

SB

125

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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March 3, 2005

Honorable Fred Dyson, Chairman
Senate Health, Education and
Social Services Committee
Alaska State Capitol, Rm. 121
Juneau, AK 99801

Dear Senator Dyson,

The Department of Health and Social Services respectfully requests a hearing in the Senate Health, Education, and Social Services Committee on Senate Bill 125 "An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

The proposed bill will streamline the department's licensing processes by consolidating virtually all of the licensing functions related to standards, enforcement, and appeal rights into a single chapter of the Alaska Statutes.

The Governor's transmittal letter providing additional information about the bill and a fiscal note should be on file with the committee. The department will provide the committee with a sectional analysis of the bill in the next several days.

Your favorable consideration of this request will be appreciated.

Sincerely,


Sherry Hill
Special Assistant

cc: Kevin Jardell, Legislative Director
Office of the Governor

Dr. Richard Mandsager, Director
Division of Public Health

SB125



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 1, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to consolidating the licensing functions of the Department of Health and Social Services (DHSS).

Executive Order No. 108, which took effect in 2003, reorganized the DHSS in an effort to streamline functions and make services more efficient and cost effective. As part of that reorganization, DHSS is consolidating all of its licensing functions.

Currently, there are at least 12 different statutory schemes for the licensure of different entities by the DHSS. The complexity of the existing statutes and regulations and the absence of any clear rationale for the wide variation in standards for licensing, enforcement, and appeals has resulted in a very burdensome and bureaucratic system. The proposed bill will streamline the licensing process so that the functions are administered in a much more efficient and cost-effective manner by consolidating virtually all of the licensing functions related to standards, enforcement, and appeal rights into a single chapter of the Alaska Statutes.

In addition, the bill requires the DHSS to implement a single, consolidated background check process across all of its programs with the goal of reducing the risk of abuse and neglect of vulnerable clients.

In December 2004, the DHSS was awarded a \$4.9 million federal grant to conduct background checks for any new worker with direct patient care duties in nursing homes and other long-term care facilities, and to establish a comprehensive training program that will meet the unique needs of workers in

COMMITTEE COPY

The Honorable Ben Stevens

March 1, 2005

Page 2

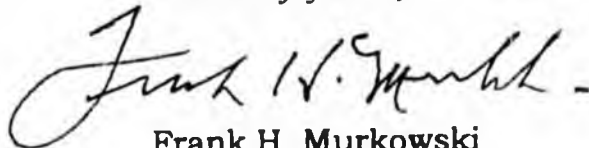
Alaska's long-term care system. This grant, in conjunction with the provisions of the legislation I am proposing today will:

- Improve monitoring and enforcement of life, health, and safety regulations for all DHSS long term-care programs.
- Extend background checks and fitness determinations to all staff serving vulnerable populations.
- Improve the overall safety and security of vulnerable individuals in state licensed and certified long-term care programs.

Finally, this bill contemplates that at the same time that the statutory changes would take effect, DHSS would have adopted regulations to implement these statutory changes. It is anticipated that the resulting regulations would further achieve the goal of efficiency and cost effectiveness.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

Sectional Analysis of SB 125 (Licensing)

(Prepared by the Department of Health and Social Services and the Department of Law, March 4, 2005)

SB 125 would centralize the licensing and administration of certain covered entities into a new chapter, and would centralize background check and registry functions for entities and individual service providers who are licensed or certified by the Department of Health and Social Services (DHSS) or who receive payments from the DHSS for providing services.

I. Addition of a new chapter to centralize licensing and administration of covered entities (Section 1):

Section 1 adds a new chapter regarding centralized licensing to title 47. The new sections do the following:

- require that certain entities obtain a license, and describe application requirements;
- provide for provisional and biennial licenses;
- provide for notice and appeal when a license is denied or made conditional;
- provide a construct for filing and investigation of complaints against an entity;
- give the DHSS a right of access to entities for inspection;
- require the DHSS to prepare a report following an investigation;
- provide for the immediate revocation or suspension of a license, for other enforcement actions, and for civil fines;
- provide for notice and appeal of enforcement actions;
- provide immunity to the DHSS, hospice volunteers, and entities in certain situations;
- provide for criminal penalties for violation of the licensing chapter;
- provide for the confidentiality of certain information and DHSS intradepartmental access to information.

II. Addition of a new article to centralize background checks and registry functions (Section 17):

Section 17 adds new background check and registry sections to the chapter dealing with the general administration of welfare, social services, and institutions (AS 47.05). The new sections are as follows:

- The new background check and registry sections are made applicable to any individual or entity that is required to be licensed or certified by the DHSS, or that is eligible to receive payments from the DHSS to provide for the health, safety, or welfare of persons.
- Individuals who will be associated with an entity as owner, fiduciary, operator, employee, or volunteer are required to provide fingerprints to the DHSS so that the DHSS can do a background check on the individual.
- An individual who has been charged with or convicted of a crime that is inconsistent with the standards for licensure or certification may not be associated with an entity or individual service provider as owner, operator, fiduciary, employee, or volunteer. If the entity associates with such an individual, the entity may not be issued or have renewed a license or certification, or may be ineligible to receive a payment from the DHSS to provide services.
- The DHSS must provide for a centralized registry that consists of the following information:
 - 1) judgments, orders, and adjudications finding that the relevant individual committed abuse, neglect, or exploitation of a child, senior citizen, or vulnerable adult;
 - 2) orders that a license or certification was denied, suspended, revoked, or conditioned.

III. Conforming amendments (Sections 2 – 16, 18 – 32)

Sections 2 – 16 and 18 – 32 set out conforming amendments and changes to reflect the bill's centralizing of licensing and administrative functions in AS 47.32. The subjects affected include:

- the definition of "hospital" in AS 09.65.095(b) (sec. 3) and AS 09.65.096(d) (sec. 4);

- the identification of a child care facility related to misconduct involving a weapon under AS 11.61.195(a) (sec. 5) and 11.61.220(a) (sec. 6);
- the conversion of a nursing facility to a nursing home under AS 18.07.031(b) (sec.7);
- the definition of "health care provider" under AS 18.23.070 (sec. 8) and AS 09.55.560 (sec. 2);
- facility compliance with health and safety laws and licensing requirements under AS 18.26.220 (sec. 9);
- the definition of "child adoption agency" in AS 18.50.950 (sec. 10);
- health maintenance organizations' requirement regarding regulation of hospitals under AS 21.86.030(c) (sec. 11);
- maintenance of records by a child placement agency under AS 25.23.185(c) (sec. 12);
- the definition of "license" under AS 25.27.244(s) (sec. 13);
- licensing fees under AS 37.05.146(c) (sec. 14);
- investigation of reports of abuse, neglect, or misappropriation of property under AS 47.05.010(15) (sec. 15) and AS 47.05.055(a) (sec. 16);
- the definition of "foster care" under AS 47.10.990 (sec. 18) and "secure residential treatment center" under AS 47.10.990 and AS 47.12.990 (secs. 19 - 20);
- a report of harm under AS 47.24.013(a) (sec. 21);
- minimum daily reimbursement rates under AS 47.24.017(d) (sec. 22);
- grants for child care facilities under AS 47.25.071(b) (sec. 23);
- the definition of "child care facility" and "day care facility" under AS 47.25.095 (secs. 24 - 25);
- the definition of "assisted living home" under AS 47.25.195(f) (sec. 26);

- the definition of "evaluation facility" under AS 47.30.915 (sec. 27) and AS 47.31.100 (sec. 28);
- licensing and supervision under AS 47.40.021 (sec. 29) and AS 47.40.110 (sec. 30);
- the definition of "long-term care facility" under AS 47.62.090 (sec. 31);
- AS 47.80.140 regarding licensing and certificates of need is repealed and readopted to reflect the centralizing of licensing in AS 47.32 (sec. 32).

IV. Repealers (Sections 33 - -39):

Section 33 repeals a reference to 47.35, which would be repealed by this bill.

Section 34 repeals certain statutes governing hospice and home care programs.

Section 35 repeals certain statutes governing hospitals and nursing facilities.

Section 36 repeals certain statutory provisions regarding the applicability of administrative adjudication.

Section 37 repeals certain statutes governing assisted living homes.

Section 38 repeals certain statutes governing child care facilities, child placement agencies, child treatment facilities, foster homes, and maternity homes.

Section 39 repeals certain statutory definitions related to alcohol treatment.

V. Applicability (Section 40):

Section 40 sets out the applicability of the bill to applications and requests depending on when submitted.

VI. Transition (Sections 41 - 43):

Section 41 sets out the transition rules for entities currently licensed or approved.

Section 42 sets out the transition rules for certain entities with pending application and other requests.

Section 43 allows the DHSS to proceed to adopt regulations under the bill.

VII. Effective date (Sections 44 – 46):

Section 44 sets out an immediate effective date for secs. 40, 42, and 43.

Section 45 sets out an effective date of July 1, 2006, for section 32.

Section 46 sets out an effective date of July 2, 2005, for the remainder of the bill.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 125
(S) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to the licensing, regulation, enforcement, and appeal rights of certain...facilities..." RDU CIVIL
Component Human Services
Sponsor _____ Component No. _____
Requester Governor

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	9.3					
Travel	0.0					
Contractual	1.1					
Supplies	0.2					
Equipment	0.2					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	10.8	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	10.8					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	10.8	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would centralize almost all DHSS licensing statutes under a new chapter to AS 47. Currently, there are 12 different statutory schemes for the licensure of different entities by the DHSS. By centralizing these disparate procedures into a streamlined licensing process under a uniform statutory framework, the DHSS hopes to be able to administer these functions in a much more efficient and cost effective manner. The Department of Law does not anticipate a significant long-term fiscal impact from passage of this legislation; however, it is clear that significant revisions to the corresponding regulations will be required. It is estimated that approximately 100 attorney hours might be required in such an effort.

Prepared by: Kathryn Daughhete, Director
Division: Administrative Services
Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General
Agency: Department of Law

Phone 465-5427
Date/Time 2/28/05 2:15 PM
Date 2/28/2005

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2
 Bill Version: SB 125
 (S) Publish Date: 3/2/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: RELATING TO LICENSING BY THE
DEPARTMENT OF HEALTH AND SOCIAL
SERVICES

RDU: Public Health

Component: Certification and Licensing

Sponsor: (RLS) BY REQUEST OF THE
GOVERNOR

Requester: GOVERNOR

Component No.: 245

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type -do not abbreviate)						
Other(Specify Type -do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Because the purpose of this legislation is to streamline the licensing process to achieve those goals of efficiency and cost effectiveness by consolidating virtually all of the licensing functions related to standards, enforcement, and appeal rights in DHSS, no additional costs or staff resources within the department are anticipated.

Prepared by: Richard Mandsager, MD
 Division: Public Health
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-3139
 Date/Time: 02/17/2005
 Date: 02/28/2005



PUBLIC HEALTH

**PROTECTING AND PROMOTING THE
HEALTH OF ALL ALASKANS**

SB 125, a Bill to Consolidate DHSS Licensing, Certification and Background Check Functions

Dr. Richard Mandsager, M.D.
Director, Alaska Department of Health and Social Services
Division of Public Health

3/14/2005

Why are we doing this? What's wrong with things the way they are?



- The existing statutory and regulatory environment is a complex patchwork, with holes, duplication and unnecessary variants.
 - Agencies which offer more than one type of care services must meet different requirements for licensing created by evolving program standards and historical licensing criteria.
 - These differences limit the flexibility of licensing staff to operate across different program types.
 - There is no compelling rationale to maintain these differences, and much benefit to be derived from eliminating them.
- Some provider types are not covered today, for either requirements of licensing or background check requirements, or both.
- Some individuals can currently pass a background screen, who shouldn't.
- Tracking of required care provider information has not been consistent.
- Existing requirements can also raise the costs to care provider applicants.

"Recruiting and hiring ... is an area we cannot afford even a single failure of the system." Matthew Jones, Executive Director, Assets Inc.

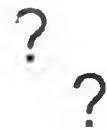
The existing regulation of long term care has not prevented instances of abuse and neglect.

- A supported living home provider was misappropriating funds from a resident. There is no requirement for the home to be licensed, and no background review had been conducted on the provider.
- An assisted living home attendant was fired for mistreatment, and the facts presented to law enforcement. No charges were filed and the case was dropped. This person remains eligible to work as a care provider.
- Three Alaska Nurse Aides were found by investigative agencies to be mistreating residents in a nine month period. Well after the mandatory reporting time period, two of these findings had not been entered into the registry.
 - One of the two involved physical violence.
- In another state, a person was involved in a stabbing in a convenience store. Months later, this person, recognized by someone who had been in the store, was found working as a long term care provider.
- Personal Care Attendants, who are typically listed by multiple employment agencies, must submit separate fingerprint-based background checks for each agency, at significant cost and duplication of effort.

