

CS FOR SENATE BILL NO. 249(HES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/10/94
Referred: STA, FIN

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to assisted living homes; relating to the conversion of an
2 assisted living home to a nursing home; repealing references to residential facilities
3 for dependent adults; abolishing the authority of certain municipalities to license
4 or supervise institutions caring for dependent adults; and providing for an
5 effective date."

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

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

8 CHAPTER 33. ASSISTED LIVING HOMES.

9 ARTICLE 1. PURPOSE; APPLICABILITY; SERVICES; OPERATIONS.

10 Sec. 47.33.005. PURPOSE. The purpose of this chapter is to

11 (1) contribute to the development of a system of care by encouraging
12 the establishment of assisted living homes that provide a homelike environment for
13 elderly persons and persons with a mental or physical disability who need assistance

1 with the activities of daily living;

2 (2) promote the establishment of homes that help

3 (A) the elderly to age in place; and

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

5 integrated into the community and to reach their highest level of functioning;

6 (3) establish standards that will protect residents of assisted living

7 homes, while at the same time promoting an environment that will encourage resident

8 growth and independence, without discouraging the establishment and continued

9 operation of those homes;

10 (4) require that a resident of an assisted living home have an assisted

11 living plan that identifies the services that will be used to meet the resident's

12 reasonable wants and needs; and

13 (5) provide a resident of an assisted living home, or the resident's

14 representative, with the opportunity to participate to the fullest extent possible in the

15 design and implementation of the resident's assisted living plan and in any decisions

16 involving the resident's care.

17 Sec. 47.33.010. APPLICABILITY. (a) Except as provided in (b) of this

18 section, this chapter applies to residential facilities operated in the state that serve three

19 or more adults who are not related to the owner of the facility by blood or marriage

20 by

21 (1) providing housing and food service to its residents; and

22 (2) providing or obtaining, or offering to provide or obtain for its

23 residents

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

25 (B) personal assistance; or

26 (C) a combination of services under (A) and (B) of this

27 paragraph.

28 (b) Notwithstanding (a) of this section, this chapter does not apply to

29 (1) a correctional facility;

30 (2) a facility for treatment of alcoholism that is regulated under

31 AS 47.37;

- 1 (3) an emergency shelter;
- 2 (4) a medical facility, including a nursing home, licensed under
- 3 AS 18.20;
- 4 (5) a program for runaway minors licensed under AS 47.10; or
- 5 (6) a maternity home licensed under AS 47.35.

6 Sec. 47.33.020. HEALTH-RELATED SERVICES ALLOWED IN ASSISTED
7 LIVING HOMES. (a) This chapter does not prohibit the resident of an assisted living
8 home from self-administering the resident's own medications, unless the resident's
9 assisted living plan specifically provides otherwise.

10 (b) An assisted living home may provide, obtain, or offer to provide or obtain
11 the health-related services described in (c) - (i) of this section. A service under (c) -
12 (i) of this section may only be provided or obtained in addition to, and as a
13 supplemental service to, the long-term provision by the home to the resident of
14 assistance with the activities of daily living or personal assistance.

15 (c) If self-administration of medications is included in a resident's assisted
16 living plan, the assisted living home may supervise the resident's self-administration
17 of medications, notwithstanding a limitation imposed by AS 08 or by a regulation
18 adopted under AS 08. The supervision may be performed by any home staff person
19 and may include

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

31 (d) An assisted living home may provide intermittent nursing services to a

1 resident who does not require 24-hour nursing services and supervision. Intermittent
2 nursing services may be provided only by a nurse licensed under AS 08.68 or by a
3 person to whom a nursing task has been delegated under (e) of this section.

4 (e) A person who is on the staff of an assisted living home and who is not a
5 nurse licensed under AS 08.68 may perform a nursing task in that home if

6 (1) the authority to perform that nursing task is delegated to that person
7 by a nurse licensed under AS 08.68; and

8 (2) that nursing task is specified in regulations adopted by the Board
9 of Nursing as a task that may be delegated.

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

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

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

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

24 (2) the home and either the resident or the resident's representative
25 have discussed the consequences and risks involved in the election to remain in the
26 home; and

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

1 (i) A terminally ill resident may remain in the home if (1) the home and either
2 the resident or the resident's representative agree that the resident may remain in the
3 home; and (2) the resident is under the care of a physician who certifies that the needs
4 of the resident are being met in the home. The time limitation of (g) of this section
5 does not apply in the case of a terminally ill resident.

