

ALASKA LEGISLATURE

HOUSE and SENATE

FINANCE COMMITTEE

FILES, 1993-1994

978

52

of audit data in rate setting. HB-155 does none of these. In fact HB-155 makes the audit process much more cumbersome and specifically disallows recovery of overpayment.

#### Discussion

Alaska, through the Medicaid Rate Advisory Commission (MRAC), establishes the rates that the State will pay to hospitals, rural health clinics, home health agencies, surgical centers, and nursing homes, on behalf of medicaid clients. This is a prospective payment rate; it is set prior to the beginning of the facilities budget year. The rate is based on the facilities actual expenditure two years previously. Those expenditures are then inflated forward to the present and thus becomes the basis for the rate. The prospective payment rate is only as accurate as the expenditure information upon which it is based. If the expenditure information from two years previously contains expenditures which are not allowed, the prospective payment rate that is set will be overstated [and] the State will have no way to recoup these overpayments. If the information going into the rate setting system is flawed, the cost containment incentives built into the system fail to work properly.

The audit function is designed to assure that the costs that are included in the base of the rate are an accurate reflection of the facilities costs by auditing for compliance to medical assistance Statutes and Regulations. For example, the payment rate for facility year 1993 will be set on January 1, 1993, but will be based upon costs incurred during facility year 1991. Before the 1993 rate can be accurately set, the audit of facility year 1991 should be completed. Examples of the adjustments proposed in 1992 are contained in appendix B.

Because of the Cordova decision, any costs which are not allowable and are not adjusted through the audit process before the facility budget year is over, cannot be recouped later. Consequently, any audit adjustments which are not included in the calculation of the prospective rate are excess costs which the State will continue to pay. During FY 94, the Department expects to pay hospitals and nursing homes approximately 114 million in medicaid payments. It is critical that the Department has an audit function that rigorously examines the costs which are the basis for these payments.

#### Analysis

A brief summary of the major problems with the bill is as follows:

- \* AS 47.07.087 indicates that audits must be done within

165 days of receipt of year end report, regardless of the delays that may occur because of untimely responses from facilities. A facility can avoid audits simply by delaying responses.

- \* Nothing in the bill talks about the quality of the response from the facility. The facility has a time line for the original submission, however, it only requires a response and does not refer to the completeness or quality of response, and excludes responses to inquiries. Attached is appendix C which documents the original due date of provider submitted information and the date the reports were ultimately available to the department. Appendix D illustrates the extensions in time to respond to audit inquiry requested by facilities being audited during 1992.
- \* The bill is so detailed that virtually any audit will likely get hung up on legal technicality. Much of the detail may be more appropriate in Regulation if the detail is necessary at all.
- \* The actual time available to do audits is very limited (field audits must be finished within 20 days for example).
- \* The bill requires the Medical Rate Advisory Commission (MRAC) to calculate rates twice. The purpose for double calculation is not clear from reading AS 47.07.180.
- \* The bill severely limits the scope of field audits by requiring the department to notify the facility of the areas of focus. This language does not allow auditors to pursue legitimate leads that become apparent as the audit proceeds. Scope limitations only serve to reward the facilities by building improperly reported costs into the payment rate.
- \* Millions of Alaska Medicaid dollars are spent annually paying for out of state home office costs. Because of the short time limitation and the out of state location of these home offices the department will have no opportunity to verify these costs.
- \* Section 1 states that the MRAC staff can do no rate analysis except what is noted as an audit exception or what is agreed to by the facility. This severely limits the scope of the rate setting and budget analysis. Annual budgets which are integral to rate setting are submitted subsequent to the 165 day cutoff for making audit adjustment. The department would therefore be accepting the budget of a facility without the ability to analyze those budgets.

- \* AS 47.07.092 contains language which shifts the burden of correct reporting from the facilities to the departments. If the facility requests an audit adjustment then the department has to include the adjustment or justify its exclusion. This provision of HB 155 would allow a facility to submit new information, or even a new cost report very late in the process, leaving the department no opportunity to verify the information. This provision would likely make void much of the audit effort accomplished prior to the facility submitting adjustments.

The department has many other concerns with this proposed legislation, however attempting to document them all may imply HB 155 can easily become acceptable. The Department does not believe this to be the case.

#### Position

House Bill 155 virtually eliminates the departments ability to audit facilities which expend over 114 million in medicaid dollars. The Bill establishes audit rules and deadlines that will prove to be impossible to meet. Even with a significant increase in staff, the department does not believe that it could maintain an audit function which would comply with Federal medicaid requirements. The department has pointed out several major problems with the legislation. This list is not exhaustive and is meant to be illustrative of the legislations' imbalance toward facilities. If this bill were to pass, the department does not believe that it could guarantee the financial integrity of the medicaid facilities budget. The department could not in good conscience make any promises to the legislature that facility medicaid costs could be contained in any way. We strongly oppose the legislation.

Recommended by:

Michael R. Sanders  
Michael R. Sanders, CPA  
Audit Unit Manager

Date:

2-23-93

Approved by:

Theodore A. Mala, MD, MPH  
Theodore A. Mala, MD, MPH  
Commissioner

Date:

2-24-93

APPENDIX A

and should include in the review process the verification of cost data upon which the facility is reimbursed.

Recommendation No. 3

DHSS should continue to seek statutory revision of Title 47 in order to provide authority for recoupment from health care facilities based on audit results.

Alaska Statute 47.07.074 provides, as a condition of obtaining payment, that a health facility will allow inspection of their records. The Alaska Supreme Court (March 30, 1990) in *City of Cordova v. Medicaid Rate Commission* found that AS 47.07.074 did not provide authority for recoupment from a facility based upon audit results. The Court found that the text of the statute did not state or imply that the amount of payment to the facility would be affected by any audit. The Court further found that no right of recapture was established by DHSS in their agreements with the facilities.

Federal regulation 42 CFR 433.300 directs that quarterly federal payments to the states under Title XIX - Medical Assistance Payments are to be reduced or increased to make adjustment for prior overpayments or underpayments which have been made. A state has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the federal Medicaid payment to the state is made. Adjustment in the payment to the state occurs whether or not recovery is made.

It is essential that the State be able to recoup from facilities payments determined to be inappropriate based upon the result of audits. The lack of recoupment and the federal requirements concerning overpayment of facilities increases the cost of the Medicaid program to the State. DHSS is currently not able to obtain reimbursement from facilities of amounts over paid them, but is required to reimburse the federal government for the amount of federal participation in that overpayment.

In 1991, the department introduced Senate Bill 288 relating to the use of audit and inspection results in recapturing overpayments and reimbursing underpayments to health facilities. However, this bill was not passed by the Legislature. We recommend that the department continue its efforts and seek such a statutory revision in the next legislative session.

In addition, we suggest the department update their agreements with facilities to include provision for the recapture of overpayments identified by the department.

## APPENDIX B

### EXAMPLES OF 1992 AUDIT ADJUSTMENTS

1. A long term care facility included Bingo and Sing Along activities as Ancillary Expenses. Ancillary expenses are to be prescribed by a physician and are reimbursed on an actual cost basis. The result was that the Medicaid program would pay approximately \$50.00 for each patient participating in Bingo or Sing Along. The adjustment records these expenses as reimbursable routine expenses.
2. A branch of a national long term care facility included \$35,000 in interest paid to the home branch. The adjustment disallows the interest as a non arms length transaction.
3. A long term care facility charges \$2.55 per day for Medical Supplies for non Medicaid patients and \$7.50 per day for Medical Supplies for Medicaid patients. The adjustment makes the charges equal.
4. A long term care facility reported more interest revenue offset than is required. Medicaid requires that interest revenue be offset only to the extent of interest expense.
5. A hospital failed to report its' full depreciation amount. The adjustment added the reimburseable cost.
6. A long term care facility's cost report contained Form A-8 adjustments recorded backward. The correction would increase the facility's reimbursement rate.
7. A hospital includes the cost of clinics in its cost report. The clinics are reimbursed differently under the system, similar to the method for reimbursing non hospital clinics. The adjustment removed the clinics from the hospital cost report.
8. A hospital included lobbying fees in the cost report. Lobbying fees are not reimbursable Medicaid expenses and were removed from the cost report.
9. Several long term care facilities included items like combs, shampoo, and bath powder as Medical Supplies an ancillary. Medicaid considers these items to be routine.
10. A branch of a national hospital chain continues to respond to inquiries by saying the records are maintained at the national location and requests for the information are rarely forthcoming.

Appendix B  
Page 2

11. Several long term care facilities included costs salary and other cost in ancillary which are always considered routine by Medicare reimbursement standards. Ancillary are reimbursed at a rate to reflect 100% of base period costs. The audit adjustment reclassified the costs as routine.
12. Approximately two thirds of all hospital and nursing homes pay for services from an out of state home office. These costs are reported on home office cost reports. Medicare intermediaries audit the home office cost, however the result of those audits are not available to the department until well after the deadlines for completion of the departments audits.

APPENDIX C

UNTIMELY REQUESTS

| <u>Facility</u>         | <u>1st Extension</u>             | <u>2nd Extension</u> |
|-------------------------|----------------------------------|----------------------|
| Cent. Peninsula         | 11/3/92 (30 days)                |                      |
| Heritage Place          | 11/3/92 (30 days)                |                      |
| Humana Hosp.-Alaska     |                                  |                      |
| Ketchikan General Hosp. | 2/23/92 (30 days)                |                      |
| OLOC                    | 10/15/92 (30 days)               | 2/1/93 (105 days)    |
| Providence Hosp.        | 11/9/92 (30 days)                |                      |
| Sitka Community Hosp.   | 3/5/92 (no response letter sent) |                      |
| South Peninsula         | 9/4/92 (30 days)                 |                      |
| Wrangell                | 7/18/92 (30 days)                |                      |
| St. Ann's               | 2/8/93 (30 days)                 |                      |
| Valley Hospital         | 11/22/92 (30 days)               | 3/1/93 (60 days)     |

APPENDIX D

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Medicaid Rate Advisory Commission

| <u>Facility</u>         | <u>Type</u> | <u>FYE</u> | <u>DUE</u> | 1992<br><u>YEC</u><br><u>Report</u><br><u>Rec'd</u> | <u>Comments</u>   |
|-------------------------|-------------|------------|------------|---|-------------------|
| Alaska Psychiatric Ins. | LTC         | 6/30       | 10/28      | 10/28/92  | Complete          |
| Bartlett Memorial Hos.  | Acute       | 6/30       | 10/28      | 11/05/92  | FS not recieved   |
| Central Peninsula       | Acute       | 6/30       | 10/28      | 10/29/92  | Complete          |
| Cordova Comm. Hosp.     | Comb.       | 6/30       | 10/28      | 01/11/93  | Complete 02/12/93 |
| Harborview Devel. Ctr.  | ICF/MR      | 6/30       | 10/28      | 12/21/92  | Ext. to 12/15/92  |
| Hope Cottages           | ICF/MR      | 6/30       | 10/28      | 12/24/92  | Ext. to 12/28/92  |
| Ketchikan Gen. Hosp.    | Comb        | 6/30       | 10/28      | 10/02/92  | 10/20/92 Complete |
| North Star Hospital     | Acute       | 6/30       | 10/28      | 10/29/92  | 11/15/92 Complete |
| Petersburg Gen. Hosp.   | Comb.       | 6/30       | 10/28      | 10/14/92  | Complete          |
| Seward Gen. Hosp.       | Acute       | 6/30       | 10/28      | 12/31/92  | Ext. to 12/31/92  |
| Sitka Comm. Hosp.       | Acute       | 6/30       | 10/28      | 10/28/92  | Complete          |
| So. Peninsula Hosp.     | Comb.       | 6/30       | 10/28      | 10/15/92  | FS not received   |
| Wesley Rehab. Ctr.      | LTC         | 6/30       | 10/28      | 10/09/92  | Complete          |
| Wrangell Gen. Hosp.     | Comb.       | 6/30       | 10/28      | 10/09/92  | Complete          |
| Humana Hosp.            | Acute       | 8/31       | 10/28      | 12/29/92  | Complete          |
| Charter North           | Acute       | 9/30       | 10/28      |   | Ext. to 3/29/93   |
| Kotzebue Sen. Citi.     | LTC         | 9/30       | 10/28      |   | Ext. to 3/29/93   |
| Norton Sound            | Comb.       | 9/30       | 10/28      |   | Ext. to 3/29/93   |

# STATE OF ALASKA

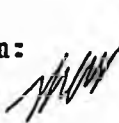
## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER  
APPENDIX E

WALTER J. HICKEL, GOVERNOR

AUDIT UNIT  
P.O. BOX 110602  
JUNEAU, ALASKA 99811-0602  
PHONE: (907) 465-3120

### M E M O R A N D U M

Date: February 23, 1993  
To: Jay Livey  
Deputy Commissioner  
From:  Michael Sanders  
Audit Unit Manager  
Subject: Status of Audits

During the past twelve months the Department has made significant progress in facilities audits.

As you know we have been contracting with KPMG Peat Marwick for the past audits, while Department staff auditors have been doing audits of current base periods.

During the past several months KPMG Peat Marwick has forwarded to this office for review, forty-nine Preliminary Facility Audits.

The first contract still has eight pending Facility Audits for which KPMG Peat Marwick awaits provider response. The completion of these eight audits will represent a total audit coverage for 1989 and all prior fiscal years.

While this effort has been taking place, the Department staff has issued seventeen Preliminary Audits of current base periods, fiscal years 1990 and 1991. The Department staff is currently engaged in fifteen fiscal year 1992 audits which will be used for the prospective payment rate for fiscal year 1994.

Contract audit effort at KPMG Peat Marwick on the fiscal year 1990 audits has just begun and results from that contract are expected in July, 1993.

#### Conclusion:

Real progress has been made in the last year toward the goal of all past years audits issued and audit total effort is focused on the current base periods. This has been accomplished through a high level of competent dedication of staff and contract auditors.

# HOSPITAL & NURSING HOME

ASSOCIATION

February 15, 1993

Section by Section analysis of HB 155 "An Act relating to audits of health facilities.":

Section 1. AS 47.07.070 (a) allows the Department of Health & Social Services (DHSS) to use only final audit adjustments and other adjustments or rate revisions agreed to by the facility in setting prospective rates of payment

Section 2. AS 47.07.074 (b) (1) & (2) defines the department's authority to audit health facility records to:

- (1) Determine accuracy of information used to set Medicaid rates
- (2) Ensure compliance with the law

Section 3. AS 47.07.082 (a) sets 120 days after their fiscal year end as the deadline for facilities to file their year-end reports with DHSS

Section 3. AS 47.07.082 (b) gives DHSS 30 days after receiving a facility's year end report to do a preliminary review of it and decide whether a field audit or a desk audit will be conducted of the facility.

