

HOUSE BILL NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES MILLETT, Lynn, Gruenberg, Peggy Wilson, Thompson, Gara, Kerttula, Nageak, Drummond, Hawker, Muñoz, Higgins, Chenault, Holmes, LeDoux, Austerman, Reinbold, Josephson, Tammie Wilson, Tuck, Saddler, Pruitt, Tarr, Keller

Introduced: 1/28/13

Referred: Health and Social Services

A BILL

FOR AN ACT ENTITLED

1 "An Act changing the terms 'mental retardation' and 'mentally retarded,' and making
2 conforming changes, in Alaska Statutes."

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

4 * **Section 1.** AS 08.68.333(d) is amended to read:

5 (d) If the certified nurse aide is employed in a skilled nursing facility or a
6 nursing facility, other than an intermediate care facility for **persons with intellectual**
7 **and developmental disabilities** [THE MENTALLY RETARDED], that is
8 participating in the Medicaid or Medicare program, only the state survey and
9 certification agency may make, and report to the Board of Nursing, a finding that the
10 certified nurse aide has committed abuse, neglect, or misappropriation of property in
11 connection with the nurse aide's employment at the facility.

12 * **Sec. 2.** AS 12.47.130(5) is amended to read:

13 (5) "mental disease or defect" means a disorder of thought or mood
14 that substantially impairs judgment, behavior, capacity to recognize reality, or ability

to cope with the ordinary demands of life; "mental disease or defect" also includes intellectual and developmental disabilities that result in [MENTAL RETARDATION, WHICH MEANS A] significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life;

* **Sec. 3.** AS 14.30.350(2) is amended to read:

(2) "child with a disability" means a child with one or more of the following:

(A) intellectual disability [MENTAL RETARDATION];

(B) learning disabilities;

(C) emotional disturbance;

(D) deafness;

(E) deaf-blindness;

(F) hearing impairment;

(G) orthopedic impairment;

(H) other health impairment;

(I) speech or language impairment;

(J) visual impairment;

(K) multiple disabilities;

(L) early childhood development delay;

(M) autism;

(N) traumatic brain injury;

(O) developmental disability;

* **Sec. 4.** AS 14.30.630(b) is amended to read:

(b) The agency shall

(1) provide special education services including

(A) itinerant outreach services to students who are deaf, deaf-blind, intellectually disabled, developmentally disabled [MENTALLY RETARDED], hearing impaired, blind and visually impaired, orthopedically disabled, health-impaired in other ways, and severely emotionally disturbed, and to students with multiple disabilities;

(B) special education instructional support and training of local school district special education personnel; and

(C) other services appropriate to special education needs;

(2) provide for an annual audit of the agency;

(3) provide the department with a two-year plan of operation including a description of the services to be offered by the agency, the method by which the services will be evaluated, information on the number of students and school district personnel to be served, a schedule of funds available to the agency from all sources, and other information that may be required by the department by regulation;

(4) present an annual budget to the department.

* **Sec. 5.** AS 18.15.210 is amended to read:

Sec. 18.15.210. Testing for certain other heritable diseases. The department shall administer and provide services for testing for other heritable diseases that lead to intellectual disabilities, developmental disabilities, or both, [MENTAL RETARDATION] and physical disabilities as screening programs accepted by current medical practice and as developed.

* **Sec. 6.** AS 18.20.140 is amended to read:

Sec. 18.20.140. Purpose. The purpose of AS 18.20.140 - 18.20.220 is to make an inventory of existing hospitals and medical facilities, community mental health centers, and facilities for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED]; to survey the need for construction of hospitals and medical facilities, community mental health centers, and facilities for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED]; and to develop a program and plan of construction for each.

