

SENATE BILL NO. 89

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR ELLIS

Introduced: 2/26/99

Referred: Judiciary, HESS

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 is amended to read:

25 **Sec. 47.80.100. Programs for persons with disabilities** [HANDICAPS]. (a)
 26 The Department of Health and Social Services, the Department of Education, and other
 27 departments of the state as appropriate [,] shall, in coordination, plan, develop, and
 28 implement a comprehensive system of services and facilities for persons with
 29 **disabilities** [HANDICAPS], that is consistent with the state plan adopted under
 30 AS 47.80.090(5) and is dispersed geographically within the state.

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 (c) **The** [WITHIN THE LIMITS OF APPROPRIATIONS AND OTHER
 5 AVAILABLE FUNDS, THE] appropriate department may itself provide the services
 6 and establish, operate, and maintain the facilities required under (a) and (b) of this
 7 section, or it may provide the services or facilities entirely or in part through
 8 contractual arrangements with public or private agencies.

9 * **Sec. 5.** AS 47.80.110 is amended to read:

10 **Sec. 47.80.110. Program principles.** The system of services and facilities
 11 required under AS 47.80.100 shall accord with the principles that service providers
 12 shall

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

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

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

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

22 (5) design treatment and habilitation to maximize individual potential
 23 and minimize institutionalization; and

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

26 * **Sec. 6.** AS 47.80 is amended by adding a new section to read:

27 **Sec. 47.80.115. Provision of services.** A state agency that has determined that
 28 a person with a disability is eligible for services through a program that uses state
 29 funds shall ensure that those services are provided to the person in accordance with the
 30 person's individual habilitation plan developed under AS 47.80.120 no later than the
 31 following number of days after the person is determined to be eligible for the services:

1 (1) for a person determined to be eligible for services on or after
2 January 1, 2000, and through December 31, 2000 - 120 days;

3 (2) for a person determined to be eligible for services on or after
4 January 1, 2001, and through December 31, 2001 - 90 days; and

5 (3) for a person determined to be eligible for services on or after
6 January 1, 2002 - 60 days.

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

8 **Sec. 47.80.120. Habilitation plans.** A state agency, contractor, or grantee who
9 is directly responsible for providing services to **a person** [PERSONS] with **a disability**
10 [HANDICAPS] shall develop an individual habilitation plan for each person whose
11 program of services **uses** [UTILIZES] state funds. The plan shall be completed in
12 writing and furnished to the department within 30 days of admission of a client to the
13 program of services. The plan, its renewals, and any changes of it, shall have the
14 written concurrence of the client, or the client's parent or guardian when appropriate,
15 and the agency or contractor responsible for providing services. The development and
16 content of a plan shall conform to requirements established by the department by
17 regulation. Insofar as practicable, the requirements shall conform to those established
18 for individual habilitation plans under P.L. 91-517 or P.L. 94-103, as amended. Each
19 plan shall be time-limited, evaluated, and renewed at least annually.

20 * **Sec. 8.** AS 47.80.130(a) is amended to read:

21 (a) The department shall

22 (1) develop budgets and receive and distribute appropriations and funds
23 under this section;

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

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

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

31 (5) operate programs and facilities, and enter into agreements, contracts,

1 or grants necessary to provide services required under this chapter;

2 (6) take the actions and undertake the obligations that are necessary to
 3 participate in federal grant-in-aid programs and accept federal or other financial aid for
 4 the study, examination, care, and treatment of **persons with disabilities** [THE
 5 HANDICAPPED].

6 * **Sec. 9.** AS 47.80.130(c) is amended to read:

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

13 * **Sec. 10.** AS 47.80.150(a) is amended to read:

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

28 * **Sec. 11.** AS 47.80.150(b) is amended to read:

29 (b) As used in (a) of this section, the term "**charges for** [ACTUAL COST OF]
 30 the care and treatment" means the lesser of (1) the rate provided for by a contract
 31 entered into under this chapter, (2) the fee established under AS 44.29.022 for services

1 provided under this chapter, or [,] (3) if the person is under the age of 18, the cost of
 2 care of a person of the same age who is not a person with a **disability** [HANDICAP]
 3 and who resides with a parent or guardian, and includes expenses of transportation
 4 incidental to treatment and carrying out the intent of this chapter. In establishing fees
 5 for services under this chapter, the commissioner shall consider the income and family
 6 size of the responsible party, age of the person receiving the services, and other factors
 7 that relate to the ability to pay. Fees may not exceed the actual cost of the care or
 8 treatment.

9 * **Sec. 12.** AS 47.80.150(e) is amended to read:

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

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

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

21 * **Sec. 14.** AS 47.80.900(3) is amended to read:

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

26 * **Sec. 15.** AS 47.80.900(4) is amended to read:

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

29 * **Sec. 16.** AS 47.80.900(5) is amended to read:

30 (5) "least restrictive setting" means a residential or other setting for
 31 meeting the needs of a [HANDICAPPED] person **with a disability that** [WHICH]

1 requires the least amount of restriction of personal liberty by enabling the person to
2 function in as normal an environment as possible and to live as normally as possible,
3 within the limitations of the **disability** [HANDICAP];

4 * **Sec. 17.** AS 47.80.900(6) is amended to read:

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

11 * **Sec. 18.** AS 47.80.900(8) is amended to read:

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

15 * **Sec. 19.** AS 47.80.900(9) is amended to read:

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