

HOUSE BILL NO. 125

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MEYER

Introduced: 2/26/03

Referred: Health, Education and Social Services, State Affairs

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to assisted living homes; relating to the rights of a resident in an**
2 **assisted living home; and prohibiting an assisted living home from taking certain actions**
3 **with respect to residents and employees of the home."**

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 **a**
7 residential **facility** [FACILITIES] operated in the state that **either serves** [SERVE]
8 three or more adults who are not related to the owner of the facility by blood or
9 marriage **or receives state or federal payment for services described in this**
10 **subsection, regardless of the number of adults served. The department shall**
11 **consider a facility to be residential if the facility** [BY]

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

13 and

14 (2) **offers** [PROVIDING OR OBTAINING, OR OFFERING] to

1 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 is amended by adding a new section to article 1 to read:

7 **Sec. 47.33.105. Retaliation against employee prohibited.** (a) An assisted
8 living home may not, in retaliation, discharge, demote, or transfer, reduce the pay,
9 benefits, or work privileges of, prepare a negative work performance evaluation for, or
10 take other retaliatory detrimental action against an employee of the home if the
11 employee, in good faith, files a complaint under AS 47.33.500.

12 (b) An employee may bring a civil action against a home for compensatory
13 and punitive damages for violation of (a) of this section. In the civil action, there is a
14 rebuttable presumption that the detrimental action by the home was retaliatory if the
15 action was taken within 90 days after the complaint was filed under AS 47.33.500.

16 * **Sec. 3.** AS 47.33.230(a) is amended to read:

17 (a) An assisted living plan for a resident of an assisted living home must

18 (1) promote the resident's participation in the community and increased
19 independence through training and support, in order to provide the resident with an
20 environment suited to the resident's needs and best interests;

21 (2) **include documentation of which services offered by the home**
22 **have been selected or refused by the resident** [RECOGNIZE THE
23 RESPONSIBILITY AND RIGHT OF THE RESIDENT OR THE RESIDENT'S
24 REPRESENTATIVE TO EVALUATE AND CHOOSE, AFTER DISCUSSION
25 WITH ALL RELEVANT PARTIES, INCLUDING THE HOME, THE RISKS
26 ASSOCIATED WITH EACH OPTION WHEN MAKING DECISIONS
27 PERTAINING TO THE RESIDENT'S ABILITIES, PREFERENCES, AND
28 SERVICE NEEDS]; and

29 (3) **include a written agreement between the resident or the**
30 **resident's representative and the home as to who bears responsibility for the risks**
31 **associated with the selection or refusal of services** [RECOGNIZE THE RIGHT OF

1 THE HOME TO EVALUATE AND TO EITHER CONSENT OR REFUSE TO
 2 ACCEPT THE RESIDENT'S CHOICE OF RISKS] under (2) of this subsection; **the**
 3 **agreement must include a statement that the home has informed the resident or**
 4 **the resident's representative of the perceived consequences of the refusal or**
 5 **selection of services under (2) of this subsection and has offered applicable**
 6 **alternatives to a service that was refused or selected.**

7 * Sec. 4. AS 47.33.300(a) is amended to read:

8 (a) Subject to (c) of this section, a resident of an assisted living home has the
 9 right [TO]

10 (1) **to** live in a safe and sanitary environment;

11 (2) **to the opportunity to make an informed choice about selecting**
 12 **or refusing a service that is provided by the home at the time the resident's**
 13 **assisted living plan is prepared under AS 47.33.230;**

14 **(3) to be free from abandonment, neglect, exploitation, and abuse**
 15 **perpetrated by the staff of the home or by contractors and volunteers with the**
 16 **home;**

17 **(4) to be free from unreasonable or improper use of physical or**
 18 **chemical restraints;**

19 **(5) to** be treated with consideration and respect for personal dignity,
 20 individuality, and the need for privacy, including privacy in

21 (A) a medical examination or health-related consultation;

22 (B) the resident's room or portion of a room;

23 (C) bathing and toileting, except for any assistance in those
 24 activities that is specified in the resident's assisted living plan; and

25 (D) the maintenance of personal possessions and the right to
 26 keep at least one cabinet or drawer locked;

27 **(6) to** [(3)] possess and use personal clothing and other personal
 28 property, unless the home can demonstrate that the possession or use of certain
 29 personal property would be unsafe or an infringement of the rights of other residents;

30 **(7) to** [(4)] engage in private communications, including

31 (A) receiving and sending unopened correspondence;

1 (B) having access to a telephone, or having a private telephone
2 at the resident's own expense; and

3 (C) visiting with persons of the resident's choice, subject to
4 visiting hours established by the home;

5 **(8) to** [(5)] close the door of the resident's room at any time, including
6 during visits in the room with guests or other residents;

