

Introduced: 2/16/82
Referred: Health, Education &
Social Services, Judiciary and
Finance

1 IN THE HOUSE

BY CLOCKSIN

2 HOUSE BILL NO. 854

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection of the elderly."

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

8 * Section 1. PURPOSE. In order to protect elderly persons from harm
9 resulting from abuse, neglect, exploitation, and abandonment and to assist
10 elderly persons who are unable to protect or care for themselves, the legis-
11 lature requires the reporting to the state by health professionals and others
12 of cases involving elderly persons who have been or are being harmed or who
13 may be in need of protection or care. It is the intent of the legislature
14 that, as a result of these reports, protective services will be made avail-
15 able in an effort to prevent or alleviate harm to the elderly persons of the
16 state.

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

18 CHAPTER 24. PROTECTION OF THE ELDERLY.

19 Sec. 47.24.010. REPORTS OF HARM. (a) The following persons who,
20 in the performance of their professional duties, have cause to believe
21 that an elderly person has suffered harm as a result of abuse, neglect,
22 exploitation, or abandonment, or that an elderly person is in need of
23 protective services, shall, not later than five calendar days after
24 first having cause for the belief, report the harm to the division of
25 family and youth services in the Department of Health and Social
26 Services:

- 27 (1) a physician;
28 (2) an osteopath;
29 (3) a mental health professional as defined in AS 47.30.-

1 915(11);

2 (4) a registered nurse;

3 (5) a licensed practical nurse;

4 (6) a dentist;

5 (7) an optometrist;

6 (8) a chiropractor;

7 (9) a podiatrist or chiropodist;

8 (10) a pharmacist;

9 (11) a nursing home administrator;

10 (12) a nurse's aide or orderly in a nursing home facility;

11 (13) a person paid to care for a patient in a nursing home
12 facility;

13 (14) a staff person employed by a nursing home facility;

14 (15) a physical or occupational therapist;

15 (16) a police officer as defined in AS 18.65.290(2);

16 (17) a clergyman.

17 (b) A report of harm filed under this section shall include

18 (1) the name and address of the elderly person;

19 (2) the name and address of the person reporting the harm;

20 (3) information relating to the nature and extent of the
21 abuse, neglect, exploitation, or abandonment;

22 (4) other information that the person reporting the harm
23 believes might be helpful in an investigation of the case or in provid-
24 ing protection for the elderly person.

26 (c) A person who fails to comply with this section is guilty of a
28 violation as defined in AS 11.81.900(55) and upon conviction may be
27 sentenced to pay a fine of not more than \$500.

28 (d) This section does not prohibit a person listed in (a) of this
29 section from reporting cases that have come to his attention in a non-

1 professional capacity nor does it prohibit any other person from report-
2 ing harm to an elderly person that he has cause to believe is a result
3 of abuse, neglect, exploitation, or abandonment.

4 (e) If the person making a report of harm under this section
5 cannot reasonably contact the division, and immediate action is necessary
6 for the well-being of the elderly person, the person shall make the
7 report to a police officer as defined in AS 18.65.290(2). The police
8 officer shall take immediate action to protect the elderly person and
9 shall, at the earliest opportunity, notify the division.

10 Sec. 47.24.020. ACTION ON REPORTS. (a) Upon receiving a report of
11 harm, the division shall promptly initiate an investigation to determine
12 the physical condition of the elderly person named in the report and
13 whether action or services are needed for the protection of the elderly
14 person. The investigation shall include a visit to the elderly person.

15 (b) The division shall prepare a written report of the investiga-
16 tion, including findings, recommendations, and a determination of whether
17 and what kind of protective services are to be provided to the elderly
18 person. The person who filed the report of harm shall be notified of
19 the findings upon request.

20 Sec. 47.24.030. PROTECTIVE SERVICES. (a) The division may
21 provide or contract for the provision of protective services to an
22 elderly person who is the subject of a report of harm and whom the
23 division has determined is in need of protective services.

24 (b) Protective services may be provided if and to the extent to
25 which the elderly person consents. If the division has cause to believe
26 that the elderly person lacks the capacity to consent to receiving
27 protective services, it may petition the superior court under AS 13.26
28 for appointment of a guardian or temporary guardian for the elderly
29 person for the purpose of obtaining consent.

1 (c) If an elderly person who has consented to receiving protective
2 services is prevented by his caretaker from receiving the services, the
3 division may petition a superior court for an injunction restraining the
4 caretaker from interfering with the provision of protective services to
5 the elderly person.

