

HB

168

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 12, 1999

Representative Joe Green
Room 214
State Capitol
Juneau, AK 99801

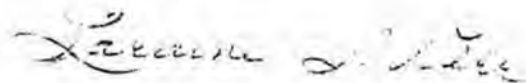
Dear Representative Green:

I am writing in support of HB 168. An Act relating to decisions regarding certain health facility payments. As you know, several of the hospitals in the State have had administrative appeals before the Hearing Officer of the Department of Health and Social Services (DHSS), had the hearing officer decisions sent to the Commissioner of DHSS, and had them remanded or sent back for more information.

The Alaska State Hospital and Nursing Home Association (ASHNHA) wants to see the situation rectified. Not only is it costly to have staff continuously working on appeals, it comes with a significant legal cost. In addition, there is an estimated \$10 million amount of money claimed by the hospitals as rightfully theirs. We believe that setting a tighter final decision date will alleviate the situation. HB 168 asks that the Commissioner of DHSS render a final decision within 30 days after the hearing officer has offered an opinion. If the Commissioner does not, then the hearing officer's decision becomes final. If either side is unsatisfied with that decision, they may proceed directly to court. Right now the process can drag on for many years - this bill should alleviate that.

Please do not hesitate to contact me if you have questions or if we can be of benefit to you.

Sincerely yours,



Laraine L. Derr
President/CEO

426 Main

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Alaska State Legislature

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BUDGET SUBCOMMITTEES
ALASKA COURT SYSTEM
DEPT. OF ENVIRONMENTAL CONSERVATION
DEPT. OF REVENUE

Representative Joe Green

District 10

House Majority Leader

Sponsor Statement

HB 168 – Appeals of Medicaid Reimbursement Rates

HB 168 amends the Medicaid reimbursement rate appeals process to ensure a more timely final decision, which, I believe, will result in lower costs for both health care providers and the Department of Health and Social Services.

Problem: The Medicaid reimbursement rate appeals process currently traps health care providers in a state of administrative indecision when they appeal rates. The payment rates for health care services covered by Medicaid are set annually by the Medicaid Rate Advisory Commission, a five-member board appointed by the Governor. If a health care provider wishes to challenge a reimbursement rate they must file an appeal within 30 days after the rate is set. Once an appeal is filed a briefing and hearing schedule is agreed upon and an evidentiary hearing is held (usually) within 120 days. These hearings often take several days, after which the hearing officer submits a recommendation to the Commissioner of Health and Social Services. The commissioner has three options: accept, deny, or remand the hearing officer's recommendation. In some cases the commissioner has remanded the recommendation, whereupon the hearing officer made additional findings and resubmitted the recommendation to the commissioner, only to have the commissioner remand the decision again. There are cases still in the appeals process that were filed in 1991, nearly a decade ago.

Solution: HB 168 establishes a more responsive timeline for the disposition of rate appeals. Current law (AS 47.07.075) allows the commissioner 30 days to render a decision, with the option of remanding the case back to the hearing officer for additional findings. HB 168 allows the commissioner 30 days to render a final administrative decision. If the commissioner fails to make a final decision, the hearing officer's recommendation becomes the final decision. A final administrative decision may be appealed to the state superior court.

There are currently more than 40 appeals outstanding, with a cost to the state of at least \$10 million and as much as \$30 million. Health care providers need to be able to more efficiently define their cost and reimbursement structure, and the department needs to be able to finalize these costly administrative appeals in a more timely manner. Please support HB 168, which addresses the needs of both the health care providers and the department.

(b) The department may establish the scope and timing of audits under this chapter. The department may provide that audits will be conducted less frequently than annually. (§ 4 ch 95 SLA 1983; am §§ 3, 4 ch 95 SLA 1997)

Effect of amendments. — The 1997 amendment, effective June 21, 1997, rewrote paragraph (a)(2) and added subsection (b).

NOTES TO DECISIONS

Recoupment. — This section does not provide authority for recoupment from a health care facility based on audit results. The text of the statute does not state or imply that the amount of the payment will be affected by any audit. *City of Cordova v. Medicaid Rate Comm'n*, 789 P.2d 346 (Alaska 1990).

Sec. 47.07.075. Administrative procedure. (a) Actions of the department regarding health facility payment rates under this chapter and AS 47.25.120 — 47.25.300 are subject to provisions of AS 44.62 (Administrative Procedure Act) except as provided in (b) of this section.

(b) The commissioner shall, by regulation, establish time limits applicable to the various phases of an administrative appeal process involving an appeal of the amount of a payment rate set by the department for a facility. The time limits set under the regulations supersede conflicting time limits in AS 44.62.330 — 44.62.630. The regulations must provide that

(1) a hearing for an appeal described in this subsection must be scheduled under AS 44.62.410 to occur no more than 120 days after written notice of rate appeal has been received by the department from a facility unless the facility requests a delay or good cause for the delay is demonstrated to the satisfaction of the hearing officer;

(2) the commissioner must, within 30 days after receiving the recommendation of the hearing officer, either render a decision in the case or refer the case back to a hearing officer for additional findings;

(3) if either time limit set under (1) or (2) of this subsection is not met, the department shall report the noncompliance to the legislature and the governor by the following January 20 with an explanation of the length of delay, reasons for the delay, and proposed corrective action by the department to ameliorate the causes of delay. (§ 4 ch 95 SLA 1983; am E.O. No. 72 § 8 (1989); am §§ 3, 4 ch 153 SLA 1990)

Sec. 47.07.080. [Renumbered as AS 47.07.900.]

Sec. 47.07.110. Medicaid Rate Advisory Commission established. The Medicaid Rate Advisory Commission is established in the department. (§ 6 ch 95 SLA 1983; am E.O. No. 72 § 9 (1989))

NOTES TO DECISIONS

Quoted in *City of Cordova v. Medicaid Rate Comm'n*, 789 P.2d 346 (Alaska 1990).

Sec. 47.07.120. Composition of commission. The commission consists of five members as follows:

(1) the chief executive officer of a health facility that is licensed by the state but not owned or operated by the state or federal government and that is subject to the budget review process under this chapter;

(2) the commissioner of administration, the commissioner of health and social services, or the appointed designee of either commissioner;

(3) a physician licensed to practice medicine in the state who is actively engaged in the practice of medicine and who is not employed by the state;

MEDICAID RATE APPEALS

What are Medicaid Rate Appeals

The Commissioner of the Department of Health and Social Services sets Medicaid reimbursement rates for hospitals and nursing homes. A complex methodology that is described in statute and regulation is used to set the rates. These rates can be appealed to an administrative hearing officer, who is an employee of the Department.

Appeal Process

Within 30 days after a Medicaid rate is set, the facility may appeal its rate to the Commissioner. The appeal is assigned to the Office of Hearings and Appeals. A briefing and hearing schedule is established among the parties. State law requires that an evidentiary hearing be held within 120 days of the filing of the appeal unless good cause can be shown for delaying the hearing. After the hearing, the hearing officer sends a proposed decision to the Commissioner. The Commissioner is to either accept or remand the decision within 30 days. If remanded with instructions, the Commissioner sends the decision back to the hearing officer for further clarification. The hearing officer then issues a final decision based on those instructions.

Current Appeals

There are currently 42 open appeals filed by 12 of Alaska's 26 facilities. Facilities with current appeals are:

- Alaska Regional Hospital – 10 appeals
- Wesley Rehabilitation and Care Center – 8 appeals
- North Star Hospital – 6 appeals
- St. Ann's Nursing Home – 4 appeals
- Charter North Hospital – 3 appeals
- Bartlett Memorial Hospital – 3 appeals
- Valley Hospital – 2 appeals
- Ketchikan General Hospital – 2 appeals
- South Peninsula, Heritage Place, Sitka Community Center, Norton Sound – 1 appeal each

Fourteen other facilities have no appeals pending. Twelve of the 42 appeals are stayed pending the outcome of court decision involving a common issue; the legality of the Department to use audited information in rate setting. The other appeals are in some stage of the hearing process.

