

HB

353

SENATE COMMITTEE RE

DATE: 4/7/98

FURTHER: State Affairs

DATE TURNED
IN TO OFFICE: 4/27/98

HES Committee considered CS FOR HOUSE BILL NO. 353(HES) am

"An Act relating to adoption by reference in regulations; and providing for an effective date."

and recommends:

- be replaced with S CS for CS HB 350 (HES)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>J. Ellis</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>Lyle Green</i>	<input checked="" type="checkbox"/>		
		<i>Drew D. Luman</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
H+SS - Medical Assistance	4/28/98	<input checked="" type="checkbox"/>	
(Applies to both the original bill version + CS)			

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

WORK DRAFT

WORK DRAFT

WORK DRAFT

0-LS1395F
Lauterbach
4/23/98

SENATE CS FOR CS FOR HOUSE BILL NO. 353()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Dyson

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to adoption by reference in regulations; and providing for an
2 effective date."

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

4 * Section 1. AS 44.62 is amended by adding a new section to read:

5 Sec. 44.62.245. Material incorporated by reference. (a) In adopting a
6 regulation that incorporates a document or other material by reference, a state agency
7 may incorporate future amended versions of the document or other material if the
8 adopted regulation identifies or refers to the document or other material followed by
9 the phrase "as may be amended," the phrase "as amended from time to time," or a
10 similar provision and the

11 (1) document consists of a regulation of another agency of the state;

12 or

13 (2) incorporation of a future amended version of the document or other
14 material is explicitly authorized by a statute.

WORK DRAFT

WORK DRAFT

0-LS1395VF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(b) When the amended version of a document or other material incorporated by reference in a regulation as described in (a) or this section becomes available, the state agency shall

(1) make the amended version of the document or other material available to the public for review; and

(2) publish in the Alaska Administrative Journal, not later than 15 days after the amended version of the document or other material becomes available, a notice that describes the affected regulation, the effective date of the amended version of the document or other material, and how a copy of the amended version may be obtained or reviewed.

(c) The state agency shall also send the notice described in (b)(2) of this section to

(1) a person who has placed the person's name on a distribution list kept by the agency that lists persons who want to receive the notice; the agency may allow a person to request that distribution of the notice be by electronic means and shall honor that request if appropriate means are available; and

(2) the regulations attorney in the Department of Law.

(d) A change in the form, format, or title in a future amended or revised version of a document or material incorporated by reference in a regulation under this section does not affect the validity of the regulation or the state agency's ability to enforce or implement the regulation. The state agency shall notify the regulations attorney in the Department of Law if the title of the document or other material changes. The regulations attorney shall correct the title in the Alaska Administrative Code under AS 44.62.125.

* Sec. 2. AS 47.05 is amended by adding a new section to read:

Sec. 47.05.012. Material incorporated by reference. Under AS 44.62.245(a)(2), in adopting or amending a regulation that incorporates a document or other material by reference, the department may incorporate future amended versions of the document or other material if the document or other material is one of the following:

(1) a document that is published, compiled, or prepared by the United

WORK DRAFT

WORK DRAFT

0-LS1395VF

- 1 States Department of Health and Human Services and is included in the following list:
- 2 (A) the international classification of diseases, clinical
- 3 modifications;
- 4 (B) the common procedure coding system;
- 5 (C) the specifications for national uniform billing data elements;
- 6 (D) the federal poverty guidelines for the state;
- 7 (E) the Indian Health Service encounter rates; or
- 8 (F) the relative value units used in the Medicare program for
- 9 determination of fee schedules:
- 10 (2) the current procedural terminology for physicians published by the
- 11 American Medical Association;
- 12 (3) the diagnostic and statistical manual of mental disorders published
- 13 by the American Psychiatric Association;
- 14 (4) the length of stay in hospitals by diagnosis and operation for the
- 15 western region of the United States, published by HCIA, Inc.
- 16 (5) the relative value guide published by the American Society of
- 17 Anesthesiologists;
- 18 (6) the consumer price index published by the United States
- 19 Department of Labor;
- 20 (7) the health plan employer data and information set published by the
- 21 National Committee for Quality Assurance;
- 22 (8) practice standards adopted by the American Academy of Pediatrics,
- 23 American College of Obstetricians and Gynecologists, American Diabetes Association,
- 24 American Cancer Society, American Academy of Family Physicians, American College
- 25 of Physicians, United States Centers for Disease Control and Prevention, Agency for
- 26 Health Care Policy and Research, or the National Asthma Education and Prevention
- 27 Program;
- 28 (9) the compendium of animal rabies control published by the United
- 29 States Centers for Disease Control and Prevention;
- 30 (10) the control of communicable diseases manual published by the
- 31 American Public Health Association;