6 (d) An elderly person shall reimburse the division for the costs
7 of protective services received to the extent the division determines
8 that the person is capable of doing so. The division shall issue regula-
9 tions establishing financial criteria and procedures for reimbursement.

10 Sec. 47.24.040. REVIEW AND REFERRAL. (a) The division shall, not
11 later than 45 days after authorizing the provision of protective services
12 to an elderly person, initiate a review of the case to determine whether
13 continuation or modification of protective services that are being
14 provided is warranted. The division shall reevaluate the case every 90
15 days thereafter until the case is closed.

16 (b) The division shall report cases of abuse, neglect, exploita-
17 tion, or abandonment of an elderly person to the Department of Law.

18 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) The division
19 shall maintain a central registry of all investigation reports and
20 reports of harm.

21 (b) Investigation reports and reports of harm filed under this
22 chapter are considered confidential and are not subject to public in-
23 spection and copying under AS 09.25.110 - 09.25.125. However, in accor-
24 dance with this chapter and division regulations issued under this
25 chapter, investigation reports may be used by appropriate governmental
26 agencies inside and outside Alaska, in connection with investigations or
27 judicial proceedings involving abuse, neglect, exploitation, or abandon-
28 ment of an elderly person. The division shall disclose a report of harm
29 if the elderly person who is the subject of the report consents in

1 writing.

2 Sec. 47.24.060. AUTHORITY OF THE DIVISION. In performing its
3 duties under this chapter, the division may

4 (1) request the assistance of state departments, agencies,
5 commissions, and local health directors;

6 (2) enlist the services of public and private agencies and
7 groups, and individuals;

8 (3) initiate actions necessary to assure the health, safety
9 and welfare of an elderly person, subject to the person's consent,
10 including the transfer of the elderly person from a nursing home;

11 (4) issue regulations to carry out the provisions of this
12 chapter.

13 Sec. 47.24.070. EVIDENCE NOT PRIVILEGED. Neither the physician-
14 patient nor the husband-wife privilege is a ground for excluding evidence
15 regarding an elderly person's harm, or its cause, in a judicial proceed-
16 ing related to a report made under this chapter.

17 Sec. 47.24.075. ANNUAL REPORT. The division shall submit to the
18 legislature each January a statistical report of cases of abuse, neglect,
19 exploitation, and abandonment of elderly persons in the state, based on
20 cases reported to and investigated by the division. The annual report
21 may not disclose the identity of victims or perpetrators of the abuse,
22 neglect, exploitation, or abandonment.

23 Sec. 47.24.080. REGULATIONS. Regulations to implement this chapter
24 shall be jointly approved by the division and the Older Alaskans Commis-
25 sion (AS 44.21.200).

26 Sec. 47.24.100. DEFINITIONS. In this chapter

27 (1) "abandonment" means desertion of an elderly person by a
28 caretaker;

29 (2) "abuse" means the infliction of physical pain, injury, or

1 mental anguish, or the deprivation by a caretaker of services that are
2 necessary to maintain the physical and mental health of an elderly
3 person;

4 (3) "caretaker" means a person who is responsible for the
5 care of an elderly person as a result of family relationship, or who has
6 assumed responsibility for the care of an elderly person voluntarily, by
7 contract, or by court order;

8 (4) "division" means the division of family and youth ser-
9 vices, Department of Health and Social Services;

10 (5) "elderly person" means a resident of Alaska who is 60
11 years of age or older;

12 (6) "exploitation" means misappropriating the possessions,
13 property, or financial resources of an elderly person or otherwise
14 taking advantage of an elderly person for monetary gain or for personal
15 or other benefit;

16 (7) "in need of protective services" means unable to perform
17 or obtain services necessary to maintain one's own physical and mental
18 health;

19 (8) "neglect" means the failure by an elderly person or his
20 caretaker to provide services necessary to maintain the physical and
21 mental health of the elderly person;

22 (9) "protective services" means services intended to prevent
23 or alleviate harm resulting from abuse, neglect, exploitation, or aban-
24 donment;

25 (10) "services necessary to maintain physical and mental
26 health" includes, but is not limited to, medical care; placement in a
27 facility or institution; assistance in maintaining personal hygiene;
28 provision of food, clothing, and shelter; placement of a person in
29 protective custody with the person's consent; and transportation neces-

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