

Original sponsor: Clocksin

Offered: 4/12/82
Referred: Judiciary and Finance

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 854 (HESS)

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. It is
13 the intent of the legislature that these reports of harm be investigated and
14 that appropriate protective services be offered in an effort to prevent or
15 alleviate harm to the elderly persons of the state.

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

17

CHAPTER 24. PROTECTION OF THE ELDERLY.

18

19

20

21

22

23

Sec. 47.24.010. REPORTS OF HARM. (a) The following persons who,
in the performance of their professional duties, have cause to believe
that an elderly person has suffered harm as a result of abuse, neglect,
exploitation, or abandonment shall, not later than 24 hours after first
having cause for the belief, report the harm to the Department of Health
and Social Services:

24

(1) a physician;

25

(2) an osteopath;

26

(3) a mental health professional as defined in AS 47.30.-

27

915(11);

28

(4) a registered nurse;

29

(5) a licensed practical nurse;

- 1 (6) a dentist;
2 (7) an optometrist;
3 (8) a chiropractor;
4 (9) a podiatrist or chiropodist;
5 (10) a pharmacist;
6 (11) a nursing home administrator;
7 (12) a nurse's aide or orderly in a nursing home facility;
8 (13) a person paid to care for a patient in a nursing home
9 facility;
10 (14) a staff person employed by a nursing home facility;
11 (15) a physical or occupational therapist;
12 (16) a police officer as defined in AS 18.65.290(2);
13 (17) a clergyman.

14 (b) A report of harm made under this section may include the name
15 and address of the person reporting the harm and shall include

- 16 (1) the name and address of the elderly person;
17 (2) information relating to the nature and extent of the
18 abuse, neglect, exploitation, or abandonment;

19 (3) other information that the person reporting the harm
20 believes might be helpful in an investigation of the case or in provid-
21 ing protection for the elderly person.

22 (c) A person who fails to comply with this section is guilty of a
23 violation as defined in AS 11.81.900(55).

24 (d) This section does not prohibit a person listed in (a) of this
25 section from reporting cases that have come to his attention in a non-
26 professional capacity nor does it prohibit any other person from report-
27 ing harm to an elderly person that he has cause to believe is a result
28 of abuse, neglect, exploitation, or abandonment.

29 (e) If immediate action is necessary to protect the elderly person

1 from imminent physical harm, the person shall make the report of harm to
2 a police officer as defined in AS 18.65.290(2). The police officer
3 shall take immediate action to protect the elderly person and shall, at
4 the earliest opportunity, notify the department.

5 (f) A person who, in good faith, makes a report under this chapter,
6 or who participates in judicial proceedings related to the submission of
7 reports under this chapter, is immune from any civil or criminal
8 liability that might otherwise be incurred or imposed.

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

15 (b) The department shall prepare a written report of the investi-
16 gation, including findings, recommendations, and a determination of
17 whether and what kind of protective services are to be offered to the
18 elderly person. Upon request the person who filed the report of harm
19 shall be notified of whether an investigation has been initiated or
20 completed.

21 Sec. 47.24.030. PROTECTIVE SERVICES. (a) Protective services may
22 be provided if and to the extent to which the elderly person consents.
23 If the department has cause to believe that the elderly person lacks the
24 capacity to consent to receiving protective services, it may petition
25 the superior court under AS 13.26 for appointment of a guardian or
26 temporary guardian for the elderly person for the purpose of obtaining
27 consent.

28 (b) If an elderly person who has consented to receiving protective
29 services is prevented by his caretaker from receiving the services, the

1 department may assist the elderly person to petition the superior court
2 for an injunction restraining the caretaker from interfering with the
3 provision of protective services to the elderly person.

4 Sec. 47.24.040. REVIEW AND REFERRAL. The department shall, not
5 later than 90 days after authorizing the provision of protective
6 services to an elderly person, initiate a review of the case to deter-
7 mine whether continuation or modification of protective services that
8 are being provided is warranted. The department shall reevaluate the
9 case every 90 days thereafter until the case is closed.

10 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) The department
11 shall maintain a central registry of all investigation reports and
12 reports of harm. The central registry shall include the number of

- 13 (1) reports of harm made;
14 (2) each type of harm reported and verified;
15 (3) investigations initiated and investigations completed;
16 (4) each type of service provided;
17 (5) cases that resulted in prosecution or other legal action.

18 (b) Investigation reports and reports of harm filed under this
19 chapter are considered confidential and are not subject to public in-
20 spection and copying under AS 09.25.110 - 09.25.125. However, in accor-
21 dance with this chapter and department regulations issued under this
22 chapter, investigation reports may be used by appropriate governmental
23 agencies inside and outside Alaska, in connection with investigations or
24 judicial proceedings involving abuse, neglect, exploitation, or abandon-
25 ment of an elderly person.

26 (c) The department shall disclose a report of harm if the elderly
27 person who is the subject of the report consents in writing. The depart-
28 ment shall, upon request, disclose the number of verified reports of
29 harm that occurred at an institution for care of the elderly that is

1 certified by the state.

2 Sec. 47.24.060. AUTHORITY OF THE DEPARTMENT. In performing its
3 duties under this chapter, the department may, subject to the person's
4 consent, initiate actions necessary to assure the health, safety and
5 welfare of an elderly person including the transfer of the elderly
6 person from a nursing home.

7 Sec. 47.24.070. REGULATIONS. Regulations to implement this
8 chapter shall be approved by the Older Alaskans Commission (AS 44.21.-
9 200) before adoption by the department.

10 Sec. 47.24.075. EVIDENCE NOT PRIVILEGED. Neither the physician-
11 patient nor the husband-wife privilege is a ground for excluding evi-
12 dence regarding an elderly person's harm, or its cause, in a judicial
13 proceeding related to a report made under this chapter.

14 Sec. 47.24.080. ANNUAL REPORT. The department shall submit to the
15 legislature each January a statistical report of cases of abuse, neglect,
16 exploitation, and abandonment of elderly persons in the state, based on
17 cases reported to and investigated by the department. The annual report
18 may not disclose the identity of victims or perpetrators of the abuse,
19 neglect, exploitation, or abandonment.

20 Sec. 47.24.100. DEFINITIONS. In this chapter

21 (1) "abandonment" means desertion of an elderly person by a
22 caretaker;

23 (2) "abuse" means the infliction of physical pain, injury, or
24 mental anguish, or the deprivation by a caretaker of services that are
25 necessary to maintain the physical and mental health of an elderly
26 person;

27 (3) "caretaker" means a person who is responsible for the
28 care of an elderly person as a result of family relationship, or who has
29 assumed responsibility for the care of an elderly person voluntarily, by

1 contract, or by court order;

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

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

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

10 (7) "neglect" means the failure by an elderly person or his
11 caretaker to provide services necessary to maintain the physical and
12 mental health of the elderly person;

13 (8) "protective services" means services intended to prevent
14 or alleviate harm resulting from abuse, neglect, exploitation, or aban-
15 donment.

16

17

18

19

20

21

22

23

24

25

26

27

28

29