What Kind of Issues are Appealed

Alaska's Medicaid reimbursement system sets specific reimbursement rates for each facility in Alaska. The reimbursement rate to each facility is based upon that facility's actual cost of serving Medicaid patients. The Department audits facility costs to assure that only expenditures directly related to Medicaid patients are reimbursed through the established rate. Consequently, facility appeals are generally disputes regarding the audit results and how those audit results are applied in the rate setting system. Alaska's system of setting specific rates for each facility encourages facilities to appeal because each appeal can directly affect the facility's revenue.

Potential Liability of Outstanding Appeals

The potential cost to the state of the outstanding appeals is approximately \$10 million. Beyond the immediate cost, many of the appeals will set precedents for the rate system and will also increase state costs on into the future.

Valley Hospital Appeals

Valley Hospital currently has two appeals; neither one has resulted in a proposed decision for the Commissioner's office to consider. The hearing officer has granted a partial summary judgement in one of the appeals (1997 rate) and stayed other issues pending a court decision on the question of the Department's use of audits in rate setting. This particular appeal has proceeded through the process as far as possible until the issue before the courts is settled. The other valley appeal is waiting to be scheduled for a hearing.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

RD. BOX 110001
JUNEAU, ALASKA 99811-0601
PHONE: (907) 485-3030
FAX: (907) 465-3088

January 20, 1999

The Honorable Tony Knowles
Governor
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

RE: Compliance Report (AS 47.07.075)

Dear Governor Knowles:

AS 47.07.075 requires that the Department report to the legislature regarding its compliance with timeliness of hearing and deciding facility appeals of Department set Medicaid reimbursement rates. The report covers calendar year 1998.

During 1998, seven appeals were filed. Three of these appeals were stayed by stipulation of counsel as they addressed issues that are currently before the superior court. Four other appeals did not have hearings within the 120 day period due to scheduling conflicts and availability of either counsel or the hearing examiner. These were all delayed for good cause and are not required to be reported under 7AAC 43.708 (c) and (j).

With regard to Commissioner compliance regarding action on proposed decisions, the Commissioners office was not in compliance with one decision (North Star 94-MRC-04). The hearing examiner's decision was received in the Commissioner's Office on March 31 but was not remanded until May 12. However, during the time that the Commissioner was considering her reply to the decision, the hearing examiner reconsidered her decision. The reconsidered decision, which was issued on July 28, was received by the Commissioner's Office on July 31, and a remand was signed by the Commissioner on August 31, within the required time period.

The Department proposes two administrative actions to avoid these issues in the future. The first is to establish a process for the hearing examiner to notify the Commissioner's office if a decision is under reconsideration. The second is to assure that the hearing examiner provides a complete set of briefs to the Commissioner's Office with the proposed decision to facilitate review.

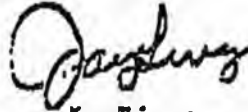
Governor Knowles

-2-

January 20, 1999

The Department would also like to correct an oversight regarding the 1997 compliance report. The Department inadvertently failed to report its lack of compliance regarding Bartlett's appeal (95 -AU -05). In that particular case, the Department mistakenly failed to send a notice of remand to the hearing examiner regarding her decision. This mistake was not realized until the instructions for the remand were prepared, at which time the remand was issued. However, the Commissioner's Office was out of compliance as a result of this oversight and this should have been reported last year.

Sincerely,



Jay Livey
Deputy Commissioner

FACILITY ID #	MRAC CASE #	HEALTH FACILITY	STATUS CODE	APPEALED TO COM	ASSIGNED BY COM
02	90-mrc-01A	Central Peninsula Hosp.	10A	1/11/90	1/24/90
15	90-mrc-02A	Our Lady of Compassion CC	10A	1/22/90	2/5/90
09	90-mrc-03A	Humana Hospital	10A	2/7/90	2/23/90
09	90-mrc-04A	Humana Hospital	10A	2/7/90	2/23/90
09	90-mrc-05A	Humana Hospital	10A	2/7/90	2/13/90
09	90-mrc-06	Humana Hospital	10A	5/11/90	5/23/90
06	90-mrc-07	Fairbanks Memorial Hosp.	10A	6/28/90	7/9/90
10	91-au-01	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-02	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-03	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-04	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-05	Ketchikan General Hosp.	10A	9/4/91	9/16/91
16	91-mrc-01	Petersburg General Hosp.	10A	1/7/91	4/2/91
21	91-mrc-02	South Peninsula Hospital	10A	1/14/91	4/2/91
14	91-mrc-03	Norton Sound Regional Hosp.	10A	2/20/91	4/2/91
02	91-mrc-04	Central Peninsula Hosp.	10A	5/23/91	6/5/91
20	91-mrc-05	Sitka Community Hospital	10A	7/2/91	7/3/91
04	91-mrc-06	Cordova Hospital	10A	7/9/91	7/12/91
24	91-mrc-07	Wrangell General Hospital	10A	7/24/91	7/25/91
10	91-mrc-08	Ketchikan General Hosp.	10A	10/2/91	10/8/91
10	91-mrc-09	Ketchikan General Hosp.	10A	10/21/91	11/7/91
10	91-mrc-10	Ketchikan General Hosp.	10A	10/21/91	10/28/91
26	92-mrc-01	Fifteen Facilities	10A	1/16/92	1/24/92
02	92-mrc-02	Central Peninsula Hosp.	10A	4/3/92	4/14/92
27	92-mrc-03	North Star Hospital	10A	5/8/92	5/19/92
04	92-mrc-04	Cordova Hospital	10A	7/7/92	7/9/92
16	92-mrc-05	Petersburg General Hosp.	10A	7/7/92	7/9/92
20	92-mrc-06	Sitka Community Hospital	10A	7/7/92	7/9/92
24	92-mrc-07	Wrangell General Hospital	10A	7/7/92	7/9/92
13	92-mrc-08	Mary Conrad Center	10A	7/16/92	8/3/92
12	92-mrc-09	Kotzebue Sr. Citizens Ctr.	10A	7/22/92	8/13/92
16	93-au-01	St. Ann's Nursing Home	10A	4/8/93	4/20/93
28	93-au-02	Valley Hospital	10A	5/4/93	5/11/93
26	93-au-03	Fifteen Facilities	10A	7/28/93	7/28/93
21	93-au-04	South Peninsula Hospital	10A	10/8/93	10/14/93
15	93-mrc-01	Our Lady of Compassion CC	10A	1/6/93	1/21/93
22	93-mrc-02	Valdez Community Hospital	10A	1/6/93	1/21/93
01	93-mrc-03	Bartlett Memorial Hosp.	10A	4/16/93	4/20/93
26	93-mrc-04	Fifteen Facilities	10A	7/28/93	7/28/93
28	93-mrc-05	Valley Hospital	10A	7/29/93	7/30/93
29	93-mrc-06	Alaska Regional Hospital	10A	9/15/93	9/27/93
14	93-mrc-07	Norton Sound Regional Hosp.	10A	10/8/93	10/14/93
29	94-au-01	Alaska Regional Hospital	01A	7/8/94	7/18/94
23	94-au-02	Wesley Rehab. & Care Ctr	01A	7/14/94	7/18/94
23	94-au-03	Wesley Rehab. & Care Ctr	01A	7/14/94	7/18/94
24	94-au-04	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-05	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-06	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-07	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-08	Wrangell General Hospital	10A	12/9/94	12/12/94
29	94-mrc-01	Alaska Regional Hospital	01A	1/10/94	1/19/94
02	94-mrc-02	Central Peninsula Hosp.	10A	2/22/94	3/8/94
24	94-mrc-03	Wrangell General Hospital	10A	4/28/94	5/4/94
27	94-mrc-04	North Star Hospital	01A	9/29/94	10/4/94
39	94-mrc-05	Alaska Regional Hospital	01A	9/30/94	10/4/94
23	95-au-01	Wesley Rehab. & Care Ctr	01A	2/6/95	2/10/95
40	95-au-02	St. Ann's Care Center	01A	2/17/95	2/28/95
27	95-au-03	North Star Hospital	01A	2/28/95	3/1/95
29	95-au-04	Alaska Regional Hospital	01A	6/23/95	6/27/95
01	95-au-05	Bartlett Memorial Hosp.	01A	7/21/95	7/24/95
28	95-au-06	Valley Hospital	10A	8/19/95	8/25/95
14	95-au-07	Norton Sound Regional Hosp.	10A	9/12/95	9/18/95
18	95-au-08	St. Ann's Nursing Home	01A	12/26/95	12/28/95
11	95-mrc-01	Kodiak Island Hospital	10A	1/6/95	1/6/95

