

SENATE BILL NO. 67

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/5/01

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to assisted living homes and to liability for acts or omissions in the**
2 **licensing, monitoring, or supervision of assisted living homes; and providing for an**
3 **effective date."**

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

5 * **Section 1.** AS 47.33.010(a) is amended to read:

6 (a) Except as provided in (b) of this section, this chapter applies to residential
7 facilities operated in the state that serve three or more adults who are not related to the
8 owner of the facility by blood or marriage **and to residential facilities in the state**
9 **that receive state or federal payment for services regardless of the number of**
10 **adults that the facility serves. The department shall consider a facility as a**
11 **residential facility if the facility** [BY]

12 (1) **provides** [PROVIDING] housing and food service to its residents;

13 and

14 (2) **provides** [PROVIDING] or **obtains** [OBTAINING], or **offers**

1 [OFFERING] to provide or obtain for its residents

2 (A) assistance with the activities of daily living;

3 (B) personal assistance; or

4 (C) a combination of services under (A) and (B) of this

5 paragraph.

6 * **Sec. 2.** AS 47.33.100 is amended to read:

7 **Sec. 47.33.100. Criminal background check [FOR EMPLOYEES].** (a)

8 An assisted living home may not employ, contract, use the services of, or allow to
 9 reside in the home an individual, including an administrator, employee,
 10 contractor, regular volunteer, care provider, or a family member living in the
 11 home, [IN A PAID POSITION THAT THE APPLICABLE LICENSING AGENCY
 12 HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS
 13 REGULATIONS,] unless the individual, before beginning employment, work,
 14 service, or residence in the home

15 (1) provides to the home a sworn statement as to whether the
 16 individual has been convicted of an offense described in (c) of this section; [AND]

17 (2) provides to the home the results of a name-check criminal
 18 background investigation that was completed by the Department of Public Safety no
 19 more than 30 days before the individual begins employment, work, service, or
 20 residence in the home [IS HIRED]; and

21 (3) submits to the home two full sets of the individual's fingerprints.

22 (b) Within 30 days after employing, contracting with, or using the services
 23 of an individual, or allowing an individual to reside in the home [AN
 24 INDIVIDUAL IN A PAID POSITION], an assisted living home shall submit to the
 25 Department of Public Safety the fingerprints obtained under (a)(3) of this section. The
 26 Department of Public Safety shall submit the fingerprints to the Federal Bureau of
 27 Investigation for a national criminal history record check and shall provide the
 28 results to the applicable licensing agency. When the results are received, the
 29 applicable licensing agency [DEPARTMENT] shall advise the home of

30 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
 31 CHECK WAS COMPLETED; AND

1 (2)] whether the check shows that the individual has committed an
2 offense described in (c) of this section.

3 (c) An assisted living home may not **employ, contract, use the services of, or**
4 **allow to reside in the home an individual** [HIRE OR RETAIN AN EMPLOYEE]
5 who has been convicted of an offense listed in the regulations of the applicable
6 licensing agency as being an offense covered by this section.

7 * **Sec. 3.** AS 47.33.100 is amended by adding a new subsection to read:

8 (d) This section does not apply to

9 (1) an individual who is a resident of the assisted living home and is
10 receiving residential services from the home under a contract made under this chapter;

11 (2) an individual who is providing services to a resident as an
12 employee of a care-providing entity that is not affiliated with the assisted living home;

13 (3) an individual residing in the assisted living home who is under 16
14 years old;

15 (4) an individual who occasionally volunteers in an assisted living
16 home and who is supervised by and performs these volunteer services in close
17 physical proximity to the staff of the assisted living home;

18 (5) an individual who is not a care provider and who

19 (A) is visiting the home for less than 14 days in a calendar
20 year; and

21 (B) is in the close physical proximity of the staff of the assisted
22 living home while visiting;

23 (6) a contractor who

24 (A) does not provide services directly to one or more residents;
25 and

26 (B) does not have unsupervised access to a part of the home
27 where services are directly provided to residents.