* **Sec. 7.** AS 18.20.150(a) is amended to read:

(a) For each of the following groups of facilities, hospitals and medical facilities (Group 1), community mental health centers (Group 2), and facilities for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED] (Group 3), the department shall

(1) make a statewide inventory of existing public, nonprofit, and proprietary facilities;

(2) survey the need for construction of these facilities;

(3) on the basis of the inventory and survey, develop a program for the construction of public and other nonprofit facilities for each of these groups that will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate facility services to all residents of the state.

* **Sec. 8.** AS 18.20.210(3) is amended to read:

(3) "facility for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED]" means a facility specially designed for the diagnosis, treatment, education, training, or custodial care of persons with intellectual and developmental disabilities [THE MENTALLY RETARDED], including facilities for training specialists and sheltered workshops for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED], but only if the workshops are part of facilities that provide or will provide comprehensive services for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED];

* **Sec. 9.** AS 18.20.210(4) is amended to read:

(4) "federal act" means Title VI of the Public Health Service Act (42 U.S.C. 291 et seq.) concerning hospitals and medical facilities and the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164) concerning facilities for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED] and community mental health centers, both as now or hereafter amended;

* **Sec. 10.** AS 18.20.210(7) is amended to read:

(7) "nonprofit facility for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED]" and "nonprofit community mental health center" mean, respectively, a facility for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED] and a community mental health center that is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term "nonprofit private agency or organization" means an agency or organization that is

such a corporation or association or that is owned and operated by one or more of such corporations or associations;

* **Sec. 11.** AS 18.80.300(15) is amended to read:

(15) "physical or mental impairment" means

(A) physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(B) mental or psychological disorder, including **intellectual disability** [MENTAL RETARDATION], organic brain syndrome, emotional or mental illness, and specific learning disabilities;

* **Sec. 12.** AS 36.30.170(k) is amended to read:

(k) In this section, "person with a disability" means an individual

(1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

(2) whose physical or mental disability

(A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, **intellectual disability, developmental disability, or both** [MENTAL RETARDATION], mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or

(B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of an evaluation of rehabilitation potential to cause substantial functional limitation

comparable to a disability identified in (A) of this paragraph; and

(3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

* **Sec. 13.** AS 43.23.095(2) is amended to read:

(2) "disabled" means physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to **intellectual disability** [MENTAL RETARDATION], cerebral palsy, epilepsy, autism, or other cause; "disabled" does not mean "incompetent";

* **Sec. 14.** AS 47.05.055(b) is amended to read:

(b) If the certified nurse aide is employed in a skilled nursing facility or nursing facility, other than an intermediate care facility for **persons with intellectual and developmental disabilities** [THE MENTALLY RETARDED], that is participating in the Medicaid or Medicare program, only the state survey and certification agency may make, and report to the Board of Nursing, a finding that a certified nurse aide has committed abuse, neglect, or misappropriation of property in connection with the nurse aide's employment at the facility.

* **Sec. 15.** AS 47.07.020(b) is amended to read:

(b) In addition to the persons specified in (a) of this section, the following optional groups of persons for whom the state may claim federal financial participation are eligible for medical assistance:

(1) persons eligible for but not receiving assistance under any plan of the state approved under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act, Supplemental Security Income) or a federal program designated as the successor to the aid to families with dependent children program;

(2) persons in a general hospital, skilled nursing facility, or intermediate care facility, who, if they left the facility, would be eligible for assistance under one of the federal programs specified in (1) of this subsection;

(3) persons under 21 years of age who are under supervision of the department, for whom maintenance is being paid in whole or in part from public funds, and who are in foster homes or private child-care institutions;

(4) aged, blind, or disabled persons, who, because they do not meet income and resources requirements, do not receive supplemental security income under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act), and who do not receive a mandatory state supplement, but who are eligible, or would be eligible if they were not in a skilled nursing facility or intermediate care facility to receive an optional state supplementary payment;

(5) persons under 21 years of age who are in an institution designated as an intermediate care facility for **persons with intellectual and developmental disabilities** [THE MENTALLY RETARDED] and who are financially eligible as determined by the standards of the federal program designated as the successor to the aid to families with dependent children program;

