

HOUSE BILL NO. 377

**IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/14/94

Referred: Health, Education & Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to assisted living homes; repealing references to residential**
2 **facilities for dependent adults; and providing for an effective date."**

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

4 *** Section 1. AS 47 is amended by adding a new chapter to read:**

5 **CHAPTER 33. ASSISTED LIVING HOMES.**

6 **ARTICLE 1. PURPOSE; APPLICABILITY; SERVICES; OPERATIONS.**

7 **Sec. 47.33.005. PURPOSE. The purpose of this chapter is to**

8 **(1) contribute to the development of a system of care by encouraging**
9 **the establishment of assisted living homes that provide a homelike environment for**
10 **elderly persons and persons with a mental or physical disability who need assistance**
11 **with the activities of daily living;**

12 **(2) promote the establishment of homes that help**

13 **(A) the elderly to age in place; and**

14 **(B) adults with a physical or mental disability to become**

1 integrated into the community and to reach their highest level of functioning;
2 (3) establish standards that will protect residents of assisted living
3 homes, while at the same time promoting an environment that will encourage resident
4 growth and independence, without discouraging the establishment and continued
5 operation of those homes;

6 (4) require that a resident of an assisted living home have an assisted
7 living plan that identifies the services that will be used to meet the resident's
8 reasonable wants and needs; and

9 (5) provide a resident of an assisted living home, or the resident's
10 representative, with the opportunity to participate to the fullest extent possible in the
11 design and implementation of the resident's assisted living plan and in any decisions
12 involving the resident's care.

13 **Sec. 47.33.010. APPLICABILITY; DEFINITION OF ASSISTED LIVING**
14 **HOME.** (a) This chapter applies to assisted living homes operated in the state that
15 serve three or more adults.

16 (b) "Assisted living home" means a residential facility that

17 (1) serves adults who are not related to the owner of the facility by
18 blood or marriage;

19 (2) provides housing and food service to its residents; and

20 (3) provides or obtains, or offers to provide or obtain, one or more of
21 the following for its residents:

22 (A) assistance with the activities of daily living;

23 (B) personal assistance;

24 (C) health-related services.

25 (c) "Assisted living home" does not include

26 (1) a correctional facility;

27 (2) a facility for treatment of alcoholism, regulated under AS 47.37;

28 (3) an emergency shelter;

29 (4) a medical facility, including a nursing home, licensed under
30 AS 18.20;

31 (5) a program for runaway minors licensed under AS 47.10; or

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(6) a maternity home licensed under AS 47.35.

Sec. 47.33.020. HEALTH-RELATED SERVICES. (a) Nothing in this chapter prohibits an assisted living home resident's self-administration of that resident's medications, unless the resident's assisted living plan specifically provides otherwise.

(b) Notwithstanding a limitation imposed by AS 08 or by a regulation adopted under AS 08, an assisted living home may supervise a resident's self-administration of medications, if self-administration of medications is included in the resident's assisted living plan. That supervision may be performed by any home staff person and may include

- (1) reminding a resident to take medication;
- (2) opening a medication container or prepackaged medication for a resident;
- (3) reading a medication label to a resident;
- (4) observing a resident while the resident takes medication;
- (5) checking a resident's self-administered dosage against the label of the medication container;
- (6) reassuring a resident that the resident is taking the dosage as prescribed; and
- (7) directing or guiding, at the request of the resident, the hand of a resident who is administering the resident's own medications.

(c) An assisted living home may provide intermittent nursing services to a resident who does not require 24-hour nursing services and supervision. Intermittent nursing services may be provided only by a nurse licensed under AS 08.68 or by a nurse aide who has completed a training and competency evaluation program required under 42 U.S.C. 1395i-3.

(d) An individual who is on the staff of an assisted living home and who is neither a nurse licensed under AS 08.68 nor a nurse aide described in (c) of this section may perform a nursing task in that home if

- (1) the authority to perform that nursing task is delegated to that individual by a nurse licensed under AS 08.68; and
- (2) that nursing task is specified in regulations adopted by the Board

1 of Nursing as a task that may be delegated.

2 (e) A resident who needs skilled nursing care may, with the consent of the
3 assisted living home, arrange for that care to be provided in the home by a nurse
4 licensed under AS 08.68 if that arrangement does not interfere with the services
5 provided to other residents.

6 (f) As part of a plan to avoid transfer of a resident from the home for medical
7 reasons, the home may provide, through the services of a nurse who is licensed under
8 AS 08.68, 24-hour skilled nursing care to the resident for not more than 45 consecutive
9 days.

10 (g) If a resident has received 24-hour skilled nursing care for the 45-day limit
11 set by (f) of this section, the resident or the resident's representative may elect to have
12 the resident remain in the home without continuation of 24-hour skilled nursing care
13 if the home agrees to retain the resident after

14 (1) the home and either the resident or the resident's representative
15 have consulted with the resident's physician;

16 (2) the home and either the resident or the resident's representative
17 have discussed the consequences and risks involved in the election to remain in the
18 home; and

19 (3) the portion of the resident's assisted living plan that relates to
20 health-related services has been revised to provide for the resident's health-related
21 needs without the use of 24-hour skilled nursing care, and the revised plan has been
22 reviewed by a registered nurse licensed under AS 08.68 or by the resident's attending
23 physician.

24 (h) A terminally ill resident may remain in the home if (1) the home and either
25 the resident or the resident's representative agree that the resident may remain in the
26 home; and (2) the resident is under the care of a physician who certifies that the needs
27 of the resident are being met in the home. The time limitation of (f) of this section
28 does not apply in the case of a terminally ill resident.