28 * **Sec. 4.** AS 47.33.360(a) is amended to read:

29 (a) An assisted living home may not terminate a residential services contract
30 with a resident of the home against the resident's will, except **as provided in**
31 **AS 47.33.370 or unless**

1 (1) **the resident engages** [FOR MEDICAL REASONS;
2 (2) FOR ENGAGING] in a documented pattern of conduct that is
3 harmful to the resident, other residents, or staff of the home;

4 **(2) the resident violates** [(3) FOR VIOLATION OF] the terms of the
5 residential services contract, including failure to pay costs incurred under the contract;

6 **(3)** [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME
7 IS ORDERED BY THE RESIDENT'S PHYSICIAN;

8 (5) WHEN] the home is closing; or

9 **(4)** [(6) WHEN] the home can no longer provide or arrange for
10 services in accordance with the resident's needs and the resident's assisted living plan.

11 * **Sec. 5.** AS 47.33.360(b) is amended to read:

12 (b) At least 30 days before terminating the residential services contract with a
13 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
14 provide written notice of the proposed contract termination to the resident or the
15 resident's representative, and to the resident's service coordinator if any. The notice
16 must state the

17 (1) basis for the termination; and

18 (2) resident's right to contest the termination in the manner provided in
19 the contract, which must include an offer by the home to participate in a case
20 conference as described in (c) of this section.

21 * **Sec. 6.** AS 47.33.360(c) is amended to read:

22 (c) Before terminating the residential services contract with a resident under
23 [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a
24 case conference if requested by the resident or the resident's representative. The case
25 conference must include the resident, the resident's representative, if any, the resident's
26 advocate, if any, the resident's service coordinator, if any, the home administrator, and
27 appropriate care providers who may discuss the appropriateness of the contract
28 termination.

29 * **Sec. 7.** AS 47.33 is amended by adding a new section to article 3 to read:

30 **Sec. 47.33.370. Emergency involuntary termination of contract.** (a) An
31 assisted living home may terminate a residential services contract with a resident of

1 the home against the resident's will and with less than 30 days' notice if one or more of
 2 the following emergency reasons exists and is supported by written documentation in
 3 the resident's file in the home:

4 (1) a medical reason;

5 (2) an emergency transfer from the home is ordered by the resident's
 6 physician;

7 (3) imminent danger to the resident or others in the home because the
 8 home is unable to meet the resident's needs or assure the health and safety of others,
 9 for purposes of this paragraph, "imminent danger to the resident or others" includes
 10 imminent danger

11 (A) to the resident caused by the resident's self-destructive
 12 behavior; and

13 (B) of serious physical assault by the resident;

14 (4) the intentional damage or destruction of property in excess of \$300.

15 (b) A resident's refusal or failure to take prescribed medication or otherwise
 16 follow the resident's assisted living plan does not constitute a medical or other reason
 17 for emergency involuntary termination of a residential services contract unless the
 18 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
 19 section.

20 (c) An assisted living home that proposes to terminate a residential services
 21 contract for any reason listed in (a) of this section shall provide written notice of the
 22 proposed contract termination within 72 hours, but not less than 24 hours, before
 23 termination to the resident, the resident's representative, if any, and to the resident's
 24 service coordinator, if any. If the resident does not have a service coordinator, notice
 25 under this subsection must also be given to adult protective services personnel of the
 26 Department of Administration. An assisted living home shall request a conference
 27 with the resident, the resident's representative, if any, the resident's advocate, if any,
 28 and the resident's service coordinator. If the resident does not have a service
 29 coordinator, adult protective services personnel assigned by the Department of
 30 Administration shall be requested to participate in the conference.

31 (d) The notice provided under (c) of this section must state the following:

1 (1) the reason under (a) of this section for the proposed termination of
 2 the residential services contract and the specific facts on which proposed termination
 3 was based;

4 (2) the alternatives to termination of the residential contract that have
 5 been attempted by the home;

6 (3) the location to which the resident will be discharged, if known;

7 (4) the date, time, and location of the conference requested under (c) of
 8 this section.

9 * **Sec. 8.** AS 47.33.410 is amended by adding a new subsection to read:

10 (g) A licensing agency under (a) and (b) of this section, its officers, its
 11 employees, and the state are not liable for civil damages as a result of an act or
 12 omission in the licensing, monitoring, or supervision of an assisted living home under
 13 this chapter. This subsection does not preclude liability for civil damages as a result
 14 of gross negligence or reckless or intentional misconduct.

