

Original sponsor: Rules Committee
by request of the Governor

Offered: 4/26/78
Referred: Finance

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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CS FOR HOUSE BILL NO. 519

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to handicapped persons; and providing
7 for an effective date."

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

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* Section 1. INTENT. This Act is intended to assure the provision of
10 quality services to those children and adults who have handicaps by reason of
11 mental or physical disabilities, including persons qualifying for special
12 education services under AS 14.30.180 - 14.30.350, other persons with the
13 same or similar handicaps, and persons handicapped by mental retardation,
14 cerebral palsy, epilepsy, autism or by other developmental disabilities
15 defined in this Act. The primary objective of the Act is to bring together
16 and make optimal use of all available resources -- federal, state, local, and
17 private -- so that persons with handicaps may be served in the most effective
18 and efficient way. A second goal of the Act is to assure the dignity of
19 persons with handicaps, by reaffirming, and providing for the protection and
20 advocacy of, their rights, which are the same rights as other people of the
21 state of the same age and include the right to live as complete and normal
22 lives as possible and develop their ability and potential to the fullest
23 extent possible.

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* Sec. 2. AS 47 is amended by adding a new chapter to read:

25

CHAPTER 80. PERSONS WITH HANDICAPS.

26

ARTICLE 1. RIGHTS.

27

Sec. 47.80.010. RIGHTS OF PERSONS WITH HANDICAPS. Persons with
28 handicaps have the same legal rights and responsibilities guaranteed all
29 other persons by the Constitution of the United States and federal laws

1 and by the constitution and laws of the state. No otherwise qualified
2 person by reason of having a handicap may be excluded from participation
3 in, be denied the benefits of, or be subjected to discrimination under,
4 any program or activity which receives public funds. Some persons with
5 handicaps may be unable, due to the severity of their handicap, to
6 exercise for themselves all of their rights in a meaningful way; for
7 others modification of some or all of their rights is appropriate. The
8 procedure used for modification of rights shall contain proper legal
9 safeguards against every form of abuse, shall be based on an evaluation
10 of the social capability of the person by qualified experts, and shall
11 be subject to periodic reviews and to the right of appeal to higher
12 authorities.

13 Sec. 47.80.020. PROTECTION AND ADVOCACY OF RIGHTS. The department
14 shall establish a system to protect and advocate rights of persons with
15 handicaps. The system

16 (1) has the authority to pursue legal, administrative, and
17 other appropriate remedies to assure the protection of the rights of
18 persons with handicaps; and

19 (2) shall be independent of any state agency which provides
20 treatment, services or habilitation of persons with handicaps.

21 ARTICLE 2. GOVERNOR'S COUNCIL FOR THE
22 HANDICAPPED AND GIFTED.

23 Sec. 47.80.030. GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED.
24 There is established the Governor's Council for the Handicapped and
25 Gifted. For budgetary purposes, the council is located within the
26 Department of Health and Social Services but is the interdepartmental
27 planning and coordinating agency of the Department of Health and Social
28 Services, the Department of Education, and other departments which
29 deliver services to persons who are handicapped or gifted. In addition,

1 the council is the state planning council for purposes of federal laws
2 relating to the handicapped or gifted.

3 Sec. 47.80.040. COMPOSITION. (a) The council consists of no
4 fewer than 18 nor more than 23 members appointed by the governor in
5 accordance with P.L. 91-517, P.L. 94-103, P.L. 94-142, as amended, and
6 AS 14.30.231.

7 (b) No fewer than one-third of the members shall be representa-
8 tives of the principal state agencies concerned with services for handi-
9 capped or gifted persons.

10 (c) No fewer than one-third of the members shall be developmen-
11 tally disabled persons or parents or guardians of such persons, who are
12 not officers or directors of an entity, or employees of a state agency,
13 which receives funds or provides services under P.L. 91-517 or P.L.
14 94-103, as amended.

15 (d) The remaining members shall be appointed to represent the
16 public at large, local agencies, non-governmental agencies, and groups
17 concerned with services to handicapped or gifted persons.

18 (e) Membership of the council shall at all times comply with the
19 requirements of P.L. 91-517, as amended.

