

HB

124

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 124 (HES)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: Assisted Living Home Licensure BRU: Institutions & Administration
Component: Mental Health/DD Admin
Sponsor: Rep. Halcro
Requester: House (HES) Component Number: 310

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	100.0	100.0	100.0	100.0	100.0	100.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	100.0	100.0	100.0	100.0	100.0

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	100.0	100.0	100.0	100.0	100.0	100.0
Other (Specify Type)						
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill expands the number of Assisted Living Homes (ALHs) required to be licensed by the state, to include those with only 1-2 residents. The population served in ALHs is made up of individuals who are the most vulnerable and dependent mentally ill, developmentally disabled and elderly individuals. Currently, the Division of Mental Health and Developmental Disabilities requires ALHs to be licensed if they serve three or more residents and receive federal or state funding. Health and safety issues are the primary factor driving DHSS toward licensing all ALHs, regardless of number of residents. With the increasing numbers of ALHs and consumers choosing to reside in them, the existing DMHDD 1 1/2 licensing staff positions (initially expected to do 135 homes per year) will not be able to provide adequate monitoring of all the homes to ensure the provision of a safe and healthy environment to each of DHSS' consumers. Presently there are 156 homes, with 11 more due to be licensed in the next month. These homes are reviewed once a year. In FY00 the staff made an additional 57 site visits for follow-up or complaint investigations. Anticipated, revised ALH regulations will enhance health and safety requirements and increase the time of the site review process. Additional staff will be needed to follow-up on Reports of Abuse and Neglect, and to complete a thorough evaluation of the quality of care at the time of initial license and renewal. The two positions listed above are requested in the budget but are not fully funded.

Prepared by: Sarah Brinkley, Admin. Manager Phone 465-3167
Division: DMHDD Date/Time 3/17/01 3:34 PM
Approved by: Elmer A. Lindstrom, Special Assistant Date 3/17/01 3:34 PM
Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB124
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to criminal background
checks in assisted living & nursing homes..." BRU: AK Longevity Programs
 Component: AK Longevity Programs
 Sponsor: Rep. Halcro Management
 Requester: H(HESS) Component Number: 2263

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	0.0	0.0	0.0	0.0	0.0	0.0
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

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Division of Alaska Longevity Programs currently conducts background investigations on all new employees hired in the six Pioneers' Homes. The bill identifies barrier crimes that prohibit employment, but does not require any additional background checks beyond what is currently performed.

Prepared by: James L. Kohn, Director Phone 465-2159
 Division: Division of Longevity Programs Date/Time 03/13/01
 Approved by: Jim Duncan, Commissioner Date 3/13/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

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Lauterbach
3/21/01

CS FOR HOUSE BILL NO. 124()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson, Stevens

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to criminal background checks that must be performed by nursing**
2 **facilities and assisted living homes; prohibiting nursing facilities and assisted living**
3 **homes from employing or allowing access by persons with certain criminal**
4 **backgrounds, with exceptions; relating to assisted living homes and to liability for acts**
5 **or omissions in the licensing, monitoring, or supervision of assisted living homes; and**
6 **providing for an effective date."**

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

8 *** Section 1. AS 18.20.302 is amended to read:**

9 **Sec. 18.20.302. Criminal background check [FOR EMPLOYEES]. (a) A**
10 **nursing facility may not employ, contract with, or use the services of an individual,**
11 **including an administrator, employee, contractor, regular volunteer, or care**
12 **provider [IN A PAID POSITION THAT THE DEPARTMENT HAS**
13 **DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS**

1 REGULATIONS], unless the individual, before beginning employment, work, or
2 service,

3 (1) provides to the facility a sworn statement as to whether the
4 individual has been convicted of an offense described in (c) of this section;

5 (2) provides to the facility the results of a name-check criminal
6 background investigation that was completed by the Department of Public Safety no
7 more than 30 days before the individual begins employment, work, or service [IS
8 HIRED]; and

9 (3) submits to the facility two full sets of the individual's fingerprints.

10 (b) Within 30 days after employing, contracting with, or using the services
11 of an individual [AN INDIVIDUAL IN A PAID POSITION], a nursing facility shall
12 submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this
13 section. The Department of Public Safety shall submit the fingerprints to the Federal
14 Bureau of Investigation for a national criminal history record check and shall provide
15 the results to the Department of Health and Social Services. When the results are
16 received, the Department of Health and Social Services [DEPARTMENT] shall
17 advise the facility of

18 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
19 CHECK WAS COMPLETED; AND

20 (2)] whether the check shows that the individual has committed an
21 offense described in (c) of this section.

22 (c) A nursing facility may not employ, contract with, or use the services of
23 an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

24 (1) of an offense in which the victim was a resident of a nursing
25 facility or assisted living home at the time of the offense; in this paragraph,
26 "assisted living home" means an entity required to be licensed under AS 47.33 or
27 an entity located outside the state that would be required to be licensed under
28 AS 47.33 if it were located inside the state;

29 (2) of an unclassified felony, a class A felony, or an offense under
30 the laws of another jurisdiction that would have been, if it had been committed in
31 this state at that time, an unclassified felony or class A felony;

1 (3) under AS 11.51.200 or 11.51.210 or of a criminal offense in
2 another jurisdiction with elements substantially similar to the elements of an
3 offense under AS 11.51.200 or 11.51.210;

4 (4) within the previous 10 years, of a class B felony or an offense
5 under the laws of another jurisdiction that would have been, if it had been
6 committed in this state at that time, a class B felony;

7 (5) within the previous five years, of a class C felony, an offense
8 under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another
9 jurisdiction that would have been, if it had been committed in this state at that
10 time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

11 (6) of an offense listed in the department's regulations as being an
12 offense for which an individual should be prohibited access to a nursing facility
13 [COVERED BY THIS SECTION].

14 * Sec. 2. AS 18.20.302 is amended by adding a new subsection to read:

15 (d) This section does not apply to

16 (1) an individual who is a resident of a nursing facility and who is
17 receiving services from the nursing facility;

18 (2) an individual who is providing services to a resident as an
19 employee of a care-providing entity that is not affiliated with the nursing facility;

20 (3) an individual who occasionally volunteers in a nursing facility and
21 who is supervised by and performs these volunteer services in close physical
22 proximity to the staff of the nursing facility;

23 (4) a contractor who does not

24 (A) provide services directly to one or more residents; and

25 (B) have unsupervised access to a part of the facility where
26 services are directly provided to residents.

27 * Sec. 3. AS 47.33.010(a) is amended to read:

28 (a) Except as provided in (b) of this section, this chapter applies to residential
29 facilities operated in the state that serve three or more adults who are not related to the
30 owner of the facility by blood or marriage and to residential facilities in the state
31 that receive state or federal payment for services, regardless of the number of

1 adults that the facility serves. The department shall consider a facility as a
2 residential facility if the facility [BY]

3 (1) provides [PROVIDING] housing and food service to its residents;
4 and

5 (2) provides [PROVIDING] or obtains [OBTAINING], or offers
6 [OFFERING] to provide or obtain, for its residents

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

8 (B) personal assistance; or

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

10 paragraph.

11 * Sec. 4. AS 47.33.100 is amended to read:

12 Sec. 47.33.100. Criminal background check [FOR EMPLOYEES]. (a)

13 An assisted living home may not employ, contract with, use the services of, or allow
14 to reside in the home an individual, including an administrator, employee,
15 contractor, regular volunteer, care provider, or family member living in the
16 home [IN A PAID POSITION THAT THE APPLICABLE LICENSING AGENCY
17 HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS
18 REGULATIONS], unless the individual, before beginning employment, work,
19 service, or residence in the home,

20 (1) provides to the home a sworn statement as to whether the
21 individual has been convicted of an offense described in (c) of this section; [AND]

22 (2) provides to the home the results of a name-check criminal
23 background investigation that was completed by the Department of Public Safety no
24 more than 30 days before the individual begins employment, work, service, or
25 residence in the home [IS HIRED]; and

26 (3) submits to the home two full sets of the individual's fingerprints.

27 (b) Within 30 days after employing, contracting with, or using the services
28 of an individual or allowing an individual to reside in the home [AN
29 INDIVIDUAL IN A PAID POSITION], an assisted living home shall submit to the
30 Department of Public Safety the fingerprints obtained under (a)(3) of this section. The
31 Department of Public Safety shall submit the fingerprints to the Federal Bureau of

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Investigation for a national criminal history record check and shall provide the results to the applicable licensing agency. When the results are received, the applicable licensing agency [DEPARTMENT] shall advise the home of

[(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND CHECK WAS COMPLETED; AND

(2)] whether the check shows that the individual has committed an offense described in (c) of this section.