29 Sec. 47.33.030. ADVANCE PAYMENTS. (a) An assisted living home may
30 not require a resident or prospective resident of the home or a resident or prospective
31 resident's representative, to make an advance payment to the home except as security

1 for performance of the contract or as advance rent for the immediately following rental
2 period. If a home requires a resident or prospective resident to make an advance
3 payment for security or as advance rent,

4 (1) the home shall promptly deposit the money in a designated trust
5 account in a financial institution, separate from other money and property of the home;

6 (2) the home may not represent on a financial statement that the
7 advance payment money is part of the assets of the home;

8 (3) the advance payment money may be used only for the account of
9 the resident;

10 (4) the home shall notify the resident or the resident's representative,
11 in writing, of the name and address of the depository in which the advance payment
12 money is being held; and

13 (5) the home shall provide to the resident or the resident's
14 representative the terms and conditions under which the advance payment money may
15 be withheld by the home.

16 (b) An assisted living home shall establish a written policy for the refund of
17 unused advance payments in the event of the discharge or death of a resident. The
18 policy must provide that a resident is entitled to a prorated refund of the unused
19 portion of an advance payment, less reasonable charges for damages to the home
20 resulting from other than normal use.

21 Sec. 47.33.040. RESIDENTS' MONEY. (a) Except for advance payments
22 under AS 47.33.030, an assisted living home may not require a resident of the home
23 to deposit with the home money that belongs to the resident. The provisions of (b) of
24 this section do not apply to money that constitutes an advance payment under
25 AS 47.33.030.

26 (b) An assisted living home may accept, for safekeeping and management,
27 money that belongs to a resident. The home shall establish a written policy for the
28 management of such money and shall act in a fiduciary capacity with respect to that
29 money, in accordance with regulations adopted by the licensing agency. A home is
30 not required to accept money that belongs to a resident.

31 Sec. 47.33.050. TEMPORARY ABSENCE. (a) An assisted living home may

1 agree to reserve a bed for a resident of the home who is temporarily absent from the
2 home and plans to return to the home. The absent resident, or the resident's
3 representative, shall notify the home in writing if the resident's plan to return to the
4 home changes.

5 (b) Until the assisted living home receives written notice that an absent
6 resident does not intend to return to the home, the home may charge the resident an
7 agreed-upon daily rate during the resident's absence from the home.

8 Sec. 47.33.060. HOUSE RULES. (a) An assisted living home may establish
9 house rules, subject to the limitations provided for under this chapter.

10 (b) An assisted living home shall give a copy of the house rules to a
11 prospective resident or the prospective resident's representative before the prospective
12 resident's admission to the home, and shall post the house rules in a conspicuous place
13 in the home.

14 (c) House rules may address

15 (1) times and frequency of use of the telephone;

16 (2) hours for viewing and volume for listening to television, radio, and
17 other electronic equipment that could disturb other residents;

18 (3) visitors;

19 (4) movement of residents in and out of the home;

20 (5) use of personal property; and

21 (6) use of tobacco and alcohol.

22 (d) An assisted living home may not adopt a house rule that unreasonably
23 restricts a right of a resident provided for under this chapter or under any other
24 provision of law.

25 Sec. 47.33.070. RESIDENT FILES. (a) An assisted living home shall
26 maintain, for each resident of the home, a file that includes

27 (1) the name and birthdate, and, if provided by the resident, the social
28 security number of the resident;

29 (2) the name, address, and telephone number of the resident's closest
30 relative, service coordinator, if any, and representative, if any;

31 (3) a statement of what actions, if any, the resident's representative is

- 1 authorized to take on the resident's behalf;
- 2 (4) a copy of the resident's assisted living plan;
- 3 (5) a copy of the admission contract between the home and the
4 resident;
- 5 (6) the physician's statement required under AS 47.33.200(b), and any
6 subsequent physicians' statements;
- 7 (7) a notice, as required under AS 47.33.030, regarding the depository
8 in which the resident's advance payment money is being held;
- 9 (8) written acknowledgement by the resident or the resident's
10 representative that the resident has received a copy of and has read, or has been read
11 the
- 12 (A) resident's rights under AS 47.33.300;
- 13 (B) resident's right to pursue a grievance under AS 47.33.340;
- 14 (C) resident's right to protection from retaliation under
15 AS 47.33.350;
- 16 (D) provisions of AS 47.33.510, regarding immunity; and
- 17 (E) home's house rules;
- 18 (9) an acknowledgement and agreement relating to home safekeeping
19 and management of the resident's money, as required by AS 47.33.040;
- 20 (10) a copy of the resident's living will, if any; and
- 21 (11) a copy of any power of attorney or other written designation of
22 an agent, representative, or surrogate by the resident.

23 (b) An assisted living home shall retain a resident's file for at least one year
24 after the resident is discharged from the home.

25 **Sec. 47.33.080. CLOSURE OR RELOCATION; CHANGE OF MAILING**
26 **ADDRESS.** (a) No later than 90 days before the voluntary closing or relocation of
27 an assisted living home, the home shall provide written notice of the closure or
28 relocation to the licensing agency, each resident of the home, all representatives of
29 residents, and all service coordinators for residents.

30 (b) No later than 14 days before a change of an assisted living home's mailing
31 address, the home shall provide written notice of the change to the licensing agency,

1 each resident of the home, all representatives of residents, and all service coordinators
2 for residents.

3 Sec. 47.33.090. RATE INCREASE. An assisted living home may not increase
4 the rate charged for services provided by the home unless the home notifies each
5 resident or the resident's representative of the increase at least 30 days before the
6 increase is to take effect.

7 ARTICLE 2. ADMISSIONS; ASSISTED LIVING PLAN.

8 Sec. 47.33.200. ADMISSION. (a) An individual may not be admitted to an
9 assisted living home without that individual's consent, or, if the individual is not
10 competent, the consent of the individual's representative.

11 (b) If an individual is being admitted for health problems, at the time of or
12 within 30 days after that individual's admission to the home, the home shall obtain,
13 and place in that resident's file, a physician's statement regarding that resident.