20 (f) In the appointment of all members other than state agency
21 members, due regard shall be given to geographically balanced represen-
22 tation of areas of the state and to representation of persons with a
23 variety of different mental and physical handicaps.

24 Sec. 47.80.050. TERM OF OFFICE. (a) Council members' terms are
25 three years. Of the initial appointees, one-third shall be appointed
26 for one-year terms, one-third for two-year terms, and one-third for
27 three-year terms.

28 (b) A vacancy occurring in the membership of the council shall be
29 filled by appointment of the governor for the unexpired portion of the

1 vacated term.

2 (c) Council members serve at the pleasure of the governor, not-
3 withstanding their terms of office.

4 (d) It is the legislative intent that the governor replace any
5 member who, by poor attendance or lack of contribution to the council's
6 work, demonstrates ineffectiveness as a council member.

7 Sec. 47.80.060. COMPENSATION, PER DIEM, AND EXPENSES. Members of
8 the council receive no salary but are entitled to per diem and reim-
9 bursement for travel and other expenses as authorized by law for boards.

10 Sec. 47.80.070. OFFICERS AND STAFF. (a) The council, by a ma-
11 jority of its membership, shall elect a chairman and other officers it
12 considers necessary from among its membership, to serve on a yearly
13 basis.

14 (b) The department shall provide for the assignment of personnel
15 to the council to ensure that the council has the capacity to fulfill
16 its responsibilities. The personnel shall be directly responsible to
17 the council for performance of their duties.

18 Sec. 47.80.080. BYLAWS. The council, on approval of a majority of
19 its membership, shall adopt and amend bylaws governing its composition,
20 proceedings and other activities consistent with secs. 30 - 90 of this
21 chapter and including, but not limited to, provisions concerning a
22 quorum to transact council business and other aspects of procedure,
23 frequency and location of meetings, and establishment, functions and
24 membership of council committees.

25 Sec. 47.80.090. RESPONSIBILITIES. The council shall

26 (1) serve as a forum by which issues and benefits regarding
27 current and potential services to handicapped and gifted persons may be
28 discussed by consumer, public, private, professional, and lay interests;

29 (2) advocate the needs of handicapped and gifted persons

1 before the executive and legislative branches of the state government
2 and before the public;

3 (3) advise the executive and legislative branches of the
4 state government and the private sector on programs and policies per-
5 taining to current and potential services to handicapped or gifted
6 persons and their families;

7 (4) submit periodic reports to the commissioners of health
8 and social services, of education and to other appropriate departments
9 on the effects of current federal and state programs regarding services
10 to handicapped or gifted persons; these reports shall include program
11 performance reports to the governor, the federal government, and to
12 state agencies as required by P.L. 91-517, P.L. 94-103, or P.L. 94-142,
13 as amended;

14 (5) in conjunction with the Departments of Health and Social
15 Services and Education, develop, prepare, adopt, periodically review,
16 and revise as necessary an annual state plan prescribing programs which
17 meet the needs of persons with developmental disabilities as required
18 under P.L. 91-517 or P.L. 94-103, as amended;

19 (6) review and comment to commissioners of state departments
20 on all state plans and proposed regulations relating to programs for
21 persons with handicaps before the adoption of a plan or regulation; for
22 this purpose, the appropriate departments shall submit the plans and
23 proposed regulations to the council;

24 (7) recommend the priorities and specifications for the use
25 of funds received by the state under P.L. 91-517, P.L. 94-103 and P.L.
26 94-142, as amended;

27 (8) submit annually to the commissioner of health and social
28 services, the commissioner of education, and the commissioner of com-
29 munity and regional affairs a proposed interdepartmental program budget

1 for services to handicapped or gifted persons which includes, insofar as
2 possible, projected revenues and expenditures for programs implemented
3 by state agencies, local governmental agencies, and private organiza-
4 tions; the interdepartmental program budget is an informational supple-
5 ment to the regular annual budgetary submissions of the departments to
6 the office of the governor;

7 (9) provide information and guidance for the development of
8 appropriate special educational programs and services for exceptional
9 children as defined in AS 14.30.350;

10 (10) monitor and evaluate budgets or other implementation
11 plans and programs for handicapped and gifted persons to assure nondup-
12 lication of services and encourage efficient and coordinated use of
13 federal, state and private resources in the provision of services;
14 members of the council with the approval of the council, have access to
15 information in the possession of state agencies subject to disclosure
16 restrictions imposed by state or federal confidentiality or privacy
17 laws; and

18 (11) perform other duties required under P.L. 91-517, P.L.
19 94-103, P.L. 94-142, as amended, or AS 14.30.231, and as the governor
20 may assign.