Section 3. AS 47.07.084 (a) (1) - (6) If DHSS is to conduct a desk audit, the procedures are:

- (1) Notify the facility in writing within 30 days of DHSS receipt of year-end report. Submit questions regarding the year-end report to the facility.
- (2) The facility may respond to the DHSS questions within 30 days.
- (3) DHSS shall issue its preliminary desk audit report within 30 days after the facility response deadline.
- (4) The facility may respond to the preliminary report within 30 days.
- (5) DHSS shall issue a final desk audit report within 30 days after the facility response deadline.
- (6) The facility has 30 days after receiving the final desk audit report to request a hearing if they disagree with the audit.

Section 3. AS 47.07.084 (b) allows DHSS to initiate field audits.

Section 3. AS 47.07.086 (1) - (11) If DHSS is to conduct a field audit, the procedures are:

- (1) Notify the facility in writing within 30 days of DHSS receipt of year-end report. Submit questions regarding the year-end report to the facility.
- (2) The facility may respond to the DHSS questions within 30 days.
- (3) DHSS shall give 10 days written notice of the date field audits will begin.
- (4) DHSS shall complete field audits within 60 days of receiving year-end reports.
- (5) The lead auditor is required to conduct an entrance conference

Section 3. AS 47.07.086 (1) - (11) If DHSS is to conduct a field audit, the procedures are: (Continued from page 1)

- (6) The lead auditor is required to conduct an exit conference
- (7) The facility has 20 days to submit information responding issues raised at the exit conference
- (8) DHSS shall issue its preliminary field audit report within 30 days after the facility response deadline.
- (9) The facility may respond to the preliminary report with 30 days.
- (10) DHSS shall issue final field audit report within 30 days after the facility response deadline.
- (11) The facility has 30 days after receiving the final field audit report to request a hearing if they disagree with the audit.

Section 3. AS 47.07.087 sets the latest date for DHSS to complete a final audit report at 165 days after the date the facility's year-end report was due or filed whichever was later.

Section 3. AS 47.07.088 (1) - (6) sets the minimum contents required in preliminary and final audit reports as:

- (1) criteria that form the basis of the audit
- (2) findings describing noncompliance or errors by the facility or the department
- (3) a statement of causation describing the reasons for noncompliance or errors
- (4) specific audit adjustments based on the findings
- (5) a revised cost report
- (6) attachments including all responses and comments submitted by the facility

Section 3. AS 47.07.90 allows DHSS to perform audits using their own staff, private contractors or the staff of the Medicaid Rate Advisory Commission. All audit work shall be performed in compliance with AS 47.07.082 - 47.07.088.

Section 3. AS 47.07.092 (a) & (b) allows a facility to request that DHSS include specified audit adjustments in the audit report. DHSS must either include the requested adjustments or state in the final report the basis for not including them.

Section 3. AS 47.07.092 (c) allows a facility to request a formal administrative hearing on requested specified adjustments within 30 days after the 165 day deadline in AS 47.07.087 if DHSS has not met that deadline.

Section 3. AS 47.07.092 (d) says if adjustments requested by a facility are determined correct, any resulting rate revision is to be applied to all affected fiscal periods.

Section 3. AS 47.07.094 (a) prohibits use of results of audits for fiscal periods before the rate year.

Section 3. AS 47.07.094 (b) (1) says audit results may not be applied for the rate year if DHSS misses the 165 day deadline in AS 47.07.087.

Section 3. AS 47.07.094 (b) (2) says audit results may not be applied for any fiscal year that begins fewer than 80 days after the facility receives the final audit report.

Section 3. AS 47.07.096 (a) - (e) establishes the process DHSS is to follow to implement the results of a final, unappealed audit or rate decision. A facility is allowed to request a formal administrative hearing within 30 days after receiving written notice of the rate revision or lump-sum adjustment.

Section 4. AS 47.07.180 describes the process to be followed by the Medicaid Rate Advisory Commission in calculating proposed rates.

Section 3. AS 47.07.900 provides definitions of "desk audit"; "facility", "field audit"; and "rate year".

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

Representative Gary Davis  
Capitol Room 15  
Juneau, Alaska 99801

March 3, 1993

Dear Representative Davis:

During the February 24 hearing on HB 155, "An Act relating to audits of health facilities", Representative Vezey asked what ASHNHA members think would happen if HB 155 passed without the fiscal note providing six new positions.

ASHNHA members believe the Department of Health & Social Services currently has sufficient personnel to complete the timely audits required by HB 155. Their current year (fiscal year 1993) budget shows that they have 12 auditors and budget analysts in the Audit Unit and the Medicaid Rate Advisory Commission.

These 12 people work on the audits and rate setting calculations for only 27 hospitals and nursing homes in Alaska. As shown on the attached worksheet, they have enough personnel to spend 725 hours on the audit of each of the 27 facilities. That's over nineteen work weeks for each audit.

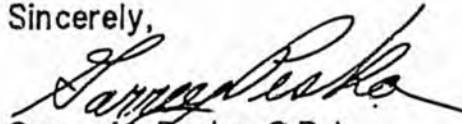
If the department completes an audit late after passage of HB 155, the department would still be able to make any necessary rate adjustments.

In HB 155, section 47.07.094 (bottom of page 5) says the department may not retroactively apply late audit results. At the top of page 6 of the bill, there is a provision that allows the department to apply audit results to fiscal years subsequent to completion of the final audit report.

So in answer to the question: if an audit is completed late, the results (if HB 155 passes) could be applied to fiscal years that begin more than 80 days after the facility receives the final audit report.

Please let me know if you have any additional questions.

Sincerely,



Garrey M. Peska, C.P.A.  
Vice President, Financial Affairs

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

## ASHNHA Position on HB 155 Fiscal Notes

Members of the Alaska State Hospital and Nursing Home Association (ASHNHA) share the concern that has been expressed about the fiscal notes submitted by the Department of Health & Social Services (DHSS) on HB 155 "An Act relating to audits of health facilities".

ASHNHA members believe that both of the fiscal notes submitted are inappropriate.

The department characterizes the \$4.0 million fiscal note as "Additional Medical Assistance payments to facilities because of a reduction in audit control effectiveness."

During the House HESS Committee hearing on February 24, 1993, DHSS representatives were unable to explain how there would be an additional \$4.0 million in payments to facilities if HB 155 becomes law.

In fact, they said the budget would not actually increase by \$4.0 million. They also said that in all of the audits they have worked on so far they "have found no fraud or abuse". Yet they maintain that somehow the facilities will wind up with \$4.0 million they should not have.

The DHSS has made it clear that they do not want to be required to complete these audits on a timely basis. For that reason they have planted a huge fiscal note on HB 155 in hope of sinking the bill with the weight of the \$4.0 million.

The smaller fiscal note requesting five new auditors and a new data processing person is also unnecessary in ASHNHA's opinion. These new staff positions would give the audit and Medicaid Rate Advisory Commission staff a total of 18 auditors, budget analysts and data processing people.

Their FY '93 budget shows they have three clerical support staff so if they were to get the new positions requested in the fiscal note, they would have 21 people to do the audits and set the Medicaid reimbursement rates for 27 facilities.

The attached calculation of "DHSS Audit and MRAC staff positions available" shows that if a C.P.A. firm spent as many hours on these audits as the DHSS has available, the audits would cost over \$70,000 per year per facility.

ASHNHA members believe the department has sufficient resources available now to do this job and that the fiscal notes should be disapproved by the legislature at the time of passage of HB 155.

Assume that each position represents 1,702.5 annual productive work hours:

|  |                    |                               |
|--|--------------------|-------------------------------|
| Total weeks available  | 52.0 weeks         |                               |
| Less: Vacation, Holidays &<br>Sick Leave                           | <u>(6.6)</u> weeks |                               |
| Total productive weeks available                                   | 45.4 weeks         |                               |
| Hours per week   | <u>37.5</u> hours  |                               |
| Productive annual hours available per auditor<br>(45.4 x 37.5)     | 1,702.5            |                               |
| Audit staff auditor positions                                      | <u>X 6</u>         |                               |
| Total audit staff hours available                                  |                    | 10,215.0 hours                |
| Productive hours   | 1,702.5            |                               |
| MRAC staff auditor positions                                       | <u>X 3</u>         | 5,107.5 hours                 |
| (2 new requested auditors would bring it to 5 in '94)              |                    |                               |
| Productive hours   | 1,702.5            |                               |
| MRAC budget analysts & director                                    | <u>X 3</u>         | <u>5,107.5 hours</u>          |
| <u>Total hours available</u>                                       |                    | 20,430.0 hours                |
| Less 1/2 position for monitoring grantee audits<br>(See Page 2*)   |                    | <u>*(851.25) hours</u>        |
| <u>Hours available for Medicaid audits &amp; rate calculations</u> |                    | 19,578.75 hours               |
| Medicaid facility audits   |                    | 27                            |
| Hours per audit (20,578.75 ÷ 27)                                   |                    | <u>725.14 hours per audit</u> |

If you assume an hourly billing rate of \$100.00 for a C.P.A. firm to do these audits, the cost based on 725 hours per facility would come to \$72,500 for each hospital and nursing home in the state that receives Medicaid.

Footnote:

\*According to the department's budget document, the audit unit keeps track of grantees who are required to have an independent C.P.A.'s audit. Since the audit unit doesn't do the grantee audit but receives reports on about 100 grants per year, it is assumed that less than 1/2 time position (851.25 hours) is needed to receive and file the reports.

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

Representative Gary Davis, Vice Chair  
House HESS Committee  
Room 15 Capitol Building  
Juneau, Alaska 99811

January 11, 1992

Dear Representative Davis:

Thank you for agreeing to review this information regarding the Alaska State Hospital and Nursing Home Association (ASHNHA) concerns about the Medicaid audit process.

Enclosed with this letter are the following supporting documents:

1/21/92 letter to Senator Arliss Sturgulewski detailing ASHNHA's position on the Medicaid audit process.

Transcript of testimony offered to the Senate HESS Committee on February 7, 1991 regarding Senate Bill 28A.

6/27/91 letter to Commissioner Mala from Petersburg General Hospital.

7/1/91 letter to Harlan Knudson describing the legislative history of the Medicaid prospective payment system in Alaska.

Draft of proposed legislation prepared by ASHNHA for introduction in the 1993 legislative session.

Until about three years ago, the Medicaid Rate Commission had final authority to set the rates used to reimburse hospitals and nursing homes for Medicaid covered services.

At that time, the Medicaid Rate Commission was changed to the Medicaid Rate Advisory Commission (MRAC). The Executive Order making the change moved the final rate setting authority to the Commissioner of the Department of Health & Social Services (DHSS).

The MRAC then became an advisory commission with the Director reporting to the Commissioner's Office.

When the change was made in the MRAC status, there was a process for hospitals and nursing homes to appeal rates set by the MRAC staff. That appeal process has broken down. Over forty Medicaid rate appeals are currently outstanding.

Two years ago the legislature passed a bill requiring that a new appeal process be put in regulation. The department has not complied with that legislation.

The DHSS Audit Division audits hospitals and nursing homes to see if the Medicaid reimbursement rates pay for eligible costs only. When the MRAC became an advisory commission, a detailed audit process was designed and adopted by the DHSS. That process has never been implemented.

There are many ongoing disputes over the use of audit adjustments by the MRAC staff in setting reimbursement rates. Facilities are not given adequate opportunity to respond to proposed audit adjustments during conduct of the audit. The Department is reducing current reimbursement rates based on proposed audit adjustments which has resulted in the filing of appeals and the setting of temporary rates.

Audits as far back as 1986 have not yet been finalized. It is inefficient, costly and unfair for facilities to have to respond to audits which are several years old.

The enclosed draft legislation would allow adjustment of current rates for only timely and final audit adjustments.

DHSS has tried to recoup funds from some of the medical facilities based on audit adjustments from old audits.

ASHNHA sued DHSS over the attempted recoupments. ASHNHA's argument is that since Alaska's Medicaid rates are set prospectively (before the beginning of the rate year), then recoupment is improper except in cases of fraud or misrepresentation. The Alaska Superior Court agreed with ASHNHA's position and the department appealed the decision to the Supreme Court.

The Supreme Court agreed that the law does not provide for retrospective recoupment from hospitals and nursing homes except in cases of fraud or misrepresentation.

DHSS then introduced SB 288 in 1991 which said the department could conduct audits and recoup funds as a result of audit findings.

ASHNHA opposed the DHSS version of SB 288 and the enclosed package includes ASHNHA's position statements. Senate Bill 288 died in the Senate HESS committee after one hearing.

ASHNHA believes that the Medicaid audit process should be detailed in writing. The DHSS as well as the facilities should be required by law to adhere to the audit process.

When DHSS makes an adjustment to a facility's rate, it has a serious financial impact on the facility. The MRAC staff should not be allowed to make rate changes unilaterally and the audits should be timely completed.

The attached proposed bill for introduction in the 1993 legislative session is designed to set out a clear process for DHSS and the facilities in the conduct of Medicaid audits of hospitals and nursing homes.

The main features of the proposed bill are:

Defines the department's authority to audit health facility records to:  
Determine accuracy of information used to set Medicaid rates  
Assure compliance with the law

Sets the deadline for facilities to file year end reports. (120 days after year end)

Sets deadlines for DHSS to complete:  
Preliminary review of year end reports  
Preliminary desk audit report  
Preliminary field audit report  
Final field audit report

Sets deadlines for facilities to respond to audit findings and reports

Requires DHSS to give facilities written notice of intent to conduct field audits

Requires DHSS to hold entrance and exit conferences with a facility representative

Requires DHSS to provide facilities with copies of work papers on request

Allows facilities to submit written responses before audits are finalized

Specifies minimum information to be included in audit reports

Allows facilities to request formal administrative hearings on disputed rates  
Prevents implementation of disputed adjustments before a final  
administrative or judicial decision is issued

Sets deadlines for completion of final audit reports

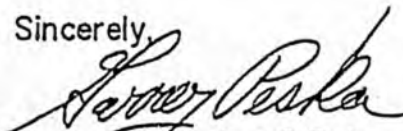
Defines the process for MRAC staff using audit reports in setting rates

Allows facilities to report errors in rates and provides for resulting adjustments

Specifies the process for late audit report adjustments to affect future rates

Please feel free to contact me if you have questions about the ASHNHA audit  
process proposal.