(c) An assisted living home may not employ, contract with, use the services of, or allow to reside in the home an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

(1) of an offense in which the victim was a resident of a nursing facility or assisted living home at the time of the offense; in this paragraph,

(A) "assisted living home" means an entity required to be licensed under this chapter or an entity located outside the state that would be required to be licensed under this chapter if it were located in the state;

(B) "nursing facility" has the meaning given in AS 18.20.390;

(2) of an unclassified felony, a class A felony, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, an unclassified felony or class A felony;

(3) under AS 11.51.200 or 11.51.210 or of a criminal offense in another jurisdiction with elements substantially similar to the elements of an offense under AS 11.51.200 or 11.51.210;

(4) within the previous 10 years, of a class B felony or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class B felony;

(5) within the previous five years, of a class C felony, an offense under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

IN REG

1 (6) of an offense listed in the regulations of the applicable licensing
2 agency as being an offense for which an individual should be prohibited access to
3 an assisted living home; in this paragraph, "assisted living home" has the
4 meaning given in (1)(A) of this subsection [COVERED BY THIS SECTION].

5 * Sec. 5. AS 47.33.100 is amended by adding a new subsection to read:

6 (d) This section does not apply to

7 (1) an individual who is a resident of the assisted living home and is
8 receiving residential services from the home under a contract made under this chapter;

9 (2) an individual who is providing services to a resident as an
10 employee of a care-providing entity that is not affiliated with the assisted living home;

11 (3) an individual residing in the assisted living home who is under 16
12 years of age;

13 (4) an individual who occasionally volunteers in an assisted living
14 home and who is supervised by and performs these volunteer services in close
15 physical proximity to the staff of the assisted living home;

16 (5) an individual who is not a care provider and who is

17 (A) visiting the home for less than 14 days in a calendar year;

18 and

19 (B) in the close physical proximity of the staff of the assisted
20 living home while visiting;

21 (6) a contractor who does not

22 (A) provide services directly to one or more residents; and

23 (B) have unsupervised access to a part of the home where
24 services are directly provided to residents.

25 * Sec. 6. AS 47.33.300(a) is amended to read:

26 (a) Subject to (c) of this section, a resident of an assisted living home has the
27 right to

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

29 (2) be treated with consideration and respect for personal dignity,
30 individuality, and the need for privacy, including privacy in

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

- 1 (B) the resident's room or portion of a room;
- 2 (C) bathing and toileting, except for any assistance in those
- 3 activities that is specified in the resident's assisted living plan; and
- 4 (D) the maintenance of personal possessions and the right to
- 5 keep at least one cabinet or drawer locked;
- 6 (3) possess and use personal clothing and other personal property,
- 7 unless the home can demonstrate that the possession or use of certain personal
- 8 property would be unsafe or an infringement of the rights of other residents;
- 9 (4) engage in private communications, including
- 10 (A) receiving and sending unopened correspondence;
- 11 (B) having access to a telephone, or having a private telephone
- 12 at the resident's own expense; and
- 13 (C) visiting with persons of the resident's choice, subject to
- 14 visiting hours established by the home;
- 15 (5) close the door of the resident's room at any time, including during
- 16 visits in the room with guests or other residents;
- 17 (6) at the resident's own expense unless otherwise provided in the
- 18 residential services contract, participate in and benefit from community services and
- 19 activities to achieve the highest possible level of independence, autonomy, and
- 20 interaction with the community;
- 21 (7) manage the resident's own money;
- 22 (8) participate in the development of the resident's assisted living plan;
- 23 (9) share a room with a spouse if both are residents of the home;
- 24 (10) have a reasonable opportunity to exercise and to go outdoors at
- 25 regular and frequent intervals, when weather permits;
- 26 (11) exercise civil and religious liberties;
- 27 (12) have access to adequate and appropriate health care and health
- 28 care providers of the resident's own choosing, consistent with established and
- 29 recognized standards within the community;
- 30 (13) self-administer the resident's own medications, unless specifically
- 31 provided otherwise in the resident's assisted living plan;

1 (14) receive meals that are consistent with religious or health-related
2 restrictions;

3 (15) receive the prior notice of relocation of the home or the home's
4 intent to terminate the residential services contract of the resident required by
5 AS 47.33.080, [AND] 47.33.360, and 47.33.370 [RESPECTIVELY];

6 (16) present to the home grievances and recommendations for change
7 in the policies, procedures, or services of the home;

8 (17) at the resident's own expense unless otherwise provided in the
9 residential services contract, have access to and participate in advocacy or special
10 interest groups;

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

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

17 * Sec. 7. AS 47.33.360(a) is amended to read:

18 (a) An assisted living home may not terminate a residential services contract
19 with a resident of the home against the resident's will, except as provided in
20 AS 47.33.370 or unless

21 (1) the resident engages [FOR MEDICAL REASONS;

22 (2) FOR ENGAGING] in a documented pattern of conduct that is
23 harmful to the resident, other residents, or staff of the home;

24 (2) the resident violates [(3) FOR VIOLATION OF] the terms of the
25 residential services contract, including failure to pay costs incurred under the contract;

26 (3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS
27 ORDERED BY THE RESIDENT'S PHYSICIAN;

28 (5) WHEN] the home is closing; or

29 (4) [(6) WHEN] the home can no longer provide or arrange for
30 services in accordance with the resident's needs and the resident's assisted living plan.

31 * Sec. 8. AS 47.33.360(b) is amended to read:

1 (b) At least 30 days before terminating the residential services contract with a
2 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
3 provide written notice of the proposed contract termination to the resident or the
4 resident's representative, [AND TO] the resident's service coordinator, if any, the
5 applicable licensing agency, and the long-term care ombudsman. The notice must
6 state the

7 (1) basis for the termination; and

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

11 * **Sec. 9.** AS 47.33.360(c) is amended to read:

12 (c) Before terminating the residential services contract with a resident under
13 [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a
14 case conference if requested by the resident or the resident's representative. The case
15 conference must include the resident, the resident's representative, if any, the resident's
16 advocate, if any, the resident's service coordinator, if any, the home administrator, and
17 appropriate care providers who shall [MAY] discuss the justification for, and the
18 appropriateness of, the contract termination.

19 * **Sec. 10.** AS 47.33 is amended by adding a new section to article 3 to read:

20 **Sec. 47.33.370. Emergency involuntary termination of contract.** (a) An
21 assisted living home may terminate a residential services contract with a resident of
22 the home against the resident's will and with less than 30 days' notice if at least one of
23 the following emergency reasons exists and is supported by written documentation in
24 the resident's file in the home:

25 (1) a medical reason;

26 (2) an emergency transfer from the home is ordered by the resident's
27 physician;

28 (3) imminent danger to the resident or others in the home because the
29 home is unable to meet the resident's needs or assure the health and safety of others,
30 for purposes of this paragraph, "imminent danger to the resident or others" includes
31 imminent danger

1 (A) to the resident caused by the resident's self-destructive
2 behavior; and

3 (B) of serious physical assault by the resident;

4 (4) the intentional damage or destruction of property in excess of \$300.

5 (b) A resident's refusal or failure to take prescribed medication or otherwise
6 follow the resident's assisted living plan does not constitute a medical or other reason
7 for emergency involuntary termination of a residential services contract unless the
8 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
9 section.

10 (c) An assisted living home that proposes to terminate a residential services
11 contract for any reason listed in (a) of this section shall provide written notice of the
12 proposed contract termination not less than 72 hours before termination to the resident,
13 the resident's representative, if any, the resident's service coordinator, if any, the
14 applicable licensing agency, and the long-term care ombudsman. If the resident does
15 not have a service coordinator, notice under this subsection shall also be given to adult
16 protective services personnel of the Department of Administration. The notice must
17 state the following:

*if Resident is 60 yrs old
own*

18 (1) the reason under (a) of this section for the proposed termination of
19 the residential services contract and the specific facts on which proposed termination
20 is based;

21 (2) the alternatives to termination of the residential contract that have
22 been attempted by the home;

23 (3) the location to which the resident will be discharged, if known;

24 (4) the date and time proposed for termination of the contract and
25 discharge of the resident;

26 (5) the resident's right to request a case conference that must be held, if
27 requested, before termination of the contract.

28 (d) After the notice is provided under (c) of this section, the assisted living
29 home shall participate in a case conference if requested by the resident, the resident's
30 representative, if any, the resident's advocate, if any, or the resident's service
31 coordinator, if any. If the resident does not have a service coordinator and a case

1 conference is requested by the resident or the resident's representative or advocate,
2 adult protective services personnel assigned by the Department of Administration shall
3 be requested by the assisted living home to participate in the conference. If the
4 request for a case conference is received before termination of the resident's contract,
5 the assisted living home may not terminate the contract until the case conference has
6 been held. A case conference requested under this subsection shall be held by the
7 assisted living home within 72 hours of the request and must include the resident, the
8 resident's representative, if any, the resident's advocate, if any, the home administrator,
9 and appropriate care providers who shall discuss the justification for, and the
10 appropriateness of, the proposed contract termination.

11 * **Sec. 11.** AS 47.33.410 is amended by adding a new subsection to read:

12 (g) A licensing agency under (a) and (b) of this section, its officers, its
13 employees, and the state are not liable for civil damages as a result of an act or
14 omission in the licensing, monitoring, or supervision of an assisted living home under
15 this chapter. This subsection does not preclude liability for civil damages as a result
16 of gross negligence or reckless or intentional misconduct.