14 Sec. 47.33.210. ADMISSION CONTRACTS. (a) An individual may not be
15 admitted as a resident of an assisted living home unless a representative of the home
16 and either the individual or the individual's representative sign an admission contract
17 that complies with the provisions of this section. Upon signing of the admission
18 contract, the home shall give the resident and the resident's representative, if any, a
19 copy of the contract and place a copy in the resident's file.

20 (b) An admission contract must

21 (1) specifically describe the services and accommodations to be
22 provided by the assisted living home;

23 (2) set out the rates charged by the home;

24 (3) specifically describe the rights, duties, and obligations of the
25 resident, other than those specified in this chapter;

26 (4) set out the policies and procedures for discharge of a resident as
27 provided for in this chapter;

28 (5) state the amount and purpose of any advance payments required by
29 the home; and

30 (6) set out the home's policy for refund of advance payments in the
31 event of the discharge or death of the resident.

1 **Sec. 47.33.220. ASSISTED LIVING PLAN REQUIRED.** An assisted living
2 home shall ensure that an assisted living plan for a resident of the home is developed,
3 and approved by the resident or the resident's representative, within 30 days after the
4 resident was admitted to the home. The assisted living plan must be developed by the
5 resident or the resident's representative with participation from

- 6 (1) the resident's service coordinator, if any;
- 7 (2) representatives of providers of services to the resident; and
- 8 (3) the administrator of the home.

9 **Sec. 47.33.230. ASSISTED LIVING PLAN CONTENTS; DISTRIBUTION.**

10 **(a) An assisted living plan for a resident of an assisted living home must**

11 (1) promote the resident's participation in the community and increased
12 independence through training and support, in order to provide the resident with an
13 environment suited to the resident's needs and best interests; and

14 (2) recognize the shared responsibility of the home and the resident or
15 the resident's representative to evaluate the risks associated with each option when
16 making decisions pertaining to the resident's abilities, preferences, and service needs.

17 **(b) An assisted living plan for a resident must identify and describe**

18 (1) the resident's specific strengths and limitations in performing the
19 activities of daily living;

20 (2) any physical disabilities and impairments, and the medical, health,
21 emotional, mental health, or other problems that are relevant to the services needed by
22 the resident;

23 (3) the resident's preference in roommates, living environment, food,
24 recreational activities, religious affiliation, and relationships and visitation with friends,
25 family members, and others;

26 (4) any specific activities of daily living with which the resident needs
27 assistance;

28 (5) how assistance with the activities of daily living will be provided
29 or arranged for by the home;

30 (6) the frequency of the resident's training for independent living, if
31 habilitation is part of the plan;

1 (7) the resident's need for personal assistance and how those needs will
2 be met by home staff or another service provider from the community;

3 (8) the resident's need for health-related services and how that need
4 will be met;

5 (9) the resident's reasonable wants and the services that will be used
6 to meet those wants.

7 (c) The assisted living home shall ensure that a registered nurse licensed under
8 AS 08.68 reviews the portion of an assisted living plan that describes how the
9 resident's need for health-related services will be met.

10 (d) An assisted living home shall prepare a resident's assisted living plan in
11 writing, in language that can be understood by the resident.

12 (e) If an individual's reasonable wants and needs can be met by a particular
13 assisted living home and a decision is made to admit the individual to that home, the
14 assisted living plan shall be approved, dated, and signed by the administrator of that
15 home and either the resident or the resident's representative.

16 (f) The assisted living plan shall be retained by the home in the resident's file.
17 The home shall provide a copy of the plan to the resident and to the resident's
18 representative, if any.

19 Sec. 47.33.240. EVALUATION OF ASSISTED LIVING PLAN. (a) An
20 assisted living home resident or the resident's representative, and the home
21 administrator or the administrator's designee, shall evaluate the resident's assisted
22 living plan, determine whether the plan is meeting the resident's reasonable wants and
23 needs, and revise the plan if necessary. At the request of the resident or the resident's
24 representative, the resident's service coordinator, if any, and family members may
25 participate in the evaluation. For a resident admitted for health problems, the
26 evaluation must be done at three-month intervals. For a resident admitted for reasons
27 other than health problems, the evaluation must be done at least at one-year intervals,
28 and must be done more often if requested by the resident, the resident's representative,
29 or the home.

30 (b) The administrator or the administrator's designee shall (1) document the
31 results of the evaluation in the resident's record; (2) sign and date any revisions to the

1 resident's assisted living plan; (3) place a copy of the revisions in the resident's file;
2 and (4) provide the resident and the resident's representative, if any, with a copy of
3 the revisions.

4 **ARTICLE 3. RESIDENTS' RIGHTS.**

5 **Sec. 47.33.300. RESIDENTS' RIGHTS.** (a) A resident of an assisted living
6 home has the right to

7 (1) live in a safe and sanitary environment;

8 (2) be treated with consideration and respect for personal dignity,
9 individuality, and the need for privacy, including

10 (A) privacy in a medical examination or health-related
11 consultation;

12 (B) privacy in the resident's room or portion of a room;

13 (C) privacy in bathing and toileting, except for any assistance
14 in those activities that is specified in the resident's assisted living plan; and

15 (D) privacy in the maintenance of personal possessions and the
16 right to keep at least one cabinet or drawer locked;

17 (3) possess and use personal clothing and other personal property,
18 unless the home can demonstrate that the possession or use of certain personal property
19 would be unsafe or an infringement of the rights of other residents;

20 (4) engage in private communications, including

21 (A) receiving and sending unopened correspondence;

22 (B) having access to a telephone, or having a private telephone
23 at the resident's own expense; and

24 (C) visiting with persons of the resident's choice, subject to
25 visiting hours established by the home;

26 (5) close the door of the resident's room at any time, including during
27 visits in the room with guests or other residents;

28 (6) participate in and benefit from community services and activities
29 to achieve the highest possible level of independence, autonomy, and interaction with
30 the community;

31 (7) manage the resident's own money;

