

SB

106

SFIN

FILE

SB 106

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

1-LS0424H
Bannister✓
4/26/99

CS FOR SENATE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): **SENATOR TAYLOR**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions of the Department of Health and Social Services
2 regarding certain health facility payments; and relating to rates of payment to
3 health facilities."

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

5 * **Section 1.** AS 47.07.075 is amended to read:

6 **Sec. 47.07.075. Administrative procedure.** (a) Actions of the department
7 regarding health facility payment rates under this chapter and AS 47.25.120 -
8 47.25.300 are subject to provisions of AS 44.62 (Administrative Procedure Act) except
9 as provided in (b), (c), (d), or (e) of this section.

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

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

6 (2) THE COMMISSIONER MUST, WITHIN 30 DAYS AFTER
7 RECEIVING THE RECOMMENDATION OF THE HEARING OFFICER, EITHER
8 RENDER A DECISION IN THE CASE OR REFER THE CASE BACK TO A
9 HEARING OFFICER FOR ADDITIONAL FINDINGS;

10 (3) IF EITHER TIME LIMIT SET UNDER (1) OR (2) OF THIS
11 SUBSECTION IS NOT MET, THE DEPARTMENT SHALL REPORT THE
12 NONCOMPLIANCE TO THE LEGISLATURE AND THE GOVERNOR BY THE
13 FOLLOWING JANUARY 20 WITH AN EXPLANATION OF THE LENGTH OF
14 DELAY, REASONS FOR THE DELAY, AND PROPOSED CORRECTIVE ACTION
15 BY THE DEPARTMENT TO AMELIORATE THE CAUSES OF DELAY].

16 * Sec. 2. AS 47.07.075 is amended by adding new subsections to read:

17 (c) The commissioner shall, within 30 days after receiving the recommendation
18 of the hearing officer, render a final administrative decision in the case unless the
19 facility requests a delay. If after 30 days the commissioner does not render a final
20 administrative decision, the hearing officer's recommendation becomes the final
21 administrative decision. A final administrative decision under this subsection is subject
22 to judicial review as a final administrative order under AS 44.62.560 and 44.62.570.

23 (d) If the time limit set under (b) of this section is not met, the department
24 shall report the noncompliance to the legislature and the governor by the following
25 January 20 with an explanation of the length of delay, reasons for the delay, and
26 proposed corrective action by the department to ameliorate the causes of delay.

27 (e) At the request of any party, the department may offer a process of
28 voluntary mediation.

29 * Sec. 3. HEALTH FACILITY PAYMENT RATES. (a) On or before the convening of
30 the Second Regular Session of the Twenty-First Alaska State Legislature, the Department of
31 Health and Social Services shall provide in a report to the legislature the rates developed

1 under this section and the recommendations and other information required by this section.

2 (b) The department shall develop proposed rates of payment for hospitals and nursing
3 facilities to be used under AS 47.07 and AS 47.25.120 - 47.25.300. The department shall
4 develop the rates under the provisions, including the hearing requirements, of AS 47.07.070,
5 except as otherwise modified by this section. The department is not required to comply with
6 the criteria of AS 47.07.070(b) or with AS 47.07.070(e) when developing the rates or to
7 appoint a technical advisory committee under AS 47.07.070(f). Notwithstanding
8 AS 47.07.070,

9 (1) the rates must be based on a fair rate for costs of patient care;

10 (2) the department is not required to set individual rates for each facility; and

11 (3) the department may recommend mandatory alternative rate setting
12 methodologies for facilities based on differences in licensing or certification, services
13 provided, facility size, patient utilization, community size, facility location, or combinations
14 of these factors; these alternative rate setting methodologies may include payment rates
15 calculated for groups of facilities or services.

16 (c) The department shall identify in the report under this section any alternative rate
17 setting methodologies as well as the rates.

18 (d) The legislature finds that 90 percent of the appeals in the setting of rates originate
19 from problems with certain areas in the applicable regulations. These problem areas include
20 volume changes in long-term care under 7 AAC 43.685, the handling of long-term care under
21 7 AAC 43.686, non-reimbursable areas under 7 AAC 43.686, year-end conformance under 7
22 AAC 43.685 and 7 AAC 43.691, audits under 7 AAC 43.693, and arbitrary treatment and
23 inconsistent annual treatment of facilities under 7 AAC 43.679 and 7 AAC 43.680. The
24 department shall examine and review these problem areas and include in the report required
25 by this section the department's recommendations, including specific changes, on how these
26 areas could be improved to reduce appeals.

27 (e) The department shall work with the Alaska State Hospital and Nursing Homes
28 Association when developing the rates and recommendations under this section.

29 (f) In this section,

30 (1) "costs of patient care" includes reasonable costs of

31 (A) current operations, including salaries and wages, purchased

1 services, supplies, insurance, leases, depreciation, taxes, interest expense, maintenance,
2 and other health facility operating expenses; and

3 (B) education, research, and appropriate capital development;

4 (2) "department" means the Department of Health and Social Services;

5 (3) "rates" means the rates of payments for health facilities to be used under

6 AS 47.07 and AS 47.25.120 - 47.25.300.

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 106(JUD)

BY SENATOR TORGERSON

*moved by Sen. Donley
object Sen. Wilken
5y-4n Adopted*

Page 1, line 2, following "payments":

Insert ";and relating to rates of payment to health facilities"

Page 2, following line 25:

Insert a new bill section to read:

"*Sec. 3. HEALTH FACILITY PAYMENT RATES. (a) On or before the convening of the Second Regular Session of the Twenty-First Alaska State Legislature, the Department of Health and Social Services shall provide in a report to the legislature the rates developed under this section and the recommendations and other information required by this section.

(b) The department shall develop proposed rates of payment for hospitals and nursing facilities to be used under AS 47.07 and AS 47.25.120 – 47.25.300. The department shall develop the rates under the provisions, including the hearing requirements, of AS 47.07.070, except as otherwise modified by this section. The department is not required to comply with the criteria of AS 47.07.070(b) or AS 47.07.070(e) when developing the rates or to appoint a technical advisory committee under AS 47.07.070(f).

Notwithstanding AS 47.07.070,

(1) the rates must be based on a fair rate for reasonable costs of patient care;

(2) the department is not required to set individual rates for each facility; and

(3) the department may recommend mandatory alternative rate setting methodologies for facilities based on differences in licensing or certification, services provided, facility size, patient utilization, community size, facility location, or combinations of these factors; these alternative rate setting

1 methodologies may include payment rates calculated for groups of
2 facilities or services.

3 (c) The department shall identify in the report under this section any
4 alternative rate setting methodologies as well as the rates.

5 (d) The legislature finds that 90 percent of the appeals in the setting
6 of rates originate from problems with certain areas in the applicable
7 regulations. These problem areas include volume changes in long-term care
8 under 7 AAC 43.685, the handling of long-term care under 7 AAC 43.686,
9 non-reimbursable areas under 7 AAC 43.686, year-end conformance under 7
10 AAC 43.685 and 7 AAC 43.691, audits under 7 AAC 43.693, and arbitrary
11 treatment and inconsistent annual treatment of facilities under 7 AAC 43.679
12 and 7 AAC 43.680. The department shall examine and review these
13 problem areas and include in the report required by this section the
14 department's recommendations, including specific changes, on how these
15 areas could be improved to reduce appeals.

