

HB

115

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 115
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Certifications for alcohol commitments BRU: Alcoholism and Drug Abuse Svcs
 Component: Alcohol and Drug Abuse Grants
 Sponsor: Representative Kapsner
 Requester: House (HES) Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will allow physicians assistants and advanced nurse practitioners to sign Certificates of Necessity and to perform other alcohol and drug abuse commitment functions under Title 47.

There will be no additional costs incurred by the Division of Alcoholism and Drug Abuse.

Prepared by: Ernest Turner Phone 465-5810
 Division: Alcoholism and Drug Abuse Date/Time 1/26/01 12:55PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/17/01 3:03 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

Passel

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE KAPSNER

TO: CSHB 115(), Draft Version "F"

- 1 Page 2, line 5:
- 2 Delete "master"
- 3 Insert "clinical"

22-LS0059\F
Ford
2/15/01

CS FOR HOUSE BILL NO. 115()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES KAPSNER, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the definition of 'mental health professional' for certain mental
2 health proceedings and treatments; relating to the services of certain medical
3 professionals in civil proceedings for the commitment of certain intoxicated persons;
4 allowing a physician assistant or advanced nurse practitioner to certify the need for
5 emergency treatment as a result of intoxication; and providing for an effective date."

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

7 * **Section 1.** AS 47.30.915(11) is amended to read:

8 (11) "mental health professional" means a psychiatrist or physician
9 who is licensed to practice in this state or employed by the federal government; a
10 clinical psychologist licensed by the state Board of Psychologist and Psychological
11 Associate Examiners; a psychological associate trained in clinical psychology and
12 licensed by the Board of Psychologist and Psychological Associate Examiners; a
13 registered nurse with a master's degree in psychiatric nursing, licensed by the State

1 Board of Nursing; a marital and family therapist licensed by the Board of Marital
 2 and Family Therapy; a professional counselor licensed by the Board of
 3 Professional Counselors; and a master social worker licensed by the Board of
 4 Social Work Examiners [WITH A MASTER'S DEGREE IN SOCIAL WORK AND
 5 SUBSTANTIAL EXPERIENCE IN THE FIELD OF MENTAL ILLNESS];

6 * Sec. 2. AS 47.37.180(b) is amended to read:

7 (b) The certifying physician, physician assistant, advanced nurse
 8 practitioner, spouse, guardian, or relative of the person to be committed, or any other
 9 responsible person, may make a written application for commitment under this
 10 section, directed to the administrator of the approved public treatment facility. The
 11 application must state facts to support the need for emergency treatment and be
 12 accompanied by a physician's, physician assistant's, or advanced nurse
 13 practitioner's certificate supporting the need for emergency treatment and stating that
 14 the physician, physician assistant, or advanced nurse practitioner has examined the
 15 person sought to be committed within two days before the certificate's date.

16 * Sec. 3. AS 47.37.180(f) is amended to read:

17 (f) A copy of the written application for commitment and of the physician's,
 18 physician assistant's, or advanced nurse practitioner's certificate, and a written
 19 explanation of the person's right to legal counsel, shall be given to the person within
 20 24 hours after commitment by the administrator, who shall provide a reasonable
 21 opportunity for the person to consult with legal counsel.

22 * Sec. 4. AS 47.37.190(a) is amended to read:

23 (a) A spouse or guardian, a relative, the certifying physician, physician
 24 assistant, advanced nurse practitioner, or the administrator in charge of an approved
 25 public treatment facility may petition the court for a 30-day involuntary commitment
 26 order. The petition must allege that the person is an alcoholic or drug abuser who (1)
 27 has threatened, attempted to inflict, or inflicted physical harm on another and that
 28 unless committed is likely to inflict physical harm on another; or (2) is incapacitated
 29 by alcohol or drugs. A refusal to undergo treatment does not constitute evidence of
 30 lack of judgment as to the need for treatment. The petition must be accompanied by a
 31 certificate of a licensed physician, physician assistant, or advanced nurse

INCLUDING AND INCLUDING TO UNBORN CHILD

1 practitioner who has examined the person within two days before submission of the
 2 petition, unless the person whose commitment is sought has refused to submit to a
 3 medical examination, in which case the fact of refusal must be alleged in the petition.
 4 The certificate must set out the ~~physician's findings of the examination~~ in support of
 5 the allegations of the petition. *MEDICAL EXAMINATION PROVIDER'S*

6 * Sec. 5. AS 47.37.200(a) is amended to read:

7 (a) At the hearing for a 30-day commitment required under AS 47.37.190(b),
 8 the court shall hear all relevant testimony, including, if possible, the testimony of at
 9 least one person [LICENSED PHYSICIAN] who has examined the person whose
 10 commitment is sought ~~under AS 47.37.190(b) or~~ 47.37.190(a). The person whose
 11 commitment is sought shall be present unless the court believes that being present is
 12 likely to be injurious to the person, in which case the court may conduct the hearing
 13 telephonically. The court may examine the person in open court, or, if advisable,
 14 examine the person out of court. If the person has refused to be examined under
 15 ~~AS 47.37.190(b) or~~ 47.37.190(a) [BY A LICENSED PHYSICIAN], the person shall
 16 be given an opportunity to request examination by a court-appointed licensed
 17 physician, physician assistant, or advanced nurse practitioner. If the person fails
 18 to request a medical examination and there is sufficient evidence to believe that the
 19 allegations of the petition are true, or, if the court believes that more medical evidence
 20 is necessary, the court may issue a temporary order committing the person to a private
 21 or public facility for a period of not more than five days for purposes of a diagnostic
 22 examination.

23 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DYSON

TO: CSHB 115(), Draft Version "F"

1 Page 1, line 5, following "intoxication;":

2 Insert "relating to commitment based on intoxication or alcohol or drug abuse;"

3

4 Page 2, following line 5:

5 Insert a new bill section to read:

6 "* Sec. 2. AS 47.37.180(a) is amended to read:

7 (a) An intoxicated person who (1) has threatened, attempted to inflict, or
8 inflicted physical harm on another ~~or on~~ ^{THEIR OWN} an unborn child, or is likely to inflict
9 physical harm on another ~~or on~~ ^{THEIR OWN} an unborn child, unless committed, or (2) is
10 incapacitated by alcohol or drugs, may be committed to an approved public treatment
11 facility for emergency treatment. A refusal to undergo treatment does not constitute
12 evidence of lack of judgment as to the need for treatment."

13

14 Renumber the following bill sections accordingly.

15

16 Page 2, line 27, following "another":

17 Insert "or on ^{THEIR OWN} an unborn child"

18

19 Page 2, line 28, following "another":

20 Insert "or ^{THEIR OWN} an unborn child"

A M E N D M E N T

OFFERED IN THE HOUSE

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TO: CSHB 115(), Draft Version "F"

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7 Page 2, line 28, following "another":

8 Insert "^{THEIR OWN}or on an unborn child"

CHAIR NOTES

March 22, 2001

Agenda

HB 115 Emergency Commitment Orders, (3 amendments)

HB 124 Nurses Home/Assisted Living Employees/Visitors Adopt CS (work order LS0087O)

HB 142 ATAP Amendment, Adopt CS (work order GS1023\C)

HB 98 High School Diploma for Certain WW II Vets

SB 19 CSED/SSAN (same as HB 41). Adopt CS (work order GS1002\P)

*Note: if CS is adopted, then a House Concurrent Resolution must be done in order
To change the title*

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 20, 2001

SUBJECT: Sectional Summary of CSHB 115() - Draft Version "F"

TO: Representative Mary Kapsner
Attn: Trim

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends the definition of "mental health professional" by adding licensed marital and family therapists, professional counselors, and a master social worker.

Section 2. Adds physician assistants and advanced nurse practitioners as authorized to make application for emergency treatment for intoxication.

Section 3. Adds physician assistants and advanced nurse practitioners as individuals authorized to sign a copy of a written application for commitment.

Section 4. Adds physician assistants and advanced nurse practitioners as individuals authorized to petition the court for a 30-day involuntary commitment order.

Section 5. Adds physician assistants and advanced nurse practitioners as individuals authorized to make a physical examination in connection with a 30-day involuntary commitment hearing. Makes certain technical changes.

Section 6. Effective date.

MFF:glc
01-259.glc

Representative Mary Kapsner

State Capitol • Juneau, Alaska 99801-1182
Phone: (907) 465-4942 • Fax: (907) 465-4589
E-Mail: Representative_Mary_Kapsner@legis.state.ak.us

House District 39
Lower Kuskokwim and Upper Bristol Bay

Sponsor Statement

HOUSE BILL NO. 115

Aktachuk
Akiak
Aleknagik
Atmautluak
Bethel
Chefornak
Clarks Point
Dillingham
Eek
Ekwik
Ekwok
Goodnews Bay
Kasigluk
Kipnuk
Koliganek
Kongiganak
Kwethluk
Kwigillingok
Manokotuk
Napakiak
Napaskiak
New Stuyahok
Numapitchuk
Oscarville
Platinum
Portage Creek
Quinhagak
Toqtaq
Tuntutuliak
Twin Hills

This bill proposes to change Title 47 Statute, Sections 37.180, 190, and 200 to allow physicians assistants and advanced nurse practitioners to sign medical certificates of necessity for treatment of individuals for alcohol and drug dependency. It also expands the definition of "mental health professional" under AS 47.30.915 to include Licensed Clinical Social Workers(LCSW), Licensed Marital and Family Therapists(LMFT) and Licensed Professional Counselors(LPC).