- 1 (8) participate in the development of the resident's assisted living plan;
2 (9) share a room with a spouse if both are residents of the home;
3 (10) have a reasonable opportunity to exercise at least several times a
4 week, and to go outdoors at regular and frequent intervals, when weather permits;
5 (11) exercise civil and religious liberties;
6 (12) have access to adequate and appropriate health care and health
7 care providers of the resident's own choosing, consistent with established and
8 recognized standards within the community;
9 (13) self-administer the resident's own medications, unless specifically
10 provided otherwise in the resident's assisted living plan;
11 (14) receive meals that are consistent with religious or health-related
12 restrictions;
13 (15) receive the prior notice of relocation of the home or involuntary
14 discharge of the resident required by AS 44.47.080 and 44.47.360, respectively;
15 (16) present to the home grievances and recommendations for change
16 in the policies, procedures, or services of the home;
17 (17) have access to and participate in advocacy or special interest
18 groups;
19 (18) intervene or participate in, or refrain from participating in,
20 adjudicatory proceedings held under this chapter, unless provided otherwise by other
21 law; and
22 (19) reasonable access to home files relating to the resident, subject to
23 the constitutional right of privacy of other residents of the home.

24 (b) An assisted living home may not establish or apply a policy, procedure, or
25 rule that is inconsistent with or contrary to a right provided by this section or by other
26 law.

27 Sec. 47.33.310. NOTICE OF RIGHTS. (a) At the time an individual is
28 admitted as a resident of an assisted living home, the home shall provide the resident
29 and the resident's representative, if any, with a copy of the rights set out in
30 AS 47.33.300. The home shall obtain from the resident or the resident's representative
31 a signed and dated acknowledgement stating that the resident has read or been read the

1 rights, understands the rights, and has had any questions about the rights answered by
2 the home.

3 (b) An assisted living home shall post in a prominent place in the home

4 (1) a copy of the rights set out in AS 47.33.300;

5 (2) the name, address, and phone number of the long term care
6 ombudsman hired under AS 44.21.231 and, if relevant to residents, of the advocacy
7 agency for persons with a developmental disability or mental illness;

8 (3) the telephone number of an information or referral service for
9 vulnerable adults; and

10 (4) a copy of the grievance procedure established under AS 47.33.340.

11 Sec. 47.33.320. ACCESS TO ASSISTED LIVING HOME. An assisted living
12 home shall allow advocates, representatives of community organizations, and
13 representatives of community legal services programs access to the home, at reasonable
14 times, to

15 (1) visit with residents of the home and to make personal, social, and
16 legal services available to residents;

17 (2) distribute educational and informational materials to advise residents
18 and their representatives of their rights; and

19 (3) assist residents or residents' representatives in asserting legal rights
20 or claims.

21 Sec. 47.33.330. PROHIBITIONS. (a) An assisted living home, including staff
22 of the home, may not

23 (1) deprive a resident of the home of the rights, benefits, or privileges
24 guaranteed to the resident by law;

25 (2) enter a resident's room without first obtaining permission, except

26 (A) during regular, previously announced, fire, sanitation, or
27 other licensing inspections;

28 (B) when a condition or situation presents an imminent danger;

29 (C) as required by the resident's assisted living

30 plan; or

31 (D) for other vital health or safety reasons;

1 (3) impose religious beliefs or practices upon a resident or require a
2 resident to attend religious services;

3 (4) place a resident under physical restraint unless the resident's own
4 actions present an imminent danger to the resident or others;

5 (5) place a resident under chemical restraint; this paragraph does not
6 prevent a resident from voluntarily taking tranquilizers, or other medication, prescribed
7 by a licensed physician;

8 (6) compel a resident to perform services for the home, except as
9 contracted for by the resident and the home or as provided for in the resident's assisted
10 living plan; or

11 (7) restrain, interfere with, coerce, discriminate against, or retaliate
12 against a resident for asserting a right specified by this chapter or by other law.

13 (b) An assisted living home may not physically restrain a resident unless the
14 home has a written physical restraint procedure that has been approved by the licensing
15 agency. If an assisted living home physically restrains a resident because the
16 resident's own actions present an imminent danger to the resident or others, the home
17 shall immediately seek assistance from appropriate medical, emergency, or police
18 personnel and shall notify the resident's representative, if any. The home shall
19 terminate the physical restraint as soon as the resident no longer presents an imminent
20 danger.

21 (c) An owner, administrator, employee, or agent of an assisted living home
22 may not act as a representative of a resident.

23 Sec. 47.33.340. RESIDENT GRIEVANCE PROCEDURE. (a) An assisted
24 living home shall establish a written grievance procedure for handling complaints of
25 residents of the home. At the time an individual is admitted as a resident of an
26 assisted living home, the home shall give a copy of the grievance procedure to the
27 resident and the resident's representative, if any.

28 (b) The grievance procedure established under this section shall provide that
29 a resident and the resident's representative have the right to

30 (1) present both a written and an oral explanation of the resident's
31 grievance;

- 1 (2) have an advocate of the resident's choice, and the resident's
2 representative, if any, attend meetings concerning the resident's grievance; and
3 (3) be notified in writing, within 30 days after the filing of the
4 grievance, of the final decision of the home regarding the grievance.

5 Sec. 47.33.350. RETALIATION AGAINST HOME RESIDENT. (a) An
6 assisted living home may not take retaliatory action against a resident of that home if
7 the resident or the resident's representative

- 8 (1) exercises a right provided by this chapter or by other law;
9 (2) appears as a witness, or refuses to appear as a witness, in an
10 adjudicatory proceeding regarding the home;
11 (3) files a civil action alleging a violation of this chapter; or
12 (4) claims a violation of this chapter before a state or federal agency
13 having jurisdiction over the home or its employees.

14 (b) Discharge of a resident by an assisted living home within 60 days after the
15 resident engages in an activity described in (a) of this section creates a rebuttable
16 presumption that the discharge was retaliatory.