16 (e) The department shall work with the Alaska State Hospital and
17 Nursing Homes Association when developing the rates and
18 recommendations under this section.

19 (f) In this section,

20 (1) "costs of patient care" includes reasonable costs of

21 (A) current operations, including salaries and wages,
22 purchased services, supplies, insurance, leases, depreciation,
23 taxes, interest expense, maintenance, and other health facility
24 operating expenses; and

25 (B) education, research, and appropriate capital
26 development;

27 (2) "department" means the Department of Health and Social
28 Services;

29 (3) "rates" means the rates of payments for health facilities to
30 be used under AS 47.07 and AS 47.25.120 – 47.25.300."

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: CSSB 106 (JUD)
Sponsor: Tomerson Date: 4/29/99
Logged In: by Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: CSSB 106(JUD)

BY SENATOR TORGERSON

*moved by Sen. Parnells
w/o objection, Adapted*

- 1 Page 1, line 8
- 2 Delete: “,(c), or (d)”
- 3 Insert “,(c), (d) or (e)”

- 4 Page 2, line 17 following “case”
- 5 Insert “**unless the facility requests a delay**”

- 6 Page 2, following line 25
- 7 Insert a new subsection to read:
- 8 (e) At the request of any party, the department may offer a process
- 9 of voluntary mediation.

1-LS0424\H
Bannister/
4/26/99

CS FOR SENATE BILL NO. 106(FIN)

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TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

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Sponsor(s): SENATOR TAYLOR

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11 to the various phases of an administrative appeal process involving an appeal of the
12 amount of a payment rate set by the department for a facility. The time limits set
13 under the regulations supersede conflicting time limits in AS 44.62.330 - 44.62.630.
14 The regulations must provide that

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

6 (2) THE COMMISSIONER MUST, WITHIN 30 DAYS AFTER
7 RECEIVING THE RECOMMENDATION OF THE HEARING OFFICER, EITHER
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17 (c) The commissioner shall, within 30 days after receiving the recommendation
18 of the hearing officer, render a final administrative decision in the case unless the
19 facility requests a delay. If after 30 days the commissioner does not render a final
20 administrative decision, the hearing officer's recommendation becomes the final
21 administrative decision. A final administrative decision under this subsection is subject
22 to judicial review as a final administrative order under AS 44.62.560 and 44.62.570.

23 (d) If the time limit set under (b) of this section is not met, the department
24 shall report the noncompliance to the legislature and the governor by the following
25 January 20 with an explanation of the length of delay, reasons for the delay, and
26 proposed corrective action by the department to ameliorate the causes of delay.

27 (e) At the request of any party, the department may offer a process of
28 voluntary mediation.

29 * Sec. 3. HEALTH FACILITY PAYMENT RATES. (a) On or before the convening of
30 the Second Regular Session of the Twenty-First Alaska State Legislature, the Department of
31 Health and Social Services shall provide in a report to the legislature the rates developed

1 under this section and the recommendations and other information required by this section.

2 (b) The department shall develop proposed rates of payment for hospitals and nursing
3 facilities to be used under AS 47.07 and AS 47.25.120 - 47.25.300. The department shall
4 develop the rates under the provisions, including the hearing requirements, of AS 47.07.070,
5 except as otherwise modified by this section. The department is not required to comply with
6 the criteria of AS 47.07.070(b) or with AS 47.07.070(e) when developing the rates or to
7 appoint a technical advisory committee under AS 47.07.070(f). Notwithstanding
8 AS 47.07.070,

- 9 (1) the rates must be based on a fair rate for costs of patient care; *reasonable omitted*
10 (2) the department is not required to set individual rates for each facility; and
11 (3) the department may recommend mandatory alternative rate setting
12 methodologies for facilities based on differences in licensing or certification, services
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25 by this section the department's recommendations, including specific changes, on how these
26 areas could be improved to reduce appeals.

27 (e) The department shall work with the Alaska State Hospital and Nursing Homes
28 Association when developing the rates and recommendations under this section.

29 (f) In this section,

- 30 (1) "costs of patient care" includes reasonable costs of
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1 services, supplies, insurance, leases, depreciation, taxes, interest expense, maintenance,
2 and other health facility operating expenses; and

3 (B) education, research, and appropriate capital development;

4 (2) "department" means the Department of Health and Social Services;

5 (3) "rates" means the rates of payments for health facilities to be used under
6 AS 47.07 and AS 47.25.120 - 47.25.300.

SENATE FINANCE

COMMITTEE

Amendment Number: 3

1-LS0424\G.7

Bill Number: CS SB 106 (JUD)

Bannister

Sponsor: Leman Date: 4/21/99

4/21/99

Logged In By: Mindy

A M E N D M E N T

OFFERED IN THE SENATE

withdrawn
BY SENATOR LEMAN

TO: CSSB 106(JUD)

1 Page 2, following line 25:

2 Insert new bill sections to read:

3 **** Sec. 3. TRANSITIONAL PROVISIONS.** (a) Notwithstanding AS 47.07.075(c),
4 enacted in sec. 2 of this Act, within 30 days after the effective date of this Act, the
5 commissioner of health and social services shall render a final administrative decision in each
6 rate appeal that is pending as of the effective date of this Act if

7 (1) the hearing officer has issued a proposed decision to the commissicner
8 before the effective date of this Act;

9 (2) the commissioner has not issued a final administrative decision in the
10 matter; and

11 (3) the commissioner

12 (A) has not, before the effective date of this Act, remanded to the
13 hearing officer the most recent proposed decision by the hearing officer; or

14 (B) has remanded the proposed decision to the hearing officer on or
15 after April 20, 1999, but before the effective date of this Act.

16 (b) If a rate appeal that is pending as of the effective date of this Act was remanded
17 by the commissioner to the hearing officer before the effective date of this Act and the
18 circumstances for disposition of the rate appeal are not described in (a)(1) - (3) of this
19 section, the 30 day period in which the commissioner must render a final administrative
20 decision in the rate appeal under AS 47.07.075(c), enacted in sec. 2 of this Act, begins when
21 the commissioner receives a proposed decision from the hearing officer after the remand.

22 (c) If the commissioner fails to comply with the requirements of (a) of this section,
23 the hearing officer's recommendation becomes the final administrative decision. A final
24 administrative decision under this subsection is subject to judicial review as a final
25 administrative order under AS 44.62.560 and 44.62.570.

1 (d) If the commissioner fails to comply with the requirements of (a) of this section,
2 the department shall report the noncompliance to the legislature and the governor by the
3 following January 20 with an explanation of the length of delay, reasons for the delay, and
4 proposed corrective action by the department to ameliorate the causes of delay.

5 (e) In this section,

6 (1) "commissioner" means the commissioner of health and social services;

7 (2) "department" means the Department of Health and Social Services;

8 (3) "rate appeal" means an administrative appeal of a health facility payment
9 rate under AS 47.07 or AS 47.25.120 - 47.25.300.