7 **(9)** [(6)] at the resident's own expense unless otherwise provided in the
8 residential services contract, **to** participate in and benefit from community services
9 and activities to achieve the highest possible level of independence, autonomy, and
10 interaction with the community;

11 **(10) to** [(7)] manage the resident's own money;

12 **(11) to** [(8)] participate in the development of the resident's assisted
13 living plan;

14 **(12) to** [(9)] share a room with a spouse if both are residents of the
15 home;

16 **(13) to** [(10)] have a reasonable opportunity to exercise and to go
17 outdoors at regular and frequent intervals, when weather permits;

18 **(14) to** [(11)] exercise civil and religious liberties;

19 **(15) to** [(12)] have access to adequate and appropriate health care and
20 health care providers of the resident's own choosing, consistent with established and
21 recognized standards within the community, **including physicians, dentists,**
22 **pharmacists, mental health professionals, and other practitioners of the healing**
23 **arts;**

24 **(16) to** [(13)] self-administer the resident's own medications, unless
25 specifically provided otherwise in the resident's assisted living plan;

26 **(17) to** [(14)] receive meals that are consistent with religious or health-
27 related restrictions;

28 **(18) to** [(15)] receive the prior notice of relocation of the home or the
29 home's intent to terminate the residential services contract of the resident required by
30 AS 47.33.080 and 47.33.360, respectively;

31 **(19) to** [(16)] present to the home grievances and recommendations for

1 change in the policies, procedures, or services of the home;

2 (20) [(17)] at the resident's own expense unless otherwise provided in
3 the residential services contract, **to** have access to and participate in advocacy or
4 special interest groups;

5 (21) [(18)] at the resident's own expense unless otherwise provided in
6 the residential services contract, **to** intervene or participate in, or refrain from
7 participating in, adjudicatory proceedings held under this chapter, unless provided
8 otherwise by other law; and

9 (22) to [(19)] reasonable access to home files relating to the resident,
10 subject to the constitutional right of privacy of other residents of the home.

11 * **Sec. 5.** AS 47.33.300(c) is amended to read:

12 (c) The rights set out in (a)(6), (7), (10), (15), and (17) [(a)(3), (4), (7), (12),
13 AND (14)] of this section do not create an obligation for an assisted living home to
14 expend money for the specified rights unless otherwise provided in the residential
15 services contract.

16 * **Sec. 6.** AS 47.33.330(a) is amended to read:

17 (a) An assisted living home, including staff of the home, may not

18 (1) deprive a resident of the home of the rights, benefits, or privileges
19 guaranteed to the resident by law;

20 (2) enter a resident's room without first obtaining permission, except

21 (A) during regular, previously announced, fire, sanitation, or
22 other licensing inspections;

23 (B) when a condition or situation presents an imminent danger;

24 (C) as required by the resident's assisted living plan to provide
25 services specified in the residential services contract; or

26 (D) for other vital health or safety reasons;

27 (3) impose religious beliefs or practices upon a resident or require a
28 resident to attend religious services;

29 (4) place a resident under physical **or chemical** restraint unless the
30 resident's own actions present an imminent danger to the resident or others **and the**
31 **restraint is authorized for a specified period of time by a physician according to**

1 clear and indicated medical or psychological need; the home shall document the
 2 need for use of physical or chemical restraint of a resident, which less restrictive
 3 alternatives were considered, and the plan for removal or reduction of the
 4 restraint when the resident no longer presents an imminent danger to the
 5 resident or others; this documentation shall be provided to the licensing agency
 6 and to the resident or the resident's representative within 24 hours, excluding
 7 Saturdays and Sundays, of when the restraint was imposed;

8 [(5) PLACE A RESIDENT UNDER CHEMICAL RESTRAINT;] this
 9 paragraph does not prevent a resident from voluntarily taking tranquilizers, or other
 10 medication, prescribed by a licensed physician;

11 ~~(5)~~ [(6)] compel a resident to perform services for the home, except as
 12 contracted for by the resident and the home or as provided for in the resident's assisted
 13 living plan; or

14 ~~(6)~~ [(7)] restrain, interfere with, coerce, discriminate against, or
 15 retaliate against a resident for asserting a right specified by this chapter or by other
 16 law.

17 * **Sec. 7.** AS 47.33.350(b) is amended to read:

18 (b) Termination of a resident's residential services contract by an assisted
 19 living home within 90 [60] days after the resident engages in an activity described in
 20 (a) of this section creates a rebuttable presumption that the termination was retaliatory.
 21 A termination that occurs within 90 days after the resident engages in an activity
 22 described in (a) of this section shall be immediately withdrawn by the home
 23 unless the termination has been approved by the licensing agency under
 24 AS 47.33.360(c). The rebuttable presumption described in this subsection applies
 25 to a civil action under this section, notwithstanding that the termination may
 26 have been approved by the licensing agency.