Sincerely,



Garrey M. Peska, C.P.A.  
Vice President - Finance

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

January 21, 1992

Senator Arliss Sturgulewski, Chair  
Senate Health, Education & Social Services Committee  
Room 427, Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Senate Bill 288 is:

"An Act relating to audits and inspections of health facilities receiving payment for medical assistance for needy persons and to the use of audit and inspection results in recapturing overpayments and reimbursing underpayments to such health facilities; and providing for an effective date"

This bill is currently in the Senate Health, Education & Social Services Committee.

The Alaska State Hospital and Nursing Home Association (ASHNHA) is opposed to SB 288.

The current Medicaid reimbursement system is a prospective rate setting system. Each facility's reimbursement rates are negotiated and set before the beginning of the fiscal year. If the facility is efficient and costs are lower than the pre-determined Medicaid reimbursement rate, the facility shares a profit with the state. If they are inefficient and costs exceed the reimbursement rate, the facility takes a loss.

SB 288 would change the Medicaid reimbursement system to allow for recoupments based on audits completed long after the end of the facility's rate year.

The attached June 27, 1991 letter from Gary Grandy, Administrator of Petersburg General Hospital details the objections facilities have to this attempt to create a retrospective reimbursement system through audit findings.

The attached July 1, 1991 letter from Stephen Rose of Inslee, Best, Doezie & Ryder, P.S. details the legislative history of the statutes which established the prospective Medicaid reimbursement system in Alaska.

According to research done by Mr. Rose, the Federal Government has recognized this problem. The Health Care Financing Administration (HCFA) asked for comments on the subject in 1981 and offered the following statement:

"... we are concerned that the retroactive adjustments in payments that could be required as a result of audit findings might, in some cases, conflict with the requirements of State payment systems. This potential for conflict could arise because some payment systems, especially those that use prospectively determined class rates, do not allow adjustments to be made after a payment rate is determined." (Emphasis mine)

(HCFA Request for Comments, 46 Fed.Reg. 47,957 - 1981)

After reviewing comments on the issue, HCFA decided not to require retroactive adjustments in conflict with prospective payment systems.

ASHNHA membership believes that the state must have the authority to conduct timely audits of the facilities.

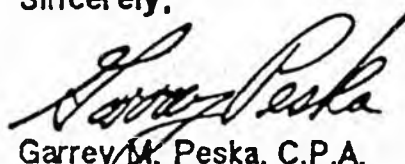
ASHNHA membership further believes that the state currently has sufficient authority to conduct timely audits and use audit adjustments in setting facility reimbursement rates.

The primary ASHNHA objection comes when the state conducts audits years after the end of the fiscal year under audit then tries to recoup costs based on those audits.

Audits of 1985 facility operations are still not completed. ASHNHA membership believes that backlog is unacceptable. Facility costs incurred in 1985 were used to set reimbursement rates for 1987. It does not seem reasonable at this late date for the state to attempt to recoup costs that were set five years ago under a prospective reimbursement system.

Please let me know if I can answer questions or provide your committee with additional information.

Sincerely,



Garrey M. Peska, C.P.A.  
Vice President for Financial Affairs

Enclosures

TESTIMONY PRESENTED BY THE ASHNHA SUBCOMMITTEE ON SB 288

SENATE FINANCE COMMITTEE - FEBRUARY 7, 1992

The ASHNHA members are not opposed to the department having the authority to conduct Medicaid audits.

The members believe rates should be set based on timely audit information.

They are opposed to this bill because it reverses the basic concept of prospective rate setting in Alaska's Medicaid reimbursement system.

Alaska has a prospective rate setting system now.

That means each facility's reimbursement rates are negotiated and set before the beginning of the fiscal year.

If the facility is efficient and costs are lower than the pre determined Medicaid reimbursement rate, the facility shares a profit with the state.

If they're inefficient and costs exceed the reimbursement rate, the facility takes a loss.

SB 283 would change the Medicaid reimbursement system to allow for recoupment based on audits completed long after the end of the facility's rate year.

The department has an audit backlog that spans several years now.

The facilities don't think it's reasonable to do an audit 4 or 5 years late and then ask them to pay money back to Medicaid because the audit discloses misinterpretations or disagreements over the meanings of regulations.

If fraud is indicated, ASHNHA believes the state does have and should have the authority to recover the funds.

In the Supreme Court decision that caused the state to introduce this bill, the Court said:

"We would have no hesitation in ordering a refund of money which had been awarded based on false representations. Likewise, if the grant had been expended for an illegal purpose, a refund would be appropriate. However, those situations do not exist here."

ASHNHA finance officers have offered a number of suggestions for how the department might be able to clear up the audit backlog and stay current.

For example: ASHNHA members believe the department should make more use of desk audits instead of full field audits especially for the facilities that receive the least amount of Medicaid funds.

The ASHNHA members believe the department auditors should focus their audit procedures on those financial areas that affect the prospective rate setting process.

There are often audit adjustments that reclassify assets or revenue accounts when those adjustments have no affect on Medicaid reimbursement rates. We also see audit adjustments for \$5 or \$10.

The current year Medicaid appropriation for facilities is \$109 million. \$5 and \$10 adjustments are not worth the auditors' time.

Generally, auditors will establish a materiality threshold and they won't even bother with audit adjustments below the threshold dollar amounts.

Many of the adjustments made by the department's audit division are to account for differences between the Medicaid cost reports and the facility's independently audited financial statements.

ASHNHA members believe the department should require such reconciliations between cost reports and financial statements to be submitted by the facilities in a standardized format to save audit staff time.

ASHNHA members believe that the department's Medicaid audits could be done on a timely basis if the audit scope and purposes were better defined, and more desk reviews were performed in lieu of full field audits.

If this bill is to pass, ASHNHA members believe it should include a requirement that the Medicaid audits be timely completed.

ASHNHA members believe timely completed means within six months of the date the facility has to submit the final Medicaid cost reports for the year.

The example on the following page shows a suggested process to complete a timely audit cycle:

EXAMPLE OF PROSPECTIVE 1993 RATES BASED ON AUDITED INFORMATION  
FOR FACILITIES WITH A DECEMBER 31 FISCAL YEAR END (HB 155 - 2/15/93)

| <u>Date Due</u>        | <u>Desk Audit</u>  | <u>Field Audit</u>   |
|------------------------|--|--|
| 4/30/92                | Facility's 1991 year end reports submitted to the department.  | Facility's 1991 year end reports submitted to the department.  |
| 5/30/92                | Department conducts preliminary review of year end reports. Department submits questions regarding year end reports. | Department decides to do a field audit. Department submits questions regarding year end reports.         |
| 6/29/92                | Facility responds to department's questions.   | Facility responds to department's questions. Department completes field audit, conducts exit conference. |
| 7/19/92                |  | Facility may submit additional information.  |
| 7/29/92                | Department issues preliminary audit report (PAR).  | Department issues preliminary audit report (PAR).  |
| 8/28/92                | Facility responds to PAR   | Facility responds to PAR.  |
| 9/27/92                | Department issues final audit report (FAR).  | Department issues final audit report (FAR).  |
| 10/12/92               | Latest date (165 days) for receipt of FAR.   | Latest date (165 days) for receipt of FAR.   |
| 10/27/92-<br>11/11/92  | Facility deadline to request administrative hearing on FAR issues.   | Facility deadline to request administrative hearing on FAR issues.                                       |
| 10/27/92 -<br>11/25/92 | MRAC staff calculates proposed rates based on FAR items not appealed.  | MRAC staff calculates proposed rates based on FAR items not appealed.                                    |
| 11/25/92*              | MRAC announces 12/15/92 meeting and submits proposed rate calculations to facility.                                  | MRAC announces 12/15/92 meeting and submits proposed rate calculations to facility.                      |
| 12/15/92*              | MRAC recommends rate   | MRAC recommends rate   |
| 12/31/92               | Department sets rate   | Department sets rate   |

\* In practice these dates could vary slightly. Under existing regulations the MRAC must give 20 day advance notice of meetings.

## SENATE BILL NO. 288

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 5/13/91  
Referred: HES, Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to audits and inspections of health facilities receiving payment for medical  
2 assistance for needy persons and to the use of audit and inspection results in recapturing  
3 overpayments and reimbursing underpayments to such health facilities; and providing for  
4 an effective date."

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

6 \* Section 1. FINDINGS. The legislature finds that

7 (1) the state commits a substantial amount of public money to provide medical assistance  
8 for eligible needy persons in Alaska, approximately 50 percent of which is reimbursed by the federal  
9 government for services covered by medicaid;

10 (2) the budget for medical assistance in Alaska has dramatically increased over the past  
11 10 years, and in fiscal year 1991 exceeded \$180,000,000;

12 (3) approximately 55 percent of the total medical assistance budget is paid to facilities  
13 that provide necessary hospital and nursing home services to needy persons eligible for the program;

14 (4) in 1983 the legislature authorized the facilities' rates for medical assistance to be set

1 it considers in making its rate determinations under this section. A rate set under this  
2 section does not take effect until it is approved in writing by the commissioner of health  
3 and social services or the agency assigned by the commissioner to perform this function.  
4 The written determination of a rate set by the department after a hearing must include a  
5 statement of the department's findings, a description of the basis of the findings and  
6 conclusions, a citation to the regulations supporting the findings and conclusions, and a  
7 statement of the decision.

8 \* Sec. 3. AS 47.07.070 is amended by adding a new subsection to read:

9 (g) The department may conduct audits and inspections of a health facility's  
10 records to assure compliance with state and federal law. Using the results of the  
11 department's audits and inspections, the department shall

12 (1) recapture amounts due from the facility through assessment, adjustment  
13 to the facility's prospective rate, or withholding from payments due to the facility under  
14 this chapter and AS 47.25.120 - 47.25.300; or

15 (2) make a payment to the facility for any amount due to the facility as  
16 a result of the audit or inspection.

17 \* Sec. 4. Sections 2 and 3 of this Act are retroactive to July 26, 1983.

18 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

PETERSBURG GENERAL HOSPITAL  
and Long Term Care Facility

Phone: (907) 772-4291  
P.O. Box 589  
Petersburg, Alaska 99833

RECEIVED

JUL 02 1991

AK HOSPITAL &  
NURSING HOME ASSOC.

June 27, 1991

Theodore A. Mala, M.D., M.P.H.  
Commissioner  
Department of Health & Social Services  
P.O. Box 8  
Juneau, Alaska 99811-0601

Dear Commissioner Mala:

Re: 1985 Audit Issue & Senate Bill No. 288

On June 18th, 1991, Karl Garber, Financial Officer for our Lady of Compassion Care Center, and I met with Jay Livey by teleconference regarding the status of the 1985 Appeals and the Senate Bill No. 288. As a follow-up to that meeting, I am writing you to ascertain that you understand some of the issues that remain unresolved and to solicit your assistance in reaching a satisfactory decision for all concerned.

I re-emphasize what I stated when Mr. Garber and I met with you on April 9th, 1991, that my bottom line concern is to put an end to the continuing legal fees that are costly for both the facilities and the State of Alaska.

Therefore, it is imperative that you understand our position. First, we believe that the State's position that there are millions of dollars that need to be recovered from the facilities is a wrong premise for the following reasons:

1. The Supreme Court Decision in the City of Cordova, et al vs. Medicaid Rate Commission, closed the door on recoupments. The only issue arguably left open is whether a Common Law right to recoupment exists based on "false information to the Commission" or whether it was disagreements on "varying interpretations of a 'reasonable allocation method'". I maintain that the latter situation occurred and the Supreme Court does not indicate that this is justification for a Common Law right of recoupment (Opinion, Supreme Court No. 5-3030, JAN-89--267 Civil, page 11).

I further maintain that the Affidavit of Michael R. Sanders, Audit Manager, Department of Health and Social Services, stating the "false information" submitted by the facilities is not false information; instead, they are disagreements based on varying interpretations of allocation methods. Please also understand that we do support recoupments where fraud and abuse can be proven.

2. An understanding of a "Prospective" system versus a "Retrospective" payment system is also imperative. A storekeeper who beforehand (prospectively) places a price on a loaf of bread in order to sell that loaf and the buyer of that loaf of bread, who in good faith purchases the loaf, does so with an understanding that six years later the storekeeper is not going to knock on his door and demand additional money for all the loaves bought because the storekeeper has now found that there were disagreements over how accountants determined certain aspects of the original price of the original loaf. Instead, the storekeeper and the buyers settle the accounting disagreements; the storekeeper sets a new price for the future loaves (prospectively) and life moves on.

I remind you that in the case of Petersburg this has already happened. As an example, we disagreed originally over the visiting physician space; we conceded and every Medicare-Medicaid report since then has carved out the costs of the visiting physician space, thus setting the most accurate rates possible for all years since then--because we are on a prospective system.

Does the Department desire to return to a retroactive system of recoupment? Senate Bill 288 certainly does this. In the present form, ASHNHA will vigorously oppose this legislation for the following reasons:

1. It attempts to rewrite history for the past eight years. Has the legislature ever passed a law that retroactively took money from facilities--say schools, for example?
2. It would seem that for the legislature to pass the bill, it would invalidate the State plans that have been filed with HCFA for the fiscal years involved. Those State plans are based on a prospective system and rules and regulations that the Supreme Court has upheld as having no valid recoupment possibility. Why would the legislature muddy the waters by invalidating State plans?
3. Senate Bill 288 is unconstitutional and would be at odds with the legality of "rights acquired by judgement are property rights which cannot be taken without due process of law". And that due process, taken clear to the Alaska Supreme Court, upheld the facilities' rights of no recoupments.
4. I have personally read much of the history of the present Medicaid Statutes and it is replete with indications of a "prospective" system and a "payment rate prior to the fiscal year as a result of discussions between each facility and the State." In other words, a prior agreed upon contract, which had no mention of recoupments--which is a retrospective system. The retrospective system was being abandoned for a new prospective system.

For the sake of brevity, I will not present additional comments at this time. I will conclude by recommending a solution that might meet the needs of the Department and the facilities. We respectively request the Department to withdraw their motion for continuance of the Appeals on Medicaid Audits and allow for their speedy resolution. At least some of the Department's paranoid fears that the Federal Government is going to come "down" on you are not merited. You have complied with your "State Plans", which were based on a prospective system, with no recoupments mentioned.

Next, if the Department desires to have a system that provides for audit recoupment in the future, then I recommend that the Department and the facilities work together and carefully review all of the present regulations, such as year-end conformance and audit procedures, and/or look at a new system route to reach a consensus that can jointly be placed in the bill to affect its passage for future years, but let us not try to rewrite history. That would only set off another round of lawsuits and be very expensive for all concerned.