6 Sec. 47.33.030. ADVANCE PAYMENTS. (a) An assisted living home may
7 not require a resident or prospective resident of the home or a resident or prospective
8 resident's representative, to make an advance payment to the home except as security
9 for performance of the contract or as advance rent for the immediately following rental
10 period as the rental period is defined in the contract. If a home requires a resident or
11 prospective resident to make an advance payment for security or as advance rent,

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

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

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

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

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

24 (b) An assisted living home shall establish a written policy for the refund of
25 unused advance payments in the event of termination of a residential services contract
26 or death of a resident. The policy must provide that a resident is entitled to a prorated
27 refund of the unused portion of an advance payment, less reasonable charges for
28 damages to the home resulting from other than normal use.

29 Sec. 47.33.040. RESIDENTS' MONEY. (a) Except for advance payments
30 under AS 47.33.030, an assisted living home may not require a resident of the home
31 to deposit with the home money that belongs to the resident. The provisions of (b) of

1 this section do not apply to money that constitutes an advance payment under
2 AS 47.33.030.

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

8 Sec. 47.33.050. TEMPORARY ABSENCE. (a) An assisted living home may
9 agree to reserve space for a resident of the home who is temporarily absent from the
10 home and plans to return to the home. The absent resident, or the resident's
11 representative, shall notify the home in writing if the resident's plan to return to the
12 home changes.

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

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

18 (b) An assisted living home shall give a copy of the house rules to a
19 prospective resident or the prospective resident's representative before the prospective
20 resident enters into a residential services contract with the home, and shall post the
21 house rules in a conspicuous place in the home.

22 (c) House rules may address various issues, including

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

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

26 (3) visitors;

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

28 (5) use of personal property;

29 (6) use of tobacco and alcohol; and

30 (7) physical, verbal, or other abuse of other residents or staff.

31 (d) An assisted living home may not adopt a house rule that unreasonably

1 restricts a right of a resident provided for under this chapter or under any other
2 provision of law.

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

5 (1) the name and birth date, and, if provided by the resident, the social
6 security number of the resident;

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

9 (3) a statement of what actions, if any, the resident's representative is
10 authorized to take on the resident's behalf;

11 (4) a copy of the resident's assisted living plan;

12 (5) a copy of the residential services contract between the home and
13 the resident;

14 (6) a notice, as required under AS 47.33.030, regarding the depository
15 in which the resident's advance payment money is being held;

16 (7) written acknowledgement by the resident or the resident's
17 representative that the resident has received a copy of and has read, or has been read
18 the

19 (A) resident's rights under AS 47.33.300;

20 (B) resident's right to pursue a grievance under AS 47.33.340;

21 (C) resident's right to protection from retaliation under
22 AS 47.33.350;

23 (D) provisions of AS 47.33.510, regarding immunity; and

24 (E) home's house rules;

25 (8) an acknowledgement and agreement relating to home safekeeping
26 and management of the resident's money, as required by AS 47.33.040;

27 (9) a copy of the resident's living will, if any; and

28 (10) a copy of a power of attorney or other written designation of an
29 agent, representative, or surrogate by the resident.

30 (b) An assisted living home shall retain a resident's file for at least one year
31 after the resident terminates residency at the home.

1 Sec. 47.33.080. CLOSURE OR RELOCATION; CHANGE OF MAILING
2 ADDRESS. (a) Not later than 90 days before the voluntary closing or relocation of
3 an assisted living home, the home shall provide written notice of the closure or
4 relocation to the licensing agency, each resident of the home, all representatives of
5 residents, and all service coordinators for residents.

6 (b) Not later than 14 days before a change of an assisted living home's mailing
7 address, the home shall provide written notice of the change to the licensing agency,
8 each resident of the home, all representatives of residents, and all service coordinators
9 for residents.

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

14 ARTICLE 2. COMMENCEMENT OF RESIDENCY; ASSISTED LIVING PLAN.

15 Sec. 47.33.200. COMMENCEMENT OF RESIDENCY. A person may not
16 begin to reside in an assisted living home without that person's consent, or, if the
17 person is not competent, the consent of the person's representative.