Besides the gaps in the oversight process and risks to Alaskans in care, there is significant cost and effort to provide the required management of care programs.

- Currently, 19 programs are administered under at least 12 different statutory schemes for licensure by DHSS.
 - The complexity of the different standards and program compliance requirements have resulted in a cumbersome administrative structure.
 - Care providers are faced with a patchwork of regulations and sometimes conflicting requirements for service delivery, particularly the agencies that operate multiple types of care services.
 - For example, under current practices a Care Coordinator might be employable at one agency, but not acceptable to another agency. And an individual acceptable for Care Coordination would not be acceptable to an Assisted Living Home, or an Assisted Living Home employee might not be employable in Child Care.
 - Yet many of the care agencies operate in all these programs
 - Licensing and Certification surveyors/licensing staff must learn and deal with the variants of each service program.
 - A consolidated program promotes greater depth in staff expertise and cross training.

- Three licensing program units have been consolidated within Public Health, but the programs they manage still must be uniquely administered.

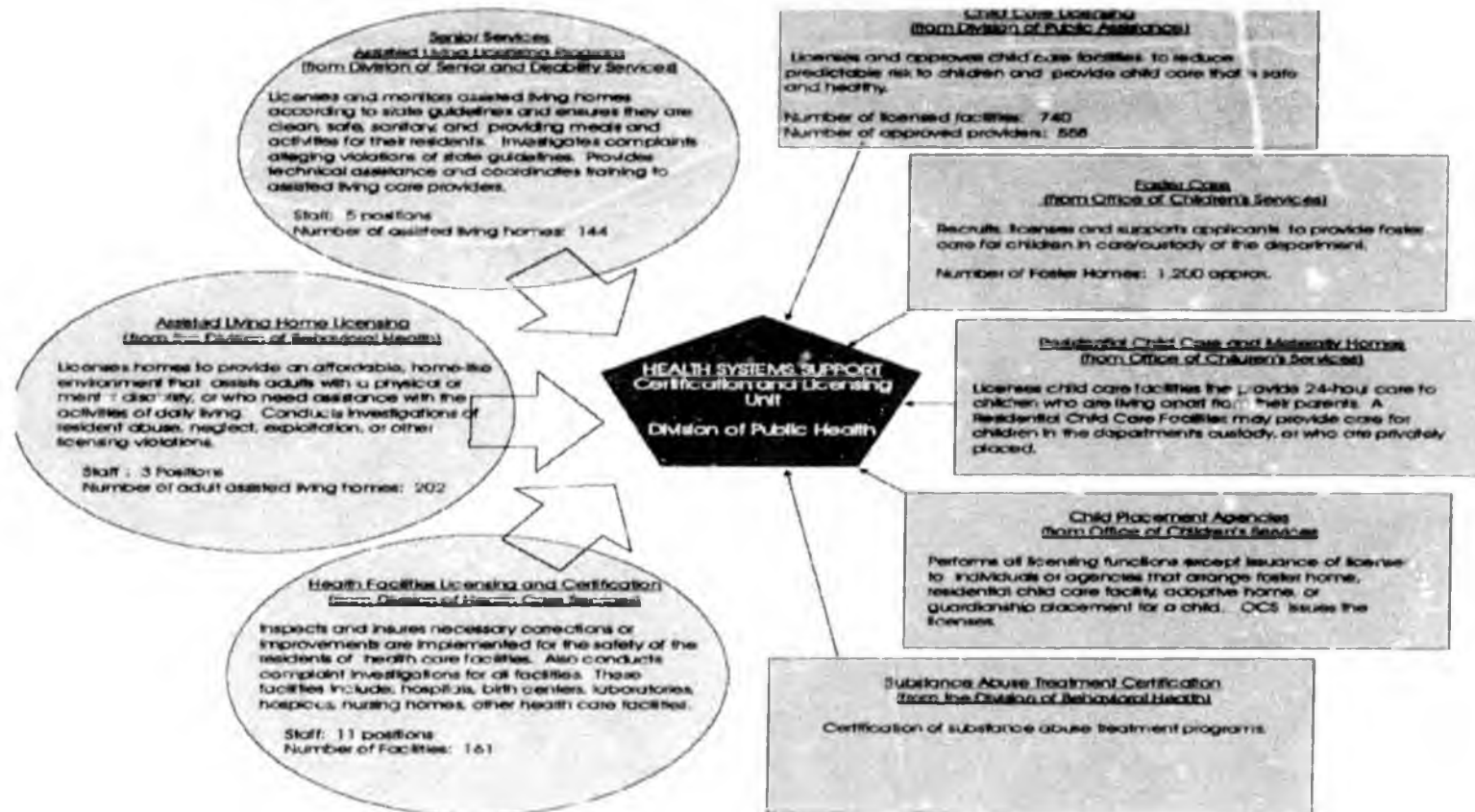


The three units that have been consolidated represent Phase I of the consolidation process.

Department of Health and Social Services Certification and Licensing Integration Project

Phase I – FY 2005

Potential Phase II - FY 2006 – 2009



Our aim is to reduce predictable risk, improve quality of care, foster patient rights, and advance public health, safety and welfare.

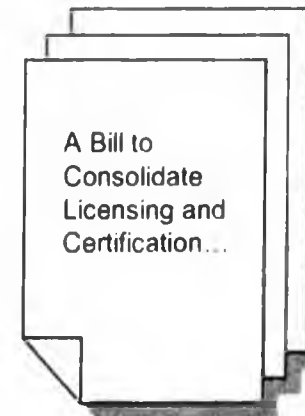
- **Centralized Licensing and Related Administrative Procedures, for:**

Ambulatory Surgical Centers	Home Health Agencies	Residential Child Care Facilities
Assisted Living Homes	Hospices	Residential Psychiatric Treatment Ctrs
Child Care Facilities	Hospitals	Rural Health Clinics
Child Placement Agencies	ICF/MRs	*Supported Living Homes
Foster Homes	Maternity Homes	*Personal Care Attendants
Freestanding Birth Centers	Nursing Facilities	*Case Mgmt/Care Coordination
		*Adult Day Care/Respite

- **Defines and Consolidates:**

- Definitions
- Requirements to get a license
- License renewal process
- Requirements for a background check
- Conditions for denial of license
- Complaints process and appeals
- Enforcement actions and penalties
- Confidentiality requirements

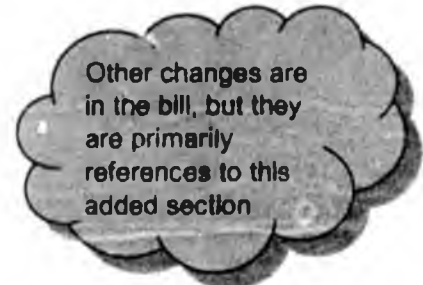
* Subject to background check provisions only
[Licensed Certified Both]



How SB 125 impacts the existing statutory definition of current DHSS licensed programs...

18.20.075-085	Hospital reg, risk mgmt, inspection
18.20.300	Nursing Facilities - state policy
18.20.305-390	Nursing regs, penalties, appeals, fines, ...
47.33.005-090	ALH Purpose, applicability, payments, rules, ...
47.33.200-360	ALH rights, grievances, contracts
18.18.100	Hospice licensing requirements
18.18.200	Volunteer Hospice licensing requirements
18.18.300-340	General Hospice requirements
18.18.390	Hospice definitions
18.18.490	HHA definitions
18.20.230-260	Hospital charges
47.43.148	Defines nonrenewal of licenses in general Amended to include children and A/DA licensing
18.20.130	Defines nonrenewal of licenses in general
47.33.990	ALH Definitions, removed references to controlled subs.
47.37.270	Removed selected definitions related to treatment facilities
18.05.040(a)(10)	Direct Entry Midwifery free standing birth centers
18.18.005-040	Hospice regulation
18.20.090-120	Disclosure of information, penalties
18.18.350	Hospice disclosure requiremen'ts
18.18.410-470	Home Health Agencies
18.20-18.20.070	Hospitals and intermediate care facility licensing
18.20.302	Criminal background check, nursing employees
47.33.100	ALH criminal background checks
47.33.400-920	ALH Licensing process & procedures
47.35.005-260	Maternity, RPTCs, childrens services process and procedures

Retained
Retained
Retained
Retained
Retained



moved to regulation
moved to regulation
moved to regulation
moved to regulation
moved to regulation



Amended

Amended
Amended
Amended



Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed



Note: "move to regulation" removes a regulatory level of detail from statute, but retains the spirit and intent of the statute in the following regulatory rewrite.
Repealed means being deleted as a separate statutory entity. The subject area will be included in the proposed new statute and usually relates to specifics of licensing, licensing oversight and background check requirements.
Replaced with indicates these statutory sections were rearranged. These are regulatory details that are being moved to a new location.

3/8/2005

What's in SB 125?

- **Addition of a new chapter to centralize licensing and administration of covered entities (Section 1):**
 - Defines what entities must be licensed
 - Defines license conditions, appeals, complaint process
 - Defines DHSS rights and responsibilities
 - Provides confidentiality protections
 - Provides criminal penalties for violations
- **Addition of a new article to centralize background checks and registry functions (Section 17):**
 - Defines who is required to have background checks
 - Provides for regulatory definition of barrier conditions
 - Requires a centralized registry be created and maintained
- **Updates to existing statutes (see previous page)**
- **Establishes the timeline for implementation**
 - July 1, 2006 for Section 1
 - July 2, 2005 for Section 17

The key provisions of SB 125:

- Barrier conditions to employment in the care provider field will be defined in a consolidated *regulation* definition, with an objective of defining one, or as close to one as possible, common, consistent set of conditions to apply to all provider types.
 - There may be a need to distinguish between barriers to adult care vs. children's care.
- All service providers with direct patient contact must be background checked including volunteers
- Charges of a barrier crime are sufficient to bar employment.
- An employee misconduct registry will be implemented for maintaining employment barrier conditions that may not be reflected elsewhere.
- A standard waivers process will be defined.
- A standard appeals process will be implemented.



Excerpt from just one of the current regulatory crosswalks

1.1.1 SUMMARY OF EXISTING AND PROPOSED NEW SAFETY AND SANITATION STANDARDS TO CERTAIN FACILITIES PROVIDING CARE TO CHILDREN AND TO ADULT RESIDENTS February 16, 2005

NOTES TO READER: REQUIREMENTS, INCLUDING APPLICABILITY, ARE SUBJECT TO CHANGE AFTER REVIEW OF PUBLIC COMMENTS AND BEFORE ADOPTION.

Bracketed numbers = number of persons licensed for care, if requirements differ by size of facility

"E" = existing requirement (but may differ in proposal) "N" = new requirement "--" = not applicable (unless licensed for more than one category of care)
* = a more stringent requirement applies

ALH = assisted living home; FH = foster home; FGH = foster group home; RGH = residential child care group home; RCCC = residential child care center;
CCH = child care home; CCGH = child care group home; CCC = child care center; RPTC = residential psychiatric treatment center for children;
MH = maternity home; AP = approved provider (child care assistance)

REQUIREMENT	ALH	FH	FGH	RGH	RCCC	CCH	CCGH	CCC	RPTC	MH	AP
7 AAC 10.610. Life and fire safety											
<i>Based on existing child care licensing, 4 AAC 62.510; existing residential child care, 7 AAC 50.510; existing ALH, 7 AAC 75.270</i>											
(b)(1) -- Meet state code for fire safety in 13 AAC 50 and 13 AAC 55 or more stringent if required by local authorities	-- [1-5] E [6+]	E	E	E	E	E	E	E	N	N	
(b)(2) -- municipal building code approvals	-- [1-5] E [6+]	N	N	N	N	N	N	N	N	N	
(b)(3) and (c) -- fire safety inspection	E	E	E	E	E	E	E	E	E	E	
(d)--disaster preparedness emergency evacuation plan	E	E	E	E	E	E	E	E	E	E	
(e) -- emergency evacuation drills	E	E	E	E	E	E	E	E	E	E	
(f) -- keep records of emergency drills	E [1-5] N [6+]	E	E	E	E	E	E	E	E	E	
(g) notification of fire or other emergency	N	N	N	N	N	N	N	N	N	N	
(h) carbon monoxide detector	N	N	N	N	N	N	N	N	N	N	
(i)(1) --at least two means of emergency escape, at least one of which is exterior door	E [1-5] -- [6+]	E	E	E	*	E	*	*	E [1-10] * [10+]	E [1-10] * [10+]	
(i)(2) -- one means of escape from basement	N [1-5]	E	E	E [1-10] * [10+]	*	E [1-5] * [6+]	E [1-5] * [6+]	*	E [1-10] * [10+]	E [1-10] * [10+]	
(i)(3) -- fully-opening window in each bedroom	F	E	E	E [1-10] * [10+]	*	E [1-5] * [6+]	E [1-5] * [6+]	E	E [1-10] * [10+]	E [1-10] * [10+]	
(i)(4) -- screens do not prevent emergency escape	E	N	N	N	N	N	N	N	N	N	

STATE OF ALASKA

GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH
DIRECTOR'S OFFICE

FRANK H. MURKOWSKI

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JUNEAU, ALASKA 99811-0610
PHONE (907) 465-3092
FAX (907) 586-1877

March 31, 2005

The Honorable Fred Dyson
State Senate
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Senator Dyson:

Following the first hearing of SB 125 before Senate HESS, your office forwarded a list of questions from the HESS Committee for our consideration and response. Our detailed response to those questions follows.