Believe me, to ignore these recommendations is going to continue the age-old gap between the Department and the facilities. Commissioner Mala, I do not believe that you want that anymore than I do. It is an expensive, ridiculous position for both of us.

To this end, please lend your support to a meeting with Jay Livey, when Mr. Livey returns from his vacation, and some of the facility representatives, to see if we can resolve our differences in a cooperative, open manner. Lastly, and to impress upon you the frustration of this situation which I have seen for nearly five years, the stack of papers on this matter on my desk now measures 12 inches deep. That is a lot of dialogue and represents a lot of legal fees that have been paid.

Please feel free to call or write on this matter. If I do not hear from you, I will trust that you will request those in your Department, who are involved, to work with us in a manner of cooperation to expedite an early and final solution to these problems.

Sincerely,

---

Gary W. Grandy  
Administrator

cc: Jay Livey  
Harlon Knutson--ASHNRA  
Karl Garber

# INSLEE, BEST, DOEZIE & RYDER, P.S.

ATTORNEYS AT LAW

Deborah S. Berg\*\*\*  
David A. Best  
Jerome D. Carpenter  
Richard U. Chapin  
Don E. Descenzo  
Thomas H. De Buys  
Peter A. Derrin  
Michael Doezie  
Thomas H. Gramm\*\*  
Henry R. Hanssen, Jr.  
Saran L. Hunter  
Evan E. Insipe  
William C. Irvine

2340 130th Avenue N E  
Building D  
PO. Box C-90016  
Bellevue, Washington 98009-9016  
(206) 455-1234  
Fax: (206) 835-5101

Rod P. Kaseguma  
Rosemary A. Larson  
David J. Lawyer  
William J. Lindberg, Jr.  
John W. Mine  
Patricia A. Murray  
Ross Radley  
John F. Rodda\*\*\*  
Steph'n D. Rose\*  
Michael P. Ruark  
Milan Gail Ryder  
John F. Sullivan\*  
James S. Turner  
Joe E. Wishcamper

\* Also Admitted in Alaska  
\*\* Also Admitted in California  
\*\*\* Also Admitted in Oregon

July 1, 1991

Please respond to

869-3428

VIA FACSIMILE

Mr. Harlan Knudson  
Alaska State Hospital and  
Nursing Home Association  
319 Seward Street #11  
Juneau, AK 99801-1173

Re: SB 288

Dear Mr. Knudson:

Brian Gilbert of Cordova Community Hospital has asked me to share with you an analysis I prepared regarding the Legislative History of the statutes which established the Medicaid prospective payment system in Alaska. As is demonstrated below, it was never the Legislature's intent to establish a recoupment program based on audit results.

SB 288 distorts reality. Namely, SB 288 is an attempt to rewrite the Medicaid statutes to allow for retroactive recoupments based upon audit results.

When you read SB 288 you will note that the Department claims that this Bill "clarifies" the Legislature's intent and that the Legislature always intended to use audits to adjust rates. Nothing could be further from the truth. It is misleading to call this Bill a "clarification". It is nothing less than an attempt to completely alter the Medicaid payment system. In fact, when the prospective payment system was first passed in Alaska, it was the Department who testified before the Legislature that each facility would have to operate and provide care at the rate determined prior to each fiscal year.

Mr. Harlan Knudson  
July 1, 1991  
Page 2

Below are excerpts from the testimony presented to the Legislature supporting the prospective payment legislation.

Prior to 1983 the Medicaid program in Alaska reimbursed health care facilities based upon the "reasonable costs" incurred by the facility for patient care. (AS 47.07.070, Repealed § 3, ch. 95 SLA 1983). The methodology in 1983 was retrospective cost-based. The Commissioner for the Department of Health and Social Services in his Position Paper regarding H.B. 19 in May of 1983 described this methodology as follows:

Hospital and Nursing home [sic] rates in Alaska have traditionally been established retrospectively, that is, costs are estimated at the beginning of a fiscal year and an "interim payment" determined. At the end of the fiscal year, the total interim payments made is [sic] compared to the allowable costs of the facility. The difference is either collected from or paid to the facility. This process is referred to as "cost settlement." (Emphasis added).

The Medicaid methodology was called retrospective because the final reimbursement calculation was made after the patient's treatment. The system was "cost-based" because the measure of reimbursement was based on expenditures actually made by the health care facility.

Major deficiencies in the cost-based reimbursement system began to be realized. Since health care providers were reimbursed for their expenditures actually made, the provider earned additional income for each service rendered. It became apparent that a cost-based retrospective methodology simply lacked incentives for health care providers to hold down costs. (See, 50 Fed. Reg. 24, 459 (1985)).

In 1983 the State of Alaska made the decision to abandon its retrospective cost-based system and to adopt a prospective budget based system. (AS 47.07.070, Repealed, § 3, ch. 95 SLA 1983). The Legislature made the following finding in 1983:

The legislature finds that, because Medicaid is a joint state and federal program and because federal Medicaid funds have been and are likely to continue to be reduced dramatically, a retrospective payment system no longer serves as an appropriate method of compensation . . . A prospective payment system is

Mr. Harlan Knudson  
July 1, 1991  
Page 3

necessary to prudently address payments to health facilities under Medicaid and general relief medical assistance programs. (Emphasis added).

In 1983 the State of Alaska began implementation of a budget based prospective payment system and established the Medicaid Rate Commission (See, Ch. 95, SLA 1983 recorded at AS 47.07.070 and AS 47.07.180; 7 AAC 43.670 (Reg. 92, Jan. 1985)).

The Alaska State Legislature in 1983 directed the Department of Health and Social Services to establish a Prospective Payment System to be administered by the newly created government body called the Medicaid Rate Commission. (AS 47.07.070 and AS 47.07.180, Ch. 95, SLA 1983).

In 1983, AS 47.07.070 was amended to read in pertinent part:

The [medicaid rate] commission shall determine prospectively the rate of payment to a health facility under this chapter . . . (Emphasis added).

AS 47.07.070(a), § 1, Ch. 182, SLA 1972; am § 3, Ch. 95, SLA 1983.

The implementing regulations stated in pertinent part:

PROSPECTIVE PAYMENT RATES DEFINED. (a) Prospective payment rates are prospectively determined payment rates to be paid by the department to health facilities providing health care services to recipients of the Medicaid and General Relief Medical Programs.

(d) Prospective payment rates will have an effective date. All services provided before the effective date will be paid by the department at the preceding rate. All services provided on or after the effective date will be paid by the department at the new prospective payment rate. (Emphasis added).

Many attempts were made to pass prospective payment system legislation prior to the actual passage in 1983. Certain topics recur throughout the proposed legislation as cornerstones of the prospective payment system. First, the prospective payment system required the up-front negotiation of

Mr. Harlan Knudson  
July 1, 1991  
Page 4

rates which would then be fixed for the fiscal period to which they applied. Second, the year-end recoupment and cost settlement practices were to be eliminated. Third, the reimbursement system was to be based on current budgeted costs as opposed to actual costs incurred.

On January 27, 1983, SB 85 was introduced in the Senate. Testimony before the Senate HESS Committee addressed the need for the establishment of a prospective payment system. SB 85 was later replaced by a Committee Substitute draft of SB 85 (CS SB 85 (HESS)).

On April 4, 1983, the Department of Health and Social Services again issued its Position Paper on CS SB 85.

The Position Paper on CS SB 85 begins with an overview of the Medicaid reimbursement in Alaska and notes:

Prospective payment, on the other hand, provides for the establishment of the payment rate prior to the fiscal year as a result of discussions between each facility and the State, each facility must then operate and provide care at this predetermined rate for the fiscal period. (Emphasis added).

On February 23, 1983, Frank W. Seuffert, a researcher for the State Advisory Council, prepared a Memorandum for Senator Kerttula, regarding SB 85. In pertinent part, researcher Seuffert's Memorandum states:

Prospective reimbursement would be desirable for Medicaid and GRM for the following reasons: (1) It encourages cost containment by giving hospitals a set target over which they make a profit, under which they accept a loss . . .

In keeping with its previous Position Paper which noted that there would be no retroactive cost settlement with a prospective payment system, Position Paper CS SB 85 notes that one of the "major provisions of SB 85" is the repeal of the definition of "cost settlement" as was contained in AS 47.07.080(a).

On April 18, 1983, Mr. Betit, Director of the Department's Division of Public Assistance, testified before the House Finance Committee regarding the House counterpart to CS SB 85.

Mr. Harlan Knudson  
July 1, 1991  
Page 5

Mr. Betit explained that the prospective payment system as detailed in CS SS HB 19 provided for up-front negotiations before the fiscal year started in order to "set" the prices which the Department would pay. Mr. Betit stated that this approach would "give us greater certainty about what it is we are spending . . . and hold the hospitals and nursing homes to these prices for the duration of the year". (Emphasis added). (House Finance Committee Hearing on CS SS HB 19 (Fin.), April 18, 1983, recorded on tape HFC 83-45.

Mr. Betit concluded his testimony by commenting on year-end and audit procedures stating:

There would be no cost settling or getting . . . basically . . . either paying up or recouping from the hospital at the end of each fiscal year as presently goes on. (Emphasis added).

The prospective payment system legislation was formerly adopted by the Legislature and became law. (AS 47.07.070, Ch. 95, SLA 1983). After the prospective payment system was adopted, the Medicaid Rate Commission listed its objectives for this new system. One objective was to "provide predictability" for state program expenditures to health facilities. (7 AAC 43.674(2)).

In order to comply with the new prospective payment system legislation, organizational changes had to be made within the Department of Health and Social Services. The first change was the creation of the Medicaid Rate Commission. (AS 47.07.070, Ch. 95 SLA 1983). The second major change was the elimination of the "audit function".

This complete elimination of the audit function is described in the Legislative Audit of the Department of Health and Social Services for Fiscal Year 1985 (hereafter "1985 Legislative Audit") as follows:

Prior to [the establishment of the Medicaid Rate Commission] health facility providers submitted cost settlement reports at year-end which were then reviewed and/or audited by DHSS auditors. This procedure was in effect under the retrospective payment system of cost settling with Medicaid health facility providers. Subsequently, statute changes required that Medicaid health facility providers be

Mr. Harlan Knudson  
July 1, 1991  
Page 6

paid under a prospective payment system. Under the prospective payment system, patient day rates are established based on estimated reimbursable costs submitted by the provider and approved by the MRC [Medicaid Rate Commission]. The audit positions that previously performed the audits were transferred to the MRC. However, these positions were reclassified to budget analysts. No audit positions have been established at the MRC. (Emphasis added).

The Executive Director of the Medicaid Rate Commission, Dr. Charles L. Eveland, prepared an Organizational Chart of the Medicaid Rate Commission which showed the replacement of the auditor positions by Program Budg. - Analysts.

With the implementation of the prospective payment system in Alaska, all audit functions of the Medicaid program ceased. Since the prospective payment system was budget based, it is not surprising that the executive dire. established three program budget analyst positions to replace the no longer needed auditor positions. Also, since the legislature repealed the definition of "cost-settlement", the legislature made clear its intent to end the year-end audit and cost-settlement process.

Having reviewed the Legislative History behind Alaska's prospective payment system, there is no doubt in my mind that it never contemplated recoupments being taken based on audits. SB 288 euphemistically calls itself a "clarification" of Legislative Intent. It is not. SB 288 represents a radical departure from the prospective payment system.

Very truly yours,

INSLEE, BEST, DOEZIE & RYDER, P.S.



Stephen D. Rose

SDR:ab  
3141b

## MEDICAID RATE ADVISORY COMMISSION MRAC

The purpose of the Medicaid Rate Advisory Commission is to advise the Department of Health & Social Services with regard to rates for facilities serving medical assistance recipients and related rate-setting policy issues. Select department staff work with the commission to establish appropriate rates of payment for Medicaid services and maintain the facility rate setting system in accordance with State and federal laws and regulations.

In 1983 legislation was enacted which established the Medicaid Rate Commission (MRC) as an independent rate-setting body; prior to that the Division of Medical Assistance established payment rates for Medicaid services for all types of providers including hospitals, nursing homes, rural health clinics, outpatient surgical clinics and home health agencies. The legislation also changed the medical assistance rate payment methodology to a prospective rate setting system from the prior retrospective cost-based system. The MRC focused the prospective system primarily on hospitals and nursing facilities, choosing to establish less complex rate setting procedures for other types of facilities.

Subsequent changes in statutes applicable to the MRC include: technical changes designed to secure optimum federal participation, the consideration of appropriations in rate setting, and the provision for a possible waiver of the year end conformance calculation. Executive Order #72 which became effective March, 1989 established the MRC as an advisory body and transferred actual rate setting authority to the Commissioner of the Department of Health & Social Services. Legislation in 1990 provided mandatory timelines for the processing of appeals, and specified other procedures to be accomplished in rate setting.

The current rate setting process utilized by the Department works as follows: Each facility submits cost and statistical information to the MRAC office in Anchorage. The staff reviews these submissions, performs rate calculations, and notifies the facility. If time allows, the facility may return comments advising of concurrence or non-concurrence with the calculations. Next, testimony is taken on the proposed rate in a public hearing before the MRAC, after which the Commission advises the Department through the adoption of a formal motion. The Department issues a Decision and Order Letter which sets the rate; the facility then has 30 days to request reconsideration from the Executive Director. Reconsiderations may or may not be taken back to the Commission, depending on the issues involved. Within 30 days of the original Decision and Order Letter or the reconsideration decision, the facility can request a formal hearing to contest the rate before the Department Hearing Officer. The final decision on an appeal is signed by the Commissioner. Any further appeal is made to the Superior Court.

## OFFICE OF HEARINGS AND APPEALS

The Office of Hearings and Appeals (OHA) is responsible for conducting impartial administrative hearings on appeals from actions by four agencies of the Department of Health and Social Services: the Division of Public Assistance, the Division of Medical Assistance, the Medicaid Rate Advisory Commission, and the Audit Unit. OHA conducts two distinctly different types of hearings: informal fair hearings on client public assistance and medical assistance appeals, and formal health care facility appeals of Medicaid payment rates and audit findings. Both types of hearings must comply with due process standards guaranteed by federal and state constitutions.

Client appeals of actions by the Division of Public Assistance and the Division of Medical Assistance are adjudicated in fair hearings mandated by federal and state regulations. A fair hearing may be requested concerning one or more of the following programs: Adult Public Assistance, Aid to Families with Dependent Children, Food Stamps, Medicaid, General Relief, Energy Assistance, Job Opportunities and Basic Skills Training Program, and Employment and Training Program. The fair hearing is an informal proceeding adjudicated by a Hearing Officer classified as a Public Assistance Program Officer. The Hearing Officer's decision may be appealed by the client to the Division Director. The Director's decision is the final administrative action, and is subject to appeal to the Superior Court.

