

SENATE BILL NO. 83

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/8/17

Referred: Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the protection of vulnerable adults and residents of long term care**
2 **facilities."**

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

4 * **Section 1.** AS 47.24.010(a) is amended to read:

5 (a) Except as provided in (e) [AND (f)] of this section, the following persons
6 who, in the performance of their professional duties, have reasonable cause to believe
7 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
8 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
9 the belief, report the belief to the department's **vulnerable adult centralized intake**
10 **office** [CENTRAL INFORMATION AND REFERRAL SERVICE FOR
11 VULNERABLE ADULTS IN THE OFFICE OF THE DEPARTMENT THAT
12 HANDLES ADULT PROTECTIVE SERVICES];

13 (1) a physician or other licensed health care provider;

14 (2) a mental health professional as defined in **AS 47.30.915**

1 [AS 47.30.915(11)] and including a marital and family therapist licensed under
2 AS 08.63;

3 (3) a pharmacist;

4 (4) an administrator or employee of a nursing home, residential care,
5 or health care facility;

6 (5) a guardian or conservator;

7 (6) a police officer;

8 (7) a village public safety officer;

9 (8) a village health aide;

10 (9) a social worker;

11 (10) a member of the clergy;

12 (11) a staff employee of a project funded by the Department of
13 Administration for the provision of services to older Alaskans, the Department of
14 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

15 (12) an employee of a personal care or home health aide program;

16 (13) an emergency medical technician or a mobile intensive care
17 paramedic;

18 (14) a caregiver of the vulnerable adult;

19 (15) a certified nurse aide;

20 (16) an educator or administrative staff member of a public or private
21 educational institution.

22 * **Sec. 2.** AS 47.24.010(e) is amended to read:

23 (e) If a person making a report under this section believes that immediate
24 action is necessary to protect the vulnerable adult from imminent risk of serious
25 physical harm due to undue influence, abandonment, exploitation, abuse, neglect, or
26 self-neglect and the reporting person cannot immediately contact the department's
27 **vulnerable adult centralized intake office** [CENTRAL INFORMATION AND
28 REFERRAL SERVICE FOR VULNERABLE ADULTS], the reporting person shall
29 make the report to a police officer or a village public safety officer. The police officer
30 or village public safety officer shall take immediate action to protect the vulnerable
31 adult and shall, within 24 hours after receiving the report of harm, notify the

department. A person may not bring an action for damages against a police officer, a village public safety officer, the state, or a political subdivision of the state based on a decision under this subsection to take or not to take immediate action to protect a vulnerable adult. If a decision is made under this subsection to take immediate action to protect a vulnerable adult, a person may not bring an action for damages based on the protective actions taken unless the protective actions were performed with gross negligence or intentional misconduct; damages awarded in the action may include only direct economic compensatory damages for personal injury.

* **Sec. 3.** AS 47.24.013(a) is amended to read:

(a) If a report received under AS 47.24.010 pertains to the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who [IS 60 YEARS OF AGE OR OLDER THAT] is alleged to have been committed by or to have resulted from the negligence of the staff or a volunteer of an out-of-home care facility, including a facility licensed under AS 47.32, in which the vulnerable adult resides, the department **may forward** [SHALL TRANSFER] the report [FOR INVESTIGATION] to the long term care ombudsman **for investigation** under AS 47.62.015.

* **Sec. 4.** AS 47.24.013(b) is amended to read:

(b) The department shall investigate a report received under AS 47.24.010 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who [IS LESS THAN 60 YEARS OF AGE THAT] is alleged to have been committed by or to have resulted from the negligence of the staff or a volunteer of an out-of-home care facility in which the vulnerable adult resides.

* **Sec. 5.** AS 47.24.013(d) is amended to read:

(d) If the long term care ombudsman receives directly a report regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the ombudsman **may** [SHALL] provide the report, and the results of the ombudsman's actions or investigations regarding the report, to the **department's vulnerable adult centralized intake office.** **The ombudsman shall obtain the informed consent of the vulnerable adult or the vulnerable adult's resident representative before providing the report to the**

1 **department** [CENTRAL INFORMATION AND REFERRAL SERVICE OF THE
 2 OFFICE OF THE DEPARTMENT THAT HANDLES ADULT PROTECTIVE
 3 SERVICES]. The department may investigate the report as described in AS 47.24.015
 4 if the department determines that action is appropriate. **In this subsection, "resident**
 5 **representative" has the meaning given in AS 42.62.090.**

6 * **Sec. 6.** AS 47.24.015(a) is amended to read:

7 (a) Upon the department's receipt of a report under AS 47.24.010 [THAT IS
 8 NOT TRANSFERRED UNDER AS 47.24.013], the department, or its designee, shall
 9 promptly initiate an investigation to determine whether the vulnerable adult who is the
 10 subject of the report suffers from undue influence, abandonment, exploitation, abuse,
 11 neglect, or self-neglect. The department, or its designee, shall conduct **an** [A FACE-
 12 TO-FACE] interview with the **vulnerable adult** [SUBJECT OF THE REPORT]
 13 unless that person is unconscious or the department, or its designee, has determined
 14 that **an** [A FACE-TO-FACE] interview could further endanger the vulnerable adult.

