

**HB**

**155**

**HAFIN**

**FILE**



8-LS0451V  
Lauterbach  
4/6/93

adopted

**CS FOR HOUSE BILL NO. 155( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVES G.DAVIS, Brice, Olberg, Nordlund, Hudson, Sitton, B.Davis**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to audits of health facilities."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1. AS 47.07.070 is amended by adding a new subsection to read:**

4 (g) Unless a facility agrees to the use of other adjustments or rate revisions,  
5 the department, in setting a prospective rate of payment under this section, may use  
6 only final audit adjustments under AS 47.07.084 - 47.07.088.

7 **\* Sec. 2. 47.07.074 is amended by adding a new subsection to read:**

8 (b) Under procedures set out in AS 47.07.082 - 47.07.096, the department may  
9 audit the financial records of a health facility and other documents relating to the  
10 calculation of medical assistance payment rates to

11 (1) determine the accuracy of information used to set a prospective rate  
12 of payment to the facility; and

13 (2) ensure compliance by the facility and by the department with this  
14 chapter and with regulations adopted under this chapter.

1 \* Sec. 3. AS 47.07 is amended by adding new sections to read:

2 Sec. 47.07.082. PRELIMINARY REVIEW PROCEDURES. (a) Within 105  
3 days after the end of the health facility's fiscal year or within whatever additional time  
4 is granted by the department at the request of the facility, a health facility shall submit  
5 to the department its year-end report, consisting of reasonable information specified  
6 by the department in its regulations.

7 (b) Within 30 days after the department receives a year-end report under (a)  
8 of this section, the department may conduct a preliminary review of the facility's  
9 report and determine whether a field audit or a desk audit will be conducted of the  
10 facility.

11 Sec. 47.07.084. AUDIT GUIDELINES. If the department determines under  
12 AS 47.07.082(b) that an audit will be conducted, it shall make a good faith effort to  
13 adhere to the following guidelines:

14 (1) within 30 days after the department's receipt of the facility's year-  
15 end report under AS 47.07.082, the department shall notify the facility in writing that  
16 it intends to conduct a desk audit or a field audit and shall submit to the facility in  
17 writing any questions the department has regarding the year-end report;

18 (2) the department shall consider responses to the questions submitted  
19 under (1) of this section if they are given to the department by the facility within 30  
20 days after receiving the department's questions under (1) of this section;

21 (3) the department shall give the facility written notice of the date the  
22 audit will begin; the department may not begin a field audit until at least 10 days after  
23 the facility received the notice, except with the consent of the facility;

24 (4) the department shall complete the desk audit or field audit within  
25 90 days after the department received the facility's year-end report under  
26 AS 47.07.082;

27 (5) before beginning a field audit, the lead auditor shall conduct an  
28 entrance conference with a representative of the facility and shall fully inform the  
29 facility of the audit process and the areas of focus;

30 (6) promptly upon completion of a field audit, the lead auditor shall  
31 conduct an exit conference; at the exit conference, the department shall provide the

1 facility with a list in writing of all proposed audit adjustments and a list in writing of  
2 any outstanding issues; upon request by the facility, the department shall provide to  
3 the facility copies of the audit work papers;

4 (7) within 20 days after the exit conference under (6) of this section,  
5 the facility may submit additional information to the department to be considered in  
6 connection with the audit;

7 (8) within 30 days after completion of the desk audit or field audit, the  
8 department shall issue its preliminary audit report;

9 (9) within 30 days after it receives the preliminary audit report under  
10 (8) of this section, a facility may submit a written response to the department; if the  
11 facility fails to respond, the department may propose use of the preliminary  
12 adjustments in the final audit report;

13 (10) within 30 days after the deadline for submission of the facility's  
14 response to the preliminary audit report under (9) of this section, the department shall  
15 issue a final audit report.

16 Sec. 47.07.086. TIME DEADLINE FOR FINAL AUDIT REPORTS. The  
17 department shall complete a final audit report and serve it on the facility so that it is  
18 received by the facility within 200 days after the date the facility's year-end report was  
19 due under AS 47.07.082 or the date the department received the year-end report,  
20 whichever was later.

21 Sec. 47.07.087. REQUEST FOR HEARING. Within 30 days after it receives  
22 a final field audit report under AS 47.07.084(10), a facility that is dissatisfied with the  
23 report may request a formal administrative hearing.

24 Sec. 47.07.088. CONTENTS OF AUDIT REPORTS. Preliminary and final  
25 audit reports for desk audits and field audits must each include

26 (1) criteria that form the basis of the audit, including the statutory,  
27 regulatory, and contractual bases of the criteria;

28 (2) findings describing noncompliance by the facility or the department  
29 with applicable statutes, regulations, or contractual requirements and calculation or  
30 reporting errors;

31 (3) specific audit adjustments based on the findings, except that the

1 department may waive adjustments that are not material;

2 (4) other adjustments as determined by the commission;

3 (5) a revised cost report if the audit report identifies changes that  
4 should be made in the cost report; and

5 (6) attachments, including all written responses and comments  
6 submitted by the facility.

7 Sec. 47.07.090. PERFORMANCE OF AUDITS. The audit unit within the  
8 department shall perform the audit functions described in AS 47.07.082 - 47.07.088.  
9 At the request of and under the direction of the audit unit, audit work under  
10 AS 47.07.082 - 47.07.088 may also be performed by a contractor or by the  
11 commission, but all audit work shall be performed in compliance with AS 47.07.082 -  
12 47.07.088.

13 Sec. 47.07.092. FACILITY'S REQUEST FOR AUDIT ADJUSTMENTS. (a)  
14 A facility may submit to the department a written request that the department include  
15 specified audit adjustments in the audit results under AS 47.07.084 - 47.07.088. The  
16 facility may submit a request under this section with its year-end report under  
17 AS 47.07.082 or at any time up to 120 days after either the date the year-end report  
18 is due or the date the department received the year-end report, whichever was later.

19 (b) The department shall review a request made under (a) of this section and  
20 consider whether to include the adjustments requested under (a) of this section in the  
21 final audit report under AS 47.07.084 - 47.07.088.

22 (c) If the department fails to comply with the 200-day time limit in  
23 AS 47.07.086, the facility's request for specified adjustments under this section is  
24 considered denied on the 200th day, and within 30 days after the 200th day, the  
25 facility may request a formal administrative hearing on the denial of the request.

26 (d) If the department includes the requested adjustments in the final audit  
27 report under AS 47.07.084 - 47.07.088 or if it is determined by a final unappealed  
28 decision in an administrative or judicial proceeding that the requested adjustments  
29 should have been included in the final audit report, then any resulting rate revision  
30 shall be applied to that rate year and to any affected subsequent fiscal period of the  
31 facility.

1           Sec. 47.07.094. AUTHORIZED USE OF AUDIT RESULTS. (a) If the  
2 department has complied with the 200-day time limit in AS 47.07.086, the department  
3 may use the audit results to calculate medical assistance payment rates for the rate  
4 year.

5           (b) If the department has failed to comply with the 200-day time limit in  
6 AS 47.07.086, the department may use the audit results in the calculation of medical  
7 assistance payment rates only for a fiscal period that commences more than 60 days  
8 after the facility receives the final audit report.

9           Sec. 47.07.096. IMPLEMENTATION OF AUDIT AND RATE DECISIONS.

10          (a) Unless otherwise ordered by a court, the department shall promptly implement the  
11 results of a final, unappealed decision issued in an administrative or judicial  
12 proceeding in which a facility has sought review of an audit result or a rate.

13          (b) Within 60 days after a decision described in (a) of this section is issued,  
14 the department shall revise the challenged audit result or rate in accordance with the  
15 decision and shall also revise affected rates for subsequent periods.

16          (c) Within the same 60-day period described in (b) of this section, the  
17 department shall calculate the lump-sum adjustment necessary to implement the revised  
18 audit result or revised rates and shall give the facility written notice of the revised  
19 audit result, the revised rates, and the related lump-sum adjustment.

20          (d) A facility may recoup amounts owed by the department as the result of an  
21 adjustment under (c) of this section. The amounts shall be repaid, at the option of the  
22 facility, by an increase in the next prospective rate of payment or by 12 equal monthly  
23 payments starting with the first month of the facility's next fiscal year.

24          (e) A facility that is dissatisfied with the rate revision or lump-sum adjustment  
25 calculated by the department under (c) of this section may request a formal  
26 administrative hearing within 30 days after the health facility receives written notice  
27 of the rate revision or lump-sum adjustment. A rate revision or adjustment challenged  
28 under this subsection may not be implemented until a final, unappealed administrative  
29 or judicial decision has been issued.

30 \* Sec. 4. AS 47.07.180 is amended by adding a new subsection to read:

31          (e) The commission shall include in its advice under (a) of this section a

1 reimbursement rate that incorporates the final audit adjustments under AS 47.07.084 -  
2 47.07.088 and other adjustments and rate revisions, consistent with this chapter, that  
3 have been agreed to by the department and the facility.

4 \* Sec. 5. AS 47.07.900 is amended by adding new paragraphs to read:

5 (18) "desk audit" means an audit conducted without being at the facility  
6 being audited;

7 (19) "facility" means a health facility;

8 (20) "field audit" means an audit conducted at the facility being  
9 audited;

10 (21) "rate year" means the second fiscal year of a health facility that  
11 begins after the end of the fiscal year that is the subject of an audit under  
12 AS 47.07.082 - 47.07.096.

**FISCAL NOTE**

**STATE OF ALASKA  
1993 LEGISLATIVE SESSION**

**BILL NO. HB 155**

Revision Date: 02/23/93 Dept. Affected: Health and Social Services  
 Title: An Act Relating to Audits of Health Facilities BRU: Administrative Services  
 Component: Audit  
 Sponsor: Rep. G. Davis,...  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 318

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	381.0	400.0	420.0	441.0	463.0	486.0
TRAVEL	21.0	22.0	23.0	24.0	26.0	27.0
CONTRACTUAL	8.4	8.8	9.3	9.7	10.2	10.7
SUPPLIES	12.0	12.6	13.2	13.9	14.6	15.3
EQUIPMENT	18.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>440.4</b>	<b>443.4</b>	<b>465.5</b>	<b>488.6</b>	<b>513.8</b>	<b>539.0</b>

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE</b>						
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**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts	220.2	221.7	232.7	244.3	256.9	269.5
1003 GF Match	220.2	221.7	232.7	244.3	256.9	269.5
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>440.4</b>	<b>443.4</b>	<b>465.5</b>	<b>488.6</b>	<b>513.8</b>	<b>539.0</b>

**POSITIONS:**

FULL-TIME	6	6	6	6	6	6
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \_\_\_\_\_

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

- (1) Additional staff: 5 Auditors and a Data Processing Technician.
- (2) Inflate personnel service cost at 5% annually.

Prepared by: Michael R. Sanders, CPA  
 Division: Audit

Phone: 465-3120  
 Date: 02/23/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: \_\_\_\_\_

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
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Position Title Internal Auditor III			No. of Positions 5	Range/Step 19A	Bargaining Unit GG
Time Status Full	Staff Months 12.0		Location Juneau		Election District
<b>TYPE of EXPENDITURE</b>			<b>AMOUNT</b>		
Salary			45.0		
Benefits			17.4		
Premium Pay					
Other					
<b>Total Personal Services</b>			<b>62.4</b>		
Travel			4.0		
Contractual			1.4		
Commodities			2.0		
Equipment					
Other					
<b>Total Cost</b>			<b>69.8</b>		
<b>FUNDING SOURCE for TOTAL COST</b>					
1002	Federal Receipts		35.6		
1003	GF Match		35.6		
1004	General Fund				
1005	GF/Program Receipts				
1006	GF/Mental Health Trust				
1007	I/A Receipts				
1061	CIP Receipts				
Other					
<p>Justification</p> <p>HB 155 imposes strict scope and time limits on Medicaid Provider Audits. The addition of these staff members will help offset the restrictions. The Medicaid Audit must be done to standards for Government Audits as established by Comptroller of the United States. Medicaid Audits are a Federal Mandated program.</p>					

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Administrative Services  
 COMPONENT: Audit 0318

Page 2 of 2

Revised Date:

**FY94**

Position Title Data Processing Technician III		No. of Positions 1	Range/Step 16A	Bargaining Unit GG
Time Status Full	Staff Mouths 12.0	Location Juneau		Election District
<b>TYPE of EXPENDITURE</b>		<b>AMOUNT</b>		
Salary		36.0		
Benefits		15.0		
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>51.0</b>		
Travel				
Contractual				
Commodities				
Equipment				
Other				
<b>Total Cost</b>				
<b>FUNDING SOURCE for TOTAL COST</b>				
1002	Federal Receipts	25.5		
1003	GF Match	25.5		
1004	General Fund			
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Page 1 of 2  
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**FY94**

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 155

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act Relating to Audits of Health BRU: Medical Assistance  
Facilities ... Component: Medicaid Facilities  
 Sponsor: Rep. G. Davis, ...  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 230

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	4,000.0	4,400.0	4,840.0	5,324.0	5,856.4	6,442.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>4,000.0</b>	<b>4,400.0</b>	<b>4,840.0</b>	<b>5,324.0</b>	<b>5,856.4</b>	<b>6,442.0</b>

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

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1003 GF Match						
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Other						
<b>TOTAL</b>	<b>4,000.0</b>	<b>4,400.0</b>	<b>4,840.0</b>	<b>5,324.0</b>	<b>5,856.4</b>	<b>6,442.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

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

- (1) Additional Medical Assistance payments to facilities because of a reduction in audit control effectiveness.
- (2) Additional costs are inflated by 10% annually due to cost containment failure.
- (3) Medical Assistance costs are 100% General Fund because Health Care Financing Administration (Title XIX funding agency) will not participate in overpayments.

Prepared by: Michael R. Sanders, CPA  
 Division: Audit Unit

Phone: 465-3120  
 Date: 02/22/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 2-23-94

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FULL-TIME	6	6	6	6	6	6
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ANALYSIS: (Attach a separate page if necessary)

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1007	I/A Receipts				
1061	CIP Receipts				
Other					
<p><b>Justification</b></p> <p>HB 155 imposes strict scope and time limits on Medicaid Provider Audits. The addition of these staff members will help offset the restrictions. The Medicaid Audit must be done to standards for Government Audits as established by Comptroller of the United States. Medicaid Audits are a Federal Mandated program.</p>					

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Administrative Services  
 COMPONENT: Audit 0318

Page 2 of 2  
 Revised Date:

**FY94**

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AGENCY: Health and Social Services

BRU: Administrative Services

COMPONENT: Audit 0318

**FY94**

Page 1 of 2

Revised Date:

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1993 LEGISLATIVE SESSION

BILL NO. HB 155

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
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Facilities ... Component: Medicaid Facilities  
 Sponsor: Rep. G. Davis, ...  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 230

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	4,000.0	4,400.0	4,840.0	5,324.0	5,856.4	6,442.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>4,000.0</b>	<b>4,400.0</b>	<b>4,840.0</b>	<b>5,324.0</b>	<b>5,856.4</b>	<b>6,442.0</b>

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**FUNDING:** (Thousands of Dollars)

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1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
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**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

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

- (1) Additional Medical Assistance payments to facilities because of a reduction in audit control effectiveness.
- (2) Additional costs are inflated by 10% annually due to cost containment failure.
- (3) Medical Assistance costs are 100% General Fund because Health Care Financing Administration (Title XIX funding agency) will not participate in overpayments.

Prepared by: Michael R. Sanders, CPA  
 Division: Audit Unit

Phone: 465-3120  
 Date: 02/22/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 2-23-94

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STATE OF ALASKA  
1993 LEGISLATIVE SESSION

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Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
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 Sponsor: Rep. G. Davis, Component: Medicaid Facilities  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 230

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	3,000.0	3,300.0	3,630.0	3,993.0	4,392.3	4,831.5
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3,000.0</b>	<b>3,300.0</b>	<b>3,630.0</b>	<b>3,993.0</b>	<b>4,392.3</b>	<b>4,831.5</b>

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3,000.0	3,300.0	3,630.0	3,993.0	4,392.3	4,831.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>3,000.0</b>	<b>3,300.0</b>	<b>3,630.0</b>	<b>3,993.0</b>	<b>4,392.3</b>	<b>4,831.5</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

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

SEE ATTACHED

Prepared by: Michael R. Sanders, CPA  
 Division: Audit Unit

Phone: 465-3120  
 Date: 04/14/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 4-16-93

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ANALYSIS (cont.):

The federal government is currently in the process of reviewing the Department's audits for fiscal year 1989. The result of this review is that approximately three percent of 1989 medicaid costs that were included in facility rates for that year should have been disallowed. Based on this experience, and our belief that the audits proposed under CSHB 155 (Fin) will be comparable in scope to the FY 89 audits, the Department projects additional cost to the State to be in the range between 2.7 percent and 3.2 percent of annual medicaid facility expenditure.

Applying this range of percentage increase to medicaid cost results in medicaid facility increases of between \$3,086,000 and \$4,229,000 in FY 94.

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 155 (Fin)

Revision Date: 04/14/93 Dept. Affected: Health and Social Services  
 Title: An Act Relating to Audits of Health Facilities BRU: Administrative Services  
 Component: Audit  
 Sponsor: Rep. G. Davis, ...  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 318

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	266.4	279.7	293.6	308.2	323.6	339.7
TRAVEL	16.8	17.6	18.4	19.3	20.2	21.2
CONTRACTUAL	6.4	6.7	7.0	7.3	7.3	7.6
SUPPLIES	9.6	10.0	10.5	11.0	11.5	12.0
EQUIPMENT	14.4					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>313.6</b>	<b>314.0</b>	<b>329.5</b>	<b>345.8</b>	<b>362.6</b>	<b>380.5</b>

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts	156.8	157.0	164.7	172.9	181.3	190.2
1003 GF Match	156.8	157.0	164.8	172.9	181.3	190.3
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>313.6</b>	<b>314.0</b>	<b>329.5</b>	<b>345.8</b>	<b>362.6</b>	<b>380.5</b>

**POSITIONS:**

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \_\_\_\_\_

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

- (1) Additional staff: 4 Auditors
- (2) Inflate personnel service cost at 5% annually.

Prepared by: Michael R. Sanders, CPA  
 Division: Audit

Phone: 465-3120  
 Date: 04/14/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 4-16-93

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Position Title Internal Auditor III		No. of Positions 4	Range/Step 19A	Bargaining Unit GG
Time Status Full	Staff Months 12.0	Location Juneau		Election District
<b>TYPE of EXPENDITURE</b>		<b>AMOUNT</b>	<b>Justification</b> CSHB 155 (Fin) imposes strict scope and time limits on Medicaid Provider Audits. The addition of these staff members will help offset the restrictions. The Medicaid Audit must be done to standards for Government Audits as established by Comptroller of the United States. Medicaid Audits are a Federal Mandated program.	
Salary		45.0		
Benefits		17.4		
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>62.4</b>		
Travel		4.0		
Contractual		1.4		
Commodities		2.0		
Equipmen'				
Other				
<b>Total Cost</b>		<b>69.8</b>		
<b>FUNDING SOURCE for TOTAL COST</b>		<b>ERROR</b>		
1002	Federal Receipts	35.6		
1003	GF Match	35.6		
1004	General Fund			
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
	Other			

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Administrative Services  
 COMPONENT: Audit 0318

**FY94**

Page 2 of 2  
 Revised Date: 04/14/93

Back-up

# Alaska State Legislature

Interim:  
P.O. Box 2187  
Soldotna, AK 99669



Session:  
State Capitol  
Juneau, AK 99801  
(907) 465-2693

**Representative Gary L. Davis**

## SPONSOR STATEMENT

### HOUSE BILL 155

#### "An Act relating to audits of health facilities."

Hospitals and nursing homes throughout the State receive a large portion of their revenues from the State/Federal Medicaid program.

Our statutes require an Audit be performed by the Department of Health & Social Services to determine the rates which can be charged for various medical services.

There are 27 medical facilities in Alaska that the department is obligated to perform annual audits on. When these audits are completed (closed-out) the facility and the department have agreed to what rates can be properly charged for the next fiscal year.

This proposed legislation will add elements of clarity, consistency, and timeliness that are currently lacking in the medicaid audit process. The final rate setting authority belongs to the Commissioner of the Department of Health & Social Services while the Medicaid Rate Advisory Commission (MRAC) acts as an advisory board. When the MRAC was established, there was a process for hospitals and nursing homes to appeal rates set by the MRAC staff. That appeal process has broken down. The breakdown of the appeal process is largely due to the lack of a well-defined audit process. Over forty Medicaid rate appeals are currently outstanding. There are other circumstances, such as staff turnover, that have stifled the process also, but the bill addresses what we perceive to be the crux of the problem.

SPONSOR STATEMENT

This bill is designed to establish a schedule whereby these audits are performed and completed in an agreed upon timeframe. The need for this bill has come about due to unacceptable delays by the department in completing these required audits. These delays have caused great concern by the medical facilities because they often face situations where their costs are increased -- and without a current completed audit their rates are in question.

POSITION PAPER  
COMMITTEE SUBSTITUTE FOR HOUSE BILL 155 (HES)

Purpose

CSHB 155 proposes changes to State law regarding the scope and timing of and procedures to be used during audits of health facilities which receive medical assistance payments.

Background

The Department of Health and Social Services, through the Medicaid program, pays Alaska hospitals and nursing homes approximately \$114 million to provide health care to medicaid eligible Alaskans.

The Alaska Supreme Court ruled in Cordova v. State of Alaska (1990) that the State did not have the statutory authority to collect audit rate adjustment overpayments paid to Alaska health facilities.

This decision was based on the Alaska Supreme Court's interpretation of the Statute governing methodology used by the State to establish medicaid payment rates for facilities. The Court ruled that the Statute requiring prospective methodology precluded recoupment of overpayment. A prospective methodology means that a basic rate is applicable during a year and that after the end of that year the compensation to the facility cannot be changed as a result of audit information. Consequently, the Department has been forced to shift its audit focus to assuring the accuracy of prospective payment amounts and, therefore, prevent overpayment from occurring. This occurs by basing payments on audited financial information.