Health care facility appeals of Medicaid payment rates and audit findings are adjudicated in formal hearings governed by the Administrative Procedure Act. These hearings are conducted by a Hearing Examiner who is required to be unbiased, impartial, and have at least two years experience in the general practice of law immediately preceding appointment. After receiving evidence and arguments, the Hearing Examiner prepares a proposed decision for submission to the Commissioner. The Commissioner's decision is the final administrative action, and may be appealed to the Superior Court.

The Office of Hearings and Appeals is a separate office reporting to the Deputy Commissioner, Department of Health and Social Services.

## AUDIT UNIT

The Audit Unit is assigned to the Office of the Commissioner; it is staffed by an Audit Manager and five Internal Auditors with staff capability augmented by contract funds for private auditors. The Audit Unit exists to help the Commissioner, Division Directors, and separate office heads effectively discharge their duties. Audit Unit objectives are to:

- Conduct audits of Medicaid providers.
- Provide assistance to the Medicaid Rate Advisory Commission.
- Perform independent fiscal and compliance audits of the department's grantees and contractors who do not fall under the state single audit requirement.
- Monitor single audits of the department grantees and contractors performed by outside CPA firms.
- Undertake special reviews and investigations as requested.
- Coordinate with the Office of Management and Budget on establishment and updating of Compliance Supplements for the State Single Audit Act.
- Provide technical assistance to the Commissioner, Division Directors, and department providers.
- Assist the Office of Management and Budget and Legislative Audit with internal and performance audits.

## MEDICAID

The Audit Unit conducts field audits and desk audits of the hospitals and nursing homes enrolled as Medicaid providers. Audits are conducted to provide assurance that the facilities are reporting costs in compliance with applicable federal laws, Alaska statutes, and department regulations. Twenty-eight facilities report costs of delivering health care to more than 56,000 Alaskans who are enrolled in the Medicaid and GRM programs.

## GRANTS

Audits of departmental grant recipients are conducted to assure compliance with applicable Alaska statutes and regulations. The State Single Audit Act requires that a financial audit be performed by an independent CPA for each grant recipient receiving more than \$150,000 in state grant funds. The Federal Single Audit Act requires that a subrecipient of \$25,000 or more federal funds passed through the state have a financial audit performed in compliance with federal requirements. The Audit Unit monitors both the state and federal single audits and reconciles the results with grant reports submitted to the granting division. For the FY91 granting year, the Audit Unit received 101 Single Audits from grantees receiving over \$78,000,000 in department grant funds distributed through 275 separate grants.



## Denali Center

1949 Gillam Way  
Fairbanks, AK 99701  
(907) 452-1921 FAX (907) 452-4522

FEB 23 1993

February 19, 1993

Representative Gary Davis  
State Capitol  
Juneau, Ak 99801

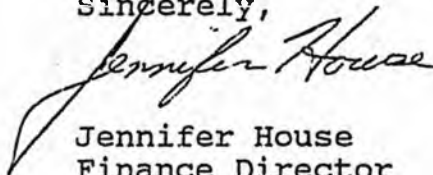
Dear Representative Davis:

I am writing you in support of House Bill 155 which addresses audits of healthcare facilities. I have reviewed the draft of this bill and feel that it is as beneficial to the State of Alaska as it is to healthcare providers. This proposed regulation will add elements of clarity, consistency and timeliness that are currently lacking in the Medicaid audit process.

Presently, the State of Alaska is five years behind schedule in conducting audits of Denali Center. This situation creates an environment of uncertainty for the facility since audit adjustments for one year often have a "domino" effect on following years' Medicaid rates. Furthermore, insufficient and ambiguous wording in existing regulations have lead to audit adjustments that are inconsistent from one year to the next.

Denali Center strongly supports the passage of HB 155. Thank you for sponsoring this legislation.

Sincerely,



Jennifer House  
Finance Director

Faxed 2/19/93

PROVIDENCE HOSPITAL  
 3200 PROVIDENCE DRIVE  
 P.O. BOX 196604  
 ANCHORAGE, ALASKA 99519-6604  
 PHONE (907) 562-2211



February 23, 1993

Representative Gary L. Davis  
 State Capitol  
 Juneau, Alaska 99801

Fax to 465-2918

Subject: House Bill 155

Dear Representative Davis:

Providence Hospital supports House Bill 155, "An Act relating to audits of health facilities".

This piece of legislation is needed in order to provide written guidelines for the conduct and use of audits conducted by the Department of Health and Social Services for the Medicaid program. Currently there are no established written guidelines and as a result, audits have not been timely (as late as 3 to 4 years after a fiscal year-end) and regulations have been inconsistently applied.

The current methodology for establishing Medicaid payment rates for healthcare facilities is based upon the recent most year-end financial data. The Medicaid payment rate by legislation is to be a prospective rate. This provides both the State of Alaska and the healthcare providers with a firm basis in order to predict Medicaid reimbursement throughout the year.

The Department of Health and Social Services desires to use audited financial data to establish Medicaid rates. Providence Hospital supports this concept. However, because the Medicaid rates are prospective, once established we do not believe they should be retroactively re-established. Furthermore, Providence Hospital firmly believes that the Department of Health and Social Services has the adequate resources and time in order to accomplish a financial audit before the annual Medicaid rate setting process is completed. This would also include adequate time for the Department of Health and Social Services and the healthcare provider to review and discuss any audit finding and adjustments.

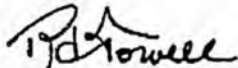
The audit process as defined within House Bill 155 is very reasonable and easy to understand. The passage of this bill would also provide easier administration of the Medicaid program for both the Department of Health and Social Services as well as providers.

This should result in lower numbers of Medicaid rate appeals. It will also allow providers to formally close out older years. Providence Hospital currently has all fiscal years from 1986 to date open or unsettled with the Department of Health and Social Services for Medicaid audits. This is not reasonable nor is it clear what needs to occur to complete these years.

I have not gone into specific details with our audit experiences and problems. However, I am aware that the Committee will be hearing testimony from a few of the healthcare providers. Their testimony represents common situations that we as healthcare providers experience during our audit process because the Department of Health and Social Services does not have written guidelines for their Medicaid audit process.

In closing, I would again like to express Providence Hospital's support for House Bill 155. If you should need additional information, please do not hesitate to contact either Dave Hennigan at 261-3002 or Jane Griffith at 261-3053.

Respectfully,



Dick Towell  
Acting Administrator

2801 DeHart Road  
Anchorage, Alaska 99508  
Telephone 907.276.1131  
Fax 907.264.1143



Alaska  
Regional Hospital

FEBRUARY 21, 1993

REPRESENTATIVE GARY L. DAVIS  
ALASKA STATE LEGISLATURE  
STATE CAPITOL  
JUNEAU, ALASKA 99801

DEAR REPRESENTATIVE DAVIS

WE SUPPORT HOUSE BILL 155, "AN ACT RELATING TO AUDITS OF HEALTH FACILITIES."

I HAVE BEEN WORKING WITH THE CURRENT SYSTEM FOR SETTING MEDICAID RATES SINCE IT'S INCEPTION. MY CONCERNS RELATE TO THE TIMELINESS OF AUDITS AND THE ACCURACY OF THE ADJUSTMENTS.

AUDITS HAVE BEEN CONDUCTED AT THIS FACILITY FOR THE FISCAL YEARS 1985-1987, AND 1990-1991. THE AUDITS FOR FISCAL YEARS 1985-87 (THREE YEARS) WERE PERFORMED ROUGHLY ALL AT THE SAME TIME IN LATE 1988. THE AUDITS FOR 1990 AND 1991 WERE CONDUCTED IN 1992. FOR FISCAL YEAR 1988 THE AUDIT WORK WAS BEGUN, BUT NOT COMPLETED. NO AUDIT WORK HAS BEEN PERFORMED FOR 1989 TO THE BEST OF MY KNOWLEDGE.

TO HAVE THREE YEARS OF AUDITS PERFORMED AT ONCE REQUIRES A DISRUPTION TO THE OPERATION OF THE FACILITY. THE FACILITY MUST ANSWER QUESTIONS RELATED TO THE PAST THREE YEARS AND TURNOVER OF PERSONNEL AT A FACILITY MAY MAKE THIS DIFFICULT.

THE AUDITS THAT WERE CONDUCTED FOR 1991, WAS VERY TIME CONSUMING FROM THE NUMBER OF QUESTIONS. IN ADDITION THE FACILITY WAS ANSWERING QUESTIONS THAT SHOULD HAVE BEEN ADDRESSED IN EARLIER AUDITS.

ONLY 1985, 1986, AND 1987 ARE FINALIZED AS IT RELATES TO A FINAL AUDIT REPORT.

THE PURPOSE OF THIS BILL IS TO PROVIDE TIMELY AUDITS TO THE FACILITY, ALLOW AN OPPORTUNITY TO REVIEW THE ACCURACY OF THE AUDIT, AND ALLOW FOR A FULL HEARING ON THE ISSUES THAT THE FACILITY DISAGREES WITH.

FACILITIES MUST HAVE TIMELY DUE PROCESS OF AUDITS SO THAT THE IMPACT TO OPERATIONS IS NOT SUBSTANTIAL.

THE BILL ALSO PROVIDES ONE IMPORTANT ELEMENT TO THE DEPARTMENT, THE ABILITY TO RECOVER AMOUNTS THAT MAY HAVE BEEN INAPPROPRIATELY REIMBURSED. THE DEPARTMENT BASED ON COURT CASES DOES NOT NOW HAVE THIS ABILITY.

WE FEEL THIS A FAIR BILL BOTH FOR THE FACILITY AND THE DEPARTMENT AS WRITTEN. THE BILL PLACES RESPONSIBILITIES ON BOTH THE DEPARTMENT AND THE FACILITY. THE BILL SHOULD ALLOW AUDITS TO BE COMPLETED WITHIN A YEAR, AND BOTH THE FACILITY AND THE DEPARTMENT MAY CLOSE OUT THOSE YEARS IN A TIMELY FASHION.

SINCERELY



BILL HARRISON  
ASSOCIATE EXECUTIVE DIRECTOR/FINANCE

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

February 19, 1993

Representative Cynthia Toohey, Co-Chairman  
HESS Committee  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Re: Support HB 155, Medicaid  
Audits

Dear Representative Toohey:

Community hospital and nursing home members of our Association ask your support for HB 155, providing a timely process for Department of Health & Social Service to audit Medicaid reimbursement to health facilities.

We had attempted to resolve this problem with the Department during the past two years, but were not successful.

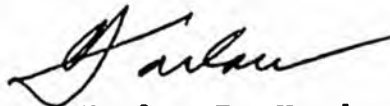
HB 155 will cut down on the number of disputes and appeals by health facilities with the Department when it uses unapproved audits in setting reimbursement rates.

ASHNHA VP for Financial Affairs, Garrey Peska and financial officers from several hospitals and nursing homes look forward to reviewing this issue with the House HESS Committee 3:00 p.m. this Wednesday afternoon.

We will do our best to answer any questions you may have and ask your support for HB 155.

Many thanks.

Sincerely,



Harlan R. Knudson  
President/CEO

CORDOVA  
COMMUNITY  
HOSPITAL



Acute and Longterm Care City-Owned Facility  
P.O. Box 160 • Cordova, Alaska 99574 • Phone: (907) 424-8000

February 23, 1993

Gary L. Davis, Representative  
Alaska State Legislature  
Interdepartmental Mail Stop: 3100  
Juneau, Alaska 99801-1182

Dear Representative Davis:

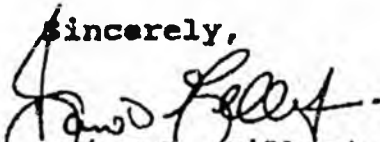
Thank you for introducing House Bill 155. With your help we can get this Bill passed and into law.

The present system of doing audits in the health care facilities has not worked. This is due in part to there being no preset system with deadlines for the Department to meet, only deadlines for the facilities. We have had trouble at Cordova Community Hospital since 1985 and the Hospital took the Department to the Supreme Court over that audit. The Department still has not signed off on the Court's decision. Setting temporary rates on unaudited cost reports has got to stop.

We must have timely audits that are final to stop the continued lawsuits we have against the Department. At the present time our rates are set in court not by the Rate Commission. This adds to the cost of health care in the State of Alaska.

Again, thank you for your help.

Sincerely,

  
Brian D. Gilbert,  
Administrator

**HEALTH FACILITY  
MEDICAID AUDITS  
NOT YET FINALIZED**

**February 1993**

| <u>FACILITY</u>                       | <u>YEARS NOT FINALIZED</u>   |
|---------------------------------------|------------------------------|
| ALASKA REGIONAL HOSPITAL              | 1988, 89, 90, 91             |
| BARTLETT MEMORIAL HOSPITAL            | 1985, 86, 87, 88, 89, 90, 91 |
| CENTRAL PENINSULA GEN. HOSPITAL       | 1987, 88, 89, 90, 91         |
| CHARTER NORTH HOSPITAL                | 1987, 88, 89, 90, 91         |
| CORDOVA COMMUNITY HOSPITAL            | 1987, 88, 89, 90, 91         |
| DENALI CENTER                         | 1986, 87, 88, 89, 90, 91     |
| FAIRBANKS MEMORIAL HOSPITAL           | 1986, 87, 88, 89, 90, 91     |
| HERITAGE PLACE                        | 1987, 88, 89, 90, 91         |
| MARY CONRAD CENTER                    | 1988, 89, 91                 |
| NORTON SOUND REGIONAL HOSPITAL        | 1987, 88, 89, 90, 91         |
| OUR LADY OF COMPASSION<br>CARE CENTER | 1986, 87, 88, 89, 90, 91     |
| PETERSBURG GENERAL HOSPITAL/LTC       | 1987, 88, 89, 90, 91         |
| PROVIDENCE HOSPITAL                   | 1986, 87, 88, 89, 90, 91     |
| SITKA COMMUNITY HOSPITAL              | 1985, 86, 87, 88, 89, 90, 91 |
| SOUTH PENINSULA HOSPITAL/LTC          | 1986, 87, 88, 89, 90,        |
| ST. ANN'S NURSING HOME                | 1986, 87, 88, 89, 90, 91     |

|  |                      |
|--|----------------------|
| VALLEY HOSPITAL                        | 1988, 89, 90, 91     |
| WESLEY REHABILITATION &<br>CARE CENTER | 1986, 87, 88, 89,    |
| WRANGELL GENERAL HOSPITAL              | 1987, 88, 89, 90, 91 |

This list was compiled through a phone call to, or letter received from, each of these individual facilities. These audits are not finalized according to the health facilities records.

