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1-GS2058VD  
Lauterbach  
3/28/00

*accepted  
3/29/00*

**CS FOR SENATE BILL NO. 233(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

3 \* Sec. 3. AS 44.77.015(a) is amended to read:

4 (a) For the purposes of filing claims for medical services provided under  
5 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means [(1)  
6 WITHIN SIX MONTHS AFTER THE DATE OF SERVICE, OR AS PROVIDED IN  
7 (b) OF THIS SECTION, IF THERE IS NO THIRD-PARTY CLAIM, OR (2)] within  
8 12 months after the date of service or as provided in (b) of this section [IF THERE  
9 IS A THIRD-PARTY CLAIM]. Except as provided in (c) of this section, a claim may  
10 not be paid if it is not filed promptly; an inference to the contrary may not be drawn  
11 from AS 09.10.053, AS 09.50.250 - 09.50.300, or AS 37.25.010.

12 \* Sec. 4. AS 44.77.015(b) is amended to read:

13 (b) In accordance with (a) of this section, a claim may be considered to be  
14 filed promptly if (1) the claim was filed more than 12 [SIX] months after the date of  
15 service because the medical provider had reason to believe that the beneficiary was  
16 ineligible for service under AS 47.07 or AS 47.25.120 - 47.25.300; (2) a court of  
17 competent jurisdiction or an administrative hearing officer finds that the beneficiary  
18 was eligible for service under AS 47.07 or AS 47.25.120 - 47.25.300 on the date of  
19 service; and (3) the claim is filed within 12 [SIX] months after the date that the court  
20 or administrative finding is rendered. The beneficiary is responsible for notifying the  
21 medical provider of the judicial or administrative finding. The department shall make  
22 a good faith effort to notify the medical provider of the judicial or administrative  
23 finding if the department has reason to believe that services have been provided to the  
24 beneficiary.

25 \* Sec. 5. AS 44.77.015(c) is amended to read:

26 (c) The commissioner of health and social services may authorize payment to  
27 a medical provider of a claim not promptly filed, upon good cause shown.  
28 [PAYMENTS UNDER THIS SUBSECTION MAY NOT EXCEED 50 PERCENT OF  
29 THE ALLOWABLE CHARGES PRESENTED IN THE CLAIM.]

30 \* Sec. 6. AS 47.05.070 (b) is amended to read:

31 (b) If the department provides or pays for medical assistance for injury or

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

12 \* Sec. 7. AS 47.05.070(c) is amended to read:

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

25 \* Sec. 8. AS 47.05.070 is amended by adding new subsections to read:

26 (e) Notwithstanding (b) of this section, the department may waive the  
27 subrogation rights to all or part of the amount of medical assistance paid on behalf of  
28 a recipient of medical assistance in cases of undue hardship.

29 (f) The department may adopt regulations to interpret and implement this  
30 section.

31 \* Sec. 9. AS 47.05 is amended by adding a new section to read:

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

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

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

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

22   \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section  
23 to read:

24           **APPLICABILITY.** (a) Sections 3 - 5 of this Act apply to all claims for medical  
25 services provided under AS 47 to a recipient of medical assistance that are submitted to the  
26 Department of Health and Social Services on or after the effective date of this Act.

27           (b) Except as provided in (a) of this section, this Act applies to all claims for medical  
28 services that are provided under AS 47 to a recipient of medical assistance on or after the  
29 effective date of this Act.

30   \* **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).

# SENATE COMMITTEE REPORT

DATE: 2/17/00

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 233

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

and recommends:

- be replaced with \_\_\_\_\_ CS SB 233 \_\_\_\_\_ (\_\_\_\_\_)
- 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 <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Rich Hayward</i>	✓		
		<i>J. ...</i>	✓		
CHAIR: <i>Christ ...</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

# 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

February 16, 2000

Honorable Robin Taylor, Chairman  
Senate Judiciary Committee  
Room 119 Capitol Building  
Juneau, AK 99811

Dear Senator Taylor,

The Department of Health and Social Services respectfully requests a hearing in the Senate Judiciary Committee on Senate Bill 233 "An Act relating to priorities, claims, and liens for payment to certain medical services provided to medical assistance recipients; and providing for an effective date."

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

A fiscal note has previously been submitted. The bill was heard by the Senate Health, Education and Social Services Committee and moved without amendment. Your favorable consideration of this request would be appreciated.

Sincerely,



Elmer A. Lindstrom  
Special Assistant to the Commissioner

Cc: Pat Pourchot  
Legislative Director  
Office of the Governor

Bob Labbe  
Director  
Division of Medical Assistance

JOHN KNOWLES

STATE OF ALASKA  
Office of the Governor  
JUNEAU

January 31, 2000

The Honorable Drue Pearce  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear President Pearce:

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

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

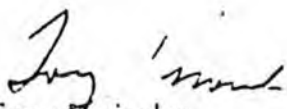
Under existing law, when a state medical assistance recipient has a claim against a third party for the recipient's medical expenses, the department has a right of subrogation. This law allows the department to stand in the place of the recipient to enforce the recipient's claim for medical assistance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

The Honorable Drue Pearce  
January 31, 2000  
Page 2

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

I urge your support of this important legislation.

Sincerely,

  
Tony Knowles  
Governor

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. SB 233

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

**Expenditures/Revenues:** (Thousands of Dollars)

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

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

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

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

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

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

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

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

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**ANALYSIS (cont.):**

**Medicaid Lien and Recovery**

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

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

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

**Timely Filing Period Extension**

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

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

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

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

Net Impact	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
Lien and Recovery (decrease)	(52.7)	(210.7)	(210.7)	(210.7)	(210.7)	(210.7)
Timely Filing (increase)	50.0	200.0	200.0	200.0	200.0	200.0
TOTAL	(2.7)	(10.7)	(10.7)	(10.7)	(10.7)	(10.7)