FACILITY ID #	MRAC CASE #	HEALTH FACILITY	STATUS CODE	APPEALED TO COM	ASSIGNED BY COM
27	95-mrc-02	North Star Hospital	01A	2/21/95	2/28/95
23	95-mrc-03	Wesley Rehab. & Care Ctr	01A	5/25/95	6/2/95
23	95-mrc-04	Wesley Rehab. & Care Ctr	01A	6/25/95	6/2/95
27	95-mrc-05	North Star Hospital	01A	5/25/95	6/2/95
21	95-mrc-06	South Peninsula Hospital	10A	5/25/95	6/2/95
04	95-mrc-07	Cardova Hospital	10A	7/20/95	7/24/95
23	95-mrc-08	Wesley Rehab. & Care Ctr	01A	7/20/95	7/24/95
21	95-mrc-09	South Peninsula Hospital	10A	10/20/95	11/3/95
29	95-mrc-10	Alaska Regional Hospital	01A	12/4/95	12/6/95
03	95-mrc-11	Charter North Hospital	01A	12/4/95	12/5/95
27	96-mrc-01	North Star Hospital	01A	1/12/96	1/23/96
34	96-mrc-02	Providence AK Med Center	10A	1/18/96	1/23/96
14	96-mrc-03	Norton Sound Regional Hosp.	10A	1/22/96	1/23/96
18	96-mrc-04	St. Ann's Nursing Home	01A	1/26/96	1/29/96
01	96-mrc-05	Bartlett Memorial Hosp.	01A	3/14/96	3/14/96
10	96-mrc-06	Ketchikan General Hosp.	10A	5/2/96	6/5/96
23	96-mrc-07	Wesley Rehab. & Care Ctr	01A	8/2/96	8/16/96
04	96-mrc-08	Cardova Hospital	10A	8/2/96	8/16/96
21	96-mrc-09	South Peninsula Hospital	10A	8/22/96	10/7/96
01	96-mrc-10	Bartlett Memorial Hosp.	01A	8/29/96	10/11/96
20	96-mrc-11	Sitka Community Hospital	10A	9/4/96	10/7/96
03	96-mrc-12	Charter North Hospital	01A	12/18/96	1/7/97
40	97-mrc-01	St. Ann's Care Center	01A	2/10/97	3/5/97
28	97-mrc-02	Valley Hospital	01A	2/11/97	3/5/97
29	97-mrc-03	Alaska Regional Hospital	01A	5/23/97	7/12/97
29	97-mrc-04	Alaska Regional Hospital	01A	5/23/97	7/12/97
29	97-mrc-05	Alaska Regional Hospital	01A	7/7/97	7/11/97
29	97-mrc-06	Alaska Regional Hospital	01A	7/7/97	7/11/97
41	97-mrc-07	Bartlett Regional Hospital	01A	8/6/97	8/11/97
14	97-mrc-08	Norton Sound Regional Hosp.	01A	10/16/97	10/29/97
10	97-mrc-09	Ketchikan General Hosp.	01A	10/21/97	10/21/97
03	97-mrc-10	Charter North Hospital	01A	10/24/97	11/17/97
27	98-mrc-01	North Star Hospital	01A	1/20/98	1/20/98
28	98-mrc-02	Valley Hospital	01A	1/30/98	2/2/98
07	98-mrc-03	Heritage Place	01A	3/2/98	4/17/98
10	98-mrc-04	Ketchikan General Hosp.	01A	7/23/98	7/29/98
23	98-mrc-05	Wesley Rehab. & Care Ctr	01A	7/23/98	7/29/98
20	98-mrc-06	Sitka Community Hospital	01A	9/4/98	9/10/98
21	98-mrc-07	South Peninsula Hospital	01A	11/2/98	11/5/98

STATE OF ALASKA

DEPT. OF HEALTH & SOCIAL SERVICES

OFFICE OF HEARINGS AND APPEALS

TONY KNOWLES, GOVERNOR

4730 BUSINESS PARK BLVD., SUITE 34
ANCHORAGE, ALASKA 99503-7137
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MEMORANDUM

DATE: October 19, 1998

TO: Jay Livey
Deputy Commissioner

FROM: Martha Beckwith
Hearing Examiner
Office of Hearings and Appeals

SUBJECT: Status of Cases (See Attached Open Case List -9/15/98)

I am sending a list of my open cases as of this date, and will explain the status of certain appeals. Of the ten Alaska Regional Hospital (ARH) cases listed, four cases were consolidated for hearing at the request of the parties, a hearing was held, and the parties are completing the post-hearing briefing in November. The four cases were consolidated because they involved related audit and rate appeal issues, and because the cases had been pending for quite awhile when I took this position. The parties felt that it would expedite the cases and save expense to have one hearing on the cases with similar issues and rate periods. The parties have requested that the remaining six ARH cases not be scheduled for hearing until a final decision in the consolidated cases is issued, in order to save the expense of preparing for a hearing which might be unnecessary, depending on the final decision.

The two Bartlett cases (FY 94, 96) were remanded from the Commissioner's office in order to determine whether a certificate of need was necessary for the MRI project. The parties briefed the issue, and a decision was issued (8/98) that a CON was not necessary. The remaining issues are scheduled to be heard at an evidentiary hearing starting this week, on October 22, 1998. The cases were consolidated at the request of the parties to avoid having two hearings on related audit and rate issues. The two other Bartlett cases (FY 97, 98), have not been set for hearing at the request of the parties, as they wish to wait for a final decision in the cases presented this week.

Charter North has a case (FY 95) which is currently under advisement. The other two Charter North cases involve FY 97 rates, and the parties have requested that the evidentiary hearing be held after a final decision is issued in that case.

The Ketchikan General Hospital (FY 98) appeal was scheduled for evidentiary hearing in January 1999. The facility asked that the matter be stayed until a decision is issued by the Supreme Court in the Wesley matter. The FY 99 appeal was just filed, and a conference will be scheduled with the attorneys soon.

I issued a proposed decision in the North Star Hospital consolidated cases (FY 93, 94, 95, and 94 audit) in March 1998, and a reconsidered proposed decision in July 1998. The Commissioner remanded the proposed decision (9/98) with instructions to proceed to address the audit issues. The cases are scheduled for a status hearing November 12, 1998, to determine whether a further evidentiary hearing is required. Another North Star case (FY 96), is scheduled for evidentiary hearing February 1999. The remaining North Star appeal will be scheduled for hearing after a final decision in the consolidated cases is made by the Commissioner.

Norton Sound is currently set for an evidentiary hearing in November 1998. However, I was recently notified that the evidentiary hearing may be vacated, based upon the summary judgment decision I issued 9/98. With regard to the St. Ann's cases, I issued a proposed decision in the FY 93 case, which was remanded by the Commissioner in 9/97. The case was then set for further briefing by the parties; the facility changed attorneys, and the new attorney requested that the case be stayed until a final decision was issued in the Wesley matter. The other two St. Ann's appeals (FY 94, FY 96), have been stayed at the request of the parties, until the FY 93 appeal is decided.