10 * **Sec. 4. APPLICABILITY.** Except as provided in sec. 3 of this Act, secs. 1 and 2 of this
11 Act apply to rate appeals that are begun on or after the effective date of this Act or that are
12 pending as of the effective date of this Act."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 26, 1999

SUBJECT: Draft CSSB 106(FIN) (Work Order No. 21-LS0424H)

TO: Senator Sean Parnell, Co-Chair
Senate Finance Committee
Attn: Jerry

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Request for delay. In proposed sec. 47.07.075(c), the committee added the clause, "unless the facility requests a delay." The 30-day deadline in the second sentence of (c) is now unclear because it does not recognize the fact that there might be a delay. If consistent with your intent, you could rewrite the second sentence to read: "If the commissioner does not render a final administrative decision within 30 days after receiving the recommendation of the hearing officer and the facility has not requested a delay, the hearing officer's recommendation becomes the final administrative decision."
2. Voluntary mediation. Does the language of proposed sec. 47.07.075(e), which allows the department to offer a process of voluntary mediation, override the time requirements of proposed sec. 47.07.075(b)? Does it override the provisions of (c) if mediation is chosen after the commissioner has received the recommendation of the hearing officer?
3. Cross-reference. In proposed sec. 47.07.075(d), should the cross-reference to "(b)" actually be "(c)." It is my understanding of the intent of sec. 47.07.075(d) that it refers to (c).

If I may be of further assistance, please advise.

TLB:pl:glc
99-061.plm

A F A X

Alaska State Legislature

Date: 4/23/99

To: Peggy, Legal Services

Fax #: 2029 Phone #: 2450

From: Jerry SFC Secretary

Phone #: 2618

Re: please incorporate attached amend #1 and #2 into your
work order 1-LS0424\G for a Finance WORK DRAFT 'CS SB 106(FIN)
Thanks much!

Following this page, please find 3 pages(s). If this does not reach you in full, please inform us ASAP.



THANK YOU

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
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50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
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Senator Robin L. Taylor

SPONSOR STATEMENT

SB 106

“An Act relating to decisions regarding certain health facility payments”

SB 106, “An Act relating to decisions regarding certain health facility payments”, is meant to correct a problem with the Medicaid Rate Setting and Appeals process. Medicaid providers have experienced problems with the Medicaid appeal process because very few decisions ever become final.

The Medicaid rate setting and appeal process is as follows: The Medicaid provider payment rates are set annually at an informal hearing before the Medicaid Rate Advisory Commission, which is simply advisory to the Department. If the provider disagrees with the payment rate, the provider may appeal the rate by requesting a formal evidentiary hearing before a Hearing Examiner. The Hearing Examiner conducts a formal hearing on the appeal and issues a proposed decision to the Commissioner of Health and Social Services. The hearings are often in excess of ten days and are expensive for the facility. The Hearing Examiner’s decision must then be approved by the Commissioner of the Department before the decision becomes final.

Rather than issuing final decisions, the Commissioner consistently remands proposed decisions back to the Hearing Examiner for further proceedings with instructions that usually do not follow the remand order until several months later. The results are that the administrative appeals process takes several years to complete, preventing providers from obtaining a final rate and, subsequently precluded from obtaining relief. While a decision has been remanded, the facility is also precluded from appealing to the Superior Court.

A provider’s inability to get a fair rate set, coupled with appeals that are log jammed for years, result in facilities not being adequately reimbursed for providing services to Medicaid patients. Without some kind of due process, many healthcare providers will eventually be forced out of business.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

MEDICAID RATE SETTING AND APPEALS PROCESS

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Medicaid providers have experienced problems with the Medicaid appeal process because very few decisions ever become final, and those that do, are in the Department's favor.

- Over the past several years, the Commissioner has issued only two final decisions.

One final decision was clearly in favor of the Department, and the other final decision has been interpreted by the Department as being in its favor as well. Thus, the Commissioner has not issued a single final decision in the past several years that is in favor of the Medicaid providers.

- Rather than issuing final decisions, the Commissioner consistently remands proposed decisions back to the Hearing Examiner for further proceedings with instructions that usually do not follow the remand order until several months later.

The result is that the administrative appeals process takes several years to complete, preventing providers from obtaining a final rate and, subsequently precluded from obtaining relief.

- While a decision has been remanded, the facility is also precluded from appealing to Superior Court.

Many of the facilities have had the hearing officer's favorable proposed decision remanded three or four times by the Commissioner.

- Out of twenty-four healthcare providers that have rates set once a year, forty-two rate appeals are currently in process.

The Commissioner is required by Statute to act on hearing officer's proposed decisions within thirty (30) days after the proposed decision is filed. However, the Commissioner has not complied with this 30 day requirement on numerous occasions. Rather, the Commissioner's usual practice, when the proposed decision is in the provider's favor, is to remand the case back to the Hearing Examiner sometime more than 30 days after the proposed decision is filed. Instructions are then issued several months later, and in one case, almost one year later. The one and only time that the Commissioner

acted on and adopted a proposed decision within the 30 days is when the proposed decision was in the Department's favor.

- Thirteen proposed decisions have been issued by the Department's Hearing Examiner between January 1, 1990, and December 31, 1998. This list was produced by the Department.
- One decision was not subject to a remand by the Commissioner. That one case was adverse to the provider, and was adopted by the Commissioner on January 25, 1999.

In a recent proposed decision by the Hearing Examiner, the Department's staff, who set the original Medicaid rate, was found to be arbitrary and capricious and without authority for their conduct. The Department's staff was also cited for the preparation and filing of inaccurate and incorrect documents.

A providers' inability to get a fair rate set, coupled with appeals that are log jammed for years, results in facilities not being adequately reimbursed for providing services to Medicaid patients. Without some kind of due process, many healthcare providers will eventually be forced out of business.

The Hearing Examiners have issued a total of Thirteen Proposed Decisions involving Thirteen cases during the period from January 1, 1990, to December 31, 1998:

1. **Our Lady of Compassion Care Center, 90-MRC-02, appeal filed 1/22/90;**
 - * Proposed Decision issued March 12, 1991;
 - Remanded by Commissioner 4/3/91.
 - Stipulation to Dismiss signed 7/20/94 by Jay Livcy.
2. **Central Peninsula, 91-MRC-04, appeal filed 5/23/91;**
 - * Proposed Decision issued 9/9/94;
 - Remanded by Commissioner 10/10/94;
 - * Proposed Decision on Remand issued 10/31/94;
 - Proposed Decision on Remand adopted 11/4/94.
3. **Norton Sound, 91-MRC-03, appeal filed 2/20/91;**
 - * Proposed Decision on Issues Other Than Telephone Lease issued 5/8/95; adopted 6/9/95;
 - * Proposed Decision on Telephone Lease issued 11/8/95;
 - Remanded by Commissioner 12/13/95;
 - * Proposed Decision on Remand issued 1/4/96;
 - Proposed Decision on Remand adopted 1/22/96.
4. **Ketchikan General Hospital, 91-MRC-08, appeal filed 10/2/91;**
5. **Ketchikan General Hospital, 91-MRC-09, appeal filed 10/21/91;**
 - * Proposed Decision issued 1/9/96;
 - Remanded by Commissioner 2/14/96;
 - * Proposed Decision on Remand issued 2/28/96;
 - Proposed Decision on Remand adopted 3/11/96.
6. **St. Ann's Care Center, 95-au-02, appeal filed 2/17/95;**
 - * Proposed Decision issued 1/2/97;
 - Interim Decision and Order by Commissioner 2/5/97;
 - Order with Instructions on Remand by Commissioner 9/26/97;
 - Status after Remand: Post-hearing briefing schedule set (due 8/98); case stayed 7/29/98 pending outcome of decision in Wesley cases; status hearing 12/15/98.
7. **Bartlett Memorial Hospital, 95-au-05, appeal filed 7/21/95;**
8. **Bartlett Memorial Hospital, 96-MRC-05, appeal filed 3/14/96;**
 - * Proposed Decision issued 1/14/97;
 - Order with Instructions on Remand issued 12/12/97;
 - Status after Remand: Order Granting Partial Summary Judgment on CON issue, issued 8/20/98; Evidentiary Hearing held 10/20/98-10/29/98;
 - Post-hearing briefing schedule to be set after transcript prepared.
9. **North Star Hospital, 94-MRC-04, appeal filed 9/29/94;**
10. **North Star Hospital, 95-au-03, appeal filed 2/28/95;**
11. **North Star Hospital, 95-MRC-02, appeal filed 2/21/95;**
12. **North Star Hospital, 95-MRC-05, appeal filed 5/25/95;**
 - * Proposed Decision issued 3/27/98;
 - Interim Decision and Order by Commissioner 5/12/98;
 - * Proposed Decision After Reconsideration issued 7/28/98;
 - Order of Remand by Commissioner 8/31/98;
 - Status after Remand: Briefing schedule has been set requiring parties to file supplemental briefs with affidavits by 3/5/99.
13. **Norton Sound Hospital, 97-MRC-03, appeal filed 10/16/97;**
 - * Proposed Decision issued 12/31/98.

SUMMARY OF APPEALS ACTIVITY

Each year the Department sets reimbursement rates for 25 facilities.

- 15 facilities currently have no appeals.

Fairbanks Memorial	Denali Center
Providence	Kodiak Island
Petersburg General Hospital	Norton Sound
Providence Extended Care	Mary Conrad
Wrangell General Hospital	Valdez Community
Providence Seward	Central Peninsula
Cordova Community Hospital	South Peninsula Hospital
Alaska Psychiatric Institute	

Total: 15

- 10 facilities have appeals pending.

Alaska Regional (10)	Wesleyan (8)
North Star (6)	St. Ann's Nursing Home (4)
Bartlette Memorial (3)	Charter North (3)
Valley (2)	Ketchikan General (2)
Heritage Place (1)	Sitka Community (1)

Total: 10 Facilities, 40 Appeals

- 40 appeals are currently outstanding.
- 21 of these appeals are stayed at the request of the facility.
- Currently there are no proposed decisions pending in the Commissioner's Office.
- 6 proposed decisions have been remanded to the Hearing Officer in the past 4 years.
 - No proposed decision has been remanded more than once.
- No Valley Hospital proposed decisions have come to the Commissioner's Office since 1990.
 - 5 Valley rates have been appealed during this time.
 - 2 were settled, 1 is currently stayed at request of facility, 2 (1998 and 1999 rates) are being scheduled.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

March 22, 1999

Senator Robin Taylor
Room 9
State Capitol
Juneau, AK 99801

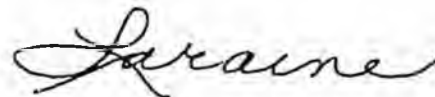
Dear Senator Taylor:

I am writing in support of SB 106, 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. CSSB 106 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



RECEIVED
MAR 4 1999
As'd.....

February 24, 1999

Senator Robin Taylor
Alaska State Legislature
50 Front Street
Suite 203
Ketchikan, AK 99901

Dear Senator Taylor:

Thank you for your letter of January 24, 1999 and your commitment to review the activities of the Department of Health and Social Services. I cannot express to you the frustration and financial cost this process has endured. Thus far, Valley Hospital has incurred \$82,250 in expenses defending our position to the Department, not to mention the countless hours Valley Hospital staff has spent compiling information for our legal council.

Please feel free to call on me to either testify or discuss further. Thank you again for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Pfeifer", written over a horizontal line.

Dave Pfeifer
Chief Executive Officer

DP/vlr

Wesley Rehabilitation And Care Center

481 First Avenue • Box 430

Seward, Alaska 99664

Tel: (907) 224-5241 • Fax: (907) 224-5250

April 16, 1999

The Honorable John Torgerson
Alaska State Senate
State Capitol Building
Juneau, AK 99811

Re: SB 106

Dear Senator Torgerson:

Thank you for your support and assistance to Wesley Rehabilitation and Care Center. As you are aware, Wesley has had a long history of difficulties dealing with the MRAC and Department of Health & Social Services. Our story of difficulties unfortunately is not different or unique from the experiences of other health care facilities in the State.

I thank you for your active support of SB 106 and hope that with its passage new opportunities arise to resolve the current appeal system.

When we met in Seward you mentioned that it would be a good idea to look at the total reimbursement system, not just the appeals portion. I agree there are problems within the system, but I am concerned that if a new reimbursement system amendment is attached to SB 106 some legislators may vote NO even though they support SB 106, because amendments are attached. The concerns over the current payment system are equally, if not more complicated than the appeals process.

I urge you to look at drafting a new separate bill, to address the reimbursement system. I am confident that the health care facilities would actively participate in exploring and developing a new system. A Department designed system will only continue a crippled system that the Department messed up in the first place.

Again, thank you very much for your assistance. It is great knowing that you are there in Juneau representing us.

Please let me know how and if I can do anything to help you.

Sincerely,



Richard W. Jones,
Administrator/CEO

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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

April 19, 1999

Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Committee Members:

At a recent hearing on SB 106, a letter was distributed, dated April 6, 1999, from Financial Consultants of Alaska to Doug Jones, DHSS Audit Manager, accusing the Department of Health and Social Services of deliberately delaying the release of Medicaid audits in order to make it more difficult for facilities to respond. I am writing to assure you that this is not the policy of the Department.

The audit process that is currently used is the product of negotiations with the Alaska State Hospital and Nursing Home Association (ASHNHA). Much of these negotiations addressed the timelines for the completion and release of audits. This audit process, which is in regulation at 7 AAC 43.693, contains timelines that the facilities and the Department must follow in conducting and issuing audit reports. The Department audits facilities according to these regulations.

The Department issues a Medicaid audit for each facility prior to the setting of its annual Medicaid rate. Medicaid rates are set at two times during the year: half of the facilities in Alaska receive a reimbursement rate in December, and half receive one in June. All of the facilities' audits mentioned in the April 6 letter are used in the June rate setting cycle.

