



# LAWS OF ALASKA

1990

**Source**

HB 418

**Chapter No.**

138

**AN ACT**

Related to quality of care in nursing facilities; establishing a nursing facility resident security fund; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 14, 1990  
Actual Effective Date: June 15, 1990

AN ACT

Related to quality of care in nursing facilities; establishing a nursing facility resident security fund; and providing for an effective date.

\* Section 1. AS 18.20.040 is amended to read:

Sec. 18.20.040. ISSUANCE AND RENEWAL OF LICENSE AND POSTING.

Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant meets the requirements established under AS 18.20.060 - 18.20.080. If the applicant does not meet the requirements established under AS 18.20.060 - 18.20.080 but makes continued efforts to comply with them, the department may grant a temporary or provisional license for a reasonable period of time. Except as provided in (b) of this section, a [A] license [, UNLESS SUSPENDED OR REVOKED,] is renewable annually without charge upon filing by the licensee, and approval by the department of an annual report on the uniform date and containing the information in the form the department prescribes by regulation. Each license issued is for the premises and person or governmental unit named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

\* Sec. 2. AS 18.20.040 is amended by adding a new subsection to read:

(b) A license is not renewable if

(1) it has been suspended or revoked under AS 18.20.050; or

1 (2) regarding a nursing facility as defined in AS 18.20.-  
2 390, the department has taken action under AS 18.20.310(a)(5).

3 \* Sec. 3. AS 18.20.050 is amended to read:

4 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.  
5 The department may deny, suspend, or revoke a license in a case in  
6 which it finds that there has been a substantial failure to comply  
7 with the requirements established under AS 08.64.336 or AS 18.20.060 -  
8 18.20.080. The license of a nursing facility, as defined in AS 18.-  
9 20.390, also may be suspended or revoked by the department under  
10 AS 18.20.310(a)(5).

11 \* Sec. 4. AS 18.20 is amended by adding new sections to read:

12 ARTICLE 4. QUALITY OF CARE IN NURSING FACILITIES.

13 Sec. 18.20.300. STATE POLICY. It is the policy of the state to  
14 ensure that the quality of care in nursing facilities in this state is  
15 maintained at a high standard in accordance with applicable state and  
16 federal law and regulations and to ensure the health, safety, and  
17 quality of life of nursing facility residents in Alaska is maintained  
18 or enhanced.

19 Sec. 18.20.305. NURSING FACILITY REGULATIONS. The department  
20 shall adopt necessary regulations to implement AS 18.20.300 - 18.20.-  
21 380 in accordance with the Administrative Procedure Act (AS 44.62).  
22 The department shall, by regulation, specify criteria as to when and  
23 how the sanctions specified in AS 18.20.310 will be applied. The  
24 criteria shall provide for the imposition of incrementally more severe  
25 penalties for deficiencies that are uncorrected or pervasive, or that  
26 present a threat to the health, safety, or welfare of nursing facility  
27 residents.

28 Sec. 18.20.310. SANCTIONS FOR NONCOMPLIANCE. (a) If the de-  
29 partment finds that a nursing facility, or a partner, officer,

1 director, owner of five percent or more of the nursing facility's  
2 assets, or managing employee of the nursing facility substantially  
3 failed or refused to comply with AS 08.68.340 - 08.68.390, AS 08.70,  
4 AS 18.20.010 - 18.20.130, AS 47.07, or with a regulation adopted under  
5 any of those statutes, or, for a nursing facility that provides Medi-  
6 caid services under AS 47.07, failed or refused to comply with the  
7 Medicaid requirements of 42 U.S.C. 1396r (Title XIX of the Social  
8 Security Act, as amended) or a regulation adopted under that statute,  
9 the department may take the following actions:

10 (1) ban the admission of new residents to the nursing facility;  
11

12 (2) as provided in AS 18.20.320, deny payment under  
13 AS 47.07 and AS 47.25.120 - 47.25.300 for any Medicaid or general  
14 relief-medical resident admitted to the nursing facility after notice  
15 by the department of denial of payment; residents who are eligible for  
16 Medicaid or general relief-medical are not responsible for payment  
17 when the department takes action under this paragraph;

18 (3) assess a civil fine in accordance with AS 18.20.340;

19 (4) suspend or terminate the nursing facility's participa-  
20 tion in the Medicaid program;

21 (5) suspend, revoke, or refuse to renew the nursing facility's  
22 license issued under this chapter;

23 (6) seek an appointment of temporary administration as  
24 provided in AS 18.20.360 or of a receiver under AS 18.20.370;

25 (7) in case of an emergency, seek an order from the court  
26 either to close the nursing facility or to transfer residents from  
27 that facility, or both.

28 (b) An order of the department imposing a sanction described in

29 (1) (a)(1), (4), or (5) of this section takes effect

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1 immediately upon service of the order on the nursing facility; howev-  
2 er, if the facility can demonstrate to the department's satisfaction  
3 that the deficiencies prompting the order do not jeopardize the health  
4 or safety of facility residents or seriously limit the nursing facili-  
5 ty's capacity to provide adequate care, the department's order takes  
6 effect 10 days after service;

7 (2) (a)(2) or (3) of this section takes effect 10 days  
8 after service of the order on the nursing facility.

9 (c) A hearing may be requested under AS 18.20.330 regarding a  
10 sanction imposed by the department under this section.