Current statutes require licensed physicians to examine persons for whom involuntary commitment is being sought and to complete a certificate of necessity for treatment. The certificate must accompany a petitioner's application to the court for commitment of an eligible alcoholic or drug dependent person. This requirement is burdensome, particularly in smaller communities where there is a shortage licensed physicians. The result is reduced access to treatment for those vulnerable Alaskans, many of whom move through both the criminal justice system and emergency medical facilities. The proposed change will allow communities where physicians may not be present to utilize physician's assistants and advanced nurse practitioners who staff local clinics to complete the required certificates of necessity for treatment.

When a person with mental health problems needs an evaluation for possible admittance to a mental health hospital facility, a "mental health professional" (MHP) is called upon to conduct the evaluation. The goal of the evaluation is to determine whether the individual has a mental illness and as a result is "gravely disabled" or is likely to cause "serious harm to self or others". If the MHP determines that the individual being evaluated fits the criteria for civil commitment, and the individual refuses voluntary hospitalization, a call is placed to a consulting psychiatrist or physician. If the consulting psychiatrist or physician concurs with the evaluation, the MHP contacts a judge who makes the decision to involuntarily commit the individual.

According to AS 47.30.915 (11) "mental health professional" is defined as "a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the state Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing and a social worker with a master's degree in social work and substantial experience in the

field of mental illness". This statute was written prior to the passage of state licensing requirements governing masters level mental health clinicians holding licenses as Licensed Clinical Social Workers, Licensed Marital and Family Therapists and Licensed Professional Counselors.

In mental health agencies across the state, there are approximately 140 mental health clinicians doing emergency services evaluations. Only half these clinicians fit the current definition of a Mental Health Professional. Licensure that includes masters level mental health clinicians enlarges the pool of Mental Health Professionals. Licensed Clinical Social Workers, Marital and Family Therapists and Professional Counselors are qualified to serve these needs. Expanding the pool of qualified professionals means quicker and better care and services for Alaskans. The Department of Health and Social Services encourages these changes.

4Rivers Counseling Services

P. O. Box 229 * McGrath, AK 99627-0229
(907) 524-3867 * In AK only: (800) 478-3781
FAX: (907) 524-3519 * e-mail: israel@mcgrathalaska.net

17 April, 2000

Ms. Pam Watts
Executive Director
Advisory Board on Alcoholism and Drug Abuse
Box 110608
Juneau, AK99811-0608

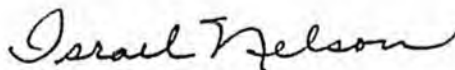
Dear Ms. Watts,

As you requested, accompanying this letter are copies of my letter to the Chief Justice of the Alaska Supreme Court and a response I received from Janna Stewart, Magistrate Education Coordinator.

Clearly, the only solution to the conundrum presented by the present provisions of Title 47 is a change of law. I am sending copies of these letters to the members of the Legislature from this part of the State with the hope that they can initiate a change of law.

I am pleased to report that the gentleman described in my letter was successfully finally admitted to a treatment program where he has been active for the last year. Only this morning his sister told me of her recent visit with him and her joy with his progress. So he was able to get help in spite of the limitations of the law.

Sincerely,



Israel Nelson, MSW, D. Min.
Executive Director

CC: Honorable Carl Morgan
Honorable Georgianna Lincoln
Honorable Beverly Masek
Honorable Mary Kapsner



Counseling Services

P.O. Box 229, McGrath, AK 99627 • (907) 524-3781

9 June, 1999

Honorable Warren Matthews, Chief Justice
Alaska Supreme Court
303 K Street
Anchorage, AK 99501

Mr. Chief Justice,

On 23 April, 1999, Ms. Naomi Norback requested the assistance of our staff to effect an emergency commitment of her brother to a medical facility because of his alcoholism. On several occasions his drinking led him to injure himself. He appears to be suffering from malnutrition. He was seen on an emergency basis by the Physician Assistant who supervises our health clinic.

