

HOUSE BILL NO. 72

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES BRICE, Croft

Introduced: 1/29/99

Referred: Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the provision of services for persons with handicaps;
2 substituting, in the chapter relating to the rights of persons with handicaps and
3 programs for the benefit of persons with handicaps, references to 'disabilities' for
4 references to 'handicaps'; correcting references in that chapter in certain
5 definitions; and correcting in that chapter a reference to an act under which
6 federal financial support is provided for the support of education of the
7 handicapped."

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

9 * **Section 1.** AS 47.80.010 is amended to read:

10 **Sec. 47.80.010. Rights of persons with disabilities [HANDICAPS].** Persons
11 with disabilities [HANDICAPS] have the same legal rights and responsibilities
12 guaranteed all other persons by the Constitution of the United States and federal laws
13 and by the constitution and laws of the state. An otherwise qualified person may not

1 be excluded, by reason of having a **disability** [HANDICAP], from participation in, be
 2 denied the benefits of, or be subjected to discrimination under, any program or activity
 3 that receives public funds. Some persons with **disabilities** [HANDICAPS] may be
 4 unable, due to the severity of their **disability** [HANDICAP], to exercise for themselves
 5 all of their rights in a meaningful way; for others, modification of some or all of their
 6 rights is appropriate. The procedure used for modification of rights must contain
 7 proper legal safeguards against every form of abuse, must be based on an evaluation
 8 of the social capability of the person by qualified experts, and must be subject to
 9 periodic reviews and to the right of appeal to higher authorities.

10 * **Sec. 2.** AS 47.80.020 is amended to read:

11 **Sec. 47.80.020. Protection and advocacy of rights.** The department shall
 12 establish a system to protect and advocate rights of persons with **disabilities**
 13 [HANDICAPS]. The system

14 (1) has the authority to pursue legal, administrative, and other
 15 appropriate remedies to assure the protection of the rights of persons with **disabilities**
 16 [HANDICAPS]; and

17 (2) shall be independent of any state agency that provides treatment,
 18 services, or habilitation of persons with **disabilities** [HANDICAPS].

19 * **Sec. 3.** AS 47.80.040(f) is amended to read:

20 (f) In the appointment of all members other than state agency members, due
 21 regard shall be given to geographically balanced representation of areas of the state
 22 and to representation of persons with a variety of different mental and physical
 23 **disabilities** [HANDICAPS].

24 * **Sec. 4.** AS 47.80.100(a) is amended to read:

25 (a) The Department of Health and Social Services, the Department of
 26 Education, and other departments of the state as appropriate [,] shall, in coordination,
 27 plan, develop, and implement a comprehensive system of services and facilities for
 28 persons with **disabilities** [HANDICAPS], that is consistent with the state plan adopted
 29 under AS 47.80.090(5) and is dispersed geographically within the state.

30 * **Sec. 5.** AS 47.80.100(b) is amended to read:

31 (b) The services required in (a) of this section are specialized services or

1 special adaptations of services available to the general population and shall be directed
 2 toward the social, personal, physical, or economic habilitation or rehabilitation of
 3 persons with **disabilities** [HANDICAPS].

4 * **Sec. 6.** AS 47.80.110 is amended to read:

5 **Sec. 47.80.110. Program principles.** The system of services and facilities
 6 required under AS 47.80.100 shall accord with the principles that service providers
 7 shall

8 (1) make services available at times and locations that enable residents
 9 of the provider's service area to obtain services readily;

10 (2) ensure each client's right to confidentiality and treatment with
 11 dignity;

12 (3) establish staffing patterns that reflect the cultural, linguistic, and
 13 other social characteristics of the community and that incorporate multidisciplinary
 14 professional staff to meet client functional levels and diagnostic and treatment needs;

15 (4) promote client and family participation in formulating, delivering,
 16 and evaluating treatment and rehabilitation;

17 (5) design treatment and habilitation to maximize individual potential
 18 and minimize institutionalization; and

19 (6) provide services in the least restrictive setting, enabling a person
 20 to live as normally as possible within the limitations of the **disability** [HANDICAP].

21 * **Sec. 7.** AS 47.80.120 is amended to read:

22 **Sec. 47.80.120. Habilitation plans.** A state agency, contractor, or grantee who
 23 is directly responsible for providing services to **a person** [PERSONS] with **a disability**
 24 [HANDICAPS] shall develop an individual habilitation plan for each person whose
 25 program of services **uses** [UTILIZES] state funds. The plan shall be completed in
 26 writing and furnished to the department within 30 days of admission of a client to the
 27 program of services. The plan, its renewals, and any changes of it, shall have the
 28 written concurrence of the client, or the client's parent or guardian when appropriate,
 29 and the agency or contractor responsible for providing services. The development and
 30 content of a plan shall conform to requirements established by the department by
 31 regulation. Insofar as practicable, the requirements shall conform to those established

1 for individual habilitation plans under P.L. 91-517 or P.L. 94-103, as amended. Each
 2 plan shall be time-limited, evaluated, and renewed at least annually.

3 * **Sec. 8.** AS 47.80 is amended by adding a new section to read:

4 **Sec. 47.80.125. Provision of habilitation services.** The state agency,
 5 contractor, or grantee who is directly responsible for providing services to a person
 6 with a disability shall initiate the provision of those services to the person in
 7 accordance with the person's individual habilitation plan developed under AS 47.80.120
 8 no later than the following number of days after the plan is furnished to the
 9 department:

10 (1) for a plan furnished to the department on or after January 1, 2000,
 11 and through December 31, 2000 - 90 days;

12 (2) for a plan furnished to the department on or after January 1, 2001,
 13 and through December 31, 2001 - 60 days; and

14 (3) for a plan furnished to the department on or after January 1, 2002
 15 - 30 days.