The audits corresponding to the June rate setting were, in fact, released later than usual this year. However, this delay was primarily because ASHNHA requested that the Department reconsider the treatment of certain facility costs related to dually eligible Medicaid and Medicare patients. This request came to the Department on October 1, 1998, and the Department agreed to work with an ASHNHA group on this very complicated and technical issue. Completion of audit work was delayed pending the conclusion of the analysis of this issue. Consequently, the delay was due to the Department's desire to foster cooperation with the facilities, not to hinder it, as the letter suggests.

Senate Finance Committee
April 19, 1999
Page Two

I would also like to take this opportunity to correct some mistaken impressions that you may have with regard to the Department's handling of Medicaid appeals. First, I believe that you may have been left with the impression that the amount of Medicaid reimbursement denied because of appeals is financially crippling Alaska's health facilities. In fact, the approximately \$10 million which constitutes the value of outstanding appeals represents only 2.7% of the total Medicaid expenditures made to facilities during the same time period.

Considerable attention has also been paid to the Department's actions regarding Bartlett Regional Hospital's rate appeal and the potential financial affects on that facility. Bartlett's loss of Medicaid revenue, as a result of the certificate of need issue, amounted to about \$24,000 in a year in which Medicaid payments to Bartlett were in excess of \$1.9 million. During that same year, Bartlett's total revenues were in excess of \$30 million and later documentation revealed that Bartlett's Medicaid revenue exceeded its Medicaid costs by nine percent.

The Department is not financially crippling Alaska's health facilities through the Medicaid rate setting and appeals process. However, the Department is trying to be a prudent purchaser of health care services, a responsibility that the legislature clearly expects the Department to exercise. Had the Department not challenged the \$10 million of potential expenditures that comprise current appeals, the Medicaid budget would be at least \$10 million dollars higher.

If you have any question with regard to these complicated issues, please do not hesitate to contact me.

Sincerely,



Karen Perdue
Commissioner

cc: ASHNHA Members
Financial Consultants of Alaska
Senator Taylor

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

0005

DONNA HERBERT

INSLEE BEST

02/02/99 10:44 FAX 425 635 7720

93-MRC-06	Alaska Regional Hospital	1991 (Consolidated with 1991 to 1993)	Rate	Briefing completed	-	Issuance of Proposed Decision from Hearing Examiners	ROI; Income Tax; YEC; Inflation; F-Calc; Depreciation; Chemical Dependency; misc. other costs	ROI & Income Tax issues decided in favor of Dept. in response to Staff's motion
94-AU-01	Alaska Regional Hospital	1992 Audit & 94 Rate	Audit	Briefing completed	April 15, 1999 Hearing	Status conference	Similar to other years	Consolidated with the 1994 Rate Appeal
94-MRC-01	Alaska Regional Hospital	1992 (Consolidated with 91 to 93)	Rate	Briefing completed	-	Staff's Post Hearing Brief completed 8/31	ROI; Income Tax; YEC; Inflation; F-Calc; Depreciation; Chemical Dependency; misc. other costs	ROI & Income Tax decided in favor of Dept. in response to Staff's motion
94-MRC-05	Alaska Regional Hospital	1993 (Consolidated with 91 to 93)	Rate	Briefing completed	-	Staff's Post Hearing Brief completed 8/31	ROI; Income Tax; YEC; Inflation; F-Calc; Depreciation; Chemical Dependency; misc. other costs	ROI & Income Tax decided in favor of Dept. in response to Staff's motion
94-MRC-04	Alaska Regional Hospital	1993	Audit	Status Conference held	December 8, 1998	Pre-hearing Conference May 5, 1999	Similar to other years	(See 93-MRC-06, 94-MRC-01 & 94-MRC-05)
95-MRC-10	Alaska Regional Hospital	1992 Audit & 1996 Rate	Rate	Consolidated with 94-AU-01	April 15, 1999 Hearing	Formal Hearing in April, 1999	ROI; Income Tax; YEC; Inflation; F-Calc; Depreciation; Chemical Dependency; misc. other costs	Consolidated with 92 audit see 94-AU-01

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

02/006

DONNA HERBERT

JNSLEE BEST

02/02/99 10:44 FAX 425 635 7720

97-MRC-03	Alaska Regional Hospital	1995	Rate	September 9, 1999	Status Conference on September 9, 1999	1993 audit also being appealed	Similar to other years	(See 93-MRC-06, 94-MRC-01 & 94-MRC-05)
97-MRC-04	Alaska Regional Hospital	9/1/95 - 12/31/95	Rate	September 9, 1999	Status Conference on September 9, 1999		Similar to other years	Partial Year.
97-MRC-05	Alaska Regional Hospital	1996	Rate	September 9, 1999	Status Conference on September 9, 1999		Similar to other years	(See 93-MRC-06, 94-MRC-01 & 94-MRC-05)
97-MRC-06	Alaska Regional Hospital	1997	Rate	September 9, 1999	Status Conference on September 9, 1999		Similar to other years	(See 93-MRC-06, 94-MRC-01 & 94-MRC-05)
95-AU-05	Bartlett Memorial Hospital	1994 Audit/ 96 Rate Audit	Rate	Formal Evidentiary Hearing completed on Oct. 21, 1998		Post hearing Brief	Audit, MRI disallowance, Cordova decision, advertising, cost allocation, audit adjustments	Combined with Rate Appeal 95-AU-05 96-MRC-05
96-MRC-10	Bartlett Memorial Hospital	1997	Rate	Schedule Formal Hearing	Status Conference	To be scheduled when '96' Decision is issued	Audit, MRI disallowance, Cordova decision, advertising, cost allocation, audit adjustments	Appealed rate but not audit. State filed responses to Statement of Issues.
97-MRC-07	Bartlett Memorial Hospital	1998	Rate		Status Conference	Schedule Formal Hearing	Audit, MRI adjustment. Issues are same as earlier rate year.	

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

0007

DONNA HERBERT

INSLEE BEST

02/02/98 10:45 FAX 425 635 7720

Case ID	Facility	Year	Rate	Post Hearing Briefing Completed	Issuance of proposed decision Hearing Examiner	Marketing & Advertising, Counseling, Center; Audit, DSH	Issuance of decision Hearing Examiner	
95-MRC-11	Charter North Hospital	1995	Rate					
96-MRC-12	Charter North Hospital	1996	Rate	Facility requested hold until 95-MRC-11 is completed	January 4, 1999	Status Hearing conference	Physician recruitment Costs, chemical dependency, substance abuse, major movable equipment depreciation, Health and welfare costs, other general comments on reconsideration, revenues, disproportionate share adjustment, audit adjustments.	On hold waiting results of prior case.
97-MRC-10	Charter North Hospital	1997	Rate	Facility requested hold until 95-MRC-11 is completed		Status Hearing	Appeal letter states: DSH; marketing; physician costs; allocation of A & G to outpatient center; timing; staff errors; audits in rates	Statement of issues has not been received
98-MRC-03	Heritage Place	1998 using 1995 YEC	Rate	On hold	Status Conference for September 15, 1999	Status Conference	Facility states application of YEC for 1995 on 1998 rate under alternative payment method involves same issues as Wesley decision.	Statement of issues has not been received
98-MRC-09	Ketchikan General Hospital	1995 audit 1998 rate	Rate	Status Hearing on January 11, 1999	Case stayed until Wesley Case is decided	Status Hearing on January 11, 1999	Appeal letter states: Use of audits; treatment of ancillary costs; utilization incorrect; hospital based physician revenues; utilization of LJC	Statement of Issues has not been received