- **AS 47.32.010(b): Which category contains ABORTION FACILITIES?**
Abortion facilities would be included in the Ambulatory Surgical Center licensure. There may be physicians who perform abortions in their private offices, which are not licensed by the State of Alaska.
- **AS 47.32.010(b): Are any of these health centers currently without licensure requirements?**
No, but the bill does add licensure for a new category of health care provider (rural health clinics to be called "frontier extended stay clinics") being created under a pilot project with The Department of Health and Human Services, Health Resources and Services Administration.
- **Will any health centers currently required to be licensed be freed from licensure requirements?**
No currently licensed facility will be exempted from licensure. However, there is transitional language that would require a facility that is currently licensed who is seeking renewal to be subject to the new provisions in AS 47.32.
- **AS 47.32.020(a): Which entities will be exempt? Why?** The only exemption anticipated at this time to continue under regulation is rural health clinics that are not a frontier extended stay clinic.
- **AS 47.32.030(a)(3)(D): Which applicants would be eligible for waivers, variances, and exemptions? Why should these classes be exempt, and other classes be required?** All applicants would be eligible to apply for waivers, variances and exemptions.
- **AS 47.32.030(a)(9): Why not, instead of waiving the requirements, consider them fulfilled, and thus licensed (and overseen by DHSS)?** All we are waiving is the application process; they will be deemed licensed. We prefer to waive the requirement rather than deeming requirements fulfilled.

- **AS 47.32.030(a)(9)(C): Ease our apprehension to allow federal requirements to dictate whether or not we require licensure.** Federal law in the Social Security Act specifically exempts federal hospitals and other federal health providers from State licensure.
- **AS 47.32.050: Why would anyone get a provisional license if they meet all of the requirements of a standard license?** The intent of this section is to accommodate new facilities/entities. A provisional license is intended to give a new provider some time to demonstrate its ability to maintain licensure compliance before a standard license is issued.
- **AS 47.32.100(b): Explain why the department would decline to investigate a complaint if they have contradicting information.** The language does not state that the department would decline to investigate a complaint if it had contradicting information. The intent is to assure a determination of merit is made following a review of all information provided. Frequently complaints are received for which there is no regulatory authority to investigate, or the information is not sufficient or is clearly spurious and would be a waste of time and resources to investigate.
- **AS 47.32.110: Even confidential records? How does this interact with HIPAA?** HIPAA allows regulatory agencies with oversight authority to review confidential records. The licensing agency is under the same HIPAA requirements as the provider.
- **AS 47.32.150(b): Why "may" instead of "shall" regarding whether or not the department conducts a follow-up inspection?** It depends on the nature of the noncompliance. Some type of follow-up is always done, but it is not always necessary to be onsite to verify compliance. For example, if a facility is cited for noncompliance with fire safety in-service training, it would not be necessary to verify compliance with an onsite visit to the facility to review documentation of in-service training when that information can be faxed to the licensing agency.
- **AS 47.32.150(c): Why "may" instead of "shall" regarding whether or not the department conducts a follow-up inspection?** Again, for the same reasons stated above.
- **AS 47.32.160: Why doesn't AS 44.64.060 not apply?** The concept of this section was to provide for a substantive administrative hearing for the more serious actions taken during an investigation, e.g., revocation or suspension of a license. Numerous discussions took place as to how this section would tie into the creation of the central hearing panel under AS 44.64. Those discussions resulted in a determination that we would want an APA-type hearing and would support having those hearings administered by the central panel. Therefore, the reference that 44.64.060 does not apply should be changed to indicate that it does apply. It should be noted that if we opt into the central panel for these types of hearings, the APA would apply pursuant to AS 44.64.060(a). Therefore, the Department will be offering an amendment to clarify this section along with other conforming amendments.
- **AS 47.32.170(b): Why protect a single class of health care professional? And a volunteer at that? Why should volunteers not be subject to the same standards?** Existing law provides immunity for hospice volunteers from liability for damages for personal injury, wrongful death, or property damage for an act or omission committed in the course of hospice-related duties unless the

act or omission constituted gross negligence, recklessness, or intentional misconduct. Including this language is simply a carry-over from existing law.

- **AS 47.05.300: Who is required to receive a background check? Who is not required?** Essentially, anyone who comes in contact with residents in care, in any capacity, or who owns or operates a facility providing services for the facility types enumerated, is required to undergo a background check.
- **AS 47.05.310(a): Why should a criminal charge, rather than a conviction, disqualify a person?** In order to establish a program of true quality, life, safety and health concerns are the building blocks of all quality assurance. This starts with the hiring of excellent, qualified staff and involves criminal background histories, fingerprints and a series of reference checks. It is our opinion that it is important to at least include charges under the discretionary bar of the criminal background check, which already exists under AS 47.35. Further it is our opinion that on occasion, persons who are charged with a crime may have those charges dismissed or reduced for a variety of reasons but not necessarily because the crime was not committed. Those individuals should be carefully screened to ensure they meet the basic standards which we would require of any person employed by a licensed entity charged with the care of vulnerable adults and children.
- **AS 47.05.330: Will the Criminal Registry be accessible to the public? If so, why?** This is not a criminal registry, but a civil registry. At this point the department is assuming the document would be public.
- **Will this new process affect the Certificate of Need process?** No.
- **Justify removing legislative oversight from the licensing process since many processes previously outlined in statute will be covered in regulation.** Both processes provide oversight. Direct legislative involvement in the regulatory process is guaranteed under AS 24.20. This bill does not remove much of the legislative oversight that currently exists in statute; rather it consolidates the process into a single statutory chapter. The provision of health and social services is a rapidly expanding and changing field, both in terms of clients to be served and the technology utilized in service delivery. To optimize its capacity to be responsive to such changes the Department must have the ability to react and respond in a timely fashion. Having the authority to make changes in regulations will improve that response process. Further, it simplifies that need for flexibility for everyone: legislators, administrators, licensers, and providers.
- **How can the creation of a database not cost any money according to the fiscal note? How can streamlining the licensing process not save any money according to the fiscal note?** The cost associated with creating the database is covered by federal grant funding recently awarded to the Department as part of a pilot program to identify efficient, effective and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct client access employees. While streamlining will reduce costs, it will also put the Department in a cost neutral position by applying the anticipated savings against the documented 15% annual growth rate in licensed assisted livings homes, and other waived services.

I appreciate the opportunity to respond to the Committee's questions and concerns with regard to SB 125, and look forward to continued open and productive dialogue as the legislation continues to move through committee review.

Sincerely,

A handwritten signature in cursive script that reads "Richard Mandsager". The signature is written in dark ink and is positioned above the printed name and title.

Richard Mandsager
Director

cc: Deb Erickson, Deputy Director
Virginia Stonkus, Certification and Licensing

**Position Paper on Senate Bill 125 Offered by Rod Betit, President ASHNHA
Before Senate Health, Education & Social Services Standing Committee
March 14, 2005**

Mr. Chairman, members of the Committee, I am Rod Betit, President of the Alaska State Hospital & Nursing Home Association. ASHNHA's membership includes all but one of the 31 hospitals and nursing homes throughout the State.

ASHNHA supports the Department in its efforts to bring greater administrative efficiency to its broad array of licensing responsibilities. This is an extremely important role of the Department in assuring that Alaskans receive appropriate care in a variety of medical and protective settings.

While we support this legislation overall, we do recommend the Committee consider a few sections of the bill for purposes of clarifying the policy outcome the Department is attempting to achieve. These provisions include the following sections:

Sec. 47.32.060(c) Lines 13-16:

As written this language would grant an automatic extension no matter when a facility files an application for renewal if the department cannot complete its review by the expiration date. The facility that files the day before its current license expires is treated the same as the one which files 90 days before expiration. What is the incentive to file timely?

Sec. 47.32.140. (a) Lines 29-33:

This is a very serious section of the licensing provision with very serious implications for all concerned if not implemented well. If the department takes this extraordinary action it should only be with the express approval of the Commissioner, in writing, with a clear written finding that continued care by the provider would be more injurious than attempting to correct the deficiencies while banning any new admissions to the program.

If this action is taken by the Department, it must be clear who is responsible for the care of the patients/residents/children from the moment the license is revoked. Clearly the provider will no longer have legal authority to direct the care of the impacted individuals. The Department would have to immediately designate a temporary manager of the facility and assume all day-to-day operational responsibilities, financial liabilities for operation of the program and liability for any care provided until the situation is resolved. This is very tricky business with a great deal of liability for the State. I have actually done this in both Alaska and Utah and I can tell you this no place for the weak of heart.

If the Department chooses to close the facility and transfer the patients it must be clear that the responsibility rests with the State to achieve this without harm to any of the residents. This would include finding appropriate beds, arranging medical transportation appropriate for each patient's medical condition, coordinating with families/guardians, and monitoring of the patients health status throughout the transfer process until the patients/residents are settled into their new facility. Again, this is a monumental task.



**Position Paper on Senate Bill 125 Offered by Rod Betit, President ASHNHA
Before Senate Health, Education & Social Services Standing Committee
March 14, 2005**

Back in the late 1970's while employed by the Alaska Dept of Health & Social Services I actually exercised a "cease and desist" order against the management of a Fairbanks nursing home. I personally took possession of the facility. I had accompanying me additional administrative staff, extra nursing staff from around the State, and law enforcement to maintain order during the transition. This "takeover" had a successful outcome some weeks later as the facility was sold to Fairbanks Memorial Hospital and has had a solid patient care reputation ever since. However, there were many points at which something could have gone wrong and the State could have been liable.

While in Utah I exercised similar closure orders against 4 additional facilities with reasonable outcomes. The State's actions were upheld in each instance. However, each caused me to lose more hair. In each of these cases I installed a Temporary Administrator reporting directly to me, and we proceeded to transfer all patients to other facilities as quickly as could be arranged. This usually took 7 to 14 days to complete safely. As State Health Director I was personally responsible for these actions until completed.

The State has time to refine when and how this provision would be used, and placing those guidelines in rulemaking. I would encourage the Department to do so working with ASHNHA, the AG and other potentially impacted parties. We are quite fortunate to have a very competent, thoughtful Commissioner at DHSS who could lead us through this process.

AS 47.32.170(a) Lines 16-18:

I understand this provision is primarily intended to protect the State's employees and agents. While it might be feasible to provide immunity to employees and agents, ASHNHA does ^{not} agree that the State should be immune from compensating for economic consequences to a provider if the action was ultimately found to be excessive. Likewise, the State should not be immune from compensating for any harm suffered by a patient as a direct result of fallout from a license revocation action.

With respect to protecting employees, the Commissioner or any DHSS employee can be sued in their personal capacity for any harm suffered to patients, loss of pay to employees, loss of revenue to contractors or vendors, economic impact on a provider etc. This language may be of little help to shield them from those forms of personal liability. You may want to consider adding language that permits the State to pay for some private legal counsel for the Commissioner and key employees if they are sued in their personal capacity. Generally, state employment rules do not provide this coverage leaving the employees to pay for their own legal counsel to defend themselves when a personal action is brought, and the AG is unsuccessful in redirecting it to their professional capacity.