Valley Hospital (FY 97) currently has a motion for summary judgment under advisement. The other issues in that appeal have been stayed at the request of the parties pending the outcome of the Wesley matter.

With regard to the Wesley appeals, 6 of the cases have been consolidated at the request of the parties to avoid the unnecessary expense of having 6 separate evidentiary hearings when the issues are related. These appeals were all pending when I began in this position, and involve appeals for audits for FY 91, 92, 93, and rate appeals for FY 94, 95, 96. An evidentiary hearing was held in June 1998, where the parties presented evidence on their version of the proper application of Judge Link's decision in the Wesley superior court matter. The parties requested that the pending administrative appeals in this office be stayed pending a final court decision in Wesley. Two additional appeals have been filed in Wesley (FY 97 and FY 99), which will probably be stayed pending a decision in the other cases.

In summary, all of the appeals which were pending when I began this position have had summary judgment decisions issued, evidentiary hearings held, or have been stayed at the request of the parties pending decisions in other earlier cases. Almost all of the current appeals awaiting hearings, which are not stayed for other companion cases, involve FY 97 (or later) rates. As I indicated earlier, the Alaska Regional appeals are stacked up behind the earlier ARH consolidated cases, which the parties are still briefing. I issued a proposed decision in the four consolidated North Star appeals, which was remanded by the Commissioner. The other North Star appeals will await scheduling until a final decision is issued in the consolidated cases. The St. Ann's and Wesley appeals are stayed pending a decision in Wesley.

In order to expedite the appeal process, when new appeals are filed by a facility which does not have any pending appeals, I often have scheduled evidentiary hearings in those cases as soon as my calendar permits, ahead of other older appeals, because the facilities that have a number of appeals pending are all awaiting decisions in their earlier cases. At this time, almost

Status of Cases Memo to Jay Avey
October 19, 1998

all of the facilities have cases which are stayed pending the outcome in the Wesley superior court matter.

I hope that this memo and attached case list assist in explaining the status of my cases. If you have any questions, please contact me.

rec. 11/2/98

42 OPEN CASES
As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
1	95-au-04	Alaska Regional Hospital	FY 93	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
2	93-mrc-06 cons.	Alaska Regional Hospital	FY 91-93	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
3	94-mrc-05	Alaska Regional Hospital	FY 93	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
4	94-mrc-01	Alaska Regional Hospital	FY 92	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
5	94-au-01 cons.	Alaska Regional Hospital	FY 92	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
6	95-mrc-10	Alaska Regional Hospital	FY 92 & 94	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
7	97-mrc-03	Alaska Regional Hospital	FY 95	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
8	97-mrc-04	Alaska Regional Hospital	FY 95	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
9	97-mrc-05	Alaska Regional Hospital	FY 96	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
10	97-mrc-06	Alaska Regional Hospital	FY 97	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
11	95-au-05 cons.	Bartlett Memorial Hosp.	FY 94	Stephen Rose	S/J Granted 8/20/98 & Evidentiary Hearing 10/22-29/98
12	96-mrc-05	Bartlett Memorial Hosp.	FY 96	Stephen Rose	S/J Granted 8/98 Evidentiary Hearing 10/22-29/98

42 OPEN CASES

As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
13	96-mrc-10	Bartlett Memorial Hosp.	FY 97	Stephen Rose	Evid. Hearing 10/19-28/98--vacated To be set
14	97-mrc-07	Bartlett Regional Hospital	FY 98	Stephen Rose	To be set
15	96-mrc-12	Charter North Hospital	FY 97	Stephen Rose	To be set
16	95-mrc-11	Charter North Hospital	FY 95	Stephen Rose	Under Advisement
17	97-mrc-10	Charter North Hospital	FY 97	John Sullivan	To be set
18	98-mrc-03	Heritage Place	FY 98/95	Susan Mason	Stayed pending <u>Wesley</u> ; Cont.. status hearing on 9/15/99 @ 9:00am
19	97-mrc-09	Ketchikan General Hospital	FY 98/95	Teresa Bigelow	Evid. Hearing Stayed Pending decision in <u>Wesley</u> ; Status hearing 1/11/99 @ 9:30 a.m.
20	98-mrc-04	Ketchikan General Hospital	FY 99/96	Administrator	To be set
21	94-mrc-04 cons.	North Star Hospital	FY 93	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.
22	95-mrc-05	North Star Hospital	FY 95	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.
23	95-mrc-02	North Star Hospital	FY 94	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.
24	95-au-03	North Star Hospital	FY 93	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.

42 OPEN CASES
As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
25	96-mrc-01	North Star Hospital	FY 96	John Sullivan	Evid. Hearing 2/8-2/12/99.
26	98-mrc-01	North Star Hospital	FY 97	John Sullivan	To be set
27	97-mrc-08	Norton Sound Hospital	FY 97	Stephen Rose	Evid. Hearing 11/9-13/98; Order Denying Partial S/J issued 9/11/98; hearing may be vacated;
28	95-au-02	St. Ann's Care Center	FY 93	Susan Mason	Remanded by CO 9/97; Stayed 7/98 pending <u>Wesley</u> decision; Con't Status Hearing 12/15/98 @ 9 a.m.
29	95-au-08 cons.	St. Ann's Nursing Home	Year '94	Susan Mason	Stayed Pending Decision in 95-AU-02; Con't Status Hearing 12/15/98 @ 9 a.m.
30	96-mrc-04	St. Ann's Nursing Home	FY 96	Susan Mason	Stayed Pending Decision in 95-AU-02; Con't Status Hearing 12/15/98 @ 9 a.m.
31	97-mrc-01	St. Ann's Care Center	FY 97	Susan Mason	Stayed Pending Decision in 95-AU-02; Status Hearing 12/15/98 @ 9 a.m.
32	97-mrc-02	Valley Hospital	FY 97	Susan Mason	Facility's motion for S/J pending 6/98;
33	98-mrc-02	Valley Hospital	FY 98/95	Susan Mason	To be set
34	94-au-02 cons.	Wesley Rehab. & Care Ctr	FY 91	John Sullivan	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98 per agreement of the parties pending Supreme Court <u>Wesley</u> decision; Con't Status Hearing 12/16/98 @ 9 a.m.
35	94-au-03	Wesley Rehab. & Care Ctr	FY 92	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m. E.H. 6/19 @ 9 a.m.

42 OPEN CASES

As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
36	95-au-01	Wesley Rehab. & Care Ctr	FY 93	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m. E.H. 6/19 @ 9 a.m.
37	95-mrc-03	Wesley Rehab. & Care Ctr	FY 95	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m.
38	95-mrc-04	Wesley Rehab. & Care Ctr	FY 94	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m.
39	95-mrc-08	Wesley Rehab. & Care Ctr	FY 96	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m.
40	96-mrc-07	Wesley Rehab. & Care Ctr	FY 97	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
41	98-mrc-05	Wesley Rehab. & Care	FY 99/96	Administrator	To be set
42	98-mrc-06	Sitka Community Hosp.	FY 2000	Administrator	To be set

Office of Hearings and Appeals
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BEFORE THE COMMISSIONER

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

STATE OF ALASKA

In the Matter of)
)
 VALLEY HOSPITAL)
 7 Palmer, Alaska)
)
 8 Appeal of 1997 Medicaid Rate)
 and 1995 Medicaid Audit)

Case No. 97-MRC-02

ORDER GRANTING VALLEY HOSPITAL'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND ORDER DENYING THE STATE'S CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT

Valley Hospital has appealed the decision of the executive
director of the Medicaid Rate Advisory Commission setting its FY
97 medicaid reimbursement rate.¹ The facility has moved for
partial summary judgment on the grounds that the staff of the
commission incorrectly calculated the disproportionate share (DSH)
threshold percentage because the staff incorrectly excluded
nursery days (all facilities), exempt-unit days (Bartlett and
Alaska Regional), and inpatient "medicaid-eligible" days from the
threshold DSH calculation.