18 Sec. 47.33.210. RESIDENTIAL SERVICES CONTRACTS. (a) A person
19 may not begin residency in an assisted living home unless a representative of the home
20 and either the person or the person's representative sign a residential services contract
21 that complies with the provisions of this section. Upon signing of the contract, the
22 home shall give the resident and the resident's representative, if any, a copy of the
23 contract and place a copy of the contract in the resident's file.

24 (b) A residential services contract must

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

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

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

30 (4) set out the policies and procedures for termination of the contract
31 as provided for in this chapter;

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

3 (6) set out the home's policy for refund of advance payments in the
4 event of termination of the contract or death of the resident.

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

10 (1) the resident's service coordinator, if any;

11 (2) representatives of providers of services to the resident; and

12 (3) the administrator of the home.

13 Sec. 47.33.230. ASSISTED LIVING PLAN CONTENTS; DISTRIBUTION.

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

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

18 (2) recognize the responsibility and right of the resident or the
19 resident's representative to evaluate and choose, after discussion with all relevant
20 parties, including the home, the risks associated with each option when making
21 decisions pertaining to the resident's abilities, preferences, and service needs; and

22 (3) recognize the right of the home to evaluate and to either consent
23 or refuse to accept the resident's choice of risks under (2) of this subsection.

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

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

27 (2) any physical disabilities and impairments, and the aspects of the
28 resident's medical condition, general health, emotional health, mental health, or other
29 conditions or problems that are relevant to the services needed by the resident;

30 (3) the resident's preference in roommates, living environment, food,
31 recreational activities, religious affiliation, and relationships and visitation with friends,

- 1 family members, and others;
- 2 (4) specific activities of daily living with which the resident needs
3 assistance;
- 4 (5) how assistance with the activities of daily living will be provided
5 or arranged for by the home or the resident;
- 6 (6) the frequency of the resident's training for independent living, if
7 habilitation is part of the plan;
- 8 (7) the resident's need for personal assistance and how those needs will
9 be met by home staff or another service provider from the community;
- 10 (8) the resident's need for health-related services and how that need
11 will be met;
- 12 (9) the resident's reasonable wants and the services that will be used
13 to meet those wants.

14 (c) If the assisted living home provides or arranges for the provision of health-
15 related services to a resident, the home shall ensure that a

16 (1) registered nurse licensed under AS 08.68 reviews the portion of an
17 assisted living plan that describes how the resident's need for health-related services
18 will be met; and

19 (2) physician's statement about the resident is included in the plan.

20 (d) A resident's assisted living plan must be in writing, in language that can
21 be understood by the resident.

22 (e) If a person's reasonable wants and needs can be met by a particular
23 assisted living home and a decision is made to enter into a residential services contract
24 between the person and the home, the resident's assisted living plan shall be approved,
25 dated, and signed by the administrator of that home and either the resident or the
26 resident's representative.

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

30 **Sec. 47.33.240. EVALUATION OF ASSISTED LIVING PLAN.** (a) An
31 assisted living home resident or the resident's representative, and the home

1 administrator or the administrator's designee, shall evaluate the resident's assisted
2 living plan, determine whether the plan is meeting the resident's reasonable wants and
3 needs, and revise the plan if necessary. At the request of the resident or the resident's
4 representative, the resident's service coordinator, if any, and family members may
5 participate in the evaluation. If the assisted living home provides or arranges for the
6 provision of health-related services to a resident, the resident's evaluation must be
7 done at three-month intervals. If the assisted living home does not provide or arrange
8 to provide health-related services to a resident, the resident's evaluation must be done
9 at least at one-year intervals.

10 (b) The administrator or the administrator's designee shall

- 11 (1) document the results of the evaluation in the resident's record;
12 (2) sign and date any revisions to the resident's assisted living plan;
13 (3) place a copy of the revisions in the resident's file; and
14 (4) provide the resident and the resident's representative, if any, with
15 a copy of the revisions.