17 * **Sec. 12.** AS 47.33.550(a) is amended to read:

18 (a) A licensing agency may revoke an assisted living home license, deny
19 renewal of an assisted living home license, suspend operations of an assisted living
20 home, suspend the ability of an assisted living home to take in new residents, place
21 conditions on the ability of an assisted living home to take in new residents, restrict
22 the type of care that an assisted living home may provide to residents, or assess an
23 administrative fine, as the agency considers appropriate, on one or more of the
24 following grounds:

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

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

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

31 (B) a felony; [OR]

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

(D) an offense described in AS 47.33.100(c);

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

* Sec. 13. AS 47.33.550(f) is amended to read:

(f) If an assisted living home requests a hearing under (d) of this section, the hearing shall be held within 120 [60] days after the licensing agency receives the request. The department's decision following a hearing under this section is a final administrative order.

* Sec. 14. AS 47.33.550 is amended by adding new subsections to read:

(j) A licensing agency may summarily suspend operations of an assisted living home before a final hearing is held or during an appeal if the licensing agency finds that the home poses a clear and imminent danger to the public health and safety. The assisted living home is entitled to a hearing before the licensing agency to appeal the summary suspension within 10 days after the order of suspension is issued. To request a hearing, the assisted living home must notify the licensing agency of the request within 24 hours, excluding weekends and holidays, after the order of suspension was received. The assisted living home may appeal, to a court of competent jurisdiction, an adverse decision of the licensing agency on an appeal of a summary suspension.

(k) If a license is suspended or revoked under this section, the facility may not be operated or maintained as an assisted living home and may not house or provide assisted living services to a facility resident.

* Sec. 15. AS 47.33 is amended by adding a new section to read:

Sec. 47.33.563. Court-ordered temporary administration and receivership. (a) If the licensing agency determines that the health or safety of the residents of an assisted living home is imminently jeopardized as the result of the assisted living home's failure or refusal to comply with a state or federal statute or regulation or local ordinance, the licensing agency may petition the superior court for an order for appointment of temporary administration to oversee the operation of the

1 assisted living home in order to ensure the health and safety of the residents of the
2 assisted living home while orderly closure of the assisted living home occurs or the
3 deficiencies necessitating temporary administrator are corrected.

4 (b) The licensing agency may petition the superior court for establishment of a
5 receivership for an assisted living home if the licensing agency finds that one of the
6 following conditions exists and the owner, operator, or administrator of the home has
7 demonstrated an inability or unwillingness to take action necessary to immediately
8 correct the following alleged conditions:

9 (1) the assisted living home is operating without a license;

10 (2) the health, safety, or welfare of the residents of the assisted living
11 home is imminently jeopardized;

12 (3) the assisted living home demonstrates a pattern and practice of
13 violating state or federal statutes or regulations or local ordinances in such a way that
14 care of residents is jeopardized.

15 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **APPLICABILITY.** (a) AS 18.20.302, as amended by secs. 1 and 2 of this Act,
18 applies to persons hired or retained by a nursing home or allowed regular access to the
19 residents of a nursing home on or after July 1, 2001, except that the offenses described in
20 AS 18.20.302(c) include offenses committed before, on, or after July 1, 2001.

21 (b) AS 47.33.100, as amended by secs. 4 and 5 of this Act, applies to employment of,
22 contracting with, using the services of, and allowing the residence of an individual in an
23 assisted living home on or after July 1, 2001, except that the offenses described in
24 AS 47.33.100(c), as amended by sec. 4 of this Act, include offenses committed before, on, or
25 after July 1, 2001.

26 (c) AS 47.33.410(g), added by sec. 11 of this Act, applies to acts or omissions
27 occurring on or after July 1, 2001.

28 (d) AS 47.33.550(a), as amended by sec. 12 of this Act, applies to an individual
29 employed as an administrator of an assisted living home on or after July 1, 2001, except that
30 the offenses described in AS 47.33.550(a)(2)(D) include offenses committed before, on, or
31 after July 1, 2001.

1 * Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION: REGULATIONS. Notwithstanding sec. 19 of this Act, the
4 Department of Administration and the Department of Health and Social Services may
5 immediately proceed to adopt regulations necessary to implement the changes made by this
6 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
7 before July 1, 2001.

8 * Sec. 18. Section 17 of this Act takes effect immediately under AS 01.10.070(c).

9 * Sec. 19. Except as provided in sec. 18 of this Act, this Act takes effect July 1, 2001.

22-LS0087L
Lauterbach
3/14/01

CS FOR HOUSE BILL NO. 124()

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

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting nursing facilities and assisted living homes from employing or
2 allowing access by persons with certain criminal backgrounds, with exceptions; relating
3 to assisted living homes and to liability for acts or omissions in the licensing, monitoring,
4 or supervision of assisted living homes; and providing for an effective date."

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

6 * Section 1. AS 18.20.302(c) is amended to read:

7 (c) A nursing facility may not hire or retain an employee or allow a person
8 who is 16 years of age or older to have regular access to the residents of a nursing
9 home, other than as a personal visitor to a resident of the home, if the employee
10 or person [WHO] has been convicted

11 (1) of an offense in which the victim was a resident of a nursing
12 facility or assisted living home at the time of the offense; in this paragraph,
13 "assisted living home" means an entity required to be licensed under AS 47.33 or
14 an entity located outside the state that would be required to be licensed under

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AS 47.33 if it were located inside the state;

(2) of an unclassified felony, a class A felony, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, an unclassified felony or class A felony;

(3) under AS 11.51.200 or 11.51.210 or of a criminal offense in another jurisdiction with elements substantially similar to the elements of an offense under AS 11.51.200 or 11.51.210;

(4) within the previous 10 years, of a class B felony or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class B felony;

(5) within the previous five years, of a class C felony, a class A misdemeanor, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class C felony or class A misdemeanor; or

(6) of an offense listed in the department's regulations as being an offense for which a person should be prohibited access to a nursing facility [COVERED BY THIS SECTION].

but defined in REGULATION

* Sec. 2. AS 47.33.010(a) is amended to read:

(a) Except as provided in (b) of this section, this chapter applies to residential facilities operated in the state that serve three or more adults who are not related to the owner of the facility by blood or marriage and to residential facilities in the state that receive state or federal payment for services, regardless of the number of adults that the facility serves. The department shall consider a facility as a residential facility if the facility [BY]

- (1) provides [PROVIDING] housing and food service to its residents;
- and
- (2) provides [PROVIDING] or obtains [OBTAINING], or offers [OFFERING] to provide or obtain, for its residents
 - (A) assistance with the activities of daily living;
 - (B) personal assistance; or
 - (C) a combination of services under (A) and (B) of this

1 paragraph.

2 * Sec. 3. AS 47.33.100 is amended to read:

3 Sec. 47.33.100. Criminal background check [FOR EMPLOYEES]. (a)

4 An assisted living home may not employ, contract with, use the services of, or allow
5 to reside in the home an individual, including an administrator, employee,
6 contractor, regular volunteer, care provider, or family member living in the
7 home [IN A PAID POSITION THAT THE APPLICABLE LICENSING AGENCY
8 HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS
9 REGULATIONS], unless the individual, before beginning employment, work,
10 service, or residence in the home,

11 (1) provides to the home a sworn statement as to whether the
12 individual has been convicted of an offense described in (c) of this section; [AND]

13 (2) provides to the home the results of a name-check criminal
14 background investigation that was completed by the Department of Public Safety no
15 more than 30 days before the individual begins employment, work, service, or
16 residence in the home [IS HIRED]; and

17 (3) submits to the home two full sets of the individual's fingerprints.

18 (b) Within 30 days after employing, contracting with, or using the services
19 of an individual or allowing an individual to reside in the home [AN
20 INDIVIDUAL IN A PAID POSITION], an assisted living home shall submit to the
21 Department of Public Safety the fingerprints obtained under (a)(3) of this section. The
22 Department of Public Safety shall submit the fingerprints to the Federal Bureau of
23 Investigation for a national criminal history record check and shall provide the
24 results to the applicable licensing agency. When the results are received, the
25 applicable licensing agency [DEPARTMENT] shall advise the home of

26 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
27 CHECK WAS COMPLETED; AND

28 (2)] whether the check shows that the individual has committed an
29 offense described in (c) of this section.