¹ Decision and Order letter, dated December 27, 1996.

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1 In its opposition/cross-motion for summary judgment, the
2 staff conceded that exempt-unit days should have been included in
3 the calculation, but argued that even if exempt-unit and nursery
4 days were included in the calculation, Valley still would not
5 qualify for the 1997 DSH adjustment.

6 **I. Valley's Motion for Partial Summary Judgment**

7 Valley has raised the following issues:

8 1) Should the DSH calculation's "medicaid inpatient
9 utilization rate" include "nursery days"?

10 2) Should the DSH calculation's medicaid inpatient
11 utilization rate include "exempt-unit" days for Alaska Regional
12 Hospital and Bartlett Memorial Hospital?

13 3) Should the medicaid inpatient utilization rate include
14 inpatient "medicaid eligible" days?

15 **DSH Adjustment**

16 According to 7 AAC 43.687(a), "an acute care hospital
17 providing services to a disproportionate share of Medicaid
18 patients is eligible for additional payments for Medicaid
19 services..." In order to qualify to receive a an "additional
20 payment," a hospital must have either
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22

23 (A) an Alaska Medicaid inpatient utilization rate
24 at least one standard deviation above the mean of
25 Alaska Medicaid inpatient utilization rates for all
hospitals in this state;or

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(B) a low-income inpatient utilization rate exceeding 25 percent; . . .²

Valley contends that it qualifies for a disproportionate share (DSH) payment under the method requiring a Medicaid inpatient utilization rate at least one standard deviation above the mean for all hospitals. In order to determine whether a particular hospital qualifies for a disproportionate share payment, the staff of the commission performs a calculation to determine which hospitals have a Medicaid inpatient utilization rate at least one standard deviation above the mean. If this threshold calculation establishes that a hospital qualifies to receive the DSH adjustment, then a separate calculation is performed to determine the amount of the DSH payment.

In order to determine a hospital's Medicaid inpatient utilization rate, a calculation must be performed according to the regulation methodology. The regulations define the term "Medicaid inpatient utilization rate" as follows:

(A)...the Alaska Medicaid inpatient utilization rate is a fraction, expressed as a percentage, of which the numerator is the hospital's number of inpatient days for Medicaid-eligible patients in this state for its qualifying year and the

² 7 AAC 43.687(b)(2)(A) and (B), (am 6/29/95, Reg. 124, the language in this section has stayed the same through the 5/31/98 amendments).

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1 denominator is the total number of the hospital's
2 inpatient days for its qualifying year;³

3 Valley contends that the staff performed this threshold
4 calculation incorrectly, as it failed to include newborn nursery
5 days as "inpatient days"; it submits that the Medicaid nursery
6 days should have been included in the numerator and the total
7 nursery days should have been included in the denominator. The
8 staff disputes this assertion, contending that nursery days were
9 properly excluded because healthy newborn babies do not constitute
10 "inpatients" as the term is used in 7 AAC 43.687, the DSH
11 regulation.

12 **A. Nursery days should be included in the DSH calculation**

13 In addition to the state regulation which provides for DSH
14 payments to qualifying hospitals, the federal medicaid and
15 medicare statutes also provide for DSH payments to hospitals. The
16 federal medicaid DSH statute is almost identical to Alaska's DSH
17 regulation, as it also provides that a hospital can qualify by
18 either a medicaid inpatient utilization rate, or by a low-income
19 utilization rate; it also uses the same methodology to determine
20 the
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25 ³ 7 AAC 43.687(b)(2)(A).

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order Denying the State's Cross-Motion for Summary Judgment
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1 medicaid inpatient utilization rate.⁴ The federal medicaid DSH
2 statute expressly includes newborns as inpatients in the DSH
3 calculation:

4 (b) (2) . . . In this paragraph, the term "inpatient
5 day" includes each day in which an individual
6 (including a newborn) is an inpatient in the hospital,
7 whether or not the individual is in a specialized ward
8 and whether or not the individual remains in the
9 hospital for lack of suitable placement elsewhere.
10 (emphasis added).⁵

11 The Medicaid Rate Advisory Commission's Accounting and
12 Reporting Manual also considers newborn infants as inpatients. In
13 its instructions on how to report expense account data, the MRAC
14 manual directs that newborn patient days are to be the standard
15 unit of measurement used in reporting nursery data:

16 STANDARD UNIT OF MEASURE: NUMBER OF NEWBORN PATIENT DAYS
17 Report patient days of care for all infant patients
18 (including "boarder babies") admitted to this unit.
19 Include the day of admission but not the day of
20 discharge or death. If both admission and discharge
21 or death occur on the same day, the day is considered
22 a day of admission and counts as one newborn patient day.⁶

23 ⁴ (2) For purposes of paragraph (1) (A), the term "medicaid inpatient
24 utilization rate" means, for a hospital, a fraction (expressed as a
25 percentage), the numerator of which is the hospital's number of inpatient days
attributable to patients who (for such days) were eligible for medical
assistance under a State plan approved under this title in a period, and the
denominator of which is the total number of the hospital's inpatient days in
that period. . . 42 U.S.C.A. § 1396r-4(b) (2).

⁵ Id.

⁶ Medicaid Rate Advisory Commission Accounting and Reporting Manual
Promulgations, "Expense Account Descriptions," § 6170, (March 1994).

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1 In addition, the Provider Reimbursement Manual, interpreting
2 federal medicare law, also indicates that newborn infants are
3 considered as inpatients:

4 Newborn Inpatient Day - Newborn inpatient days
5 are the days that an infant occupies a newborn bed
6 in the nursery. Include an infant remaining in the
7 hospital after the mother is discharged who does not
8 occupy a newborn bed in the nursery, an infant
9 delivered outside the hospital and later admitted to
10 the hospital but not occupying a newborn bed in the
11 nursery, or an infant admitted or transferred out of
the nursery for an illness in inpatient days. Also,
include an infant born in and remaining in the hospital
and occupying a newborn bed in the nursery after the
mother is discharged in newborn inpatient days.
(emphasis added).⁷

12 ...
13 Line 4--Total newborn inpatient days to be reported
on line 4 are the total days that infants occupy newborn beds
in the nursery. (emphasis added).⁸

14 In summary, the state's argument that newborn infants are not
15 inpatients because they are not "admitted" was not supported by
16 any legal authority. Newborn infants are specifically considered
17 inpatients according to the MRAC's own manual, the federal
18 medicaid DSH statute, and the provider reimbursement manual.
19 Because the federal medicaid DSH law has the same purpose as the
20 Alaska DSH regulation, (reimbursing hospitals which qualify due to
21 high medicaid inpatient utilization rate or low-income utilization
22

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24 ⁷ FRM (HCFA Pub. 15-2) §1924; HCFA Form 2552-96, § 3622. "Worksheet D-1
- Computation of Inpatient Operating Cost," p. 36-107.

25 ⁸ FRM §1208.1. See also ex. 13, 14.

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1 rate), and uses the same methodology for calculating the medicaid
2 inpatient utilization rate, the similarity of purposes and
3 methodology also support the conclusion that the same categories
4 of patients are included in the identical calculations.

5 I find that Valley's DSH calculation should be recomputed to
6 include nursery days in both the medicaid days (numerator) and
7 total facility days (denominator) components of the medicaid
8 inpatient utilization rate calculation.

9
10 **B. Exempt-Unit Days should be included in the denominator of the
DSH calculation**

11 In its motion, Valley requested that certain "exempt-unit"
12 days (1266 psychiatric days for Bartlett, and 2,572 rehabilitation
13 days for Alaska Regional) be included in the total patient days
14 portion (denominator) of the DSH calculation, as the staff
15 included these days in the denominator for all of the other
16 facilities. As the state conceded that these days were omitted
17 and should have been included in the original calculation, I find
18 that the DSH calculation should also be re-computed to include
19 1,266 psychiatric days for Bartlett, and 2,572 rehabilitation days
20 for Alaska Regional, in the total patient days portion of the
21 calculation (denominator).⁹

22
23
24 ⁹ The state indicated in its brief: "Staff agrees that Alaska Regional's
25 and Bartlett's exempt-unit days originally should have been included in the DSH
calculation."

