



# LAWS OF ALASKA

1978

Source

SCS CSHB 472

Chapter No.

165

## AN ACT

Relating to handicapped persons; and providing for an effective date.

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

\* Section 1. INTENT. This Act is intended to assure the provision of quality services to those children and adults who have handicaps by reason of mental or physical disabilities, including persons qualifying for special education services under AS 14.30.180 - 14.30.350, other persons with the same or similar handicaps, and persons handicapped by mental retardation, cerebral palsy, epilepsy, autism or by other developmental disabilities defined in this Act. The primary objective of the Act is to bring together and make optimal use of all available resources -- federal, state, local, and private -- so that persons with handicaps may be served in the most effective and efficient way. A second goal of the Act is to assure the dignity of persons with handicaps, by reaffirming, and providing for the protection and advocacy of, their rights, which are the same rights as other people of the state of the same age and include the right to live as complete and normal lives as possible and develop their ability and potential to the fullest extent possible.

\* Sec. 2. AS 47 is amended by adding a new chapter to read:

CHAPTER 80. PERSONS WITH HANDICAPS.

ARTICLE 1. RIGHTS.

Sec. 47.80.010. RIGHTS OF PERSONS WITH HANDICAPS. Persons with handicaps have the same legal rights and responsibilities guaranteed all other persons by the Constitution of the United States and federal laws and by the constitution and laws of the state. No otherwise qualified person by reason of having a handicap may be

excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity which receives public funds. Some persons with handicaps may be unable, due to the severity of their handicap, to exercise for themselves all of their rights in a meaningful way; for others modification of some or all of their rights is appropriate. The procedure used for modification of rights shall contain proper legal safeguards against every form of abuse, shall be based on an evaluation of the social capability of the person by qualified experts, and shall be subject to periodic reviews and to the right of appeal to higher authorities.

Sec. 47.80.020. PROTECTION AND ADVOCACY OF RIGHTS. The department shall establish a system to protect and advocate rights of persons with handicaps. The system

(1) has the authority to pursue legal, administrative, and other appropriate remedies to assure the protection of the rights of persons with handicaps; and

(2) shall be independent of any state agency which provides treatment, services or habilitation of persons with handicaps.

ARTICLE 2. GOVERNOR'S COUNCIL FOR THE  
HANDICAPPED AND GIFTED.

Sec. 47.80.030. GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED. There is established the Governor's Council for the Handicapped and Gifted. For budgetary purposes, the council is located within the Department of Health and Social Services but is the interdepartmental planning and coordinating agency of the Department of Health and Social Services, the Department of Education, and other departments which deliver services to persons who are handicapped or gifted. In addition, the council is the state planning council for purposes of federal laws relating to the handicapped or gifted.

Sec. 47.80.040. COMPOSITION. (a) The council consists of no fewer than 18 nor more than 23 members appointed by the governor in accordance with P.L. 91-517, P.L. 94-103, P.L. 94-142, as amended, and AS 14.30.231.

(b) No fewer than one-third of the members shall be representatives of the principal state agencies concerned with services for handicapped or gifted persons.

(c) No fewer than one-third of the members shall be developmentally disabled persons or parents or guardians of such persons, who are not officers or directors of an entity, or employees of a state agency, which receives funds or provides services under P.L. 91-517 or P.L. 94-103, as amended.

(d) The remaining members shall be appointed to represent the public at large, local agencies, nongovernmental agencies, and groups concerned with services to handicapped or gifted persons.

(e) Membership of the council shall at all times comply with the requirements of P.L. 91-517, as amended.

(f) In the appointment of all members other than state agency members, due regard shall be given to geographically balanced representation of areas of the state and to representation of persons with a variety of different mental and physical handicaps.

Sec. 47.80.050. TERM OF OFFICE. (a) Council members' terms are three years. Of the initial appointees, one-third shall be appointed for one-year terms, one-third for two-year terms, and one-third for three-year terms.

(b) A vacancy occurring in the membership of the council shall be filled by appointment of the governor for the unexpired portion of the vacated term.

(c) Council members serve at the pleasure of the governor, notwithstanding their terms of office.

(d) It is the legislative intent that the governor replace any member who, by poor attendance or lack of contribution to the council's work, demonstrates ineffectiveness as a council member.

Sec. 47.80.060. COMPENSATION, PER DIEM, AND EXPENSES. Members of the council receive no salary but are entitled to per diem and reimbursement for travel and other expenses as authorized by law for boards.

