

CS FOR HOUSE BILL NO. 109(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/9/05

Referred: Health, Education and Social Services, Finance

Sponsor(s): REPRESENTATIVES RAMRAS, Gara, Elkins, Wilson, Gruenberg, McGuire, Anderson, LeDoux, Guttenberg, Lynn, Joule, Kerttula, Dahlstrom, Stoltze, Kelly

A BILL

FOR AN ACT ENTITLED

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

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

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

9 LEGISLATIVE FINDINGS. The legislature finds that

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

12 (2) 80 percent of the language ability of a child is established by the time the
13 child is 18 months of age, and appropriate language training is vitally important to the healthy

1 development of cognitive, social, emotional, and academic skills;

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

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

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

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

13 LEGISLATIVE INTENT. Subject to the availability of appropriations to implement
14 AS 47.20.300 - 47.20.390, enacted by sec. 6 of this Act, the Department of Health and Social
15 Services shall implement the program required by this Act so that 100 percent of all newborns
16 and infants in the state are being screened for hearing loss by January 1, 2008.

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

18 (b) Notwithstanding the provisions of this chapter,

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

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

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

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

30 **(5) an individual may perform hearing screening under**
31 **AS 47.20.310 if authorized to do so under a protocol adopted under**

1 the physician in attendance at or immediately after the birth of a child in a hospital in
2 this state, or, if a physician is not in attendance at or immediately after the birth, the
3 person attending the newborn child in a hospital in this state, shall, unless medically
4 contraindicated, cause the child to be screened to determine whether the child has a
5 potential hearing impairment using the methods determined by the department under
6 (e) of this section. Unless medically contraindicated, the screening shall occur before
7 the newborn is released from the hospital or before the infant is 30 days old,
8 whichever is earlier. Each birthing center that provides maternity and newborn care
9 services shall provide that each newborn in the center's care is referred for an
10 appointment to a licensed audiologist or to a hospital or other newborn hearing
11 screening provider before discharge. Unless medically contraindicated, the screening
12 shall occur before the infant is 30 days old.

13 (b) Notwithstanding (a) of this section, the physician or other person at or
14 immediately after the birth of a child in a hospital or birthing center that averages less
15 than 20 births a year is not required to screen the child as described in (a) of this
16 section but shall, before the newborn is released from the hospital or birthing center,
17 refer the child for screening at another facility or with another provider. Unless
18 medically contraindicated, the screening shall occur before the child is 30 days old.

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

22 (1) refer the child for confirmatory diagnostic evaluation;

23 (2) make reasonable efforts to promptly notify the child's parent that
24 the child may have a hearing impairment and explain to the parent the potential effect
25 of the impairment on the development of the child's speech and language skills and
26 psychosocial and cognitive development; and

27 (3) notify the department of the hearing screening results on a form
28 approved by the department.

29 (d) When the Bureau of Vital Statistics receives a certificate of live birth
30 under AS 18.50.160 for a newborn who was delivered at a place other than a hospital,
31 the bureau shall notify the department employees who administer AS 47.20.310 -

1 47.20.390. The department employees shall notify the child's parents of the merits of
2 having a hearing screening performed, and the department shall provide information to
3 the parents to assist the parents in accomplishing the hearing screening within 30 days
4 after the child's birth.

5 (e) The hearing screening required under this section shall use protocols
6 established by the department. At a minimum, the protocols must include the use of at
7 least one of the following physiologic technologies: automated or diagnostic auditory
8 brainstem response (ABR) or otoacoustic emissions (OAE). The department shall
9 consider updating the protocols as information is provided to the department that new
10 physiologic technologies or improvements to existing physiologic technologies will
11 substantially enhance newborn and infant hearing assessment.

12 (f) Notwithstanding (a) of this section, a physician or other person required to
13 cause a newborn hearing screening under this section is exempt from this requirement
14 if the parent of the newborn child objects to the screening procedure on the grounds
15 that the procedure conflicts with the religious tenets and practices of the parent. The
16 parent shall sign a statement that the parent knowingly refuses the services, and the
17 physician or other person shall have a copy of the signed statement retained in the
18 hospital records of the birth and sent to the department for tracking under
19 AS 47.20.320.