The department has not been current with it's facility audits since the beginning of the prospective payment system for a number of reasons including, complexity of the system, conservative audit budgets, and delays in the beginning. During the last two years the department has made significant progress in catching up with the backlog of provider audits and expects that effort to continue. We expect to be current in the next 12 months. (Appendix E)

The Division of Legislative Audit included a recommendation (appendix A) in a special audit 06-4428-92, that the department seek statutory revision of Title 47 in order to provide authority for recoupment from health care facilities based on audit results. The department would support legislation which; 1) streamlined the audit process, assisting with the catchup and keep current effort; 2) allowed

recoupment from health care facilities, and; 3) allow the use of audit data in rate setting. CSHB-155 does none of these. In fact CSHB-155 makes the audit process much more cumbersome and specifically disallows recovery of overpayment.

#### Discussion

Alaska, through the Medicaid Rate Advisory Commission (MRAC), establishes the rates that the State will pay to hospitals, rural health clinics, home health agencies, surgical centers, and nursing homes, on behalf of medicaid clients. This is a prospective payment rate; it is set prior to the beginning of the facilities budget year. The rate is based on the facilities actual expenditure two years previously. Those expenditures are then inflated forward to the present and thus becomes the basis for the rate. The prospective payment rate is only as accurate as the expenditure information upon which it is based. If the expenditure information from two years previously contains expenditures which are not allowed, the prospective payment rate that is set will be overstated [and] the State will have no way to recoup these overpayments. If the information going into the rate setting system is flawed, the cost containment incentives built into the system fail to work properly.

The audit function is designed to assure that the costs that are included in the base of the rate are an accurate reflection of the facilities costs by auditing for compliance to medical assistance Statutes and Regulations. For example, the payment rate for facility year 1993 will be set on January 1, 1993, but will be based upon costs incurred during facility year 1991. Before the 1993 rate can be accurately set, the audit of facility year 1991 should be completed. Examples of the adjustments proposed in 1992 are contained in appendix B.

Because of the Cordova decision, any costs which are not allowable and are not adjusted through the audit process before the facility budget year is over, cannot be recouped later. Consequently, any audit adjustments which are not included in the calculation of the prospective rate are excess costs which the State will continue to pay. During FY 94, the Department expects to pay hospitals and nursing homes approximately 114 million in medicaid payments. It is critical that the Department has an audit function that rigorously examines the costs which are the basis for these payments.

#### Analysis

A brief summary of the major problems with the bill is as follows:

- \* AS 47.07.087 indicates that audits must be done within 165 days of receipt of year end report, regardless of the delays that may occur because of untimely responses from facilities. A facility can avoid audits simply by delaying responses.
- \* Nothing in the bill talks about the quality of the response from the facility. The facility has a time line for the original submission , however, it only requires a response and does not refer to the completeness or quality of response, and excludes responses to inquiries. Attached is appendix C which documents the original due date of provider submitted information and the date the reports were ultimately available to the department. Appendix D illustrates the extensions in time to respond to audit inquiry requested by facilities being audited during 1992.
- \* The bill is so detailed that virtually any audit will likely get hung up on legal technicality. Much of the detail may be more appropriate in Regulation if the detail is necessary at all.
- \* The actual time available to do audits is very limited (field audits must be finished within 20 days for example).
- \* The bill requires the Medical Rate Advisory Commission (MRAC) to calculate rates twice. The purpose for double calculation is not clear from reading AS 47.07.180.
- \* The bill severely limits the scope of field audits by requiring the department to notify the facility of the areas of focus. This language does not allow auditors to pursue legitimate leads that become apparent as the audit proceeds. Scope limitations only serve to reward the facilities by building improperly reported costs into the payment rate.
- \* Millions of Alaska Medicaid dollars are spent annually paying for out of state home office costs. Because of the short time limitation and the out of state location of these home offices the department will have no opportunity to verify these costs.
- \* Section 1 states that the MRAC staff can do no rate analysis except what is noted as an audit exception or what is agreed to by the facility. This severely limits the scope of the rate setting and budget analysis. Annual budgets which are integral to rate setting are submitted subsequent to the 165 day cutoff for making

audit adjustment. The department would therefore be accepting the budget of a facility without the ability to analyze those budgets.

- \* AS 47.07.092 contains language which shifts the burden of correct reporting from the facilities to the departments. If the facility requests an audit adjustment then the department has to include the adjustment or justify its exclusion. This provision of CSHB 155 would allow a facility to submit new information, or even a new cost report very late in the process, leaving the department no opportunity to verify the information. This provision would likely make void much of the audit effort accomplished prior to the facility submitting adjustments.

The department has many other concerns with this proposed legislation, however attempting to document them all may imply CSHB 155 can easily become acceptable. The Department does not believe this to be the case.

Position

CSHB 155 virtually eliminates the departments ability to audit facilities which expend over 114 million in medicaid dollars. The Bill establishes audit rules and deadlines that will prove to be impossible to meet. Even with a significant increase in staff, the department does not believe that it could maintain an audit function which would comply with Federal medicaid requirements. The department has pointed out several major problems with the legislation. This list is not exhaustive and is meant to be illustrative of the legislations' imbalance toward facilities. If this bill were to pass, the department does not believe that it could guarantee the financial integrity of the medicaid facilities budget. The department could not in good conscience make any promises to the legislature that facility medicaid costs could be contained in any way. We strongly oppose the legislation.

Recommended by: *Michael R. Sanders*  
 Michael R. Sanders, CPA  
 Audit Unit Manager

Date: \_\_\_\_\_

Approved by: *Theodore A. Mala*  
 Theodore A. Mala, MD, MPH  
 Commissioner

Date: 3/22/93

APPENDIX A

and should include in the review process the verification of cost data upon which the facility is reimbursed.

Recommendation No. 3

DHSS should continue to seek statutory revision of Title 47 in order to provide authority for recoupment from health care facilities based on audit results.

Alaska Statute 47.07.074 provides, as a condition of obtaining payment, that a health facility will allow inspection of their records. The Alaska Supreme Court (March 30, 1990) in *City of Cordova v. Medicaid Rate Commission* found that AS 47.07.074 did not provide authority for recoupment from a facility based upon audit results. The Court found that the text of the statute did not state or imply that the amount of payment to the facility would be affected by any audit. The Court further found that no right of recapture was established by DHSS in their agreements with the facilities.

Federal regulation 42 CFR 433.300 directs that quarterly federal payments to the states under Title XIX - Medical Assistance Payments are to be reduced or increased to make adjustment for prior overpayments or underpayments which have been made. A state has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the federal Medicaid payment to the state is made. Adjustment in the payment to the state occurs whether or not recovery is made.

It is essential that the State be able to recoup from facilities payments determined to be inappropriate based upon the result of audits. The lack of recoupment and the federal requirements concerning overpayment of facilities increases the cost of the Medicaid program to the State. DHSS is currently not able to obtain reimbursement from facilities of amounts over paid them, but is required to reimburse the federal government for the amount of federal participation in that overpayment.

In 1991, the department introduced Senate Bill 288 relating to the use of audit and inspection results in recapturing overpayments and reimbursing underpayments to health facilities. However, this bill was not passed by the Legislature. We recommend that the department continue its efforts and seek such a statutory revision in the next legislative session.

In addition, we suggest the department update their agreements with facilities to include provision for the recapture of overpayments identified by the department.

## APPENDIX B

### EXAMPLES OF 1992 AUDIT ADJUSTMENTS

1. A long term care facility included Bingo and Sing Along activities as Ancillary Expenses. Ancillary expenses are to be prescribed by a physician and are reimbursed on an actual cost basis. The result was that the Medicaid program would pay approximately \$50.00 for each patient participating in Bingo or Sing Along. The adjustment records these expenses as reimbursable routine expenses.
2. A branch of a national long term care facility included \$35,000 in interest paid to the home branch. The adjustment disallows the interest as a non arms length transaction.
3. A long term care facility charges \$2.55 per day for Medical Supplies for non Medicaid patients and \$7.50 per day for Medical Supplies for Medicaid patients. The adjustment makes the charges equal.
4. A long term care facility reported more interest revenue offset than is required. Medicaid requires that interest revenue be offset only to the extent of interest expense.
5. A hospital failed to report its' full depreciation amount. The adjustment added the reimburseable cost.
6. A long term care facility's cost report contained Form A-8 adjustments recorded backwards. The correction would increase the facility's reimbursement rate.
7. A hospital includes the cost of clinics in its cost report. The clinics are reimbursed differently under the system, similar to the method for reimbursing non hospital clinics. The adjustment removed the clinics from the hospital cost report.
8. A hospital included lobbying fees in the cost report. Lobbying fees are not reimbursable Medicaid expenses and were removed from the cost report.
9. Several long term care facilities included items like combs, shampoo, and bath powder as Medical Supplies an ancillary. Medicaid considers these items to be routine.
10. A branch of a national hospital chain continues to respond to inquiries by saying the records are maintained at the national location and requests for the information are rarely forthcoming.

Appendix B  
Page 2

11. Several long term care facilities included costs salary and other cost in ancillary which are always considered routine by Medicare reimbursement standards. Ancillary are reimbursed at a rate to reflect 100% of base period costs. The audit adjustment reclassified the costs as routine.
12. Approximately two thirds of all hospital and nursing homes pay for services from an out of state home office. These costs are reported on home office cost reports. Medicare intermediaries audit the home office cost, however the result of those audits are not available to the department until well after the deadlines for completion of the departments audits.

APPENDIX C

UNTIMELY REQUESTS

<u>Facility</u>	<u>1st Extension</u>	<u>2nd Extension</u>
Cent. Peninsula	11/3/92 (30 days)	
Heritage Place	11/3/92 (30 days)	
Humana Hosp.-Alaska		
Ketchikan General Hosp.	2/28/92 (30 days)	
OLOC	10/15/92 (30 days)	2/1/93 (105 days)
Providence Hosp.	11/9/92 (30 days)	
Sitka Community Hosp.	3/5/92 (no response letter sent)	
South Peninsula	9/4/92 (30 days)	
Wrangell	7/18/92 (30 days)	
St. Ann's	2/8/93 (30 days)	
Valley Hospital	11/22/92 (30 days)	3/1/93 (60 days)

APPENDIX D

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Medicaid Rate Advisory Commission

<u>Facility</u>	<u>Type</u>	<u>FYE</u>	<u>DUE</u>	1992 <u>YEC</u> <u>Report</u> <u>Rec'd</u>	<u>Comments</u>
Alaska Psychiatric Ins.	LTC	6/30	10/28	10/28/92	Complete
Bartlett Memorial Hos.	Acute	6/30	10/28	11/05/92	FS not recieved
Central Peninsula	Acute	6/30	10/28	10/29/92	Complete
Cordova Comm. Hosp.	Comb.	6/30	10/28	01/11/93	Complete 02/12/93
Harborview Devel. Ctr.	ICF/MR	6/30	10/28	12/21/92	Ext. to 12/15/92
Hope Cottages	ICF/MR	6/30	10/28	12/24/92	Ext. to 12/28/92
Ketchikan Gen. Hosp.	Comb	6/30	10/28	10/02/92	10/20/92 Complete
North Star Hospital	Acute	6/30	10/28	10/29/92	11/15/92 Complete
Petersburg Gen. Hosp.	Comb.	6/30	10/28	10/14/92	Complete
Seward Gen. Hosp.	Acute	6/30	10/28	12/31/92	Ext. to 12/31/92
Sitka Comm. Hosp.	Acute	6/30	10/28	10/28/92	Complete
So. Peninsula Hosp.	Comb.	6/30	10/28	10/15/92	FS not received
Wesley Rehab. Ctr.	LTC	6/30	10/28	10/09/92	Complete
Wrangell Gen. Hosp.	Comb.	6/30	10/28	10/09/92	Complete
Humana Hosp.	Acute	8/31	10/28	12/29/92	Complete
Charter North	Acute	9/30	10/28		Ext. to 3/29/93
Kotzebue Sen. Citi.	LTC	9/30	10/28		Ext. to 3/29/93
Norton Sound	Comb.	9/30	10/28		Ext. to 3/29/93

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### OFFICE OF THE COMMISSIONER APPENDIX E

AUDIT UNIT  
P.O. BOX 110602  
JUNEAU, ALASKA 99811-0602  
PHONE: (907) 465-3120

#### M E M O R A N D U M

Date: February 23, 1993  
To: Jay Livey  
Deputy Commissioner  
From: *MS* Michael Sanders  
Audit Unit Manager  
Subject: Status of Audits

During the past twelve months the Department has made significant progress in facilities audits.

As you know we have been contracting with KPMG Peat Marwick for the past audits, while Department staff auditors have been doing audits of current base periods.

During the past several months KPMG Peat Marwick has forwarded to this office for review, forty-nine Preliminary Facility Audits.

The first contract still has eight pending Facility Audits for which KPMG Peat Marwick awaits provider response. The completion of these eight audits will represent a total audit coverage for 1989 and all prior fiscal years.

While this effort has been taking place, the Department staff has issued seventeen Preliminary Audits of current base periods, fiscal years 1990 and 1991. The Department staff is currently engaged in fifteen fiscal year 1992 audits which will be used for the prospective payment rate for fiscal year 1994.

Contract audit effort at KPMG Peat Marwick on the fiscal year 1990 audits has just begun and results from that contract are expected in July, 1993.

#### Conclusion:

Real progress has been made in the last year toward the goal of all past years audits issued and audit total effort is focused on the current base periods. This has been accomplished through a high level of competent dedication of staff and contract auditors.

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 155

Revision Date: 03/18/93 Dept. Affected: Health and Social Services  
 Title: An Act Relating to Audits of Health Facilities BRU: Administrative Services  
 Component: Audit  
 Sponsor: Rep. G. Davis, ...  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 318

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	381.0	400.0	420.0	441.0	463.0	486.0
TRAVEL	21.0	22.0	23.0	24.0	26.0	27.0
CONTRACTUAL	8.4	8.8	9.3	9.7	10.2	10.7
SUPPLIES	12.0	12.6	13.2	13.9	14.6	15.3
EQUIPMENT	18.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>440.4</b>	<b>443.4</b>	<b>465.5</b>	<b>488.6</b>	<b>513.8</b>	<b>539.0</b>

CAPITAL						
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REVENUE FUND SOURCE						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts	220.2	221.7	232.7	244.3	256.9	269.5
1003 GF Match	220.2	221.7	232.8	244.3	256.9	269.5
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>440.4</b>	<b>443.4</b>	<b>465.5</b>	<b>488.6</b>	<b>513.8</b>	<b>539.0</b>

**POSITIONS:**

FULL-TIME	6	6	6	6	6	6
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary)  
 (1) Additional staff: 5 Auditors and a Data Processing Technician.  
 (2) Inflate personnel service cost at 5% annually.

Prepared by: Michael R. Sanders, CPA *Michael R. Sanders*  
 Division: Audit

Phone: 465-3120  
 Date: 03/18/93

Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala*  
 Agency: Department of Health & Social Services

Date: 3/22/93

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Position Title Data Processing Technician III		No. of Positions 1	Range/Step 16A	Bargaining Unit GG
Time Status Full	Staff Months 12.0	Location Juneau		Election District
<b>TYPE of EXPENDITURE</b>		<b>AMOUNT</b>		
Salary		36.0		
Benefits		15.0		
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>51.0</b>		
Travel				
Contractual				
Commodities				
Equipment				
Other				
<b>Total Cost</b>				
<b>FUNDING SOURCE for TOTAL COST</b>				
1002	Federal Receipts	25.5		
1003	GF Match	25.5		
1004	General Fund			
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
<p><b>Justification</b></p> <p>CSHB 155 imposes strict scope and time limits on Medicaid Provider Audits. The addition of these staff members will help offset the restrictions. The Medicaid Audit must be done to standards for Government audits as established by the Comptroller of the United States. Medicaid Audits are a Federal Mandated program.</p>				

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Administrative Services  
 COMPONENT: Audit 0318

Page 1 of 2

Revised Date:

**FY94**

Position Title Internal Auditor III		No. of Positions 5	Range/Step 19A	Bargaining Unit GG
Time Status Full	Staff Months 12.0	Location Juneau		Election District
<b>TYPE of EXPENDITURE</b>		<b>AMOUNT</b>		
Salary		45.0		
Benefits		17.4		
Premium Pay				
Other				
<b>Total Personal Services</b>		62.4		
Travel		4.0		
Contractual		1.4		
Commodities		2.0		
Equipment				
Other				
<b>Total Cost</b>		69.8		
<b>FUNDING SOURCE for TOTAL COST</b>		<b>ERROR</b>		
1002	Federal Receipts	35.6		
1003	GF Match	35.6		
1004	General Fund			
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				

Justification  
 CSHB 155 imposes strict scope and time limits on Medicaid Provider Audits. The addition of these staff members will help offset the restrictions. The Medicaid Audit must be done to standards for Government Audits as established by Comptroller of the United States. Medicaid Audits are a Federal Mandated program.

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Administrative Services  
 COMPONENT: Audit 0318

**FY94**

Page 2 of 2  
 Revised Date:

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 155

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Al. Act Relating to Audits of Health BRU: Medical Assistance  
Facilities... Component: Medicaid Facilities  
 Sponsor: Rep. G. Davis,  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 230

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	4,000.0	4,400.0	4,840.0	5,324.0	5,856.4	6,442.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>4,000.0</b>	<b>4,400.0</b>	<b>4,840.0</b>	<b>5,324.0</b>	<b>5,856.4</b>	<b>6,442.0</b>
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE</b>						

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	4,000.0	4,400.0	4,840.0	5,324.0	5,856.4	6,442.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>4,000.0</b>	<b>4,400.0</b>	<b>4,840.0</b>	<b>5,324.0</b>	<b>5,856.4</b>	<b>6,442.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

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

Prepared by: Michael R. Sanders, CPA *Michael R. Sanders* Phone: 465-3120  
 Division: Audit Unit Date: 03/18/93  
 Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala* Date: 3/22/93  
 Agency: Department of Health & Social Services

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D R A F T

"An Act relating to audits and inspections of health facilities receiving payment for medical assistance for needy persons and to the use of audit and inspection results to set prospective rates, recapture overpayments, and to reimburse underpayments to such health facilities; and providing for an effective date."

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

\* Section 1. FINDINGS. The legislature finds that

(1) the state commits a substantial amount of public money to provide medical assistance for eligible needy persons in Alaska, approximately 50 percent of which is reimbursed by the federal government for services covered by medicaid;

(2) the budget for medical assistance in Alaska has dramatically increased over the past 10 years, and in fiscal year 1992 exceeded \$208,800,000

(3) approximately 47% percent of the total medical assistance budget is paid to facilities that provide necessary hospital and nursing home services to needy persons eligible for the program;

(4) in 1983 the legislature authorized the facility's rates for medical assistance to be set prospectively under AS 47.07.070 in order to prudently adjust payment to health facilities and to give the state flexibility in responding to federal funding changes;

Foot-It™ brand fax transmittal memo 7671		# of pages >
To Jay Lively	From Glenn Gustafson	
Co.	Co. Attorney General's Of	
Dept.	Phone # 261-5135	
Fax # 465-3028	Fax #	

(5) the legislature recognized its responsibility then as now, to prudently protect and monitor the spending of public money;

(6) audits are a critical tool in monitoring the spending of public money for facilities receiving medical assistance payments, because auditors review data used to calculate rates and review payment of public money;

(7) changing to a prospective rate-setting system in 1983 did not eliminate the important role of audits in setting fair rates based on reasonable costs for facility services receiving medical assistance payments, even though the rates are prospective in type and, therefore, may require adjustment after the end of the fiscal year for which the rate was set based on audit results;

(8) in 1990 the Alaska Supreme Court ruled in *City of Cordova v. Medicaid Rate Commission*, 789 P.2d 346 (Alaska 1990), that, with respect to Medicaid payments for 1985, the rate setting statute for facilities (AS 47.07.070) was silent on the subject of prospective recoupment from a facility based on audit results and, therefore, precluded recoupment by the program;

(9) it is, therefore, necessary to clarify the legislature's intent that AS 47.07.070 allows the state to reset prospective payment rates, refund underpayments and recoup overpayments based on audit results and allows for the consideration of audit results in rate setting, even though the rate setting statutes previously were silent on the role

of audits;

(10) the issue of what can be done with audit results has been contested for several years and some facilities have relied on the reading of the law set out by the Supreme Court;

(11) the corrective legislation authorized overpayment and underpayment correction for any facility fiscal years beginning after June 30, 1993, by recoupment, assessment, adjustment to the facilities rate, or payment;

(12) the corrective legislation only authorizes correction of overpayment and underpayment for audit and inspection issues identified within twenty-four (24) months following a facilities fiscal year end;

(13) the amendments of AS 47.07.070 in this Act are adopted to make clear that audits are intended to be used to adjust prospective rates, to recoup overpayments of public money, and to provide a sound basis for the state to set rates.

\* Sec. 2. AS 47.07.070(a) is amended to read:

(a) The department shall set the prospective rate of payment to a health facility under this chapter and AS 47.25.120 -- 47.25.300 based on a fair rate for reasonable costs incurred by the facility. In setting a rate the department may utilize the results of department audits and inspections. The department may not set a rate until after a public hearing before the Medicaid Rate Advisory Commission, except that this hearing requirement is not applicable if a

new rate is immediately necessary to afford exceptional relief to a facility as determined under regulations adopted by the department. The department shall by regulation list the factors it considers in making its rate determinations under this section. A rate set under this section does not take effect until it is approved in writing by the commissioner of health and social services or the agency assigned by the commissioner to perform this function. The written determination of a rate set by the department after a hearing must include a statement of the department's findings, a description of the basis of the findings and conclusions, a citation to the regulations supporting the findings and conclusions, and a statement of the decision.

\* Sec.3. AS 47.07.07U is amended by adding a new subsection to read;

(g) Using results of its audits and inspections of a health facility's books and records, as well as other available information identified within two years of the facilities<sup>4/3</sup> year end, the department shall

- ✓
- ✓
- ✓
- ✓

(1) recapture overpayments made to the facility, including overpayments made as a result of the departments or facilities<sup>4/3</sup> errors, by means of assessments, adjustments to the facilities<sup>4/3</sup> prospective rates, or withholding from payments otherwise due to the facility under this chapter and AS 47.25.120 --- 47.25.300; and

(2) make payments to the facility to correct underpayments<sup>4/3</sup> identified as a result of the audit. ©

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\* Sec. 4

Sections 2 and 3 of this Act allow audits and inspections of facility to be used in computing and correcting overpayments and underpayments, and allow information acquired in such audits and inspections to be used in setting prospective rates effective after June 30, 1993.