16 ARTICLE 3. RESIDENTS' RIGHTS.

17 Sec. 47.33.300. RESIDENTS' RIGHTS. (a) Subject to (c) of this section, a
18 resident of an assisted living home has the right to

- 19 (1) live in a safe and sanitary environment;
20 (2) be treated with consideration and respect for personal dignity,
21 individuality, and the need for privacy, including privacy in

22 (A) a medical examination or health-related consultation;

23 (B) the resident's room or portion of a room;

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

26 (D) the maintenance of personal possessions and the right to
27 keep at least one cabinet or drawer locked;

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

31 (4) engage in private communications, including

- 1 (A) receiving and sending unopened correspondence;
- 2 (B) having access to a telephone, or having a private telephone
- 3 at the resident's own expense; and
- 4 (C) visiting with persons of the resident's choice, subject to
- 5 visiting hours established by the home;
- 6 (5) close the door of the resident's room at any time, including during
- 7 visits in the room with guests or other residents;
- 8 (6) at the resident's own expense unless otherwise provided in the
- 9 residential services contract, participate in and benefit from community services and
- 10 activities to achieve the highest possible level of independence, autonomy, and
- 11 interaction with the community;
- 12 (7) manage the resident's own money;
- 13 (8) participate in the development of the resident's assisted living plan;
- 14 (9) share a room with a spouse if both are residents of the home;
- 15 (10) have a reasonable opportunity to exercise and to go outdoors at
- 16 regular and frequent intervals, when weather permits;
- 17 (11) exercise civil and religious liberties;
- 18 (12) have access to adequate and appropriate health care and health
- 19 care providers of the resident's own choosing, consistent with established and
- 20 recognized standards within the community;
- 21 (13) self-administer the resident's own medications, unless specifically
- 22 provided otherwise in the resident's assisted living plan;
- 23 (14) receive meals that are consistent with religious or health-related
- 24 restrictions;
- 25 (15) receive the prior notice of relocation of the home or the home's
- 26 intent to terminate the residential services contract of the resident required by
- 27 AS 47.33.080 and 47.33.360, respectively;
- 28 (16) present to the home grievances and recommendations for change
- 29 in the policies, procedures, or services of the home;
- 30 (17) at the resident's own expense unless otherwise provided in the
- 31 residential services contract, have access to and participate in advocacy or special

1 interest groups;

2 (18) at the resident's own expense unless otherwise provided in the
3 residential services contract, intervene or participate in, or refrain from participating
4 in, adjudicatory proceedings held under this chapter, unless provided otherwise by
5 other law; and

6 (19) reasonable access to home files relating to the resident, subject to
7 the constitutional right of privacy of other residents of the home.

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

11 (c) The rights set out in (a)(3), (4), (7), (12), and (14) of this section do not
12 create an obligation for an assisted living home to expend money for the specified
13 rights unless otherwise provided in the residential services contract.

14 Sec. 47.33.310. NOTICE OF RIGHTS. (a) At the time a person begins
15 residency in an assisted living home, the home shall provide the resident and the
16 resident's representative, if any, with a copy of the rights set out in AS 47.33.300.
17 The home shall obtain from the resident or the resident's representative a signed and
18 dated acknowledgement stating that the resident has read or been read the rights,
19 understands the rights, and has had any questions about the rights answered by the
20 home.

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

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

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

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

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

29 Sec. 47.33.320. ACCESS TO ASSISTED LIVING HOME. An assisted living
30 home shall allow advocates and the representatives of community legal services
31 programs access to the home at reasonable times to, subject to the resident's consent,

1 (1) visit with a resident of the home and make personal, social, and
2 legal services available to the resident;

3 (2) distribute educational and informational materials to advise a
4 resident or resident's representative of applicable rights; and

5 (3) assist a resident or a resident's representative in asserting legal
6 rights or claims.

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

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

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

12 (A) during regular, previously announced, fire, sanitation, or
13 other licensing inspections;

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

15 (C) as required by the resident's assisted living plan to provide
16 services specified in the residential services contract; or

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

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

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

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

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

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

30 (b) An assisted living home may not physically restrain a resident unless the
31 home has a written physical restraint procedure that has been approved by the licensing

1 agency. The home shall terminate the physical restraint as soon as the resident no
2 longer presents an imminent danger.

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

5 Sec. 47.33.340. RESIDENT GRIEVANCE PROCEDURE. (a) An assisted
6 living home shall establish a written grievance procedure for handling complaints of
7 residents of the home. At the time a person begins residency in an assisted living
8 home, the home shall give a copy of the grievance procedure to the resident and the
9 resident's representative, if any.