17 (c) At the time, or before, an individual is admitted as a resident of an assisted
18 living home, the home shall give the resident and the resident's representative, if any,
19 written notice of the protection from retaliation provided under this section.

20 Sec. 47.33.360. INVOLUNTARY DISCHARGE. (a) An assisted living home
21 may not discharge a resident of the home against the resident's will, except

- 22 (1) for medical reasons;
23 (2) for engaging in a documented pattern of conduct that is harmful to
24 other residents or to home staff;
25 (3) for violation of the terms of the admission contract, including
26 failure to pay costs incurred under the contract;
27 (4) when emergency discharge is ordered by the resident's physician;
28 (5) when the home is closing; or
29 (6) when the home can no longer provide or arrange for services in
30 accordance with the resident's needs and the resident's assisted living plan.

31 (b) At least 30 days before discharging a resident under (a)(2), (3), (5), or (6)

1 of this section, the assisted living home shall provide written notice of the proposed
2 discharge to the resident or the resident's representative, and to the resident's service
3 coordinator if any. The notice shall state

4 (1) the basis for the discharge;

5 (2) the resident's right to contest the discharge, in the manner provided
6 in the resident's admission contract; and

7 (3) the time and date of the case conference required under (c) of this
8 section.

9 (c) Before discharging a resident under (a)(2), (3), (5), or (6) of this section,
10 the assisted living home shall hold a case conference in which the resident; the
11 resident's representative, if any; the resident's advocate, if any; the resident's service
12 coordinator, if any; the home administrator; and appropriate care providers determine
13 the appropriateness of the discharge based on an assessment of

14 (1) the resident's needs and preferences;

15 (2) the ability of the assisted living home, alternative facilities, family
16 members, friends, or other individuals or agencies to provide the care and services the
17 resident requires;

18 (3) the benefits and risks involved with alternatives to discharge and
19 the shared responsibility of the assisted living home and the resident in assuming risks
20 associated with the alternatives; and

21 (4) the proximity of alternative facilities to the resident's family and
22 friends.

23 (d) If a home discharges a resident under this section, the home shall cooperate
24 with the resident; the resident's service coordinator, if any; and the resident's
25 representative, if any, in making arrangements to relocate the resident.

26 ARTICLE 4. LICENSING.

27 Sec. 47.33.400. LICENSE REQUIRED. (a) A person may not maintain or
28 operate an assisted living home that is subject to this chapter unless that home is
29 licensed under this chapter.

30 (b) A person may not use the term "assisted living home" or "assisted living
31 facility" in connection with services to be provided or obtained unless the home or

1 facility meets the definition of an assisted living home in AS 47.33.010(b).

2 (c) To be licensed as an assisted living home, a facility must meet the
3 licensure requirements of this chapter and of regulations adopted under this chapter.

4 (d) Nothing in this chapter prohibits an assisted living home that is licensed
5 under this chapter and that serves five or fewer residents from using the term "adult
6 foster home" or "assisted living foster home" in connection with that facility.

7 Sec. 47.33.410. LICENSING AGENCY. (a) The Department of Health and
8 Social Services is the licensing agency responsible for licensing assisted living homes
9 that will be providing care primarily to individuals with a mental or developmental
10 disability.

11 (b) The Department of Administration is the licensing agency responsible for
12 licensing assisted living homes that will be providing care primarily to individuals who
13 have a physical disability, who are elderly, or who suffer from dementia, but who are
14 not diagnosed as chronically mentally ill.

15 (c) The Department of Administration and the Department of Health and
16 Social Services shall confer and jointly determine, in accordance with regulations, the
17 appropriate licensing agency for an assisted living home

18 (1) that, at the time of application for a license, appears to meet
19 the criteria in both (a) and (b) of this section;

20 (2) for which, at the time of application for a license, the
21 appropriate licensing agency is not clear under the criteria in (a) and (b) of this
22 section;

23 (3) that, during the term of a license issued under this chapter,
24 wishes to relinquish the license issued by one licensing agency and replace the
25 license with one issued by the other licensing agency; or

26 (4) that, at the time of the assisted living home's license
27 renewal under this chapter, is described in (1), (2), or (3) of this subsection.

28 (d) A licensing agency shall

29 (1) establish, by regulation, requirements and standards for licensure
30 and renewal of a license under this chapter;

31 (2) license assisted living homes in accordance with this chapter and

1 regulations adopted under this chapter;

2 (3) investigate license applicants and licensees for compliance with this
3 chapter; and

4 (4) enforce the standards established by this chapter and regulations
5 adopted under this chapter.

6 (e) The Department of Administration and the Department of Health and
7 Social Services shall jointly adopt regulations to implement the provisions of (c) of this
8 section, including regulations providing procedures and standards for determining the
9 appropriate licensing agency for an assisted living home and for relinquishing and
10 replacing a license issued under this chapter.

11 (f) Under procedures and standards of operation established by the licensing
12 agency by regulation, a licensing agency may contract with private or municipal
13 agencies to investigate and make recommendations to the licensing agency for the
14 licensing of assisted living homes.

15 Sec. 47.33.420. STANDARD FORMS. The Department of Health and Social
16 Services and the Department of Administration shall cooperatively develop standard
17 forms that assisted living homes may use to comply with the requirements of this
18 chapter.

19 Sec. 47.33.430. AUTHORITY OF STATE AGENCIES TO IMPOSE
20 ADDITIONAL REQUIREMENTS. The provisions of this chapter do not preclude
21 a state agency from imposing additional requirements or standards on an assisted living
22 home in order for the home to receive state or federal payment for services.

23 ARTICLE 5. COMPLAINT, INVESTIGATION, AND ADJUDICATORY
24 PROCEDURES; SANCTIONS; PENALTIES.

25 Sec. 47.33.500. COMPLAINT. (a) A person who believes that a provision
26 of this chapter or of a regulation adopted under this chapter has been violated may file
27 a complaint with the appropriate licensing agency.