16 * **Sec. 9.** AS 47.80.130(a) is amended to read:

17 (a) The department shall

18 (1) develop budgets and receive and distribute appropriations and funds
 19 under this section;

20 (2) adopt regulations regarding standards of services and facilities for
 21 persons with **disabilities** [HANDICAPS] and the quality of services and the process
 22 by which services are to be delivered;

23 (3) adopt any other regulations necessary to implement this chapter;

24 (4) provide technical assistance to public and private agencies in
 25 planning, developing, and implementing programs to serve [HANDICAPPED] persons
 26 **with disabilities**;

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

29 (6) take the actions and undertake the obligations that are necessary to
 30 participate in federal grant-in-aid programs and accept federal or other financial aid for
 31 the study, examination, care, and treatment of **persons with disabilities** [THE

1 HANDICAPPED].

2 * **Sec. 10.** AS 47.80.130(c) is amended to read:

3 (c) The Department of Education may make applications for, receive, and
 4 expend grants under **20 U.S.C. 1400 - 1462 (Education of the Handicapped Act), as**
 5 **amended (Title VI, P.L. 91-230)** [P.L. 91-230 (THE EDUCATION FOR THE
 6 HANDICAPPED ACT), AS AMENDED], and otherwise exercise the powers and
 7 perform the functions necessary to comply with **those provisions of federal law**
 8 [THAT ACT].

9 * **Sec. 11.** AS 47.80.150(a) is amended to read:

10 (a) A person with a **disability** [HANDICAP] or the person's legal
 11 representative acting in a representative capacity, the person's spouse, or the person's
 12 parents if the person is a minor [,] shall pay or contribute to the payment of the
 13 charges for the care or treatment in accordance with the fee schedule adopted under
 14 AS 44.29.022. The order of the department relating to the payment of charges shall
 15 be prospective in effect and may relate only to charges to be incurred, except that, if
 16 a person intentionally conceals ability to pay, the person shall be ordered to pay to the
 17 extent of the person's ability to pay the charges accruing during the period of the
 18 concealment. The order of the department relating to the payment of charges by the
 19 person with a **disability** [HANDICAP] or the person's legal representative, or the
 20 person's spouse or parents, shall be issued within six months of the date on which the
 21 charge was incurred. The department may make necessary investigations to determine
 22 the ability to pay. The order shall remain in full force and effect unless modified by
 23 subsequent court or department orders.

24 * **Sec. 12.** AS 47.80.150(b) is amended to read:

25 (b) As used in (a) of this section, the term "**charges for** [ACTUAL COST OF]
 26 the care and treatment" means the lesser of (1) the rate provided for by a contract
 27 entered into under this chapter, (2) the fee established under AS 44.29.022 for services
 28 provided under this chapter, or [,] (3) if the person is under the age of 18, the cost of
 29 care of a person of the same age who is not a person with a **disability** [HANDICAP]
 30 and who resides with a parent or guardian, and includes expenses of transportation
 31 incidental to treatment and carrying out the intent of this chapter. In establishing fees

1 for services under this chapter, the commissioner shall consider the income and family
2 size of the responsible party, age of the person receiving the services, and other factors
3 that relate to the ability to pay. Fees may not exceed the actual cost of the care or
4 treatment.

5 * **Sec. 13.** AS 47.80.150(e) is amended to read:

6 (e) All money paid to the department by the person with a **disability**
7 [HANDICAP] or on the person's behalf, under this section, shall be deposited in the
8 general fund.

9 * **Sec. 14.** AS 47.80.150(f) is amended to read:

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

17 * **Sec. 15.** AS 47.80.900(3) is amended to read:

18 (3) "facilities for persons with **disabilities** [HANDICAPS]" means
19 publicly or privately operated facilities, or specified portions of facilities, designed
20 primarily for the delivery of services to those persons; the term includes but is not
21 limited to residential facilities;

22 * **Sec. 16.** AS 47.80.900(4) is amended to read:

23 (4) "habilitation" means education or training for **persons with**
24 **disabilities** [THE HANDICAPPED] to enable them to function better in society;

25 * **Sec. 17.** AS 47.80.900(5) is amended to read:

26 (5) "least restrictive setting" means a residential or other setting for
27 meeting the needs of a [HANDICAPPED] person **with a disability that** [WHICH]
28 requires the least amount of restriction of personal liberty by enabling the person to
29 function in as normal an environment as possible and to live as normally as possible,
30 within the limitations of the **disability** [HANDICAP];

31 * **Sec. 18.** AS 47.80.900(6) is amended to read:

1 (6) "person with a **disability** [HANDICAP]" means a person with a
2 developmental disability as defined in (7) of this section or a person who is hard of
3 hearing, deaf, speech impaired, visually **impaired** [HANDICAPPED], seriously
4 emotionally disturbed, orthopedically or otherwise health impaired, or who has a
5 specific learning disability; the term includes but is not limited to "exceptional
6 children" as defined in AS 14.30.350;

7 * **Sec. 19.** AS 47.80.900(8) is amended to read:

8 (8) "residential facility" means a publicly or privately operated facility
9 that provides 24-hour care for four or more persons with **disabilities** [HANDICAPS],
10 excluding family, foster family, or adoptive homes;

11 * **Sec. 20.** AS 47.80.900(9) is amended to read:

12 (9) "substantial **functional limitation** [HANDICAP]" means a disability
13 that prevents or substantially impedes the person's participating in and benefiting from
14 the social, economic, educational, recreational, or other opportunities generally
15 available to peers in the community who are not similarly **disabled** [HANDICAPPED].