10 (b) The grievance procedure established under this section must provide that
11 a resident and the resident's representative have the right to

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

14 (2) have an advocate of the resident's choice, and the resident's
15 representative, if any, attend meetings concerning the resident's grievance; and

16 (3) be notified in writing, within 30 days after the filing of the
17 grievance, of the final decision of the home regarding the grievance.

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

21 (1) exercises a right provided by this chapter or by other law;

22 (2) appears as a witness, or refuses to appear as a witness, in an
23 adjudicatory proceeding regarding the home;

24 (3) files a civil action alleging a violation of this chapter; or

25 (4) claims a violation of this chapter before a state or federal agency
26 having jurisdiction over the home or its employees.

27 (b) Termination of a resident's residential services contract by an assisted
28 living home within 60 days after the resident engages in an activity described in (a)
29 of this section creates a rebuttable presumption that the termination was retaliatory.

30 (c) At the time, or before, a person begins residency in an assisted living
31 home, the home shall give the resident and the resident's representative, if any, written

1 notice of the protection from retaliation provided under this section.

2 Sec. 47.33.360. INVOLUNTARY TERMINATION OF CONTRACT. (a) An
3 assisted living home may not terminate a residential services contract with a resident
4 of the home against the resident's will, except

5 (1) for medical reasons;

6 (2) for engaging in a documented pattern of conduct that is harmful to
7 the resident, other residents, or staff of the home;

8 (3) for violation of the terms of the residential services contract,
9 including failure to pay costs incurred under the contract;

10 (4) when emergency transfer out of the home is ordered by the
11 resident's physician;

12 (5) when the home is closing; or

13 (6) when the home can no longer provide or arrange for services in
14 accordance with the resident's needs and the resident's assisted living plan.

15 (b) At least 30 days before terminating the residential services contract with
16 a resident under (a)(2), (3), (5), or (6) of this section, the assisted living home shall
17 provide written notice of the proposed contract termination to the resident or the
18 resident's representative, and to the resident's service coordinator if any. The notice
19 must state the

20 (1) basis for the termination; and

21 (2) resident's right to contest the termination in the manner provided
22 in the contract, which must include an offer by the home to participate in a case
23 conference as described in (c) of this section.

24 (c) Before terminating the residential services contract with a resident under
25 (a)(2), (3), (5), or (6) of this section, the assisted living home shall participate in a case
26 conference if requested by the resident or the resident's representative. The case
27 conference must include the resident, the resident's representative, if any, the resident's
28 advocate, if any, the resident's service coordinator, if any, the home administrator, and
29 appropriate care providers who may discuss the appropriateness of the contract
30 termination.

31 (d) If a home terminates the residential services contract with a resident under

1 this section, the home shall cooperate with the resident, the resident's service
2 coordinator, if any, and the resident's representative, if any, in making arrangements
3 to relocate the resident.

4 ARTICLE 4. LICENSING.

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

8 (b) A person may not use the term "assisted living home" or "assisted living
9 facility" in connection with services to be provided or obtained unless the home or
10 facility is governed by this chapter, as described in AS 47.33.010.

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

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

16 Sec. 47.33.410. LICENSING AGENCY. (a) The Department of Health and
17 Social Services is the licensing agency responsible for licensing assisted living homes
18 that will be providing care primarily to persons with a mental or developmental
19 disability.

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

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

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

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

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

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

6 (d) A licensing agency shall

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

9 (2) license assisted living homes in accordance with this chapter and
10 regulations adopted under this chapter;

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

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

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

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

24 Sec. 47.33.420. STANDARD FORMS. The Department of Health and Social
25 Services and the Department of Administration shall cooperatively develop standard
26 forms that assisted living homes may use to comply with the requirements of this
27 chapter.

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

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

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

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

10 (1) a description of the violation;

11 (2) a citation to the statute or regulation that has been violated;

12 (3) an order requiring the home to correct the violation by the time
13 specified in the order, not to exceed 90 days after the date the home receives the
14 notice of violation;

15 (4) a statement of the requirement for filing a report of compliance
16 under AS 47.33.540;

17 (5) notice of the sanctions that may be imposed under this chapter if
18 the home fails to timely file a report of compliance or fails to correct the violation;
19 and

20 (6) notice of the right to apply for a variance, if applicable under
21 licensing agency regulations.