**STATE OF ALASKA****DEPARTMENT OF LAW****OFFICE OF THE ATTORNEY GENERAL****WALTER J. HICKEL, GOVERNOR**

PLEASE REPLY TO:

1031 W. 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1004  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1560  
FAX: (907) 456-1317

P. O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 463-3800  
FAX: (907) 463-5295

April 16, 1993

VIA FACSIMILE AND MAIL

Jay Livey  
Deputy Commissioner  
Department of Health  
and Social Services  
P.O. Box 110601  
Juneau, Alaska 99811-0601

Re: Review of -CSHB 155 (4/6/93  
version) pending before House  
Finance Committee

Dear Deputy Commissioner Livey:

This letter is provided in response to your request that we review CSHB 155 (4/6/93 version), proposed legislation relating to audits of health facilities. You have asked that we review the legislation and supply you with comments as to the legal issues which may arise out of the enactment of this legislation.

We have also reviewed the letter to you dated March 16, 1993, from Thomas G. Wallner, Associate Regional Administrator, Health Care Financing Administration, Department of Health and Human Services and the letter from Randy S. Welker, Legislative Auditor, to the Honorable Mark Hanley dated March 29, 1993 with respect to the proposed legislation. We agree with, and adopt the concerns raised in these two letters.

Specifically, we would like to reinforce those criticisms of the pending legislation presented by Thomas G. Wallner on behalf of the federal Health Care Financing Administration (HCFA). As we are sure you are aware, federal financial participation is crucial to sustaining the state's Medicaid program. Accordingly, concerns raised by HCFA must be taken extremely seriously. In analyzing proposed legislation related to Medicaid, it is also important to consider the fact that at all funding for the state's Medicaid program is from public monies.

Rather than reiterate the concerns addressed in the letters referenced above, the following will highlight a few of the more significant shortcomings in the proposed legislation from our point of view.

**THE PROPOSED LEGISLATION MAY CONFLICT WITH  
FEDERAL LAW AND THE FEDERAL STANDARDS FOR  
ADMINISTRATION OF THE STATE'S MEDICAID PROGRAM**

As you are aware, the present dilemma faced by the state with respect to its Medicaid program is that the state is required to perform an audit function but, in light of the Alaska Supreme Court decision in City of Cordova, the extent to which the state may recoup for overpayments identified in audits is unclear. Notwithstanding this uncertainty, HCFA has seized upon the audit results to withhold in excess of \$1,000,000.00 in federal financial participation based upon overpayments identified in the audits. Rather than remedy this serious problem, the proposed legislation merely exacerbates it by creating more onerous restrictions on the performance of audits and use of audit results.

As noted in Mr. Wallner's letter on behalf of HCFA, several provisions of the proposed legislation may conflict with federal law regarding the use of audit results. The serious constraints created with respect to the audit process and the use of audit results could have an enormous adverse effect on state revenues by further reducing federal financial participation with respect to the state's Medicaid program. The seriousness of these problems is evident in Mr. Wallner's statement that HCFA would most likely not approve the state's Medicaid plan if it incorporated the severe limits on the use of audit results contained in the proposed legislation.

Beyond these seemingly insurmountable obstacles, the proposed legislation unduly limits the scope of the audits which may be conducted by the state. Specifically, the proposed legislation would allow for audits of only a facility's "financial records and other documents." See proposed AS 47.07.074(b). This would apparently prevent the state from conducting audits regarding facility economy and efficiency as a way of further implementing the payment standards set forth by federal law. See 42 U.S.C. § 1396a(a)(13)(A) (the "Boren Amendment"), which specifically relates the adequacy of payment to facility efficiency and economy. This undue restriction over the type of audit which may be conducted by the state of a health care facility seems unwarranted.

Jay Livey, Deputy Director  
Department of Health and Social Services

April 16, 1993  
Page 3

**THE PROPOSED LEGISLATION INAPPROPRIATELY  
CONFINES THE EXERCISE OF AGENCY DISCRETION  
AND PRESENTS INTERPRETATION AND APPLICATION OBSTACLES**

The purpose of legislation, as opposed to regulations, is to establish general parameters within which the agency may exercise its discretion. Legislation which provides too high a level of detail prevents an agency from fine tuning its procedures to accommodate the realities of the unique and varied situations it may face. The proposed legislation violates this general principle.

For example, proposed AS 47.07.084(1) requires that:

within 30 days after the department's receipt of the facility's year-end report under AS 47.07.082, the department shall notify the facility in writing that it intends to conduct a desk audit or a field audit and shall submit to the facility in writing any questions the department has regarding the year-end report.

From a practical standpoint, the agency may not be able to determine whether it is appropriate to conduct an in-depth field audit without initially having performed a preliminary or desk audit. Further, to require the department to submit any questions to the facility prior to even commencing an audit may be of little practical benefit since, until the auditors have uncovered irregularities, it will be impossible to formulate questions regarding the irregularities. This type of "over-precision" in legislative drafting has resulted in ongoing litigation for the department. For example, the department is currently involved in litigation regarding the interpretation of AS 47.07.070(e), which purports to establish very specific and detailed requirements regarding year-end conformance adjustments.

Another problem with the proposed legislation is that it would establish unclear standards that will inevitably produce protracted litigation. It is apparent from review of the draft legislation that it fails in particular to define certain essential terms and also establishes imprecise standards. For example, in section 3 of the draft legislation, there is a proposal to add AS 47.07.084 to read:

**AUDIT GUIDELINES.** If the department determines under AS 47.07.082(b) that an audit will be conducted, it shall make a good faith effort to

Jay Livey, Deputy Director  
Department of Health and Social Services

April 16, 1993  
Page 4

adhere to the following guidelines. (Emphasis added.)

Because the term "good faith effort" is not defined in the statute it is necessarily left for the courts to define. This statutory language would likely spawn significant additional litigation.

**THE PROPOSED LEGISLATION ESTABLISHES INTERNALLY  
INCONSISTENT AND CONFLICTING PROCEDURES  
AFFECTING MUCH MORE THAN JUST "AUDITS OF HEALTH FACILITIES"**

Section 1 of CSHB 155 would add new subsection (g) to AS 47.07.070. This subsection would provide for the use of "adjustments or rate revisions" in setting prospective rates only if such adjustments or rate revisions are consented to by the facility or are included as final audit adjustments, an undefined term. As a practical matter, this requires that all factors affecting a facility's reimbursement rate, as well as revisions to that rate, be included as part of the audit process. This provision has the effect of incorporating the entire rate-setting process into the audit process. In addition to the fact that this result apparently exceeds the intended goals of the legislation, the provision would make it virtually impossible to set payment rates without the consent of the facility.

Specifically, under the current methodology for setting prospective payment rates, components of the rate with respect to capital costs utilize budget data which are not required to be submitted by the facility until the time set forth in the proposed legislation for conducting and completing the audit has expired. Accordingly, under the legislation currently proposed, adjustments or revisions to the data submitted by the facility with respect to such budgeted data would only be permitted if the facility agreed to such adjustments or revisions. This would make it virtually impossible for the department to make any adjustments or revisions to the budgeted data submitted by the facility.

Further, this subsection applies to revisions in rates with respect to all Medicaid facilities, not merely acute care and long term facilities. Thus, the proposed legislation would be applicable to rural health clinics, home health agencies and outpatient surgical clinics as well. See AS 47.07.900(11). These types of facilities are not regularly audited as part of the rate setting process. Under the proposed legislation no "final audit adjustments" would be available for these facilities and,

Jay Livoy, Deputy Director  
Department of Health and Social Services

April 16, 1993  
Page 5

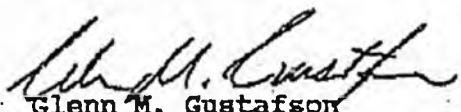
therefore, no adjustments or revisions in rates could be made without these facilities' consent.

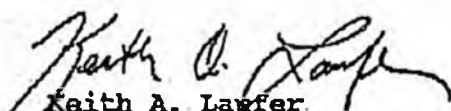
#### CONCLUSION

If the proposed legislation is adopted in its current form, it will create fertile ground for litigation. It could create parameters for the conduct of audits which would be nearly impossible for the department to meet. The legislation would likely prevent the department from utilizing audit results or make other adjustments in rate setting and prevent the department from recouping past overpayments made to health facilities. Ultimately, this would result in a substantial loss of state funds which could be further exacerbated if there is a reduction in federal financial participation as a result of the legislation. For the reasons set forth above, we do not believe that the department should recommend that the proposed legislation in its current form be adopted.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

  
By: Glenn M. Gustafson  
Assistant Attorney General  
Governmental Affairs-Anchorage

  
Keith A. Lawler  
Assistant Attorney General  
Governmental Affairs-Anchorage

GMG/aw



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112  
Juneau, Alaska 99801  
907/586-2820  
Fax: 907/463-2545

April 16, 1993

The Honorable Ron Larson and Eileen MacLean, Co-Chairs  
and Members of the House Finance Committee  
Alaska State House of Representatives  
The Capitol Building, Room 502  
Juneau, Alaska 99801-1182

RE: HB 269: Appro: Exxon Valdez Restoration Projects

Dear Representatives Larson and MacLean and Committee Members:

As President of United Fishermen of Alaska and a member of the Public Advisory Group to the Trustees, I have had some suggestions made to me by many of the oil spill impacted fisheries groups. The groups that have spoken with me are Cordova District Fishermen United, Kenai Peninsula Fishermen's Association, and United Cook Inlet Drift Association. I have not yet had the opportunity to speak with the Kodiak fishery groups.

There has been a great deal of concern expressed to me regarding the lack of fisheries projects from the State of Alaska and Trustees process.

Prince William Sound - Alaska  
Department of Fish and Game (see proposal)

Wire Code Tag Recovery Programs for Pink Salmon in Prince William Sound. The funds are not available to recover the tags and do a detailed report. This study helps us understand oil spill impacts and the interaction between hatchery stocks and wild stocks.

Kenai Proposal - Alaska Department of Fish and Game

Section 3. Make sure the proposed fund go for habitat restoration. Will this happen if the words restoration and enhancement are left in the Section? Or, could they go for docks and other projects?

Project 1. Development and deployment of in-river sonar counters to replace the existing Bendis counters which are no longer in production and for which no spare parts are available. The new systems would be deployed in the Kenai, Kasilof, Susitna, and Crescent River systems.

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Selnors Association  
Bering Sea Fishermen's Association • Bristol Bay Drilltrollers Association • Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association  
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association  
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative  
Southeast Alaska Selnors Association • Southern Southeast Regional Aquaculture Association  
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

The Honorable Ron Larson and Eileen MacLean, Co-Chairs  
and Members of the House Finance Committee  
April 16, 1993  
Page Two

Project 2. Susitna River drainage sockeye salmon studies. These research programs would investigate sockeye salmon at all stages of development and attempt to determine whether lakes in the Susitna system are being fully utilized by rearing sockeye.

Cost: \$1.5 million over a five year period (see attached).

We view these as all worthwhile projects to the second largest industry and State's largest employer.

I would appreciate your consideration of these projects.

Sincerely,



Jerry McCune  
President  
United Fishermen of Alaska

Enclosures

cc: The Honorable Walter J. Hickel, Governor  
The Honorable Harley Olberg, Representative  
The Honorable Gail Phillips, Representative  
Carl Rosier, Commissioner, ADF&G  
UFA Board of Directors

PROJECT TITLE: Prince William Sound Pink Salmon  
 Coded-Wire Tag Recovery  
 FISHERY UNIT: Prince William Sound Salmon  
 COMPONENT: Commercial Fish  
 LOCATION: Cordova  
 SUBCOMPONENT:  
 LEGISLATIVE DISTRICTS: 6,2

PROJECT NUMBER: TF-XXX  
 LEDGER CODE: 1101XXX1  
 PRINT ORDER: 206\_XXX1\_  
 REGION: 2  
 PRIORITY: 1.00

PROGRAM ELEMENT: Stock Structure Analysis  
 FISHERIES AFFECTED: Purse Seine and Gill Net

USER GROUPS AFFECTED: Commercial, Hatchery

SPECIES AFFECTED: Pink (100%)

PROJECT DESCRIPTION

Management complexity in Prince William Sound (PWS) pink salmon fisheries has increased due to the Valdez Fisheries Development Association (VFDA) Solomon Gulch Hatchery and the Prince William Sound Aquaculture Corporation Cannery Creek, Wally H. Noerenberg, and Armin F. Koernig hatcheries. Returns to these four hatcheries now outnumber wild returns by almost five to one and mingle with wild returns in migratory corridors as well as in hatchery terminal areas. Fisheries directed at numerically superior hatchery returns in these mixed stock areas may overexploit wild fish which cannot sustain comparable harvest rates. To minimize interceptions of wild fish yet still permit some fishing in non-terminal areas fisheries managers must be able to identify time and area trends in abundance for both hatchery and wild fish. This project will recover coded-wire tags from the commercial gillnet and seine fisheries in the all fishing districts of PWS. It will also recover tags from coast recovery harvest and broodstock from all PWS pink salmon hatcheries. Tag recovery data will be used to make catch stock composition estimates from specific areas and times. These estimates will provide better understanding of stock intermixing among and within districts and weeks. This information can be used to regulate fisheries or modify district boundaries to control exploitation rates on wild and hatchery stocks.

PROJECT OBJECTIVES

To provide estimates of stock composition for specific area and time strata within fishing districts and hatchery terminal harvest areas of Prince William Sound.

BUDGET MANAGER: PCN 1210 - Sam Sharr, PWS Research Project Leader

**YELLOWBOOK PAGE 2 PROJECT DESCRIPTION**

Salaries computed using FY93 rates.

PROJECT TITLE: Prince William Sound Pink Salmon Coded-wire Tag Recovery      PROJECT NUMBER: TF-XXX  
 UNIT: Prince William Sound Salmon      LEDGER CODE: 1101XXX1  
 COMPONENT: Commercial Fish      PRINT ORDER: 206\_XXX1\_      REGION: 2

BUDGET DETAIL: CODE/LINE ITEM	PRIOR YEAR ALLOCATIONS			PAGE 2 SUMMARY
	FY90	FY91	FY92	
100 PERSONAL SERVICES	0.0	0.0	0.0	
200 TRAVEL	0.0	0.0	0.0	
300 CONTRACTUAL	0.0	0.0	0.0	
400 COMMODITIES	0.0	0.0	0.0	
500 EQUIPMENT	0.0	0.0	0.0	
700 GRANTS	0.0	0.0	0.0	
<b>PROJECT TOTALS</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	
FEDERAL RECEIPTS	0.0	0.0	0.0	
GENERAL FUND	0.0	0.0	0.0	
INTERAGENCY RECEIPTS	0.0	0.0	0.0	
PROGRAM RECEIPTS	0.0	0.0	0.0	
GENERAL FUND MATCH	0.0	0.0	0.0	
STAFF MONTHS	0.0	0.0	0.0	

**PERSONAL SERVICES DATA**

PCN	TITLE & NAME	R	S	Range		MM	SEADUTY		Premium Pay			TOTAL COST	
				93	94		SWD	RDO	OT	HAZ	SHIFT		
1909	FB II - Peckham C	A	S	DWA	16A	16A	12.0	0	0	0.	0.	0.	\$57,288
1571	FB I - Valdez	A	S	EAA	14A	14A	4.0	0	0	240.	0.	0.	\$21,320
????	FB I - Cordova	A	S	DWA	14A	14A	6.0	0	0	180.	3.	0.	\$30,345
1496	FT III- Speer N	A	S	DWA	11A	11A	6.0	0	0	180.	0.	0.	\$27,117
7072	BMI - Evans D	A	S	EBA	17A	17A	3.0	0	0	0.	0.	0.	\$10,977
????	FT II - Cordova	A	S	DWA	09A	09A	3.0	0	0	120.	0.	0.	\$10,518
????	FT II - Cordova	A	S	DWA	09A	09A	3.0	0	0	120.	0.	0.	\$10,518
????	FT II - Cordova	A	S	DWA	09A	09A	3.0	0	0	120.	0.	0.	\$10,518
????	FT II - Cordova	A	S	DWA	09A	09A	1.5	0	0	60.	0.	0.	\$5,010
????	FT II - Cordova	A	S	DWA	09A	09A	1.5	0	0	60.	0.	0.	\$5,010
????	FT II - Cordova	A	S	DWA	09A	09A	1.5	0	0	60.	0.	0.	\$5,010
????	FT II - Cordova	A	S	DWA	09A	09A	1.5	0	0	60.	0.	0.	\$5,010
????	FT II - Cordova	A	S	DWA	09A	09A	1.5	540	0	90.	0.	0.	\$6,388
????	FT II - Cordova	A	S	DWA	09A	09A	1.5	540	0	90.	0.	0.	\$6,388
????	FT II - Cordova	A	S	DWA	09A	09A	1.0	0	0	60.	0.	0.	\$3,754
????	FT II - Cordova	A	S	DWA	09A	09A	1.0	0	0	60.	0.	0.	\$3,754
????	FT II - Cordova	A	S	DWA	09A	09A	1.0	0	0	60.	0.	0.	\$3,754
????	FT II - Cordova	A	S	DWA	09A	09A	1.0	0	0	60.	0.	0.	\$3,754
????	FT II - Whittier	A	S	DWA	09A	09A	2.0	0	0	100.	0.	0.	\$9,828
????	FT II - Valdez	A	S	EAA	09A	09A	2.5	0	0	200.	0.	0.	\$11,042
????	FT II - Valdez	A	S	EAA	09A	09A	2.5	0	0	200.	0.	0.	\$11,042
????	FT II - Valdez	A	S	EAA	09A	09A	2.5	0	0	200.	0.	0.	\$11,042
????	FT II - Valdez	A	S	EAA	09A	09A	2.5	0	0	200.	0.	0.	\$11,042
????	FT II - Valdez	A	J	EAA	09A	09A	2.5	0	0	200.	0.	0.	\$11,042
????	FT II - Valdez	A	S	EAA	09A	09A	2.5	0	0	200.	0.	0.	\$11,042
????	FT II - Valdez	A	S	EAA	09A	09A	1.5	0	0	120.	0.	0.	\$6,626
????	FT II - Valdez	A	S	EAA	09A	09A	1.5	0	0	120.	0.	0.	\$6,626
????	FT II - Kodak	A	S	CAA	09A	09A	1.0	0	0	100.	0.	0.	\$4,662

**YELLOWBOOK PAGE 3 PROJECT DESCRIPTION**

Salaries computed using FY93 rates.

PROJECT TITLE: Western Prince William Sound Sockeye and Chum Salmon Stock ID      PROJECT NUMBER: TF-XXX  
 UNIT: Prince William Sound Salmon      LEDGER CODE: 1101XXX1  
 COMPONENT: Commercial Fish      PRINT ORDER: 206\_XXX1\_      REGION: 2

0000000

7031 AP III- Juneau	A S AWA 17D 17D	7.0	0	0	0.	0.	0.	\$35,784
7042 FT III- Juneau	A S AWA 11C 11C	7.0	0	0	0.	0.	0.	\$23,975
7038 FT II - Juneau	A S AWA 09C 09C	15.5	0	0	0.	0.	0.	\$48,406
7040 FT II - Juneau	A S AWA 09B 09B	6.0	0	0	0.	0.	0.	\$12,000
-----								
Personnel Totals =		108.0	7.2	0	821.	3.	0.	\$435,585

PROJECT LINE ITEM DETAIL

LINE #	DESCRIPTION	AMOUNT	COMMENT
72240	Supervisory travel	7.2	Cdv to Vdz, Kdk, & Wtr
72360	Per Diem	2.4	
73100	Communication	1.0	Phones (Vdz, Anch, Swd etc)
73400	Air Charter	5.1	
73420	Vehicle Rental	3.2	
73400	Transportation	6.8	
73500	Printing	1.0	
73600	Public Utilities	0.5	
73700	Minor Repair & Maint	1.0	
73800	Office Rental (Valdez, Whittier)	1.8	
74220	Office & Library Supplies	4.0	
74520	Profess. & Sci. Supplies	8.0	
77000	Grants	0.0	
		=====	
	TOTAL LINES 200 - 700	42.0	DATE PRINTED 2/09/1993
	TOTAL PROJECT COST	477.6	

Lead Agency: Alaska Department of Fish and Game (ADF&G)

Project #1

Cooperating Agencies:

Project Term:

Start Date:

7/1/93

Finish Date:

7/1/96

Project title: Development and Deployment of Hydroacoustic <sup>in-river</sup> counters for UCI

#### INTRODUCTION:

Sockeye salmon *Oncorhynchus nerka* which spawn in the Kenai River system were injured by the Exxon Valdez oil spill. Greatly reduced fishing time in the Upper Cook Inlet area due to the oil spill caused sockeye spawning escapement levels in the Kenai River system to exceed the desired amount by three times. The biological impact of the oil spill on Kenai River sockeye salmon stocks is expected to be serious. Data collected by NRDA Fish/Shellfish Study 27, *Sockeye Salmon Overescapement*, showed greatly reduced survival estimates of juvenile sockeye salmon during the winter-spring rearing period. The extremely high escapement appears to have produced more rearing juvenile sockeye salmon than could be supported by nursery lake productivity. In general, when rearing salmon abundance greatly exceeds lake carrying capacity, the species and size composition of prey resources are altered which, in turn, affects all trophic levels. Because of such changes, juvenile sockeye growth is reduced and freshwater mortality is increased. Greater numbers of fry remain in the lake for another year of rearing. Competition for a limited food supply reduces condition of surviving fry. Marine mortality is increased because of poor condition of outmigrating smolts.

Limiting sockeye salmon fry production by closely regulating the number of spawning adults is the best way to restore the productivity of these rearing areas. However, the number of adult sockeye salmon returning from the 1989 overescapement may be so low that a severe reduction, or complete elimination, of human use of this species may be necessary starting in 1993 to ensure minimum spawning escapements.