WORK DRAFT

WORK DRAFT

O-LS1395F

1
2
3
4
5
6
7
8

(11) the standards manual and interpretative guidelines for behavioral health, employment and community support services, and for medical rehabilitation published by the Commission on Accreditation of Rehabilitative Facilities;

(12) consumer assessment of health plans published by the Agency for Health Care Policy and Research; or

(13) resources for optimal care of the injured patient published by the Committee on Trauma, American College of Surgeons.

* Sec. 3. This Act takes effect July 1, 1998.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSHB 353(HES) am

1 Page 1, following line 3:

2 Insert a new bill section to read:

3 **** Section 1.** AS 23.30.005 is amended by adding a new subsection to read:

4 (m) Under AS 44.62.245(a), for the purpose of describing the requirements
5 of an employee's job in order to carry out the provisions of this chapter, the
6 department may adopt a regulation that incorporates future amended versions of the
7 United States Department of Labor's "Selected Characteristics of Occupations Defined
8 in the Revised Dictionary of Occupational Titles."

9 Page 1, line 4:

10 Delete "Section 1"

11 Insert "Sec. 2"

12 Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 353(HES) am

1 Page 1, line 10, following "and the":

2 Insert

3 "(1) document consists of a regulation of another agency of the state;

4 or

5 (2)"

Conceptual
Amendment to CSHB 353 (HES) am

^{3 30}
Page ~~4~~, line ~~16~~, following "research;"

Delete "or".

¹
Page 4, line ~~18~~, following "Surgeons"

Insert:

"; or

¹⁹
~~(16)~~ the revisions to payment policies and the adjustments to the relative value units for medical procedures for the Medicaid program, when Medicare standards apply to determine the payments to Medicaid providers"

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

March 13, 1998

Honorable Con Bunde, Chair
State of Alaska
House of Representatives
Health, Education & Social Services Committee
Room 106, Capitol
Juneau, AK 99801-1182

RE: HB 353

Dear Representative Bunde:

The Alaska State Medical Association (ASMA) represents nearly 500 private practice physicians and their patients. I am writing you today in regards to HB 353. ASMA has some serious concerns about this measure.

Nancy Weller, Medical Assistance Administrator, Department of Health and Social services wrote a letter dated January 22, 1998, to Representative Kelly, the bill's sponsor. The letter explains that the state Medicaid program relies on a number of published national standards, and that it is burdensome to adopt new regulations each time these standards are changed. Currently, Medicaid uses such national standards as the current procedural terminology (CPT) of the AMA, the International Classification of Diseases and various other published standards.

Ms. Weller says:

"The Medicaid Program is particular hard-hit currently having to change regulations when a national standard is changed] ...and there is an expectation by health care providers that they can do business with us in the same manner as ... any other insurance company. The health care industry has adopted numerous standardized codes relating to billing for services to assure all providers and payers are "speaking" the same language... If the Medicaid Program cannot consistently use current standards, providers will simply cease doing business with us and it will create an access problems for the 90,000 people who depend on Medicaid..."

Ms. Weller's sentiments are correct. Unfortunately, however, Medicaid *at present* fails to adhere consistently to at least one of the major national standards mentioned in HB 353 - the Current Procedural Terminology of the AMA. This has nothing to do with the adoption or non-adoption of changes in the CPT. It has to do instead with Medicaid's persistent refusal over the years to recognize standard CPT Modifiers, which form an integral and important part of the CPT. Medicaid, you see, has purchased a popular computer "audit-edit" program called "ClaimCheck". This proprietary program, the details of which a public agency (Medicaid) keeps secret from the public and from the provider community, is very popular with third-party payors because it denies many

modified CPT codes, thereby reducing financial outlay. It is kept secret because it is proprietary – so when one complains of its inequities, one is told, "ClaimCheck was developed by doctors," and is therefore above question.

