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# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 67  
 ( S ) 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						
<b>TOTAL OPERATING</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

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

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SB 67  
 (S) 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 inflation unless otherwise noted below.

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

*DIVISION OF MEDICAL ASSISTANCE  
HEALTH FACILITIES LICENSING AND CERTIFICATION*

4730 BUSINESS PARK BLVD., SUITE 18  
ANCHORAGE, AK 99503  
PHONE: (907) 561-8081  
FAX: (907) 561-3011

### MEMORANDUM:

**DATE:** March 8, 2001

**TO:** Elmer Lindstrom, Special Assistant  
Department of Health and Social Services

**THRU:** Bob Labbe, Director  
Division of Medical Assistance

**FROM:** Shelby Larsen, Administrator  
Health Facilities Licensing & Certification

**SUBJECT:** Background Checks in Nursing Homes

The need for background checks for employees working directly with residents in nursing facilities is a major concern of the Department. Over the last several years Health Facilities Licensing and Certification (HFL&C) has met with the Division of Senior Services (DSS) and other State agencies to develop regulations which define barrier crimes for potential employees of nursing facilities and assisted living homes. The goal of both departments was to introduce regulations, which covered the background check criteria needs for both assisted living homes and nursing facilities. This would allow for consistency in regulatory language and less confusion for providers. The Assisted Living Home (ALH) proposed regulations 7 AAC 75.215. CRIMINAL BACKGROUND CHECK REQUIREMENTS, have been reviewed by the Department of Law (DOL), and are ready for public comment. After the comment period, and once they have cleared the final review by DOL, HFL&C will finish the draft regulations for criminal background checks in nursing facilities, based on the barrier crimes listed in the new assisted living regulations. The timeframe for completion of these regulations is estimated to be short, since much of the research is already done and a need for multiple revisions may be eliminated.

Statute changes proposed in HB 107, affecting AS 47.33.010 for criminal background checks in assisted living homes, has been reviewed by HFL&C, and recommendation has been made to

Elmer Lindstrum

3/8/2001

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amend HB107 to include similar language in AS 18.20.302 for criminal background checks for nursing facilities. A preliminary recommendation for this change is already in place.

At present, HFL&C has regulations which require home health employees working as home health aides to have Federal and State criminal background checks (CBK). Home health aides must also be certified nursing assistants (CNA's) with specialized training for home health. The CBK for home health aides is accomplished through submission of State and federal finger prints. The Federal CBK reports are sent to HFL&C and reviewed to ensure the prospective employees have not been convicted of a crime that would restrict them from working in the home health field.

For all CNA's working in the nursing homes our office requires their professional certification be checked by facilities through contacting the Board of Nursing (BON). The Social Security Act and State Statute require a CNA registry that includes a listing of those CNA's who have had findings of abuse, neglect or misappropriation of resident funds. When the certification check request is made, the BON contacts the states where the CNA has held a professional certification. The BON verifies that their certification has not been revoked for unprofessional or unlawful reasons. This requirement does not extend to other employees working in a nursing facility. When HFL&C surveyors conduct surveys in these facilities, employment background records are checked during the personnel review to ensure compliance.

If there are any questions regarding this issue, please feel free to contact me at (907) 561-8081 or through email at [slarsen@health.state.ak.us](mailto:slarsen@health.state.ak.us).

\* Sec. \_\_\_\_ AS 18.20.302 is amended to read:

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

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

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

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

(b) Within 30 days after employing, contracting with, or using the services of an individual [AN INDIVIDUAL IN A PAID POSITION], a nursing facility shall submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this section. The Department of Public Safety shall submit the fingerprints to the Federal Bureau of 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 facility 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) A nursing facility may not employ, contract, or use the services of an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted of an offense listed in the department's regulations as being an offense covered by this section.

\* Sec. \_\_\_\_ AS 18.20.302 is amended by adding a new subsection to read:

(d) This section does not apply to

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

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

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

(4) a contractor who

(A) does not provide services directly to one or more residents; and

(B) does not have unsupervised access to a part of the home where services are directly provided to residents.

## **SB 67: 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.

TONY KNOWLES  
GOVERNOR  
*governor@gov.state.ak.us*

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

PO Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3552  
[www.gov.state.ak.us](http://www.gov.state.ak.us)

1167

February 2, 2001

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear President Halford:

Concerns over the health and safety of Alaska's assisted living home residents and the wish to ensure greater safety to these vulnerable citizens is the impetus behind this bill I am transmitting today.

Current statutes regulating and licensing assisted living homes apply only to residential facilities that serve three or more adults. This bill expands the law to include any residential facility that receives state or federal payment for services, regardless of the number of adults the facility serves.

The bill increases the safety of residents in assisted living homes in several ways, including:

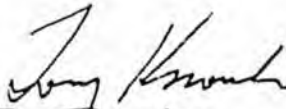
- Strengthening the requirements for criminal background checks for assisted living home employees;
- Giving the state more flexibility to suspend or revoke licenses if an assisted living home operator is convicted of criminal offenses;
- Allowing immediate suspension of a home's license under certain circumstances, particularly when serious life or safety concerns exist for the residents;
- Allowing the state to petition for a court order to temporarily administer the home when serious life or safety concerns exist for the residents;
- Allowing an assisted living home to terminate a resident's contract when the resident poses a risk to self, others or property.

The Honorable Rick Halford  
February 2, 2001  
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The bill also provides civil immunity for the state licensing agencies in licensing, monitoring, and supervising assisted living homes. This provision is intended to create protections similar to those afforded certain state agencies and personnel working in similar fields and promotes the ability for employees to do their jobs thoroughly without being subject to certain pressures for quick or rash decisions. The licensing agencies and the state would still be liable if the damage occurred due to grossly negligent or reckless, or intentional, conduct.

I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles  
Governor