30 (c) An assisted living home may not employ, contract with, use the services
31 of, or allow to reside in the home an individual [HIRE OR RETAIN AN

1 EMPLOYEE] who has been convicted

2 (1) of an offense in which the victim was a resident of a nursing
3 facility or assisted living home at the time of the offense; in this paragraph,

4 (A) "assisted living home" means an entity required to be
5 licensed under this chapter or an entity located outside the state that
6 would be required to be licensed under this chapter if it were located in
7 the state;

8 (B) "nursing facility" has the meaning given in
9 AS 18.20.390;

10 (2) of an unclassified felony, a class A felony, or an offense under
11 the laws of another jurisdiction that would have been, if it had been committed in
12 this state at that time, an unclassified felony or class A felony;

13 (3) under AS 11.51.200 or 11.51.210 or of a criminal offense in
14 another jurisdiction with elements substantially similar to the elements of an
15 offense under AS 11.51.200 or 11.51.210;

16 (4) within the previous 10 years, of a class B felony or an offense
17 under the laws of another jurisdiction that would have been, if it had been
18 committed in this state at that time, a class B felony;

19 (5) within the previous five years, of a class C felony, a class A
20 misdemeanor, or an offense under the laws of another jurisdiction that would
21 have been, if it had been committed in this state at that time, a class C felony or
22 class A misdemeanor; or

23 (6) of an offense listed in the regulations of the applicable licensing
24 agency as being an offense for which a person should be prohibited access to an
25 assisted living home; in this paragraph, "assisted living home" has the meaning
26 given in (1)(A) of this subsection [COVERED BY THIS SECTION].

27 * Sec. 4. AS 47.33.100 is amended by adding a new subsection to read:

28 (d) This section does not apply to

29 (1) an individual who is a resident of the assisted living home and is
30 receiving residential services from the home under a contract made under this chapter;

31 (2) an individual who is providing services to a resident as an

1 employee of a care-providing entity that is not affiliated with the assisted living home;
 2 (3) an individual residing in the assisted living home who is under 16
 3 years of age;

4 (4) an individual who occasionally volunteers in an assisted living
 5 home and who is supervised by and performs these volunteer services in close
 6 physical proximity to the staff of the assisted living home;

7 (5) an individual who is not a care provider and who is

8 (A) visiting the home for less than 14 days in a calendar year;

9 and

10 (B) in the close physical proximity of the staff of the assisted
 11 living home while visiting;

12 (6) a contractor who does not

13 (A) provide services directly to one or more residents; and

14 (B) have unsupervised access to a part of the home where
 15 services are directly provided to residents.

16 * Sec. 5. AS 47.33.300(a) is amended to read:

17 (a) Subject to (c) of this section, a resident of an assisted living home has the
 18 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
 30 property 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, and 47.33.370 [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 * Sec. 6. AS 47.33.360(a) is amended to read:

9 (a) An assisted living home may not terminate a residential services contract
10 with a resident of the home against the resident's will, except as provided in
11 AS 47.33.370 or unless

12 (1) the resident engages [FOR MEDICAL REASONS;

13 (2) FOR ENGAGING] in a documented pattern of conduct that is
14 harmful to the resident, other residents, or staff of the home;

15 (2) the resident violates [(3) FOR VIOLATION OF] the terms of the
16 residential services contract, including failure to pay costs incurred under the contract;

17 (3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS
18 ORDERED BY THE RESIDENT'S PHYSICIAN;

19 (5) WHEN] the home is closing; or

20 (4) [(6) WHEN] the home can no longer provide or arrange for
21 services in accordance with the resident's needs and the resident's assisted living plan.

22 * Sec. 7. AS 47.33.360(b) is amended to read:

23 (b) At least 30 days before terminating the residential services contract with a
24 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
25 provide written notice of the proposed contract termination to the resident or the
26 resident's representative [,] and to the resident's service coordinator, if any. The notice
27 must state the

28 (1) basis for the termination; and

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

1 * **Sec. 8.** AS 47.33.360(c) is amended to read:

2 (c) Before terminating the residential services contract with a resident under
3 [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a
4 case conference if requested by the resident or the resident's representative. The case
5 conference must include the resident, the resident's representative, if any, the resident's
6 advocate, if any, the resident's service coordinator, if any, the home administrator, and
7 appropriate care providers who may discuss the appropriateness of the contract
8 termination.

9 * **Sec. 9.** AS 47.33 is amended by adding a new section to article 3 to read:

10 **Sec. 47.33.370. Emergency involuntary termination of contract.** (a) An
11 assisted living home may terminate a residential services contract with a resident of
12 the home against the resident's will and with less than 30 days' notice if at least one of
13 the following emergency reasons exists and is supported by written documentation in
14 the resident's file in the home:

15 (1) a medical reason;

16 (2) an emergency transfer from the home is ordered by the resident's
17 physician;

18 (3) imminent danger to the resident or others in the home because the
19 home is unable to meet the resident's needs or assure the health and safety of others,
20 for purposes of this paragraph, "imminent danger to the resident or others" includes
21 imminent danger

22 (A) to the resident caused by the resident's self-destructive
23 behavior; and

24 (B) of serious physical assault by the resident;

25 (4) the intentional damage or destruction of property in excess of \$300.

26 (b) A resident's refusal or failure to take prescribed medication or otherwise
27 follow the resident's assisted living plan does not constitute a medical or other reason
28 for emergency involuntary termination of a residential services contract unless the
29 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
30 section.

31 (c) An assisted living home that proposes to terminate a residential services

1 contract for any reason listed in (a) of this section shall provide written notice of the
2 proposed contract termination within 72 hours, but not less than 24 hours, before
3 termination to the resident, the resident's representative, if any, and the resident's
4 service coordinator, if any. If the resident does not have a service coordinator, notice
5 under this subsection must also be given to adult protective services personnel of the
6 Department of Administration. An assisted living home shall request a conference
7 with the resident, the resident's representative, if any, the resident's advocate, if any,
8 and the resident's service coordinator. If the resident does not have a service
9 coordinator, adult protective services personnel assigned by the Department of
10 Administration shall be requested to participate in the conference.

11 (d) The notice provided under (c) of this section must state the following:

12 (1) the reason under (a) of this section for the proposed termination of
13 the residential services contract and the specific facts on which proposed termination
14 is based;

15 (2) the alternatives to termination of the residential contract that have
16 been attempted by the home;

17 (3) the location to which the resident will be discharged, if known;

18 (4) the date, time, and location of the conference requested under (c) of
19 this section.

20 * **Sec. 10.** AS 47.33.410 is amended by adding a new subsection to read:

21 (g) A licensing agency under (a) and (b) of this section, its officers, its
22 employees, and the state are not liable for civil damages as a result of an act or
23 omission in the licensing, monitoring, or supervision of an assisted living home under
24 this chapter. This subsection does not preclude liability for civil damages as a result
25 of gross negligence or reckless or intentional misconduct.

26 * **Sec. 11.** AS 47.33.550(a) is amended to read:

27 (a) A licensing agency may revoke an assisted living home license, deny
28 renewal of an assisted living home license, suspend operations of an assisted living
29 home, suspend the ability of an assisted living home to take in new residents, place
30 conditions on the ability of an assisted living home to take in new residents, restrict
31 the type of care that an assisted living home may provide to residents, or assess an

1 administrative fine, as the agency considers appropriate, on one or more of the
2 following grounds:

3 (1) a violation of a provision of this chapter, a regulation adopted
4 under this chapter, an order in a notice of violation issued under this chapter, or a term
5 of a license issued under this chapter;

6 (2) a criminal conviction of an administrator of an assisted living home
7 if the conviction is

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

9 (B) a felony; [OR]

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

12 (D) an offense described in AS 47.33.100(c);

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

15 * Sec. 12. AS 47.33.550(f) is amended to read:

16 (f) If an assisted living home requests a hearing under (d) of this section, the
17 hearing shall be held within 120 [60] days after the licensing agency receives the
18 request. The department's decision following a hearing under this section is a final
19 administrative order.

20 * Sec. 13. AS 47.33.550 is amended by adding new subsections to read:

21 (j) A licensing agency may summarily suspend operations of an assisted living
22 home before a final hearing is held or during an appeal if the licensing agency finds
23 that the home poses a clear and imminent danger to the public health and safety. The
24 assisted living home is entitled to a hearing before the licensing agency to appeal the
25 summary suspension within 10 days after the order of suspension is issued. To
26 request a hearing, the assisted living home must notify the licensing agency of the
27 request within 24 hours, excluding weekends and holidays, after the order of
28 suspension was received. The assisted living home may appeal, to a court of
29 competent jurisdiction, an adverse decision of the licensing agency on an appeal of a
30 summary suspension.

31 (k) If a license is suspended or revoked under this section, the facility may not

1 be operated or maintained as an assisted living home and may not house or provide
2 assisted living services to a facility resident.

3 * **Sec. 14.** AS 47.33 is amended by adding a new section to read:

4 **Sec. 47.33.563. Court-ordered temporary administration and**
5 **receivership.** (a) If the licensing agency determines that the health or safety of the
6 residents of an assisted living home is imminently jeopardized as the result of the
7 assisted living home's failure or refusal to comply with a state or federal statute or
8 regulation or local ordinance, the licensing agency may petition the superior court for
9 an order for appointment of temporary administration to oversee the operation of the
10 assisted living home in order to ensure the health and safety of the residents of the
11 assisted living home while orderly closure of the assisted living home occurs or the
12 deficiencies necessitating temporary administration are corrected.