Sec. 47.80.070. OFFICERS AND STAFF. (a) The council, by a majority of its membership, shall elect a chairman and other officers it considers necessary from among its membership, to serve on a yearly basis.

(b) The department shall provide for the assignment of personnel to the council to ensure that the council has the capacity to fulfill its responsibilities. The personnel shall be directly responsible to the council for performance of their duties.

Sec. 47.80.080. BYLAWS. The council, on approval of a majority of its membership, shall adopt and amend bylaws governing its composition, proceedings and other activities consistent with secs. 30 - 90 of this chapter and including, but not limited to, provisions concerning a quorum to transact council business and other aspects of procedure, frequency and location of meetings, and establishment, functions and membership of council committees.

Sec. 47.80.090. RESPONSIBILITIES. The council shall

(1) serve as a forum by which issues and benefits regarding current and potential services to handicapped and gifted persons may be discussed by consumer, public, private, professional, and lay interests;

(2) advocate the needs of handicapped and gifted persons before the executive and legislative branches of the state government and before the public;

(3) advise the executive and legislative branches of the state government and the private sector on programs and policies pertaining to current and potential services to handicapped or gifted persons and their families;

(4) submit periodic reports to the commissioner of health and social services, the commissioner of education and to other appropriate departments, on the effects of current federal and state programs regarding services to handicapped or gifted persons; these reports shall include program performance reports to the governor, the federal government, and to state agencies as required by P.L. 91-517, P.L. 94-103, or P.L. 94-142, as amended;

(5) in conjunction with the Departments of Health and Social Services and Education, develop, prepare, adopt, periodically review, and revise as necessary an annual state plan prescribing programs which meet the needs of persons with developmental disabilities as required under P.L. 91-517 or P.L. 94-103, as amended;

(6) review and comment to commissioners of state departments on all state plans and proposed regulations relating to programs for persons with handicaps before the adoption of a plan or regulation; for this purpose, the appropriate departments shall submit the plans and proposed regulations to the council;

(7) recommend the priorities and specifications for the use of funds received by the state under P.L. 91-517, P.L. 94-103 and P.L. 94-142, as amended;

(8) submit annually to the commissioner of health and social services, the commissioner of education, and the commissioner of community and regional affairs a proposed interdepartmental program budget for services to handicapped or gifted persons which includes, insofar as possible, projected revenues and expenditures for programs implemented by state agencies, local governmental agencies, and private organizations; the interdepartmental program budget is an informational supplement to the regular annual budgetary submissions of the departments to the Office of the Governor;

(9) provide information and guidance for the development of appropriate special educational programs and services for exceptional children as defined in AS 14.30.-350;

(10) monitor and evaluate budgets or other implementation plans and programs for handicapped and gifted persons to assure nonduplication of services and encourage efficient and coordinated use of federal, state and private resources in the provision of services; members of the council, with the approval of the council, have access to information in the possession of state agencies subject to disclosure restrictions imposed by state or federal confidentiality or privacy laws; and

(11) perform other duties required under P.L. 91-517, P.L. 94-103, P.L. 94-142, as amended, or AS 14.30.-231, and as the governor may assign.

### ARTICLE 3. PROGRAMS AND PLANS.

#### Sec. 47.80.100. PROGRAMS FOR PERSONS WITH HANDICAPS.

(a) The Department of Health and Social Services, the Department of Education, and other departments of the state

as appropriate, shall, in coordination, plan, develop, and implement a comprehensive system of services and facilities for persons with handicaps, which is consistent with the state plan adopted under sec. 90(5) of this chapter and is dispersed geographically within the state.

(b) The services required in (a) of this section are specialized services or special adaptations of services available to the general population and shall be directed toward the social, personal, physical, or economic habilitation or rehabilitation of persons with handicaps.

(c) Within the limits of appropriations and other available funds, the appropriate department may itself provide the services and establish, operate, and maintain the facilities required under (a) and (b) of this section, or it may provide the services or facilities entirely or in part through contractual arrangements with public or private agencies.

Sec. 47.80.110. PROGRAM PRINCIPLES. The system of services and facilities required under sec. 100 of this chapter shall accord with the principle that treatment, services, and habilitation shall be designed to maximize individual potential, minimize institutionalization, and shall be provided in the least restrictive setting, enabling a person to live as normally as possible within the limitations of the handicap.