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

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

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

30 Sec. 47.33.550. ADMINISTRATIVE SANCTIONS. (a) A licensing agency
31 may revoke an assisted living home license, deny renewal of an assisted living home

1 license, suspend operations of an assisted living home, suspend the ability of an
2 assisted living home to take in new residents, place conditions on the ability of an
3 assisted living home to take in new residents, restrict the type of care than an assisted
4 living home may provide to residents, or assess an administrative fine, as the agency
5 considers appropriate, on one or more of the following grounds:

6 (1) a violation of a provision of this chapter, a regulation adopted under
7 this chapter, an order in a notice of violation issued under this chapter, or a term of
8 a license issued under this chapter;

9 (2) a criminal conviction of an administrator of an assisted living home
10 if the conviction is

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

12 (B) a felony; or

13 (C) a misdemeanor involving alcohol, a controlled substance,
14 an imitation controlled substance, or physical or sexual abuse;

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

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

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

24 (1) each sanction to be imposed;

25 (2) the violation that is the basis of each sanction; and

26 (3) the home's right to request a hearing to contest the sanctions.

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

31 (e) Unless an administrative sanction is related to a violation that presents an

1 imminent danger to the health or safety of the residents of an assisted living home, the
2 sanction may not be imposed until the

3 (1) time period for requesting a hearing under (d) of this section has
4 passed without a hearing being requested; or

5 (2) licensing agency renders a final decision following a hearing
6 requested under (d) of this section.

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

11 (g) If an assisted living home does not request a hearing under (d) of this
12 section, the licensing agency's notice of administrative sanction constitutes a final
13 administrative order that the licensing agency may seek the court's assistance in
14 enforcing.

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

17 (1) each resident of the home;

18 (2) the agencies that provide treatment to the residents;

19 (3) the residents' service coordinators; and

20 (4) adult protective services.

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

23 Sec. 47.33.560. ADMINISTRATIVE PROCEDURES. (a) Except as
24 otherwise provided in this chapter, administrative proceedings involving the denial,
25 limitation, suspension, or revocation of a license or the assessment of an administrative
26 fine under this chapter shall be conducted under AS 44.62 (Administrative Procedure
27 Act).

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

31 (c) A resident may intervene as a party in an adjudicatory proceeding held

1 under this chapter if the home in which that person resides is a party to the
2 proceeding.

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

6 Sec. 47.33.570. CRIMINAL PENALTY. A person who violates
7 AS 47.33.400(a) or (b) is guilty of a class B misdemeanor.

8 ARTICLE 6. GENERAL PROVISIONS.

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

11 Sec. 47.33.920. REGULATIONS. The commissioner of health and social
12 services and the commissioner of administration each may adopt regulations to carry
13 out the provisions of this chapter, including regulations regarding licensure and
14 renewal requirements, license application and renewal procedures; application and
15 license fees; types, duration, renewal, and transferability of licenses; staffing and home
16 operation standards; and variances to licensure and operating standards. Regulations
17 adopted under this chapter may provide for the waiver or modification of the
18 requirements of this chapter for homes with fewer than six residents.

19 Sec. 47.33.990. DEFINITIONS. In this chapter,

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

22 (2) "administrator" means an person who has general administrative
23 charge and oversight of an assisted living home;

24 (3) "adult" means a person 18 years of age or older who is not a ward
25 of the state under AS 47.10.080;

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

30 (5) "aging in place" means choosing to remain in a familiar living
31 environment and manage the risks associated with the physical or mental decline that

- 1 can occur with increasing age;
- 2 (6) "assisted living home" means a residential facility to which this
3 chapter applies, as described in AS 47.33.010;
- 4 (7) "assisted living plan" means a written description of
5 (A) a person's functional capabilities;
6 (B) the person's needs and preferences for assistance with the
7 activities of daily living; and
8 (C) the services to be provided to meet the person's reasonable
9 wants and needs;
- 10 (8) "controlled substance" has the meaning given in AS 11.71.900;
- 11 (9) "health-related services" means services described in
12 AS 47.33.020(c) - (i);
- 13 (10) "home" means an assisted living home;
- 14 (11) "imitation controlled substance" has the meaning given in
15 AS 11.73.099;
- 16 (12) "imminent danger" means a danger that could reasonably be
17 expected to cause death or serious physical harm to the resident's self, to the staff of
18 a home, or to others;
- 19 (13) "instrumental activities of daily living" means doing laundry,
20 cleaning of living areas, food preparation, managing money and conducting business
21 affairs, using public transportation, writing letters, obtaining appointments, using the
22 telephone, and engaging in recreational or leisure activities;
- 23 (14) "licensing agency" means the state agency given authority under
24 AS 47.33.410 to license an assisted living home;
- 25 (15) "personal assistance" means the provision by an assisted living
26 home of one or more of the following personal services to a resident of the home:
27 (A) assisting a resident in obtaining supportive services as
28 provided for in the resident's assisted living plan;
29 (B) assisting a resident in obtaining instrumental activities of
30 daily living, as provided for in the resident's assisted living plan;
31 (C) being aware of a resident's general whereabouts while the

