

HB

325

HFIN

FILE

(11)

Date Referred to Committee: March 29, 2000

HOUSE COMMITTEE REPORT

FURTHER REFERRALS:

Date of Committee Action: 4/4/00

The FINANCE Committee considered:

HB 325

HOUSE BILL NO. 325

MEDICAL ASSISTANCE: LIENS & CLAIMS

"An Act relating to priorities, claims, and liens for payment for certain medical services provided to medical assistance recipients; and providing for an effective date."

recommends it be replaced with the following committee substitute

(S) HB 325 (JUD)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS:

(Dept/Date)

fiscal note(s) _____

fiscal note(s) DHSS 2/2/00

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therriault</i>	Therriault	X			
<i>Glenn Mulder</i>	Mulder			✓	
<i>Carl Bunde</i>	Bunde	✓			
<i>Alan Austin</i>	Austin			X	
<i>John J. Davis</i>	J. Davis	X			
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>Carol P. Moses</i>	Moses	X			
<i>John G. Davis</i>	G. Davis			X	
<i>William Williams</i>	Williams	X			
<i>John F. Foster</i>	Foster	X			
<i>Saint Phillip's</i>	Phillips	X			

CO CHAIR'S SIGNATURE *Gene Therriault* (8) *Glenn Mulder* (3)

FISCAL NOTE

No. 1

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Ver #: HB 325
(H) Publish Date: 2/2/00

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Medicaid lien recovery and filing period BRU: Medical Assistance
 Component: Medicaid Services
 Sponsor: Rules COMPONENT SERIAL NO. 2077
 Requestor: Governor See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(2.7)	(10.7)	(10.7)	(10.7)	(10.7)	(10.7)
MISCELLANEOUS						
TOTAL OPERATING	(2.7)	(10.7)	(10.7)	(10.7)	(10.7)	(10.7)

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	(1.6)	(6.4)	(6.4)	(6.4)	(6.4)	(6.4)
1003 GF Match	(1.1)	(4.3)	(4.3)	(4.3)	(4.3)	(4.3)
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	(2.7)	(10.7)	(10.7)	(10.7)	(10.7)	(10.7)

Estimate of any current year (FY2000) cost: \$0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation would make two changes to the Medicaid program: the net effect of those changes is shown above. First, the legislation would strengthen the Department of Health and Social Services' ability to recover money from third party payors when they are liable for the medical expenses that have been paid by the department for someone receiving medical assistance under Medicaid or the Chronic and Acute Medical Assistance (CAMA) program. This would result in the Department recovering more of these expenditures.

The legislation also extends the timely filing period for providers to submit claims to Medicaid and CAMA from six months to one year. This will increase expenditures as currently some claims are not paid solely because they are not filed within the six month time period. The following page shows the separate impacts. (Note: impacts to CAMA are not included as they are not considered material.)

Prepared by: Jon Sherwood Phone: 465-3355
 Division: Medical Assistance Date/Time: 1/20/00 3:03 PM
 Approved by Commissioner: Karen Perdue, Commissioner Date: 1/24/00
 Agency: Department of Health & Social Services

HB 325



TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

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OFFICE OF THE GOVERNOR
JUNEAU

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Juneau, Alaska 99811-0001
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January 31, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

In the interest of recovering medical assistance payments due to the state, I am transmitting this bill that grants the Department of Health and Social Services an express right to a lien against any money recovered from a third party for assistance payments. The bill also strengthens the department's existing right of third party subrogation and extends the time period from six months to one year for medical providers to file claims with the department for medical services provided.

Under the bill, when a state medical assistance recipient recovers money from a third party who is found liable for the recipient's medical expenses, the department would have a lien against that recovery. The department's lien would be reduced by a pro rata share of the recipient's attorney fees and litigation costs incurred in the recovery. If the department incurs attorney fees and costs to enforce the lien, the amount of the lien would be increased to cover those fees and costs. The department's lien would take priority over a lien filed by a hospital, nurse, or physician.

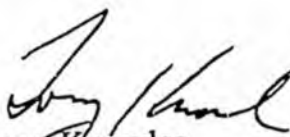
Under existing law, when a state medical assistance recipient has a claim against a third party for the recipient's medical expenses, the department has a right of subrogation. This law allows the department to stand in the place of the recipient to enforce the recipient's claim for medical assistance payments against an insurer or other third party. This bill adds a requirement that the recipient give the department notice if the recipient has an action or claim against a third party so that the department may enforce its subrogation rights. The bill also expressly grants the department the right to bring an

The Honorable Brian Porter
January 31, 2000
Page 2

action to recover on a subrogated medical assistance claim regardless of whether the recipient acts or fails to act to enforce the claim.

I urge your support of this important legislation.

