

CS FOR HOUSE BILL NO. 151(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/18/05

Referred: Labor and Commerce

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to provider responsibility for ocular postoperative care; and providing**
2 **for an effective date."**

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

4 *** Section 1.** AS 08.64 is amended by adding a new section to article 3 to read:

5 **Sec. 08.64.364. Postoperative care after eye surgery.** (a) If a surgeon
6 delegates the responsibility for postoperative care for a patient for whom the surgeon
7 performed eye surgery in this state, the surgeon may do so only by entering into a
8 comanagement agreement with an ophthalmologist or optometrist under the provisions
9 of this section.

10 (b) Except as provided in (c) of this section, a surgeon who performs eye
11 surgery in this state shall be physically available to the patient for postoperative care
12 in the community in which the operation was performed for at least 48 hours after the
13 surgery is completed.

14 (c) A surgeon who performs eye surgery in this state may delegate the

1 responsibility for the first 48 hours of postoperative care for the patient to another
 2 person if the delegation occurs through a comanagement agreement that meets the
 3 requirements of this section and the person to whom the responsibility is delegated

4 (1) is an ophthalmologist; and

5 (2) either

6 (A) holds a license or permit to practice medicine or osteopathy
 7 that was issued under this chapter; or

8 (B) is exempt from the requirement to have a license or permit
 9 under this chapter by AS 08.64.370(a)(1) or (4).

10 (d) In order to satisfy the requirements of this section, a comanagement
 11 agreement for post operative care of a patient must meet the following requirements:

12 (1) the agreement may be entered into only when

13 (A) the distance the patient would have to travel to the regular
 14 office of the operating surgeon would result in an unreasonable hardship for
 15 the patient, as determined by the patient;

16 (B) the surgeon will not be available for postoperative care of
 17 the patient as a result of the surgeon's personal travel, illness, travel to a rural
 18 area of the state for occasional practice of medicine, or travel to an area of the
 19 state designated as a physician shortage area by the State Medical Board; or

20 (C) other justifiable circumstances exist, as provided under
 21 regulations of the board;

22 (2) the agreement may not provide a fee to the person to whom the
 23 care is delegated that does not reflect the fair market value of the services provided by
 24 the person;

25 (3) the agreement may be entered into only if the surgeon confirms that
 26 the person to whom the care is delegated is qualified to treat the patient during the
 27 postoperative period and is licensed or certified to provide the care if license or
 28 certification is required by law;

29 (4) the agreement may not take effect unless there is a written
 30 statement in the surgeon's file and in the files of the person to whom postoperative
 31 care is being delegated that is signed by the patient in which the patient states the

1 patient's consent to the comanagement agreement and in which the patient
 2 acknowledges that the details of the comanagement agreement have been explained to
 3 the extent required under (5) of this subsection;

4 (5) the details of the agreement shall be disclosed to the patient in
 5 writing before surgery is performed; the disclosure required under this paragraph must
 6 include

7 (A) the reason for the delegation;

8 (B) the qualifications, including licensure or certification, of
 9 the person to whom the care is delegated;

10 (C) the financial details about how the surgical fee will be
 11 divided between the surgeon and the person who provides the postoperative
 12 care;

13 (D) a notice that, notwithstanding the delegation of care, the
 14 patient may receive postoperative care from the surgeon at the patient's request
 15 without the payment of additional fees;

16 (E) a statement that the surgeon will be ultimately responsible
 17 for the patient's care until the patient is postoperatively stable;

18 (F) a statement that there is no fixed date on which the patient
 19 will be required to return to the referring health care provider; and

20 (G) a description of special risks to the patient that may result
 21 from the comanagement agreement.

22 (e) A surgeon may not enter into a comanagement agreement governed by this
 23 section

24 (1) under which two or more physicians or optometrists agree to
 25 comanage patients of the surgeon as a matter of routine policy rather than on a case-
 26 by-case basis;

27 (2) that is not clinically appropriate for the patient;

28 (3) that is made with the intent to induce surgical referrals; or

29 (4) that is based on economic considerations affecting the surgeon.

30 (f) An ophthalmologist or optometrist may not require, as a condition of
 31 making referrals to a surgeon, that the surgeon must enter into a comanagement

1 agreement with the ophthalmologist or optometrist for the postoperative care of the
2 patient who is referred.

3 (g) An ophthalmologist or optometrist to whom postoperative care is
4 delegated under a comanagement agreement governed by this section may not further
5 delegate the care to another person, regardless of whether the other person is under the
6 supervision of the ophthalmologist or optometrist.

7 (h) It is an affirmative defense to a prosecution under this section or in a
8 disciplinary proceeding for violation of this section that the surgeon delegated
9 postoperative care of a patient because of unanticipated circumstances that were not
10 reasonably foreseeable by the surgeon before the surgery was performed.

11 (i) In this section,

12 (1) "ophthalmologist" means a physician who has completed a
13 residency in ophthalmology in an accredited program;

14 (2) "optometrist" means a person licensed as an optometrist under
15 AS 08.72.

16 (j) A person who knowingly violates this section is guilty of a class A
17 misdemeanor.

18 * **Sec. 2.** AS 08.64.370 is amended to read:

19 **Sec. 08.64.370. Exceptions to application of chapter. Except as provided**
20 **in (b) of this section, this** [THIS] chapter does not apply to

21 (1) officers in the regular medical service of the armed services of the
22 United States or the United States Public Health Service while in the discharge of their
23 official duties;

24 (2) a physician or osteopath, who is not a resident of this state, who is
25 asked by a physician or osteopath licensed in this state to help in the diagnosis or
26 treatment of a case;

27 (3) the practice of the religious tenets of a church;

28 (4) a physician in the regular medical service of the United States
29 Public Health Service or the armed services of the United States volunteering services
30 without pay or other remuneration to a hospital, clinic, medical office, or other
31 medical facility in the state;

1 (5) a person who is certified as a direct-entry midwife by the
 2 department under AS 08.65 or who is excluded from registration under
 3 AS 08.65.170(3) and (4) while engaged in the practice of midwifery whether or not
 4 the person accepts compensation for those services.

5 * **Sec. 3.** AS 08.64.370 is amended by adding a new subsection to read:

6 (b) Notwithstanding the general exemption in (a) of this section, a person
 7 described in (a)(2) and (4) of this section shall comply with AS 08.64.364. A person
 8 who knowingly violates this subsection is guilty of a class A misdemeanor.

9 * **Sec. 4.** AS 08.64.380 is amended by adding a new paragraph to read:

10 (8) "knowingly" has the meaning given in AS 11.81.900(a).

11 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 12 read:

13 REGULATIONS. The State Medical Board may immediately begin the process of
 14 adopting regulations to implement this Act. The regulations take effect under AS 44.62
 15 (Administrative Procedure Act), but not before the effective date of secs. 1 - 4 of this Act.

16 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 APPLICABILITY. The amendments made to AS 08.64 by this Act apply to eye
 19 surgery that occurs on or after the effective date of secs. 1 - 4 of this Act.

20 * **Sec. 7.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).