21 ARTICLE 3. PROGRAMS AND PLANS.

22 Sec. 47.80.100. PROGRAMS FOR PERSONS WITH HANDICAPS. (a) The
23 Department of Health and Social Services, the Department of Education,
24 and other departments of the state as appropriate, shall, in coordina-
25 tion, plan, develop, and implement a comprehensive system of services
26 and facilities for persons with handicaps, which is consistent with the
27 state plan adopted under sec. 90(5) of this chapter and is dispersed
28 geographically within the state.

29 (b) The services required in (a) of this section are specialized

1 services or special adaptations of services available to the general
2 population and shall be directed toward the social, personal, physical,
3 or economic habilitation or rehabilitation of persons with handicaps.

4 (c) Within the limits of appropriations and other available funds,
5 the appropriate department may itself provide the services and estab-
6 lish, operate, and maintain the facilities required under (a) and (b) of
7 this section, or it may provide the services or facilities entirely or
8 in part through contractual arrangements with public or private agen-
9 cies.

10 Sec. 47.80.110. PROGRAM PRINCIPLES. The system of services and
11 facilities required under sec. 100 of this chapter shall accord with the
12 principle that treatment, services, and habilitation shall be designed
13 to maximize individual potential, minimize institutionalization, and
14 shall be provided in the least restrictive setting, enabling a person to
15 live as normally as possible within the limitations of the handicap.

16 Sec. 47.80.120. HABILITATION PLANS. A state agency, contractor,
17 or grantee who is directly responsible for providing services to persons
18 with handicaps shall develop an individual habilitation plan for each
19 person whose program of services utilizes state funds. The plan shall
20 be completed in writing and furnished to the department within 30 days
21 of admission of a client to the program of services. The plan, its re-
22 newals, and any changes of it, shall have the written concurrence of the
23 client, or his parent or guardian when appropriate, and the agency or
24 contractor responsible for providing services. The development and
25 content of a plan shall conform to requirements established by the
26 department by regulation. Insofar as practicable, the requirements
27 shall conform to those established for individual habilitation plans
28 under P.L. 91-517 or P.L. 94-103, as amended. Each plan shall be
29 time-limited, evaluated, and renewed at least annually.

1 Sec. 47.80.130. POWERS AND DUTIES OF THE DEPARTMENT. (a) The
2 department shall

3 (1) develop budgets and receive and distribute appropriations
4 and funds under this section;

5 (2) adopt regulations regarding standards of services and
6 facilities for persons with handicaps and the quality of services and
7 the process by which services are to be delivered;

8 (3) adopt any other regulations necessary to implement this
9 chapter;

10 (4) provide technical assistance to public and private agen-
11 cies in planning, developing, and implementing programs to serve handi-
12 capped persons;

13 (5) operate programs and facilities, and enter into agree-
14 ments, contracts, or grants necessary to provide services required under
15 ch. 80 of this title;

16 (6) take the actions and undertake the obligations which are
17 necessary to participate in federal grant-in-aid programs and accept
18 federal or other financial aid for the study, examination, care and
19 treatment of the handicapped.

20 (b) For purposes of P.L. 91-517 and P.L. 94-103, as amended, the
21 department is designated the sole administering agency; it shall make
22 applications for, receive, and expend grants under P.L. 91-517 or P.L.
23 94-103, as amended, and otherwise exercise the powers and perform the
24 duties and functions necessary to comply with P.L. 91-517 and P.L.
25 94-103, as amended.

26 (c) The Department of Education may make applications for, re-
27 ceive, and expend grants under P.L. 91-230 (The Education for the Handi-
28 capped Act), as amended, and otherwise exercise the powers and perform
29 the functions necessary to comply with that Act.