15 * **Sec. 9.** AS 47.33.550(a) is amended to read:

16 (a) A licensing agency may revoke an assisted living home license, deny
 17 renewal of an assisted living home license, suspend operations of an assisted living
 18 home, suspend the ability of an assisted living home to take in new residents, place
 19 conditions on the ability of an assisted living home to take in new residents, restrict
 20 the type of care that an assisted living home may provide to residents, or assess an
 21 administrative fine, as the agency considers appropriate, on one or more of the
 22 following grounds:

23 (1) a violation of a provision of this chapter, a regulation adopted
 24 under this chapter, an order in a notice of violation issued under this chapter, or a term
 25 of a license issued under this chapter;

26 (2) a criminal conviction of an administrator of an assisted living home
 27 if the conviction is

28 (A) for an offense involving a resident of the home;

29 (B) a felony; [OR]

30 (C) a misdemeanor involving alcohol, a controlled substance,
 31 an imitation controlled substance, or physical or sexual abuse; **or**

1 **(D) an offense listed in the regulations of the applicable**
 2 **licensing agency as being an offense covered by AS 47.33.100(c);**

3 (3) obtaining, retaining, or attempting to obtain or retain a license
 4 under this chapter by fraud or misrepresentation.

5 * **Sec. 10.** AS 47.33.550(f) is amended to read:

6 (f) If an assisted living home requests a hearing under (d) of this section the
 7 hearing shall be held within **120** [60] days after the licensing agency receives the
 8 request. The department's decision following a hearing under this section is a final
 9 administrative order.

10 * **Sec. 11.** AS 47.33.550 is amended by adding new subsections to read:

11 (j) A licensing agency may summarily suspend operations of an assisted living
 12 home before a final hearing is held or during an appeal if the licensing agency finds
 13 that the home poses a clear and imminent danger to the public health and safety. The
 14 assisted living home is entitled to a hearing before the licensing agency to appeal the
 15 summary suspension within 10 days after the order of suspension is issued. To
 16 request a hearing, the assisted living home must notify the licensing agency of the
 17 request within 24 hours, excluding weekends and holidays, after the order of
 18 suspension was received. The assisted living home may appeal, to a court of
 19 competent jurisdiction, an adverse decision of the licensing agency on an appeal of a
 20 summary suspension.

21 (k) If a license is suspended or revoked under this section, the facility may not
 22 be operated or maintained as an assisted living home and may not house or provide
 23 assisted living services to any facility resident.

24 * **Sec. 12.** AS 47.33 is amended by adding a new section to read:

25 **Sec. 47.33.563. Court-ordered temporary administration and**
 26 **receivership.** (a) If the licensing agency determines that the health or safety of the
 27 residents of an assisted living home is imminently jeopardized as the result of the
 28 assisted living home's failure or refusal to comply with a state or federal statute or
 29 regulation or local ordinance, the licensing agency may petition the superior court for
 30 an order for appointment of temporary administration to oversee the operation of the
 31 assisted living home in order to ensure the health and safety of the assisted living

1 home residents while orderly closure of the assisted living home occurs or the
2 deficiencies necessitating temporary administration are corrected.

3 (b) The licensing agency may petition the superior court for establishment of a
4 receivership for an assisted living home if the licensing agency finds that one of the
5 following conditions exists and the owner, operator, or administrator of the home has
6 demonstrated an inability or unwillingness to take action necessary to immediately
7 correct the following alleged conditions:

8 (1) the assisted living home is operating without a license;

9 (2) the health, safety, or welfare of the assisted living home's residents
10 is imminently jeopardized;

11 (3) the assisted living home demonstrates a pattern and practice of
12 violating state or federal statutes or regulations or local ordinances in such a way that
13 care of residents is jeopardized.

14 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **APPLICABILITY.** This Act applies to all acts or omissions done on or after the
17 effective date of this Act.

18 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **TRANSITION: REGULATIONS.** Notwithstanding sec. 16 of this Act, the
21 Department of Administration and the Department of Health and Social Services may
22 immediately proceed to adopt regulations necessary to implement the changes made by this
23 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
24 before the effective date of the statutory change.

25 * **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2001.