This project consists of increased monitoring and management of the sockeye salmon stocks in the Kenai River and Upper Cook Inlet (UCI) north of Anchor Point. The project will benefit subsistence, sport, and commercial fishermen in coastal communities throughout Cook Inlet, from Homer north through Anchorage to Tyonek. In 1992 nearly 10,000 families obtained subsistence permits to harvest salmon in UCI, most targeting Kenai River sockeye salmon. The most recent statistics indicate that nearly 100,000 sport anglers fished the Kenai River for salmon in 1990, spending \$38 million in 1986 dollars. Forty percent of those anglers were from out of state. Of the 1,323 permits licensed to commercial fish in UCI, 80% are fished by state residents with the remaining predominately from Pacific Coast states. Average ex-vessel value (1987-1991) of the UCI commercial salmon harvest was \$ 67.8 million

Bendix Corporation side-scan hydroacoustic equipment has been used since 1978 to count adult sockeye salmon entering the Kenai River to spawn. Lack of Bendix replacement parts and the inability to purchase new Bendix counters will compromise our future ability to provide escapement estimates. Accuracy of estimates would be greatly enhanced through use of newer, more technically advanced equipment.

Evaluation of equipment available from other manufactures in 1992 indicated the unique counting conditions of the Kenai River will require a new series of hydroacoustic counters. In this context, this project is designed to conduct the research and development work associated with developing these counters. Following counter development, the remaining monies will be used to purchase counters for ~~the~~ Upper Cook Inlet hydroacoustic counting sites located in the Kenai, Kasilof, Crescent, and Susitna Rivers. Total cost of research and development is estimated at 1 million dollars. Purchase costs are anticipated to be an additional 1 million dollars for a total project cost of 2 million.

As per your request, here is a suggestion for a Cook Inlet salmon project that the legislature might consider funding. I tried to put it in Yellowbook format. Please note that the budget figures are estimates.

Project Title: Susitna River Sockeye Salmon Production Evaluation  
Fishery Unit: Upper Cook Inlet Salmon  
Component: Commercial Fish  
Legislative District: 5

Program Element: Stock Structure Analysis

User Groups Affected: Commercial and Recreational

Species Affected: Sockeye (100%)

Project Description

The Susitna River is the major salmon producing system in the Northern District of Upper Cook Inlet. Its fishery resources play a major role in the economies of the Matanuska/Susitna and Kenai boroughs as well as the city of Anchorage. Susitna River sockeye salmon stocks contribute about 20% of the total commercial sockeye salmon harvest within Upper Cook Inlet. Presently, adult sockeye salmon escapement is enumerated using hydroacoustics on the Yentna River. However, the Susitna is a very large and complex drainage system and adult sockeye spawn in several lakes, creeks and main river sloughs. A better understanding of the production capabilities of the Susitna River drainage is needed to evaluate escapement goals and harvest strategies. This project will provide detailed information on the contribution of various spawning and rearing areas to total system production by placing adult weirs across streams draining five major lake systems within the Susitna drainage, placing smolt fyke nets or traps within these five streams, collecting limnological data in these five lakes, and conducting rearing juvenile hydroacoustic and tow net surveys within a subset of these five lakes.

Project Objectives

Specific objectives of this project are 1) to enumerate adult sockeye salmon escapements and collect age, size and sex data from five major spawning lake systems; 2) to enumerate smolt (using mark-recapture techniques) migrating from these lakes and to obtain age and size data; 3) to enumerate rearing juveniles in selected lake systems and to obtain age and size data; 4) to determine whether these lakes are being fully utilized by rearing sockeye

juveniles.

Budget Manager: 1255 - Ken Tardox, UCI Research Project Leader

Budget Detail

	FT94	9.0 PFT
100 Personal Serv.	175.0	175.0 Other
200 Travel	3.0	
300 Contractual	26.0	
400 Commodities	71.0	
500 Equipment	25.0	
700 Grants	0.0	
<b>Project Totals</b>	<b>300.0</b>	
Federal Receipts	0.0	
General Fund	300.0	
Interagency Receipts	0.0	
Program Receipts	0.0	
General Fund Match	0.0	
<b>Staff Months</b>	<b>45.3</b>	

juveniles.

Project #2

APR 15 '93 10:39AM UCILIA 307 293 303 362 478 707

Jay

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

### Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

### MEMORANDUM

TO: The Honorable Mark Hanley  
Chairman, House Finance Subcommittee  
on CSHB 155 (HES)

FROM: Randy S. Welker  
Legislative Auditor

DATE: March 29, 1993

RE: CSHB 155 (HES) - An Act relating to audits of health facilities.

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Jay/Hanley	From	Randy Welker
Co.		Co.	Leg. Audit
Dept.	HES	Phone #	3830
Fax #	3068	Fax #	2347

The Division of Legislative Audit has been asked by both the Department of Health and Social Services and the bill Sponsor to review HB 155 and provide comments. Since the bill will be before your subcommittee tomorrow, I thought it would be most expedient to submit my reply directly to you.

We have reviewed the bill and its accompanying fiscal notes; testimony at previous meetings; position papers from the department and the Alaska State Hospital and Nursing Home Association; and other miscellaneous correspondence. While we have not done any detailed analysis of the department's current audit philosophy or their analysis of the impact HB 155 would have on their operations, I offer the following observations concerning the current language of the bill.

The bill does not allow recoupment based on audit findings

As clarified in the Alaska Supreme Court ruling in City of Cordova v. Medicaid Rate Commission the department does not have the ability to recoup overpayment from facilities based on audit results. We have recommended legislation authorizing this recoupment. Without the authority, the department is caught between the inability to recover and the mandate to reimburse the federal government's share of the identified overpayment. This is unacceptable and clearly not in the State's best interest.

Representative Hanley

-2-

March 29, 1993

The bill exudes frustration with the current backlog and audit process

We have also recommended to the department in the past that there is a need for them to become current in the audit process. The frustration demonstrated by the language in this bill is understandable. However, this legislation does not address the existing audit backlog. The bill's remedies are prospective in that they attempt to prevent future delays in the audit process by establishing time limitations on the completion of audits.

It is our understanding that the department has established a realistic plan to eliminate the current audit backlog. If this holds true, then the focus should turn to the future. While the establishment of an overall audit deadline would not be unreasonable, the myriad of audit procedure deadlines in the bill appears to be overkill. In my first reading of the bill, I noticed, then actually counted, indications of the bill's imbalance. For example, the bill uses the phrase "facility shall" only once and "facility may" seven times. On the other hand, the phrase "department shall" is used seventeen times and "department may" only once. Each "shall" appears to give rise to a potential cause for excluding the results of the final audit from the rate setting process.

Audit process defined in the bill is flawed

The imbalance discussed above is perhaps best demonstrated in the flawed requirement for the department to determine whether a desk audit or a field audit will be conducted. Several requirements of the bill state the department shall determine, within 30 days of receiving the year-end reports, whether a field audit or a desk audit will be conducted. During that 30 day period, the department is to submit to the facility in writing any questions the department has regarding the year-end report.

The facility has 30 days from receipt of the written request to respond if they choose to respond; a response is not mandatory. It appears to us that the facility should be required to respond and that the department would want to consider the response in making the determination to conduct a desk audit or a field audit. The bill does not allow that information to be considered by the auditors.

For the desk audit procedure to be effective, the facilities should be required to respond to questions. Without response, the only way the department has to obtain answers to significant questions is to conduct a field audit.

Likewise, to present a balanced report for consideration, a facility response should be mandatory. The bill as currently written, does not require a response to the preliminary audit.

We agree with the department that several of the procedures outlined in the bill may be best established as regulation. All parties should have a general understanding of the process and the expectations of each other.

Representative Hanley

-3-

March 29, 1993

An additional procedural concern we see is the 20-day limit imposed for field work on an audit. In fact, if the department uses the 30 day period provided for reviewing the year-end report and submitting questions to the facility, and the facility uses the 30 days provided to respond to the questions, the field audit must be completed on the day the response to the preliminary questions may be submitted. This rigid schedule neither provides recognition of potential significant audit issues that may arise and need to be resolved, nor the potential contentious environment the auditors may have to face in the resolution of significant issues.

Summary

While we can understand the frustration that has led to the introduction of this bill, we believe that **COMPROMISE** should be the word for the day. Both the facilities and the department have legitimate concerns. However, in our opinion, this bill does not resolve those concerns in the best interest of the State.

Until a compromise bill is developed, we would not recommend the passage of CSHB 155 (HES).

cc: Representative Gary Davis  
Alaska State House

Jay Livey, Deputy Commissioner  
Department of Health and Social Services

Garrey M. Peska, CPA  
Vice President, Financial Affairs, ASH&NHA

*[Faint, illegible text, possibly a routing slip or stamp]*



DEPARTMENT OF HEALTH & HUMAN SERVICES

*Eimer/HB*  
Health Care  
Financing Administration

Region X  
M/S          RX-43  
2201 Sixth Avenue  
Seattle, WA 98121

FM:GHAYASHI:ad  
2810

MAR 16 1993

Jay Livey, Deputy Commissioner  
Department of Health and Social Services  
Post Office Box 110602  
Juneau, Alaska 99811-0602

ii) Dear Mr. Livey:

In response to your request of March 4, 1993, we are providing comments on House Bill No. 155 (HB 155) which proposes significant revisions to existing State statutory provisions relating to audits of health facilities. The effectiveness of the audit process is dependent not only on specific procedures and standards required of the State's audit resource, but also similar constraints and required actions of the facilities subject to audit. HB 155 appears to place the onus of the audit process strictly on the State, with few apparent deterrents against and obligations required of the health facilities that ensure effective and timely audit results. This will become apparent through our discussion of several pertinent activities/functions of the audit process that are vaguely or not addressed in HB 155. More importantly, if HB 155 passes and is signed into law, HCFA most likely will not approve a State plan amendment that contains the bill's provisions precluding the application of valid audit adjustments if the audit process is not concluded within 165 days of receipt of a facility's year-end report.

Federal Requirements on Audit

Before conveying our observations on HB 155, mention of the Federal requirements on audit are necessary to provide the State with a basis to fully comprehend our comments.

Section 1902(a)(13)(A) of the Social Security Act (Act) requires that the State plan must provide for the payment of inpatient hospital and long-term care (LTC) facility services through the use of payment rates that the State finds and makes assurances, are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities. The State must make further assurances including providing for periodic audits. The intent of this statutory provision is to utilize the audit process to verify that payment rates were set in accordance with the approved State plan. This statutory provision evolved from the Omnibus Reconciliation Acts of 1980 and 1981. Both made significant changes in the provisions of the Medicaid law pertaining to reimbursement for LTC facility and inpatient hospital services.

In the implementing regulations, HCFA did not specify detailed cost reporting and audit requirements, but permitted States to implement their own systems in order to reduce the administrative burden, for States and facilities, of complying with the new regulations. Concerning audits of LTC facility cost reports, HCFA further explained that current regulations dealing with a minimum level of audit activity (audit of 15 percent of all facilities each year), audit procedures, cost report desk analysis, audit of all facilities' records over a 3-year period, audit reports, and accounting for overpayments found in audits were deleted. States no longer had to rely on the audits performed by Medicare intermediaries on hospitals because of the change in the law that eliminated the Medicaid requirement that States pay the reasonable costs of inpatient hospital services under methods and standards that adopt the Medicare standards and principles for determining reasonable cost reimbursement.

States were also cautioned that HCFA expects that States would under the revised regulations maintain the minimum level of audit activity needed to ensure that payments are being made in accordance with their State plans and to detect and correct provider fraud and abuse. The audit requirement, which was initially codified as a general provision, was realigned to one subject to State assurances. To receive approval of a change in methods and standards, the State must make assurances satisfactory to the Secretary that it provides for periodic audits of financial and statistical records.

#### Limit on Completing the On-site Audit

HB 155 provides that the field audit must be completed within 60 days of the State's receipt of the facility's year-end report. However, other timeframes imposed by HB 155 could restrict the actual on-site audit verification and exit conference to only 20 days. Within 30 days of receipt of the year-end report, the State must complete the preliminary review of the report and advise the provider that a desk audit or field audit will be conducted. If a field audit is to be conducted, the State cannot begin the audit until at least 10 days after the facility has received the notice that an audit will be conducted.

We have two concerns with the time constraint on field audits. The quality of the audits may be jeopardized and specifically, that the audit standards ("Standards For Audit of Governmental Organizations, Programs, Activities, and Functions") may be circumvented. Also, we are concerned that comprehensive audit coverage may not be provided because of the following circumstances:

1. If a desk review rather than an audit is performed, the desk review must be completed within 60 days of receipt of the year-end report. If during the desk review, the State determines that an audit is necessary, HB 155 provides that a field audit can be undertaken. However, there is no provision as to when the field audit must be completed. HB 155 appears to require the completion of such audits within 60 days of receipt of the year-end report.

2. Any questions that the State may have that result from the preliminary review of the year-end report must be communicated to the facility for a response in the notice advising the facility that an audit will be conducted. HB 155 further provides that the facility, within 30 days of receipt of these questions, may submit a response. Assuming the facility does respond within this timeframe, the field audit may be nearing completion or could have been concluded, thus affording the State with no means to verify the response. There is no requirement that the facility must respond to the State's questions. In fact, if it becomes evident that a response will not be submitted while the audit is being conducted, HB 155 appears to preclude the State from pursuing resolution of these questions as a specific field audit step because, at the entrance conference, the lead auditor must fully inform the facility of the areas that the audit will focus on. This requirement also leads to another complication. If, during the audit, the State concludes that another area should receive audit review, HB 155 appears to preclude the State from pursuing and resolving a new concern.
  
3. Completion of the audit is often delayed because of untimely responses from facilities to the auditor's request for additional information. HB 155 does not address this issue.

Finally, because most of the Alaska providers have either a December 31 or June 30 fiscal year end, this provision may severely tax State resources. The State is somewhat dissatisfied with contracting audits and furthermore, the HB 155's restrictive timeframe may preclude contracting audits because of the lengthy time to secure a contract. If the State were to increase audit staff, there will be periods of time where the staff will not be fully utilized. Specifically, we can envision the State's audit staff being occupied with audits during only four months of the year.

#### Time Limit on the Completion of the Audit Process

HCFA's major concern with HB 155 is a provision that the entire audit process, i.e., preliminary review, field work, receipt of the provider's response to the audit results, and the issuance of the preliminary and final audit reports, must be completed within 165 days of the State's receipt of the year-end report. If the State does not meet the "165 day provision", it cannot use the audit results to calculate payment rates for the rate year in which the year-end report is used as the base year or for any fiscal period that commences fewer than 80 days after the facility receives the final audit report. If this provision is submitted as a State plan amendment, HCFA will most likely not approve it. Although the State may be barred from applying an audit adjustment because the 165 day limit had lapsed, this will not preclude HCFA from the recovery of any resulting overpayments. Overpayments resulting from audits of financial and statistical records of providers are governed by three sections of the Act.

1. Section 1903(d)(2)(A) provides that the quarterly Federal payments to the State under Title XIX of the Act are to be reduced to make adjustment for prior overpayments that the Secretary determines have been made.
2. Sections 1903(d)(2)(C) and (D) provide that a State has 60 days from the discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the Federal Medicaid payment to the State is made and that adjustment will be made at the end of the 60 days, whether or not recovery is made, unless the State is unable to recover from the provider because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectible.
3. Section 1903(d)(3) further provides that the Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

There is one final disturbing feature of the 165 day provision that needs to be addressed. Should the audit process expire because of this limitation (for discussion purposes, the audit of a 1991 year-end report), resulting audit adjustments that benefit or favor the facility can be included in a subsequent year's (e.g., 1993) final audit report if the facility submits a request with its 1993 year-end report or any time up to 120 days after either the date the year-end report is due or the date the State received the report. The State must include the requested adjustments in the final audit report unless it has a basis for exclusion. Is HCFA to assume that the State would contest its own audit adjustment? Furthermore, if the 165 day provision should lapse on the 1993 year-end report, the facility can request a formal administrative hearing. HB 155 seems to favor the facility. This aspect of HB 155 attests to our perception that a facility, and not the State, has a resource that appears to be detrimental to the integrity of the audit process.

#### Other Areas of Concern

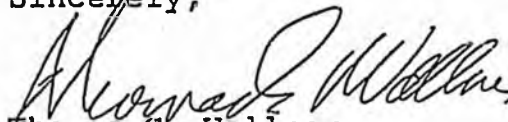
We have several other concerns, most stemming from the ambiguity of provisions of HB 155.

1. HB 155 has no provision on a facility's submission of an incomplete year-end report. Specifically, will the 60 day audit or desk review and the 165 day limits commence when an acceptable report is received?
2. There is no provision for time limits on appeals of audit adjustments, specifically, how long this process should take.

3. Under HB 155, the Medicaid Rate Advisory Commission will establish two proposed payment rates for each facility. One rate will incorporate all final audit adjustments agreed to by the State and the facility. The other rate will include the final audit adjustments that are not subject to a "formal administrative hearing or other administrative or judicial review " and are agreed to by the State and the facility. This second rate will serve as the basis for the rate adopted by the State. The purpose of the first rate is not addressed in HB 155.
3. It appears that HB 155 will limit the review function of the Medicaid Rate Advisory Commission to the extent that facility budgets will be accepted as submitted.
4. There is no provision in HB 155 as to whether an amended year-end report can be subjected to an audit.

We appreciate the opportunity to provide comments on HB 155. If there are any questions, please contact me or Guy Hayashi at 206/553-8157.

Sincerely,



Thomas G. Wallner  
Associate Regional Administrator  
Division of Medicaid

cc: Michael Sanders; Audit Unit Manager  
Jack Nielson; Executive Director

STATE OF ALASKA \* DEPARTMENT OF HEALTH & SOCIAL SERVICES

Position Paper  
HB No. 155

Purpose

HB 155 proposes changes to State law regarding the scope and timing of and procedures to be used during audits of health facilities which receive medical assistance payments.

Background

The Department of Health and Social Services, through the Medicaid program, pays Alaska hospitals and nursing homes approximately \$114 million to provide health care to medicaid eligible Alaskans.

The Alaska Supreme Court ruled in Cordova v. State of Alaska (1990) that the State did not have the statutory authority to collect audit rate adjustment overpayments paid to Alaska health facilities.

This decision was based on the Alaska Supreme Court's interpretation of the Statute governing methodology used by the State to establish medicaid payment rates for facilities. The Court ruled that the Statute requiring prospective methodology precluded recoupment of overpayment. A prospective methodology means that a basic rate is applicable during a year and that after the end of that year the compensation to the facility cannot be changed as a result of audit information. Consequently, the Department has been forced to shift its audit focus to assuring the accuracy of prospective payment amounts and, therefore, prevent overpayment from occurring. This occurs by basing payments on audited financial information.

The department has not been current with it's facility audits since the beginning of the prospective payment system for a number of reasons including, complexity of the system, conservative audit budgets, and delays in the beginning. During the last two years the department has made significant progress in catching up with the backlog of provider audits and expects that effort to continue. We expect to be current in the next 12 months. (Appendix E)

The Division of Legislative Audit included a recommendation (appendix A) in a special audit 06-4428-92, that the department seek statutory revision of Title 47 in order to provide authority for recoupment from health care facilities based on audit results. The department would support legislation which; 1) streamlined the audit process, assisting with the catchup and keep current effort; 2) allowed recoupment from health care facilities, and; 3) allow the use

of audit data in rate setting. HB-155 does none of these. In fact HB-155 makes the audit process much more cumbersome and specifically disallows recovery of overpayment.

#### Discussion

Alaska, through the Medicaid Rate Advisory Commission (MRAC), establishes the rates that the State will pay to hospitals, rural health clinics, home health agencies, surgical centers, and nursing homes, on behalf of medicaid clients. This is a prospective payment rate; it is set prior to the beginning of the facilities budget year. The rate is based on the facilities actual expenditure two years previously. Those expenditures are then inflated forward to the present and thus becomes the basis for the rate. The prospective payment rate is only as accurate as the expenditure information upon which it is based. If the expenditure information from two years previously contains expenditures which are not allowed, the prospective payment rate that is set will be overstated [and] the State will have no way to recoup these overpayments. If the information going into the rate setting system is flawed, the cost containment incentives built into the system fail to work properly.

The audit function is designed to assure that the costs that are included in the base of the rate are an accurate reflection of the facilities costs by auditing for compliance to medical assistance Statutes and Regulations. For example, the payment rate for facility year 1993 will be set on January 1, 1993, but will be based upon costs incurred during facility year 1991. Before the 1993 rate can be accurately set, the audit of facility year 1991 should be completed. Examples of the adjustments proposed in 1992 are contained in appendix B.

Because of the Cordova decision, any costs which are not allowable and are not adjusted through the audit process before the facility budget year is over, cannot be recouped later. Consequently, any audit adjustments which are not included in the calculation of the prospective rate are excess costs which the State will continue to pay. During FY 94, the Department expects to pay hospitals and nursing homes approximately 114 million in medicaid payments. It is critical that the Department has an audit function that rigorously examines the costs which are the basis for these payments.

#### Analysis

A brief summary of the major problems with the bill is as follows:

- \* AS 47.07.087 indicates that audits must be done within

165 days of receipt of year end report, regardless of the delays that may occur because of untimely responses from facilities. A facility can avoid audits simply by delaying responses.

- \* Nothing in the bill talks about the quality of the response from the facility. The facility has a time line for the original submission, however, it only requires a response and does not refer to the completeness or quality of response, and excludes responses to inquiries. Attached is appendix C which documents the original due date of provider submitted information and the date the reports were ultimately available to the department. Appendix D illustrates the extensions in time to respond to audit inquiry requested by facilities being audited during 1992.
- \* The bill is so detailed that virtually any audit will likely get hung up on legal technicality. Much of the detail may be more appropriate in Regulation if the detail is necessary at all.
- \* The actual time available to do audits is very limited (field audits must be finished within 20 days for example).
- \* The bill requires the Medical Rate Advisory Commission (MRAC) to calculate rates twice. The purpose for double calculation is not clear from reading AS 47.07.180.
- \* The bill severely limits the scope of field audits by requiring the department to notify the facility of the areas of focus. This language does not allow auditors to pursue legitimate leads that become apparent as the audit proceeds. Scope limitations only serve to reward the facilities by building improperly reported costs into the payment rate.
- \* Millions of Alaska Medicaid dollars are spent annually paying for out of state home office costs. Because of the short time limitation and the out of state location of these home offices the department will have no opportunity to verify these costs.
- \* Section 1 states that the MRAC staff can do no rate analysis except what is noted as an audit exception or what is agreed to by the facility. This severely limits the scope of the rate setting and budget analysis. Annual budgets which are integral to rate setting are submitted subsequent to the 165 day cutoff for making audit adjustment. The department would therefore be accepting the budget of a facility without the ability to analyze those budgets.