Sincerely,



Tony Knowles
Governor

FISCAL NOTE

No: 1

STATE OF ALASKA
2000 LEGISLATIVE SESSION

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(H) Publish Date: 2/2/00

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CAPITAL EXPENDITURES						
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Estimate of any current year (FY2000) cost: \$0.0

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PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation would make two changes to the Medicaid program; the net effect of those changes is shown above. First, the legislation would strengthen the Department of Health and Social Services' ability to recover money from third party payors when they are liable for the medical expenses that have been paid by the department for someone receiving medical assistance under Medicaid or the Chronic and Acute Medical Assistance (CAMA) program. This would result in the Department recovering more of these expenditures.

The legislation also extends the timely filing period for providers to submit claims to Medicaid and CAMA from six months to one year. This will increase expenditures as currently some claims are not paid solely because they are not filed within the six month time period. The following page shows the separate impacts. (Note: impacts to CAMA are not included as they are not considered material.)

Prepared by: Jon Sherwood Phone: 465-3355
 Division: Medical Assistance Date/Time: 1/20/00 3:03 PM
 Approved by Commissioner: Karen Perdue, Commissioner Date: 1/24/00
 Agency: Department of Health & Social Services

ANALYSIS (cont.):

Medicaid Lien and Recovery

Giving the Department lien authority and improving its subrogation rights will result in increased third-party settlement recoveries (those recoveries in which liens and subrogation are at issue) for the Medicaid program. Because regulations are necessary to implement some provisions and third party recoveries usually take place well after the Medicaid program has paid for the medical services, recoveries are not expected to increase immediately. The table below shows the projected increase in recoveries.

<u>Year</u>	<u>Increased Recovery (thousands)</u>
FY2001	\$52.7
FY2002	\$210.7
FY2003	\$210.7
FY2004	\$210.7
FY2005	\$210.7
FY2006	\$210.7

Assumption: Third party settlement recoveries will increase by one-third, beginning in the 4th quarter of FY2001.

Timely Filing Period Extension

Currently, some Medicaid providers fail to bill within the six month timely filing period. In some cases, these claims are not reimbursed. In other cases, where providers show good cause for late filing, they may get paid for 50 percent of the normal reimbursement for the claims.

Extending the timely filing period to 12 months and allowing full reimbursement for late claims with good cause will result in more valid claims being paid in full. The amount of late claims can vary widely from year to year, and in some years, more late claims are meet the good cause criteria for partial reimbursement. The table below represents an average estimated amount of increased claims payments as a result of the proposed change, assuming that implementing regulations become effective in the fourth quarter of FY2001.

<u>Year</u>	<u>Increased Payments (thousands)</u>
FY2001	\$50.0
FY2002	\$200.0
FY2003	\$200.0
FY2004	\$200.0
FY2005	\$200.0
FY2006	\$200.0

Assumption: New timely filing limits go into effect beginning the 4th quarter of FY2001.

<u>Net Impact</u>	<u>FY2001</u>	<u>FY2002</u>	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>FY2006</u>
Liens and Recovery (decrease)	(52.7)	(210.7)	(210.7)	(210.7)	(210.7)	(210.7)
Timely Filing (increase)	50.0	200.0	200.0	200.0	200.0	200.0
TOTAL	(2.7)	(10.7)	(10.7)	(10.7)	(10.7)	(10.7)

1-GH2058\H
Lauterbach
4/4/00

(withdrawn)

CS FOR HOUSE BILL NO. 325(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to priorities, claims, and liens for payment for certain medical
2 services provided to medical assistance recipients; and providing for an effective
3 date."

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

5 * **Section 1.** AS 34.35.460 is amended by adding a new subsection to read:

6 (b) A hospital or the owner or operator of a hospital, or a physician or licensed
7 special nurse who files a notice of lien under (a) of this section for hospitalization or
8 services provided to a recipient of medical assistance under AS 47 shall mail a copy
9 of the notice of lien to the unit of the Department of Health and Social Services that
10 administers medical assistance for needy persons under AS 47. The copy must be sent
11 by certified mail no later than 30 days after the filing of the notice of lien under (a)
12 of this section.

13 * **Sec. 2.** AS 34.35 is amended by adding a new section to read:

14 **Sec. 34.35.481. Priority of liens.** A lien perfected by the Department of

1 Health and Social Services under AS 47.05.075 has priority over a lien perfected by
2 a hospital, nurse, or physician under AS 34.35.450 - 34.35.480.

3 * Sec. 3. AS 47.05.070 (b) is amended to read:

4 (b) If the department provides or pays for medical assistance for injury or
5 illness under this title, the department is subrogated to the rights of the recipient of that
6 medical assistance for any claim arising from the injury or illness and to the proceeds
7 of an insurance policy covering the injury or illness to the extent of the value of the
8 medical assistance provided. A recipient of medical assistance or the recipient's
9 attorney must notify the department in writing of any action or claim against a
10 third-party pavor if medical assistance was provided by the department to treat
11 an injury or illness for which the third party may be liable. Notwithstanding the
12 assertion of any action or claim by the recipient of medical assistance, the
13 department may bring an action in the superior court against an alleged third-
14 party pavor to recover an amount subrogated to the department for medical
15 assistance provided on behalf of a recipient.