28 (b) The licensing agency shall investigate a complaint filed under this section
29 unless the agency reasonably concludes that the complaint is without merit.

30 (c) Unless disclosure is required by court order, the licensing agency may not
31 disclose the identity of a complainant, or of a resident on whose behalf a complaint

1 is filed, without the consent of the complainant or the resident or the resident's
2 representative.

3 Sec. 47.33.510. IMMUNITY. A person who files a complaint concerning a
4 suspected violation of this chapter or of a regulation adopted under this chapter, or
5 who testifies in an administrative or judicial proceeding arising from a complaint
6 concerning a suspected violation of this chapter or of a regulation adopted under this
7 chapter, is immune from civil liability for the filing or testifying unless the person
8 acted in bad faith or with malicious purpose.

9 Sec. 47.33.520. INVESTIGATION. (a) A licensing agency may investigate
10 an assisted living home at any time to determine whether the home is in compliance
11 with this chapter and regulations adopted under this chapter.

12 (b) An assisted living home that is the subject of an investigation shall give
13 the licensing agency access to

- 14 (1) the home;
15 (2) all records relating to the operation of the home;
16 (3) all resident files; and
17 (4) the residents and employees of the home.

18 (c) The licensing agency shall prepare a written report of the investigation that
19 summarizes its findings, and shall provide a copy of the report to the assisted living
20 home that is the subject of the investigation and to the complainant, if any, if the
21 complainant requests a copy.

22 (d) The assisted living home may submit to the licensing agency a written
23 response to the investigation report. The licensing agency shall retain the home's
24 response with the record of the complaint.

25 (e) Except as otherwise provided in AS 47.33.500(c), completed investigation
26 reports and responses from homes are public records.

27 Sec. 47.33.530. NOTICE OF VIOLATION. (a) If the licensing agency
28 determines that an assisted living home has violated a provision of this chapter or of
29 a regulation adopted under this chapter, the licensing agency shall prepare a written
30 notice of violation that contains

- 31 (1) a description of the violation;

- 1 (2) a citation to the statute or regulation that has been violated;
2 (3) an order requiring the home to correct the violation by the time
3 specified in the order, not to exceed 90 days after the date the home receives the
4 notice of violation;
5 (4) a statement of the requirement for filing a report of compliance
6 under AS 47.33.540;
7 (5) notice of the sanctions that may be imposed under this chapter if
8 the home fails to timely file a report of compliance or fails to correct the violation;
9 and
10 (6) notice of the right to apply for a variance, if applicable under
11 licensing agency regulations.

12 (b) The licensing agency shall serve the notice of violation on the home in
13 person, or by certified mail, return receipt requested.

14 Sec. 47.33.540. REPORT OF COMPLIANCE. (a) After correcting a violation
15 described in a notice of violation served under AS 47.33.530, an assisted living home
16 shall submit to the licensing agency a report of compliance regarding the correction.

17 (b) Each licensing agency shall adopt regulations specifying the contents of
18 and establishing procedures for reports of compliance, including the time period for
19 submission to the licensing agency under (a) of this section.

20 Sec. 47.33.550. ADMINISTRATIVE SANCTIONS. (a) A licensing agency
21 may revoke an assisted living home license, deny renewal of an assisted living home
22 license, suspend operations of an assisted living home, suspend admissions to an
23 assisted living home, or assess an administrative fine, as the agency considers
24 appropriate, on one or more of the following grounds:

25 (1) a violation of a provision of this chapter, a regulation adopted under
26 this chapter, an order in a notice of violation issued under this chapter, or a term of
27 a license issued under this chapter;

28 (2) a criminal conviction of an administrator of an assisted living home
29 if the conviction

30 (A) is for an offense involving a resident of the home;

31 (B) is a felony; or

1 (C) is a misdemeanor involving alcohol, a controlled substance,
2 an imitation controlled substance, or physical or sexual abuse;

3 (3) obtaining, retaining, or attempting to obtain or retain a license under
4 this chapter by fraud or misrepresentation.

5 (b) An administrative fine assessed under this section may not exceed \$500 a
6 day for each day that a violation continues, and may not exceed a total of \$5,000 for
7 a violation.

8 (c) Before imposing an administrative sanction under (a) of this section, the
9 licensing agency shall give the assisted living home a written notice of the imposition
10 of administrative sanction. The notice must contain a form for requesting a hearing
11 under (d) of this section, and must describe

- 12 (1) each sanction to be imposed;
- 13 (2) the violation that is the basis of each sanction; and
- 14 (3) the home's right to request a hearing to contest the sanctions.

15 (d) An assisted living home may contest a licensing agency's decision to
16 impose an administrative sanction by filing a written request for a hearing, on the form
17 provided by the licensing agency, no later than 10 days after receipt of the notice of
18 administrative sanction.

19 (e) Unless an administrative sanction is related to a violation that presents an
20 imminent danger to the health or safety of the residents of an assisted living home, the
21 sanction may not be imposed until

- 22 (1) the time period for requesting a hearing under (d) of this section has
23 passed without a hearing being requested; or
- 24 (2) the licensing agency renders a final decision following a hearing
25 requested under (d) of this section.

26 (f) If an assisted living home requests a hearing under (d) of this section the
27 hearing shall be held within 60 days after the licensing agency receives the request.
28 The department's decision following a hearing under this section is a final
29 administrative order.

30 (g) If an assisted living home does not request a hearing under (d) of this
31 section, the licensing agency's notice of administrative sanction constitutes a final

1 administrative order, for which the licensing agency may seek the court's assistance
2 in enforcing.

3 (b) A licensing agency shall provide notice of the agency's final action
4 regarding imposition of an administrative sanction on an assisted living home to

- 5 (1) each resident of the home;
6 (2) the agencies that provide treatment to the residents;
7 (3) the residents' service coordinators; and
8 (4) adult protective services.

9 (i) Imposition of an administrative sanction under this section does not
10 preclude imposition of a criminal penalty under AS 47.33.570.