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

008

DONNA HERBERT

INSLEE BEST

02/02/98 10:45 FAX 425 635 7720

98-MRC-04	Keichikam General Hospital	1996 Audit and 1999 Rate	Audit & Rate	Case is Stayed				Appeal letter states: Use of audits; treatment of ancillary cost; utilization incorrect; hospital based physician revenues; utilization of LTC	Administrative appeal received issues are Medicaid Non-Covered Charges on Hosp D form.
94-MRC-04	North Star Hospital	1993 (Consolidated with Rates 93, 94 & 95, And Audit 93	Rate	Post Hearing Brief is being prepared	Facility Supplemental Brief is due on January 22, 1999	Facility files Supplemental Brief		Advertising/Marketing; Outpatient; DSH; audit used in rate setting	Case was on hold due to Facility in Bankruptcy Court. Received approval to continue.
95-AU-03	North Star Hospital	1993 (Consolidated with Rates 93, 94 & 95, And Audit 93	Audit & 95 Rate		See 94-MRC-04	See 94-MRC-04		Advertising/Marketing; Outpatient; DSH; audit used in rate setting	Case was on hold due to Facility in Bankruptcy Court. Received approval to continue.
95-MRC-02	North Star Hospital	1993 (Consolidated with Rates 93, 94 & 95, And Audit 93	Rate		See 94-MRC-04	See 94-MRC-04		Advertising/Marketing; Outpatient; DSH; audit used in rate setting	Case was on hold due to Facility in Bankruptcy Court. Received approval to continue.
95-MRC-05	North Star Hospital	1993 (Consolidated with Rates 93, 94 & 95, And Audit 93	Rate		See 94-MRC-04	See 94-MRC-04		Advertising/Marketing; Outpatient; DSH; audit used in rate setting	Case was on hold due to Facility in Bankruptcy Court. Received approval to continue.

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

008

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INSLEE BEST

02/02/99 10:45 FAX 425 835 7720

96-MRC-03	North Star Hospital	1996	Rate	Waiting	1/15/99 Parties file and exchange exhibits Facility Pre-hearing Brief is due	February Formal hearing, Feb. 11 to 12, 1999	Advertising Marketing; Outpatient; DSH; Audit used in rate setting	Courts allowed continuance. Facility is in Bankruptcy Court. Jan. 18, Prefiled Testimony is due.
98-MRC-01	North Star Hospital	1997	Rate	Waiting	Hearing Officer sets up status order			DSB add-on and calculation. Adjustments to YEC Report. Adjustments to Medicare Cost Report form 2552-92. Improper use of audits to set rates, Other.
97-MRC-08	North Sound	1998	Rate		Summary Judgment Order at Facility Request			Facility claims failure to follow State Plan using F-Calc.
98-MRC-06	Sitka Community Center	YEC for 1997 and Rate for Year 2000	YEC & Rate	Pre-hearing Scheduling Order	Facility Files Statement of Issues on Jan. 11, 1999, Staff Replies Feb. 5, 1999, Discovery completed May 28, 1999		1997 Year End Conformance and Rate 2000	Small Facility Payment Agreement Appeal. Year End Conformance issues applied in Rate. Formal hearing on August 2 to 6, 1999
JKN-98-401C1	South Peninsula	Various Rates 94-97	Rates	Trial in Kenai tentatively set up for August 23, 1999	Tentative August 23 to 27, 1999	Two day bench trial set up in Kenai Superior Court.	Recovery of permanent versus Interim rates for various years.	Facility claims that Medicaid funds relating to the difference between Interim and final rates is improper.

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

010

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INSLEE BEST

02/02/99 10:46 FAX 425 635 7720

95-AU-02	St. Ann's Nursing Home	1993	Audit	Case is stayed at this point waiting the outcome of the Wesley Case CI	June 15, 1999	Status Conference	Adjustment of routine nursing services adjusted from the ancillary cost center to routine	Facility asked for stay continue for St. Ann's cases due to Wesley case outcome.
95-AU-08	St. Ann's Nursing Home	1994	Audit	Case is stayed at this point waiting the outcome of the Wesley Case CI	June 15, 1999	Status Conference	Request for matter to be continued after the Wesley Superior Court JKN-95-716CI is decided.	Combined with Rate Appeal 96-MRC-07 Case is stayed.
96-MRC-04	St. Ann's Nursing Home	1996	Rate	Case is stayed at this point waiting the outcome of the Wesley Case CI	June 15, 1999	Status Conference	Audit used in rate setting; Ancillary adjustments to routine cost centers	The facility's main claim is that staff can't use audits in rates.
97-MRC-01	St. Ann's Nursing Home	1997	Rate	Case is currently stayed waiting decision on Wesley Civil Case	June 15, 1999	Status Conference	Audits in rates. Ancillary claims	The 1997 rate was based on the appealed 1994 audit which has been stayed pending Supreme Court Decision on the uses of audits in rates
97-MRC-02	Valley Hospital	1997	Rate	Hearing Examiner Issued Partial Summary Judgment on Disproportionate Share Issue		Hearing Examiner Summary Judgment	DSH audits in rate; disallowance of interest; advertising disallowance	1998 audit was not appealed. '97 is rebase year.

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

011

DONNA HERBERT

INSLEE BEST

02/02/99 10:46 FAX 425 635 7720

Case ID	Entity	Year	Type	Description	Status	Notes	References
98-MRC-02	Valley Hospital	1998	Rate		Status Conference	DSH issues audit issues and related overhead allocations	
94-AU-02	Wesley Rehabilitation & Care Center	1991	Audit	Case is stayed pending outcome of Kenal Court case.		Facility to submit proposed Summary Judgment Order to Kenal Superior Court. Administrative Appeal Stayed. Civil Case 3KN-95-716-CI Consolidated cases	(See 95-MRC-04, 95-MRC-03 & 95-MRC-08)
94-AU-05	Wesley Rehabilitation & Care Center	1992	Audit	See 94-AU-02		LTC ancillaries, YEC adjustment and the Boren amendment issues.	(See 95-MRC-04, 95-MRC-03 & 95-MRC-08)
94-AU-01	Wesley Rehabilitation & Care Center	1993	Audit	See 94-AU-02		LTC ancillaries, YEC adjustment and the Boren amendment issues	(See 95-MRC-04, 95-MRC-03 & 95-MRC-08)

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

012

DONNA HERBERT

INSLEE BEST

02/02/99 10:46 FAX 425 635 7720

95-MRC-03 Wesley Rehabilitation & Care Center 1995 Rate See 94-AU-02 LTC ancillaries, YEC adjustment and the Boren amendment issues (See 95-MRC-04, 95-MRC-03 & 95-MRC-06)

95-MRC-04 Wesley Rehabilitation & Care Center 1994 Rate See 94-AU-02 LTC ancillaries, YEC adjustment and the Boren amendment issues (See 95-MRC-04, 95-MRC-03 & 95-MRC-06)

95-MRC-05 Wesley Rehabilitation & Care Center 1996 Rate See 94-AU-02 LTC ancillaries; YEC adjustment and the Boren amendment issues (See 95-MRC-04, 95-MRC-03 & 95-MRC-06)

95-MRC-07 Wesley Rehabilitation & Care Center 1997 Rate Stayed pending outcome of 93 to 96 case Reclassifying ancillary cost to the appropriate routine cost centers and the use of audits in rates Issues similar to 94-96.

