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Referred: Health, Education &
Social Services

1 IN THE SENATE

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2 SENATE BILL NO. 773

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; and
7 providing for an effective date."

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

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

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

19 CHAPTER 24. PROTECTION OF THE ELDERLY.

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

- 28 (1) a physician;
29 (2) an osteopath;

1 (3) a mental health professional as defined in AS 47.30.-
2 915(11);

3 (4) a registered nurse;

4 (5) a licensed practical nurse;

5 (6) a dentist;

6 (7) an optometrist;

7 (8) a chiropractor;

8 (9) a podiatrist or chiropodist;

9 (10) a pharmacist;

10 (11) a nursing home administrator;

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

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

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

15 (15) a physical or occupational therapist;

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

17 (17) a clergyman.

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

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

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

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

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

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

29 (d) This section does not prohibit a person listed in (a) of this

1 section from reporting cases that have come to his attention in a non-
2 professional capacity nor does it prohibit any other person from report-
3 ing harm to an elderly person that he has cause to believe is a result
4 of abuse, neglect, exploitation, or abandonment.

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

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

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

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

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

1 person for the purpose of obtaining consent.

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

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

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

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

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

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

1 if the elderly person who is the subject of the report consents in
2 writing.

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

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

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

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

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

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

18 Sec. 47.24.100. DEFINITIONS. In this chapter

19 (1) "abandonment" means desertion of an elderly person by a
20 caretaker;

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

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

29 (4) "division" means the division of family and youth

1 services, Department of Health and Social Services;

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

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

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

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

14 (9) "protective services" means services intended to prevent
15 or alleviate harm resulting from abuse, neglect, exploitation, or aban-
16 donment;

17 (10) "services necessary to maintain physical and mental
18 health" includes, but is not limited to, medical care; placement in a
19 facility or institution; assistance in maintaining personal hygiene;
20 provision of food, clothing, and shelter; placement of a person in
21 protective custody with the person's consent; and transportation neces-
22 sary to obtain services.

23 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
24 070(c).