AS 47.32.900(2)(A) Page 15, Lines 25-03 on page 16:

This section defines an "Assisted Living Home". Services that may be provided in an assisted living environment need to be better defined. For example, this definition would make it appear that it is not permissible to accept a resident that is incapable of managing their own medication or that requires any nursing care. There have been many cases in other states where people requiring this level of "medical care" are cared for in assisted living homes, even when the extent of those services goes beyond what is reasonable to provide in that setting. The language would seem to suggest that the need for these kinds of medical services would preclude their placement in an assisted living home. Further, a key

**Position Paper on Senate Bill 125 Offered by Rod Betit, President ASHNHA
Before Senate Health, Education & Social Services Standing Committee
March 14, 2005**

indicator of a person's ability to live independently in an assisted living home is their physical capacity to egress the building in the event of a fire unassisted. There is no mention of this standard in the proposed language so it is unclear whether that is the intent or not.

Again, ASHNHA believes that the changes embodied in SB 125 represent an important step in improving the licensing responsibilities of the Department and we generally support it however, we believe the above concerns should be addressed before the bill leaves this Committee to make its intent clear to all concerned.

Mr. Chairman that concludes my comments.

Contact Info:

Rod Betit, President ASHNHA
526 Main St Juneau 586-3881

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV STATE AK US



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19071 465-3500
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WWW.GOV.STATE.AK.US

October 12, 2004

Ms. Judith Norris
Centers for Medicare and Medicaid Services
OOM, AGG, Grants Management Staff
Mail Stop: C2-21-15
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Norris:

This letter serves to document my support for the Department of Health and Social Services background check demonstration project grant application to the Centers for Medicare and Medicaid Services (CMS). My administration is committed to the safety and welfare of individuals receiving long-term care services. Through this demonstration project the department will implement a more efficient and effective fingerprint-based criminal history records investigation and fitness determination program that in the end will benefit the beneficiaries of Alaska's long-term programs.

I will sponsor legislation to consolidate and clarify Alaska's certification and licensing laws to give the department statutory authority to implement coordinated administrative services to expand our background check programs. The department will work with the long-term care provider community, The Department of Public Safety, the Long-Term Care Ombudsman, and others to improve monitoring and enforcement of life, health, and safety regulations for all long-term care programs in Alaska.

Thank you for this opportunity to apply for this grant. I am looking forward to working with you and the CMS project team as we build this model program to protect and serve vulnerable children and adults in care.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski
Governor

cc: Joel Gilbertson, Commissioner, Department of Health and Social Services

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations/Survey & Certification Group

MAR 21 2005

Frank Murkowski, Governor
Office of the Governor of Alaska
P.O. Box 11001
Juneau, AK 99811

RECEIVED

MAR 25 2005

Division of Public Health

Dear Governor Murkowski:

I would like to extend my sincere congratulations to the State of Alaska on your successful application and willingness to participate in the Centers for Medicare & Medicaid Services (CMS) Background Check Pilot Program. As you are aware, CMS has approved your state to receive an award of \$ 4,899,844 to fund the implementation of this important pilot.

This three-year pilot will help to evaluate the impact of conducting national background checks on new workers to reduce abuse and neglect in long-term care facilities. The pilot also will help to determine a variety of best practices in conducting efficient, effective and economical state and national background checks.

On March 9-10, 2005, representatives from the seven pilot states (Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico and Wisconsin) attended the CMS Background Check Pilot kick-off conference in Baltimore. The attendees shared information regarding their state's progress in implementing the pilot program and established important connections and networks for discussing background check issues.

Please be assured that CMS is deeply committed and strongly supports Alaska's participation and the pilot's successful implementation overall. We appreciate your continued support of the pilot and urge you to assist the Department of Health & Social Services in overcoming the challenges inherent in implementing a state program (e.g., securing necessary state authority, recruiting qualified staff, establishing partnerships and collaboration among state agencies, etc.). CMS will also work with Alaska to creatively resolve any potential policy issues or challenges that may be a barrier in the implementation of your state's pilot program.

Once again, my congratulations on Alaska's selection and willingness to participate in the CMS Background Check Pilot Program.

Sincerely,

A handwritten signature in cursive script that reads "Thomas E. Hamilton".

Thomas E. Hamilton
Director

Cc: Virginia Stonkus, Alaska Department of Health & Social Services ✓



805 Airport Road Fairbanks Alaska 99701

October 4, 2004

To Whom It May Concern:

I am pleased to provide a letter of support for the proposed Federally Funded Criminal Background Check Pilot Project. As Fairbanks Resource Agency provides an array of services to vulnerable persons, the use of criminal background checks is critical to assuring the safe and appropriate hire of employees in our community-based programs.

Successful funding of the project to consolidate and streamline the criminal investigation process is an important step in assuring quality services in Alaska's long-term care providers both in Fairbanks and around the state. The project also involves standardizing criteria for identification and creating uniform procedures for information exchange which are essential to assuring both timely and thorough information for providers.

An additional feature of the project involves standardized criteria for fitness to work in the field of long-term care. In addition to the criminal check, this additional evaluation will help assure that well-qualified staff are hired.

Given the nature of Alaska's transitory population and the fact that many long-term care employee applicants have been in the state only a short time, it is often difficult to obtain adequate reference information about a potential new hire. The proposed resource for criminal background checks and fitness evaluations will be extremely beneficial if not essential to abuse prevention. In addition, the project's proposal to provide a comprehensive abuse prevention training program that can be modified for Alaska's unique situation is commendable.

Over the years, FRA has maintained a positive working relationship with the Community Care Licensing office, and we have appreciated your help in maintaining and improving standards which promote quality services to our clients with developmental disabilities. I look forward to the implementation of the project which should enhance our ability to recruit and hire the best employees to do the challenging work of long-term care.

Thank you for the opportunity to extend my wholehearted support for the Criminal Background Check Pilot Project.

Sincerely,

A handwritten signature in cursive script that reads 'Emily F. Ennis'.

Emily F. Ennis
Executive Director

EFE/njm

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

*DIVISION OF SENIOR AND DISABILITIES SERVICES
OFFICE OF THE DIRECTOR*

FRANK H. MURKOWSKI
GOVERNOR

3601 C Street, Suite 310

ANCHORAGE, AK 99503

PHONE (907) 269-3666

FAX (907) 269-3690

September 29, 2004

Department of Health and Human Services
Centers for Medicare and Medicaid Services
7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, MD 21244-1850

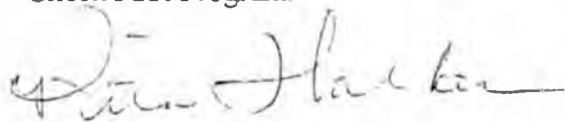
As Project Coordinator for the Nursing Facilities Transition Project, through a grant from the Center for Medicare and Medicaid Services, it is my pleasure to enthusiastically endorse and support the grant proposal for a background check demonstration project. I look forward to working with the Department in their effort to improve background checks and believe that these efforts will effectuate a dramatic change in the care of elders and those with disabilities.

This demonstration project will help meet the need for critical protection of vulnerable populations who receive care from individuals in long-term care facilities or in the community. I believe that recruitment and retention of qualified candidates will improve care of these individuals and contribute greatly to quality of life.

We have worked diligently to provide quality services to individuals through the transitions project, and would be encouraged to know that the individuals whom we are transitioning into the community will have safe, high quality care. I believe that this program will provide the mechanisms to recruit and hire safe and well-qualified staff. This could be a giant step in improving how the public perceives those who care for our most frail vulnerable individuals.

It has been my pleasure to work closely with the Division of Senior and Disabilities Services for waiver approvals and the quality assurance section to ensure that individuals are receiving the care they deserve.

I wholeheartedly and enthusiastically endorse the Department's application for the Background Check Pilot Program.



Rita Walker, Project Coordinator
Nursing Facility Transitions Project



Alzheimer's
Resource of Alaska

October 7, 2004

Anchorage &
Statewide Services
1750 Abbott Road
Anchorage, AK 99507
phone 907-561-3313
fax 907-561-3315
Toll-free in Alaska
800-478-1080

Fairbanks Services
Regency Court Mall
P.O. Box 72791
Fairbanks, AK 99707
phone 907-452-2277
fax 907-457-3376

Juneau Services
3100 Channel Drive
Suite 19
Juneau, AK 99801
phone 907-586-6044
fax 907-586-6084

Mat-Su Valley Services
Trinity Barn Plaza
P.O. Box 4406
Palmer, AK 99645
phone 907-746-3413
fax 907-746-3412

www.alzaska.org

Dear grant review committee:

The Alzheimer's Disease Resource Agency of Alaska supports the effort of the Governor's Council on Disabilities and Special Education to obtain a grant for the background check pilot project.

Through our own experience with placing in-home respite workers for elderly clients, we are aware of the importance of doing everything possible to insure the safety of our elders. A thorough criminal background check of our employees is a vital component. This pilot program could help our state develop consistent practices in all agencies that provide care to vulnerable people. I hope that you will consider funding their grant proposal.

Sincerely,

A handwritten signature in cursive script that reads 'Melissa E. Mitchell'.

Melissa E. Mitchell
In-Home Services Manager
Alzheimer's Resource Agency of Alaska
Ph: 907-561-3313



FRANK H. MURKOWSKI, GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone 907-269-8990 • Fax 907-269-8995 • Toll Free 888-269-8990

September 27, 2004

Elizabeth Vazquez
Alaska Department of Health and Social Services
3601 C Street, Ste 902
Anchorage, Alaska 99524

Dear Ms. Vazquez,

On behalf of the Governor's Council on Disabilities and Special Education, I would like to express the Council's support for the Alaska Department of Health and Social Services' application for the *Program for Background Checks for Employees with Direct Access to Individuals Who Require Long Term Care* grant funds.

As you know, one of the overarching concerns for all individuals who require direct care is the need for safe, quality care. Among direct care providers in Alaska, the ability to offer quality services and to expand the capacity of those services to meet the growing needs of Alaska is dramatically constrained by the availability of qualified direct service staff. We believe implementing a system to ease the process of conducting background checks would be beneficial to both the individual receiving care and the provider agencies.

Currently, the Council has already partnered with several state agencies, the University of Alaska, and provider organizations to address the overall shortage of direct care providers in Alaska through the development and sustained support of the Alaska Alliance for Direct Service Careers. The Alliance is currently developing ways to expand the pool of direct service workers by increasing access to information about direct care professions through outreach and marketing efforts.

The Council fully supports this proposal and is willing to participate on a team to ensure the hiring of fully qualified individuals as direct care providers.

Sincerely,

A handwritten signature in cursive script that reads "Millie Ryan".

Millie Ryan
Executive Director

Alaska Alliance For Direct Service Careers
PO Box 240249
3601 C Street, Ste 740
Anchorage, Alaska 99524-0249

September 27, 2004

Judith Norris
US Department of Health and Human Services
Centers for Medicare and Medicaid Services
OOM/Acquisitions and Grants Group
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Norris,

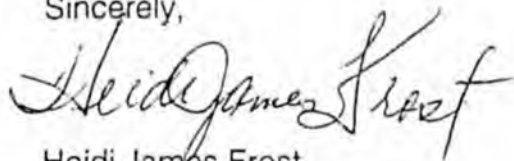
The Alaska Alliance for Direct Service Careers is pleased to offer its support of the ***Program for Background Checks for Employees with Direct Access to Individuals Who Require Long Term Care*** grant application by Alaska Department of Health and Social Services.

The shortage of direct service staff in the developmental disability, mental health, substance abuse, and aging fields is at crisis level in Alaska. The need to do more with less, changes in employee expectations, a tight job market and the aging of the American workforce are all contributing factors to this problem. The Alaska Alliance for Direct Service Careers (AADSC) is working with consumers, advocates, service providers and other state department staff to identify ways to improve the recruitment and retention of direct care providers.

Our efforts includes working with the American Network for Community Options and Resources (ANCOR) to develop a multi-media campaign to encourage both traditional and non-traditional labor pools to enter direct care work. AADSC has also developed both retention and recruitment tool kits for service providers and, with the Alaska Job Center Network and the Alaska State Hospital and Nursing Home Association, has sponsored the annual career fair for direct service work. Augmenting these services with a program to provide background checks would be valuable.

The Alaska Alliance for Direct Service Careers looks forward partnering with the Alaska Department of Health and Social Services to offer yet another valuable tool in the recruitment and retention of direct care providers.

Sincerely,



Heidi James Frost
Recruitment Chair



Assets, Inc.