MEDICAID RATE ADVISORY COMMISSION
OPEN APPEAL HISTORY

013 94-MRC-05 Wesley
Rehabilitation & 96 Audit &
Care Center 99 Rate Audit & Rate Request for
Exceptional Relief

Reclassifying ancillary cost to the
appropriate routine cost centers and the
use of audit in rates

Order staying Administrative Appeal matter stayed pending the decision on
appeal in Wesley Superior Court Case.

→ DONNA HERBERT

INSLEE BEST

02/02/98 10:46 FAX 425 635 7720

Administrative Appeals Filed from 1/1/90 to 12/4/98

12/4/98

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	4/21/91
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
18	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	Barlett 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	01A	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
29	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	Barlett 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

Administrative Appeals Filed from 1/1/90 to 12/4/98

12/4/98

FACILITY ID #	MRA C 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	5/25/95	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	Cordova 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	5/24/96	6/5/96
23	96-mrc-07	Wesley Rehab. & Care Ctr	01A	8/2/96	8/16/96
04	96-mrc-08	Cordova 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

Donna Herbert, owner



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105 Municipal Way
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April 15, 1999

The Honorable John Torgerson
Alaska State Senate
State Capitol Building
Juneau, AK 99811

Re: SB 106

Dear Senator Torgerson:

On behalf of the facilities I represent, thank you for your efforts and support of SB 106. The current version of CSSB106(JUD) will certainly improve the appeal process that has caused the facilities to be blocked from seeking court resolution. (See enclosed 13 remanded appeals list.)

In your conversations with members of ASHNHA, you stated your intention to offer an amendment to SB 106 that would make changes to the Medicaid rate setting system, in order to 'rectify' the disparity of reimbursement rates for long term care facilities. Although I have not yet had the opportunity to discuss this with you, my understanding of your proposed amendment was a peer group averaging methodology.

The State of Alaska hired Myers and Stauffer to conduct a review on DRG/Case Mix Recommendations. The report, dated August 11, 1998, states in part:

Unsuitability of Peer-Grouped Rates

It was further determined that a peer-grouped base rate methodology would be difficult to implement in Alaska due to the small number of facilities. Alaska hospitals could easily be categorized into two or three groups based on location and size; e.g., Large Urban, Small Rural, and Very Small Rural. However, even if one included Fairbanks Memorial in with the Large Hospitals peer group, there would still be only three facilities in this critical group (which accounts for 80% of all Medicaid inpatient days), and it is not clear how one could set an acceptable rate for a group of three. A system with peer group ceilings will not work well with peer groups smaller than five hospitals, and three is also too few to support the development of a single rate at the peer group average.

Senator Torgerson
April 15, 1999
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The amount of variation in costs between facilities argues against the development of a single statewide base rate methodology. This is especially true if one assumes that some of the observed variation in costs is due to environmental characteristics beyond the control of the provider, and/or differences in case-mix acuity that aren't fully measured by the DRG system. Therefore, we would recommend that the State employ facility-specific base rates, as discussed above, in the proposed pro-forma DRG reimbursement methodology.

I urge you to keep SB 106 in its current format, and pursue the other Medicaid reimbursement system changes in a separate bill. The need to get the appeal process underway, without any further delays, is paramount to keeping some of these facilities from closing down, and ultimately taking away access to health care, and the economic base of some of the communities.

A review of the small co-located rural facilities reveals that although they have the highest rates they only have 8 to 10 beds. They are in fact the facilities that receive the lowest level of Medicaid revenue. They are operating at a net loss, no cash balance, and the inability to update equipment to keep up with the high technology changes in the health field.

Although there needs to be a change in the current system, it is essential that the design of a new system not be placed solely in the hands of the Department, who already do not follow the regulations current in place, but balance the development with the knowledge and recommendations from the industry.

The new bill could propose that a subcommittee be created from members of the Alaska State Hospital and Nursing Home Administration's (ASHNHA) Finance Committee, or their representatives, and 6 members from the Department of Health and Social Services to re-write and further clarify the Medicaid rate setting regulations that are causing 90% of the appeals. Those 6 issues are as follows:

- (1) Year End Conformance -
7AAC 43.691, 7AAC 43.685;
- (2) Volume Changes in LTC -
7AAC 43.685;
- (3) Ancillary definition for LTC -
7AAC 43.686;

Senator Torgerson
April 15, 1999
Page 3

- (4) Arbitrary treatment among facilities - inconsistent from year to year -
7AAC 43.679-680;
- (5) Audits -
7AAC 43.693; and
- (6) Non-reimbursable areas -
7AAC 43.686.

The subcommittee would insure that the rates are based on a fair rate for costs of patient care; and provide access to patient care. The cost of patient care includes reasonable cost of current operations, including salary and wages, purchased services, supplies, insurance, leases, depreciation, taxes, interest expense, maintenance, and other Health Facility operating expenses including education, research, and capital development.

The 6-person Medicaid Rate Advisory Commission prior to 1988, had authority to set rates. Currently it has *advisory* authority only, and two of the 6 positions are held by DHSS employees. The new bill could eliminate the Medicaid Rate Advisory Commission, under AS 47.07.110 - 180. This expensive layer of review does not serve a meaningful streamlined process. The Department could then set rates in a public forum, on a quarterly basis.

I look forward to meeting with you tomorrow. Thank you again for your efforts and assistance.

Sincerely,



Donna L. Herbert

Enclosures

The Hearing Examiners have issued a total of Thirteen Proposed Decisions involving Thirteen cases during the period from January 1, 1990, to December 31, 1998:

1. Our Lady of Compassion Care Center, 90-MRC-02, appeal filed 1/22/90;
 - Proposed Decision issued March 12, 1991;
 - Remanded by Commissioner 4/3/91.
 - Stipulation to Dismiss signed 7/20/94 by Jay Livcy.
2. Central Peninsula, 91-MRC-04, appeal filed 5/23/91;
 - Proposed Decision issued 9/9/94;
 - Remanded by Commissioner 10/10/94;
 - Proposed Decision on Remand issued 10/31/94;
 - Proposed Decision on Remand adopted 11/4/94.
3. Norton Sound, 91-MRC-03, appeal filed 2/20/91;
 - Proposed Decision on Issues Other Than Telephone Lease issued 5/8/95; adopted 6/9/95;
 - Proposed Decision on Telephone Lease issued 11/8/95;
 - Remanded by Commissioner 12/13/95;
 - Proposed Decision on Remand issued 1/4/96;
 - Proposed Decision on Remand adopted 1/22/96.
4. Ketchikan General Hospital, 91-MRC-08, appeal filed 10/2/91;
5. Ketchikan General Hospital, 91-MRC-09, appeal filed 10/21/91;
 - Proposed Decision issued 1/9/96;
 - Remanded by Commissioner 2/14/96;
 - Proposed Decision on Remand issued 2/28/96;
 - Proposed Decision on Remand adopted 3/11/96.
6. St. Ann's Care Center, 95-au-02, appeal filed 2/17/95;
 - Proposed Decision issued 1/2/97;
 - Interim Decision and Order by Commissioner 2/5/97;
 - Order with Instructions on Remand by Commissioner 9/26/97;
 - Status after Remand: Post-hearing briefing schedule set (due 8/98); case stayed 7/29/98 pending outcome of decision in Wesley cases; status hearing 12/15/98.
7. Bartlett Memorial Hospital, 95-au-05, appeal filed 7/21/95;
8. Bartlett Memorial Hospital, 96-MRC-05, appeal filed 3/14/96;
 - Proposed Decision issued 1/14/97;
 - Order with Instructions on Remand issued 12/12/97;
 - Status after Remand: Order Granting Partial Summary Judgment on CON issue, issued 8/20/98; Evidentiary Hearing held 10/20/98-10/29/98;
 - Post-hearing briefing schedule to be set after transcript prepared.
9. North Star Hospital, 94-MRC-04, appeal filed 9/29/94;
10. North Star Hospital, 95-au-03, appeal filed 2/28/95;
11. North Star Hospital, 95-MRC-02, appeal filed 2/21/95;
12. North Star Hospital, 95-MRC-05, appeal filed 5/25/95;
 - Proposed Decision issued 3/27/98;
 - Interim Decision and Order by Commissioner 5/12/98;
 - Proposed Decision After Reconsideration issued 7/28/98;
 - Order of Remand by Commissioner 8/31/98;
 - Status after Remand: Briefing schedule has been set requiring parties to file supplemental briefs with affidavits by 3/5/99.
13. Norton Sound Hospital, 97-MRC-08, appeal filed 10/16/97;
 - Proposed Decision issued 12/31/98.

**LTC PER DIEM RATES
FY 99**

COLOCATED	FREE STANDING	# BEDS	PER DIEM
Sitka		8	\$569.09
Cordova		10	\$452.61
Quyaana Care (Nome)		15	\$429.21
Providence Kodiak Island		19	\$382.43
South Peninsula		20	\$345.73
Ketchikan		46	\$345.21
Wrangell		14	\$320.00
Denali		5	\$319.00
Petersburg		15	\$285.46
	St. Ann's	44	\$282.00
	Mary Conrad	89	\$237.00
	Wesley Rehab	66	\$233.99
	Providence Extended Care	224	\$215.00
	Heritage	45	\$183.11



Donna Herbert, owner

April 6, 1999

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105 Municipal Way
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Juneau, Alaska
99801

The Honorable Robin Taylor
Alaska State Senate
State Capitol
Juneau, AK 99801

Re: Letter from Commissioner Perdue regarding
SB 106 Testimony and reference to
Valley Hospital Appeal Remands

Dear Sue:

Without reviewing the tape again to know when and why Senator Taylor remarked about Valley, I can only guess he was speaking off the cuff, and perhaps referred to the wrong facility. Enclosed is the list of the 13 proposed decisions since 1990 to December, 1998.

The issue at hand remains to be that out of the 13 decisions since 1994, 12 were in the facility's favor. Each one of those has been remanded, at least once. Norton Sound is the only one that was not remanded, and is the only decision that was *against* a facility.

What is relevant in Valley Hospital's appeals is that their 1997 Appeal, Case #97-MRC-02, is that the State appointed hearing examiner made the following findings of facts and comments:

- Affidavit lacks credibility
- Affidavits established a pattern by the agency of preparation and filing of inaccurate and incorrect exhibits . . . illustrating a lack of candor and apparent inability to competently perform the calculation.
- The exhibits submitted by the state has been shown to be inaccurate, unreliable, and to contain unsupported changes in the treatment of source data. The State made misrepresentations about exhibits in its opposition to Valley's motion. Representations made were untrue.
- Findings also indicated that unsupported statements conflict with the agency's past and present treatment. The supervisory's previous testimony is neither credible nor reliable. Agency's conduct is arbitrary and capricious.

Sue Mosgrove

April 6, 1999

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- Successive inaccurate exhibits, each with new allegations of its own "recently discovered" numerous mistakes, and the Staff's continuously changing positions of which patient data to include, illustrated a pattern of arbitrary and capricious conduct, with its sole purpose to attempt to defeat Valley's motion, by changing the data to be included in the calculation.
- Staff changes were deemed to be arbitrary and capricious efforts by the agency to manipulate the data.

To summarize many hidden unidentified changes were undisclosed, leading to misrepresentation of data, and included numerous errors.

Sincerely,

Donna L. Herbert
Donna L. Herbert

for
Enclosure

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
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April 6, 1999

Honorable Robin Taylor
Alaska State Senate
State Capitol Room 30
Juneau, Alaska 99801

Dear Senator Taylor:

Recently, you made comments on the floor of the Senate regarding the handling of Valley Hospital's Medicaid rate appeals by the Department of Health and Social Services. The statements were not correct and require clarification.

As you know, a hospital may appeal its Medicaid reimbursement rate, which is set annually. Upon review and hearing of the appeal, the Hearing Officer prepares a proposed decision and forwards it to me for review. I can either accept the decision as final or remand it back to the Hearing Officer for further work.

You stated on the floor that I have remanded the Valley appeal to the Hearing Officer five times. This is not the case. I have never remanded a Valley Hospital case to the Hearing Officer, and no proposed decisions with regard to Valley Hospital are awaiting my review or action. In fact, there has not been a proposed decision regarding a Valley Hospital appeal before a Commissioner for consideration in the past ten years.

You also made the point that Valley Hospital has been forced to repeatedly appeal the same issues to the Department regarding the setting of its Medicaid reimbursement rate. In the past ten years, Valley has appealed its rate five times. On two of these occasions the rate was settled. One appeal is currently on hold at the request of the facility. Two appeals are currently waiting to be scheduled before the Hearing Officer.

However, these appeals are not based on the same issue, as your remarks suggested. Because Valley gets a new reimbursement rate every year, each appeal is based upon new circumstances and financial issues. So long as the Department sets a new reimbursement rate for each facility each year, the potential for multiple appeals exists.

I know that there are problems with the rate setting and appeals process. Sometimes it does take too long for appeals to work through the system. On two occasions during the past four years, I did take additional time to consider proposed decisions and their subsequent remands. Both of these appeals focused on the Department's authority to audit health facilities and use the results of

Honorable Robin Taylor
April 6, 1999
Page Two

those audits to set the facility's Medicaid rate. Because audits are fundamental to controlling Medicaid facility costs, these appeals (and others like them) could cost the state millions of dollars. I believe the extra consideration of these proposed decisions was reasonable and prudent.

Thank you for your interest in this subject.

Sincerely,



Karen Perdue
Commissioner

cc: Senate Finance Committee
Alaska State Hospital & Nursing Home Association