



August 7, 2019

Submitted by email to: jamie.walker@alaska.gov

Dear Ms. Walker,

The Alaska State Hospital and Nursing Home Association (ASHNHA) is submitting comments on the Department of Health and Social Services emergency regulations on Medicaid cost containment.

On June 28, 2019, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid cost containment measures related to rates for Medicaid service.

ASHNHA is concerned about both the rate cuts and the use of the emergency regulatory process to cut rates. We are opposed to across the board rate cuts with little to no analysis of the impact of those cuts on Alaska's Medicaid patients and the providers serving them.

Provider rate cuts are the easiest lever for the Department to pull to address Medicaid cost growth. However, cutting provider rates simply ratchets down the amount that the Department pays for services without addressing the underlying structure, organization or cost growth of health care. Medicaid already pays below cost, so reducing Medicaid rates merely shifts burden and risk from the state to other payers. Many states have reduced provider rates, but cost growth in the Medicaid program has continued. Reducing provider rates is not innovative, forward-thinking or transformational. In fact, reducing provider rates could harm efforts to transform the delivery system to achieve a more sustainable growth rate moving forward.

Cutting rates has a large financial impact on providers while having a smaller impact on state general fund spending. The overall federal match rate is estimated at 62% which means for every \$1 cut from provider rates the state only saves 38% while the rest of the savings goes to the federal government. This is not an efficient way to reduce the general fund spending while maintaining access to care for vulnerable Alaskans.

When rate cuts were discussed at legislative hearings, ASHNHA and other stakeholders repeatedly asked for an analysis of the impact on patient care. Before moving forward, such an analysis should be completed. With notice of only three days, rates for nearly all facilities and provider types were cut by 5% and inflationary increases were withheld. While we

appreciate the effort to hold primary care and critical access hospitals harmless, this rate cut will impact hospitals of all sizes. Hospitals employ a variety of health care professionals whose services will be impacted by the cut including physician specialists, therapists (PT, OT, speech, respiratory), ancillary services such as lab and radiology, behavioral health and ambulatory surgical services.

Physicians have previously received a 10% rate cut and have had inflationary adjustments suspended for several years, making the cumulative reduction over time more than 20%. The Department has not conducted an impact analysis on the proposed rate reduction to determine if this new rate cut would result in the loss of physician specialists in communities, disrupting services for patients.

Behavioral health providers finally received a rate increase after nearly a decade of flat rates. Cutting rates now will stifle the development of much needed behavioral health programs and push those with needs to the highest cost setting. The cumulative impact of this rate cut, cuts to behavioral health grants and the slow implementation of the 1115 waiver could result in some providers closing their doors.

While we continue to hear that the Department is in conversations with CMS about how to address future cost-containment, the lack of direction and vision is of serious concern to the providers responsible for caring for Alaskans. The Department is engaging with outside contractors and yet not engaging the providers who live and practice in Alaska. Simply cutting provider rates with little notice does not address underlying cost drivers. The use of emergency regulations to change rates also creates concerns that the Department is already programming future rate changes (such as conversion to DRG system) without any dialogue with stakeholders.

As a necessary result of these actions by the Department, ASHNHA, on behalf of its member entities, was compelled to challenge their legality in court. Because ASHNHA believes the Department has not performed the necessary analysis, because it believes the Department used the emergency regulations process improperly, and because the Department's actions will negatively impact facilities and thereby Alaskans' access to care, ASHNHA is requesting that these rate cuts be invalidated. Attached to this letter, please find and review the relevant pleadings, filed both by ASHNHA and on behalf of the Department.¹ These

¹ Attached hereto, please find: 1) ASHNHA's Motion for Summary Judgment; 2) ASHNHA's Motion for Preliminary Injunction; 3) Affidavit of Becky Hultberg; 4) Affidavit of Allison Lee; 5) Affidavit of Timothy Bateman, M.D.; 6) Affidavit of Preston Simmons; 7) DHSS' Opposition to Motion for Preliminary Injunction; 8) Affidavit of Donna Steward; 9) Affidavit of Renee Gayhart; 10) Affidavit of Brian Fechter; 11) ASHNHA's Reply in Support of Motion for Preliminary Injunction; 12) Second Affidavit of Becky Hultberg.

documents explain in much more detail the negative impacts, and impropriety of the Department's actions.

To avoid unintended consequences, we encourage you to involve stakeholders prior to implementing these changes. We want to work together as good partners to improve and transform the Alaska health care system – and we look forward to the time when we can focus on that shared vision.

Sincerely,

A handwritten signature in black ink that reads "Becky Hultberg".

Becky Hultberg
President/CEO

CC: Chuck Bill, ASHNHA Board Chair