(6) persons in a medical or intermediate care facility whose income while in the facility does not exceed 300 percent of the supplemental security income benefit rate under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act) but who would not be eligible for an optional state supplementary payment if they left the hospital or other facility;

(7) persons under 21 years of age who are receiving active treatment in a psychiatric hospital and who are financially eligible as determined by the standards of the federal program designated as the successor to the aid to families with dependent children program;

(8) persons under 21 years of age and not covered under (a) of this section, who would be eligible for benefits under the federal program designated as the successor to the aid to families with dependent children program, except that they have the care and support of both their natural and adoptive parents;

(9) pregnant women not covered under (a) of this section and who meet the income and resource requirements of the federal program designated as the successor to the aid to families with dependent children program;

(10) persons under 21 years of age not covered under (a) of this section who the department has determined cannot be placed for adoption without medical assistance because of a special need for medical or rehabilitative care and who the department has determined are hard-to-place children eligible for subsidy under

1 AS 25.23.190 - 25.23.210;

2 (11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title
3 XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom
4 a supplemental security income is being paid under 42 U.S.C. 1381 - 1383c (Title
5 XVI, Social Security Act) because they meet all of the following criteria:

6 (A) they are 18 years of age or younger and qualify as disabled
7 individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

8 (B) the department has determined that

9 (i) they require a level of care provided in a hospital,
10 nursing facility, or intermediate care facility for persons with
11 intellectual and developmental disabilities [THE MENTALLY
12 RETARDED];

13 (ii) it is appropriate to provide their care outside of an
14 institution; and

15 (iii) the estimated amount that would be spent for
16 medical assistance for their individual care outside an institution is not
17 greater than the estimated amount that would otherwise be expended
18 individually for medical assistance within an appropriate institution;

19 (C) if they were in a medical institution, they would be eligible
20 for medical assistance under other provisions of this chapter; and

21 (D) home and community-based services under a waiver
22 approved by the federal government are either not available to them under this
23 chapter or would be inappropriate for them;

24 (12) disabled persons, as described in 42 U.S.C.
25 1396a(a)(10)(A)(ii)(XIII), who are in families whose income, as determined under
26 applicable federal regulations or guidelines, is less than 250 percent of the official
27 poverty line applicable to a family of that size according to the United States
28 Department of Health and Human Services, and who, but for earnings in excess of the
29 limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be
30 individuals with respect to whom a supplemental security income is being paid under
31 42 U.S.C. 1381 - 1383c; a person eligible for assistance under this paragraph who is

not eligible under another provision of this section shall pay a premium or other cost-sharing charges according to a sliding fee scale that is based on income as established by the department in regulations;

(13) persons under 19 years of age who are not covered under (a) of this section and whose household income does not exceed 175 percent of the federal poverty line as defined by the United States Department of Health and Human Services and revised under 42 U.S.C. 9902(2);

(14) pregnant women who are not covered under (a) of this section and whose household income does not exceed 175 percent of the federal poverty line as defined by the United States Department of Health and Human Services and revised under 42 U.S.C. 9902(2);

(15) persons who have been diagnosed with breast or cervical cancer and who are eligible for coverage under 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII).

* **Sec. 16.** AS 47.07.030(b) is amended to read:

(b) In addition to the mandatory services specified in (a) of this section and the services provided under (d) of this section, the department may offer only the following optional services: case management services for traumatic or acquired brain injury; case management and nutrition services for pregnant women; personal care services in a recipient's home; emergency hospital services; long-term care noninstitutional services; medical supplies and equipment; advanced nurse practitioner services; clinic services; rehabilitative services for children eligible for services under AS 47.07.063, substance abusers, and emotionally disturbed or chronically mentally ill adults; targeted case management services; inpatient psychiatric facility services for individuals [AGE] 65 years of age or older and individuals under [AGE] 21 years of age; psychologists' services; clinical social workers' services; midwife services; prescribed drugs; physical therapy; occupational therapy; chiropractic services; low-dose mammography screening, as defined in AS 21.42.375(e); hospice care; treatment of speech, hearing, and language disorders; adult dental services; prosthetic devices and eyeglasses; optometrists' services; intermediate care facility services, including intermediate care facility services for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED]; skilled nursing facility services for

1 individuals under [AGE] 21 years of age; and reasonable transportation to and from
 2 the point of medical care.