RECEIVED

Department of Public Health

Matthew J. Jones M.A., Executive Director

October 1, 2004

To whom it may Concern,

Our company, Assets Inc. is completely committed to providing safe and quality services to those individuals we support so I am extremely pleased that the Department of Health and Social Services is seeking to obtain funding for a background check demonstration project. We have worked closely and cooperatively with the department to ensure only qualified and appropriate individuals work with our vulnerable clientele. We would welcome the opportunity to continue this ongoing relationship by providing whatever assistance or collaboration is needed.

Recruiting and hiring only appropriate supports is an area we cannot afford even a single failure of the system. The department's efforts will increase the timeliness and effectiveness of this intensive effort. We strongly support the department's efforts in this project.

Sincerely,

Matthew J. Jones M.A.
Assets Inc. Executive Director





September 30, 2004
Anchorage, Alaska

Regional Offices

South Central Region
540 W International Airport Rd
Anchorage, AK 99518-1110
(907) 561-5335
1-800-478-0078
Fax: (907) 564-7429

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851 E Westpoint Drive, Suite 308
Wasilla, AK 99654
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Fax: (907) 357-3751

Dillingham/Bristol Bay Region
PO Box 715
Dillingham, AK 99576-0715
1-800-478-2117
Fax: (907) 842-5007

Kodiak/Aleutian Region
1623 Mill Bay Road
Kodiak, AK 99615-6235
(907) 486-5011
Fax: (907) 486-5019

Seward/Resurrection Bay Region
PO Box 1933
Seward, AK 99664
(907) 224-2063
Fax: (907) 224-2063

Juneau/Southeast Region
9109 Mendenhall Mall Rd., Ste 50
Juneau, AK 99801
(907) 463-3602
Fax: (907) 463-3605

Barrow/North Slope Region
PO Box 2123
Barrow, AK 99723
(907) 852-3151
Fax: (907) 852-2855

www.hopealaska.org

Stephen P. Laska
Executive Director

Roy T. Scheller
Deputy Executive Director

To Whom It May Concern:

Hope Community Resources, Inc. is the largest provider of community supports for individuals and families who experience disabilities, in the State of Alaska. With a main office in Anchorage, there are an additional seven regional offices located in Kodiak, Seward, Kenai/Soldotna, Barrow, Dillingham, Juneau, and the Mat-Su Valley. Hope supports over 750 people throughout these regions with a multiplicity of individualized, family driven, wrap-around supports.

It has come to my attention that the Department is seeking funding to obtain resources in order to establish a background check demonstration project coordinated with abuse prevention training. Hope Community Resources fully endorses this application and supports the Departments efforts to do so without qualification.

In order to establish a program of true quality, life safety and health concerns are the building blocks of all quality assurance. This starts with the hiring of excellent, qualified staff and involves criminal background histories, fingerprints and a series of reference checks. The restructure and standardization of our current system, as conceived by the Department, along with proposed strategies and abuse prevention training, would give our community programs a more comprehensive and expeditious approach in the hiring process.

Hope is, and has always been, totally committed to the provision of quality community services which includes highly qualified and fit staff. This project will serve to strengthen that commitment to our families.

Hope has always enjoyed an excellent, cooperative relationship with the Department in the interests of those we mutually support. We would be eager to continue this relationship with the Criminal Background Check Pilot Program, as proposed. I commit my time and that of my staff to this project in any way that we can assist in making it a reality. I personally applaud the Department for their initiative in pursuit of this highly coordinated, comprehensive system that will benefit all of our community programs.

I cannot adequately stress the importance of this proposal and its positive impact and quantifiable ramifications on our community programs. I believe, after a review of the project, that Hope will be able to better assure our

families and individuals who choose our supports that all of our staff are not only extremely qualified to do the job, but are also "safe hires." The relative newness of our Alaskan system, in comparison to those of the Lower 48, our geographical isolation, time differences and other key factors make the retrieval of standardized information cumbersome at best, and time consuming.

I would urge you to fully fund this project as a critical component in the delivery of our community programs in respect to the vital components of health and life safety for all those who trust us in the provision of supports.

If I can answer any questions or be of further service, please do not hesitate to contact me at your convenience. I look forward to working with the Department in the implementation of this proposal as a true benefit to all of our community programs across rural and urban Alaska.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen P. Lesko".

Stephen P. Lesko
Executive Director
Hope Community Resources, Inc.

Manillaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

October 11, 2004

To the Commissioner of Alaska Health and Social Services:

I am pleased to provide a letter of support for the proposed Federally Funded Criminal Background Check Pilot Project. As Manillaq Association provides an array of services to vulnerable persons, the use of criminal background checks is critical to assuring the safe and appropriate hire of employees in our community-based programs.

Successful funding of the project to consolidate and streamline the criminal investigation process is an important step in assuring quality services in Alaska's long-term care providers in Kotzebue and around the state. The project also involves standardizing criteria for identification and creating uniform procedures for information exchange, essential to assuring both timely and thorough information for providers.

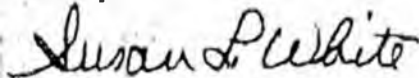
An additional feature of the project involves standardized criteria for fitness to work in the field of long-term care. In addition to the criminal check, this additional evaluation will help assure that well-qualified staff is hired.

Given the nature of Alaska's transitory population and the fact that many long-term care employee applicants have been in the state only a short time, it is often difficult to obtain adequate reference information about a potential new hire. In fact, there have been times that we have been unable to obtain background information in a timely manner which has compromised our ability to hire. The proposed resource for criminal background checks and fitness evaluations will be extremely beneficial if not essential to abuse prevention. In addition, the project's proposal to provide a comprehensive abuse prevention training program that can be modified for Alaska's unique situation is commendable.

Over the years, Manillaq Association has maintained a partnership with Office of Children's Services, and we have worked together in maintaining and improving standards which promote quality services to our clients with a multitude of needs. I look forward to the implementation of the project which should enhance our ability to recruit and hire the best employees to do the challenging work of long-term care.

Thank you for the opportunity to extend my wholehearted support for the Criminal Background Check Pilot Project.

Sincerely,



Susan L. White, Director of Family Resources
Manillaq Association

Member Villages

Ivishappaat, Nunatchinaq, Imatchitlaq, Katayank, Kivalthra, Luqviik, Qiddiqagruk, Nauanaq, Nuurofik, Akulligaaq, Istinaaq, Tildgaq
Ambler, Buckland, Deering, Klana, Kivalina, Kobuk, Kotzebue, Noatak, Nuorvik, Selawik, Shungnak, Pt. Hope



2211 Arca Drive
Anchorage, Alaska 99508

(907) 277-6677

Fax (907) 272-2161

TTY (907) 258-2232

Website: www.arc-anchorage.org

info@arc-anchorage.org

Services

Arctic Resource Center

CE/QL Program

Care Coordination

Community Living Services

Deaf and Hard of Hearing Center

Family Services

Interpreter Referral Line

Mental Health Services

Nursing Services

Short Term Assistance
and Referral (STAR)

Student Living Center for the
Deaf and Hard of Hearing

Substance Abuse Treatment

Supported Employment

Supported Parenting

General

Advocacy

Espresso Shop

Information and Referral

Public Education

Pick-Up Service and
Donation Center

October 8, 2004

Don Brand
Division of Public Health
P.O. Box 110610
Juneau, AK 99811-0601

Dear Mr. Brand:

On behalf of The Arc of Anchorage I would like to support the Department's effort to obtain funding for the background check demonstration project. An essential component to mitigate the risk of abuse and neglect of people receiving long term care services in Alaska is an efficient and easy method to access and obtain timely background checks of potential providers of services to individuals with disabilities that we serve. The improvements in the background checks process that will occur as a result of this project will work toward that goal.

The Arc of Anchorage is pleased to work with the Department to develop and implement a consolidated and streamlined criminal history investigation and fitness determination program. This will assist us to meet our commitment to providing quality services to the individuals we serve in our licensed homes and assist us in hiring only qualified providers.

I strongly support the pilot project and believe it will make it easier to recruit and hire safe and well qualified staff once the program has been created and implemented. The abuse prevention training component is another sorely needed and welcome addition that will improve certification and licensing functions of the Department.

Sincerely,

Gwendolyn Lee
Executive Director

RECEIVED

2004
Division of Public Health



U.S. Department of Justice

United States Attorney
District of Alaska

RECEIVED

Department of Health

Federal Building & U.S. Courthouse
222 West 7th Avenue, #9, Room 233
Anchorage, Alaska 99513-7367

Commercial (907) 271-5071
Fax Number (907) 271-3224

October 12, 2004

Elizabeth Vazquez
Quality Assurance Coordinator
State of Alaska
Department of Health & Social Services
Commissioner's Office
Suite 902
3601 C Street - Frontier Building
Anchorage, Alaska 99503

Re: Pilot Program for Background Checks

Dear Ms. Vazquez:

I am aware of the effort by Alaska's Department of Health & Social Services to be selected for the national pilot program to improve background checks for the workforce that provides services and support to Alaska's elderly and disabled population. I fully support the Department's efforts in this regard, and believe that funding for this effort is essential to providing protection to Alaska's elderly and disabled population.

Because a large portion of the services provided to elderly and disabled Alaskans are provided through in-home care, and because Alaska has one of the fastest growing elderly populations in the country, I believe it is imperative that efforts be undertaken to ensure the safety of recipients. One of the most fundamental and effective ways this can be achieved is by performing background checks on potential care givers. In addition to providing assurance that those in need will be protected, I believe this program will help ensure that the large percentage of Medicaid funds allocated to Alaska will be properly spent.

We appreciate and strongly support the Department's effort to be selected for this program, and its efforts in ensuring that Alaskans receive the full value of Medicaid and Medicare funds spent in our state. We have enjoyed working with the Department in this effort, and look forward to a continued close working relationship in the future.

Very truly yours,

TIMOTHY M. BURGESS
United States Attorney



State of Alaska

Department of Public Safety
Division of

Statewide Services

Frank H. Murkowski, Governor
William Tandeske, Commissioner

October 11, 2004

Richard Mandsager, Director
Division of Public Health
350 Main Street, Room 508
Juneau, Alaska 99801

Dear Mr. Mandsager,

Subject:

This letter is being provided to express the support of the Department of Health and Social Services (DHSS), Division of Public Health's (DPH's) proposal to establish a single administrative unit to oversee all aspects of the background check program across divisional and office boundaries within the DHSS.

Background:

The DHSS has determined that standards used to determine suitability for employment within the many programs they are required to license and/or monitor are dissimilar or not based in statute or regulation. Implementation of the DHSS/DPH proposal will result in the consistent screening of applicants to positions of authority over dependent citizens, and will consolidate the screening into one centralized location to further facilitate the consistent implementation of hiring standards.

While this program will certainly have a far-reaching effect on DHSS divisions, DPS is involved only to the extent of facilitating the efficient processing of fingerprint-based state and national criminal history background checks. Currently, background check results are being returned to over 450 businesses and government entities for employment or licensing purposes. Rolled inked or live scan fingerprint impressions are obtained by numerous private entities, and are submitted to the employer or licensing agency for submission to the Central Repository of Criminal History Records (the Criminal Records & Identification Bureau) at the Department of Public Safety. Due to time delays in the processing of these fingerprints, many agencies require preliminary name-based criminal history background checks of Alaska criminal history records.

Conclusion:

The Department of Public Safety supports DHSS/DPH's proposal to implement and consolidate an effective and efficient fingerprint-based criminal history records investigation and fitness determination program, as well as a number of enhancements to the current licensing and monitoring process. The Department of Public Safety will offer support and advice to the Division of Public Health (DPH) on the development and implementation of a system to streamline the fingerprint collection and fitness determination processes on prospective employees of long-term care facilities and providers who have direct access to patients. Technical staff will also assist in assuring that any live scan and card scan equipment obtained for this purpose meets state and national standards and technical specifications. The Department of Public Safety currently has the technology available to notify a licensing agency of a licensee's criminal justice contact subsequent to a fingerprint based background check, and will extend this technology to the Division of Public Health in support of this

Director's Office

5700 East Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0202 - Fax (907) 269-4543

program. Successful implementation of this program will ultimately improve the efficiency of both departments, and will improve the Department of Public Health's ability to make consistent, informed licensing decisions.

Sincerely,

A handwritten signature in cursive script that reads "David L. Schade".