1 Sec. 47.80.140. LICENSING AND CERTIFICATES OF NEED. (a) No
2 person may establish or operate a residential facility without first
3 obtaining a license to do so. The department by regulation shall pro-
4 vide for licensing of residential facilities which are not within the
5 licensing provisions of AS 18.20.010 - 18.20.130, AS 47.35.010 - 47.35.-
6 080 or other law requiring state licensing of such facilities. Regula-
7 tions of the department shall include but need not be limited to (1)
8 standards of operation promoting and protecting public health, safety,
9 and welfare, and (2) procedures governing applications for and issuance
10 of licenses and duration, renewal, and revocation of licenses for cause.
11 The department may at reasonable times inspect and examine residential
12 facilities, licensed under this subsection, for conformity with licens-
13 ing requirements.

14 (b) A certificate of need is required as a prerequisite for li-
15 censing a residential facility established after the effective date of
16 this Act and not otherwise provided for in AS 18.07.031 - 18.07.111. A
17 certificate shall be issued and regulated in the same manner as provided
18 in AS 18.07.031 - 18.07.111 for certificates of need for health care
19 facilities.

20 Sec. 47.80.150. LIABILITY FOR EXPENSE OF SERVICES. (a) A person
21 with a handicap or his legal representative acting in a representative
22 capacity, or his spouse or parents, shall pay or contribute to the
23 payment of the charges for the care or treatment in the manner and
24 proportion which the department finds is not detrimental to rehabili-
25 tation and which is within the responsible person's ability to pay. The
26 charges may not exceed the actual cost of the care or treatment as
27 determined by the department. The order of the department relating to
28 the payment of charges shall be prospective in effect and shall relate
29 only to charges to be incurred, except that if a person intentionally

1 conceals his ability to pay, he shall be ordered to pay to the extent of
2 his ability the charges accruing during the period of the concealment.
3 The order of the department relating to the payment of charges by the
4 person with a handicap or his legal representative, or his spouse or
5 parents, shall be issued within six months of the date on which the
6 charge was incurred. The department may make necessary investigations
7 to determine the ability to pay. The order shall remain in full force
8 and effect unless modified by subsequent court or department orders.

9 (b) As used in (a) of this section, the term "actual cost of the
10 care and treatment" means either the rate provided for by a contract
11 entered into under this chapter, or, in the absence of a contract, a
12 daily rate fixed by the department, and includes expenses of transpor-
13 tation incidental to treatment and carrying out the intent of this
14 chapter.

15 (c) A person with a handicap who receives benefits under this
16 chapter who is developmentally disabled as defined in sec. 900(7) of
17 this chapter or the person responsible for payment of charges for such a
18 person, may not be required to pay more than \$50 a month toward the
19 charges for the care, treatment, and transportation in connection with
20 treatment of the person with a handicap.

21 (d) The department may charge, or accept from a person money or
22 property, for the care or treatment of an in-patient or out-patient or
23 for other purposes, even if the payment is not required by an order of
24 the department, so long as the total payments received do not exceed the
25 actual cost of care or treatment.

26 (e) All money paid by the person with a handicap or on his behalf,
27 under this section, shall be deposited in the state treasury.

28 (f) If an order of payment is entered by the department under this
29 section and delinquency in the payment of any amount due the state under

1 the order continues for a period of more than 30 days after the noti-
2 fication by the department to the legal representative, parent, or
3 spouse of the person with a handicap, the state may proceed to collect
4 the amounts due by appropriate proceedings. Actions to enforce the
5 collection of payments may only be brought within three years after the
6 date of notification of a delinquent payment.

7 Sec. 47.80.160. TRANSPORTATION. When an individual is to be
8 treated under this chapter, the department shall arrange, upon the
9 request of a person having a proper interest in the individual's
10 treatment, and may pay for the individual's transportation to the desig-
11 nated facility, with appropriate medical or nursing attendants and by
12 the available means which are appropriate and suitable. The department
13 may pay return transportation of an individual and appropriate medical
14 and nursing attendants. When practicable, one or more relatives or
15 friends of the individual to be treated shall be permitted to accompany
16 him. The department may pay necessary travel, housing and meal expenses
17 incurred by one relative or friend in accompanying the individual to the
18 facility if the department determines

19 (1) that the best interests of the individual's health re-
20 quire that he be accompanied by the relative or friend;

21 (2) the relative or friend accompanying the individual is
22 indigent.