- 1 resident is traveling independently in the community;
- 2 (D) monitoring a resident's activities while on the home
3 premises to provide for the resident's and others' safety and well-being;
- 4 (16) "person with a developmental disability" has the meaning given
5 in AS 47.80.900;
- 6 (17) "physician's statement" means a written statement by a person's
7 primary physician that includes a
- 8 (A) medical history and physical, not older than six months, of
9 the person;
- 10 (B) listing of the person's complete current medicine regimen;
11 and
- 12 (C) statement of current therapy regimen necessary to maintain
13 or increase the person's functioning, mobility, or independence;
- 14 (18) "resident" means an adult who has signed a residential services
15 contract with and resides in an assisted living home;
- 16 (19) "representative" means a guardian, conservator, attorney in fact,
17 or other person designated by a court, or in writing by a legally competent person, to
18 act on behalf of that person;
- 19 (20) "service coordinator" means a person who is responsible for
- 20 (A) coordinating the services of community agencies that
21 provide services to a resident of an assisted living home;
- 22 (B) participating in inter-agency case management for a
23 resident; or
- 24 (C) planning for the placement of a person in an assisted living
25 home;
- 26 (21) "supportive services" means recreational and leisure activities,
27 transportation, social services, legal services, financial management services,
28 educational and vocational services, medical, dental, and other health care services,
29 habilitation or rehabilitation services, respite services, case management, day care, and
30 other services required to meet a resident's needs;
- 31 (22) "terminally ill resident" means an ill resident who has a medical

1 prognosis, certified in writing by the resident's attending physician, that the life
2 expectancy of the resident is no more than six months if the illness runs its normal
3 course.

4 * Sec. 2. AS 11.61.195(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the
6 second degree if the person knowingly

7 (1) possesses a firearm during the commission of an offense under
8 AS 11.71.010 - 11.71.040; or

9 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a
10 parking lot immediately adjacent to

11 (A) a public or private preschool, elementary, junior high, or
12 secondary school without the permission of the chief administrative officer of
13 the school or district or the designee of the chief administrative officer; or

14 (B) a center, other than a private residence, licensed under
15 AS 47.33 or AS 47.35.010 - 47.35.070 [AS 47.35.010 - 47.35.075] or
16 recognized by the federal government for the care of children.

17 * Sec. 3. AS 11.61.220(a) is amended to read:

18 (a) A person commits the crime of misconduct involving weapons in the fifth
19 degree if the person

20 (1) knowingly possesses a deadly weapon, other than an ordinary
21 pocketknife or a defensive weapon, that is concealed on the person;

22 (2) knowingly possesses a loaded firearm on the person in any place
23 where intoxicating liquor is sold for consumption on the premises;

24 (3) being an unemancipated minor under 16 years of age, possesses a
25 firearm without the consent of a parent or guardian of the minor;

26 (4) knowingly possesses a firearm

27 (A) or a defensive weapon within the grounds of or on a
28 parking lot immediately adjacent to a public or private preschool, elementary,
29 junior high, or secondary school without the permission of the chief
30 administrative officer of the school or district or the designee of the chief
31 administrative officer, except that a person 21 years of age or older may