- \* AS 47.07.092 contains language which shifts the burden of correct reporting from the facilities to the departments. If the facility requests an audit adjustment then the department has to include the adjustment or justify its exclusion. This provision of HB 155 would allow a facility to submit new information, or even a new cost report very late in the process, leaving the department no opportunity to verify the information. This provision would likely make void much of the audit effort accomplished prior to the facility submitting adjustments.

The department has many other concerns with this proposed legislation, however attempting to document them all may imply HB 155 can easily become acceptable. The Department does not believe this to be the case.

#### Position

House Bill 155 virtually eliminates the departments ability to audit facilities which expend over 114 million in medicaid dollars. The Bill establishes audit rules and deadlines that will prove to be impossible to meet. Even with a significant increase in staff, the department does not believe that it could maintain an audit function which would comply with Federal medicaid requirements. The department has pointed out several major problems with the legislation. This list is not exhaustive and is meant to be illustrative of the legislations' imbalance toward facilities. If this bill were to pass, the department does not believe that it could guarantee the financial integrity of the medicaid facilities budget. The department could not in good conscience make any promises to the legislature that facility medicaid costs could be contained in any way. We strongly oppose the legislation.

Recommended by:

Michael R. Sanders  
Michael R. Sanders, CPA  
Audit Unit Manager

Date:

2-23-93

Approved by:

Theodore A. Mala, MD, MPH  
Theodore A. Mala, MD, MPH  
Commissioner

Date:

2-24-93

APPENDIX A

and should include in the review process the verification of cost data upon which the facility is reimbursed.

Recommendation No. 3

DHSS should continue to seek statutory revision of Title 47 in order to provide authority for recoupment from health care facilities based on audit results.

Alaska Statute 47.07.074 provides, as a condition of obtaining payment, that a health facility will allow inspection of their records. The Alaska Supreme Court (March 30, 1990) in *City of Cordova v. Medicaid Rate Commission* found that AS 47.07.074 did not provide authority for recoupment from a facility based upon audit results. The Court found that the text of the statute did not state or imply that the amount of payment to the facility would be affected by any audit. The Court further found that no right of recapture was established by DHSS in their agreements with the facilities.

Federal regulation 42 CFR 433.300 directs that quarterly federal payments to the states under Title XIX - Medical Assistance Payments are to be reduced or increased to make adjustment for prior overpayments or underpayments which have been made. A state has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the federal Medicaid payment to the state is made. Adjustment in the payment to the state occurs whether or not recovery is made.

It is essential that the State be able to recoup from facilities payments determined to be inappropriate based upon the result of audits. The lack of recoupment and the federal requirements concerning overpayment of facilities increases the cost of the Medicaid program to the State. DHSS is currently not able to obtain reimbursement from facilities of amounts over paid them, but is required to reimburse the federal government for the amount of federal participation in that overpayment.

In 1991, the department introduced Senate Bill 288 relating to the use of audit and inspection results in recapturing overpayments and reimbursing underpayments to health facilities. However, this bill was not passed by the Legislature. We recommend that the department continue its efforts and seek such a statutory revision in the next legislative session.

In addition, we suggest the department update their agreements with facilities to include provision for the recapture of overpayments identified by the department.

## APPENDIX B

### EXAMPLES OF 1992 AUDIT ADJUSTMENTS

1. A long term care facility included Bingo and Sing Along activities as Ancillary Expenses. Ancillary expenses are to be prescribed by a physician and are reimbursed on an actual cost basis. The result was that the Medicaid program would pay approximately \$50.00 for each patient participating in Bingo or Sing Along. The adjustment records these expenses as reimbursable routine expenses.
2. A branch of a national long term care facility included \$35,000 in interest paid to the home branch. The adjustment disallows the interest as a non arms length transaction.
3. A long term care facility charges \$2.55 per day for Medical Supplies for non Medicaid patients and \$7.50 per day for Medical Supplies for Medicaid patients. The adjustment makes the charges equal.
4. A long term care facility reported more interest revenue offset than is required. Medicaid requires that interest revenue be offset only to the extent of interest expense.
5. A hospital failed to report its' full depreciation amount. The adjustment added the reimburseable cost.
6. A long term care facility's cost report contained Form A-8 adjustments recorded backward. The correction would increase the facility's reimbursement rate.
7. A hospital includes the cost of clinics in its cost report. The clinics are reimbursed differently under the system, similar to the method for reimbursing non hospital clinics. The adjustment removed the clinics from the hospital cost report.
8. A hospital included lobbying fees in the cost report. Lobbying fees are not reimbursable Medicaid expenses and were removed from the cost report.
9. Several long term care facilities included items like combs, shampoo, and bath powder as Medical Supplies an ancillary. Medicaid considers these items to be routine.
10. A branch of a national hospital chain continues to respond to inquiries by saying the records are maintained at the national location and requests for the information are rarely forthcoming.

Appendix B  
Page 2

11. Several long term care facilities included costs salary and other cost in ancillary which are always considered routine by Medicare reimbursement standards. Ancillary are reimbursed at a rate to reflect 100% of base period costs. The audit adjustment reclassified the costs as routine.
12. Approximately two thirds of all hospital and nursing homes pay for services from an out of state home office. These costs are reported on home office cost reports. Medicare intermediaries audit the home office cost, however the result of those audits are not available to the department until well after the deadlines for completion of the departments audits.

APPENDIX C

UNTIMELY REQUESTS

<u>Facility</u>	<u>1st Extension</u>	<u>2nd Extension</u>
Cent. Peninsula	11/3/92 (30 days)	
Heritage Place	11/3/92 (30 days)	
Humana Hosp.-Alaska		
Ketchikan General Hosp.	2/23/92 (30 days)	
OLOC	10/15/92 (30 days)	2/1/93 (105 days)
Providence Hosp.	11/9/92 (30 days)	
Sitka Community Hosp.	3/5/92 (no response letter sent)	
South Peninsula	9/4/92 (30 days)	
Wrangell	7/18/92 (30 days)	
St. Ann's	2/8/93 (30 days)	
Valley Hospital	11/22/92 (30 days)	3/1/93 (60 days)

APPENDIX D

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Medicaid Rate Advisory Commission

<u>Facility</u>	<u>Type</u>	<u>FYE</u>	<u>DUE</u>	1992 <u>YEC</u> <u>Report</u> <u>Rec'd</u>	<u>Comments</u>
Alaska Psychiatric Ins.	LTC	6/30	10/28	10/28/92	Complete
Bartlett Memorial Hos.	Acute	6/30	10/28	11/05/92	FS not recieved
Central Peninsula	Acute	6/30	10/28	10/29/92	Complete
Cordova Comm. Hosp.	Comb.	6/30	10/28	01/11/93	Complete 02/12/93
Harborview Devel. Ctr.	ICF/MR	6/30	10/28	12/21/92	Ext. to 12/15/92
Hope Cottages	ICF/MR	6/30	10/28	12/24/92	Ext. to 12/28/92
Ketchikan Gen. Hosp.	Comb	6/30	10/28	10/02/92	10/20/92 Complete
North Star Hospital	Acute	6/30	10/28	10/29/92	11/15/92 Complete
Petersburg Gen. Hosp.	Comb.	6/30	10/28	10/14/92	Complete
Seward Gen. Hosp.	Acute	6/30	10/28	12/31/92	Ext. to 12/31/92
Sitka Comm. Hosp.	Acute	6/30	10/28	10/28/92	Complete
So. Peninsula Hosp.	Comb.	6/30	10/28	10/15/92	FS not received
Wesley Rehab. Ctr.	LTC	6/30	10/28	10/09/92	Complete
Wrangell Gen. Hosp.	Comb.	6/30	10/28	10/09/92	Complete
Humana Hosp.	Acute	8/31	10/28	12/29/92	Complete
Charter North	Acute	9/30	10/28		Ext. to 3/29/93
Kotzebue Sen. Citi.	LTC	9/30	10/28		Ext. to 3/29/93
Norton Sound	Comb.	9/30	10/28		Ext. to 3/29/93

# STATE OF ALASKA

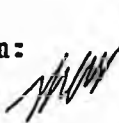
## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER  
APPENDIX E

WALTER J. HICKEL, GOVERNOR

AUDIT UNIT  
P.O. BCX 110602  
JUNEAU, ALASKA 99811-0602  
PHONE: (907) 465-3120

### M E M O R A N D U M

Date: February 23, 1993  
To: Jay Livey  
Deputy Commissioner  
From:  Michael Sanders  
Audit Unit Manager  
Subject: Status of Audits

During the past twelve months the Department has made significant progress in facilities audits.

As you know we have been contracting with KPMG Peat Marwick for the past audits, while Department staff auditors have been doing audits of current base periods.

During the past several months KPMG Peat Marwick has forwarded to this office for review, forty-nine Preliminary Facility Audits.

The first contract still has eight pending Facility Audits for which KPMG Peat Marwick awaits provider response. The completion of these eight audits will represent a total audit coverage for 1989 and all prior fiscal years.

While this effort has been taking place, the Department staff has issued seventeen Preliminary Audits of current base periods, fiscal years 1990 and 1991. The Department staff is currently engaged in fifteen fiscal year 1992 audits which will be used for the prospective payment rate for fiscal year 1994.

Contract audit effort at KPMG Peat Marwick on the fiscal year 1990 audits has just begun and results from that contract are expected in July, 1993.

#### Conclusion:

Real progress has been made in the last year toward the goal of all past years audits issued and audit total effort is focused on the current base periods. This has been accomplished through a high level of competent dedication of staff and contract auditors.

# HOSPITAL & NURSING HOME

ASSOCIATION

February 15, 1993

Section by Section analysis of HB 155 "An Act relating to audits of health facilities.":

Section 1. AS 47.07.070 (a) allows the Department of Health & Social Services (DHSS) to use only final audit adjustments and other adjustments or rate revisions agreed to by the facility in setting prospective rates of payment

Section 2. AS 47.07.074 (b) (1) & (2) defines the department's authority to audit health facility records to:

- (1) Determine accuracy of information used to set Medicaid rates
- (2) Ensure compliance with the law

Section 3. AS 47.07.082 (a) sets 120 days after their fiscal year end as the deadline for facilities to file their year-end reports with DHSS

Section 3. AS 47.07.082 (b) gives DHSS 30 days after receiving a facility's year end report to do a preliminary review of it and decide whether a field audit or a desk audit will be conducted of the facility.

Section 3. AS 47.07.084 (a) (1) - (6) If DHSS is to conduct a desk audit, the procedures are:

- (1) Notify the facility in writing within 30 days of DHSS receipt of year-end report. Submit questions regarding the year-end report to the facility.
- (2) The facility may respond to the DHSS questions within 30 days.
- (3) DHSS shall issue its preliminary desk audit report within 30 days after the facility response deadline.
- (4) The facility may respond to the preliminary report within 30 days.
- (5) DHSS shall issue a final desk audit report within 30 days after the facility response deadline.
- (6) The facility has 30 days after receiving the final desk audit report to request a hearing if they disagree with the audit.

Section 3. AS 47.07.084 (b) allows DHSS to initiate field audits.

Section 3. AS 47.07.086 (1) - (11) If DHSS is to conduct a field audit, the procedures are:

- (1) Notify the facility in writing within 30 days of DHSS receipt of year-end report. Submit questions regarding the year-end report to the facility.
- (2) The facility may respond to the DHSS questions within 30 days.
- (3) DHSS shall give 10 days written notice of the date field audits will begin.
- (4) DHSS shall complete field audits within 60 days of receiving year-end reports.
- (5) The lead auditor is required to conduct an entrance conference

Section 3. AS 47.07.086 (1) - (11) If DHSS is to conduct a field audit, the procedures are: (Continued from page 1)

- (6) The lead auditor is required to conduct an exit conference
- (7) The facility has 20 days to submit information responding issues raised at the exit conference
- (8) DHSS shall issue its preliminary field audit report within 30 days after the facility response deadline.
- (9) The facility may respond to the preliminary report with 30 days.
- (10) DHSS shall issue final field audit report within 30 days after the facility response deadline.
- (11) The facility has 30 days after receiving the final field audit report to request a hearing if they disagree with the audit.

Section 3. AS 47.07.087 sets the latest date for DHSS to complete a final audit report at 165 days after the date the facility's year-end report was due or filed whichever was later.

Section 3. AS 47.07.088 (1) - (6) sets the minimum contents required in preliminary and final audit reports as:

- (1) criteria that form the basis of the audit
- (2) findings describing noncompliance or errors by the facility or the department
- (3) a statement of causation describing the reasons for noncompliance or errors
- (4) specific audit adjustments based on the findings
- (5) a revised cost report
- (6) attachments including all responses and comments submitted by the facility

Section 3. AS 47.07.90 allows DHSS to perform audits using their own staff, private contractors or the staff of the Medicaid Rate Advisory Commission. All audit work shall be performed in compliance with AS 47.07.082 - 47.07.088.

Section 3. AS 47.07.092 (a) & (b) allows a facility to request that DHSS include specified audit adjustments in the audit report. DHSS must either include the requested adjustments or state in the final report the basis for not including them.

Section 3. AS 47.07.092 (c) allows a facility to request a formal administrative hearing on requested specified adjustments within 30 days after the 165 day deadline in AS 47.07.087 if DHSS has not met that deadline.

Section 3. AS 47.07.092 (d) says if adjustments requested by a facility are determined correct, any resulting rate revision is to be applied to all affected fiscal periods.

Section 3. AS 47.07.094 (a) prohibits use of results of audits for fiscal periods before the rate year.

Section 3. AS 47.07.094 (b) (1) says audit results may not be applied for the rate year if DHSS misses the 165 day deadline in AS 47.07.087.

Section 3. AS 47.07.094 (b) (2) says audit results may not be applied for any fiscal year that begins fewer than 80 days after the facility receives the final audit report.

Section 3. AS 47.07.096 (a) - (e) establishes the process DHSS is to follow to implement the results of a final, unappealed audit or rate decision. A facility is allowed to request a formal administrative hearing within 30 days after receiving written notice of the rate revision or lump-sum adjustment.

Section 4. AS 47.07.180 describes the process to be followed by the Medicaid Rate Advisory Commission in calculating proposed rates.

Section 3. AS 47.07.900 provides definitions of "desk audit"; "facility", "field audit"; and "rate year".

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

Representative Gary Davis  
Capitol Room 15  
Juneau, Alaska 99801

March 3, 1993

Dear Representative Davis:

During the February 24 hearing on HB 155, "An Act relating to audits of health facilities", Representative Vezey asked what ASHNHA members think would happen if HB 155 passed without the fiscal note providing six new positions.

ASHNHA members believe the Department of Health & Social Services currently has sufficient personnel to complete the timely audits required by HB 155. Their current year (fiscal year 1993) budget shows that they have 12 auditors and budget analysts in the Audit Unit and the Medicaid Rate Advisory Commission.

These 12 people work on the audits and rate setting calculations for only 27 hospitals and nursing homes in Alaska. As shown on the attached worksheet, they have enough personnel to spend 725 hours on the audit of each of the 27 facilities. That's over nineteen work weeks for each audit.

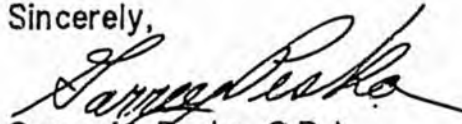
If the department completes an audit late after passage of HB 155, the department would still be able to make any necessary rate adjustments.

In HB 155, section 47.07.094 (bottom of page 5) says the department may not retroactively apply late audit results. At the top of page 6 of the bill, there is a provision that allows the department to apply audit results to fiscal years subsequent to completion of the final audit report.

So in answer to the question: if an audit is completed late, the results (if HB 155 passes) could be applied to fiscal years that begin more than 80 days after the facility receives the final audit report.

Please let me know if you have any additional questions.

Sincerely,



Garrey M. Peska, C.P.A.  
Vice President, Financial Affairs

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

## ASHNHA Position on HB 155 Fiscal Notes

Members of the Alaska State Hospital and Nursing Home Association (ASHNHA) share the concern that has been expressed about the fiscal notes submitted by the Department of Health & Social Services (DHSS) on HB 155 "An Act relating to audits of health facilities".

ASHNHA members believe that both of the fiscal notes submitted are inappropriate.

The department characterizes the \$4.0 million fiscal note as "Additional Medical Assistance payments to facilities because of a reduction in audit control effectiveness."

During the House HESS Committee hearing on February 24, 1993, DHSS representatives were unable to explain how there would be an additional \$4.0 million in payments to facilities if HB 155 becomes law.

In fact, they said the budget would not actually increase by \$4.0 million. They also said that in all of the audits they have worked on so far they "have found no fraud or abuse". Yet they maintain that somehow the facilities will wind up with \$4.0 million they should not have.

The DHSS has made it clear that they do not want to be required to complete these audits on a timely basis. For that reason they have planted a huge fiscal note on HB 155 in hope of sinking the bill with the weight of the \$4.0 million.

The smaller fiscal note requesting five new auditors and a new data processing person is also unnecessary in ASHNHA's opinion. These new staff positions would give the audit and Medicaid Rate Advisory Commission staff a total of 18 auditors, budget analysts and data processing people.

Their FY '93 budget shows they have three clerical support staff so if they were to get the new positions requested in the fiscal note, they would have 21 people to do the audits and set the Medicaid reimbursement rates for 27 facilities.

The attached calculation of "DHSS Audit and MRAC staff positions available" shows that if a C.P.A. firm spent as many hours on these audits as the DHSS has available, the audits would cost over \$70,000 per year per facility.

ASHNHA members believe the department has sufficient resources available now to do this job and that the fiscal notes should be disapproved by the legislature at the time of passage of HB 155.

Assume that each position represents 1,702.5 annual productive work hours:

Total weeks available	52.0 weeks	
Less: Vacation, Holidays & Sick Leave	<u>(6.6)</u> weeks	
Total productive weeks available	45.4 weeks	
Hours per week	<u>37.5</u> hours	
Productive annual hours available per auditor (45.4 x 37.5)	1,702.5	
Audit staff auditor positions	<u>X 6</u>	
Total audit staff hours available		10,215.0 hours
Productive hours	1,702.5	
MRAC staff auditor positions	<u>X 3</u>	5,107.5 hours
(2 new requested auditors would bring it to 5 in '94)		
Productive hours	1,702.5	
MRAC budget analysts & director	<u>X 3</u>	<u>5,107.5 hours</u>
<u>Total hours available</u>		20,430.0 hours
Less 1/2 position for monitoring grantee audits (See Page 2*)		<u>*(851.25) hours</u>
<u>Hours available for Medicaid audits &amp; rate calculations</u>		19,578.75 hours
Medicaid facility audits		27
Hours per audit (20,578.75 ÷ 27)		<u>725.14 hours per audit</u>

If you assume an hourly billing rate of \$100.00 for a C.P.A. firm to do these audits, the cost based on 725 hours per facility would come to \$72,500 for each hospital and nursing home in the state that receives Medicaid.

Footnote:

\*According to the department's budget document, the audit unit keeps track of grantees who are required to have an independent C.P.A.'s audit. Since the audit unit doesn't do the grantee audit but receives reports on about 100 grants per year, it is assumed that less than 1/2 time position (851.25 hours) is needed to receive and file the reports.

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

Representative Gary Davis, Vice Chair  
House HESS Committee  
Room 15 Capitol Building  
Juneau, Alaska 99811

January 11, 1992

Dear Representative Davis:

Thank you for agreeing to review this information regarding the Alaska State Hospital and Nursing Home Association (ASHNHA) concerns about the Medicaid audit process.

Enclosed with this letter are the following supporting documents:

1/21/92 letter to Senator Arliss Sturgulewski detailing ASHNHA's position on the Medicaid audit process.

Transcript of testimony offered to the Senate HESS Committee on February 7, 1991 regarding Senate Bill 28A.

6/27/91 letter to Commissioner Mala from Petersburg General Hospital.

7/1/91 letter to Harlan Knudson describing the legislative history of the Medicaid prospective payment system in Alaska.

Draft of proposed legislation prepared by ASHNHA for introduction in the 1993 legislative session.

Until about three years ago, the Medicaid Rate Commission had final authority to set the rates used to reimburse hospitals and nursing homes for Medicaid covered services.

At that time, the Medicaid Rate Commission was changed to the Medicaid Rate Advisory Commission (MRAC). The Executive Order making the change moved the final rate setting authority to the Commissioner of the Department of Health & Social Services (DHSS).

The MRAC then became an advisory commission with the Director reporting to the Commissioner's Office.

When the change was made in the MRAC status, there was a process for hospitals and nursing homes to appeal rates set by the MRAC staff. That appeal process has broken down. Over forty Medicaid rate appeals are currently outstanding.

Two years ago the legislature passed a bill requiring that a new appeal process be put in regulation. The department has not complied with that legislation.

The DHSS Audit Division audits hospitals and nursing homes to see if the Medicaid reimbursement rates pay for eligible costs only. When the MRAC became an advisory commission, a detailed audit process was designed and adopted by the DHSS. That process has never been implemented.

There are many ongoing disputes over the use of audit adjustments by the MRAC staff in setting reimbursement rates. Facilities are not given adequate opportunity to respond to proposed audit adjustments during conduct of the audit. The Department is reducing current reimbursement rates based on proposed audit adjustments which has resulted in the filing of appeals and the setting of temporary rates.

Audits as far back as 1986 have not yet been finalized. It is inefficient, costly and unfair for facilities to have to respond to audits which are several years old.

The enclosed draft legislation would allow adjustment of current rates for only timely and final audit adjustments.

DHSS has tried to recoup funds from some of the medical facilities based on audit adjustments from old audits.

ASHNHA sued DHSS over the attempted recoupments. ASHNHA's argument is that since Alaska's Medicaid rates are set prospectively (before the beginning of the rate year), then recoupment is improper except in cases of fraud or misrepresentation. The Alaska Superior Court agreed with ASHNHA's position and the department appealed the decision to the Supreme Court.

The Supreme Court agreed that the law does not provide for retrospective recoupment from hospitals and nursing homes except in cases of fraud or misrepresentation.

DHSS then introduced SB 288 in 1991 which said the department could conduct audits and recoup funds as a result of audit findings.