15 * **Sec. 7.** AS 47.62.015(a) is amended to read:

16 (a) The ombudsman shall investigate and resolve a complaint made by or on
 17 behalf of an older Alaskan who resides in a long term care facility in the state if the
 18 complaint relates to a decision, action, or failure to act by a provider or a
 19 representative of a provider of long term care services, or by a public agency or social
 20 services agency, that may adversely affect the health, safety, welfare, or rights of the
 21 older Alaskan. **At the discretion of the ombudsman, the ombudsman may**
 22 **investigate and resolve a complaint made by or on behalf of a resident who is not**
 23 **an older Alaskan if the complaint relates to a decision, action, or failure to act by**
 24 **a provider or a representative of a provider of long term care services, or by a**
 25 **public agency or social services agency, that may adversely affect the health,**
 26 **safety, welfare, or rights of the resident.**

27 * **Sec. 8.** AS 47.62.015(c) is amended to read:

28 (c) The ombudsman may
 29 (1) subpoena witnesses, compel their attendance, require the
 30 production of evidence, administer oaths, and examine any person under oath in
 31 connection with a complaint described under (a) of this section; the powers described

1 in this paragraph shall be enforced by the superior court;

2 (2) pursue administrative, legal, or other appropriate remedies on
3 behalf of a resident of [AN OLDER ALASKAN WHO RESIDES IN] a long term
4 care facility in the state.

5 * **Sec. 9.** AS 47.62.025 is repealed and reenacted to read:

6 **Sec. 47.62.025. Access to long term care facilities, residents, and records.**

7 (a) A person may not deny access to a long term care facility or to a resident by the
8 ombudsman or an employee, volunteer, or other representative of the office.

9 (b) Notwithstanding the provisions of AS 47.62.015(c)(1), the ombudsman
10 may obtain medical or other records of a resident of a long term care facility in the
11 state only with the consent of the resident or the person's resident representative or
12 legal guardian; if the resident is unable or incompetent to consent and does not have a
13 resident representative, only with a subpoena or court order.

14 * **Sec. 10.** AS 47.62.030(b) is repealed and reenacted to read:

15 (b) The identity of a complainant or an older Alaskan or resident on whose
16 behalf a complaint is made may only be disclosed with the consent of the identified
17 person or the person's legal guardian or resident representative, or by court order.
18 However, if an older Alaskan is unable to provide consent and does not have a legal
19 guardian, or if a resident is unable to provide consent and does not have a resident
20 representative, the ombudsman may disclose the identity of an identified person for
21 the purpose of making a referral to an agency or person, if the ombudsman or an
22 employee or volunteer of the office

23 (1) has reasonable cause to believe that an action, inaction, or decision,
24 including an action, inaction, or decision by a resident representative or a legal
25 guardian of an older Alaskan, may adversely affect the health, safety, welfare, or
26 rights of the older Alaskan or resident;

27 (2) has reasonable cause to believe the referral is in the best interest of
28 the older Alaskan or resident;

29 (3) obtains the approval of the ombudsman for the disclosure and
30 referral; and

31 (4) does not have evidence that the older Alaskan or resident would

disagree with the referral.

* **Sec. 11.** AS 47.62.060 is amended to read:

Sec. 47.62.060. Cooperative agreements. The authority shall enter into cooperative agreements concerning the operations of the office, including protocols for investigations, with state and local agencies that have jurisdiction over long term care facilities or over the abuse and neglect of older Alaskans or residents.

* **Sec. 12.** AS 47.62.090 is amended to read:

Sec. 47.62.090. Definitions. In AS 47.62.010 - 47.62.090,

(1) "authority" means the Alaska Mental Health Trust Authority established in AS 47.30.011;

(2) "long term care facility" means an assisted living home, as defined in AS 47.32.900, and a nursing facility, as defined in AS 47.32.900;

(3) "office" means the office of the long term care ombudsman;

(4) "older Alaskan" means a person [A RESIDENT] who is 60 years of age or older and who resides in the state;

(5) "ombudsman" means the long term care ombudsman hired under AS 47.62.010;

(6) "resident" means a person who resides in a long term care facility in the state;

(7) "resident representative" means

(A) an individual chosen by a resident to act on behalf of the resident to

(i) support the resident in decision-making;

(ii) access medical, social, or other personal information of the resident;

(iii) manage financial matters; or

(iv) receive notifications;

(B) a person authorized by federal or state law to act on behalf of a resident ["SENIOR CITIZEN HOUSING" HAS THE MEANING GIVEN "SENIOR HOUSING" IN AS 18.56.799].

* **Sec. 13.** AS 47.24.010(f), 47.24.013(c)(3), and 47.24.013(e) are repealed.