

SB

106

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/16/99

FURTHER: Finance

Date of 5-Day Notice: 3-18-99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3-23-99

Judiciary Committee considered

SENATE BILL NO. 106

"An Act relating to decisions by the commissioner of health and social services to remand certain health facility payment decisions back to the hearing officers; and amending Rule 602, Alaska Rules of Appellate Procedure."

and recommends:

- be replaced with _____ CS SB106 (Jud)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

SIGNING DO/PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 106(JUD)

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: **Taylor** COMPONENT SERIAL NO. **1434**
 Requestor: **Senate Judiciary** 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 of the committee substitute, 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.

Prepared by: Bob Labbe Phone: 465-3355
 Division: Medical Assistance Date/Time: 3/25/99 9:58 AM
 Approved by Commissioner: Karen Perdue, Commissioner Date: 3/25/99
 Agency: Department of Health & Social Services

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FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. CSSB 106 (JUD)

Revision Date/Time (Note if correction)		Dept. Affected	Law
Title	"... relating to actions of the Department of Health and Social Services regarding certain health facility payments."	BRU	Civil Division
Sponsor	Senator Taylor	Component	Governmental Affairs
Requester	Senate Judiciary Committee	Component Serial No.	2207

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	112.3	112.3	112.3	112.3	112.3	112.3
Travel	0.4	0.4	0.4	0.4	0.4	0.4
Contractual	19.5	19.5	19.5	19.5	19.5	19.5
Supplies	1.7	1.7	1.7	1.7	1.7	1.7
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	140.4	133.9	133.9	133.9	133.9	133.9

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Rcpts	140.4	133.9	133.9	133.9	133.9	133.9
TOTAL	140.4	133.9	133.9	133.9	133.9	133.9

Estimate of any current year (FY99) cost:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

In order to meet the accelerated hearing process called for in CSSB 106 (JUD), the Department of Health and Social Services is proposing to add two new hearing officer positions. The Department of Law anticipates needing one additional attorney position in its Anchorage Governmental Affairs section to handle the increased rate appeal activity generated by the new hearing officers.

Cost estimates are based on the department's FY00 standard attorney cost schedule of \$133,926 and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The cost schedule does not include one-time new equipment purchases, and \$6,500 is added in FY00 only for this purpose.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Ruth M. Boldt *Ruth M. Boldt*
 Agency Department of Law

Phone 465-5370
 Date/Time 3/25/99, 1:43 PM
 Date 3/25/99

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Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



Senator Robin L. Taylor

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Ketchikan, Alaska 99901
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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

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.



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

ATTN: T. Barnister

W/D

LS0424D
3/19/99

1

2

~~PROPOSED~~ AMENDMENTS TO AS 47.07.075 (SB NO. 106)
adopted

3

4

Section 1. AS 47.07.075 is amended to read:

5

(a) Actions of the department regarding health facility

6

payment rates under this chapter and AS 47.25.120-47.25.300 are

7

subject to provisions of AS 44.62 (Administrative Procedure Act) except

8

as provided in (b), (c) and (d) of this section.

9

(b) The commissioner shall [,] by regulation [,] establish

10

time limits applicable to the various phases of an administrative appeal

11

process involving an appeal of the amount of a payment rate set by the

12

department for a facility. The time limits set under the regulations

13

supersede conflicting time limits in AS 44.62.330-44.62.630. The

14

regulations must provide that [(1)] a hearing for an appeal described in

15

this subsection must be scheduled under AS 44.62.410 to occur no more

16

than 120 days after written notice of rate appeal has been received by

17

the department from a facility unless the facility requests a delay or

18

good cause for the delay is demonstrated to the satisfaction of the

19

hearing officer [;].

20

[(2)] (c) [t]The commissioner must, within 30 days after

21

receiving the recommendation of the hearing office, [EITHER] render a

22

New Text Underlined (DELETED TEXT BRACKETED)

1 final administrative decision in the case. If, after 30 days, the
2 commissioner does not render a final administrative decision, the
3 hearing officer's recommendation becomes the final administrative
4 decision. A final administrative decision under this paragraph is
5 subject to judicial review as a final administrative order under
6 AS 44.62.560 and 44.62.570 [OR REFER THE CASE BACK TO A
7 HEARING OFFICER FOR ADDITIONAL FINDINGS;].

8 [(3) (d) (i) If the [EITHER] time limit set under [(1) OR (2)]
9 (b) of this [SUBSECTION] section is not met, the department shall
10 report the noncompliance to the legislature and the governor by the
11 following January 20 with an explanation of the length of delay, reasons
12 for the delay, and proposed corrective action by the department to
13 ameliorate the causes of delay.

14
15
16
17
18
19
20
21
New Text Underlined [DELETED TEXT BRACKETED]

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FAX Transmission Sheet

Date: March 22, 1999
To: Sue Mussgrove
 (907) 465-3922
From: Susan Wright Mason
Subject: Proposed Amendments to AS 47.07.075 (SB NO. 106)
Our File No. 4566-1

Message: Please see the attached Proposed Amendments to AS 47.07.075.

You should receive 4 page(s) including this cover sheet. If there is a problem receiving this transmission, please call (907) 279-9696. Our fax number is (907) 279-4239.

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March 22, 1998

PROPOSED AMENDMENTS TO AS 47.07.075 (SB NO. 106)

Susan Wright Mason

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1-LS0424D
Bannister
3/19/99

*adopted
3/22/99*

CS FOR SENATE BILL NO. 106()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to decisions regarding certain health facility payments."