11 Sec. 47.33.560. ADMINISTRATIVE PROCEDURES. (a) Except as
12 otherwise provided in this chapter, administrative proceedings involving the denial,
13 limitation, suspension, or revocation of a license or the assessment of an administrative
14 fine under this chapter shall be conducted under AS 44.62 (Administrative Procedure
15 Act).

16 (b) An administrative hearing held under this chapter shall be open to the
17 public unless the hearing officer determines that the hearing should be closed to protect
18 the privacy of a resident of an assisted living home.

19 (c) A resident may intervene as a party in an adjudicatory proceeding held
20 under this chapter if the home in which that individual resides is a party to the
21 proceeding.

22 (d) At least 30 days before a hearing is held under this chapter, the licensing
23 agency shall give notice of the hearing to each resident of the assisted living home that
24 is the subject of the hearing.

25 Sec. 47.33.570. CRIMINAL PENALTY. A person who violates
26 AS 44.33.400(a) or (b) is guilty of a class B misdemeanor.

27 ARTICLE 6. GENERAL PROVISIONS.

28 Sec. 47.33.910. FEES. A licensing agency may charge and collect fees for
29 application and licensure under this chapter.

30 Sec. 47.33.920. REGULATIONS. The commissioner of health and social
31 services and the commissioner of administration each may adopt regulations to carry

1 out the provisions of this chapter, including regulations regarding licensure and
2 renewal requirements, license application and renewal procedures; application and
3 license fees; types, duration, renewal, and transferability of licenses; staffing and home
4 operation standards; and variances to licensure and operating standards. Regulations
5 adopted under this chapter may provide for the waiver or modification of the
6 requirements of this chapter for homes with fewer than six residents.

7 Sec. 47.33.990. DEFINITIONS. In this chapter,

8 (1) "activities of daily living" means walking, eating, dressing, bathing,
9 toileting, and transfer between a bed and a chair;

10 (2) "administrator" means an individual who has general administrative
11 charge and oversight of an assisted living home;

12 (3) "adult" means an individual 18 years of age or older who is not a
13 ward of the state under AS 47.10.080;

14 (4) "advocate" means a public or private officer, agency, or
15 organization designated by federal or state statute, or a state plan developed under a
16 federal or state statute, to represent the interests of and speak on behalf of a resident
17 of an assisted living home;

18 (5) "aging in place" means choosing to remain in a familiar living
19 environment and manage the risks associated with the physical or mental decline that
20 can occur with increasing age;

21 (6) "assisted living home" has the meaning given in AS 47.33.010;

22 (7) "assisted living plan" means a written description of

23 (A) an individual's functional capabilities;

24 (B) the individual's needs and preferences for assistance with
25 the activities of daily living; and

26 (C) the services to be provided to meet the individual's
27 reasonable wants and needs;

28 (8) "controlled substance" has the meaning given in AS 11.71.900;

29 (9) "health-related services" means services described in
30 AS 47.33.020(a) - (g);

31 (10) "home" means an assisted living home;

1 (11) "imitation controlled substance" has the meaning given in
2 AS 11.73.099;

3 (12) "imminent danger" means a danger that could reasonably be
4 expected to cause death or serious physical harm to a resident;

5 (13) "individual with a developmental disability" has the meaning given
6 the term "person with a developmental disability" in AS 47.80.900;

7 (14) "instrumental activities of daily living" means doing laundry,
8 cleaning of living areas, food preparation, managing money and conducting business
9 affairs, using public transportation, writing letters, obtaining appointments, using the
10 telephone, and engaging in recreational or leisure activities;

11 (15) "licensing agency" means the state agency given authority under
12 AS 47.33.410 to license an assisted living home;

13 (16) "personal assistance" means the provision by an assisted living
14 home of one or more of the following personal services to a resident of the home:

15 (A) assisting a resident in obtaining supportive services as
16 provided for in the resident's assisted living plan;

17 (B) assisting a resident in obtaining instrumental activities of
18 daily living, as provided for in the resident's assisted living plan;

19 (C) being aware of a resident's general whereabouts while the
20 resident is traveling independently in the community;

21 (D) monitoring a resident's activities while on the home
22 premises to provide for the resident's and others' safety and well-being;

23 (17) "physician's statement" means a written statement by an
24 individual's primary physician that includes

25 (A) a medical history and physical, not older than six months,
26 of the individual;

27 (B) a listing of the individual's complete current medicine
28 regimen; and

29 (C) a statement of current therapy regimen necessary to
30 maintain or increase the individual's functioning, mobility, or independence;

31 (18) "resident" means an adult who has been admitted to and resides

1 in an assisted living home;

2 (19) "representative" means a guardian, conservator, attorney in fact,
3 or other person designated by a court, or in writing by a legally competent individual,
4 to act on behalf of that individual;

5 (20) "service coordinator" means an individual who is responsible for

6 (A) coordinating the services of community agencies that
7 provide services to a resident of an assisted living home;

8 (B) participating in inter-agency case management for a
9 resident; or

10 (C) planning for the placement of an individual in an assisted
11 living home;

12 (21) "supportive services" means recreational and leisure activities,
13 transportation, social services, legal services, financial management services,
14 educational and vocational services, medical, dental, and other health care services,
15 habilitation or rehabilitation services, respite services, case management, day care, and
16 other services required to meet a resident's needs.

17 * Sec. 2. AS 36.30.850(b)(19) is amended to read:

18 (19) contracts for home health care provided under regulations
19 adopted by the Department of Health and Social Services and for adult residential
20 [AND FOSTER] care services provided under regulations adopted by the Department
21 of Health and Social Services or by the Department of Administration;

22 * Sec. 3. AS 44.21.240(2) is amended to read:

23 (2) "long term care facility" means an assisted living home [A
24 FOSTER HOME OR OTHER RESIDENTIAL FACILITY FOR DEPENDENT
25 ADULTS] that is required to be licensed under AS 47.33 [AS 47.35] and a nursing
26 home as defined in AS 08.70.180.