Utilizing Section 47.37.180 (Emergency Commitment) of the Uniform Alcoholism and Intoxication Treatment Act, all of the appropriate documentation was completed and forwarded to the presiding judge of the Superior Court of Alaska at Bethel. While he found that all the documentation was in order, he refused to sign the commitment order because the patient had not been examined by a physician, as is required by the law.

McGrath is 221 air miles from Anchorage, 248 air miles from Fairbanks, and over 300 miles from Bethel. Our most direct and immediate access to urban settings where hospitals are located for emergency care is a commercial flight on Pen Air to Anchorage once a day. There is no physician here, only a Physician Assistant who practices under the supervision of a physician based in Fairbanks with the Tanana Chiefs Conference. Without a physician's signature, we could not proceed to commit the gentleman for care. Our next strategy was to utilize the powers of a police officer to effect commitment, but the local Village Public Safety Officer could not act because the gentleman was not posing an immediate threat to himself or others.

It appears to me that one part of Section 47.37.180 of the Uniform Alcoholism and Intoxication Treatment Act is too restrictive to be of use in Bush circumstances such as ours. Indeed, what am I as an alcoholism treatment professional supposed to do when I come upon a case of a person needing involuntary commitment to care where no physician is available to examine the patient, but, at best, a physician assistant may be available? I believe the intention of the law is correct and helpful. It appears, however, that this one provision renders it useless to me.

May I respectfully suggest that you encourage the Legislature to amend the law to allow for examination by a physician assistant in circumstances such as this. May I also respectfully suggest that you offer an interpretation of the spirit of the law to the presiding judge of the Bethel Superior Court so that we may proceed to provide care to a man I and his family are watching die by the day due to his alcoholism.

Sincerely,

Israel Nelson, MSW, D. Min.
Executive Director

CC: Ms. Naomi Norback
Box 282
McGrath, AK 99627 (Telephone (907) 524-3287)



*ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director*

Janna Stewart
Magistrate Education Coordinator

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8237
FAX (907) 264-8291

June 30, 1999

Isreal Nelson, Executive Director
4 Rivers Counseling Services
P. O. Box 229
McGrath, Alaska 99627

Dear Mr. Jones:

On behalf of Chief Justice Warren Matthews, I am responding to your June 9 letter regarding the requirements of the Uniform Alcoholism and Intoxication Treatment Act and an unsuccessful effort to commit a McGrath resident under AS 47.37.180 (emergency commitment) and AS 47.37.190 (involuntary commitment).

Your criticism of what these statutes require—a physician's certificate based on an examination of the respondent within two days—is well founded. It is difficult or impossible to meet that requirement in McGrath and in countless other rural Alaska communities where physicians are not available to provide direct services.

As you know, the lack of a physician's certificate made it impossible for the Bethel Superior Court Judge to issue a commitment order in the April case. According to that judge, and to the Superior Court Probate Master in Fairbanks who regularly deals with such cases, there is virtually no way to work around this unequivocal statutory requirement.

I understand that on occasion physicians have been willing to go "out on a limb" and sign certificates based on physical examinations performed by physician's assistants or nurse practitioners, but I cannot determine whether commitments have ever been authorized based on such efforts. I understand that this examination-by-proxy option was not available in the instant case, in any event.

In my review of these statutes and the pertinent implementation procedures, I consulted with Loren Jones, the Director of the Division of Alcoholism and Drug Abuse. I understand that he has spoken with you about the limitations of these statutes. I can only recommend, as he has, that you contact your state legislators and ask them to attempt to legislatively modify the

Puller

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10 incapacitated by alcohol or drugs, may be committed to an approved public treatment
11 facility for emergency treatment. A refusal to undergo treatment does not constitute
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Israel Nelson
June 30, 1999
Page Two

physician's certificate requirement. You can also contact Mr. Jones or his Anchorage regional coordinator, Suzanne Frey, to discuss the potential for support from the executive branch (from the Division, from the Department of Health and Social Services, or from the office of the Attorney General) for such legislative efforts.

Please let me add, on behalf of the judge in Bethel and of many of us who strive to provide quality justice system services throughout Alaska, that we certainly do understand how difficult it is to be faced with these situations. And while we appreciate the intention (or the "spirit" of the law, as you say)—to make available potentially life-saving care and intervention for persons in grave circumstances due to alcohol abuse—we cannot ignore the fact that the law also provides those same persons with the protections of due process: evidence, certifications, and findings, as well as notice, representation, and the right to a hearing.

Please let me know if I can be of assistance in any other way regarding this matter.

Sincerely,



Janna Stewart
Magistrate Education Coordinator

cc: Stephanie J. Cole, Administrative Director
Alaska Court System