23 Sec. 47.80.170. PROVISION FOR PERSONAL NEEDS UPON DISCHARGE. The
24 department shall make arrangements which are necessary to ensure that

25 (1) no patient is discharged or placed on convalescent status
26 from a designated facility without suitable clothing; and

27 (2) an indigent patient discharged or placed on convalescent
28 status is furnished suitable transportation to his permanent residence
29 in this state or other suitable place at the discretion of the depart-

1 ment, and a reasonable amount of money to meet his immediate needs.

2 ARTICLE 4. GENERAL PROVISIONS.

3 Sec. 47.80.900. DEFINITIONS. In this chapter

4 (1) "council" means the Governor's Council for the Handi-
5 capped and Gifted created by sec. 30 of this chapter;

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

8 (3) "facilities for persons with handicaps" means publicly or
9 privately operated facilities, or specified portions of facilities,
10 designed primarily for the delivery of services to those persons; the
11 term includes but is not limited to residential facilities;

12 (4) "habilitation" means education or training for the handi-
13 capped to enable them to function better in society;

14 (5) "least restrictive setting" means a residential or other
15 setting for meeting the needs of a handicapped person which requires the
16 least amount of restriction of personal liberty by enabling the person
17 to function in as normal an environment as possible, and to live as
18 normally as possible, within the limitations of the handicap;

19 (6) "person with a handicap" means a person with a develop-
20 mental disability as defined in (7) of this section or a person who is
21 hard of hearing, deaf, speech impaired, visually handicapped, seriously
22 emotionally disturbed, orthopedically or otherwise health impaired, or
23 who has a specific learning disability; the term includes but is not
24 limited to "exceptional children" as defined in AS 14.30.350(1) and AS
25 47.20.050(1);

26 (7) "person with a developmental disability" means a person
27 having a disability which

28 (A) is attributable to

29 (i) mental retardation, cerebral palsy, epilepsy,

1 or autism;

2 (ii) any other condition found to be closely re-
3 lated to mental retardation because the condition results in
4 impairment of general intellectual functioning or adaptive
5 behavior similar to impairment resulting from mental retarda-
6 tion; or

7 (iii) dyslexia resulting from a disability des-
8 cribed in (i) or (ii) of this subparagraph; and

9 (B) constitutes a substantial handicap to the person's
10 ability to function normally in society;

11 (8) "residential facility" means a publicly or privately
12 operated facility which provides 24-hour care for four or more persons
13 with handicaps, excluding family, foster family, or adoptive homes;

14 (9) "substantial handicap" means a disability which prevents,
15 or substantially impedes the person's participating in and benefiting
16 from the social, economic, educational, recreational, or other opportu-
17 nities generally available to peers in the community who are not simi-
18 larly handicapped.

19 * Sec. 3. AS 18.05.031 and AS 47.30.010 - 47.30.340 are repealed.

20 * Sec. 4. TRANSITION. The Governor's Council for the Handicapped and
21 Gifted established under this Act succeeds to all contracts, rights, liabili-
22 ties and obligations of the Alaska Developmental Disabilities Planning
23 Council appointed under law repealed by this Act which are in effect on the
24 effective date of this Act. The council also succeeds to all contract
25 rights, liabilities, and obligations of the Special Education Advisory
26 Council established under the authority of AS 14.30.231 and made part of the
27 Governor's Council for the Handicapped and Gifted by Administrative Order No.
28 42A dated November 25, 1977. Records, equipment and other property of the
29 former councils shall be transferred upon this Act's taking effect. The

1 amount of any appropriation to the former councils which is encumbered but
2 not expended on the effective date of this Act shall not lapse but shall be
3 transferred to the Governor's Council for the Handicapped and Gifted con-
4 currently with the effective date of this Act.

5 * Sec. 5. This Act takes effect on the effective date of a version of
6 House Bill No. 472.

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