Medicare, which pays poorly but adheres very closely to the CPT, recognizes CPT modifiers – particularly –24, -25, -57, -59 and -79, but Medicaid refuses to have ClaimCheck modified (modification is a prerogative of the ClaimCheck client). Consequently, all claims bearing these modifiers are automatically rejected, and must be dealt with on appeal, a frustrating and costly process. In other words, though there may be an expectation by health care providers that Medicaid should do business "like any other insurance company," and that "providers and payers" are "speaking the same language," Medicaid currently fails to meet these expectations.

Another area where ClaimCheck (and Medicaid) diverge from the CPT is in the arbitrary use of "incidental to" codes. "Incidental to" codes are codes which ClaimCheck maintains are "bundled" in "more comprehensive" codes, so that, when the latter are billed, the former are automatically rejected. Here again, ClaimCheck differs from Medicare in considering a broad range of codes as "incidental to" other codes. Code 92015, (Determination of Refractive State), for example, is such an "incidental to" code. Medicare correctly does not recognize it as part of any other CPT code, but Medicaid considers it "bundled" with any other code an ophthalmologist may bill on the same day. So, while Medicaid represents to the public that it "reintroduced coverage" for refractions for eyeglasses in 1997, it refuses to pay for the service because it is always "incidental to" something else.

While HB 353's concept of reducing unnecessary regulation is a laudatory one, Medicaid cannot tell Representative Kelly that "it wants to play by the rules" and at the same time ignore the very rules it claims it is trying to play by.

Consequently, ASMA can not support HB 353 as written, even though Medicaid may be following every set of national standards cited in the bill except the CPT. It is not appropriate and perhaps not legal to adopt an entire standard such as the CPT by reference and then, without the benefit of any further formal regulatory process, elect not to utilize certain elements of that standard.

By: Kevin Tomera, MD, President

For: ASMA Board of Trustees

cc: Representative Joe Green, Vice Chair
Representative Fred Dyson
Representative Brian Porter
Representative Al Vezey
Representative Tom Brice
Representative Allen Kemplen

Commissioner Karen Perdue, Department of Health and Social Services.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

April 23, 1998

Memorandum

To: Representative Pete Kelly

OK

Re: HB 353, Regulations by Reference, State Medical Assn. Concerns

Jeff Bullock, representing the Alaska State Medical Association, has expressed the associations concerns that the numerical codes and billing standards adopted by reference must be adopted in whole, not in part.

The allegation is that the Division of Medical Assistance is using a computer program that does not recognize all groupings of billing codes. A specific doctor wants to use a code that includes several procedures in a single numerical code, or a procedure and an office visit in a single numerical code. The department, however, will not pay for all of these services, and only recognizes specific codes, not the inclusive grouped code.

The issue may have merit, but it is not applicable to HB 353. In discussion with the Attorney General's office it is clear that HB 353 authorized the adoption of a complete reference document, not a portion or fragment of the document. The regulations that describe the use of these numerical codes can specify which codes will be used and how they will be used.

The Alaska State Medical Association issue is a matter for discussion in the regulation adoption process.

HB 353 does not allow for the adoption of only a portion of the manual or reference material. HB 353 has nothing to do with the regulatory decision that certain codes will or will not be recognized by the department.

Alaska State Legislature

REPRESENTATIVE

PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203

Fairbanks, Alaska 99701

(907) 456-8161



White in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-2327

House District 31

House Of Representatives

April 2, 1998

Floor Discussion

HB 353, Regulations by Reference

House Bill 353 streamlines the state's adoption of the current version of numerical codes and standards for medical practitioners.

Currently the state must go through the lengthy regulation writing process each time a national code is changed or rewritten.

By the time the regulation process is completed the department must go back and recalculate payments to care providers. The department then has to make up the difference in all of the billing and accounts with the new data.

The whole process may take more than a year, and the new codes are published, starting the chase all over again.

The speed and efficiency gained by this bill is important for all health workers who must describe their work in numerical codes. Most apply to medicaid.