\* NON-FINALIZED AUDITS CANNOT BE APPEALED

# **SOUTH PENINSULA HOSPITAL**

**4300 BARTLETT • HOMER, ALASKA 99603 • (907) 235-8101**

**February 24, 1993**

**Representative Gary L. Davis  
House HESS Committee  
State Capitol  
Juneau, Alaska 99801**

**Re: House Bill 155,  
"An Act relating to audits of health facilities"**

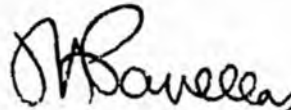
**Dear Representative Davis:**

**Thank you for being the prime sponsor of HB 155.**

**South Peninsula Hospital fully supports this important bill which will:**

- ▶ **Establish a timely and orderly process when Department of Health & Social Services (DHSS) audits hospitals and nursing homes to see if Medicaid rate reimbursement pays for eligible costs only;**
- ▶ **Cut down on the number of disputes and appeals by facilities with the Department when the Department uses unapproved audit adjustments in setting reimbursement rates;**
- ▶ **Establish an orderly process for setting facility rates based on timely and final audits.**

**Sincerely,**



**Ron Pavellas  
Administrator**

**RP:db**



Central Peninsula  
General Hospital

250 HOSPITAL PLACE • SOLDOTNA, ALASKA 99669

(907) 262-4404

Operated by LHS Management Company

February 24, 1993

Representative Gary Davis  
State Capitol, Room 15  
Juneau, AK 99801-1182

Dear Gary:

On behalf of Central Peninsula General Hospital I would like to express our support for SB 155 on Medicaid audits of health facilities. Under the current system of audits, we have finalized only one fiscal year (FY 1986). Since the current system came into being in our fiscal year 1985, this is a very poor record for finalization.

This has been a continued point of frustration for our auditors as there is always a question as to the extent of any possible liability to the state.

There have been various changes made during audit process that would have effected the rate approvals. The department is constantly attempting to change numbers retrospectively. Our contention is that this was designed to be a prospective payment system and that the retrospectiveness of the audits have denied the systems ability to provide just that.

I am in strong support of assuring that all audit adjustments be material. As you can see, trying to run down and explain each and every small discrepancy by the accounting staff is cumbersome to the process, and to the operations of the facilities.

I would also like to see a provision in the bill providing for a facility profile containing pertinent data that would prevent the redundant questions asked of the facilities year after year. There has also been a problem in the audit division not always using or having access to the information that is already available at the MRAC.

Sincerely,

Michael J. Lockwood  
Administrator

# STATE OF ALASKA

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

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

March 9, 1993

Honorable Cynthia Toohey  
House of Representatives  
Alaska State Legislature  
State Capitol  
Juneau, AK 99811-1182

Dear Representative Toohey:

The Department's compliance audits, of facilities enrolled as Medicaid providers, has experienced a backlog since the inception of the prospective payment system.

The Department has made catching up with the backlog a priority subsequent to the Cordova v. State of Alaska Supreme Court ruling which in part states that the State of Alaska cannot recover overpayment identified in audits. The need to complete audits before the prospective payment rate is calculated and is even more critical.

The Audit Unit has been contracting with KPMG Peat Marwick to achieve the goal of completing the audits of past years while Department staff auditors are assigned to current base period audits. Therefore, the Department has simultaneously been 1) reducing the backlog of audits, and 2) adding assurance that the prospective rates are set from the best information available (i.e. audited cost reports).

One KPMG Peat Marwick contract provides for the audit of facilities through FY89. It involves the completion of sixty (60) audit reports. Fifty (50) audit reports have been forwarded to the Department for review, of which eleven have been approved to issue as Preliminary Audit reports. The ten (10) outstanding reports are substantially complete at KPMG Peat Marwick and are awaiting final responses from the facilities. These final ten reports are expected for review at the Department Audit Unit in the next 60 days. The Department expects to complete its review of all reports on this contract in the next 90 days.

A second contract with KPMG Peat Marwick provides for the audits through FY90. It involves 24 audits of FY90 and it is anticipated that these reports should be ready for Department review by September 1993.

Honorable Cynthia Toohy  
March 9, 1993  
Page 2

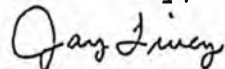
A third KPMG Peat Marwick contract provides for audits through FY91. It will involve completion of the catch-up process and some current base-period audits. Completion of this effort is anticipated by February 1994.

As noted, the Department's desire is to audit the most recent available fiscal year before the prospective rate is set. Staff auditors completed four FY90 audits prior to the prospective rate calculation for FY92, and fourteen FY91 audits before the FY93 prospective rate calculation. The staff is currently engaged in fifteen facility audits, which will result in the inclusion of audit adjustments into the 1994 facility rate.

In summary, the catch-up auditing effort which has plagued the Department for so many years is anticipated to be complete as of February 1994. The progress has been difficult for both the Department and the facilities. This intense effort needs to continue through project completion. It should be noted, however, that some of the audits which will be issued over the next few months may be subject to Administrative Appeal by the facilities. The final adjudication of those appeals may not be completed by February 1994.

If you require additional information, please do not hesitate to call.

Sincerely,



Jay A. Livey  
Deputy Commissioner

cc: Theodore A. Mala, MD, MPH  
Commissioner

Mike Sanders, Unit Chief  
Audit Unit, Office of the Commissioner

H/HES  
2/24/93 HB155

HB 155 RE: MEDICAID FACILITY AUDITS  
HOUSE HES COMMITTEE  
FEBRUARY 24, 1993

REMARKS BY ELMER A. LINDSTROM  
SPECIAL ASSISTANT TO THE COMMISSIONER  
DEPARTMENT OF HEALTH & SOCIAL SERVICES

Co-Chair Toohey and members of the House HES Committee:

Today you have before you HB 155 relating to state audits of hospitals, nursing homes and other Medicaid enrolled facilities. Although on the face of it this may seem to be a trivial if not outright boring topic, the fact of the matter is that this bill raises issues of vital importance to the health care industry, health care consumers and the State of Alaska.

As it is currently written, the Department of Health and Social Services is adamantly opposed to this bill. The department believes that enactment of this legislation would result in the loss of our ability to effectively audit hospital and nursing home facilities which would inevitably lead to increased Medicaid facility costs and could well jeopardize the continued receipt of some federal funds for our Medicaid program. Before going into our specific objections, however, I would like to take just a minute to put this bill in a broader context.

The disagreements and disputes you will hear today are a inevitable and even necessary product of the Medicaid

rate setting system. We, the Department of Health and Social Services, are charged with prudently purchasing health care on behalf of Medicaid clients. In order to prudently purchase health care, it is essential to fairly and accurately determine the rates paid to hospitals and nursing homes for Medicaid clients.

In setting these rates, the department must take many factors into consideration. Among those factors are the requirements imposed on the Medicaid program by the federal government (the federal and state governments share 50/50 in the costs of the Medicaid program), the need to provide adequate rates to facilities to insure the continued availability of these services and the need to protect the state's financial interest which, in this instance, is substantial.

The facilities, too, have interests to protect. And while I am not here to speak for the facilities, I believe I am safe in saying to you that the facilities interests differ markedly from the interests of the state in this area.

In short, what you have here is the classic conflict between a regulatory agency charged with protecting a variety of public interests--in this case prudently purchasing health care with state and federal dollars on behalf of Medicaid clients-- and the interests of those being regulated.

The department is opposed to this bill; but no one here today should be left with the impression that our opposition reflects a belief that hospitals and nursing homes or their representatives are acting contrary to law or in any other way inappropriately. Our differing positions are simply a reflection of the differing roles we must play in this process.

Having placed this issue in this broader context, I would now like to address our concerns with HB 155. These concerns are also reflected in our position paper and fiscal notes which should be in each members bill file. To the extent I am unable to address your specific technical questions, we also have available to testify Mr. Mike Sanders, Chief of our Medicaid Audit Section, and Mr. Jack Nielson, Executive Director of the Medicaid Rate Advisory Commission.

As mentioned previously, the department has the fiduciary responsibility to see that funds appropriated by the legislature for payment to hospitals and nursing homes for the care of Medicaid eligible Alaskans are spent in accordance with state and federal laws and regulations relating to Medicaid reimbursement. In part, this means the department has a responsibility to use state funds most efficiently when purchasing medical services. This is no small matter.

In FY 94, the department is requesting \$114.4 million in state and federal funds for payment to Medicaid

facilities.

This is only \$10.0 million less than the cost of the AFDC program which you are only too familiar with.

It is \$44.8 million more than is requested to fully-fund the existing longevity bonus program.

It is \$55.8 million more than what has been requested in total for municipal assistance and revenue sharing next year.

It is over \$10.0 million more than the total budgets of the Legislative and Judicial branches of government plus the Office of the Governor.

It is a lot of money. And the Medicaid facilities budget is growing.

From FY 91 to FY 92 expenditures for Medicaid facilities increased 5.9%. From FY 92 to FY 93 year-to-date it has increased 4.0%. And for FY 94, we are estimating an increase of 5.9%.

We must do everything that is possible to contain costs in this area while continuing to insure that poor Alaskans have access to needed health care facilities.

The mechanism to achieve this is a fair rate setting process which provides adequate payment to facilities while at the same time insures that only costs allowable

for Medicaid reimbursement are paid. A credible audit process is essential to these objectives and the bill you have before you today would short-circuit that process. Some specific concerns:

- The timelines in HB 155 put all the responsibility on the department and virtually none on the facility. After you have waded through the tortuous language of the bill the bottom line is that the department has 165 days from receipt of the facility's year-end report to complete an audit. Given the many delays built into the process by the bells and whistles in HB 155, this is not reasonable.

- Nothing in the bill takes into account the quality of a facility's response. There is a deadline for their original submission; but no provision for the very time-consuming process of requests by the department for further information or clarification to the original response. Historically, facilities have frequently sought and usually received time extensions to respond to audit inquiries. The department's position paper includes an appendix which documents time extensions requested by facilities.

- The actual time available to do audits is very limited--field audits must be completed within 20 days for example.

- The bill limits the scope of field audits by requiring the department to notify the facility of the

areas to be reviewed.

- The Medicaid Rate Advisory Commission would be required to calculate rates twice.

- Because of the time limitations in the bill, Home office costs could not be verified for facilities with headquarters out-of-state.

- The department's reading of the bill leads us to conclude that the Medicaid Rate Advisory Commission would be precluded from performing any analysis beyond items noted in an audit exception

- HB 155 shifts the burden of correct reporting from the facility to the department. If a facility requests an adjustment which is not accepted by the department, the facility may appeal, and if it prevails on appeal the adjustment must be retroactively made. On the other hand, the state cannot secure retroactive adjustments on items that are appealed.

- And, in the opinion of the department, the bill is over-precise insofar as it does not provide the department with sufficient flexibility to respond to future changes in federal law, HCFA interpretations or practical variations among divergent facilities. To the extent that some of the provisions may be necessary--and we are certainly not conceding that point--it would be more appropriate to include them in regulation rather

than statutory law.

This is just a partial list of concerns the department has with items included in HB 155. At this time, however, we would like to bring to your attention several items which are not included in HB 155 which are also of concern. In this regard, we cite a recent report of the Division of Legislative Audit entitled "Department of Health and Social Services; Medicaid Rate Advisory Commission, Selected Rate Setting Issues" dated August 11, 1992.

The Division of Legislative Audit recommends that the department seek statutory revision to provide for recoupment from health care facilities based on audit results. In the words of the Legislative Auditor "It is essential that the State be able to recoup from facilities payments determined to be inappropriate based upon the result of audits. The lack of recoupment and the federal requirements concerning overpayment of facilities increases the cost of the Medicaid program to the State. DHSS is currently not able to obtain reimbursement from facilities of amounts over paid them, but is required to reimburse the federal government for the amount of federal participation in that overpayment."

This situation has arisen due to the Alaska Supreme Court ruling in City of Cordova v. Medicaid Rate Commission which we would be happy to discuss further with the committee if it so desires.

The department is sensitive to the criticism voiced by facilities that we have not always been timely in completing facility audits. This problem is also cited in the legislative audit. The department is addressing this problem however. Attached to our position paper is an appendix which indicates our progress toward eliminating the back-log of facility audits. We anticipate being current with all audits by the end of FY 94.

Nevertheless, the department would support legislation which would have the effect of streamlining the audit process, assisting with bringing all audits current and keeping them current. Nothing in HB 155 as currently written will accomplish these worthy goals--despite the significant increase in audit resources indicated on our fiscal notes.

In conclusion, Madame Chair, the department is strongly opposed to HB 155 and, should the bill be passed in its present form, would strongly recommend a veto by the Governor.

ALASKA STATE  
**HOSPITAL & NURSING HOME**  
ASSOCIATION

H/HSS 2/24/93

HB 155

GARREY PESKA  
FINANCE VICE PRESIDENT

January 11, 1993

The main features of the attached ASHNA proposal for Medicaid rate setting process legislation are as follows:

Defines the department's authority to audit health facility records to:  
Determine accuracy of information used to set Medicaid rates  
Assure compliance with the law

Sets the deadline for facilities to file year end reports. (120 days after year end)

Sets deadlines for DHSS to complete:  
Preliminary review of year end reports  
Preliminary desk audit report  
Preliminary field audit report  
Final field audit report

Allows facilities to submit written responses before audits are finalized.

Specifies minimum information to be included in audit reports

Allows facilities to request formal administrative hearings on disputed rates.  
Prevents implementation of disputed adjustments before a final administrative or judicial decision is issued.

Sets deadlines for completion of final audit reports (Within 165 days after the date the health facility's year end report was due or the date the department received the year end report, whichever is later).

Defines the process for MRAC staff using audit reports in setting rates.

Allows facilities to report errors in rates and provides for resulting adjustments.

Specifies the process for late audit report adjustments to affect future rates.

H/HES  
2/27/93

HB155

SUMMARY OF THE NEED FOR AUDIT LEGISLATION

By Karl Garber, Director of Finance  
Our Lady of Compassion Care Center  
January 8, 1993

We believe the legislation is needed primarily for two reasons:

- (1) Audits are not being conducted in a timely manner. The status of the audits of Our Lady of Compassion Care Center is as follows:

1986 and 1987 The final audit reports were issued in 1990 and are currently in the Formal Administrative Hearing Process.