David L. Schade
Director, Division of Statewide Services
Alaska Department of Public Safety

Director's Office

5700 East Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0202 - Fax (907) 269-4543



RECEIVED

OCT 25 2004

Division of Public Health

October 22, 2004

Don Brand
Division of Public Health
Dept of Health and Social Services
PO Box 110610
Juneau, AK 99811-0610

Dear Mr. Brand:

Job Ready, Inc. was begun in response to a need for employment services which were individualized to meet the needs of consumers. Job Ready began as a sole proprietorship then incorporated in 1996. Job Ready is a privately owned corporation. Job Ready, Inc. has provided community-based services in the Anchorage area since 1989. Initially, Job Ready provided employment services for individuals referred by the Division of Vocational Rehabilitation. In 1995, services were expanded to include individuals referred by Veteran's Affairs. In 1997, Job Ready, Inc. began providing personal care attendant services in Anchorage. In 1998, employment services were expanded to individuals who are welfare recipients. In addition, personal care attendant services were begun in Fairbanks in 1998. Job Ready, Inc. currently maintains offices in Anchorage, Wasilla, Fairbanks Delta Junction, Homer, Cordova, Soldotna and Seward. There are currently over 650 full and part time staff members making us the 30th largest private employer in the state of Alaska. In January, 2004 Job Ready, Inc. changed its name to READY CARE. The corporate name will continue to be Job Ready, Inc. doing business as: READY CARE. The name change reflects the broad spectrum of services we provide.

READY CARE has developed a reputation in the represented communities as an organization "who gets the job done." READY CARE works closely with the Division of Vocational Rehabilitation, Veterans Affairs, Division of Public Assistance, Division of Senior and Disability Services and local non-profits to provide a broad array of home and community-based services.

READY CARE'S mission is services are based on the values of Individualized Assistance, Honoring Personal Choice and Dealing with Issues with a Sense of Urgency.

READY CARE is aware of the Department's effort to obtain funding for a background check demonstration project.

There have been a number of situations where employees are employed by more than one agency and in those cases, multiple finger prints have

a division of Job Ready, Inc.

Anchorage
600 Barrow St., Ste. 404
Anchorage, AK 99501
Ph 907 258-3498
Fax 907 279-0171
800 918-3045

Mat-Su
165 E. Parks Highway, Ste. 104
Wasilla, AK 99654
Ph. 907 357-5827
Fax. 907 357 5828

Fairbanks
542 4th Avenue, Ste. 234
Fairbanks, AK 99701
Ph. 907 456-4524
Fax. 907 456-5524

Soldotna
44539 Sterling Hwy, Ste. 206
Soldotna, AK 99659
Ph 907 282-9400
Fax 907 282-9422

Seward
216 4th Avenue
PO Box 88
Seward, AK 99603
Ph 907 224-4424
Fax 907 224-4432

Homer
332 E Pioneer Avenue, Ste. 2
Homer, AK 99603
Ph 907 235-7683
Fax 907 235-7684

Cordova
PO Box 18
Cordova, AK 99574
Ph 907 424-7935
Fax 907 424-7936

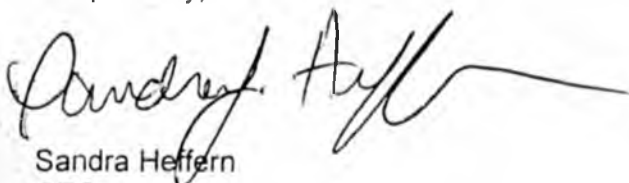
Delta Junction
2855 Alcan Highway
Delta Junction, AK 99737
Ph 907 895-3289
Fax 907 895 3290

Glennallen
Mile 111 Richardson Hwy
Glennallen, AK 99 588
Ph. 907 822-4211
Fax 907 822-4131

been required by current state regulation. This has caused a burden in some cases for not only the employee but also the client. It also has an increased cost for the employee and the agency. The possibility of a protocol that would be enacted that would require just one set of finger prints rather than multiple sets would streamline the process, and ease the current burden placed upon the Department of Public Safety, the employee and employer(s), not to mention savings in costs and time and effort.

READY CARE is certainly open to working with the Department in developing, and hopefully, implementing a consolidated and streamlined criminal history investigation and fitness determination program.

Respectfully,

A handwritten signature in black ink, appearing to read "Sandra Heffern", with a long horizontal flourish extending to the right.

Sandra Heffern
CEO

READY CARE, a Division of Job Ready, Inc.

Sitka Tribe of Alaska
Tribal Government for Sitka, Alaska



RECEIVED BY O.C.S.
2004 OCT 19 AM 11:44

October 11, 2004

To the Commissioner of Alaska Health and Social Services:

I am pleased to provide a letter of support for the proposed Federally Funded Criminal Background Check Pilot Project. As Sitka Tribe of Alaska provides an array of services to vulnerable persons, the use of criminal background checks is critical to assuring the safe and appropriate hire of employees in our community-based programs.

Successful funding of the project to consolidate and streamline the criminal investigation process is an important step in assuring quality services in Alaska's long-term care providers in Southeast Alaska and around the state. The project also involves standardizing criteria for identification and creating uniform procedures for information exchange, essential to assuring both timely and thorough information for providers.

An additional feature of the project involves standardized criteria for fitness to work in the field of long-term care. In addition to the criminal check, this additional evaluation will help assure that well-qualified staff is hired.

Given the nature of Alaska's transitory population and the fact that many long-term care employee applicants have been in the state only a short time, it is often difficult to obtain adequate reference information about a potential new hire. The proposed resource for criminal background checks and fitness evaluations will be extremely beneficial if not essential to abuse prevention. In addition, the project's proposal to provide a comprehensive abuse prevention training program that can be modified for Alaska's unique situation is commendable.

Over the years Sitka Tribe of Alaska has maintained a partnership with Office of Children's Services, and we have worked together in maintaining and improving standards, which promote quality services to our clients with a multitude of needs. I look forward to the implementation of the project, which should enhance our ability to recruit and hire the best employees to do the challenging work of long-term care.

Thank you for the opportunity to extend my wholehearted support for the Criminal Background Check Pilot Project.

Sincerely,

Louise Brady
Sitka Tribe of Alaska
Sitka, Alaska

NEW PROVISIONS IN SB 125 (LICENSING BILL)

<u>New under SB 125</u>	<u>Current law</u>
1. (Sec. 1) AS 47.32.010(b)(8) makes all hospices and hospice programs subject to the same licensing and administrative provisions.	1. For-profit and volunteer hospice programs treated differently under licensing scheme.
2. AS 47.32.030(a)(9) allows the department to waive the application requirements for an entity if it can show it has otherwise met them.	2. No like provision.
3. AS 47.32.100(b) permits the department to consolidate complaints that an entity has violated an applicable statute or regulation.	3. No provision for consolidating complaints.
4. AS 47.32.120(b) allows the department to seek license revocation when an entity denies access to the department that is statutorily allowed.	4. No provision allowing the department to seek revocation of license when denied access.
5. AS 47.32.130(a)(2) requires the department to include in its report of investigation or inspection any enforcement action it intends to take.	5. No provision requiring the department to include enforcement action in report of investigation or inspection.
6. AS 47.32.140(b) provides for a two-stage notice of immediate suspension or revocation of license.	6. No provision for a two-stage notice of immediate suspension or revocation.
7. AS 47.32.150(d)(7) allows the department to close an entity as an enforcement action regardless of whether the entity is licensed.	7. No provision allowing for closure of entities that are not licensed.

- | | |
|--|---|
| 8. AS 47.32.150(d) allows the department to include an entity on the centralized abuse registry as an enforcement action. | 8. No centralized abuse registry exists. |
| 9. AS 47.32.150(i) permits the department to allow an entity whose license has been revoked to seek licensure if the ownership, control, or management of the entity changes. | 9. No such provision. |
| 10. AS 47.32.160(a) requires the use of an administrative law judge for hearings on certain enforcement actions. | 10. Administrative law judge not required for any hearings. |
| 11. AS 47.32.160(b) makes the Administrative Procedures Act apply to hearings on certain types of sanctions, while providing for informal hearings for other types of sanctions. | 11. Administrative Procedures Act applies to all hearings, with the exception of hearings regarding nursing facilities. |
| 12. AS 47.32.170(c) makes an entity immune from liability for employment decisions based on information obtained under a criminal history check. | 12. No similar immunity provision. |
| 13. AS 47.32.190(a) makes a complaint, investigation, inspection, and records related to these things confidential. | 13. Only the identity of the complainant and the individual receiving services made confidential. |
| 14. AS 47.32.200 gives the public health and public assistance divisions access to any information compiled or retained by other divisions of the department. | 14. No similar access provision. |

- | | |
|--|--|
| 15. AS 47.32.210(c) requires an entity to notify the department within 24 hours of having knowledge of an <i>allegation</i> or <i>suspicion</i> of abuse, neglect, or misappropriation of money or property; it also requires the entity to conduct an investigation and make a written report to the department within five days. | 15. No similar provision for notification based on suspicion or allegation. |
| 16. (Sec. 17) AS 47.05.300 makes the background check and registry provisions applicable to entities that receive money from the state to provide services. | 16. Background check provisions not applicable to entities that are eligible to receive money from the state, only licensed or certified entities. |
| 17. AS 47.05.310(a) prohibits an individual from owning or being a principal, officer, director, member, or partner of an entity if the individual has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards of licensure or certification. | 17. No similar provision regarding individuals who own or have an ownership interest or control. |
| 18. AS 47.05.310(c)(2) prohibits the department from issuing or renewing a license or certification for an entity if the individual who is applying appears on the centralized abuse registry. | 18. No like provision. |

19. AS 47.05.310(d)(1) requires an entity to provide of release of information for a criminal history check for an individual who *intends* to become an owner, officer, director, partner, member, or principal.

19. No like provision.

20. AS 47.05.330 sets out the centralized registry, which will contain information regarding orders, judgments, and adjudications that an individual committed abuse, neglect, or exploitation of a child or vulnerable adult, and orders that an entity had its license revoked, suspended, conditioned, or denied.

20. No centralized abuse registry.

24G-1
4/4/2005
(9:34 AM)

AMENDMENT

OFFERED IN THE SENATE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE
TO: SB 125

BY _____

1 Page 2, lines 25 - 27:

2 Delete all material.

3

4 Page 15, line 20, following "center":

5 Insert "(A)"

6

7 Page 15, line 21:

8 Delete "(A)"

9 Insert "(i)"

10

11 Page 15, line 23:

12 Delete "(B)"

13 Insert "(ii)"

14

15 Page 15, line 24, following "hospitalization;":

16 Insert "and"

17

18 Page 15, following line 24:

19 Insert the following new material:

20 "(B) includes a facility that performs invasive diagnostic or

21 therapeutic services;"

1 Page 16, lines 16 - 17:

2 Delete all material.

3

4 Page 16, line 18:

5 Delete "(5)"

6 Insert "(4)"

7

8 Page 16, line 19:

9 Delete "(6)"

10 Insert "(5)"

11

12 Page 16, line 20:

13 Delete "(7)"

14 Insert "(6)"

15

16 Page 16, line 23:

17 Delete "(8)"

18 Insert "(7)"

19

20 Page 16, line 25:

21 Delete "(9)"

22 Insert "(8)"

23

24 Page 16, line 27:

25 Delete "(10)"

26 Insert "(9)"

27

28 Page 17, line 8:

29 Delete "(11)"

30 Insert "(10)"

31

1 Page 17, line 9:

2 Delete "(12)"

3 Insert "(11)"

4

5 Page 17, line 17:

6 Delete "(13)"

7 Insert "(12)"

8

9 Page 17, line 22:

10 Delete "(14)"

11 Insert "(13)"

12

13 Page 17, line 28:

14 Delete "(15)"

15 Insert "(14)"

16

17 Page 17, line 30:

18 Delete "(16)"

19 Insert "(15)"

20

21 Page 18, line 1:

22 Delete "(17)"

23 Insert "(16)"

24

25 Page 18, line 5:

26 Delete "(18)"

27 Insert "(17)"

28

29 Page 18, line 10:

30 Delete "(19)"

31 Insert "(18)"

1 Page 18, line 13:

2 Delete "(20)"

3 Insert "(19)"

4

5 Page 18, line 17:

6 Delete "(21)"

7 Insert "(20)"

8

9 Page 31, following line 9:

10 Insert a new bill section to read:

11 **** Sec. 29. AS 47.32.010 is amended by adding a new subsection to read:**

12 (c) The provisions of AS 47.05.300 - 47.05.390, regarding criminal history,
13 criminal history checks, criminal history use standards, and a centralized registry, apply
14 to entities listed in (b) of this section as provided in AS 47.05.300."