Once a national code is adopted as a state regulation, this bill allows the state to quickly allow practitioners to use the latest, updated version.

The bill applies to:

- 1) International classification of diseases. (Numerical code for each clinical diagnosis or disease. Required on all medical claim forms.)
- 2) Common procedure coding system. (Numerical codes used by all insurance providers.)
- 3) National uniform billing data. (Numerical code to describe the services rendered in hospitals.)
- 4) Federal poverty guidelines. (Annual guidelines.)
- 5) Indian Health Service rates. (Annual reimbursement rates paid by the Indian Health Service, medicaid program.)
- 6) Current American Medical Association procedural terminology. (Numerical codes that describe treatment rendered by physicians.)
- 7) American Psychiatric Association diagnostic and statistical manual of mental disorders. (DSM numerical codes for mental disorders.)

Floor discussion.

Page 2.

- 8) HCIA, Inc. length of stay in hospitals, by diagnosis. (Average length of stay in hospitals, a percentage multiplier is used for reimbursement by insurers.)
- 9) American Society of Anesthesiologists relative value guide. (Standards for administration and billing of anesthesia procedures.)
- 10) U.S. Dept. of Labor Consumer Price Index. (CPI – Used by the state to annually update standards for needs based programs.)
- 11) National health plan employer data and information set. (Standards used to evaluate managed care practice.)
- 12) Practice standards.
- 13) The compendium of animal rabies control.
- 14) Control of communicable diseases manual.
- 15) Standards manual for behavioral health.
- 16) Accreditation manual for mental health.
- 17) Standards for accreditation of managed care organizations.
- 18) Consumer assessment of health plans.
- 19) Resources for optimal care of the injured patient.

FISCAL NOTE

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 353 (HES)
Publish Date: 3/11/98

Revision Date: _____
Title: Adoption by reference
Sponsor: Kelly
Requestor: HESS

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Commissioner's Office
COMPONENT SERIAL NO. 317
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.05, general authority for the Department of Health and Social Services, to allow the adoption by reference of federal and state laws and regulations and those specific items listed in the bill in their most current form. The current adoption by reference standard employed by the Department of Law requires a regulation change every time the reference material is changed. Most of the items listed in this bill are used for purposes of billing the Medicaid Program for services rendered, and are annually updated. Delays in the regulation process prevent the department's regulations from remaining current with standards as they are changed, so adoption of this legislation will reduce the administrative work related to regulations for more efficient operations.

1120198
Prepared by: Nancy Weller
Division: Medical Assistance
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3355
Date: 01/27/98
Date: 1/25/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

P.O. BOX 110660
JUNEAU, ALASKA 99811-0660
PHONE: (907) 465-3355
FAX: (907) 465-2204

DIVISION OF MEDICAL ASSISTANCE

January 22, 1998

The Honorable Pete Kelly
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kelly:

You have asked me to briefly explain the substance of the adoption by reference Legislation that you intend to introduce on behalf of the Department of Health and Social Services.

This bill, if enacted, would allow the department to adopt within its regulations standards set out in federal or state law or regulation, or the specific national standards itemized in subsection (a)(2), without adopting a new regulation every time that these standards are changed. The procedure for notifying the public of adoption of a changed standard would be a notice published in the Alaska Administrative Journal.

The Department of Law, under current law and legal interpretation of the reference standard made through court decisions, require agencies to adopt by reference any material with a specific citation and date. Any time these materials are changed, the state agency must adopt a new regulation adopting the citation change; as the regulation adoption process is so lengthy, it is impossible for a state agency to remain current with standards adopted by reference.


The Medicaid Program is particularly hard hit by the adoption by reference requirement, as we operate like an insurance company and there is an expectation by health care providers that they can do business with us in the same manner as Blue Cross, Aetna or any other insurance company. The health care industry has adopted numerous standardized codes related to billing for services to assure that all providers and payers are "speaking" the same language. All of these standards are updated annually to keep pace with medical practice standards. If the Medicaid Program cannot consistently use current standards, providers will simply cease doing business with us and it will create an access problem for the 90,000 people who depend on Medicaid for health care coverage.

The standards listed in this bill are mostly related to Medicaid; I am attaching a list of the standards with a brief explanation of their use for your reference. None of these standards should be controversial.