27 * Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

28 (59) the Department of Health and Social Services and the Department
29 of Administration as to the licensing and regulation of assisted living homes under
30 AS 47.33.

31 * Sec. 5. AS 47.35.010(a) is amended to read:

1 (a) The department may
2 (1) license and supervise boarding homes, foster homes, group homes,
3 nurseries, and institutions caring for children [AND FOSTER HOMES, GROUP
4 HOMES AND INSTITUTIONS CARING FOR DEPENDENT ADULTS];
5 (2) investigate and supervise licensees;
6 (3) enforce the standards established by it;
7 (4) contract with private or municipal agencies to investigate and make
8 recommendations to the department for the licensing and supervision of boarding
9 homes, foster homes, group homes, nurseries, and institutions caring for children
10 [AND FOSTER HOMES, GROUP HOMES AND INSTITUTIONS CARING FOR
11 DEPENDENT ADULTS] under procedures and standards of operation established by
12 the department; contracts with private agencies under this paragraph are governed by
13 AS 36.30 (State Procurement Code).

14 * Sec. 6. AS 47.35.020 is amended to read:

15 Sec. 47.35.020. LICENSE OR PERMIT REQUIRED FOR CERTAIN CARE
16 FACILITIES. A person may not, without a license or permit to do so,

17 (1) maintain or conduct, for more than 90 days, a boarding home, foster
18 home, group home, institution, or other place for the regular reception or care of
19 children under 16 years of age[, OR A FOSTER HOME, GROUP HOME, OR
20 INSTITUTION FOR THE CARE OF DEPENDENT ADULTS]; or

21 (2) engage in the business of receiving or caring for children under 14
22 years of age, with or without compensation, in a nursery in which five or more
23 children not related by blood or marriage, or legal adoption, to the owner, operator, or
24 manager of the business are lodged.

25 * Sec. 7. AS 47.35.035(a) is amended to read:

26 (a) A person may not be licensed under this chapter to maintain or conduct a
27 foster home for children under the age of 18 unless the person has completed an
28 orientation for foster parents approved by the department. An orientation required
29 under this subsection must provide information about foster care regulations, policies,
30 and procedures; practical instruction about the realities of caring for a child who is
31 placed in a foster home; and other appropriate information.

1 * Sec. 8. AS 47.35.040(e) is amended to read:

2 (e) The department shall give written notice of revocation or modification under
3 (b) of this section 30 days before the effective date of the action. However, if the
4 health or well-being of children [OR DEPENDENT ADULTS] is in jeopardy, the
5 revocation or modification action is effective immediately upon the issuance of written
6 notice by the department.

7 * Sec. 9. AS 47.35.060 is amended to read:

8 Sec. 47.35.060. RECORDS REQUIRED. Each licensee or permit holder shall
9 keep records regarding each child [OR ADULT] in its control and care, or placed by
10 it, that the department prescribes, and shall report to the department the facts that the
11 department requires with reference to the children [OR ADULTS]. All records
12 regarding individuals placed for care in an institution or home under this chapter are
13 confidential and shall be safeguarded from improper disclosure by the agency or
14 department.

15 * Sec. 10. AS 47.35.900(3) is amended to read:

16 (3) "facility" means the administration, program, and physical plant of
17 a nursery caring for children, or a foster home, group home, or institution caring for
18 children [OR DEPENDENT ADULTS];

19 * Sec. 11. AS 47.80.140 is amended to read:

20 Sec. 47.80.140. LICENSING AND CERTIFICATES OF NEED. (a) A person
21 may not establish or operate a residential facility without first obtaining a license to
22 do so. The department by regulation shall provide for licensing of residential facilities
23 that are not within the licensing provisions of AS 18.20.010 - 18.20.130, AS 47.33,
24 AS 47.35.010 - 47.35.080 or other law requiring state licensing of such facilities.
25 Regulations of the department must include but need not be limited to (1) standards
26 of operation promoting and protecting public health, safety, and welfare, and (2)
27 procedures governing applications for and issuance of licenses and duration, renewal,
28 and revocation of licenses for cause. The department may at reasonable times inspect
29 and examine residential facilities licensed under this subsection for conformity with
30 licensing requirements.

31 (b) A certificate of need is required as a prerequisite for licensing a residential

1 facility established after July 1, 1978 and not otherwise provided for in AS 18.07.031 -
2 18.07.111. A certificate shall be issued and regulated in the same manner as provided
3 in AS 18.07.031 - 18.07.111 for certificates of need for health care facilities. This
4 subsection does not apply to an assisted living home licensed under AS 47.33.

5 * Sec. 12. AS 47.35.075 is repealed.

6 * Sec. 13. TRANSITION. Regulations relating to licensure of residential facilities for
7 dependent adults, adopted by the Department of Health and Social Services under authority
8 of AS 47.35 and in effect before January 1, 1995, remain in effect, and may be implemented
9 and enforced by the Department of Health and Social Services, until regulations relating to
10 assisted living homes are adopted by the Department of Health and Social Services and the
11 Department of Administration under AS 47.33, and take effect. Litigation, hearings,
12 investigation, and other proceedings pending under a law amended or repealed by this Act,
13 or in connection with functions transferred by this Act, continue in effect and may be
14 continued and completed notwithstanding a transfer, amendment, or repeal provided for in this
15 Act.

16 * Sec. 14. REGULATIONS. Notwithstanding sec. 16 of this Act, the Department of
17 Health and Social Services and the Department of Administration may proceed to adopt
18 regulations necessary to implement the changes made by this Act. The regulations may not
19 take effect before January 1, 1995.

20 * Sec. 15. Section 14 of this Act takes effect immediately under AS 01.10.070(c).

21 * Sec. 16. Sections 1 - 13 of this Act take effect January 1, 1995.