ASHNHA opposed the DHSS version of SB 288 and the enclosed package includes ASHNHA's position statements. Senate Bill 288 died in the Senate HESS committee after one hearing.

ASHNHA believes that the Medicaid audit process should be detailed in writing. The DHSS as well as the facilities should be required by law to adhere to the audit process.

When DHSS makes an adjustment to a facility's rate, it has a serious financial impact on the facility. The MRAC staff should not be allowed to make rate changes unilaterally and the audits should be timely completed.

The attached proposed bill for introduction in the 1993 legislative session is designed to set out a clear process for DHSS and the facilities in the conduct of Medicaid audits of hospitals and nursing homes.

The main features of the proposed bill are:

Defines the department's authority to audit health facility records to:  
Determine accuracy of information used to set Medicaid rates  
Assure compliance with the law

Sets the deadline for facilities to file year end reports. (120 days after year end)

Sets deadlines for DHSS to complete:  
Preliminary review of year end reports  
Preliminary desk audit report  
Preliminary field audit report  
Final field audit report

Sets deadlines for facilities to respond to audit findings and reports

Requires DHSS to give facilities written notice of intent to conduct field audits

Requires DHSS to hold entrance and exit conferences with a facility representative

Requires DHSS to provide facilities with copies of work papers on request

Allows facilities to submit written responses before audits are finalized

Specifies minimum information to be included in audit reports

Allows facilities to request formal administrative hearings on disputed rates  
Prevents implementation of disputed adjustments before a final  
administrative or judicial decision is issued

Sets deadlines for completion of final audit reports

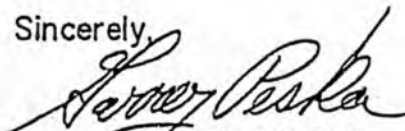
Defines the process for MRAC staff using audit reports in setting rates

Allows facilities to report errors in rates and provides for resulting adjustments

Specifies the process for late audit report adjustments to affect future rates

Please feel free to contact me if you have questions about the ASHNHA audit  
process proposal.

Sincerely,



Garrey M. Peska, C.P.A.  
Vice President - Finance

ALASKA STATE

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# HOSPITAL & NURSING HOME

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ASSOCIATION

January 21, 1992

Senator Arliss Sturgulewski, Chair  
Senate Health, Education & Social Services Committee  
Room 427, Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Senate Bill 288 is:

"An Act relating to audits and inspections of health facilities receiving payment for medical assistance for needy persons and to the use of audit and inspection results in recapturing overpayments and reimbursing underpayments to such health facilities; and providing for an effective date"

This bill is currently in the Senate Health, Education & Social Services Committee.

The Alaska State Hospital and Nursing Home Association (ASHNHA) is opposed to SB 288.

The current Medicaid reimbursement system is a prospective rate setting system. Each facility's reimbursement rates are negotiated and set before the beginning of the fiscal year. If the facility is efficient and costs are lower than the pre-determined Medicaid reimbursement rate, the facility shares a profit with the state. If they are inefficient and costs exceed the reimbursement rate, the facility takes a loss.

SB 288 would change the Medicaid reimbursement system to allow for recoupments based on audits completed long after the end of the facility's rate year.

The attached June 27, 1991 letter from Gary Grandy, Administrator of Petersburg General Hospital details the objections facilities have to this attempt to create a retrospective reimbursement system through audit findings.

The attached July 1, 1991 letter from Stephen Rose of Inslee, Best, Doezie & Ryder, P.S. details the legislative history of the statutes which established the prospective Medicaid reimbursement system in Alaska.

According to research done by Mr. Rose, the Federal Government has recognized this problem. The Health Care Financing Administration (HCFA) asked for comments on the subject in 1981 and offered the following statement:

"... we are concerned that the retroactive adjustments in payments that could be required as a result of audit findings might, in some cases, conflict with the requirements of State payment systems. This potential for conflict could arise because some payment systems, especially those that use prospectively determined class rates, do not allow adjustments to be made after a payment rate is determined." (Emphasis mine)

(HCFA Request for Comments, 46 Fed.Reg. 47,957 - 1981)

After reviewing comments on the issue, HCFA decided not to require retroactive adjustments in conflict with prospective payment systems.

ASHNHA membership believes that the state must have the authority to conduct timely audits of the facilities.

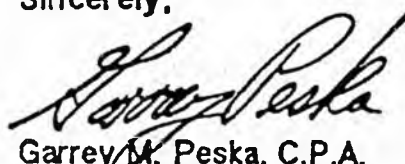
ASHNHA membership further believes that the state currently has sufficient authority to conduct timely audits and use audit adjustments in setting facility reimbursement rates.

The primary ASHNHA objection comes when the state conducts audits years after the end of the fiscal year under audit then tries to recoup costs based on those audits.

Audits of 1985 facility operations are still not completed. ASHNHA membership believes that backlog is unacceptable. Facility costs incurred in 1985 were used to set reimbursement rates for 1987. It does not seem reasonable at this late date for the state to attempt to recoup costs that were set five years ago under a prospective reimbursement system.

Please let me know if I can answer questions or provide your committee with additional information.

Sincerely,



Garrey M. Peska, C.P.A.  
Vice President for Financial Affairs

Enclosures

TESTIMONY PRESENTED BY THE ASHNHA SUBCOMMITTEE ON SB 288

SENATE FINANCE COMMITTEE - FEBRUARY 7, 1992

The ASHNHA members are not opposed to the department having the authority to conduct Medicaid audits.

The members believe rates should be set based on timely audit information.

They are opposed to this bill because it reverses the basic concept of prospective rate setting in Alaska's Medicaid reimbursement system.

Alaska has a prospective rate setting system now.

That means each facility's reimbursement rates are negotiated and set before the beginning of the fiscal year.

If the facility is efficient and costs are lower than the pre determined Medicaid reimbursement rate, the facility shares a profit with the state.

If they're inefficient and costs exceed the reimbursement rate, the facility takes a loss.

SB 283 would change the Medicaid reimbursement system to allow for recoupment based on audits completed long after the end of the facility's rate year.

The department has an audit backlog that spans several years now.

The facilities don't think it's reasonable to do an audit 4 or 5 years late and then ask them to pay money back to Medicaid because the audit discloses misinterpretations or disagreements over the meanings of regulations.

If fraud is indicated, ASHNHA believes the state does have and should have the authority to recover the funds.

In the Supreme Court decision that caused the state to introduce this bill, the Court said:

"We would have no hesitation in ordering a refund of money which had been awarded based on false representations. Likewise, if the grant had been expended for an illegal purpose, a refund would be appropriate. However, those situations do not exist here."

ASHNHA finance officers have offered a number of suggestions for how the department might be able to clear up the audit backlog and stay current.

For example: ASHNHA members believe the department should make more use of desk audits instead of full field audits especially for the facilities that receive the least amount of Medicaid funds.

The ASHNHA members believe the department auditors should focus their audit procedures on those financial areas that affect the prospective rate setting process.

There are often audit adjustments that reclassify assets or revenue accounts when those adjustments have no affect on Medicaid reimbursement rates. We also see audit adjustments for \$5 or \$10.

The current year Medicaid appropriation for facilities is \$109 million. \$5 and \$10 adjustments are not worth the auditors' time.

Generally, auditors will establish a materiality threshold and they won't even bother with audit adjustments below the threshold dollar amounts.

Many of the adjustments made by the department's audit division are to account for differences between the Medicaid cost reports and the facility's independently audited financial statements.

ASHNHA members believe the department should require such reconciliations between cost reports and financial statements to be submitted by the facilities in a standardized format to save audit staff time.

ASHNHA members believe that the department's Medicaid audits could be done on a timely basis if the audit scope and purposes were better defined, and more desk reviews were performed in lieu of full field audits.

If this bill is to pass, ASHNHA members believe it should include a requirement that the Medicaid audits be timely completed.

ASHNHA members believe timely completed means within six months of the date the facility has to submit the final Medicaid cost reports for the year.

The example on the following page shows a suggested process to complete a timely audit cycle:

EXAMPLE OF PROSPECTIVE 1993 RATES BASED ON AUDITED INFORMATION  
FOR FACILITIES WITH A DECEMBER 31 FISCAL YEAR END (HB 155 - 2/15/93)

<u>Date Due</u>	<u>Desk Audit</u>	<u>Field Audit</u>
4/30/92	Facility's 1991 year end reports submitted to the department.	Facility's 1991 year end reports submitted to the department.
5/30/92	Department conducts preliminary review of year end reports. Department submits questions regarding year end reports.	Department decides to do a field audit. Department submits questions regarding year end reports.
6/29/92	Facility responds to department's questions.	Facility responds to department's questions. Department completes field audit, conducts exit conference.
7/19/92		Facility may submit additional information.
7/29/92	Department issues preliminary audit report (PAR).	Department issues preliminary audit report (PAR).
8/28/92	Facility responds to PAR	Facility responds to PAR.
9/27/92	Department issues final audit report (FAR).	Department issues final audit report (FAR).
10/12/92	Latest date (165 days) for receipt of FAR.	Latest date (165 days) for receipt of FAR.
10/27/92- 11/11/92	Facility deadline to request administrative hearing on FAR issues.	Facility deadline to request administrative hearing on FAR issues.
10/27/92 - 11/25/92	MRAC staff calculates proposed rates based on FAR items not appealed.	MRAC staff calculates proposed rates based on FAR items not appealed.
11/25/92*	MRAC announces 12/15/92 meeting and submits proposed rate calculations to facility.	MRAC announces 12/15/92 meeting and submits proposed rate calculations to facility.
12/15/92*	MRAC recommends rate	MRAC recommends rate
12/31/92	Department sets rate	Department sets rate

\* In practice these dates could vary slightly. Under existing regulations the MRAC must give 20 day advance notice of meetings.

## SENATE BILL NO. 288

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 5/13/91  
Referred: HES, Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to audits and inspections of health facilities receiving payment for medical  
2 assistance for needy persons and to the use of audit and inspection results in recapturing  
3 overpayments and reimbursing underpayments to such health facilities; and providing for  
4 an effective date."

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

6 \* Section 1. FINDINGS. The legislature finds that

7 (1) the state commits a substantial amount of public money to provide medical assistance  
8 for eligible needy persons in Alaska, approximately 50 percent of which is reimbursed by the federal  
9 government for services covered by medicaid;

10 (2) the budget for medical assistance in Alaska has dramatically increased over the past  
11 10 years, and in fiscal year 1991 exceeded \$180,000,000;

12 (3) approximately 55 percent of the total medical assistance budget is paid to facilities  
13 that provide necessary hospital and nursing home services to needy persons eligible for the program;

14 (4) in 1983 the legislature authorized the facilities' rates for medical assistance to be set

1 it considers in making its rate determinations under this section. A rate set under this  
2 section does not take effect until it is approved in writing by the commissioner of health  
3 and social services or the agency assigned by the commissioner to perform this function.  
4 The written determination of a rate set by the department after a hearing must include a  
5 statement of the department's findings, a description of the basis of the findings and  
6 conclusions, a citation to the regulations supporting the findings and conclusions, and a  
7 statement of the decision.

8 \* Sec. 3. AS 47.07.070 is amended by adding a new subsection to read:

9 (g) The department may conduct audits and inspections of a health facility's  
10 records to assure compliance with state and federal law. Using the results of the  
11 department's audits and inspections, the department shall

12 (1) recapture amounts due from the facility through assessment, adjustment  
13 to the facility's prospective rate, or withholding from payments due to the facility under  
14 this chapter and AS 47.25.120 - 47.25.300; or

15 (2) make a payment to the facility for any amount due to the facility as  
16 a result of the audit or inspection.

17 \* Sec. 4. Sections 2 and 3 of this Act are retroactive to July 26, 1983.

18 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

PETERSBURG GENERAL HOSPITAL  
and Long Term Care Facility

Phone: (907) 772-4291  
P.O. Box 589  
Petersburg, Alaska 99833

RECEIVED

JUL 02 1991

AK HOSPITAL &  
NURSING HOME ASSOC.

June 27, 1991

Theodore A. Mala, M.D., M.P.H.  
Commissioner  
Department of Health & Social Services  
P.O. Box 8  
Juneau, Alaska 99811-0601

Dear Commissioner Mala:

Re: 1985 Audit Issue & Senate Bill No. 288

On June 18th, 1991, Karl Garber, Financial Officer for our Lady of Compassion Care Center, and I met with Jay Livey by teleconference regarding the status of the 1985 Appeals and the Senate Bill No. 288. As a follow-up to that meeting, I am writing you to ascertain that you understand some of the issues that remain unresolved and to solicit your assistance in reaching a satisfactory decision for all concerned.

I re-emphasize what I stated when Mr. Garber and I met with you on April 9th, 1991, that my bottom line concern is to put an end to the continuing legal fees that are costly for both the facilities and the State of Alaska.

Therefore, it is imperative that you understand our position. First, we believe that the State's position that there are millions of dollars that need to be recovered from the facilities is a wrong premise for the following reasons:

1. The Supreme Court Decision in the City of Cordova, et al vs. Medicaid Rate Commission, closed the door on recoupments. The only issue arguably left open is whether a Common Law right to recoupment exists based on "false information to the Commission" or whether it was disagreements on "varying interpretations of a 'reasonable allocation method'". I maintain that the latter situation occurred and the Supreme Court does not indicate that this is justification for a Common Law right of recoupment (Opinion, Supreme Court No. 5-3030, JAN-89--267 Civil, page 11).

I further maintain that the Affidavit of Michael R. Sanders, Audit Manager, Department of Health and Social Services, stating the "false information" submitted by the facilities is not false information; instead, they are disagreements based on varying interpretations of allocation methods. Please also understand that we do support recoupments where fraud and abuse can be proven.

2. An understanding of a "Prospective" system versus a "Retrospective" payment system is also imperative. A storekeeper who beforehand (prospectively) places a price on a loaf of bread in order to sell that loaf and the buyer of that loaf of bread, who in good faith purchases the loaf, does so with an understanding that six years later the storekeeper is not going to knock on his door and demand additional money for all the loaves bought because the storekeeper has now found that there were disagreements over how accountants determined certain aspects of the original price of the original loaf. Instead, the storekeeper and the buyers settle the accounting disagreements; the storekeeper sets a new price for the future loaves (prospectively) and life moves on.

I remind you that in the case of Petersburg this has already happened. As an example, we disagreed originally over the visiting physician space; we conceded and every Medicare-Medicaid report since then has carved out the costs of the visiting physician space, thus setting the most accurate rates possible for all years since then--because we are on a prospective system.

Does the Department desire to return to a retroactive system of recoupment? Senate Bill 288 certainly does this. In the present form, ASHNHA will vigorously oppose this legislation for the following reasons:

1. It attempts to rewrite history for the past eight years. Has the legislature ever passed a law that retroactively took money from facilities--say schools, for example?
2. It would seem that for the legislature to pass the bill, it would invalidate the State plans that have been filed with HCFA for the fiscal years involved. Those State plans are based on a prospective system and rules and regulations that the Supreme Court has upheld as having no valid recoupment possibility. Why would the legislature muddy the waters by invalidating State plans?
3. Senate Bill 288 is unconstitutional and would be at odds with the legality of "rights acquired by judgement are property rights which cannot be taken without due process of law". And that due process, taken clear to the Alaska Supreme Court, upheld the facilities' rights of no recoupments.
4. I have personally read much of the history of the present Medicaid Statutes and it is replete with indications of a "prospective" system and a "payment rate prior to the fiscal year as a result of discussions between each facility and the State." In other words, a prior agreed upon contract, which had no mention of recoupments--which is a retrospective system. The retrospective system was being abandoned for a new prospective system.

For the sake of brevity, I will not present additional comments at this time. I will conclude by recommending a solution that might meet the needs of the Department and the facilities. We respectively request the Department to withdraw their motion for continuance of the Appeals on Medicaid Audits and allow for their speedy resolution. At least some of the Department's paranoid fears that the Federal Government is going to come "down" on you are not merited. You have complied with your "State Plans", which were based on a prospective system, with no recoupments mentioned.

Next, if the Department desires to have a system that provides for audit recoupment in the future, then I recommend that the Department and the facilities work together and carefully review all of the present regulations, such as year-end conformance and audit procedures, and/or look at a new system route to reach a consensus that can jointly be placed in the bill to affect its passage for future years, but let us not try to rewrite history. That would only set off another round of lawsuits and be very expensive for all concerned.

Believe me, to ignore these recommendations is going to continue the age-old gap between the Department and the facilities. Commissioner Mala, I do not believe that you want that anymore than I do. It is an expensive, ridiculous position for both of us.

To this end, please lend your support to a meeting with Jay Livey, when Mr. Livey returns from his vacation, and some of the facility representatives, to see if we can resolve our differences in a cooperative, open manner. Lastly, and to impress upon you the frustration of this situation which I have seen for nearly five years, the stack of papers on this matter on my desk now measures 12 inches deep. That is a lot of dialogue and represents a lot of legal fees that have been paid.

Please feel free to call or write on this matter. If I do not hear from you, I will trust that you will request those in your Department, who are involved, to work with us in a manner of cooperation to expedite an early and final solution to these problems.

Sincerely,

---

Gary W. Grandy  
Administrator

cc: Jay Livey  
Harlon Knutson--ASHNRA  
Karl Garber

# INSLEE, BEST, DOEZIE & RYDER, P.S.

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Michael P. Ruark  
Milan Gail Ryder  
John F. Sullivan\*  
James S. Turner  
Joe E. Wishcamper

\* Also Admitted in Alaska  
\*\* Also Admitted in California  
\*\*\* Also Admitted in Oregon

July 1, 1991

Please respond to

869-3428

VIA FACSIMILE

Mr. Harlan Knudson  
Alaska State Hospital and  
Nursing Home Association  
319 Seward Street #11  
Juneau, AK 99801-1173

Re: SB 288

Dear Mr. Knudson:

Brian Gilbert of Cordova Community Hospital has asked me to share with you an analysis I prepared regarding the Legislative History of the statutes which established the Medicaid prospective payment system in Alaska. As is demonstrated below, it was never the Legislature's intent to establish a recoupment program based on audit results.

SB 288 distorts reality. Namely, SB 288 is an attempt to rewrite the Medicaid statutes to allow for retroactive recoupments based upon audit results.

When you read SB 288 you will note that the Department claims that this Bill "clarifies" the Legislature's intent and that the Legislature always intended to use audits to adjust rates. Nothing could be further from the truth. It is misleading to call this Bill a "clarification". It is nothing less than an attempt to completely alter the Medicaid payment system. In fact, when the prospective payment system was first passed in Alaska, it was the Department who testified before the Legislature that each facility would have to operate and provide care at the rate determined prior to each fiscal year.

Mr. Harlan Knudson  
July 1, 1991  
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Below are excerpts from the testimony presented to the Legislature supporting the prospective payment legislation.

Prior to 1983 the Medicaid program in Alaska reimbursed health care facilities based upon the "reasonable costs" incurred by the facility for patient care. (AS 47.07.070, Repealed § 3, ch. 95 SLA 1983). The methodology in 1983 was retrospective cost-based. The Commissioner for the Department of Health and Social Services in his Position Paper regarding H.B. 19 in May of 1983 described this methodology as follows:

Hospital and Nursing home [sic] rates in Alaska have traditionally been established retrospectively, that is, costs are estimated at the beginning of a fiscal year and an "interim payment" determined. At the end of the fiscal year, the total interim payments made is [sic] compared to the allowable costs of the facility. The difference is either collected from or paid to the facility. This process is referred to as "cost settlement." (Emphasis added).

The Medicaid methodology was called retrospective because the final reimbursement calculation was made after the patient's treatment. The system was "cost-based" because the measure of reimbursement was based on expenditures actually made by the health care facility.

Major deficiencies in the cost-based reimbursement system began to be realized. Since health care providers were reimbursed for their expenditures actually made, the provider earned additional income for each service rendered. It became apparent that a cost-based retrospective methodology simply lacked incentives for health care providers to hold down costs. (See, 50 Fed. Reg. 24, 459 (1985)).

In 1983 the State of Alaska made the decision to abandon its retrospective cost-based system and to adopt a prospective budget based system. (AS 47.07.070, Repealed, § 3, ch. 95 SLA 1983). The Legislature made the following finding in 1983:

The legislature finds that, because Medicaid is a joint state and federal program and because federal Medicaid funds have been and are likely to continue to be reduced dramatically, a retrospective payment system no longer serves as an appropriate method of compensation . . . A prospective payment system is

Mr. Harlan Knudson  
July 1, 1991  
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necessary to prudently address payments to health facilities under Medicaid and general relief medical assistance programs. (Emphasis added).

In 1983 the State of Alaska began implementation of a budget based prospective payment system and established the Medicaid Rate Commission (See, Ch. 95, SLA 1983 recorded at AS 47.07.070 and AS 47.07.180; 7 AAC 43.670 (Reg. 92, Jan. 1985).).

The Alaska State Legislature in 1983 directed the Department of Health and Social Services to establish a Prospective Payment System to be administered by the newly created government body called the Medicaid Rate Commission. (AS 47.07.070 and AS 47.07.180, Ch. 95, SLA 1983).

In 1983, AS 47.07.070 was amended to read in pertinent part:

The [medicaid rate] commission shall determine prospectively the rate of payment to a health facility under this chapter . . . (Emphasis added).

AS 47.07.070(a), § 1, Ch. 182, SLA 1972; am § 3, Ch. 95, SLA 1983.

The implementing regulations stated in pertinent part:

PROSPECTIVE PAYMENT RATES DEFINED. (a) Prospective payment rates are prospectively determined payment rates to be paid by the department to health facilities providing health care services to recipients of the Medicaid and General Relief Medical Programs.

(d) Prospective payment rates will have an effective date. All services provided before the effective date will be paid by the department at the preceding rate. All services provided on or after the effective date will be paid by the department at the new prospective payment rate. (Emphasis added).

Many attempts were made to pass prospective payment system legislation prior to the actual passage in 1983. Certain topics recur throughout the proposed legislation as cornerstones of the prospective payment system. First, the prospective payment system required the up-front negotiation of

Mr. Harlan Knudson  
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rates which would then be fixed for the fiscal period to which they applied. Second, the year-end recoupment and cost settlement practices were to be eliminated. Third, the reimbursement system was to be based on current budgeted costs as opposed to actual costs incurred.