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1 **C. Inpatient "Medicaid-eligible" days**

2 Valley has also raised the issue that the DSH calculation was
3 improperly performed because it excluded inpatient "medicaid-
4 eligible" days. Valley indicated in its motion that a decision on
5 this issue is unnecessary if it prevailed on the nursery and
6 exempt-unit days issues. Because those issues have been decided
7 in the facility's favor, I will not reach the issue of whether
8 inpatient medicaid-eligible days were improperly excluded. If the
9 parties request a decision on this issue, I will be requesting
10 supplemental briefing on the matter.
11

12 **II. The State's Cross-Motion for Summary Judgment**

13 The state filed a cross-motion for summary judgment on the
14 grounds that even if the adjustments requested by Valley were made
15 to the DSH calculation, the facility still would not qualify for a
16 DSH adjustment, so that Valley's request was moot. In support of
17 its argument, the state filed exhibit A, which it represented as
18 containing data to support this position. Valley then filed a
19 reply, which indicated that the data in exhibit A was not the
20 original data used by the state in performing the 1997 DSH
21 calculation. Valley identified eighteen changes from the original
22 source data the staff had made in exhibit A, which the state had
23 not identified or discussed in its opposition to Valley's motion.
24

25

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1 Despite the issues raised by Valley, the state did not file a
2 reply, or respond to the allegations raised about the altered data
3 in exhibit A.

4 A month later, at the oral argument on the parties'
5 respective motions for summary judgment, the state filed several
6 new exhibits, containing new data (ex. B, C, and D), and attempted
7 to raise new arguments not previously made in its motion for
8 summary judgment. Over the objections of Valley, although the
9 state had not filed a timely response to its own motion, the state
10 was allowed an opportunity to file a late reply (after oral
11 argument) solely to address these issues: 1) to explain the
12 reasons why it had made numerous changes to the original DSH data
13 in its exhibit A, without identifying the changes or source of the
14 data, and 2) to explain any legal or factual basis for the changes
15 it presented in exhibit A.

17 In its two-page reply, the state did not address the required
18 issues as directed. It did not provide any explanation as to why
19 it filed an exhibit which misrepresented its source data. The
20 state also did not identify any legal support for the changes it
21 had made in exhibit A. In fact, in its reply, the state
22 specifically disavowed any reliance on exhibit A, and presented a
23 new exhibit F. The only explanation provided by the state for
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25

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1 filing an exhibit with altered source data, was set out in the
2 affidavit of Susan Christy, the state's auditor. The affidavit
3 stated that she had been inexperienced and unfamiliar with how to
4 perform DSH calculations as she had only performed the calculation
5 once before, in 1996; the MRAC does not have any written policy or
6 description of which days to include in the DSH calculation, and
7 because of this, she was unaware of which days to include in the
8 1997 DSH calculation. Ms. Christy conceded that when she prepared
9 exhibit A (filed 4/20/98), she made approximately 18 changes to
10 the original source data, to attempt to correct for the 18
11 categories of errors that she alleges she made in the original
12 1997 DSH calculation. She indicated that although a supervisor
13 reviewed the revised DSH calculation, the unnamed supervisor
14 apparently did not discover any of the numerous alleged errors.
15

16 She also stated that after preparing exhibit A in April 1998,
17 she subsequently decided that it also contained numerous errors.
18 At the oral argument on June 2, 1998, even staff's counsel agreed
19 that exhibit A contained inaccurate data, and again incorrectly
20 calculated the DSH adjustment. Counsel identified approximately
21 four new categories of errors in the denominator of DSH
22 calculation, and indicated that these four categories should
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1 (apparently) be changed back to the original data used in the
2 calculation. Counsel stated:

3 There were a number of errors and those were
4 the categories and they said if we're going to redo
5 the DSH calculation, it should be done correctly and
6 this [exhibit C (sic)] is what the correct calculation is
and subsequent to exhibit A, four of those 18 adjustments
actually were in error. They should not have been made.¹⁰

7 ...I will now pass out exhibit C which I
8 will also discuss in the brief that I will submit
9 or the affidavit that I will submit and that has
those errors backed out and that is the latest staff
10 DSH calculation for 1997. (emphasis added).¹¹

11 Thus, as of June 2, the state had discarded exhibit A, and
12 was now relying on exhibit C as the "latest" correct DSH
13 calculation, which was intended to replace exhibit A (prepared
14 three months earlier, on 4/98), and the original DSH calculation
15 (prepared 8/97). Ms. Christy also conceded that exhibit A should
16 be disregarded because of the errors she made, stating:

17 It should be noted that exhibit A also contains
18 errors, as explained below, and is not the staff's final
DSH calculation with respect to Valley's claims.¹²

19 Ms. Christy went on to state that she also prepared exhibits
20 B and C (filed at oral argument 6/2/98), which were presented by
21 the state's attorney on that date, as being the "latest" correct
22

23 " Tr. at 32.

24 " Tr. at 34.

25 " Christy affidavit, p. 6.

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1 version of the DSH calculation. However, on June 9, only a week
2 later, she stated in her affidavit that because she again made
3 errors in those exhibits (B and C), that these exhibits should
4 also be disregarded:

5 Staff has previously submitted its exhibits A
6 and C relating to the revised DSH calculation . . .
7 However, those exhibits should be disregarded because
8 they contain the errors noted above in paragraph 10.¹³

8 The errors referred to in paragraph 10, include 22 separate
9 categories of errors (10 in the numerator, 12 in the denominator)
10 which Christy says she made in exhibits A, B, and C, filed only a
11 week earlier. After stating that all of the alleged errors and
12 data source changes made in exhibit A were now fully explained in
13 the new exhibit E, (filed 6/9/98 with her affidavit), Ms. Christy
14 then indicates that exhibit E should be disregarded, (apparently
15 because it was merely a restatement of the inaccurate exhibit A)
16 because she has prepared other, more accurate exhibits, F and G.¹⁴
17

18 Christy then states that exhibits F and G (filed June 9,
19 1998), now contained the actual, correct 1997 DSH calculation:

20 I prepared Exhibit F, attached hereto,
21 as staff's final, corrected DSH calculation.¹⁵

22
23 ¹³ Id. at 13.

24 ¹⁴ Id.

25 ¹⁵ Id.

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1
2 However, although Ms. Christy details at length all of the
3 numerous mistakes she made in exhibits A, B, C, and E, the
4 affidavit is silent as to what changes she made in exhibits F and
5 G, how these exhibits differ from the state's original 1997 DSH
6 calculation, and does not provide any justification for the
7 changes, other than her opinion. The affidavit also does not
8 identify how exhibits F and G differ from the previously filed
9 inaccurate exhibits, or provide any justification for the sudden
10 change in treatment of swing bed days, observation bed days, and
11 medicaid psych/substance abuse/rehabilitation days, from the
12 original or revised DSH calculation and previous exhibits.