13 (b) The licensing agency may petition the superior court for establishment of a
14 receivership for an assisted living home if the licensing agency finds that one of the
15 following conditions exists and the owner, operator, or administrator of the home has
16 demonstrated an inability or unwillingness to take action necessary to immediately
17 correct the following alleged conditions:

18 (1) the assisted living home is operating without a license;

19 (2) the health, safety, or welfare of the residents of the assisted living
20 home is imminently jeopardized;

21 (3) the assisted living home demonstrates a pattern and practice of
22 violating state or federal statutes or regulations or local ordinances in such a way that
23 care of residents is jeopardized.

24 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** (a) AS 18.20.302(c), as amended by sec. 1 of this Act, applies to
27 persons hired or retained by a nursing home or allowed regular access to the residents of a
28 nursing home on or after July 1, 2001, except that the offenses described in AS 18.20.302(c)
29 include offenses committed before, on, or after July 1, 2001.

30 (b) AS 47.33.100, as amended by secs. 3 and 4 of this Act, applies to employment of,
31 contracting with, using the services of, and allowing the residence of an individual in an

1 assisted living home on or after July 1, 2001, except that the offenses described in
2 AS 47.33.100(c), as amended by sec. 3 of this Act, include offenses committed before, on, or
3 after July 1, 2001.

4 (c) AS 47.33.410(g), added by sec. 10 of this Act, applies to acts or omissions
5 occurring on or after July 1, 2001.

6 (d) AS 47.33.550(a), as amended by sec. 11 of this Act, applies to an individual
7 employed as an administrator of an assisted living home on or after July 1, 2001, except that
8 the offenses described in AS 47.33.550(a)(2)(D) include offenses committed before, on, or
9 after July 1, 2001.

10 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITION: REGULATIONS. Notwithstanding sec. 18 of this Act, the
13 Department of Administration and the Department of Health and Social Services may
14 immediately proceed to adopt regulations necessary to implement the changes made by this
15 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
16 before July 1, 2001.

17 * Sec. 17. Section 16 of this Act takes effect immediately under AS 01.10.070(c).

18 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2001.

22-LS0087P
Lauterbach
4/5/01

CS FOR HOUSE BILL NO. 124()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson, Stevens

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal background checks that must be performed by nursing
2 facilities and assisted living homes; prohibiting nursing facilities from employing
3 persons with certain criminal backgrounds; prohibiting assisted living homes from
4 employing or allowing the residence of persons with certain criminal backgrounds, with
5 exceptions; relating to liability for acts or omissions in the licensing, monitoring, or
6 supervision of assisted living homes; relating to assisted living homes and nursing
7 facilities; and providing for an effective date."

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

9 * **Section 1.** AS 18.20.302 is amended to read:

10 **Sec. 18.20.302. Criminal background check [FOR EMPLOYEES].** (a) A
11 nursing facility may not employ an individual, including an administrator [IN A
12 PAID POSITION THAT THE DEPARTMENT HAS DETERMINED IS COVERED
13 BY THIS SECTION, ACCORDING TO ITS REGULATIONS], unless the individual,

1 before beginning employment,

2 (1) provides to the facility a sworn statement as to whether the
3 individual has been convicted of an offense described in (c) of this section or of an
4 offense in which the victim was a resident of a nursing facility or assisted living
5 home at the time of the offense; in this paragraph, "assisted living home" means
6 an entity required to be licensed under AS 47.33 or an entity located outside the
7 state that would be required to be licensed under AS 47.33 if it were located
8 inside the state;

9 (2) provides to the facility the results of a name-check criminal
10 background investigation that was completed by the Department of Public Safety no
11 more than 30 days before the individual begins employment [IS HIRED]; and

12 (3) submits to the facility two full sets of the individual's fingerprints.

13 (b) Within 30 days after employing an individual [AN INDIVIDUAL IN A
14 PAID POSITION], a nursing facility shall submit to the Department of Public Safety
15 the fingerprints obtained under (a)(3) of this section. The Department of Public Safety
16 shall submit the fingerprints to the Federal Bureau of Investigation for a national
17 criminal history record check and shall provide the results to the Department of
18 Health and Social Services. When the results are received, the Department of
19 Health and Social Services [DEPARTMENT] shall advise the facility of

20 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
21 CHECK WAS COMPLETED; AND

22 (2)] whether the check shows that the individual has committed an
23 offense described in (c) of this section.

24 (c) A nursing facility may not employ an individual [HIRE OR RETAIN AN
25 EMPLOYEE] who has been convicted

26 (1) of an unclassified felony, a class A felony, or an offense under
27 the laws of another jurisdiction that would have been, if it had been committed in
28 this state at that time, an unclassified felony or class A felony;

29 (2) under AS 11.51.200 or 11.51.210 or of a criminal offense in
30 another jurisdiction with elements substantially similar to the elements of an
31 offense under AS 11.51.200 or 11.51.210;

1 (3) within the previous 10 years, of a class B felony or an offense
2 under the laws of another jurisdiction that would have been, if it had been
3 committed in this state at that time, a class B felony;

4 (4) within the previous five years, of a class C felony, an offense
5 under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another
6 jurisdiction that would have been, if it had been committed in this state at that
7 time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

8 (5) of an offense listed in the department's regulations as being an
9 offense for which an individual should be prohibited access to a nursing facility
10 [COVERED BY THIS SECTION].

11 * **Sec. 2.** AS 18.20.302 is amended by adding a new subsection to read:

12 (d) A nursing facility administrator shall provide safeguards to ensure that
13 contractors, volunteers, and other persons entering the nursing facility do not abuse,
14 neglect, or exploit a resident of the facility.

15 * **Sec. 3.** AS 47.33.010(a) is amended to read:

16 (a) Except as provided in (b) of this section, this chapter applies to residential
17 facilities operated in the state that serve three or more adults who are not related to the
18 owner of the facility by blood or marriage and to residential facilities in the state
19 that receive state or federal payment for services, regardless of the number of
20 adults that the facility serves. The department shall consider a facility as a
21 residential facility if the facility [BY]

22 (1) provides [PROVIDING] housing and food service to its residents;
23 and

24 (2) provides [PROVIDING] or obtains [OBTAINING], or offers
25 [OFFERING] to provide or obtain, for its residents

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

27 (B) personal assistance; or

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

29 paragraph.

30 * **Sec. 4.** AS 47.33.100 is amended to read:

31 **Sec. 47.33.100. Criminal background checks [CHECK FOR**

1 **EMPLOYEES].** (a) An assisted living home may not employ or allow to reside in
2 the home an individual, including an administrator [IN A PAID POSITION THAT
3 THE APPLICABLE LICENSING AGENCY HAS DETERMINED IS COVERED
4 BY THIS SECTION, ACCORDING TO ITS REGULATIONS], unless the individual,
5 before beginning employment or residence in the home,

6 (1) provides to the home a sworn statement as to whether the
7 individual has been convicted of an offense described in (c) of this section or of an
8 offense in which the victim was a resident of a nursing facility or assisted living
9 home at the time of the offense; in this paragraph,

10 (A) "assisted living home" means an entity required to be
11 licensed under this chapter or an entity located outside the state that
12 would be required to be licensed under this chapter if it were located in
13 the state;

14 (B) "nursing facility" has the meaning given in
15 AS 18.20.390; [AND]

16 (2) provides to the home the results of a name-check criminal
17 background investigation that was completed by the Department of Public Safety no
18 more than 30 days before the individual begins employment or residence in the
19 home [IS HIRED]; and

20 (3) submits to the home two full sets of the individual's fingerprints.

21 (b) Within 30 days after employing or allowing an individual to reside in
22 the home [AN INDIVIDUAL IN A PAID POSITION], an assisted living home shall
23 submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this
24 section. The Department of Public Safety shall submit the fingerprints to the Federal
25 Bureau of Investigation for a national criminal history record check and shall provide
26 the results to the applicable licensing agency. When the results are received, the
27 applicable licensing agency [DEPARTMENT] shall advise the home of

28 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
29 CHECK WAS COMPLETED; AND

30 (2)] whether the check shows that the individual has committed an
31 offense described in (c) of this section.

1 (c) An assisted living home may not employ or allow to reside in the home
 2 an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

3 (1) of an unclassified felony, a class A felony, or an offense under
 4 the laws of another jurisdiction that would have been, if it had been committed in
 5 this state at that time, an unclassified felony or class A felony;

6 (2) under AS 11.51.200 or 11.51.210 or of a criminal offense in
 7 another jurisdiction with elements substantially similar to the elements of an
 8 offense under AS 11.51.200 or 11.51.210;

9 (3) within the previous 10 years, of a class B felony or an offense
 10 under the laws of another jurisdiction that would have been, if it had been
 11 committed in this state at that time, a class B felony;

12 (4) within the previous five years, of a class C felony, an offense
 13 under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another
 14 jurisdiction that would have been, if it had been committed in this state at that
 15 time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

16 (5) of an offense listed in the regulations of the applicable licensing
 17 agency as being an offense for which an individual should be prohibited access to
 18 an assisted living home; in this paragraph, "assisted living home" has the
 19 meaning given in (a)(1)(A) of [COVERED BY] this section.