16 * Sec. 4. AS 47.05.070(c) is amended to read:

17 (c) If a recipient of medical assistance under this title settles a claim or obtains
18 an award or judgment arising from the injury or illness for which the medical
19 assistance was received, the amount of the claim to which the department is
20 entitled under (b) of this section shall be reduced by a pro rata share of the
21 [DEPARTMENT SHALL REIMBURSE THE RECIPIENT FOR] attorney fees and
22 litigation costs [COMMENSURATE WITH THE AMOUNT OF THE SETTLEMENT,
23 AWARD, OR JUDGMENT TO WHICH THE DEPARTMENT IS ENTITLED
24 UNDER (b) OF THIS SECTION]. Regardless of the manner in which the amount of
25 the attorney fees is derived in the particular case, the pro rata reduction of the
26 subrogated claim for [,] reimbursement of attorney fees shall be calculated
27 in
28 accordance with the applicable rules of court governing the award of attorney fees in
29 civil matters.

30 * Sec. 5. AS 47.05.070 is amended by adding new subsections to read:

31 (e) Notwithstanding (b) of this section, the department may waive the
subrogation rights to all or part of the amount of medical assistance paid on behalf of

1 a recipient of medical assistance in cases of undue hardship.

2 (f) The department may adopt regulations to interpret and implement this
3 section.

4 * **Sec. 6.** AS 47.05 is amended by adding a new section to read:

5 **Sec. 47.05.075. Medical assistance lien.** (a) The department has a lien upon
6 any sum that may be due to the recipient of medical assistance from a third-party
7 payor. The lien is in the amount of the medical assistance paid for medical services
8 under this title, together with reasonable attorney fees and litigation costs incurred in
9 the enforcement of the lien.

10 (b) A lien against a sum due from a third-party payor for medical services
11 provided to a recipient of medical assistance under this title attaches and is effective
12 upon filing with a recorder's office in any recording district in the state. However, a
13 lien filed under this subsection is not perfected and has no effect unless notice of filing
14 of the lien is served by the department upon the third-party payor, personally or by
15 registered, certified, or insured mail, return receipt requested.

16 (c) If a recipient of medical assistance under this title settles a claim or obtains
17 an award or judgment arising from the injury or illness for which the medical
18 assistance was received, the amount of the lien to which the department is entitled
19 under (a) of this section shall be reduced by a pro rata share of the attorney fees and
20 litigation costs. Regardless of the manner in which the amount of the attorney fees is
21 derived in the particular case, the pro rata reduction of the lien shall be calculated in
22 accordance with the applicable rules of court governing the award of attorney fees in
23 civil matters.

24 (d) A perfected lien under this section has priority over a lien perfected by a
25 hospital, nurse, or physician under AS 34.35.450 - 34.35.480.

26 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section
27 to read:

28 **APPLICABILITY.** This Act applies to all claims for medical services that are
29 provided under AS 47 to a recipient of medical assistance on or after the effective date of this
30 Act.

31 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

48 325



TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

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OFFICE OF THE GOVERNOR
JUNEAU

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Juneau, Alaska 99811-0001
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January 31, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

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Under the bill, when a state medical assistance recipient recovers money from a third party who is found liable for the recipient's medical expenses, the department would have a lien against that recovery. The department's lien would be reduced by a pro rata share of the recipient's attorney fees and litigation costs incurred in the recovery. If the department incurs attorney fees and costs to enforce the lien, the amount of the lien would be increased to cover those fees and costs. The department's lien would take priority over a lien filed by a hospital, nurse, or physician.

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Governor

The Honorable Brian Porter
January 31, 2000
Page 2

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I urge your support of this important legislation.

Sincerely,



Tony Knowles
Governor

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

TONY KNOWLES, GOVERNOR

March 28, 2000

OFFICE OF THE COMMISSIONER

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

Honorable Gene Therriault, Co-Chairman
House Finance Committee
Room 511 Capitol Building
Juneau, AK 99811

HB 325

Dear Representative Therriault,

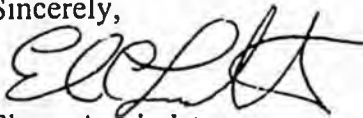
The Department of Health and Social Services respectfully requests a hearing in the House Finance Committee on House Bill 325 "An Act relating to priorities, claims, and liens for payment to certain medical services provided to medical assistance recipients; and providing for an effective date."

The bill contains two distinct provisions: 1) providing the Department of Health and Social Services with unambiguous authority to recover medical costs incurred by the Division of Medical Assistance when a legal settlement making a monetary award to cover injuries has been made; and 2) allowing providers to bill the Division for services up to twelve months from the date of service.

The House Health, Education, and Social Services Committee and House Judiciary Committee have heard the bill and has recommended Committee Substitutes. The Department supports the House (JUD) Committee Substitute which also incorporates material added in the House (HES) Committee. A fiscal note has previously been submitted.

Your favorable consideration of this request would be appreciated.

Sincerely,



Elmer A. Lindstrom
Special Assistant to the Commissioner

CC: Pat Pourchot
Legislative Director
Office of the Governor

Bob Labbe
Director
Division of Medical Assistance