13 Discussion

14
15 1. The affidavit lacks credibility

16 To the extent the state has submitted Ms. Christy's affidavit
17 as support to "re-do" the 1997 DSH calculation because of alleged
18 errors made by her in the original calculation, that request is
19 denied because it is not supported by any legal authority,
20 argument or competent evidence. The information presented at the
21 oral argument and in Christy's affidavit established a pattern by
22 the agency of preparation and filing of inaccurate and incorrect
23 exhibits. I find that the affidavit of Susan Christy and the
24 exhibits she has prepared in this matter, illustrate a lack of
25

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1 candor and apparent inability to competently perform the DSH
2 calculation. As an initial matter, she stated that she made
3 numerous errors in the revised 1997 DSH calculation because she
4 was inexperienced and had only worked on one other DSH
5 calculation, the 1996 DSH calculation. This sworn statement
6 directly conflicts with the sworn interrogatory answer given
7 previously by her supervisor, the executive director, in the
8 Charter North appeal. Contrary to Christy's statement that she
9 had only worked on one 1996 DSH calculation, her supervisor stated
10 under oath that she had also worked on the FY 1995 DSH
11 calculation. Thus, she was not as inexperienced as she
12 represented.¹⁶

14 Christy attributes her alleged 18 errors in the revised 1997
15 DSH calculation (illustrated in exhibit A), to inexperience, lack
16 of written guidelines, and lack of adequate supervision. However,
17 she never explained why she has continued to make similar,
18 repeated errors in each of the exhibits submitted in this matter,
19 in April and June 1998, when she presumably had more experience.
20 In addition, no explanation has been provided by the state as to
21 why the MRAC supervisors did not adequately or competently review
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¹⁶ Ex. 15, p. 2.

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1 her work in 1997 or 1998, on a calculation which has a substantial
2 effect on several facilities.

3 **2. Inaccurate exhibits**

4 I find that each of the exhibits submitted by the state has
5 been shown to be inaccurate, unreliable, and to contain
6 unsupported changes in the treatment of source data. Except for
7 the new exhibits F and G, each exhibit Ms. Christy has prepared
8 has been repudiated either by her or state's counsel, because they
9 both agree the exhibits contain inaccuracies and errors.¹⁷

10
11 In addition to filing inaccurate exhibits, I find that the
12 state made misrepresentations about exhibit A in its opposition to
13 Valley's motion. In its opposition, the state claimed that if the
14 two types of changes requested by Valley were allowed, then Valley
15 still would not qualify for a DSH adjustment. Exhibit A was
16 offered to support this argument, and was represented by the state
17 as being the original 1997 DSH calculation, with Valley's two
18 submitted proposed changes. This representation was untrue. The
19 state, through Ms. Christy, had made 18 changes to the underlying
20 source data without identifying those changes, and also had
21 misrepresented the data changes sought by Valley. Instead of
22 including the exempt-unit days in the denominator as requested by
23
24

25 ¹⁷ Affidavit p. 4, 5, 6, 11, 13; tr. at 32, 34.

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1 Valley, the auditor put these days in the numerator in exhibit A,
2 representing that this was the result sought by Valley, which was
3 not a true statement.¹⁸

4 **3. No legal authority supports the state's treatment of swing bed**
5 **days, observation bed days, and psych/substance abuse days**

6 The state requested an opportunity to file a late reply to
7 try to explain the reasons for filing the inaccurate exhibit A,
8 and to justify any changes it felt were necessary to the 1997 DSH
9 calculation. In its reply, the state indicated that a number of
10 errors had been made by the staff, but did not identify any
11 alleged errors in the revised DSH calculation, or provide any
12 legal support for any changes sought, despite being requested to
13 do so.

14
15 Even though the state did not identify or provide legal
16 authority to support any changes to the 1997 DSH calculation, I
17 will briefly address the conclusionary statements made in
18 Christy's affidavit concerning swing bed days, observation days,
19 and psych/substance abuse days.

20 **Psych/substance Abuse Days**

21 The Christy affidavit states that although she did not
22 originally include rehabilitation days in the numerator of the DSH
23

24 ¹⁸ State's brief, p. 1, 2.

25

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1 calculation, she now (in 1998) believed that these days should be
2 included in the numerator. Ms. Christy's opinion was not
3 supported by any legal authority or even discussed by her counsel.
4 Her position also directly contradicted the way the agency has
5 treated these days in past calculations, as well as how the agency
6 treated these days in the subsequent 1998 DSH calculation.¹⁹ No
7 explanation was provided to justify the agency's change in the
8 treatment of these days.

9
10 In addition, Christy's statements that substance abuse days
11 should be in the numerator of the calculation, directly conflict
12 with the previous sworn statements given by Jack Nielson, the
13 executive director of the commission, in his testimony in the
14 Charter North formal hearing. During his testimony, Nielson
15 testified that rehabilitation/chemical dependency days should not
16 be included in the numerator.²⁰

17 I find that because Christy's unsupported statements conflict
18 with the agency's past and present treatment of these types of
19 days, and the agency supervisor's previous testimony, that her
20 position that rehabilitation days should be included in the
21 numerator of the calculation, is neither credible nor reliable.
22

23
24 ¹⁹ Ex. 16.

25 ²⁰ Ex. 17, p. 4.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order Denying the State's Cross-Motion for Summary Judgment
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1 **Swing Bed/Observation Bed Days**

2 Christy also indicates in her affidavit that although she did
3 not include swing bed or observation bed days in the 1997 DSH
4 calculation, she now "believes" that these days should be
5 included. No other information was presented to support this
6 conclusion. Christy's statements concerning swing bed days again
7 conflict with the agency's past treatment of swing bed days in the
8 original and revised 1997 DSH calculation, as well as the agency
9 statements presented on the front of the revised 1997 DSH
10 calculation:
11

12 Total facility days taken from T-2, include
13 acute care, ICU, NICU, Psych & Sub. abuse, observation
14 beds, but not nursery.²¹

14 The agency clearly indicated that swing bed days were not
15 included in the total facility days. Christy's statements also
16 conflict with the agency's treatment of swing bed days in the 1998
17 DSH calculation: the agency did not include swing bed days.²²

18 With regard to observation bed days, it was the agency's
19 previous position (in the original and revised 1997 DSH
20 calculations) that observation bed days were to be included in the
21

22
23
24 ²¹ Ex. 3.

25 ²² Ex. 16, p. 3.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
Denying the State's Cross-Motion for Summary Judgment
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1 "total facility days" portion of the calculation, and no authority
2 has been provided to support a different treatment.²³

3 In summary, I do not find any support for the agency's sudden
4 change in the treatment of swing bed or observation bed days.

5 **4. Agency's Arbitrary and Capricious Conduct**
6

7 The only argument presented by the state in its motion for
8 partial summary judgment, was that the facility would not qualify
9 for a DSH adjustment even if the nursery days and exempt-unit days
10 were included in the calculation. Prior to Valley's raising its
11 concerns about the DSH calculation in its motion for summary
12 judgment, the state never requested to re-do the already revised
13 1997 DSH calculation because of any alleged errors it had made.
14 Even after Valley filed its motion for summary judgment and raised
15 issues about the accuracy of the calculation, the state never
16 identified any type of errors that it made, or requested to change
17 the 1997 DSH calculation due to errors it had made.²⁴ After
18 Valley pointed out that even with the changes the state made in
19 altering the data in exhibit A, it still would qualify for a DSH
20

21 ²³ Ex. 3, p. 1.

22 ²⁴ In its opposition, the state did concede that the exempt-unit days
23 (rehabilitation days for Alaska Regional and the psych days for Bartlett),
24 should have been included in the calculation. However, the state then
25 proceeded to include these days in the numerator, representing this change as
requested by Valley, which was not correct. Valley's request was to treat
these days the same way the staff treated all the other facilities
rehabilitation days, which was to include them in the denominator.

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1 DSH payment if nursery and exempt-unit days were included as
2 requested, the state began to file exhibits, each of which
3 presented a different position on which categories of days should
4 be included in the DSH calculation.

5 I find that the staff's presentation of successive inaccurate
6 exhibits, each with new allegations of its own "recently
7 discovered" numerous mistakes, and the staff's continuously
8 changing positions of which patient data to include, illustrated a
9 pattern of arbitrary and capricious conduct, with its sole purpose
10 to attempt to defeat Valley's motion, by changing the data to be
11 included in the calculation. Each time that Valley indicated that
12 it would still qualify for the DSH payment, even with the staff's
13 changes, the staff then changed its position to exclude or include
14 a different category of patients from the calculation, which if
15 accepted, would disqualify Valley from receiving a DSH payment.