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

3 * Section 1. AS 47.07.075(b) is amended to read:

4 (b) The commissioner shall [,] by regulation [,] establish time limits applicable
5 to the various phases of an administrative appeal process involving an appeal of the
6 amount of a payment rate set by the department for a facility. The time limits set
7 under the regulations supersede conflicting time limits in AS 44.62.330 - 44.62.630.

8 The regulations must provide that

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

14 (e) ~~(2)~~ the commissioner must, within 30 days after receiving the
15 recommendation of the hearing officer, [EITHER] render a final administrative

1 decision in the case: if, after 30 days, the commissioner does not render a final
2 administrative decision, the hearing officer's recommendation becomes the final
3 administrative decision; a final administrative decision under this paragraph is
4 subject to judicial review as a final administrative order under AS 44.62.560 and
5 44.62.570 [OR REFER THE CASE BACK TO A HEARING OFFICER FOR
6 ADDITIONAL FINDINGS];

7 (d) ~~(s)~~ if the [EITHER] time limit set under (1) [OR (2)] of this subsection
8 is not met, the department shall report the noncompliance to the legislature and the
9 governor by the following January 20 with an explanation of the length of delay,
10 reasons for the delay, and proposed corrective action by the department to ameliorate
11 the causes of delay.

SENATE BILL NO. 106

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR TAYLOR

Introduced: 3/16/99

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to decisions by the commissioner of health and social services
2 to remand certain health facility payment decisions back to the hearing officers;
3 and amending Rule 602, Alaska Rules of Appellate Procedure."

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

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

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

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

1 hearing officer;

(2) the commissioner must render a final administrative decision in the case within 30 days after receiving the recommendation of the hearing officer. If after 30 days no decision is rendered, the hearing officer's recommendation becomes the final administrative decision. A final administrative decision under this section is subject to judicial review as a final administrative order under AS 44.62.560 and 44.62.570.

6 ~~of the referral;~~

-7 (3) if a [EITHER] time limit set under (1) ~~is~~ of this subsection is
8 not met, the department shall report the noncompliance to the legislature and the
9 governor by the following January 20 with an explanation of the length of delay,
10 reasons for the delay, and proposed corrective action by the department to ameliorate
11 the causes of delay.

-12 * Sec. 2. AS 47.07.075 is amended by adding a new subsection to read:

13 (c) In addition to the review of final administrative orders under AS 44.62.560
14 and 44.62.570, a health facility may appeal to the superior court a decision by the
15 commissioner under (b)(2) of this section to refer a case back to a hearing officer.
16 The health facility must file the appeal within 30 days after the health facility receives
17 notice from the commissioner of the decision.

18 * Sec. 3. COURT RULE CHANGES. Section 2 of this Act changes Rule 602, Alaska
19 Rules of Appellate Procedure, by

20 (1) authorizing a right of appeal to the superior court for a decision that is an
21 interlocutory order and not a final decision of an administrative agency;

22 (2) authorizing an appeal even though the administrative agency has not issued
23 a decision that states that it is a final decision and that the claimant has 30 days to appeal;

24 (3) changing the time within which an appeal, as applied to an interlocutory
25 order, may be filed.

26 * Sec. 4. AS 47.07.075(c), enacted by sec. 2 of this Act, takes effect only if sec. 3 of this
27 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,

-28 Constitution of the State of Alaska.

Subject: RE: Amendments to SB 106

Date: Fri, 19 Mar 1999 11:31:22 -0900

From: Doug Wooliver <dwooliver@courts.state.ak.us>

To: "Sue Mossgrove" <Sue_Mossgrove@legis.state.ak.us>

Here it is.

Page 2, lines 2 through 6; delete all material and replace with:

Page 2, line 7 following (1); delete "or (2)"

Page 2, lines 12 through 28; delete all material.

Doug

-----Original Message-----

From: Sue Mossgrove [SMTP:Sue_Mossgrove@legis.state.ak.us]

Sent: Friday, March 19, 1999 11:22 AM

To: Doug Wooliver

Subject: Re: Amendments to SB 106

Doug,

I am having trouble opening you attachment, could you please copy it into an email message.

Thanks

Sue

Reimbursement Rate/Appeals Process



1

Facility reimbursement rates

- \$140 million annual Medicaid expenditure
- Each facility has own rate
- Reimbursement rate pays cost of Medicaid services



2

Facility specific cost report

- Cost report audited by state
- Audited cost basis for reimbursement



3

Rate setting

- Proposed rate reviewed by Medicaid Rate Advisory Commission
- MRAC recommends rate
- Rate set by Department

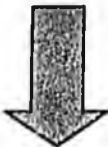


Facility appeals rate to
Commissioner

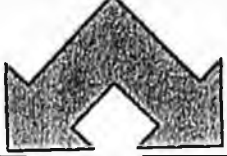
Facility accepts
rate



- 4
1. Rate appeal assigned to Hearing Officer
 2. Hearing scheduled by Hearing Officer, Facility & State
 3. Appeal process: Depositions
Briefing
Evidentiary Hearing
Post Hearing briefing
 4. Hearing Officer writes decision



Commissioner



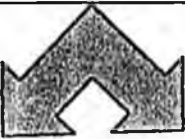
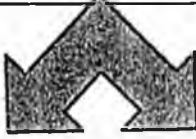
Accept

Remand



Appeal Complete

Appeal Complete



Facility accepts rate

Appeal to Court

Facility accepts rate



Hearing Officer issues new decision to Commissioner