On January 27, 1983, SB 85 was introduced in the Senate. Testimony before the Senate HESS Committee addressed the need for the establishment of a prospective payment system. SB 85 was later replaced by a Committee Substitute draft of SB 85 (CS SB 85 (HESS)).

On April 4, 1983, the Department of Health and Social Services again issued its Position Paper on CS SB 85.

The Position Paper on CS SB 85 begins with an overview of the Medicaid reimbursement in Alaska and notes:

Prospective payment, on the other hand, provides for the establishment of the payment rate prior to the fiscal year as a result of discussions between each facility and the State, each facility must then operate and provide care at this predetermined rate for the fiscal period. (Emphasis added).

On February 23, 1983, Frank W. Seuffert, a researcher for the State Advisory Council, prepared a Memorandum for Senator Kerttula, regarding SB 85. In pertinent part, researcher Seuffert's Memorandum states:

Prospective reimbursement would be desirable for Medicaid and GRM for the following reasons: (1) It encourages cost containment by giving hospitals a set target over which they make a profit, under which they accept a loss . . .

In keeping with its previous Position Paper which noted that there would be no retroactive cost settlement with a prospective payment system, Position Paper CS SB 85 notes that one of the "major provisions of SB 85" is the repeal of the definition of "cost settlement" as was contained in AS 47.07.080(a).

On April 18, 1983, Mr. Betit, Director of the Department's Division of Public Assistance, testified before the House Finance Committee regarding the House counterpart to CS SB 85.

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Mr. Betit explained that the prospective payment system as detailed in CS SS HB 19 provided for up-front negotiations before the fiscal year started in order to "set" the prices which the Department would pay. Mr. Betit stated that this approach would "give us greater certainty about what it is we are spending . . . and hold the hospitals and nursing homes to these prices for the duration of the year". (Emphasis added). (House Finance Committee Hearing on CS SS HB 19 (Fin.), April 18, 1983, recorded on tape HFC 83-45.

Mr. Betit concluded his testimony by commenting on year-end and audit procedures stating:

There would be no cost settling or getting . . . basically . . . either paying up or recouping from the hospital at the end of each fiscal year as presently goes on. (Emphasis added).

The prospective payment system legislation was formerly adopted by the Legislature and became law. (AS 47.07.070, Ch. 95, SLA 1983). After the prospective payment system was adopted, the Medicaid Rate Commission listed its objectives for this new system. One objective was to "provide predictability" for state program expenditures to health facilities. (7 AAC 43.674(2)).

In order to comply with the new prospective payment system legislation, organizational changes had to be made within the Department of Health and Social Services. The first change was the creation of the Medicaid Rate Commission. (AS 47.07.070, Ch. 95 SLA 1983). The second major change was the elimination of the "audit function".

This complete elimination of the audit function is described in the Legislative Audit of the Department of Health and Social Services for Fiscal Year 1985 (hereafter "1985 Legislative Audit") as follows:

Prior to [the establishment of the Medicaid Rate Commission] health facility providers submitted cost settlement reports at year-end which were then reviewed and/or audited by DHSS auditors. This procedure was in effect under the retrospective payment system of cost settling with Medicaid health facility providers. Subsequently, statute changes required that Medicaid health facility providers be

Mr. Harlan Knudson  
July 1, 1991  
Page 6

paid under a prospective payment system. Under the prospective payment system, patient day rates are established based on estimated reimbursable costs submitted by the provider and approved by the MRC [Medicaid Rate Commission]. The audit positions that previously performed the audits were transferred to the MRC. However, these positions were reclassified to budget analysts. No audit positions have been established at the MRC. (Emphasis added).

The Executive Director of the Medicaid Rate Commission, Dr. Charles L. Eveland, prepared an Organizational Chart of the Medicaid Rate Commission which showed the replacement of the auditor positions by Program Budg. - Analysts.

With the implementation of the prospective payment system in Alaska, all audit functions of the Medicaid program ceased. Since the prospective payment system was budget based, it is not surprising that the executive dire. established three program budget analyst positions to replace the no longer needed auditor positions. Also, since the legislature repealed the definition of "cost-settlement", the legislature made clear its intent to end the year-end audit and cost-settlement process.

Having reviewed the Legislative History behind Alaska's prospective payment system, there is no doubt in my mind that it never contemplated recoupments being taken based on audits. SB 288 euphemistically calls itself a "clarification" of Legislative Intent. It is not. SB 288 represents a radical departure from the prospective payment system.

Very truly yours,

INSLEE, BEST, DOEZIE & RYDER, P.S.



Stephen D. Rose

SDR:ab  
3141b

## MEDICAID RATE ADVISORY COMMISSION MRAC

The purpose of the Medicaid Rate Advisory Commission is to advise the Department of Health & Social Services with regard to rates for facilities serving medical assistance recipients and related rate-setting policy issues. Select department staff work with the commission to establish appropriate rates of payment for Medicaid services and maintain the facility rate setting system in accordance with State and federal laws and regulations.

In 1983 legislation was enacted which established the Medicaid Rate Commission (MRC) as an independent rate-setting body; prior to that the Division of Medical Assistance established payment rates for Medicaid services for all types of providers including hospitals, nursing homes, rural health clinics, outpatient surgical clinics and home health agencies. The legislation also changed the medical assistance rate payment methodology to a prospective rate setting system from the prior retrospective cost-based system. The MRC focused the prospective system primarily on hospitals and nursing facilities, choosing to establish less complex rate setting procedures for other types of facilities.

Subsequent changes in statutes applicable to the MRC include: technical changes designed to secure optimum federal participation, the consideration of appropriations in rate setting, and the provision for a possible waiver of the year end conformance calculation. Executive Order #72 which became effective March, 1989 established the MRC as an advisory body and transferred actual rate setting authority to the Commissioner of the Department of Health & Social Services. Legislation in 1990 provided mandatory timelines for the processing of appeals, and specified other procedures to be accomplished in rate setting.

The current rate setting process utilized by the Department works as follows: Each facility submits cost and statistical information to the MRAC office in Anchorage. The staff reviews these submissions, performs rate calculations, and notifies the facility. If time allows, the facility may return comments advising of concurrence or non-concurrence with the calculations. Next, testimony is taken on the proposed rate in a public hearing before the MRAC, after which the Commission advises the Department through the adoption of a formal motion. The Department issues a Decision and Order Letter which sets the rate; the facility then has 30 days to request reconsideration from the Executive Director. Reconsiderations may or may not be taken back to the Commission, depending on the issues involved. Within 30 days of the original Decision and Order Letter or the reconsideration decision, the facility can request a formal hearing to contest the rate before the Department Hearing Officer. The final decision on an appeal is signed by the Commissioner. Any further appeal is made to the Superior Court.

## OFFICE OF HEARINGS AND APPEALS

The Office of Hearings and Appeals (OHA) is responsible for conducting impartial administrative hearings on appeals from actions by four agencies of the Department of Health and Social Services: the Division of Public Assistance, the Division of Medical Assistance, the Medicaid Rate Advisory Commission, and the Audit Unit. OHA conducts two distinctly different types of hearings: informal fair hearings on client public assistance and medical assistance appeals, and formal health care facility appeals of Medicaid payment rates and audit findings. Both types of hearings must comply with due process standards guaranteed by federal and state constitutions.

Client appeals of actions by the Division of Public Assistance and the Division of Medical Assistance are adjudicated in fair hearings mandated by federal and state regulations. A fair hearing may be requested concerning one or more of the following programs: Adult Public Assistance, Aid to Families with Dependent Children, Food Stamps, Medicaid, General Relief, Energy Assistance, Job Opportunities and Basic Skills Training Program, and Employment and Training Program. The fair hearing is an informal proceeding adjudicated by a Hearing Officer classified as a Public Assistance Program Officer. The Hearing Officer's decision may be appealed by the client to the Division Director. The Director's decision is the final administrative action, and is subject to appeal to the Superior Court.

Health care facility appeals of Medicaid payment rates and audit findings are adjudicated in formal hearings governed by the Administrative Procedure Act. These hearings are conducted by a Hearing Examiner who is required to be unbiased, impartial, and have at least two years experience in the general practice of law immediately preceding appointment. After receiving evidence and arguments, the Hearing Examiner prepares a proposed decision for submission to the Commissioner. The Commissioner's decision is the final administrative action, and may be appealed to the Superior Court.

The Office of Hearings and Appeals is a separate office reporting to the Deputy Commissioner, Department of Health and Social Services.

## AUDIT UNIT

The Audit Unit is assigned to the Office of the Commissioner; it is staffed by an Audit Manager and five Internal Auditors with staff capability augmented by contract funds for private auditors. The Audit Unit exists to help the Commissioner, Division Directors, and separate office heads effectively discharge their duties. Audit Unit objectives are to:

- Conduct audits of Medicaid providers.
- Provide assistance to the Medicaid Rate Advisory Commission.
- Perform independent fiscal and compliance audits of the department's grantees and contractors who do not fall under the state single audit requirement.
- Monitor single audits of the department grantees and contractors performed by outside CPA firms.
- Undertake special reviews and investigations as requested.
- Coordinate with the Office of Management and Budget on establishment and updating of Compliance Supplements for the State Single Audit Act.
- Provide technical assistance to the Commissioner, Division Directors, and department providers.
- Assist the Office of Management and Budget and Legislative Audit with internal and performance audits.

## MEDICAID

The Audit Unit conducts field audits and desk audits of the hospitals and nursing homes enrolled as Medicaid providers. Audits are conducted to provide assurance that the facilities are reporting costs in compliance with applicable federal laws, Alaska statutes, and department regulations. Twenty-eight facilities report costs of delivering health care to more than 56,000 Alaskans who are enrolled in the Medicaid and GRM programs.

## GRANTS

Audits of departmental grant recipients are conducted to assure compliance with applicable Alaska statutes and regulations. The State Single Audit Act requires that a financial audit be performed by an independent CPA for each grant recipient receiving more than \$150,000 in state grant funds. The Federal Single Audit Act requires that a subrecipient of \$25,000 or more federal funds passed through the state have a financial audit performed in compliance with federal requirements. The Audit Unit monitors both the state and federal single audits and reconciles the results with grant reports submitted to the granting division. For the FY91 granting year, the Audit Unit received 101 Single Audits from grantees receiving over \$78,000,000 in department grant funds distributed through 275 separate grants.



## Denali Center

1949 Gillam Way  
Fairbanks, AK 99701  
(907) 452-1921 FAX (907) 452-4522

FEB 23 1993

February 19, 1993

Representative Gary Davis  
State Capitol  
Juneau, Ak 99801

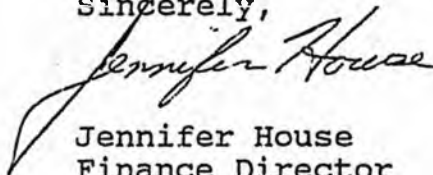
Dear Representative Davis:

I am writing you in support of House Bill 155 which addresses audits of healthcare facilities. I have reviewed the draft of this bill and feel that it is as beneficial to the State of Alaska as it is to healthcare providers. This proposed regulation will add elements of clarity, consistency and timeliness that are currently lacking in the Medicaid audit process.

Presently, the State of Alaska is five years behind schedule in conducting audits of Denali Center. This situation creates an environment of uncertainty for the facility since audit adjustments for one year often have a "domino" effect on following years' Medicaid rates. Furthermore, insufficient and ambiguous wording in existing regulations have lead to audit adjustments that are inconsistent from one year to the next.

Denali Center strongly supports the passage of HB 155. Thank you for sponsoring this legislation.

Sincerely,



Jennifer House  
Finance Director

Faxed 2/19/93

PROVIDENCE HOSPITAL  
 3200 PROVIDENCE DRIVE  
 P.O. BOX 196604  
 ANCHORAGE, ALASKA 99519-6604  
 PHONE (907) 562-2211



February 23, 1993

Representative Gary L. Davis  
 State Capitol  
 Juneau, Alaska 99801

Fax to 465-2918

Subject: House Bill 155

Dear Representative Davis:

Providence Hospital supports House Bill 155, "An Act relating to audits of health facilities".

This piece of legislation is needed in order to provide written guidelines for the conduct and use of audits conducted by the Department of Health and Social Services for the Medicaid program. Currently there are no established written guidelines and as a result, audits have not been timely (as late as 3 to 4 years after a fiscal year-end) and regulations have been inconsistently applied.

The current methodology for establishing Medicaid payment rates for healthcare facilities is based upon the recent most year-end financial data. The Medicaid payment rate by legislation is to be a prospective rate. This provides both the State of Alaska and the healthcare providers with a firm basis in order to predict Medicaid reimbursement throughout the year.

The Department of Health and Social Services desires to use audited financial data to establish Medicaid rates. Providence Hospital supports this concept. However, because the Medicaid rates are prospective, once established we do not believe they should be retroactively re-established. Furthermore, Providence Hospital firmly believes that the Department of Health and Social Services has the adequate resources and time in order to accomplish a financial audit before the annual Medicaid rate setting process is completed. This would also include adequate time for the Department of Health and Social Services and the healthcare provider to review and discuss any audit finding and adjustments.

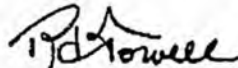
The audit process as defined within House Bill 155 is very reasonable and easy to understand. The passage of this bill would also provide easier administration of the Medicaid program for both the Department of Health and Social Services as well as providers.

This should result in lower numbers of Medicaid rate appeals. It will also allow providers to formally close out older years. Providence Hospital currently has all fiscal years from 1986 to date open or unsettled with the Department of Health and Social Services for Medicaid audits. This is not reasonable nor is it clear what needs to occur to complete these years.

I have not gone into specific details with our audit experiences and problems. However, I am aware that the Committee will be hearing testimony from a few of the healthcare providers. Their testimony represents common situations that we as healthcare providers experience during our audit process because the Department of Health and Social Services does not have written guidelines for their Medicaid audit process.

In closing, I would again like to express Providence Hospital's support for House Bill 155. If you should need additional information, please do not hesitate to contact either Dave Hennigan at 261-3002 or Jane Griffith at 261-3053.

Respectfully,



Dick Towell  
Acting Administrator

2801 DeHart Road  
Anchorage, Alaska 99508  
Telephone 907.276.1131  
Fax 907.264.1143



Alaska  
Regional Hospital

FEBRUARY 21, 1993

REPRESENTATIVE GARY L. DAVIS  
ALASKA STATE LEGISLATURE  
STATE CAPITOL  
JUNEAU, ALASKA 99801

DEAR REPRESENTATIVE DAVIS

WE SUPPORT HOUSE BILL 155, "AN ACT RELATING TO AUDITS OF HEALTH FACILITIES."

I HAVE BEEN WORKING WITH THE CURRENT SYSTEM FOR SETTING MEDICAID RATES SINCE IT'S INCEPTION. MY CONCERNS RELATE TO THE TIMELINESS OF AUDITS AND THE ACCURACY OF THE ADJUSTMENTS.

AUDITS HAVE BEEN CONDUCTED AT THIS FACILITY FOR THE FISCAL YEARS 1985-1987, AND 1990-1991. THE AUDITS FOR FISCAL YEARS 1985-87 (THREE YEARS) WERE PERFORMED ROUGHLY ALL AT THE SAME TIME IN LATE 1988. THE AUDITS FOR 1990 AND 1991 WERE CONDUCTED IN 1992. FOR FISCAL YEAR 1988 THE AUDIT WORK WAS BEGUN, BUT NOT COMPLETED. NO AUDIT WORK HAS BEEN PERFORMED FOR 1989 TO THE BEST OF MY KNOWLEDGE.

TO HAVE THREE YEARS OF AUDITS PERFORMED AT ONCE REQUIRES A DISRUPTION TO THE OPERATION OF THE FACILITY. THE FACILITY MUST ANSWER QUESTIONS RELATED TO THE PAST THREE YEARS AND TURNOVER OF PERSONNEL AT A FACILITY MAY MAKE THIS DIFFICULT.

THE AUDITS THAT WERE CONDUCTED FOR 1991, WAS VERY TIME CONSUMING FROM THE NUMBER OF QUESTIONS. IN ADDITION THE FACILITY WAS ANSWERING QUESTIONS THAT SHOULD HAVE BEEN ADDRESSED IN EARLIER AUDITS.

ONLY 1985, 1986, AND 1987 ARE FINALIZED AS IT RELATES TO A FINAL AUDIT REPORT.

THE PURPOSE OF THIS BILL IS TO PROVIDE TIMELY AUDITS TO THE FACILITY, ALLOW AN OPPORTUNITY TO REVIEW THE ACCURACY OF THE AUDIT, AND ALLOW FOR A FULL HEARING ON THE ISSUES THAT THE FACILITY DISAGREES WITH.

FACILITIES MUST HAVE TIMELY DUE PROCESS OF AUDITS SO THAT THE IMPACT TO OPERATIONS IS NOT SUBSTANTIAL.

THE BILL ALSO PROVIDES ONE IMPORTANT ELEMENT TO THE DEPARTMENT, THE ABILITY TO RECOVER AMOUNTS THAT MAY HAVE BEEN INAPPROPRIATELY REIMBURSED. THE DEPARTMENT BASED ON COURT CASES DOES NOT NOW HAVE THIS ABILITY.

WE FEEL THIS A FAIR BILL BOTH FOR THE FACILITY AND THE DEPARTMENT AS WRITTEN. THE BILL PLACES RESPONSIBILITIES ON BOTH THE DEPARTMENT AND THE FACILITY. THE BILL SHOULD ALLOW AUDITS TO BE COMPLETED WITHIN A YEAR, AND BOTH THE FACILITY AND THE DEPARTMENT MAY CLOSE OUT THOSE YEARS IN A TIMELY FASHION.

SINCERELY

A handwritten signature in cursive script that reads "Bill Harrison".

BILL HARRISON  
ASSOCIATE EXECUTIVE DIRECTOR/FINANCE

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

February 19, 1993

Representative Cynthia Toohey, Co-Chairman  
HESS Committee  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Re: Support HB 155, Medicaid  
Audits

Dear Representative Toohey:

Community hospital and nursing home members of our Association ask your support for HB 155, providing a timely process for Department of Health & Social Service to audit Medicaid reimbursement to health facilities.

We had attempted to resolve this problem with the Department during the past two years, but were not successful.

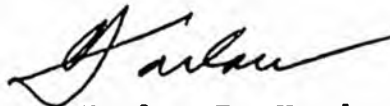
HB 155 will cut down on the number of disputes and appeals by health facilities with the Department when it uses unapproved audits in setting reimbursement rates.

ASHNHA VP for Financial Affairs, Garrey Peska and financial officers from several hospitals and nursing homes look forward to reviewing this issue with the House HESS Committee 3:00 p.m. this Wednesday afternoon.

We will do our best to answer any questions you may have and ask your support for HB 155.

Many thanks.

Sincerely,



Harlan R. Knudson  
President/CEO

CORDOVA  
COMMUNITY  
HOSPITAL



Acute and Longterm Care City-Owned Facility  
P.O. Box 160 • Cordova, Alaska 99574 • Phone: (907) 424-8000

February 23, 1993

Gary L. Davis, Representative  
Alaska State Legislature  
Interdepartmental Mail Stop: 3100  
Juneau, Alaska 99801-1182

Dear Representative Davis:

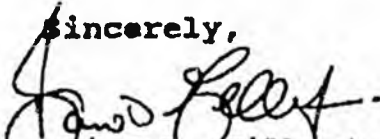
Thank you for introducing House Bill 155. With your help we can get this Bill passed and into law.

The present system of doing audits in the health care facilities has not worked. This is due in part to there being no preset system with deadlines for the Department to meet, only deadlines for the facilities. We have had trouble at Cordova Community Hospital since 1985 and the Hospital took the Department to the Supreme Court over that audit. The Department still has not signed off on the Court's decision. Setting temporary rates on unaudited cost reports has got to stop.

We must have timely audits that are final to stop the continued lawsuits we have against the Department. At the present time our rates are set in court not by the Rate Commission. This adds to the cost of health care in the State of Alaska.

Again, thank you for your help.

Sincerely,

  
Brian D. Gilbert,  
Administrator

**HEALTH FACILITY  
MEDICAID AUDITS  
NOT YET FINALIZED**

**February 1993**

<u>FACILITY</u>	<u>YEARS NOT FINALIZED</u>
ALASKA REGIONAL HOSPITAL	1988, 89, 90, 91
BARTLETT MEMORIAL HOSPITAL	1985, 86, 87, 88, 89, 90, 91
CENTRAL PENINSULA GEN. HOSPITAL	1987, 88, 89, 90, 91
CHARTER NORTH HOSPITAL	1987, 88, 89, 90, 91
CORDOVA COMMUNITY HOSPITAL	1987, 88, 89, 90, 91
DENALI CENTER	1986, 87, 88, 89, 90, 91
FAIRBANKS MEMORIAL HOSPITAL	1986, 87, 88, 89, 90, 91
HERITAGE PLACE	1987, 88, 89, 90, 91
MARY CONRAD CENTER	1988, 89, 91
NORTON SOUND REGIONAL HOSPITAL	1987, 88, 89, 90, 91
OUR LADY OF COMPASSION CARE CENTER	1986, 87, 88, 89, 90, 91
PETERSBURG GENERAL HOSPITAL/LTC	1987, 88, 89, 90, 91
PROVIDENCE HOSPITAL	1986, 87, 88, 89, 90, 91
SITKA COMMUNITY HOSPITAL	1985, 86, 87, 88, 89, 90, 91
SOUTH PENINSULA HOSPITAL/LTC	1986, 87, 88, 89, 90,
ST. ANN'S NURSING HOME	1986, 87, 88, 89, 90, 91

VALLEY HOSPITAL	1988, 89, 90, 91
WESLEY REHABILITATION & CARE CENTER	1986, 87, 88, 89,
WRANGELL GENERAL HOSPITAL	1987, 88, 89, 90, 91

This list was compiled through a phone call to, or letter received from, each of these individual facilities. These audits are not finalized according to the health facilities records.

\* NON-FINALIZED AUDITS CANNOT BE APPEALED

# **SOUTH PENINSULA HOSPITAL**

4300 BARTLETT • HOMER, ALASKA 99603 • (907) 235-8101

February 24, 1993

Representative Gary L. Davis  
House HESS Committee  
State Capitol  
Juneau, Alaska 99801

Re: House Bill 155,  
"An Act relating to audits of health facilities"

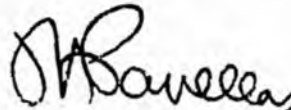
Dear Representative Davis:

Thank you for being the prime sponsor of HB 155.

