

HOUSE BILL NO. 173

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES JOULE, Cissna, Crawford, Croft, Davies, Harris, Hayes, Kapsner, Lancaster, Wilson, Guess, Scalzi, Kerttula, Morgan, Stevens

Introduced: 3/12/01

Referred: Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to establishing a screening, tracking, and intervention program related to**
2 **the hearing ability of newborns and infants; providing an exemption to licensure as an**
3 **audiologist for certain persons performing hearing screening tests; relating to insurance**
4 **coverage for newborn and infant hearing screening; and providing for an effective date."**

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 LEGISLATIVE FINDINGS. The legislature finds that

9 (1) hearing loss occurs in newborns and infants more frequently than any other
10 health condition for which newborn or infant screening is required;

11 (2) 80 percent of the language ability of a child is established by the time the
12 child is 18 months of age, and appropriate language training is vitally important to the healthy
13 development of cognitive, social, emotional, and academic skills;

1 (3) early detection of hearing loss in a child and early intervention and
 2 treatment have been demonstrated to be highly effective in facilitating a child's healthy
 3 development in a manner consistent with the child's age and cognitive ability;

4 (4) children with hearing loss who do not receive early intervention and
 5 treatment frequently require special education services, and these services are publicly funded
 6 for the vast majority of children with hearing needs in the state; and

7 (5) appropriate testing and identification of newborns and infants with hearing
 8 loss will facilitate early intervention and treatment and may serve the public purpose of
 9 promoting the healthy development of children while reducing public expenditures.

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 11 read:

12 LEGISLATIVE INTENT. Subject to the availability of appropriations to implement
 13 AS 47.20.300 - 47.20.390, enacted by sec. 6 of this Act, the Department of Health and Social
 14 Services shall implement the program required by this Act so that at least 90 percent of all
 15 newborns and infants in the state are being screened for hearing loss by January 1, 2003.

16 * **Sec. 3.** AS 08.11.120(b) is amended to read:

17 (b) Notwithstanding the provisions of this chapter,

18 (1) a nurse licensed under AS 08.68 may perform hearing sensitivity
 19 evaluations;

20 (2) an individual licensed as a hearing aid dealer under AS 08.55 may
 21 deal in hearing aids;

22 (3) an individual holding a class A certificate issued by the Conference
 23 of Executives of American Schools of the Deaf may teach the hearing impaired;

24 (4) an individual may engage in the testing of hearing as part of a
 25 hearing conservation program that complies with the regulations of the Occupational
 26 Safety and Health Administration of the federal government if the individual is
 27 certified to do the testing by a state or federal agency acceptable to the Occupational
 28 Safety and Health Administration;

29 **(5) an individual may perform a hearing screening test under**
 30 **AS 47.20.310 if authorized to do so under a protocol adopted under**
 31 **AS 47.20.310(e) by the Department of Health and Social Services.**

1 person attending the newborn child in a hospital in this state, shall, unless medically
2 contraindicated, cause the child to be tested to determine whether the child has a
3 potential hearing impairment using the methods determined by the department under
4 (e) of this section. Unless medically contraindicated, the screening shall occur before
5 the newborn is released from the hospital or before the infant is 30 days old,
6 whichever is earlier. Each birthing center that provides maternity and newborn care
7 services shall provide that each newborn in the center's care is referred for an
8 appointment to a licensed audiologist or to a hospital or other newborn hearing
9 screening provider before discharge. Unless medically contraindicated, the screening
10 shall occur before the infant is 30 days old.

11 (b) Notwithstanding (a) of this section, the physician or other person at or
12 immediately after the birth of a child in a hospital or birthing center that averages less
13 than 50 births a year is not required to screen the child as described in (a) of this
14 section but shall, before the newborn is released from the hospital or birthing center,
15 refer the child for screening at another facility or with another provider. Unless
16 medically contraindicated, the screening shall occur before the child is 30 days old.

17 (c) If it is determined by testing that a newborn child may have a hearing
18 impairment, the physician or other person who is required under (a) of this section to
19 cause the child to be tested shall

20 (1) refer the child for confirmatory testing; and

21 (2) make reasonable efforts to promptly notify the child's parent that
22 the child may have a hearing impairment and explain to the parent the potential effect
23 of the impairment on the development of the child's speech and language skills.

24 (d) When the Bureau of Vital Statistics receives a certificate of live birth
25 under AS 18.50.160 for a newborn who was delivered at a place other than a hospital,
26 the bureau shall notify the department employees who administer AS 47.20.300 -
27 47.20.390; the department employees shall notify the child's parents of the merits of
28 having a hearing screening performed, and the department shall provide information to
29 the parents to assist the parents in accomplishing the hearing testing within 30 days
30 after the child's birth.

31 (e) The hearing testing required under this section shall use protocols

1 established by the department. At a minimum, the protocols must include the use of at
2 least one of the following physiologic technologies: automated or diagnostic auditory
3 brainstem response (ABR) or otoacoustic emissions (OAE). The department shall
4 consider updating the protocols as information is provided to the department that new
5 physiologic technologies or improvements to existing physiologic technologies will
6 substantially enhance newborn and infant hearing assessment.

7 (f) Notwithstanding (a) of this section, a physician or other person required to
8 cause a newborn hearing screening test under this section is exempt from this
9 requirement if the parent of the newborn child objects to the testing procedure on the
10 grounds that the procedure conflicts with the religious tenets and practices of the
11 parent. The parent shall sign a statement that the parent knowingly refuses the
12 services, and the physician or other person shall have a copy of the signed statement
13 retained in the hospital records of the birth.