15

16 Renumber the following bill sections accordingly.

17

18 Page 32, line 23:

19 Following "APPLICABILITY":

20 Insert "REGARDING CERTAIN SECTIONS"

21

22 Following "by":

23 Insert "secs. 1 - 16, 18 - 28, 30 - 32, and 34 - 40 of"

24

25 Page 32, line 26:

26 Delete "secs. 1 and 17"

27 Insert "sec. 1"

28

29 Page 32, line 27:

30 Delete "or selection as any of the following:"

31 Insert "of"

- 1 Page 32, lines 28 - 29:
- 2 Delete all material.
- 3
- 4 Page 32, line 30:
- 5 Delete "(B)"
- 6
- 7 Delete "Act,"
- 8 Insert "Act; and"
- 9
- 10 Page 32, line 31:
- 11 Delete all material.
- 12
- 13 Page 33, line 2:
- 14 Delete "1 - 31 and 33 - 39"
- 15 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"
- 16
- 17 Page 33, line 3:
- 18 Delete "1 - 31 and 33 - 39"
- 19 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"
- 20
- 21 Page 33, line 5:
- 22 Delete "; and"
- 23 Insert "."
- 24
- 25 Page 33, lines 6 - 10:
- 26 Delete all material.
- 27
- 28 Page 33, line 13:
- 29 Delete "1 - 31 and 33 - 39"
- 30 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"
- 31

1 Page 33, lines 14 - 19:

2 Delete all material.

3

4 Page 33, following line 19:

5 Insert a new bill section to read:

6 *** Sec. 42. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 APPLICABILITY REGARDING SEC. 17 OF THIS ACT; DEPARTMENT ACTION.

9 (a) The changes made by sec. 17 of this Act apply to

10 (1) applications or requests submitted within the 30 days before, or submitted on
11 or after, the effective date of sec. 17 of this Act for initial licensure, certification, or other
12 approval or selection as any of the following:

13 (A) an entity or individual service provider that is subject to AS
14 47.05.300 - 47.05.390, enacted by sec. 17 of this Act;

15 (B) an entity listed in AS 47.32.010(b), enacted by sec. 1 of this Act, that
16 is not described in (A) of this paragraph; and

17 (2) applications or requests submitted within the 30 days before, or submitted on
18 or after, the effective date of sec. 17 of this Act, for renewal of a license, certification, or other
19 approval or selection for an entity or individual service provider that is subject to AS 47.05.300 -
20 47.05.390, enacted by sec. 17 of this Act.

21 (b) The Department of Health and Social Services may not make a final determination
22 regarding an application or request described in (a) of this section earlier than the effective date
23 of sec. 17 of this Act.

24 (c) In this section,

25 (1) "entity" includes an entity subject to AS 47.05.300 - 47.05.390, enacted by
26 sec. 17 of this Act, and an entity listed in AS 47.32.010(b), enacted by sec. 1 of this Act, that is
27 not subject to AS 47.05.300 - 47.05.390, enacted by sec. 17 of this Act;

28 (2) "individual service provider" has the meaning given in AS 47.05.390, enacted
29 by sec. 17 of this Act."

30

31 Renumber the following sections accordingly.

1 Page 33, line 25:

2 Delete "1 - 31 and 33 - 39"

3 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

4

5 Page 34, line 1:

6 Delete "1 - 31 and 33 - 39"

7 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

8

9 Page 34, line 18:

10 Delete "AND OTHER REQUESTS"

11

12 Page 34, line 21:

13 Delete "1 - 31 and 33 - 39"

14 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

15

16 Page 34, lines 22 - 23:

17 Delete "1 - 31 and 33 - 39"

18 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

19

20 Page 34, line 25:

21 Delete "1 - 31 and 33 - 39"

22 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

23

24 Page 34, line 30:

25 Delete "1 - 31 and 33 - 39"

26 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

27

28 Page 35, line 2:

29 Delete "1 - 31 and 33 - 39"

30 Insert : "1 - 16, 18 - 28, 30 - 32, and 34 - 40"

31

1 Page 35, lines 11 - 22:

2 Delete all material.

3

4 Page 35, line 23:

5 Delete "(f)"

6 Insert "(e)"

7

8 Page 35, following line 25:

9 Insert a new bill section to read:

10 **** Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **TRANSITION: PENDING APPLICATIONS AND OTHER REQUESTS REGARDING**
13 **SEC. 17 OF THIS ACT.** (a) An application or other request for licensure, certification, or other
14 approval or selection as an entity or individual service provider that would be subject to
15 AS 47.05.300 - 47.05.390, enacted by sec. 17 of this Act, that was submitted more than 30 days
16 before the effective date of sec. 17 of this Act and is pending department action on the effective
17 date of sec. 17 of this Act shall continue to be processed, and either granted or denied, by the
18 department under the applicable statutes and regulations that were in effect on the day before the
19 effective date of sec. 17 of this Act. In this subsection,

20 (1) "entity" means an entity that would be subject to AS 47.05.300 - 47.05.390,
21 enacted by sec. 17 of this Act;

22 (2) "individual service provider" has the meaning given in AS 47.05.390, enacted
23 by sec. 17 of this Act.

24 (b) In this section,

25 (1) "department" means the Department of Health and Social Services;

26 (2) "license" includes a renewed license."
27

28 Renumber the following bill sections accordingly.

29

30 Page 35, line 28, following "REGULATIONS.":

31 Insert "(a)"

1 Page 35, line 29, following "implement":

2 Insert "secs. 1 - 16, 18 - 28, and 30 - 40 of"

3

4 Page 35, following line 31:

5 Insert the following new material:

6 "(b) The Department of Health and Social Services may proceed to adopt regulations
7 necessary to implement secs. 17 and 29 of this Act. The regulations take effect under AS 44.62.

8 * Sec. 47. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS. The lieutenant
11 governor shall certify to the revisor of statutes the effective date of the regulations adopted by the
12 Department of Health and Social Services under sec. 46(b) of this Act."

13

14 Renumber the following bill sections accordingly.

15

16 Page 36, line 1:

17 Delete "40, 42, and 43"

18 Insert "41, 42, and 44 - 47"

19

20 Page 36, line 3:

21 Delete "32"

22 Insert "33"

23

24 Page 36, following line 3:

25 Insert a new bill section to read:

26 "** Sec. 50. Sections 17 and 29 of this Act take effect

27 (1) on the effective date of the regulations adopted by the Department of Health
28 and Social Services under sec. 46(b) of this Act implementing sec. 17 of this Act, or March 1,
29 2006, whichever is earlier; but

30 (2) no earlier than July 2, 2005."

31

1 Renumber the remaining bill section accordingly.

2

3 Page 36, line 4:

4 Delete "44 and 45"

5 Insert "48 - 50"

24G-1
4/4/2005
(4:04 PM)

AMENDMENT

OFFERED IN THE SENATE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE
TO: SB 125

BY _____

- 1 Page 9, line 24:
- 2 Delete "(e)"
- 3 Insert "(f)"
- 4
- 5 Page 9, line 28:
- 6 Delete "(e)"
- 7 Insert "(f)"
- 8
- 9 Page 10, line 10:
- 10 Delete "(e)"
- 11 Insert "(f)"
- 12
- 13 Page 10, line 18:
- 14 Delete "(e)"
- 15 Insert "(f)"
- 16
- 17 Page 10, line 27:
- 18 Delete "(e)"
- 19 Insert "(f)"
- 20
- 21 Page 11, following line 25:

1 Insert the following new material:

2 "(e) The department may not take action under (d)(9) of this section unless the
3 commissioner has reasonable cause to believe that continued management by the entity
4 while the entity is attempting to cure a violation would be injurious to the health, safety,
5 or welfare of individuals receiving services from the entity."

6

7 Page 11, line 26:

8 Delete "(e)"

9 Insert "(f)"

10

11 Page 12, line 1:

12 Delete "(f)"

13 Insert "(g)"

14

15 Page 12, line 2:

16 Delete "(e)"

17 Insert "(f)"

18

19 Page 12, line 6:

20 Delete "(g)"

21 Insert "(h)"

22

23 Delete "(e)"

24 Insert "(f)"

25

26 Page 12, line 9:

27 Delete "(f)"

28 Insert "(g)"

29

30 Page 12, line 12:

31 Delete "(f)"

1 Insert "(g)"
2
3 Page 12, line 13:
4 Delete "(h)"
5 Insert "(i)"
6
7 Delete "(f)"
8 Insert "(g)"
9
10 Page 12, line 15:
11 Delete "(e)"
12 Insert "(f)"
13
14 Page 12, line 17:
15 Delete "(i)"
16 Insert "(j)"
17
18 Delete "(e)"
19 Insert "(f)"
20
21 Page 12, line 25:
22 Delete "(j)"
23 Insert "(k)"
24
25 Page 13, line 1:
26 Delete "does not apply"
27 Insert "applies"
28
29 Page 13, line 1, following "hearing.", through line 3:
30 Delete all material.
31

1 Page 13, line 8, following "AS 44.62":

2 Insert "or AS 44.64"

3

4 Page 14, line 20:

5 Delete "47.32.150(h)"

6 Insert "47.32.150(i)"

7

8 Page 24, following line 5:

9 Insert a new bill section to read:

10 **** Sec. 15. AS 44.64.030(a)(33) is amended to read:**

11 **(33) AS 47.32 (Department of Health and Social Services Licensing)**

12 **[AS 47.33 (ASSISTED LIVING HOMES)];"**

13

14 Renumber the following bill sections accordingly.

15

16 Page 32, following line 11:

17 Insert a new bill section to read:

18 **** Sec. 38. AS 44.64.030(a)(15), 44.64.030(a)(16), and 44.64.030(a)(34) are repealed."**

19

20 Renumber the following bill sections accordingly.

21

22 Page 32, line 26:

23 Delete "17"

24 Insert "18"

25

26 Page 32, line 29:

27 Delete "17"

28 Insert "18"

29

30 Page 33, line 2:

31 Delete "1 - 31 and 33 - 39"

1 Insert "1 - 32 and 34 - 41"

2

3 Page 33, line 3:

4 Delete "1 - 31 and 33 - 39"

5 Insert "1 - 32 and 34 - 41"

6

7 Page 33, line 7:

8 Delete "17"

9 Insert "18"

10

11 Page 33, line 9:

12 Delete "17"

13 Insert "18"

14

15 Page 33, line 13:

16 Delete "1 - 31 and 33 - 39"

17 Insert "1 - 32 and 34 - 41"

18

19 Page 33, line 16:

20 Delete "17"

21 Insert "18"

22

23 Page 33, line 17:

24 Delete "17"

25 Insert "18"

26

27 Page 33, line 19:

28 Delete "17"

29 Insert "18"

30

31 Page 33, line 25:

- 1 Delete "1 - 31 and 33 - 39"
- 2 Insert "1 - 32 and 34 - 41"
- 3
- 4 Page 34, line 1:
 - 5 Delete "1 - 31 and 33 - 39"
 - 6 Insert "1 - 32 and 34 - 41"
 - 7
- 8 Page 34, line 21:
 - 9 Delete "1 - 31 and 33 - 39"
 - 10 Insert "1 - 32 and 34 - 41"
 - 11
- 12 Page 34, lines 22 - 23:
 - 13 Delete "1 - 31 and 33 - 39"
 - 14 Insert "1 - 32 and 34 - 41"
 - 15
- 16 Page 34, line 25:
 - 17 Delete "1 - 31 and 33 - 39"
 - 18 Insert "1 - 32 and 34 - 41"
 - 19
- 20 Page 34, line 30:
 - 21 Delete "1 - 31 and 33 - 39"
 - 22 Insert "1 - 32 and 34 - 41"
 - 23
- 24 Page 35, line 2:
 - 25 Delete "1 - 31 and 33 - 39"
 - 26 Insert "1 - 32 and 34 - 41"
 - 27
- 28 Page 35, line 13:
 - 29 Delete "17"
 - 30 Insert "18"
 - 31

1 Page 35, line 14:

2 Delete "17"

3 Insert "18"

4

5 Page 35, line 15:

6 Delete "17"

7 Insert "18"

8

9 Page 35, line 17:

10 Delete "17"

11 Insert "18"

12

13 Page 35, line 19:

14 Delete "17"

15 Insert "18"

16

17 Page 35, line 22:

18 Delete "17"

19 Insert "18"

20

21 Page 36, line 1:

22 Delete "40, 42, and 43"

23 Insert "42, 44, and 45"

24

25 Page 36, line 3:

26 Delete "32"

27 Insert "33"

28

29 Page 36, line 4:

30 Delete "44 and 45"

31 Insert "46 and 47"

**FREQUENTLY ASKED QUESTIONS RE: BACKGROUND CHECKS
REGISTRIES AND OTHER DATABASES**

Q1. What is the difference between a criminal and civil background check?