South Peninsula Hospital fully supports this important bill which will:

- ▶ Establish a timely and orderly process when Department of Health & Social Services (DHSS) audits hospitals and nursing homes to see if Medicaid rate reimbursement pays for eligible costs only;
- ▶ Cut down on the number of disputes and appeals by facilities with the Department when the Department uses unapproved audit adjustments in setting reimbursement rates;
- ▶ Establish an orderly process for setting facility rates based on timely and final audits.

Sincerely,



**Ron Pavellas**  
Administrator

RP:db



Central Peninsula  
General Hospital

250 HOSPITAL PLACE • SOLDOTNA, ALASKA 99669

(907) 262-4404

Operated by LHS Management Company

February 24, 1993

Representative Gary Davis  
State Capitol, Room 15  
Juneau, AK 99801-1182

Dear Gary:

On behalf of Central Peninsula General Hospital I would like to express our support for SB 155 on Medicaid audits of health facilities. Under the current system of audits, we have finalized only one fiscal year (FY 1986). Since the current system came into being in our fiscal year 1985, this is a very poor record for finalization.

This has been a continued point of frustration for our auditors as there is always a question as to the extent of any possible liability to the state.

There have been various changes made during audit process that would have effected the rate approvals. The department is constantly attempting to change numbers retrospectively. Our contention is that this was designed to be a prospective payment system and that the retrospectiveness of the audits have denied the systems ability to provide just that.

I am in strong support of assuring that all audit adjustments be material. As you can see, trying to run down and explain each and every small discrepancy by the accounting staff is cumbersome to the process, and to the operations of the facilities.

I would also like to see a provision in the bill providing for a facility profile containing pertinent data that would prevent the redundant questions asked of the facilities year after year. There has also been a problem in the audit division not always using or having access to the information that is already available at the MRAC.

Sincerely,

Michael J. Lockwood  
Administrator

# STATE OF ALASKA

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030

March 9, 1993

Honorable Cynthia Toohey  
House of Representatives  
Alaska State Legislature  
State Capitol  
Juneau, AK 99811-1182

Dear Representative Toohey:

The Department's compliance audits, of facilities enrolled as Medicaid providers, has experienced a backlog since the inception of the prospective payment system.

The Department has made catching up with the backlog a priority subsequent to the Cordova v. State of Alaska Supreme Court ruling which in part states that the State of Alaska cannot recover overpayment identified in audits. The need to complete audits before the prospective payment rate is calculated and is even more critical.

The Audit Unit has been contracting with KPMG Peat Marwick to achieve the goal of completing the audits of past years while Department staff auditors are assigned to current base period audits. Therefore, the Department has simultaneously been 1) reducing the backlog of audits, and 2) adding assurance that the prospective rates are set from the best information available (i.e. audited cost reports).

One KPMG Peat Marwick contract provides for the audit of facilities through FY89. It involves the completion of sixty (60) audit reports. Fifty (50) audit reports have been forwarded to the Department for review, of which eleven have been approved to issue as Preliminary Audit reports. The ten (10) outstanding reports are substantially complete at KPMG Peat Marwick and are awaiting final responses from the facilities. These final ten reports are expected for review at the Department Audit Unit in the next 60 days. The Department expects to complete its review of all reports on this contract in the next 90 days.

A second contract with KPMG Peat Marwick provides for the audits through FY90. It involves 24 audits of FY90 and it is anticipated that these reports should be ready for Department review by September 1993.

Honorable Cynthia Toohy  
March 9, 1993  
Page 2

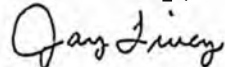
A third KPMG Peat Marwick contract provides for audits through FY91. It will involve completion of the catch-up process and some current base-period audits. Completion of this effort is anticipated by February 1994.

As noted, the Department's desire is to audit the most recent available fiscal year before the prospective rate is set. Staff auditors completed four FY90 audits prior to the prospective rate calculation for FY92, and fourteen FY91 audits before the FY93 prospective rate calculation. The staff is currently engaged in fifteen facility audits, which will result in the inclusion of audit adjustments into the 1994 facility rate.

In summary, the catch-up auditing effort which has plagued the Department for so many years is anticipated to be complete as of February 1994. The progress has been difficult for both the Department and the facilities. This intense effort needs to continue through project completion. It should be noted, however, that some of the audits which will be issued over the next few months may be subject to Administrative Appeal by the facilities. The final adjudication of those appeals may not be completed by February 1994.

If you require additional information, please do not hesitate to call.

Sincerely,



Jay A. Livey  
Deputy Commissioner

cc: Theodore A. Mala, MD, MPH  
Commissioner

Mike Sanders, Unit Chief  
Audit Unit, Office of the Commissioner

H/HES  
2/24/93 HB155

HB 155 RE: MEDICAID FACILITY AUDITS  
HOUSE HES COMMITTEE  
FEBRUARY 24, 1993

REMARKS BY ELMER A. LINDSTROM  
SPECIAL ASSISTANT TO THE COMMISSIONER  
DEPARTMENT OF HEALTH & SOCIAL SERVICES

Co-Chair Toohey and members of the House HES Committee:

Today you have before you HB 155 relating to state audits of hospitals, nursing homes and other Medicaid enrolled facilities. Although on the face of it this may seem to be a trivial if not outright boring topic, the fact of the matter is that this bill raises issues of vital importance to the health care industry, health care consumers and the State of Alaska.

As it is currently written, the Department of Health and Social Services is adamantly opposed to this bill. The department believes that enactment of this legislation would result in the loss of our ability to effectively audit hospital and nursing home facilities which would inevitably lead to increased Medicaid facility costs and could well jeopardize the continued receipt of some federal funds for our Medicaid program. Before going into our specific objections, however, I would like to take just a minute to put this bill in a broader context.

The disagreements and disputes you will hear today are a inevitable and even necessary product of the Medicaid

rate setting system. We, the Department of Health and Social Services, are charged with prudently purchasing health care on behalf of Medicaid clients. In order to prudently purchase health care, it is essential to fairly and accurately determine the rates paid to hospitals and nursing homes for Medicaid clients.

In setting these rates, the department must take many factors into consideration. Among those factors are the requirements imposed on the Medicaid program by the federal government (the federal and state governments share 50/50 in the costs of the Medicaid program), the need to provide adequate rates to facilities to insure the continued availability of these services and the need to protect the state's financial interest which, in this instance, is substantial.

The facilities, too, have interests to protect. And while I am not here to speak for the facilities, I believe I am safe in saying to you that the facilities interests differ markedly from the interests of the state in this area.

In short, what you have here is the classic conflict between a regulatory agency charged with protecting a variety of public interests--in this case prudently purchasing health care with state and federal dollars on behalf of Medicaid clients-- and the interests of those being regulated.

The department is opposed to this bill; but no one here today should be left with the impression that our opposition reflects a belief that hospitals and nursing homes or their representatives are acting contrary to law or in any other way inappropriately. Our differing positions are simply a reflection of the differing roles we must play in this process.

Having placed this issue in this broader context, I would now like to address our concerns with HB 155. These concerns are also reflected in our position paper and fiscal notes which should be in each members bill file. To the extent I am unable to address your specific technical questions, we also have available to testify Mr. Mike Sanders, Chief of our Medicaid Audit Section, and Mr. Jack Nielson, Executive Director of the Medicaid Rate Advisory Commission.

As mentioned previously, the department has the fiduciary responsibility to see that funds appropriated by the legislature for payment to hospitals and nursing homes for the care of Medicaid eligible Alaskans are spent in accordance with state and federal laws and regulations relating to Medicaid reimbursement. In part, this means the department has a responsibility to use state funds most efficiently when purchasing medical services. This is no small matter.

In FY 94, the department is requesting \$114.4 million in state and federal funds for payment to Medicaid

facilities.

This is only \$10.0 million less than the cost of the AFDC program which you are only too familiar with.

It is \$44.8 million more than is requested to fully-fund the existing longevity bonus program.

It is \$55.8 million more than what has been requested in total for municipal assistance and revenue sharing next year.

It is over \$10.0 million more than the total budgets of the Legislative and Judicial branches of government plus the Office of the Governor.

It is a lot of money. And the Medicaid facilities budget is growing.

From FY 91 to FY 92 expenditures for Medicaid facilities increased 5.9%. From FY 92 to FY 93 year-to-date it has increased 4.0%. And for FY 94, we are estimating an increase of 5.9%.

We must do everything that is possible to contain costs in this area while continuing to insure that poor Alaskans have access to needed health care facilities.

The mechanism to achieve this is a fair rate setting process which provides adequate payment to facilities while at the same time insures that only costs allowable

for Medicaid reimbursement are paid. A credible audit process is essential to these objectives and the bill you have before you today would short-circuit that process. Some specific concerns:

- The timelines in HB 155 put all the responsibility on the department and virtually none on the facility. After you have waded through the tortuous language of the bill the bottom line is that the department has 165 days from receipt of the facility's year-end report to complete an audit. Given the many delays built into the process by the bells and whistles in HB 155, this is not reasonable.

- Nothing in the bill takes into account the quality of a facility's response. There is a deadline for their original submission; but no provision for the very time-consuming process of requests by the department for further information or clarification to the original response. Historically, facilities have frequently sought and usually received time extensions to respond to audit inquiries. The department's position paper includes an appendix which documents time extensions requested by facilities.

- The actual time available to do audits is very limited--field audits must be completed within 20 days for example.

- The bill limits the scope of field audits by requiring the department to notify the facility of the

areas to be reviewed.

- The Medicaid Rate Advisory Commission would be required to calculate rates twice.

- Because of the time limitations in the bill, Home office costs could not be verified for facilities with headquarters out-of-state.

- The department's reading of the bill leads us to conclude that the Medicaid Rate Advisory Commission would be precluded from performing any analysis beyond items noted in an audit exception

- HB 155 shifts the burden of correct reporting from the facility to the department. If a facility requests an adjustment which is not accepted by the department, the facility may appeal, and if it prevails on appeal the adjustment must be retroactively made. On the other hand, the state cannot secure retroactive adjustments on items that are appealed.

- And, in the opinion of the department, the bill is over-precise insofar as it does not provide the department with sufficient flexibility to respond to future changes in federal law, HCFA interpretations or practical variations among divergent facilities. To the extent that some of the provisions may be necessary--and we are certainly not conceding that point--it would be more appropriate to include them in regulation rather

than statutory law.

This is just a partial list of concerns the department has with items included in HB 155. At this time, however, we would like to bring to your attention several items which are not included in HB 155 which are also of concern. In this regard, we cite a recent report of the Division of Legislative Audit entitled "Department of Health and Social Services; Medicaid Rate Advisory Commission, Selected Rate Setting Issues" dated August 11, 1992.

The Division of Legislative Audit recommends that the department seek statutory revision to provide for recoupment from health care facilities based on audit results. In the words of the Legislative Auditor "It is essential that the State be able to recoup from facilities payments determined to be inappropriate based upon the result of audits. The lack of recoupment and the federal requirements concerning overpayment of facilities increases the cost of the Medicaid program to the State. DHSS is currently not able to obtain reimbursement from facilities of amounts over paid them, but is required to reimburse the federal government for the amount of federal participation in that overpayment."

This situation has arisen due to the Alaska Supreme Court ruling in City of Cordova v. Medicaid Rate Commission which we would be happy to discuss further with the committee if it so desires.

The department is sensitive to the criticism voiced by facilities that we have not always been timely in completing facility audits. This problem is also cited in the legislative audit. The department is addressing this problem however. Attached to our position paper is an appendix which indicates our progress toward eliminating the back-log of facility audits. We anticipate being current with all audits by the end of FY 94.

Nevertheless, the department would support legislation which would have the effect of streamlining the audit process, assisting with bringing all audits current and keeping them current. Nothing in HB 155 as currently written will accomplish these worthy goals--despite the significant increase in audit resources indicated on our fiscal notes.

In conclusion, Madame Chair, the department is strongly opposed to HB 155 and, should the bill be passed in its present form, would strongly recommend a veto by the Governor.

ALASKA STATE  
**HOSPITAL & NURSING HOME**  
ASSOCIATION

H/HESS 2/24/93

HB 155

GARREY PESKA  
FINANCE VICE PRESIDENT

January 11, 1993

The main features of the attached ASHNA proposal for Medicaid rate setting process legislation are as follows:

Defines the department's authority to audit health facility records to:  
Determine accuracy of information used to set Medicaid rates  
Assure compliance with the law

Sets the deadline for facilities to file year end reports. (120 days after year end)

Sets deadlines for DHSS to complete:  
Preliminary review of year end reports  
Preliminary desk audit report  
Preliminary field audit report  
Final field audit report

Allows facilities to submit written responses before audits are finalized.

Specifies minimum information to be included in audit reports

Allows facilities to request formal administrative hearings on disputed rates.  
Prevents implementation of disputed adjustments before a final administrative or judicial decision is issued.

Sets deadlines for completion of final audit reports (Within 165 days after the date the health facility's year end report was due or the date the department received the year end report, whichever is later).

Defines the process for MRAC staff using audit reports in setting rates.

Allows facilities to report errors in rates and provides for resulting adjustments.

Specifies the process for late audit report adjustments to affect future rates.

H/HES  
2/27/93

HB155

## SUMMARY OF THE NEED FOR AUDIT LEGISLATION

By Karl Garber, Director of Finance  
Our Lady of Compassion Care Center  
January 8, 1993

We believe the legislation is needed primarily for two reasons:

- (1) Audits are not being conducted in a timely manner. The status of the audits of Our Lady of Compassion Care Center is as follows:

1986 and 1987 The final audit reports were issued in 1990 and are currently in the Formal Administrative Hearing Process.

1988 The field audit was completed in August 1990. There have been no audit reports issued since then.

1989 We responded to the Auditor's desk review inquiries in August 1992. There have been no audit reports issued since then.

1990 We responded to the Auditor's desk review inquiries in January 1992. The Department issued a Preliminary Report in May 1992. In June 1992, in order to respond to the Preliminary Report, we requested the statutory and regulatory authority to conduct this audit and to take actions based on this audit. Other items were also requested. We have not received a response.

1991 In November 1992 a field audit was conducted and a Preliminary Report was issued. A significant change (as compared to prior audits) in classification of costs was proposed. We are reviewing the report to determine our response; however, the inconsistent treatment has resulted in a projected \$390,000 deficiency for our 1993 Budgeted Medicaid Reimbursement.

The status of our audits (above) is typical of the lateness of audits of the majority of the other health facilities throughout Alaska.

- (2) The Department is incorporating preliminary audit findings into reimbursement rates. This is a recent development within the last year.

We believe there is no statutory or regulatory authority for the incorporation of preliminary findings into the reimbursement rates, and it has resulted in many temporary rates and will undoubtedly result in numerous lawsuits. From a practical perspective, our past experience is that most preliminary audit findings are reversed prior to the issuance of a final audit or prior to the resolution of legal appeals.

At the December 1992 meeting of the Medicaid Rate Advisory Commission we agreed to a temporary rate until April 30, 1993. We believe we will be significantly underpaid by the Department during this time period as a result of incorporating the inconsistent preliminary findings of the 1991 Audit into our 1993 rate. However, we are hopeful that this underpayment can be corrected when we have had time to respond to the preliminary audit of 1991, and when the prior year audits are completed in a manner that is consistent to the final 1991 audit (as noted above, this inconsistency creates a \$390,000 deficiency).

We agreed to a temporary rate in a good faith effort that a legal appeal may be avoided. Nevertheless, the rate setting system is not designed for and is bogged down by temporary rates for a variety of reasons too numerous and extensive to describe here. Approximately 75% of the facilities had temporary rates set at the December 1992 meeting of the Medicaid Rate Advisory Commission. All long term care facilities had temporary rates set at that meeting. We understand this was due at least in part to the status and treatment of their audits. This is not an efficient method of setting rates.

H/HESS  
2/24/93

HB 155

**BARTLETT MEMORIAL HOSPITAL**

3260 Hospital Drive • Juneau, Alaska 99801 • Telephone (907) 586-2611

VIA FAX # 465-2918

February 24, 1993

Representative Gary L. Davis  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Representative Davis:

We appreciate your introduction of House Bill 155, "An Act relating to audits of health facilities," for the consideration of the Legislature. We were able to help with some of the work done by the Alaska State Hospital and Nursing Home Association and support the Bill.

The need to firmly establish audit procedures and time frames has been apparent for a number of years. This has been a topic of much discussion in the industry and with the Department of Health and Social Services.

Uncertainty and frustration are caused by having audit issues outstanding for a number of years. For example: We spent a considerable amount of time during 1991 answering inquiries related to audits for our fiscal years 1985, 1986, 1987, and 1988. The initial work on these cost reports was done by my predecessor's predecessor. We spent a lot of time simply locating records and then trying to understand issues from so long ago. These audits have not as yet been finalized. Now, with the passage of more time, any additional questions raised in moving to finalize these audits could easily result in the need to pull out these old records once again. In the meantime we must provide care to patients and deal with operational issues every day.

House Bill 155 establishes time frames and will assist in eliminating the delays and frustration in the current audit process. Audits need to be completed in a timely manner. We appreciate your efforts to move this important legislation forward and offer our support to your efforts.

Sincerely,

  
Garth M. Hamblin  
Controller



# ANN'S NURSING HOME

415 Sixth Street, Juneau, AK 99801 (907) 586-3883

H/HESS  
2/24/93

HB 155

## HOUSE HEALTH, EDUCATION, AND SOCIAL SERVICES COMMITTEE

FEBRUARY 24, 1993

My name is Grant Asay. I am the administrator at St. Ann's Nursing Home here in Juneau. I have been in my position for four years.

St. Ann's is a 45 bed long term care facility. Our funding is 90% Medicaid. We are therefore, 90% reliant on an efficient, effective, fair state Medicaid process. Our other revenue comes from Veterans Administration and private paying patients.

Our last finalized Medicaid audit was for fiscal year 1985. Since then, all audits have been preliminary and we have only seen the preliminary reports on the 1990 and 1991 audits. It is unknown whether or not the earlier unfinalized audits, 1986-1989, which I haven't seen propose adjustments and if so, will those adjustments impact future periods. This bill not only requires audits to be finalized in a timely fashion. It also specifies the process and any impact the late audits will have on future rates.

The calendar year is our fiscal year. Typically, in November, I present to my Board the annual budget for the upcoming year. However, with the current audit process, the revenue projection is unavailable until well into the operating year. For example, I will not know what our revenue is this year until the end of April. One-third of the year will have gone. As I will illustrate in an example specific to St. Ann's, this is because the whole audit process, time frames and deadlines are undefined. Because our revenue is unknown, I have no way of performing basic administrative functions such as adjusting expenses to expected revenue. It is unfair to prematurely increase charges to those who are non Medicaid beneficiaries. There is no way I can tell employees if or when there will be a cost-of-living increase when there is no solid revenue projection. This frustration doesn't have to be and that is why I strongly support this legislation. Let me give you the example of the audit process we experienced this year.

Our 1993 rate is set off of 1991 expenses. The audit unit conducted a desk audit and some field work of fiscal year 1991 around thanksgiving in November 1992. The preliminary audit findings with several substantial adjustments were sent to the rate setting agency (the Medicaid Rate Advisory Commission) in Anchorage who incorporated those adjustments and sent me a letter proposing our 1993 permanent rate. This letter was prior to me ever seeing or receiving any preliminary audit report outlining audit findings and proposed adjustments. There was no way I could set up a hearing to discuss the audit adjustments because the permanent rate was already proposed incorporating the audit findings. What this does is create a relationship between the facilities and the department that is needlessly adversarial.

We did succeed in getting a livable temporary rate and are preparing for another hearing on our permanent rate in April.

I understand that during the course of an audit, discrepancies and disagreements will arise. I am a fairly new administrator to Alaska. That is partly how one learns the Medicaid system and the State's expectations and requirements-by working through the disagreements. It would have been a greater learning experience to have had audits conducted soon after the audit period as this bill requires. However, as I have said, I have participated in only two preliminary audits and nothing has been finalized at St. Ann's since 1985. The facilities need time to work through these audits and the disputed adjustments prior to incorporating them into a permanent rate. This bill puts into statute workable, reasonable time frames that allow appropriate response time to prevent our experience from reoccurring.

Thank you for the opportunity to testify.

H/HESS  
2/24/93

HB 155

93- 9-11 Auditors  
- Budget  
Auditors  
3 Auditors - Sunnyside  
3 Auditors - Anchorage  
96

My name is Donna Herbert, I am a Health Care Reimbursement Consultant who represents eleven of the hospitals and nursing homes in this state. The facilities that I represent, feel that it is important that the audit process be set out in statute.

Overall the Medicaid regulations that affect reimbursement are vague and interpreted differently each year. There is a great deal of confusion regarding the interpretations of the Medicaid regulations.

The audit process must be very structured and clear to alleviate the turmoil that now exists on interpretation of the regulations. If the audit process remains vague the chaos will simply accelerate.

Many of the health care facilities current Medicaid reimbursement rates were reduced based on audits even though the facilities had never seen the audit report. The reports were sent to the Medicaid Rate Advisory Commission and the rates reduced before the reports were ever published. The facilities believe it is critical that a statute control the following audit criteria:

### AUDIT CRITERIA

ESTABLISH TIME DEADLINES

DEFINE THE AUDIT PROCESS AND PROTOCOL

ALLOW ADEQUATE RESPONSE TO THE AUDIT ADJUSTMENTS

OUTLINES THE DOLLAR IMPACT OF THE ADJUSTMENTS

TIME LINES WHICH ALLOW FOR PROPER NOTIFICATION AND RESPONSE TIME

DICTIONATES THAT RATES CAN ONLY BE ADJUSTED AFTER THE AUDIT IS FINALIZED

*It is the facilities opinion*

~~The facilities~~ believe that the audit process is very important but that it is equally important that guidelines be established with accountability on both sides.

*I represent 11  
facilities most  
of these facilities  
have 5-6 years  
of outstanding  
audit. None  
of them are  
under appeal*

*Our facilities believe this is unlawful.  
Even IRS is required to give notice  
to a taxpayer before they garnish a bank account  
in ~~any~~ <sup>several</sup> case the Audit Adjustments  
were in error and needed to be reversed.*