- 1 possess
- 2 (i) an unloaded firearm in the trunk of a motor vehicle
- 3 or encased in a closed container in a motor vehicle;
- 4 (ii) a defensive weapon; or
- 5 (B) within the grounds of or on a parking lot immediately
- 6 adjacent to a center, other than a private residence, licensed under AS 47.33 or
- 7 AS 47.35.010 - 47.35.070 [AS 47.35.010 - 47.35.075] or recognized by the
- 8 federal government for the care of children; or
- 9 (5) possesses or transports a switchblade or a gravity knife.
- 10 * Sec. 4. AS 18.07.031 is amended by adding a new subsection to read:
- 11 (b) Notwithstanding the expenditure threshold in (a) of this section, a person
- 12 may not convert a building or part of a building that is licensed as an assisted living
- 13 facility under AS 47.33 to a nursing home that requires licensure under AS 18.20.020
- 14 unless authorized under the terms of a certificate of need issued by the office.
- 15 * Sec. 5. AS 36.30.850(b)(19) is amended to read:
- 16 (19) contracts for home health care provided under regulations
- 17 adopted by the Department of Health and Social Services and for adult residential
- 18 [AND FOSTER] care services provided under regulations adopted by the Department
- 19 of Health and Social Services or by the Department of Administration;
- 20 * Sec. 6. AS 44.21.240(2) is amended to read:
- 21 (2) "long term care facility" means an assisted living [A FOSTER]
- 22 home [OR OTHER RESIDENTIAL FACILITY FOR DEPENDENT ADULTS] that
- 23 is required to be licensed under AS 47.33 [AS 47.35] and a nursing home as defined
- 24 in AS 08.70.180;
- 25 * Sec. 7. AS 44.62.330(a) is amended by adding a new paragraph to read:
- 26 (59) the Department of Health and Social Services and the Department
- 27 of Administration as to the licensing and regulation of assisted living homes under
- 28 AS 47.33.
- 29 * Sec. 8. AS 47.35.010(a) is amended to read:
- 30 (a) The department may
- 31 (1) license and supervise boarding homes, foster homes, group homes,

1 nurseries, and institutions caring for children [AND FOSTER HOMES, GROUP
2 HOMES AND INSTITUTIONS CARING FOR DEPENDENT ADULTS];

3 (2) investigate and supervise licensees;

4 (3) enforce the standards established by it;

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

12 * Sec. 9. AS 47.35.020 is amended to read:

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

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

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

23 * Sec. 10. AS 47.35.035(a) is amended to read:

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

30 * Sec. 11. AS 47.35.040(e) is amended to read:

31 (e) The department shall give written notice of revocation or modification

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

5 * Sec. 12. AS 47.35.060 is amended to read:

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

13 * Sec. 13. AS 47.35.900(3) is amended to read:

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

17 * Sec. 14. AS 47.80.140 is amended to read:

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

29 (b) A certificate of need is required as a prerequisite for licensing a residential
30 facility established after July 1, 1978, and not otherwise provided for in AS 18.07.031
31 - 18.07.111. A certificate shall be issued and regulated in the same manner as

1 provided in AS 18.07.031 - 18.07.111 for certificates of need for health care facilities.

2 **This subsection does not apply to an assisted living home licensed under AS 47.33.**

3 * Sec. 15. AS 47.35.075 is repealed.

4 * Sec. 16. TRANSITION. Regulations relating to licensure of residential facilities for
5 dependent adults, adopted by the Department of Health and Social Services under authority
6 of AS 47.35 and in effect before January 1, 1995, remain in effect, and may be implemented
7 and enforced by the Department of Health and Social Services, until regulations relating to
8 assisted living homes are adopted by the Department of Health and Social Services and the
9 Department of Administration under AS 47.33, and take effect. Litigation, hearings,
10 investigation, and other proceedings pending under a law amended or repealed by this Act,
11 or in connection with functions transferred by this Act, continue in effect and may be
12 continued and completed notwithstanding a transfer, amendment, or repeal provided for in this
13 Act.

14 * Sec. 17. REGULATIONS. Notwithstanding sec. 20 of this Act, the Department of
15 Health and Social Services and the Department of Administration may proceed to adopt
16 regulations necessary to implement the changes made by this Act. The regulations may not
17 take effect before January 1, 1995.

18 * Sec. 18. REVISOR'S INSTRUCTION. (a) In AS 44.47.305 and 44.47.310, the revisor
19 of statutes shall change "AS 47.35.010 - 47.35.075" to "AS 47.35."

20 (b) In AS 47.35, the revisor of statutes shall change "AS 47.35.010 - 47.35.075" to
21 "AS 47.35.010 - 47.35.070."

22 * Sec. 19. Section 17 of this Act takes effect immediately under AS 01.10.070(c).

23 * Sec. 20. Sections 1 - 16 of this Act take effect January 1, 1995.