20 * Sec. 5. AS 47.33.100 is amended by adding new subsections to read:

21 (d) This section does not apply to an individual

22 (1) who is a resident of the assisted living home and is receiving
 23 residential services from the home under a contract made under this chapter;

24 (2) residing in the assisted living home who is under 16 years of age;

25 or

26 (3) who is not a care provider and who is

27 (A) residing in the home for less than 14 days in a calendar
 28 year; and

29 (B) in the close physical proximity of the staff of the assisted
 30 living home while visiting.

31 (e) The administrator of an assisted living home shall provide safeguards to

1 ensure that contractors, volunteers, and other persons entering the home do not abuse,
2 neglect, or exploit a resident of the home.

3 * Sec. 6. AS 47.33.300(a) is amended to read:

4 (a) Subject to (c) of this section, a resident of an assisted living home has the
5 right to

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

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

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

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

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

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

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

18 (4) engage in private communications, including

19 (A) receiving and sending unopened correspondence;

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

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

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

26 (6) at the resident's own expense unless otherwise provided in the
27 residential services contract, participate in and benefit from community services and
28 activities to achieve the highest possible level of independence, autonomy, and
29 interaction with the community;

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

31 (8) participate in the development of the resident's assisted living plan;

- 1 (9) share a room with a spouse if both are residents of the home;
- 2 (10) have a reasonable opportunity to exercise and to go outdoors at
- 3 regular and frequent intervals, when weather permits;
- 4 (11) exercise civil and religious liberties;
- 5 (12) have access to adequate and appropriate health care and health
- 6 care providers of the resident's own choosing, consistent with established and
- 7 recognized standards within the community;
- 8 (13) self-administer the resident's own medications, unless specifically
- 9 provided otherwise in the resident's assisted living plan;
- 10 (14) receive meals that are consistent with religious or health-related
- 11 restrictions;
- 12 (15) receive the prior notice of relocation of the home or the home's
- 13 intent to terminate the residential services contract of the resident required by
- 14 AS 47.33.080, [AND] 47.33.360, and 47.33.370 [RESPECTIVELY];
- 15 (16) present to the home grievances and recommendations for change
- 16 in the policies, procedures, or services of the home;
- 17 (17) at the resident's own expense unless otherwise provided in the
- 18 residential services contract, have access to and participate in advocacy or special
- 19 interest groups;
- 20 (18) at the resident's own expense unless otherwise provided in the
- 21 residential services contract, intervene or participate in, or refrain from participating
- 22 in, adjudicatory proceedings held under this chapter, unless provided otherwise by
- 23 other law; and
- 24 (19) reasonable access to home files relating to the resident, subject to
- 25 the constitutional right of privacy of other residents of the home.

26 * **Sec. 7.** AS 47.33.360(a) is amended to read:

27 (a) An assisted living home may not terminate a residential services contract

28 with a resident of the home against the resident's will, except as provided in

29 AS 47.33.370 or unless

30 (1) the resident engages [FOR MEDICAL REASONS;

31 (2) FOR ENGAGING] in a documented pattern of conduct that is

1 harmful to the resident, other residents, or staff of the home;

2 (2) the resident violates [(3) FOR VIOLATION OF] the terms of the
3 residential services contract, including failure to pay costs incurred under the contract;

4 (3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS
5 ORDERED BY THE RESIDENT'S PHYSICIAN;

6 (5) WHEN] the home is closing; or

7 (4) [(6) WHEN] the home can no longer provide or arrange for
8 services in accordance with the resident's needs and the resident's assisted living plan.

9 * Sec. 8. AS 47.33.360(b) is amended to read:

10 (b) At least 30 days before terminating the residential services contract with a
11 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
12 provide written notice of the proposed contract termination to the resident or the
13 resident's representative, [AND TO] the resident's service coordinator, if any, the
14 applicable licensing agency, and the long-term care ombudsman. The notice must
15 state the

16 (1) basis for the termination; and

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

20 * Sec. 9. AS 47.33.360(c) is amended to read:

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

28 * Sec. 10. AS 47.33 is amended by adding a new section to article 3 to read:

29 Sec. 47.33.370. **Emergency involuntary termination of contract.** (a) An
30 assisted living home may terminate a residential services contract with a resident of
31 the home against the resident's will and with less than 30 days' notice if at least one of

1 the following emergency reasons exists and is supported by written documentation in
2 the resident's file in the home:

3 (1) a medical reason;

4 (2) an emergency transfer from the home is ordered by the resident's
5 physician;

6 (3) imminent danger to the resident or others in the home because the
7 home is unable to meet the resident's needs or assure the health and safety of others,
8 for purposes of this paragraph, "imminent danger to the resident or others" includes
9 imminent danger

10 (A) to the resident caused by the resident's self-destructive
11 behavior; and

12 (B) of serious physical assault by the resident;

13 (4) the intentional damage or destruction of property in excess of \$300.

14 (b) A resident's refusal or failure to take prescribed medication or otherwise
15 follow the resident's assisted living plan does not constitute a medical or other reason
16 for emergency involuntary termination of a residential services contract unless the
17 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
18 section.

19 (c) An assisted living home that proposes to terminate a residential services
20 contract for any reason listed in (a) of this section shall provide written notice of the
21 proposed contract termination not less than 72 hours before termination to the resident,
22 the resident's representative, if any, the resident's service coordinator, if any, the
23 applicable licensing agency, and the long-term care ombudsman. If the resident does
24 not have a service coordinator, notice under this subsection shall also be given to adult
25 protective services personnel of the Department of Administration. The notice must
26 state the following:

27 (1) the reason under (a) of this section for the proposed termination of
28 the residential services contract and the specific facts on which proposed termination
29 is based;

30 (2) the alternatives to termination of the residential contract that have
31 been attempted by the home;

1 (3) the location to which the resident will be discharged, if known;

2 (4) the date and time proposed for termination of the contract and
3 discharge of the resident;

4 (5) the resident's right to request a case conference that must be held, if
5 requested, before termination of the contract.

6 (d) After the notice is provided under (c) of this section, the assisted living
7 home shall participate in a case conference if requested by the resident, the resident's
8 representative, if any, the resident's advocate, if any, or the resident's service
9 coordinator, if any. If the resident does not have a service coordinator and a case
10 conference is requested by the resident or the resident's representative or advocate,
11 adult protective services personnel assigned by the Department of Administration shall
12 be requested by the assisted living home to participate in the conference. If the
13 request for a case conference is received before termination of the resident's contract,
14 the assisted living home may not terminate the contract until the case conference has
15 been held. A case conference requested under this subsection shall be held by the
16 assisted living home within 72 hours of the request and must include the resident, the
17 resident's representative, if any, the resident's advocate, if any, the home administrator,
18 and appropriate care providers who shall discuss the justification for, and the
19 appropriateness of, the proposed contract termination.

20 * **Sec. 11.** AS 47.33.410 is amended by adding a new subsection to read:

21 (g) A licensing agency under (a) and (b) of this section, its officers, its
22 employees, and the state are not liable for civil damages as a result of an act or
23 omission in the licensing, monitoring, or supervision of an assisted living home under
24 this chapter. This subsection does not preclude liability for civil damages as a result
25 of gross negligence or reckless or intentional misconduct.

26 * **Sec. 12.** AS 47.33.550(a) is amended to read:

27 (a) A licensing agency may revoke an assisted living home license, deny
28 renewal of an assisted living home license, suspend operations of an assisted living
29 home, suspend the ability of an assisted living home to take in new residents, place
30 conditions on the ability of an assisted living home to take in new residents, restrict
31 the type of care that an assisted living home may provide to residents, or assess an

1 administrative fine, as the agency considers appropriate, on one or more of the
2 following grounds:

3 (1) a violation of a provision of this chapter, a regulation adopted
4 under this chapter, an order in a notice of violation issued under this chapter. or a term
5 of a license issued under this chapter;

6 (2) a criminal conviction of an administrator of an assisted living home
7 if the conviction is

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

9 (B) a felony; [OR]

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

12 (D) an offense described in AS 47.33.100(c);

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

15 * Sec. 13. AS 47.33.550(f) is amended to read:

16 (f) If an assisted living home requests a hearing under (d) of this section, the
17 hearing shall be held within 120 [60] days after the licensing agency receives the
18 request. The department's decision following a hearing under this section is a final
19 administrative order.

20 * Sec. 14. AS 47.33.550 is amended by adding new subsections to read:

21 (j) A licensing agency may summarily suspend operations of an assisted living
22 home before a final hearing is held or during an appeal if the licensing agency finds
23 that the home poses a clear and imminent danger to the public health and safety. The
24 assisted living home is entitled to a hearing before the licensing agency to appeal the
25 summary suspension within 10 days after the order of suspension is issued. To
26 request a hearing, the assisted living home must notify the licensing agency of the
27 request within 24 hours, excluding weekends and holidays, after the order of
28 suspension was received. The assisted living home may appeal, to a court of
29 competent jurisdiction, an adverse decision of the licensing agency on an appeal of a
30 summary suspension.