3 * **Sec. 17.** AS 47.07.045(b) is amended to read:

4 (b) Before the department may terminate payment for services provided under
 5 (a) of this section,

6 (1) the recipient must have had an annual assessment to determine
 7 whether the recipient continues to meet the standards under (a) of this section;

8 (2) the annual assessment must have been reviewed by an independent
 9 qualified health care professional under contract with the department; for purposes of
 10 this paragraph, "independent qualified health care professional" means,

11 (A) for a waiver based on intellectual [MENTAL
 12 RETARDATION] or developmental disability, a person who is qualified under
 13 42 CFR 483.430 as a qualified intellectual disability [MENTAL
 14 RETARDATION] professional;

15 (B) for other allowable waivers, a registered nurse licensed
 16 under AS 08.68 who is qualified to assess children with complex medical
 17 conditions, older Alaskans, and adults with physical disabilities for medical
 18 assistance waivers; and

19 (3) the annual assessment must find that the recipient's condition has
 20 materially improved since the previous assessment; for purposes of this paragraph,
 21 "materially improved" means that a recipient who has previously qualified for a
 22 waiver for

23 (A) a child with complex medical conditions, no longer needs
 24 technical assistance for a life-threatening condition, and is expected to be
 25 placed in a skilled nursing facility for less than 30 days each year;

26 (B) intellectual [MENTAL RETARDATION] or
 27 developmental disability, no longer needs the level of care provided by an
 28 intermediate care facility for persons with intellectual and developmental
 29 disabilities [THE MENTALLY RETARDED] either because the qualifying
 30 diagnosis has changed or the recipient is able to demonstrate the ability to
 31 function in a home setting without the need for waiver services; or

(C) an older Alaskan or adult with a physical disability, no longer has a functional limitation or cognitive impairment that would result in the need for nursing home placement, and is able to demonstrate the ability to function in a home setting without the need for waiver services.

* **Sec. 18.** AS 47.07.055(a) is amended to read:

(a) The estate of an individual who received medical assistance payments is subject to a claim for recovery of the medical assistance after the individual's death that, except as provided in (b) of this section, may be secured by a lien filed against the individual's real property during the individual's lifetime if the

(1) individual was an inpatient in a nursing facility, intermediate care facility for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED], or other medical institution;

(2) department required the individual, as a condition of receiving medical assistance under this chapter, to spend for medical expenses all but a minimal amount of that individual's income; and

(3) department determined during the individual's lifetime, after notice and opportunity for hearing, that the individual could not reasonably be expected to be discharged from the institution and to return home.

* **Sec. 19.** AS 47.07.055(e) is amended to read:

(e) In addition to recovery of medical assistance upon sale of property subject to a lien authorized under (a) - (d) of this section, after an individual's death, the individual's estate is subject to a claim for reimbursement for medical assistance payments made on behalf of the individual under this chapter for the following services to the extent that those services were provided when the individual was 55 years of age or older:

(1) services received while an inpatient in a nursing facility, intermediate care facility for persons with intellectual and developmental disabilities [THE MENTALLY RETARDED], or other medical institutions; and

(2) home and community-based services provided through a waiver received from the federal government that allows home and community-based services to be covered under this chapter for persons who are eligible for coverage under this

chapter while in an institution but who are able to avoid institutionalization because of the provision of home and community-based services.