11 Sec. 18.20.320. DENIAL OF PAYMENT. The department shall deny  
12 payment under AS 47.07 or AS 47.25.120 - 47.25.300 to a nursing facil-  
13 ity

14 (1) that is not in compliance, and, for the preceding three  
15 months, has not been in compliance, with the requirements of 42 U.S.C.  
16 1396r (Title XIX of the Social Security Act, as amended), and regu-  
17 lations adopted under that statute, until correction of the deficien-  
18 cy; or

19 (2) if the department finds, on three consecutive reviews,  
20 that the nursing facility provided substandard quality of care; the  
21 department shall deny payment under this paragraph for new admissions  
22 until the facility has demonstrated to the satisfaction of the depart-  
23 ment that it is in compliance with the Medicaid requirements of 42  
24 U.S.C. 1396r, and that it will remain in compliance with the require-  
25 ments.

26 Sec. 18.20.330. APPEAL; HEARING. (a) Notwithstanding  
27 AS 44.62.330 - 44.62.630, the department, by regulation, shall estab-  
28 lish a hearing procedure by which a nursing facility may present  
29 evidence to refute a deficiency found by the department, and by which

1 it may appeal a sanction imposed by order of the department under  
2 AS 18.20.310. A request for a hearing must be made in writing within  
3 10 days after service of the department's order on the nursing  
4 facility. Except for an order that takes effect immediately under  
5 AS 18.20.310(b)(1), a request under this subsection has the effect of  
6 staying the department's order until the hearing is concluded and the  
7 department makes a final determination.

8 (b) An appeal, or request for stay, regarding a sanction imposed  
9 by the court under AS 18.20.310(6) or (7), 18.20.360, or 18.20.370,  
10 must be filed with the court in accordance with the Rules of Civil  
11 Procedure.

12 Sec. 18.20.340. CIVIL FINES. In accordance with regulations  
13 adopted by the department under AS 44.62.010 - 44.62.300, the depart-  
14 ment may assess and collect, with interest, a civil fine of up to  
15 \$10,000 a day for each day a nursing facility is or was out of compli-  
16 ance with any of the federal or state statutes or regulations listed  
17 in AS 18.20.310. The department shall annually increase the maximum  
18 amount of the civil fine authorized in this section by a percentage  
19 equal to the percentage of increase in all items of the Consumer Price  
20 Index for all urban consumers for Anchorage, Alaska. Each day upon  
21 which the same or a substantially similar noncompliance occurs is a  
22 separate violation subject to the assessment of a separate civil fine.  
23 A civil fine assessed under this section is not reimbursable under  
24 AS 47.07 or AS 47.25.120 - 47.25.300. The department shall deduct the  
25 amount of a civil fine from reimbursement due or to be due the nursing  
26 facility under AS 47.07 or AS 47.25.120 - 47.25.300. The department  
27 may also use any remedy available under law to pursue collection of an  
28 unpaid fine.

29 Sec. 18.20.350. NURSING FACILITY RESIDENT SECURITY FUND. (a)

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1 There is established in the department, as a fund separate from other  
2 public money of the state, the nursing facility resident security  
3 fund. This fund consists of all civil fines collected under  
4 AS 18.20.310(a)(3) and 18.20.340 related to noncompliance with 42  
5 U.S.C. 1396r(b), (c), or (d), and all interest earned on money in the  
6 fund.

7 (b) The nursing facility resident security fund shall be admin-  
8 istered by the department. Money in the fund may only be used for the  
9 protection of the health or property of residents of nursing facil-  
10 ities found to be out of compliance with 42 U.S.C. 1396r(b), (c), or  
11 (d), or a regulation adopted under those statutes, including payment  
12 for the costs of relocation of residents to other facilities, mainte-  
13 nance of operation of a facility pending correction of deficiencies or  
14 closure, and reimbursement to a resident for personal money lost.

15 Sec. 18.20.360. TEMPORARY MANAGEMENT. (a) If the department  
16 determines that the health or safety of the residents of a nursing  
17 facility is immediately jeopardized as the result of the nursing  
18 facility's failure or refusal to comply with a state statute or regu-  
19 lation, or failure or refusal to comply with the Medicaid requirements  
20 in 42 U.S.C. 1396r (Title XIX of the Social Security Act) or a regu-  
21 lation adopted under that statute, the department shall immediately  
22 petition the superior court for an order for appointment of temporary  
23 administration to

24 (1) oversee the operation of the facility; and

25 (2) ensure the health and safety of the facility's resi-  
26 dents while orderly closure of the facility occurs or the deficiencies  
27 necessitating temporary administration are corrected.

28 (b) The court shall grant the petition if it finds by a pre-  
29 ponderance of the evidence that the conditions in (a) of this section

1 exist.

2 Sec. 18.20.370. RECEIVERSHIP. (a) The department may petition  
3 the superior court for establishment of a receivership for a nursing  
4 facility if the department finds that one of the following conditions  
5 exists and the current operator has demonstrated an inability or  
6 unwillingness to take action necessary to immediately correct the  
7 conditions alleged:

8 (1) the facility is operating without a license;

9 (2) the health, safety, or welfare of facility's residents  
10 is immediately jeopardized;

11 (3) the facility demonstrates a pattern and practice of  
12 violating state or federal statutes or regulations in such a way that  
13 minimum resident care is jeopardized.

14 (b) The court shall grant the petition if it finds by a prepon-  
15 derance of the evidence that one or more of the conditions in (a) of  
16 this section exist and the current operator is unable or unwilling to  
17 take action necessary to correct the condition.

18 Sec. 18.20.390. DEFINITIONS. In AS 18.20.300 - 18.20.390,  
19 unless the context requires otherwise,

20 (1) "department" means the Department of Health and Social  
21 Services;

22 (2) "general relief-medical" means the medical assistance  
23 program authorized in AS 47.25.120 - 47.25.300;

24 (3) "nursing facility" means an institution, or a distinct  
25 part of an institution, as defined in 42 U.S.C. 1396r;

26 (4) "Medicaid" means the medical assistance program author-  
27 ized in AS 47.07.

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