31 (k) If a license is suspended or revoked under this section, the facility may not

1 be operated or maintained as an assisted living home and may not house or provide
2 assisted living services to a facility resident.

3 * **Sec. 15.** AS 47.33 is amended by adding a new section to read:

4 **Sec. 47.33.563. Court-ordered temporary administration and**
5 **receivership.** (a) If the licensing agency determines that the health or safety of the
6 residents of an assisted living home is imminently jeopardized as the result of the
7 assisted living home's failure or refusal to comply with a state or federal statute or
8 regulation or local ordinance, the licensing agency may petition the superior court for
9 an order for appointment of temporary administration to oversee the operation of the
10 assisted living home in order to ensure the health and safety of the residents of the
11 assisted living home while orderly closure of the assisted living home occurs or the
12 deficiencies necessitating temporary administration are corrected.

13 (b) The licensing agency may petition the superior court for establishment of a
14 receivership for an assisted living home if the licensing agency finds that one of the
15 following conditions exists and the owner, operator, or administrator of the home has
16 demonstrated an inability or unwillingness to take action necessary to immediately
17 correct the following alleged conditions:

18 (1) the assisted living home is operating without a license;

19 (2) the health, safety, or welfare of the residents of the assisted living
20 home is imminently jeopardized;

21 (3) the assisted living home demonstrates a pattern and practice of
22 violating state or federal statutes or regulations or local ordinances in such a way that
23 care of residents is jeopardized.

24 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** (a) AS 18.20.302, as amended by secs. 1 and 2 of this Act,
27 applies to persons employed by a nursing home on or after July 1, 2001, except that the
28 offenses described in AS 18.20.302(a)(1) and (c) include offenses committed before, on, or
29 after July 1, 2001.

30 (b) AS 47.33.100, as amended by secs. 4 and 5 of this Act, applies to employment and
31 allowing the residence of an individual in an assisted living home on or after July 1, 2001,

1 except that the offenses described in AS 47.33.100(a)(1) and (c), as amended by sec. 4 of this
2 Act, include offenses committed before, on, or after July 1, 2001.

3 (c) AS 47.33.410(g), added by sec. 11 of this Act, applies to acts or omissions
4 occurring on or after July 1, 2001.

5 (d) AS 47.33.550(a), as amended by sec. 12 of this Act, applies to an individual
6 employed as an administrator of an assisted living home on or after July 1, 2001, except that
7 the offenses described in AS 47.33.550(a)(2)(D) include offenses committed before, on, or
8 after July 1, 2001.

9 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **TRANSITION: REGULATIONS.** Notwithstanding sec. 19 of this Act, the
12 Department of Administration and the Department of Health and Social Services may
13 immediately proceed to adopt regulations necessary to implement the changes made by this
14 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
15 before July 1, 2001.

16 * **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect July 1, 2001.

March 15, 2001

House Health, Education and Social Services Committee
Capital Bldg.
Juneau, AK

Dear Committee Members,

As an Alaskan that is concerned about the safety and well-being of Alaska's elderly residing in long term care facilities, I ask you to support HB124.

Alaska is long past due having a barrier crimes law that prohibits Nursing and Assisted Living Homes from employing or retaining individuals with criminal histories or convictions in crimes against the elderly. Please do not let another year go by leaving these vulnerable adults unprotected in their homes. Please prohibit potentially dangerous people from access to those citizens who are no longer able to protect themselves.

I beseech you to give this issue the attention that it deserves and our elders the protection that they rely on from our elected officials. Many of these residents are long past being capable of asking for help on their own behalf-it is our responsibility to see to it that they live out their remaining years being cared for safely, compassionately and competently by qualified people.

I look forward to hearing of HB124 steady progress through the legislative process and to the announcement that Alaska finally has a barrier crimes law that protects our long term care residents!

Sincerely,

Clinton Coress
6808 SPRUCE RD
ANCHORAGE AK.
99507

March 15, 2001

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Capital Bldg.
Juneau, AK

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Sincerely,

Anne E. McDuffie
11620 Brook Hill Ct.
Anchorage, AK 99516

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Juneau, AK

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Sincerely,

Piedra Bohn
16245 Chasewood Lane
Anchorage, AK 99516

March 15, 2001

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Juneau, AK

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Sincerely,

Cynthia McFar
9315 Strathmore
Anchorage Alaska
99515

March 15, 2001

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Capital Bldg.
Juneau, AK

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Sincerely,


2846 Nusset Ln
Anch AK 99516

March 15, 2001

House Health, Education and Social Services Committee
Capital Bldg.
Juneau, AK

Dear Committee Members,

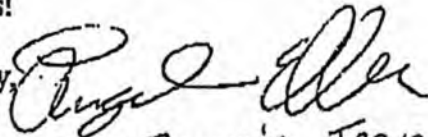
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230 Bonnie Jean Ct.
Anchorage, AK 99515

ALASKA STATE LEGISLATURE

CHAIR
TRANSPORTATION

VICE-CHAIR
LABOR AND COMMERCE

MEMBER
COMMUNITY AND REGIONAL AFFAIRS

SPECIAL COMMITTEE
ECONOMIC DEVELOPMENT AND TOURISM



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REPRESENTATIVE ANDREW HALCRO
District 12

HB 124

Sponsor Statement

The welfare of Alaska's senior citizens and vulnerable adults must be a paramount concern for all Alaskans. As the state sees the continued utilization of the Pioneer's Homes and other nursing facilities as a safe haven for our elder population, we need to be proactive to insure the safety of our most revered residents.

Due to the disability or immobility of some residents, they are at risk of falling victim to crimes of physical abuse and exploitation as well as negligent acts by other residents or the facility itself. House Bill 124 aims to decrease this risk by implementing statutory changes to protect our aged population.

These changes include limiting the access of workers who have exhibited a serious criminal history; requiring all Assisted Living Homes which receive public funding to be licensed regardless of the number of residents; allowing for emergency termination of a housing contract for residents who represent an immediate threat to other residents, themselves, or the home; and allowing the state to take over operation of a home when the residence is non-compliant and therefore represents a risk for residents.

The changes incorporated into this legislation represent a coordinated effort on behalf of various Administrative departments and the Legislature to draft regulatory and statutory changes to implement the protectionary measures for the benefit of Alaska's vulnerable population. I urge you to support the protection of Alaska's seniors with support of House Bill 124.

CS HB 124 (HES) : Assisted Living Licensure

Prepared by the Dept. of Health and Social Services and Department of Administration

Background:

The Department of Administration, Division of Senior Services and the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities have joint responsibility for licensing Assisted Living Homes. The departments have developed regulations to improve the licensing process to better assure the safety of residents and to address concerns raised by Assisted Living Home providers at a series of community meetings. These regulations have just been publicly noticed.

During the course of developing the regulations several items were identified that require statutory, as opposed to regulatory, changes. This bill would increase protection of consumers by:

- Requiring all Assisted Living Homes which receive public funding to be licensed regardless of the number of clients served;
- Setting standards requiring all agencies receiving state or federal funds to meet minimum requirements including the requirement for background checks on providers, including family members living in the home;
- Allowing for emergency termination of the housing contract of consumers presenting a danger to others in the home, themselves or the home;
- Establishing immunity from liability for acts or omissions in the licensing, monitoring or supervision of a licensed home; and
- Allowing the state to take over operation of a home when the home is non-compliant and leaving the residents at risk.

There will be an increase in licensed homes, and additional monitoring requirements resulting from pending regulation and statute changes. Additional staff will be needed to follow-up on Reports of Abuse and Neglect, and to review assisted living homes to complete thorough evaluations of the quality of care at the time of initial license and renewal.

Division of Senior Services Background Information:

The Division of Senior Services licenses approximately 123 homes and received 63 complaint investigations last year. The Division has requested an additional licensing staff person (via the Trust) in the Governor's FY 02 budget for a total of 4 1/2 plus licensing staff and 1 dedicated clerical staff person. Assisted Living Homes licensed by the Division total 1350 beds. On-site licensing reviews run from 1/2 day for small homes

(5 and under), and 3 days for larger homes. A review of a Pioneer's Home may take 4 days. A complaint investigation of a large home will take more time because they must interview so many individuals.

It should be noted that the -6 Pioneer Homes operated by the Department of Administration account for 600 of the 1350 beds licensed by the Division.

Division of Senior Services staff average 54 site visits per year.

Division of Mental Health and Developmental Disabilities:

The Division has 1 ½ licensing staff to cover 156 homes (an additional 11 by early February) with 558 beds. They visit every home a minimum of once per year, plus complaint investigations. In FY00 staff did an additional 57 site visits for investigations or other reasons, for a total of 199 visits (142 homes in FY00). With the additional homes they anticipate well over 200 visits this year. These visits average 4-5 hours per small site, to 2-3 days for the large sites, plus travel and paperwork time.

The Division licenses facilities that serve two populations, mentally ill and developmentally disabled consumers. The mentally ill consumers do not receive as much financial assistance as the developmentally disabled consumers do. Developmentally disabled consumers tend to live in smaller settings, the larger Assisted Living Homes house mentally ill consumers. The Division is mandated to not have consumers in institutional settings.