1988 The field audit was completed in August 1990. There have been no audit reports issued since then.

1989 We responded to the Auditor's desk review inquiries in August 1992. There have been no audit reports issued since then.

1990 We responded to the Auditor's desk review inquiries in January 1992. The Department issued a Preliminary Report in May 1992. In June 1992, in order to respond to the Preliminary Report, we requested the statutory and regulatory authority to conduct this audit and to take actions based on this audit. Other items were also requested. We have not received a response.

1991 In November 1992 a field audit was conducted and a Preliminary Report was issued. A significant change (as compared to prior audits) in classification of costs was proposed. We are reviewing the report to determine our response; however, the inconsistent treatment has resulted in a projected \$390,000 deficiency for our 1993 Budgeted Medicaid Reimbursement.

The status of our audits (above) is typical of the lateness of audits of the majority of the other health facilities throughout Alaska.

- (2) The Department is incorporating preliminary audit findings into reimbursement rates. This is a recent development within the last year.

We believe there is no statutory or regulatory authority for the incorporation of preliminary findings into the reimbursement rates, and it has resulted in many temporary rates and will undoubtedly result in numerous lawsuits. From a practical perspective, our past experience is that most preliminary audit findings are reversed prior to the issuance of a final audit or prior to the resolution of legal appeals.

At the December 1992 meeting of the Medicaid Rate Advisory Commission we agreed to a temporary rate until April 30, 1993. We believe we will be significantly underpaid by the Department during this time period as a result of incorporating the inconsistent preliminary findings of the 1991 Audit into our 1993 rate. However, we are hopeful that this underpayment can be corrected when we have had time to respond to the preliminary audit of 1991, and when the prior year audits are completed in a manner that is consistent to the final 1991 audit (as noted above, this inconsistency creates a \$390,000 deficiency).

We agreed to a temporary rate in a good faith effort that a legal appeal may be avoided. Nevertheless, the rate setting system is not designed for and is bogged down by temporary rates for a variety of reasons too numerous and extensive to describe here. Approximately 75% of the facilities had temporary rates set at the December 1992 meeting of the Medicaid Rate Advisory Commission. All long term care facilities had temporary rates set at that meeting. We understand this was due at least in part to the status and treatment of their audits. This is not an efficient method of setting rates.

H/HESS  
2/24/93

HB 155

**BARTLETT MEMORIAL HOSPITAL**

3260 Hospital Drive • Juneau, Alaska 99801 • Telephone (907) 586-2611

VIA FAX # 465-2918

February 24, 1993

Representative Gary L. Davis  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Representative Davis:

We appreciate your introduction of House Bill 155, "An Act relating to audits of health facilities," for the consideration of the Legislature. We were able to help with some of the work done by the Alaska State Hospital and Nursing Home Association and support the Bill.

The need to firmly establish audit procedures and time frames has been apparent for a number of years. This has been a topic of much discussion in the industry and with the Department of Health and Social Services.

Uncertainty and frustration are caused by having audit issues outstanding for a number of years. For example: We spent a considerable amount of time during 1991 answering inquiries related to audits for our fiscal years 1985, 1986, 1987, and 1988. The initial work on these cost reports was done by my predecessor's predecessor. We spent a lot of time simply locating records and then trying to understand issues from so long ago. These audits have not as yet been finalized. Now, with the passage of more time, any additional questions raised in moving to finalize these audits could easily result in the need to pull out these old records once again. In the meantime we must provide care to patients and deal with operational issues every day.

House Bill 155 establishes time frames and will assist in eliminating the delays and frustration in the current audit process. Audits need to be completed in a timely manner. We appreciate your efforts to move this important legislation forward and offer our support to your efforts.

Sincerely,

  
Garth M. Hamblin  
Controller



# ANN'S NURSING HOME

415 Sixth Street, Juneau, AK 99801 (907) 586-3883

H/HESS  
2/24/93

HB 155

## HOUSE HEALTH, EDUCATION, AND SOCIAL SERVICES COMMITTEE

FEBRUARY 24, 1993

My name is Grant Asay. I am the administrator at St. Ann's Nursing Home here in Juneau. I have been in my position for four years.

St. Ann's is a 45 bed long term care facility. Our funding is 90% Medicaid. We are therefore, 90% reliant on an efficient, effective, fair state Medicaid process. Our other revenue comes from Veterans Administration and private paying patients.

Our last finalized Medicaid audit was for fiscal year 1985. Since then, all audits have been preliminary and we have only seen the preliminary reports on the 1990 and 1991 audits. It is unknown whether or not the earlier unfinalized audits, 1986-1989, which I haven't seen propose adjustments and if so, will those adjustments impact future periods. This bill not only requires audits to be finalized in a timely fashion. It also specifies the process and any impact the late audits will have on future rates.

The calendar year is our fiscal year. Typically, in November, I present to my Board the annual budget for the upcoming year. However, with the current audit process, the revenue projection is unavailable until well into the operating year. For example, I will not know what our revenue is this year until the end of April. One-third of the year will have gone. As I will illustrate in an example specific to St. Ann's, this is because the whole audit process, time frames and deadlines are undefined. Because our revenue is unknown, I have no way of performing basic administrative functions such as adjusting expenses to expected revenue. It is unfair to prematurely increase charges to those who are non Medicaid beneficiaries. There is no way I can tell employees if or when there will be a cost-of-living increase when there is no solid revenue projection. This frustration doesn't have to be and that is why I strongly support this legislation. Let me give you the example of the audit process we experienced this year.

Our 1993 rate is set off of 1991 expenses. The audit unit conducted a desk audit and some field work of fiscal year 1991 around thanksgiving in November 1992. The preliminary audit findings with several substantial adjustments were sent to the rate setting agency (the Medicaid Rate Advisory Commission) in Anchorage who incorporated those adjustments and sent me a letter proposing our 1993 permanent rate. This letter was prior to me ever seeing or receiving any preliminary audit report outlining audit findings and proposed adjustments. There was no way I could set up a hearing to discuss the audit adjustments because the permanent rate was already proposed incorporating the audit findings. What this does is create a relationship between the facilities and the department that is needlessly adversarial.

We did succeed in getting a livable temporary rate and are preparing for another hearing on our permanent rate in April.

I understand that during the course of an audit, discrepancies and disagreements will arise. I am a fairly new administrator to Alaska. That is partly how one learns the Medicaid system and the State's expectations and requirements-by working through the disagreements. It would have been a greater learning experience to have had audits conducted soon after the audit period as this bill requires. However, as I have said, I have participated in only two preliminary audits and nothing has been finalized at St. Ann's since 1985. The facilities need time to work through these audits and the disputed adjustments prior to incorporating them into a permanent rate. This bill puts into statute workable, reasonable time frames that allow appropriate response time to prevent our experience from reoccurring.

Thank you for the opportunity to testify.

H/HESS  
2/24/93

HB 155

93- 9-11 Auditors  
- Budget  
Auditors  
3 Auditors - Anchorage  
3 Auditors - Anchorage  
96

My name is Donna Herbert, I am a Health Care Reimbursement Consultant who represents eleven of the hospitals and nursing homes in this state. The facilities that I represent, feel that it is important that the audit process be set out in statute.

Overall the Medicaid regulations that affect reimbursement are vague and interpreted differently each year. There is a great deal of confusion regarding the interpretations of the Medicaid regulations.

The audit process must be very structured and clear to alleviate the turmoil that now exists on interpretation of the regulations. If the audit process remains vague the chaos will simply accelerate.

Many of the health care facilities current Medicaid reimbursement rates were reduced based on audits even though the facilities had never seen the audit report. The reports were sent to the Medicaid Rate Advisory Commission and the rates reduced before the reports were ever published. The facilities believe it is critical that a statute control the following audit criteria:

### AUDIT CRITERIA

ESTABLISH TIME DEADLINES

DEFINE THE AUDIT PROCESS AND PROTOCOL

ALLOW ADEQUATE RESPONSE TO THE AUDIT ADJUSTMENTS

OUTLINES THE DOLLAR IMPACT OF THE ADJUSTMENTS

TIME LINES WHICH ALLOW FOR PROPER NOTIFICATION AND RESPONSE TIME

DICTIONATES THAT RATES CAN ONLY BE ADJUSTED AFTER THE AUDIT IS FINALIZED

*It is the facilities opinion*

~~The facilities~~ believe that the audit process is very important but that it is equally important that guidelines be established with accountability on both sides.

*I represent 11  
facilities most  
of these facilities  
have 5-6 years  
of outstanding  
audit. None  
of them are  
under appeal*

*Our facilities believe this is unlawful.  
Even IRS is required to give notice  
to a taxpayer before they garnish a bank account  
in ~~any~~ <sup>several</sup> case the Audit Adjustments  
were in error and needed to be reversed.*

**HEB**

**158**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 5, 1993

FURTHER REFERRALS:

Date of Committee Action: 3/26/93

The FINANCE Committee considered:

HB 158

HOUSE BILL NO. 158

APPROP: CONTRACT SETTLEMENT COSTS

"An Act making appropriations for contract settlement costs and cost-of-living adjustments for public employees who are members of certain collective bargaining units; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 158 (L.C.)  the same title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

| SIGNING <u>DO PASS</u>               | DP | <u>OTHER RECOMMENDATIONS</u>  | DNP | NR | AM |
|--------------------------------------|----|-------------------------------|-----|----|----|
| <i>Ed Prochean</i> Maclean ✓         |    | <i>Terry Martin</i> MARTIN ✓  |     |    |    |
| <i>Ronald Larson</i> Larson x        |    | <i>John Hoffman</i> HOFFMAN ✓ |     |    |    |
| <i>Mark Hanley</i> Hanley x          |    |                               |     |    |    |
| <i>Alan Parvell</i> Parvell ✓        |    |                               |     |    |    |
| <i>Ben Grussendorf</i> grussendorf x |    |                               |     |    |    |
| <i>Fay Brown</i> BROWN ✓             |    |                               |     |    |    |
| <i>Richard Foster</i> Foster x       |    |                               |     |    |    |
|                                      |    |                               |     |    |    |
|                                      |    |                               |     |    |    |
|                                      |    |                               |     |    |    |

*Ronald Larson* *Ed Prochean*  
 Co-CHAIRMAN'S SIGNATURE  
 Larson Maclean

CS FOR HOUSE BILL NO. 158(L&C)  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/5/93

Referred: Finance

|                      |              |                  |
|----------------------|--------------|------------------|
| Funding Information: | General Fund | \$6,148,205      |
|                      | Other Funds  | <u>2,884,911</u> |
|                      |              | \$9,033,116      |

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

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations for contract settlement costs and cost-of-living  
 2 adjustments for public employees who are members of certain collective bargaining  
 3 units; and providing for an effective date."

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

5 \* Section 1. The sum of \$2,909,370 is appropriated to the Office of the Governor, office  
 6 of management and budget, to pay the 3.6 percent cost-of-living adjustment required under  
 7 the terms of the contract settlement with the Labor, Trades, and Crafts bargaining unit for the  
 8 period from July 1, 1992, through June 30, 1993, from the following sources:

|    |                                  |           |
|----|----------------------------------|-----------|
| 9  | Federal Receipts                 | \$ 94,705 |
| 10 | General Fund Match               | 24,491    |
| 11 | General Fund                     | 1,697,509 |
| 12 | General Fund/Program Receipts    | 37,648    |
| 13 | General Fund/Mental Health Trust | 94,813    |
| 14 | Fish and Game Fund               | 446       |

|   |                                      |         |
|---|--------------------------------------|---------|
| 1 | Highway Working Capital Fund         | 297,992 |
| 2 | International Airports Revenue Fund  | 371,122 |
| 3 | Surplus Property Revolving Fund      | 1,448   |
| 4 | Capital Improvement Project Receipts | 276,664 |
| 5 | Alaska Marine Highway Fund           | 12,532  |

6 \* Sec. 2. The sum of \$4,921,271 is appropriated to the Office of the Governor, office of  
7 management and budget, to pay the 3.6 percent cost-of-living adjustment and the increased  
8 costs of health insurance benefits required under the terms of the contract settlement with the  
9 Labor, Trades, and Crafts bargaining unit for the period from July 1, 1993, through June 30,  
10 1994, from the following sources:

|    |                                      |            |
|----|--------------------------------------|------------|
| 11 | Federal Receipts                     | \$ 162,871 |
| 12 | General Fund Match                   | 43,489     |
| 13 | General Fund                         | 2,817,864  |
| 14 | General Fund/Program Receipts        | 69,627     |
| 15 | General Fund/Mental Health Trust     | 160,289    |
| 16 | Fish and Game Fund                   | 4,044      |
| 17 | Highway Working Capital Fund         | 486,932    |
| 18 | International Airports Revenue Fund  | 643,634    |
| 19 | Surplus Property Revolving Fund      | 3,008      |
| 20 | Capital Improvement Project Receipts | 506,406    |
| 21 | Alaska Marine Highway Fund           | 23,107     |

22 \* Sec. 3. The sum of \$105,641 is appropriated from the general fund to the Office of the  
23 Governor, office of management and budget, to pay the contract signing bonus to eligible  
24 employees required under the terms of the contract settlement with the Labor, Trades, and  
25 Crafts bargaining unit for the fiscal year ending June 30, 1993.

26 \* Sec. 4. The sum of \$67,600 is appropriated from the general fund to the Office of the  
27 Governor, office of management and budget, to reimburse employees for the cost of obtaining  
28 a commercial driver's license as a condition of continued employment required under the  
29 terms of the contract settlement with the Labor, Trades, and Crafts bargaining unit for the  
30 fiscal year ending June 30, 1993.

31 \* Sec. 5. The sum of \$507,012 is appropriated from the general fund to the University of

1 Alaska to pay the three percent salary adjustment required under the terms of the contract  
2 agreement entered into with the Alaska Community College Federation of Teachers bargaining  
3 unit for the period from July 1, 1992, through June 30, 1993.

4 \* Sec. 6. The sum of \$522,222 is appropriated from the general fund to the University of  
5 Alaska to pay the three percent salary adjustment required under the terms of the contract  
6 agreement entered into with the Alaska Community College Federation of Teachers bargaining  
7 unit for the period from July 1, 1993, through June 30, 1994.

8 \* Sec. 7. The unexpended and unobligated balances of the appropriations made by secs.  
9 1, 3, 4, and 5 of this Act lapse into the funds from which they were appropriated, June 30,  
10 1993.

11 \* Sec. 8. The unexpended and unobligated balances of the appropriations made by secs. 2  
12 and 6 of this Act lapse into the funds from which they were appropriated, June 30, 1994.