Sec. 47.80.120. HABILITATION PLANS. A state agency, contractor, or grantee who is directly responsible for providing services to persons with handicaps shall develop an individual habilitation plan for each person whose program of services utilizes state funds. The plan shall be completed in writing and furnished to the department within 30 days of admission of a client to the program of services. The plan, its renewals, and any changes of it, shall have the written concurrence of the client, or his parent or guardian when appropriate, and the agency or contractor responsible for providing services. The development and content of a plan shall conform to requirements established by the department by regulation. Insofar as practicable, the requirements shall conform to those established for individual habilitation plans under P.L. 91-517 or P.L. 94-103, as amended. Each plan shall be time-limited, evaluated, and renewed at least annually.

Sec. 47.80.130. POWERS AND DUTIES OF THE DEPARTMENT.

(a) The department shall

- (1) develop budgets and receive and distribute appropriations and funds under this section;
- (2) adopt regulations regarding standards of services and facilities for persons with handicaps and the quality of services and the process by which services are to be delivered;
- (3) adopt any other regulations necessary to implement this chapter;
- (4) provide technical assistance to public and private agencies in planning, developing, and implementing

programs to serve handicapped persons;

(5) operate programs and facilities, and enter into agreements, contracts, or grants necessary to provide services required under this chapter;

(6) take the actions and undertake the obligations which are necessary to participate in federal grant-in-aid programs and accept federal or other financial aid for the study, examination, care and treatment of the handicapped.

(b) For purposes of P.L. 91-517 and P.L. 94-103, as amended, the department is designated the sole administering agency; it shall make applications for, receive, and expend grants under P.L. 91-517 or P.L. 94-103, as amended, and otherwise exercise the powers and perform the duties and functions necessary to comply with P.L. 91-517 and P.L. 94-103, as amended.

(c) The Department of Education may make applications for, receive, and expend grants under P.L. 91-230 (The Education for the Handicapped Act), as amended, and otherwise exercise the powers and perform the functions necessary to comply with that Act.

Sec. 47.80.140. LICENSING AND CERTIFICATES OF NEED.

(a) No person may establish or operate a residential facility without first obtaining a license to do so. The department by regulation shall provide for licensing of residential facilities which are not within the licensing provisions of AS 18.20.010 - 18.20.130, AS 47.35.010 - 47.35.080 or other law requiring state licensing of such facilities. Regulations of the department shall include but need not be limited to (1) standards of operation promoting and protecting public health, safety, and welfare, and (2) procedures governing applications for and issuance of licenses and duration, renewal, and revocation of licenses for cause. The department may at reasonable times inspect and examine residential facilities licensed under this subsection for conformity with licensing requirements.

(b) A certificate of need is required as a prerequisite for licensing a residential facility established after the effective date of this Act and not otherwise provided for in AS 18.07.031 - 18.07.111. A certificate shall be issued and regulated in the same manner as provided in AS 18.07.031 - 18.07.111 for certificates of need for health care facilities.

Sec. 47.80.150. LIABILITY FOR EXPENSE OF SERVICES.

(a) A person with a handicap or his legal representative acting in a representative capacity, or his spouse or parents, shall pay or contribute to the payment of the charges for the care or treatment in the manner and proportion which the department finds is not detrimental to rehabilitation and which is within the responsible person's ability to pay. The charges may not exceed the actual cost of the care or treatment as determined by the department. The order of the department relating to the payment of charges shall be prospective in effect and shall relate only to charges to be incurred, except that if a person intentionally conceals his ability to pay, he shall be ordered

to pay to the extent of his ability the charges accruing during the period of the concealment. The order of the department relating to the payment of charges by the person with a handicap or his legal representative, or his spouse or parents, shall be issued within six months of the date on which the charge was incurred. The department may make necessary investigations to determine the ability to pay. The order shall remain in full force and effect unless modified by subsequent court or department orders.

(b) As used in (a) of this section, the term "actual cost of the care and treatment" means either the rate provided for by a contract entered into under this chapter, or, in the absence of a contract, a daily rate fixed by the department, and includes expenses of transportation incidental to treatment and carrying out the intent of this chapter.

(c) A person with a handicap who receives benefits under this chapter who is developmentally disabled as defined in sec. 900(7) of this chapter or the person responsible for payment of charges for such a person, may not be required to pay more than \$50 a month toward the charges for the care, treatment, and transportation in connection with treatment of the person with a handicap.

(d) The department may charge, or accept from a person money or property, for the care or treatment of an in-patient or out-patient or for other purposes, even if the payment is not required by an order of the department, so long as the total payments received do not exceed the actual cost of care or treatment.