16 I find that the staff's 1998 changes to the original 1997 DSH
17 calculation, were not made because of any real "errors", but
18 rather were arbitrary and capricious efforts by the agency to
19 manipulate the data and calculation to exclude Valley from
20 qualifying for the DSH payment.²⁵ An agency is required to follow

21
22
23 _____
24 " The exhibits also showed that the auditor made repeated clerical
25 errors, (even in exhibit F). No authority was provided to justify changing
these numbers. Hopefully, adequate training, supervision, and competent review
of the calculation prior to its dissemination to the public, should correct
this problem in the future.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
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1 its regulations, and is not entitled to act in an arbitrary and
2 capricious manner, without any authority for its conduct.²⁶

3 Conclusion

4 Based upon the foregoing discussion, the 1997 DSH calculation
5 must be re-calculated to include nursery days in both the
6 numerator and denominator of the DSH calculation. I also find
7 that the rehabilitation days for Alaska Regional (2,572) and the
8 psychiatric days for Bartlett (1,266), should be included in the
9 denominator (total facility days) of the calculation.

10 The staff's request to consider its most recent exhibits F
11 and G as the "final, corrected 1997 DSH calculation" is denied.
12 The DSH regulation requires that staff produce the DSH calculation
13 by June 1 of the qualifying year.²⁷ The staff prepared the
14 original DSH calculation 6/1/96, and then issued the revised 1997
15 DSH calculation 8/11/97, as the final DSH calculation.²⁸ In
16 preparing the calculation, the staff is required to follow the
17 regulation criteria. According to the affidavit of the staff's
18 auditor, because the agency lacks any written protocol to follow,
19 and the existing regulations are so vague, that she is still
20 uncertain which days to include or exclude. Despite the auditor's
21

22
23 ²⁶ Noey v. Department of Environmental Conservation, 737 P. 2d 796
(Alaska 1987).

24 ²⁷ 7 AAC 43.687.

25 ²⁸ Ex. 2, p. 5; ex. 3.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
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 Valley Hospital
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lack of knowledge, the staff is not permitted to change the DSH
 criteria on an ad hoc basis, or by whim or conjecture. Absent any
 other authority, I find that the patient bed categories staff used
 in preparing the "final" revised 1997 DSH calculation (dated
 8/11/97), indicated the staff's view of the correct categories of
 days to include in the calculation. These categories and numbers
 used shall remain the same in the re-computed DSH calculation,
 with the exception of the inclusion of nursery days and
 rehabilitation days as indicated above.

If a decision on the issue of "medicaid-eligible" patients is
 still sought by the facility, Valley can present the issue again
 with additional briefing.

Dated at Anchorage, Alaska, this 23rd day of November, 1998.

Martha Beckwith
 Martha Beckwith
 Hearing Examiner

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

Mary Pagenkopf

Senate Finance Committee, April 6, 1999, 6:04 p.m.

Alaska State Legislature

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BUDGET SUBCOMMITTEES
ALASKA COURT SYSTEM
DEPT. OF ENVIRONMENTAL CONSERVATION
DEPT. OF REVENUE

Representative Joe Green
District 10
House Majority Leader

Sponsor Statement

HB 168 – Appeals of Medicaid Reimbursement Rates

HB 16 amends the Medicaid reimbursement rate appeals process to ensure a more timely final decision, which, I believe, will result in lower costs for both the health care providers and the Department of Health and Social Services.

Problem: The Medicaid reimbursement rate appeals process currently traps health care providers in a state of administrative indecision when they appeal rates. The payment rates for health care services covered by Medicaid are set annually by the Medicaid Rate Advisory Commission, a five-member board appointed by the Governor. If a health care provider wishes to challenge a reimbursement rate they must file an appeal within 30 days after the rate is set. Once an appeal is filed a briefing and hearing schedule is agreed upon and an evidentiary hearing is held (usually) within 120 days. These hearings often take several days, after which the hearing officer submits a recommendation to the Commissioner of Health and Social Services. The commissioner has three options: accept, deny, or remand the hearing officer's recommendation. In some cases the commissioner has remanded the recommendation, whereupon the hearing officer made additional findings and resubmitted the recommendation to the commissioner, only to have the commissioner remand the decision again. There are cases still in the appeals process that were filed in 1991, nearly a decade ago.

Solution: HB 168 establishes a more responsive timeline for the disposition of rate appeals. Current law (AS 47.07.075) allows the commissioner 30 days to render a decision, with the option of remanding the case back to the hearing officer for additional findings. HB 168 allows the commissioner 30 days to render a final administrative decision. If the commissioner fails to make a final decision, the hearing officer's recommendation becomes the final decision.

There are currently more than 40 appeals outstanding, with a cost to the state of at least \$10 million and as much as \$30 million. Health care providers need to be able to more efficiently define their cost and reimbursement structure, and the department needs to be able to finalize these costly administrative appeals in a more timely manner. Please support HB 168, which addresses the needs of both the health care providers and the department.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 168

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Actions of the Department of Health and Social BRU: Medical Assistance Admin
 Services regarding certain facility payments Component: Hearings and Appeals
 Sponsor: Green COMPONENT SERIAL NO. 143-J
 Requestor: House HESS See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	226.4	226.4	226.4	226.4	226.4	226.4
TRAVEL						
CONTRACTUAL	140.4	140.4	140.4	140.4	140.4	140.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	366.8	366.8	366.8	366.8	366.8	366.8

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	183.4	183.4	183.4	183.4	183.4	183.4
1003 GF Match	183.4	183.4	183.4	183.4	183.4	183.4
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	366.8	366.8	366.8	366.8	366.8	366.8

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The department assumes that the "recommendation" on page 2, line 16 of Section 2. for which the commissioner must render a final decision within 30 days, is a proposed decision under AS 44.62.500. In order to accelerate the hearing process, meet the 30 day review requirements for a final administrative decision, and make any necessary changes for the final administrative decision, the department requests three new positions. The positions consist of two new hearing officers in the Office of Hearings and Appeals and one new position in the Commissioner Office to review the proposed appeals. Facility rate appeals are extremely specialized and complex, and cannot be successfully reviewed within the 30 day window without additional staff resources.

Contractual funding is requested to support a new attorney position in the Department of Law to handle the increased activity related to rate appeals by the new hearing officer positions. The department will RSA funding to the Department of Law who will establish this position in Anchorage.

4/7/99
 Prepared by: Bob Labbe Phone: 465-3355
 Division: Medical Assistance Date/Time: 4/6/99 8:15 AM
 Approved by Commissioner: Karen Perdue, Commissioner Date: 4/12/99
 Agency: Department of Health & Social Services

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DRAFT

October 3, 1994

Mr. Jack Nielson, Executive Director
Medicaid Rate Advisory Commission
4710 Business Park Blvd, Ste 44
Anchorage, Alaska 99503-7100

Dear Mr. Nielson:

I am writing to you regarding the proposed amendments to 7 AAC 43 Medicaid Appeal Regulations. I share ASHNHA's concern that a deadline for appeal decisions is not included in the regulations.

It is my understanding that imposing a deadline on the hearing officer's proposed decision was the legislature's intent when it passed Senate Bill 431 in 1990. It seems that one of the concerns addressed by SB 431 was the backlog of medicaid appeals. In several cases, health facilities have waited, or are waiting, for more than two years for a decision to be proposed. Again, this does not seem to be fulfilling the legislation's intent.

I hope the department will consider the inclusion of a deadline for a proposed decision within these proposed regulations. Otherwise, it seems that these regulations will not solve the perceived problem of an open-ended appeal process. This situation may require the regulations to be reviewed by the Administrative Regulation Review Committee or addressed through more precise legislation.

Any effort by the department to ensure these regulations solve the problem would be appreciated.

Regards,

Gary L. Davis, Representative
GD:dm