The new statutes require that every home be licensed. Currently, the Division of Mental Health and Developmental Disabilities does not license homes with fewer than three residents. Licensing all homes receiving public funds will increase the number of homes licensed by the Division significantly.

Health and Safety issues are the primary issues driving the Division toward licensing all assisted living homes. With the increasing numbers of Assisted Living Homes and consumers choosing to reside in them, the existing licensing staff will not be able to provide adequate monitoring of all the homes to ensure the provision of a safe and healthy environment to each of DHSS' consumers. Presently licensing staff visits all homes once a year, but a visit once every six months, especially in homes where there are identified concerns would ensure greater safety to vulnerable consumers.

The new regulations will add more details to the review process, increasing the length each visit.

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: HB 107
 (H) Publish Date: 2/5/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: Assisted Living Homes BRU: Senior Services
 Component: Protection, Community Services, Admin
 Sponsor: Rules Component Number: 2083
 Requester: Governor

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURE:	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 ()						
-------------------------------	--	--	--	--	--	--

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 not require additional funding.

Prepared by: Dwight Becker Phone 269-3674
 Division: Senior Services Date/Time 1/17/01 12:00 AM
 Approved by: Jim Duncan, Commissioner Date 1/18/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 107
(H) Publish Date: 2/5/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: Assisted Living Home Licensure BRU: Institutions & Administration
Component: Mental Health/DD Admin
Sponsor: Rules
Requester: Governor Component Number: 310

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	100.0	100.0	100.0	100.0	100.0	100.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	100.0	100.0	100.0	100.0	100.0

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	100.0	100.0	100.0	100.0	100.0	100.0
Other (Specify Type)						
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill expands the number of Assisted Living Homes (ALHs) required to be licensed by the state, to include those with only 1-2 residents. The population served in ALHs is made up of individuals who are the most vulnerable and dependent mentally ill, developmentally disabled and elderly individuals. Currently, the Division of Mental Health and Developmental Disabilities requires ALHs to be licensed if they serve three or more residents and receive federal or state funding. Health and safety issues are the primary factor driving DHSS toward licensing all ALHs, regardless of number of residents. With the increasing numbers of ALHs and consumers choosing to reside in them, the existing DMHDD 1 1/2 licensing staff positions (initially expected to do 135 homes per year) will not be able to provide adequate monitoring of all the homes to ensure the provision of a safe and healthy environment to each of DHSS' consumers. Presently there are 156 homes, with 11 more due to be licensed in the next month. These homes are reviewed once a year. In FY00 the staff made an additional 57 site visits for follow-up or complaint investigations. Anticipated, revised ALH regulations will enhance health and safety requirements and increase the time of the site review process. Additional staff will be needed to follow-up on Reports of Abuse and Neglect, and to complete a thorough evaluation of the quality of care at the time of initial license and renewal. The two positions listed above are requested in the budget but are not fully funded.

Prepared by: Sarah Brinkley, Admin. Manager Phone 465-3167
Division: DMHDD Date/Time: 1/31/01 3:55 PM
Approved by: Elmer A. Lindstrom, Special Assistant Date: 1/31/01 3:55 PM
Agency: Department of Health & Social Services

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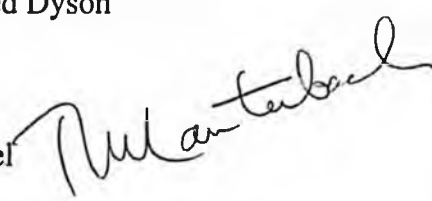
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 18, 2001

SUBJECT: CSHB 124(HES), version "S" (Criminal Background Checks)

TO: Representative Fred Dyson
Attn: Randy

FROM: Terri Lauterbach
Legislative Counsel 

Enclosed is a HES CS for HB 124. It includes a conceptual amendment made in committee, which affected secs. 2 and 5 of the bill.

In concept, the amendment referred to both "out of state" and "out of country" new hires. However, since "out of state" includes people who are out of the country, including both phrases would be redundant. Therefore, you will note the secs. 2 and 5 refer only to people who were nonresidents of the state at the time of hire. (Nonresidents of the country would also have been nonresidents of the state.)

Please let me know if further changes are needed.

TML:med
01-074.med

Enclosure

ALASKA STATE LEGISLATURE

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HB 124

Sponsor Statement

The welfare of Alaska's senior citizens and vulnerable adults must be a paramount concern for all Alaskans. As the state sees the continued utilization of the Pioneer's Homes and other nursing facilities as a safe haven for our elder population, we need to be proactive to insure the safety of our most revered residents.

Due to the disability or immobility of some residents, they are at risk of falling victim to crimes of physical abuse and exploitation as well as negligent acts by other residents or the facility itself. House Bill 124 aims to decrease this risk by implementing statutory changes to protect our aged population.

These changes include limiting the access of workers who have exhibited a serious criminal history; requiring all Assisted Living Homes which receive public funding to be licensed regardless of the number of residents; allowing for emergency termination of a housing contract for residents who represent an immediate threat to other residents, themselves, or the home; and allowing the state to take over operation of a home when the residence is non-compliant and therefore represents a risk for residents.

The changes incorporated into this legislation represent a coordinated effort on behalf of various Administrative departments and the Legislature to draft regulatory and statutory changes to implement the protectionary measures for the benefit of Alaska's vulnerable population. I urge you to support the protection of Alaska's seniors with support of House Bill 124.

CS HB 124 (HES) : Assisted Living Licensure

Prepared by the Dept. of Health and Social Services and Department of Administration

Background:

The Department of Administration, Division of Senior Services and the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities have joint responsibility for licensing Assisted Living Homes. The departments have developed regulations to improve the licensing process to better assure the safety of residents and to address concerns raised by Assisted Living Home providers at a series of community meetings. These regulations have just been publicly noticed.

During the course of developing the regulations several items were identified that require statutory, as opposed to regulatory, changes. This bill would increase protection of consumers by:

- Requiring all Assisted Living Homes which receive public funding to be licensed regardless of the number of clients served;
- Setting standards requiring all agencies receiving state or federal funds to meet minimum requirements including the requirement for background checks on providers, including family members living in the home;
- Allowing for emergency termination of the housing contract of consumers presenting a danger to others in the home, themselves or the home;
- Establishing immunity from liability for acts or omissions in the licensing, monitoring or supervision of a licensed home; and
- Allowing the state to take over operation of a home when the home is non-compliant and leaving the residents at risk.

There will be an increase in licensed homes, and additional monitoring requirements resulting from pending regulation and statute changes. Additional staff will be needed to follow-up on Reports of Abuse and Neglect, and to review assisted living homes to complete thorough evaluations of the quality of care at the time of initial license and renewal.

Division of Senior Services Background Information:

The Division of Senior Services licenses approximately 123 homes and received 63 complaint investigations last year. The Division has requested an additional licensing staff person (via the Trust) in the Governor's FY 02 budget for a total of 4 1/2 plus licensing staff and 1 dedicated clerical staff person. Assisted Living Homes licensed by the Division total 1350 beds. On-site licensing reviews run from 1/2 day for small homes

(5 and under), and 3 days for larger homes. A review of a Pioneer's Home may take 4 days. A complaint investigation of a large home will take more time because they must interview so many individuals.

It should be noted that the -6 Pioneer Homes operated by the Department of Administration account for 600 of the 1350 beds licensed by the Division.

Division of Senior Services staff average 54 site visits per year.

Division of Mental Health and Developmental Disabilities:

The Division has 1 ½ licensing staff to cover 156 homes (an additional 11 by early February) with 558 beds. They visit every home a minimum of once per year, plus complaint investigations. In FY00 staff did an additional 57 site visits for investigations or other reasons, for a total of 199 visits (142 homes in FY00). With the additional homes they anticipate well over 200 visits this year. These visits average 4-5 hours per small site, to 2-3 days for the large sites, plus travel and paperwork time.

The Division licenses facilities that serve two populations, mentally ill and developmentally disabled consumers. The mentally ill consumers do not receive as much financial assistance as the developmentally disabled consumers do. Developmentally disabled consumers tend to live in smaller settings, the larger Assisted Living Homes house mentally ill consumers. The Division is mandated to not have consumers in institutional settings.

The new statutes require that every home be licensed. Currently, the Division of Mental Health and Developmental Disabilities does not license homes with fewer than three residents. Licensing all homes receiving public funds will increase the number of homes licensed by the Division significantly.

Health and Safety issues are the primary issues driving the Division toward licensing all assisted living homes. With the increasing numbers of Assisted Living Homes and consumers choosing to reside in them, the existing licensing staff will not be able to provide adequate monitoring of all the homes to ensure the provision of a safe and healthy environment to each of DHSS' consumers. Presently licensing staff visits all homes once a year, but a visit once every six months, especially in homes where there are identified concerns would ensure greater safety to vulnerable consumers. The new regulations will add more details to the review process, increasing the length each visit.