27 * **Sec. 8.** AS 47.33.360(a) is amended to read:

28 (a) An assisted living home may not terminate a residential services contract
 29 with a resident of the home against the resident's will, except

30 (1) for medical reasons, as certified by the resident's physician;

31 (2) for engaging in a documented pattern of conduct that is harmful to

1 the resident, other residents, or staff of the home;

2 (3) for violation of the terms of the residential services contract,
3 including failure to pay costs incurred under the contract;

4 (4) when emergency transfer out of the home is ordered by the
5 resident's physician;

6 (5) when the home is closing; or

7 (6) when the home can no longer provide or arrange for services in
8 accordance with the resident's needs and the resident's assisted living plan.

9 * **Sec. 9.** AS 47.33.360(c) is amended to read:

10 (c) Before terminating the residential services contract with a resident under
11 (a)(2), (3), (5), or (6) of this section, the assisted living home shall participate in a case
12 conference if requested by the resident or the resident's representative. The case
13 conference must include the resident, the resident's representative, if any, the resident's
14 advocate, if any, the resident's service coordinator, if any, the home administrator, **a**
15 **representative of the licensing agency,** and appropriate care providers who may
16 discuss the appropriateness of the contract termination. **The licensing agency shall**
17 **be considered to have approved the proposed termination for purposes of**
18 **AS 47.33.350(b) if the licensing agency does not object to the termination within**
19 **10 days after the case conference held under this subsection by sending written**
20 **notice of objection to the home and to the resident or the resident's**
21 **representative.**

22 * **Sec. 10.** AS 47.33.360 is amended by adding a new subsection to read:

23 (e) If a home terminates the residential services contract with a resident, the
24 home shall refund the current month's rent on a pro rata basis and refund prepaid rent
25 and deposits.

26 * **Sec. 11.** AS 47.33 is amended by adding a new section to article 3 to read:

27 **Sec. 47.33.362. Termination of contract by resident.** (a) A resident may,
28 within 30 days before the termination, terminate a residential services contract with
29 less than 30 days' notice to the home if the home has

30 (1) received a notice of violation under AS 47.33.530 for engaging in
31 conduct that was harmful to the resident;

- 1 (2) violated the terms of the residential services contract;
 2 (3) become unlicensed; or
 3 (4) given notice that the home is closing.

4 (b) A resident who terminates a contract under (a) of this section is entitled to
 5 a refund of the resident's current month's rent on a pro rata basis, prepaid rent, and
 6 deposits.

7 * **Sec. 12.** AS 47.33.550(f) is amended to read:

8 (f) If an assisted living home requests a hearing under (d) of this section, the
 9 hearing shall be held within **120** [60] days after the licensing agency receives the
 10 request, **except that a hearing requested in response to an emergency revocation**
 11 **of an assisted living home license related to a violation that presents an imminent**
 12 **danger to the health or safety of the resident of an assisted living home shall be**
 13 **held within 60 days after the licensing agency receives the request.** The
 14 department's decision following a hearing under this section is a final administrative
 15 order.

16 * **Sec. 13.** AS 47.33 is amended by adding a new section to read:

17 **Sec. 47.33.930. Limitation of liability for state, licensing agency, and**
 18 **employees.** The state, the Department of Administration, the Department of Health
 19 and Social Services, and the officers and employees of the Department of
 20 Administration or the Department of Health and Social Services are not liable for civil
 21 damages as a result of an act or omission in the licensing, monitoring, or supervision
 22 of an assisted living home under this chapter unless the act or omission constitutes
 23 gross negligence or reckless or intentional misconduct.

24 * **Sec. 14.** AS 47.33.990(12) is amended to read:

25 (12) "imminent danger" means a danger that could reasonably be **perceived**
 26 [EXPECTED] to **potentially** cause death or serious physical harm to the **resident**
 27 [RESIDENT'S SELF, TO THE STAFF OF A HOME,] or to others **except that, for**
 28 **purposes of AS 47.33.330(a)(4) and (b), "imminent danger" does not include a**
 29 **situation that may arise from a resident's chronic condition, such as wandering**
 30 **or instability in walking or sitting, unless less restrictive alternatives have been**
 31 **tried and have been unsuccessful, as documented in the resident's records;**

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

3 APPLICABILITY. (a) Notwithstanding other provisions of this Act, to the extent that
4 a law as enacted or amended by this Act contradicts a provision contained in a residential
5 services contract signed under AS 47.33 before the effective date of this Act, the law as
6 enacted or amended by this Act does not supercede the contradictory provision of the
7 residential services contract.

8 (b) AS 47.33.930, enacted by sec. 13 of this Act, applies to acts or omissions that
9 occur on or after the effective date of this Act.