* **Sec. 20.** AS 47.07.900(11) is amended to read:

(11) "health facility" includes a

(A) hospital, skilled nursing facility, intermediate care facility, intermediate care facility for **persons with intellectual and developmental disabilities** [THE MENTALLY RETARDED], rehabilitation facility, inpatient psychiatric facility, home health agency, rural health clinic, and outpatient surgical clinic; and

(B) birthing center if birthing centers are authorized for coverage under the state plan approved under AS 47.07.040 by the United States Department of Health and Human Services;

* **Sec. 21.** AS 47.25.195(f)(2) is amended to read:

(2) "health facility" includes a hospital, skilled nursing facility, intermediate care facility, intermediate care facility for **persons with intellectual and developmental disabilities** [THE MENTALLY RETARDED], rehabilitation facility, inpatient psychiatric facility, home health agency, rural health clinic, and outpatient surgical clinic.

* **Sec. 22.** AS 47.30.056(b) is amended to read:

(b) Expenditures under (a)(1) of this section must provide for a reasonable level of necessary services to **persons who**

(1) **are** [THE] mentally ill;

(2) **have an intellectual disability, a developmental disability, or both** [THE MENTALLY DEFECTIVE AND RETARDED];

(3) **are** chronic alcoholics suffering from psychoses;

(4) [SENILE PEOPLE WHO] as a result of [THEIR] senility, suffer major mental illness; and

(5) **need** [OTHER PERSONS NEEDING] mental health services, as the legislature may determine.

* **Sec. 23.** AS 47.30.056(e) is amended to read:

(e) In (b)(2) of this section, **"persons who have an intellectual disability,**

developmental disability, or both ["THE MENTALLY DEFECTIVE AND RETARDED"] includes persons with the following neurologic or mental disorders:

- (1) cerebral palsy;
- (2) epilepsy;
- (3) [MENTAL RETARDATION;
- (4)] autistic disorder;
- (4)** [(5)] severe organic brain impairment;
- (5)** [(6)] significant developmental delay during early childhood indicating risk of developing a disorder listed in this subsection;
- (6)** [(7)] other severe and persistent **intellectual disability or developmental disability** [MENTAL DISORDERS] manifested by behaviors and symptoms similar to those manifested by persons with disorders listed in this subsection.

* **Sec. 24.** AS 47.30.580 is amended to read:

Sec. 47.30.580. Comprehensive services. Plans and regulations adopted under AS 47.30.520 - 47.30.620 must allow local programs sufficient administrative and program flexibility so that local community mental health programs may be joined with other programs such as **intellectual and developmental disability** [MENTAL RETARDATION] programs, drug abuse programs, alcoholism programs, and comprehensive mental health services programs.

* **Sec. 25.** AS 47.30.915(12) is amended to read:

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand; **intellectual disability, developmental disability, or both** [MENTAL RETARDATION], epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

* **Sec. 26.** AS 47.32.010(b) is amended to read:

(b) This chapter and regulations adopted under this chapter apply to the following entities:

- 1 (1) ambulatory surgical centers;
- 2 (2) assisted living homes;
- 3 (3) child care facilities;
- 4 (4) child placement agencies;
- 5 (5) foster homes;
- 6 (6) free-standing birth centers;
- 7 (7) home health agencies;
- 8 (8) hospices, or agencies providing hospice services or operating
- 9 hospice programs;
- 10 (9) hospitals;
- 11 (10) intermediate care facilities for **individuals with an intellectual**
- 12 **disability or related condition** [THE MENTALLY RETARDED];
- 13 (11) maternity homes;
- 14 (12) nursing facilities;
- 15 (13) residential child care facilities;
- 16 (14) residential psychiatric treatment centers;
- 17 (15) rural health clinics;
- 18 (16) runaway shelters.

19 * **Sec. 27.** AS 47.32.900(14) is amended to read:

- 20 (14) "intermediate care facility for **individuals with an intellectual**
- 21 **disability or related condition** [THE MENTALLY RETARDED]" has the meaning
- 22 given in 42 C.F.R. 440.150;