13 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

Back-up

**CS HB 158 (L&C)  
Sectional Analysis**

**Appropriations to meet the Contract Settlement Costs  
and Cost-of-Living Adjustments for Public Employees Who Are  
Members of Certain Collective Bargaining Units**

**Section 1.** Appropriates funds to pay a 3.6% cost-of-living-allowance to bargaining unit members for FY 93 (members of other bargaining units received a similar increase in FY 93). Of the \$2,909,370 appropriated:

|               |             |
|---------------|-------------|
| General Funds | \$1,854,461 |
| Other Funds   | \$1,054,909 |

**Section 2.** Appropriates funds to continue the same 3.6% cost-of-living allowance in FY 94. Also includes funding to cover the increased cost of health benefits which will go from the currently budgeted level of \$386.00 per employee per month to \$500.00. Of the \$4,921,271 appropriated in this section:

\$2,911,483 is for the COLA:

|               |             |
|---------------|-------------|
| General Funds | \$1,836,998 |
| Other Funds   | \$1,074,485 |

\$2,009,788 is for increased health benefit costs:

|               |             |
|---------------|-------------|
| General Funds | \$1,254,271 |
| Other Funds   | \$755,517   |

**Section 3.** Appropriates \$105,641 to pay a \$50.00 contract signing bonus to LTC members that were employed on February 1, 1993.

**Section 4.** Appropriates \$67,600 to reimburse employees for the \$100.00 cost an LTC employee incurred in obtaining a commercial driver's license as a condition of continued employment.

**Section 5.** Appropriates \$507,012 to the University of Alaska to pay a 3% COLA to members of the Alaska Community College Federation of Teachers (ACCFT) for FY 93.

**Section 6.** Appropriates \$522,222 to the University of Alaska to pay the same 3% COLA to ACCFT members in FY 94.

**Section 7.** Provides a June 30, 1993 lapse date for any unexpended and unobligated balance of an appropriation made in the sections 1, 3 and 4 and 5.

**Section 8.** Provides a June 30, 1994 lapse date for any unexpended and unobligated balance of the appropriation made in section 2 and 6.

**Section 7.** Provides an immediate effective date for the legislation.



1992/94 LTC Contract

Negotiations began in December 1991, and were limited to six contract articles selected by the parties. With the assistance of a federal mediator, an agreement was reached on a three year agreement.

| Issue            | Change  |
|------------------|---|
| Contracting Out  | The rules which limit the State's ability to contract out work performed by union members have been clarified.  |
| Licenses         | When a new license requirement is imposed on current employees, the State will reimburse the employee for the license fee when the license is obtained prior to the deadline established by law or regulation. Future renewals are the responsibility of the employee.  |
| Wages            | A 3.6% increase effective July 1, 1992. This is the same increase received by other unions effective January 1, 1992. The contract provides no further wage increases in 1993 or 1994.  |
| Classification   | The new agreement excludes classification disputes from the grievance procedure. Under the prior agreement, an arbitrator had the right to determine the pay rate for disputed classifications.   |
| Call Back        | The minimum pay guarantees were eliminated when overtime is scheduled in advance.   |
| Travel           | Travel pay entitlements were changed to comply with the Fair Labor Standards Act. These changes should result in reduced expenses for travel pay.   |
| Holidays         | The Lincoln's Birthday holiday will be eliminated in 1994.  |
| Family Leave     | The provisions of the Alaska Family Leave Act were incorporated into the contract.  |
| Promotion        | The strict seniority preference was eliminated. Supervisors will now have a greater choice when making a promotion.   |
| Health Insurance | In consideration of the deferral of the pay increase for six months and elimination of a holiday, the monthly contribution to health insurance will be increased to \$500. effective July 1, 1993. Any future increases will be equally shared between the employer and the State up to a maximum of \$25 each. Further increases are the responsibility of the employee. |
| Signing Bonus    | Each employee in pay status on February 1, 1993, will receive a signing bonus of \$50.  |

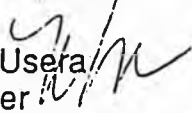
# MEMORANDUM

STATE OF ALASKA  
Department of Administration  
Office of the Commissioner

RECEIVED  
FEB 5 1993  
BUDGET REVIEW

To: Shelby Stastny  
Director  
Office of Management and Budget  
Office of the Governor

Date: February 1, 1993

From: Nancy Bear Usera   
Commissioner  
Department of Administration

Re: Monetary Terms of Labor,  
Trades and Crafts Contract

The State of Alaska has concluded negotiations with Public Employees Local 71 representing the Labor, Trades and Crafts Unit (LTC) and the union membership has ratified the agreement. The following monetary terms are provided so that supplemental and budget amendment requests may be made to the legislature. I am also providing the legislature with the monetary terms as required by AS 23.40.215(b).

## Monetary Terms

Monetary terms of an agreement are defined in AS 23.40.250(4) as changes that will require an appropriation for their implementation, changes that will result in a change in state revenues, or changes that will result in a change in productive work hours for state employees.

### I. Require Appropriation.

- A. Each employee in pay status on the date of signing (February 1, 1993), will receive a signing bonus of \$50. The appropriation should include any additional benefits costs.
- B. Effective July 1, 1992, the wage rates for all employees are increased by 3.6%. This increase equals the percentage increase granted most other state employees last year. However, most other employees received the increase effective January 1, 1992. There will be no further increases in the wage schedule for the life of this agreement which expires on December 31, 1994.
- C. Effective February 1, 1993, the monthly contribution to health insurance for members of the LTC unit will be \$423.50. On July 1, 1993, the contribution on behalf of each eligible member of the bargaining unit will increase to \$500. If there is an increase in the premium in 1994, the state and the employees will equally share the additional cost up to a maximum of \$25. each. Any further increase shall be paid entirely by the employees or the level of benefits shall be adjusted to conform to the premium. The benefits costs associated with LTC positions should be modified to reflect this change.

D. Certain employees were required to obtain a Commercial Driver's License as a condition of continued employment pursuant to AS 28.33.100. The new contract requires the State to reimburse employee's who obtained the license prior to April 1, 1992. Future renewals will be at the expense of the employee. The fee was \$100 per employee. The departments are determining the number of employees affected by this provision. That number will be reported as soon as it is available.

## II. State Revenue.

There are no provisions in the agreement that would change state revenues.

## III. Productive Work Hours

In 1994, the floating holiday known as Lincoln's Birthday will be eliminated. At present, employees receive an additional day of annual leave on February 12. This change will reduce the amount of leave accrual and time taken away from work.

## Other Terms

There are other terms of the collective bargaining agreement which will not require an appropriation but may have a budgetary impact .

- Managers will now have the choice between the two most senior, qualified and competent employees when filling a LTC position through promotion.
- Travel provisions of the agreement have been modified to more closely match the requirements of the Fair Labor Standards Act. This change is expected to result in an overall savings.
- Family leave provisions have been added to conform with the Alaska Family Leave Act (AS 23.10.500 - 23.10.550).
- Designated foremen will receive an additional 75 cents per hour when supervising eight or more employees. This change will reduce the need to reclassify positions when employees perform higher level duties.
- When overtime is scheduled in advance, the State is required to pay only for actual hours of work. A guaranteed minimum of four hours pay at the overtime rate was eliminated.
- Part-time employees will be eligible for overtime on the same basis as other employees. A provision which required overtime for all hours in excess of the regular part-time schedule was eliminated.

## Conclusion

Funding for certain monetary terms will be required. Please prepare and forward to the legislature the necessary documents. Please feel free to call on the staff of the Labor Relations Section for any assistance desired.

| <b>LTC Contract Costs - COLA and Health Benefits</b>                                      |                   |                |                |                   |                |                |                        |              |                |
|---|-------------------|----------------|----------------|-------------------|----------------|----------------|------------------------|--------------|----------------|
|   | <b>FY 93</b>      |                |                | <b>FY 94</b>      |                |                | <b>FY 94</b>           |              |                |
|   | <b>COLA Costs</b> |                |                | <b>COLA Costs</b> |                |                | <b>Health Benefits</b> |              |                |
| <b>Department</b>   | <b>GF</b>         | <b>OF</b>      | <b>Total</b>   | <b>GF</b>         | <b>OF</b>      | <b>Total</b>   | <b>GF</b>              | <b>OF</b>    | <b>Total</b>   |
| Administration  | 331.7             | 1.4            | 333.2          | 329.9             | 1.6            | 331.6          | 279.7                  | 1.4          | 281.0          |
| Education   | 32.1              | .0             | 32.1           | 31.5              | 0.0            | 31.5           | 26.4                   | 0.0          | 26.4           |
| Health & Soc Services   | 140.2             | .0             | 140.2          | 135.5             | 0.0            | 135.5          | 109.5                  | 0.0          | 109.5          |
| Labor   | 39.2              | 15.8           | 55.1           | 37.9              | 16.8           | 54.7           | 23.1                   | 10.2         | 33.3           |
| Military & Veterans Affairs   | 20.3              | 56.6           | 77.0           | 21.3              | 60.6           | 81.9           | 15.3                   | 44.2         | 59.5           |
| Natural Resources   | 38.9              | .5             | 39.4           | 35.4              | 0.8            | 36.2           | 26.6                   | 0.9          | 27.5           |
| Fish and Game   | 25.0              | 10.8           | 35.8           | 10.0              | 9.4            | 19.4           | 6.2                    | 6.6          | 12.8           |
| Public Safety   | 25.9              | .0             | 25.9           | 26.2              | 0.0            | 26.2           | 19.9                   | 0.0          | 19.9           |
| Environmental Conservation  | 3.5               | .5             | 4.0            | 4.6               | 0.0            | 4.6            | 2.6                    | 0.0          | 2.6            |
| Corrections   | 143.2             | .0             | 143.2          | 150.5             | 0.0            | 150.5          | 110.0                  | 0.0          | 110.0          |
| DOT/PF  | 1,054.3           | 969.1          | 2,023.5        | 1,054.1           | 985.3          | 2,039.3        | 635.0                  | 692.3        | 1,327.2        |
| <b>Total</b>  | <b>1,854.5</b>    | <b>1,054.9</b> | <b>2,909.4</b> | <b>1,837.0</b>    | <b>1,074.5</b> | <b>2,911.5</b> | <b>1,254.3</b>         | <b>755.5</b> | <b>2,009.8</b> |
| <b>NOTES:</b>   |                   |                |                |                   |                |                |                        |              |                |
| Each department amount is reduced by the FY 93 budgeted vacancy factor for that component |                   |                |                |                   |                |                |                        |              |                |
| FY 94 calculations are based on FY 94 Governor's budget as introduced in January          |                   |                |                |                   |                |                |                        |              |                |

## **Bargaining Unit Profile**

### **Labor, Trades and Crafts Unit (LTC)**

Description: Classified, nonsupervisory, blue- and gray-collar employees of the Executive Branch. Classifications include cooks, custodians, equipment operators and skilled crafts. The employees work primarily for the Departments of Transportation & Public Facilities, Administration, Corrections, and Health and Social Services.

Size: 1,634 employees as of February 1, 1993.

Exclusive Representative: Public Employees Local 71

Affiliation: AFL-CIO, Laborers International

Established: By the Labor Relations Agency in 1973.

First Agreement Effective: January 1, 1974

Prior Agreement Expired: December 31, 1992.

Duration of Current Agreement: March 1, 1993 through December 31, 1994.

Wage increase effective July 1, 1992.

## 1992/94 Labor, Trades and Crafts Agreement



### Management Goals

- Increase management flexibility to respond effectively to the changing economic conditions of the State while maximizing the quality of government services to the public.
  1. Where possible, defer to the Personnel Rules.
  2. Increase management choice when making promotions.
  3. Clarify management's right to contract out work and layoff employees.
  4. Terminate all prior letters of agreement.
- Improve productivity, accountability, consistency, and efficiency of State government operations.
  1. Reduce overtime and other premium pay liabilities to FLSA standards.
  2. Convert travel and per diem entitlements to those provided in the State Administrative Manual.
  3. Reduce the number of holidays.
- Realign the cost of personal services, moderating the State's relative position as a provider of wages and benefits so as to reflect the current and foreseeable economic environment.
  1. Modify health benefits, reduce unnecessary utilization and increase employee participation in selecting the benefit package.
  2. Share future cost increase of health insurance between employees and State.
  3. Limit across-the-board salary increases.
  4. Defer the effective date of the salary increase by six months.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182  
(907) 465-4954



MEMORANDUM

March 4, 1993

TO: Legal Services

FROM: Representative Bill Hudson, Chair  
House Labor & Commerce Committee

SUBJECT: CS for HB 158

Please prepare a committee substitute for House Bill 158 to show the adoption of the following amendments:

Page 2, line 22: Delete \$70,350 and replace with \$105,641;

Page 2, line 26: Delete \$74,200 and replace with \$67,600;

Page 2, line 31: Add new section 5. The sum of \$507,012 is appropriated from the general fund to the University of Alaska to pay the 3 percent salary adjustment per the terms of the contract agreement with the Alaska Community College Federation of Teachers (ACCFT) bargaining unit for the period from July 1, 1992, through June 30, 1993;

Add new section 6: The sum of \$522,222 is appropriated from the general fund to the University of Alaska to pay the 3 percent salary adjustment per the terms of the contract agreement with the ACCFT bargaining unit for the period of July 1, 1993, through June 30, 1994.

Renumber other sections accordingly.

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## OFFICE OF THE GOVERNOR

P.O. BOX 110020  
JUNEAU, ALASKA 99811-0020  
PHONE: (907) 465-3568

### OFFICE OF MANAGEMENT AND BUDGET DIVISION OF BUDGET REVIEW

March 3, 1993

The Honorable Bill Hudson  
Chair  
House Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Hudson:

House Bill 158 appropriates funding to meet the FY 93 and FY 94 monetary terms of the collective bargaining agreement with the Labor, Trades and Crafts union. It is scheduled for the committee's consideration at this Thursday's meeting.

Since the bill's introduction, updated information has become available which necessitates the following amendments for the committee's consideration:

**Amendment 1: Page 2, line 22: Delete \$70,350 and replace with \$105,641.**

The change is necessary for two reasons: The final number of LTC members eligible for the \$50 contract signing bonus was based on the payroll that ran on approximately February 25, 1993. This number of 1,634 contrasts with the preliminary estimate of 1,407 used in the bill's initial drafting. In addition, this section's original appropriation level did not include the benefit costs of \$23,941 which are incurred as a result of paying this bonus.

**Amendment 2: Page 2, line 26: Delete \$74,200 and replace with \$67,600.**