(e) All money paid by the person with a handicap or on his behalf, under this section, shall be deposited in the state treasury.

(f) If an order of payment is entered by the department under this section and delinquency in the payment of any amount due the state under the order continues for a period of more than 30 days after the notification by the department to the legal representative, parent, or spouse of the person with a handicap, the state may proceed to collect the amounts due by appropriate proceedings. Actions to enforce the collection of payments may only be brought within three years after the date of notification of a delinquent payment.

Sec. 47.80.160. TRANSPORTATION. When an individual is to be treated under this chapter, the department shall arrange, upon the request of a person having a proper interest in the individual's treatment, and may pay for the individual's transportation to the designated facility, with appropriate medical or nursing attendants and by the available means which are appropriate and suitable. The department may pay return transportation of an individual and appropriate medical and nursing attendants. When practicable, one or more relatives or friends of the individual to be treated shall be permitted to accompany him. The department may pay necessary travel, housing and meal expenses incurred by one relative or friend in accompanying the individual to the facility if the department determines

(1) that the best interests of the individual's health require that he be accompanied by the relative or friend;

(2) the relative or friend accompanying the individual is indigent.

Sec. 47.80.170. PROVISION FOR PERSONAL NEEDS UPON DISCHARGE. The department shall make arrangements which are necessary to ensure that

(1) no patient is discharged or placed on convalescent status from a designated facility without suitable clothing; and

(2) an indigent patient discharged or placed on convalescent status is furnished suitable transportation to his permanent residence in this state or other suitable place at the discretion of the department, and a reasonable amount of money to meet his immediate needs.

#### ARTICLE 4. GENERAL PROVISIONS.

Sec. 47.80.900. DEFINITIONS. In this chapter

(1) "council" means the Governor's Council for the Handicapped and Gifted created by sec. 30 of this chapter;

(2) "department" means the Department of Health and Social Services;

(3) "facilities for persons with handicaps" means publicly or privately operated facilities, or specified portions of facilities, designed primarily for the delivery of services to those persons; the term includes but is not limited to residential facilities;

(4) "habilitation" means education or training for the handicapped to enable them to function better in society;

(5) "least restrictive setting" means a residential or other setting for meeting the needs of a handicapped person which requires the least amount of restriction of personal liberty by enabling the person to function in as normal an environment as possible and to live as normally as possible, within the limitations of the handicap;

(6) "person with a handicap" means a person with a developmental disability as defined in (7) of this section or a person who is hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically or otherwise health impaired, or who has a specific learning disability; the term includes but is not limited to "exceptional children" as defined in AS 14.30.-350(1) and AS 47.20.050(1);

(7) "person with a developmental disability" means a person having a disability which

(A) is attributable to



(i) mental retardation, cerebral palsy, epilepsy, or autism;

(ii) any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to impairment resulting from mental retardation; or

(iii) dyslexia resulting from a disability described in (i) or (ii) of this subparagraph; and

(B) constitutes a substantial handicap to the person's ability to function normally in society;

(8) "residential facility" means a publicly or privately operated facility which provides 24-hour care for four or more persons with handicaps, excluding family, foster family, or adoptive homes;

(9) "substantial handicap" means a disability which prevents or substantially impedes the person's participating in and benefiting from the social, economic, educational, recreational, or other opportunities generally available to peers in the community who are not similarly handicapped.

\* Sec. 3. AS 47.30.340(10) is amended to read:

(10) "mentally ill individual" means an individual having a psychosis or senile changes which substantially impair his mental health to the degree that he is a danger to himself or others; the definition does not include an individual suffering from acute alcoholism or drug addiction;

\* Sec. 4. TRANSITION. The Governor's Council for the Handicapped and Gifted established under this Act succeeds to all contracts, rights, liabilities and obligations of the Alaska Developmental Disabilities Planning Council appointed under law repealed by this Act which are in effect on the effective date of this Act. The council also succeeds to all contract rights, liabilities, and obligations of the Special Education Advisory Council established under the authority of AS 14.30.231 and made part of the Governor's Council for the Handicapped and Gifted by Administrative Order No. 42A dated November 25, 1977. Records, equipment and other property of the former councils shall be transferred upon this Act's taking effect. The amount of any appropriation to the former councils which is encumbered but not expended on the effective date of this Act shall not lapse but shall be transferred to the Governor's Council for the Handicapped and Gifted concurrently with the effective date of this Act.

\* Sec. 5. AS 18.05.031 is repealed.

\* Sec. 6. This Act takes effect July 1, 1978.