14 (g) After appropriate billing, the department shall pay the costs of a screening
15 performed under this section if the department determines that the parents are unable
16 to pay the costs and there is no other private insurance or public program under which
17 the costs are eligible for payment. The department shall establish by regulation
18 standards for payment under this section.

19 **Sec. 47.20.320. Reporting and tracking program.** (a) The department shall
20 develop and implement a reporting and tracking system for newborns and infants
21 tested for hearing loss in order to provide the department with information and data to
22 effectively plan, establish, monitor, and evaluate the newborn and infant hearing
23 screening, tracking, and intervention program. Evaluation of the program must
24 include evaluation of the initial hearing screening, follow-up components, and the use
25 and availability of the system of services for newborns and infants who are deaf or
26 hard of hearing and their families.

27 (b) A physician or other person attending the birth in the state, or a hospital on
28 behalf of a physician or other person attending the birth, shall report information
29 related to hearing screening required under (a) of this section as specified by the
30 department. Persons providing audiological confirmatory testing and diagnostic
31 services for newborns and infants whose hearing was tested under AS 47.20.310 shall

1 report information as specified by the department in regulation.

2 (c) The information received under (b) of this section shall be compiled and
3 maintained by the department in the tracking system. The information shall be kept
4 confidential in accordance with the applicable provisions of 20 U.S.C. 1439
5 (Individuals with Disabilities Education Act), as amended by P.L. 105-17. Data
6 collected by the department that was obtained from the medical records of the
7 newborn or infant shall be for the confidential use of the department and are not public
8 records subject to disclosure under AS 40.25.110. Aggregate statistical data without
9 identifying information compiled from the information received is public information.

10 (d) A hospital or other health facility, clinical laboratory, audiologist,
11 physician, registered nurse, officer or employee of a health facility or clinical
12 laboratory, or an employee of an audiologist, physician, or registered nurse is not
13 criminally or civilly liable for furnishing information in good faith to the department
14 or its designee under this section. The furnishing of information in accordance with
15 this section is not a violation of AS 08 or AS 18 or regulations adopted under AS 08 or
16 AS 18 for licensees under those statutes.

17 **Sec. 47.20.330. Intervention program.** (a) The department shall establish
18 guidelines for the provision of follow-up care for newborn and infant children in the
19 state who have been identified as having or being at risk of developing a hearing loss.
20 The services recommended must include appropriate follow-up care for newborns and
21 infants with abnormal or inconclusive test results, such as diagnostic evaluation,
22 referral, and coordination of early intervention service programs if the newborn or
23 infant is found to have a hearing loss.

24 (b) The parents of all newborns and infants diagnosed with a hearing loss, as
25 reported to the department, shall be provided by the department with written
26 information on the availability of follow-up care through community resources and
27 government agencies, including those provided in accordance with 20 U.S.C. 1400 -
28 1491 (Individuals with Disabilities Education Act), as amended. Information provided
29 by the department must include listings of local and statewide nonprofit deaf and hard
30 of hearing consumer-based organizations, parent support organizations affiliated with
31 deafness, counseling and educational services, and programs offered through the

1 department and the Department of Education and Early Development.

2 **Sec. 47.20.340. Outreach campaign.** The department shall conduct a
3 community outreach and awareness campaign to inform medical providers, pregnant
4 women, and families of newborns and infants of the newborn and infant hearing
5 screening, tracking, and intervention program and the value of early hearing testing.

6 **Sec. 47.20.350. Report.** The department shall prepare an annual report for the
7 governor about the newborn and infant hearing screening, tracking, and intervention
8 program administered under AS 47.20.300 - 47.20.390. The report must include
9 recommendations on improving the testing program, including strategies to increase
10 the rate of early screening and the use of appropriate early intervention techniques.
11 The department shall notify the legislature that the report is available.

12 **Sec. 47.20.390. Definitions.** In AS 47.20.300 - 47.20.390,

13 (1) "commissioner" means the commissioner of health and social
14 services;

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

16 (3) "follow-up care" means all of the following:

17 (A) services necessary to diagnose and confirm a hearing loss;

18 (B) ongoing audiological services to monitor hearing;

19 (C) communication services, including aural rehabilitation,
20 speech, language, social, and psychological services;

21 (D) support services for the infant and family; and

22 (E) early intervention services described in 20 U.S.C. 1431 -
23 1445 (Individuals with Disabilities Education Act), as amended by P.L. 105-
24 17;

25 (4) "hearing loss" means a hearing loss of 30 decibels or greater in the
26 frequency region important for speech recognition and comprehension in one or both
27 ears, approximately 500 through 4000 Hz;

28 (5) "infant" means a child 30 days to 24 months old;

29 (6) "newborn" means a child less than 30 days old;

30 (7) "parent" means a natural parent, stepparent, adoptive parent, legal
31 guardian, or other legal custodian of the child;

1 (8) "program" means the newborn and infant hearing, tracking, and
2 intervention screening program established under AS 47.20.300 - 47.20.390.

3 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: REGULATIONS. Notwithstanding sec. 9 of this Act, the
6 Department of Health and Social Services may proceed to develop and adopt regulations
7 required to implement this Act. The regulations take effect under AS 44.62 (Administrative
8 Procedure Act), but not before the effective date of the relevant provision of this Act.

9 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 INSTRUCTION TO REVISOR. In AS 47.20.060 - 47.20.290, the revisor shall delete
12 "this chapter" and insert "AS 47.20.060 - 47.20.290."

13 * **Sec. 9.** AS 47.20.300, enacted by sec. 6 of this Act, and secs. 7 and 8 of this Act take
14 effect immediately under AS 01.10.070(c).

15 * **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect January 1, 2002.