The Honorable Pete Kelly
January 22, 1998
Page 2

Thank you for your assistance with this important Legislation, and please contact me at any time if you need additional information.

Sincerely,


Nancy Weher,
Medical Assistance Administrator

International Classification of Diseases, Clinical Modifications - ICD - this book establishes a numerical code for each clinical diagnosis/disease. These codes are required on all medical claim forms.

Common Procedure Coding System - This system of numerical codes is maintained by the Health Care Financing Administration, and are uniformly used by all insurers. The coding system includes CPT codes and HCFA created codes for special procedures not included in other coding systems.

Specifications for National Uniform Billing Data Elements - Commonly known as revenue codes, this numerical coding system describes the services rendered in hospitals. These codes are required on all medical claim forms for hospital services.

Federal Poverty Guidelines - These guidelines are published annually, adjusted by the consumer price index, and are used to determine program eligibility. Many DHSS programs refer to the federal poverty level in their grants, as grantees are required to have a sliding fee schedule based on income.

Indian Health Service Encounter Rates - these rates are negotiated annually by the Health Care Financing Administration, Office of Management and Budget, and the Indian Health Service to be used as reimbursement for IHS and tribal health facilities by the Medicaid Program.

Current Procedural Terminology for Physicians - CPT - these numerical codes describe each treatment rendered by physicians and other providers. The CPT codes are required on all insurance claim forms and are updated January 1st of every year.

Diagnostic and Statistical Manual of Mental Disorders - DSM - Similar to the ICD, this manual contains a system of numerical codes that describes mental disorders for use on claim forms.

Length of Stay in Hospitals by Diagnosis and Operation for the Western Region of the US - LOS These two manuals describe the average length of inpatient hospital admission in the western US. Some percentage of this standard is ordinarily used by an insurer as the limit on length of stay they will reimburse, although LOS can usually be extended if there are complications.

Relative Value Guide - This book creates standards for the administration and billing of anesthesia procedures.

Consumer Price Index - CPI - Used by the federal government and the state to annually update a number of standards for needs based programs.

Health Plan Employer Data and Information Set - HEDIS - These standards are commonly used to evaluate how well providers and plans meet managed care standards of practice.

Practice Standards - practice standards adopted by many national organizations are routinely used in managed care as the purchaser's expectations for patient outcomes that are evaluated with HEDIS.

Compendium of Animal Rabies Control - This publication serves as the basis for animal rabies control programs throughout the United States and facilitates standardization of procedures among jurisdictions. Immunization procedure recommendations are contained in Part 1; all animal rabies vaccines licensed by the United States Department of Agriculture (USDA) and marketed in the US are listed in Part 2; Part 3 details the principles of rabies control.

Control of Communicable Diseases Manual - This manual furnishes public health administrators with a source of reliable information for preparing regulations and legal requirements for the control and management of communicable diseases and for developing programs for the health education of the public.

Standards Manual and Interpretive Guidelines for Behavioral Health, Employment and Community Support Services and for Medical Rehabilitation - The Divisions of Mental Health and Developmental Disabilities and Alcoholism and Drug Abuse uses these standards for accreditation of psychiatric or substance abuse rehabilitation programs that are grantees of the state.

Accreditation Manual for Mental Health, Chemical Dependency, and Other Health Care Facilities - This manual is used by the Divisions of Mental Health and Developmental Disabilities and Alcoholism and Drug Abuse for accreditation of general psychiatric or substance abuse treatment programs that are grantees of the department.

Standards for Accreditation of Managed Care Organizations, Standards for Accreditation of Managed Behavioral Health Organizations, and Standards for Certification of Credentials Verification Organizations - These accreditation standards will be used by the department for the certification of managed care organizations under contract.

Consumer Assessment of Health Plans - This consumer assessment of managed care is a tool created by the federal government for use with government health care programs required to complete such annual assessments.

Resources for the Optimal Care of the Injured Patient - This national evaluation tool establishes comprehensive guidelines for the care of the injured patient, including standards for different levels of trauma centers. The State of Alaska uses compliance with the standards in the document as one of the qualifications for certification as a trauma center (7 AAC 26.010 - 7 AAC 26.999).