20 (g) The physician or other person required to cause a newborn hearing
21 screening under this section shall report the results of newborn hearing screening as
22 required by the department under AS 47.20.320.

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

31 (b) A physician or other person attending the birth in the state, or a hospital on

1 behalf of a physician or other person attending the birth, shall report information
 2 related to hearing screening required under (a) of this section as specified by the
 3 department. A person who provides audiological confirmatory evaluation and
 4 diagnostic services for newborns and infants whose hearing was screened under
 5 AS 47.20.310 shall report information as specified by the department in regulation.

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

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

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

28 (b) The parents of all newborns and infants diagnosed with a hearing loss, as
 29 reported to the department, shall be provided by the department with written
 30 information on the availability of follow-up care through community resources and
 31 government agencies, including those provided in accordance with 20 U.S.C. 1400 -

1 1491 (Individuals with Disabilities Education Act), as amended. Information provided
 2 by the department must include listings of local and statewide nonprofit deaf and hard
 3 of hearing consumer-based organizations, parent support organizations affiliated with
 4 deafness, counseling and educational services, and programs offered through the
 5 department and the Department of Education and Early Development.

6 **Sec. 47.20.340. Outreach campaign.** The department shall conduct a
 7 community outreach and awareness campaign to inform medical providers, pregnant
 8 women, and families of newborns and infants of the newborn and infant hearing
 9 screening, tracking, and intervention program and the value of early hearing screening,
 10 tracking, and intervention.

11 **Sec. 47.20.350. Report.** The department shall prepare an annual report for the
 12 governor about the newborn and infant hearing screening, tracking, and intervention
 13 program administered under AS 47.20.310 - 47.20.390. The report must include
 14 recommendations on improving the early screening, tracking, and intervention
 15 program, including strategies to increase the rate of early screening and the use of
 16 appropriate early intervention techniques. The department shall notify the legislature
 17 that the report is available.

18 **Sec. 47.20.360. Performance evaluation.** (a) The department shall collect
 19 and compile performance data on the early hearing screening, tracking, and
 20 intervention program established under AS 47.20.300 - 47.20.390 to ensure that the
 21 program is in compliance with AS 47.20.300 - 47.20.390 and the regulations adopted
 22 under AS 47.20.300 - 47.20.390. The performance evaluation must include

- 23 (1) a comparison of the number of infants born in the state to the
 24 number of infants screened;
- 25 (2) the referral rate for confirmatory diagnostic evaluation;
- 26 (3) the follow-up rate for intervention; and
- 27 (4) the number of false screening results.

28 (b) In conducting a performance evaluation, the department shall
 29 establish hearing screening performance standards that must include a false positive
 30 rate and a false negative rate for screening results of less than or equal to three percent.

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

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

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

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

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

6 (B) ongoing audiological services to monitor hearing;

7 (C) communication services, including aural rehabilitation,
8 speech, language, social, and psychological services;

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

10 (E) early intervention services described in 20 U.S.C. 1431 -
11 1445 (Individuals with Disabilities Education Act), as amended;

12 (4) "health care insurer" means an entity regulated by the director of
13 insurance, Department of Commerce, Community, and Economic Development, and
14 includes a health, hospital, or medical service plan corporation, and a health
15 maintenance organization;

16 (5) "hearing loss" means a hearing loss of 40 decibels or greater in the
17 frequency region important for speech recognition and comprehension in one or both
18 ears, approximately 500 through 4000 Hz;

19 (6) "hearing screening" means automated auditory brain stem
20 response, otoacoustic emissions, or other appropriate screening procedure approved by
21 the department;

22 (7) "infant" means a child 30 days to 24 months old;

23 (8) "newborn" means a child less than 30 days old;

24 (9) "parent" means a natural parent, stepparent, adoptive parent, legal
25 guardian, or other legal custodian of the child;

26 (10) "program" means the newborn and infant hearing, tracking, and
27 intervention screening program established under AS 47.20.310 - 47.20.390.

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

30 **TRANSITION: REGULATIONS.** Notwithstanding sec. 9 of this Act, the
31 Department of Health and Social Services may proceed to develop and adopt regulations

1 required to implement this Act. The regulations take effect under AS 44.62 (Administrative
2 Procedure Act), but not before the effective date of the relevant provision of this Act.

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

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

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

9 * **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect January 1, 2006.