A1. Fingerprint capture and background checks that are conducted by state or local law enforcement agencies (sheriff's offices, police departments, state police, correctional facilities, courts), or federal agencies (FBI, Drug Enforcement Agency, Bureau of Alcohol, Tobacco, Firearms and Explosives) as the result of illegal or alleged illegal activity, are considered to be "criminal" background checks.

Background checks and fingerprint capture related to employment, licensing, adoption, name changes, and other non-criminal justice purposes are considered to be "civil" background checks.

Q2. Is it possible for a state to conduct a background check only using the potential employee's name and social security number?

A2. No. Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), PL 108-173, requires both the state criminal history record search and the FBI IAFIS record search to be conducted utilizing a 10 rolled fingerprint-based search. Criminal history background checks based only on non-unique identifiers (e.g., name, social security number, race, sex, date of birth) are known to result in a significant number of errors, producing both "false positive" and "false negative" results.

A false positive occurs when individuals are erroneously associated with criminal records that actually relate to other individuals with similar names and other identifiers. A false negative occurs when a name check fails to find the criminal records of an individual who provide inaccurate identification information either at the time of the arrest or when applying for a job. False negatives may also be attributed to misspellings or other such errors.

The state criminal history records search must access the state's repository of criminal justice information by utilizing a 10-rolled fingerprint check. This may be done either electronically (e.g., live-scan), by facsimile transmission or digitized paper fingerprint card (e.g., dead- or card-scan) or by mail or courier delivery of paper fingerprint cards (e.g., via hard card).

Q3. Who is a direct access employee? What employee categories are subject to the background check requirements?

A3. Section 307 of the MMA defines a direct access client employee as, "Any individual (other than a volunteer) that has access to a client or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by the state." Alaska proposes to expand this category to develop through the regulation process the ability to include volunteers who have unsupervised direct access to vulnerable populations.

Examples of direct access client employee categories might include physicians, psychiatrists, licensed practical nurses, registered nurses, social workers, therapists, nurse aides, home health aides, personal care workers, feeding assistants, and support staff such as house keepers, book keepers, etc., who have direct access to our clients or client belongings.

Q4. What are the parameters of the background check?

- A4.** The background check, as required under section 307 of the MMA, includes a search of:
- Any available registries (including the state's nurse aide registry) that would likely contain disqualifying information about the applicant; and
 - State criminal history record search through a 10 rolled fingerprint-based check, utilizing State criminal records; and
 - National criminal history record search through a 10 rolled fingerprint-based check of the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation (FBI)

Q5. Can a background check be used for multiple providers? For example, if a nurse aide works at two different nursing homes, can the same background check be used for both providers?

- A5.** Each covered provider must conduct a new background check on each prospective direct client access employee. If the state agency is completing the state and IAFIS criminal history record search, the state may develop procedures when the same person applies concurrently for employment with multiple long-term care providers. This would allow the background check process and the fitness determination response to be coordinated among multiple providers, eliminating the need for the applicant to provide multiple sets of fingerprints and run separate background check searches.

However, this does not mean that a background check conducted on a direct client access employee for one provider may subsequently be used when the same individual seeks employment with another provider in the future, regardless of the length of time that has passed. Only if employment at multiple providers is sought at the same time, may the background check be used for multiple providers.

Alaska proposes to establish a procedure to retain the fingerprint records, thus eliminating the need for multiple fingerprint captures.

Q6. Alaska proposes to implement a "rap back" or flagging process. Do we have to conduct a full background check each time a prospective direct client access employee is hired?

- A6.** When a state establishes a "rap back" or flagging process, the direct client access employee's civil fingerprints remain on file with the state law enforcement agency, and the designated state agency will be notified if a state criminal history record is established for the individual, or any time new information is added to an existing state criminal history record. If the state agency is making the fitness determination, it will only be necessary to search:

- Available registries, including the state nurse aide registry and other nurse aide registries, if appropriate
- Other databases, as determined by the state, and
- FBI's IAFIS system.

Once again, the check may be terminated at any stage disqualifying information is obtained.

Q7. Are states required to check the state nurse aide registry for all prospective employees, including nurses, physical therapists and physicians?

A7. Section 307 of the MMA requires facilities or providers to, "check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider." The state nurse aide registry must always be checked for all prospective nurse aide applicants, as a registry "likely to contain disqualifying information."

Q8. Are pilot states required to check other state nurse aide registries?

A8. The facility or provider is required to, "check any available registries that would be likely to contain disqualifying information about a prospective employee."

Q9. How long does the nurse aide registry maintain the record of an aide who has a substantiated finding?

A9. Federal regulations require state nurse aide registries to permanently maintain the name of a nurse aide who has a substantiated finding of abuse, neglect or misappropriation of property. A limited exception exists for substantiated findings of neglect. State agencies must establish a process for a nurse aide to petition the state to remove his or her name from the nurse aide registry. The state may remove the aide's name from the registry, if the state determined the employment and personal history of the aide does not reflect a pattern of abusive behavior or neglect, and the neglect involved in the original finding was a singular occurrence.

Q10. What national databases could be searched under the background check requirements?

A10. In addition to the state nurse aide registry check, it may be appropriate to check other national databases. Other national databases include the Medicare Exclusion Database (MED), Fraud Investigation Database (FID), the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB). It is anticipated that these databases will be checked in limited circumstances, as appropriate for each employee category.

Q11. What is the difference between "rolled" fingerprints and "flat" fingerprints?

A11. "Rolled" fingerprint impressions are made by rolling the thumb or finger from nail edge to nail edge. Rolled impressions give all the needed ridge characteristics for accurate classification.

"Flat" fingerprint impressions are made simply by pressing the four fingers on a fingerprint card at a slight angle. Thumbs are then printed by inking and pressing them on the block next to the plain finger impressions. While flat impressions may sometimes show characteristics that are distorted in rolled prints, they do not provide all the needed ridge characteristics currently required by state criminal history record repositories and the FBI's IAFIS, for the most accurate classification.

National Criminal History Check

Q12. How is the national criminal history check completed?

A12. The national criminal history check is completed by conducting a 10-rolled fingerprint-based search of the Integrated Automated Fingerprint Identification System (IAFIS).

The IAFIS is a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division. The IAFIS provides automated fingerprint search capabilities, latent print searching capability, electronic image storage, and electronic exchange of fingerprints and responses, 24 hours a day, 365 days a year. The IAFIS contains the fingerprints and corresponding criminal history information for more than 48 million persons whose records are included in the Criminal Master File. The fingerprints and corresponding criminal history information are submitted voluntarily by local, state, and federal law enforcement agencies.

Q13. Does the FBI maintain all fingerprint records submitted to IAFIS?

A13. No. The FBI does not maintain a record of IAFIS fingerprint submissions conducted for civil purposes (e.g., employment, licensing). However, the FBI permanently maintains fingerprint records submitted by law enforcement agencies for criminal justice purposes.

Q14. What is the expected response time for fingerprint submissions to the FBI?

A14. If fingerprints are submitted electronically (via live-scan or card-scan technology), the expected response time for ten-print fingerprint submissions is within 24 hours for civil purposes. **Alaska will be submitting its fingerprint submissions electronically.**

If fingerprints are submitted in hard copy format, the expected FBI/CJIS processing time is approximately two weeks from the date on which CJIS receives the submission to the time a response is sent to the requesting entity.

Q15. What is a Rap Sheet?

A15. An FBI Identification Record, often referred to as a Criminal History Record or Rap Sheet, is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests. The Identification Record includes the name of the agency that submitted the fingerprints to the FBI, the date of arrest, the arrest charge, and

the disposition of the arrest, if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports and other reports submitted by agencies having criminal justice responsibilities.

Dispositions include adjudications that have been modified or dropped and the findings of a court. Dispositions are submitted by criminal justice agencies, which include State Identification Bureaus, arresting agencies (sheriff's offices, police departments, state police, correctional facilities) courts, and federal agencies (FBI, Drug Enforcement Agency, Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Marshals, Immigration and Naturalization Services).

Q16. Do states have to wait for the results from the state criminal records check before submitting fingerprints to the FBI?

A16. No. States do not have to wait for the results of one check (e.g., the state registries check or the state criminal history records check) to be complete before moving on to the next level. However, states may establish procedures to allow for the background check to be terminated at any stage at which disqualifying information is obtained about a prospective direct patient access employee.

Q17. Are states required to submit fingerprints of all prospective direct client access employees to the FBI, even if disqualifying information is found at the state level?

A17. No. Section 307(b)(2)(B)(1) of the MMA, Elimination of Unnecessary Checks, stipulates that states must establish a procedure that permits a care facility or provider to terminate the background check at any stage at which disqualifying information regarding a prospective direct patient access employee is obtained (e.g., nurse aide registries, employee misconduct registries, OIG Exclusions List, other databases, state criminal history record, FBI IAFIS record). Therefore, it is not necessary to submit all fingerprints to the FBI, if disqualifying information is found earlier in the background check process.

Q18. Must a state agency use the FBI IAFIS response only to make a fitness determination for care employees, pursuant to section 307 of the MMA, or can the information be shared with other state agencies for other purposes? This information would be useful for other state licensing or employment decisions (e.g., teachers, etc.).

A18. A state agency that has requested and received the FBI's response for a long term care applicant, pursuant to section 307 of the MMA, may share the results with other state agencies to assist in making licensing and/or employment decisions **only if:**

(a) those are approved purposes pursuant to federal law (including state statutes enacted pursuant to Public Law 92-544), and

(b) both reasons are indicated on the fingerprint submission.

Q19. Can a state agency that uses the FBI IAFIS information to make a fitness determination for long term care employees, pursuant to section 307 of the MMA, provide a determination to multiple facilities or providers?

A19: Upon the direction of the applicant, concurrently with the fingerprint submissions or no later than the state's receipt of the FBI's response, a state agency may disseminate either the determination or the FBI's Criminal History Record Information (CHRI), depending on the jurisdiction, to multiple facilities/providers.

Q20. Can facilities or providers share their FBI background check results with other health care employers as long as the information is used to make a fitness determination?

A20. No. Under federal law, an employer may only use the results of the FBI criminal history record check (whether a state's determination or the CHRI) for its own purposes and may not share the information with another employer.

Disqualifying Information & Fitness Determination

Q21. What is a fitness determination?

A21. A fitness determination is the review of the background check results (i.e., available registries and other databases, state and national criminal history search), and the decision as to whether a prospective hire is eligible to work as a direct client access employee of a licensed facility or provider, based on the absence of any disqualifying information, as determined by the state.

Q22. What criteria should be used to make the fitness determination?

A22. Section 307 of the MMA stipulates that a health care facility or provider may not knowingly employ any direct client access employee who has any "disqualifying information."

"Disqualifying information" is defined as a conviction for a relevant crime or a finding of patient or resident abuse. The term "conviction for a relevant crime" means any Federal or State criminal conviction for any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7). The disqualifying offenses, as required under section 307 of the MMA include the following:

- **Conviction of program-related crimes**
 - Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII [42 USCS § 1395 et. seq] or under any State health care program.

- **Conviction relating to patient abuse**
 - Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

- **Felony conviction related to health care fraud**
 - Any individual or entity that has been convicted for an offense which occurred after the date of the enactment (August 21, 1996) of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

- **Felony conviction related to controlled substance**
 - Any individual or entity that has been convicted for an offense which occurred after the date of the enactment (August 21, 1996) of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

- **Finding of patient or resident abuse.**
 - Any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed (A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; and (B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.

Q23. What does "conviction for a relevant crime" mean?

A23. This means any Federal or state criminal conviction for any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7); and other such types of offenses a State may specify for purposes of conducting the background check process in that State.

The offenses described in section 1128(a) of the Social Security Act are convictions for criminal offenses related to the delivery of an item or service under the Medicare program or any state health care program (e.g., Medicaid), convictions related to patient abuse, felony convictions relating to health care fraud and felony convictions relating to controlled substances.

Q24. What is the definition of "conviction?"

A24. A conviction is the final legal judgment entered after a finding of guilt. States determine what constitutes a conviction for the purpose of their background check process (including the effect of post-conviction relief), in accordance with state law.

Q25. What is a "substantiated finding?"

A25. A substantiated finding is the final decision by a governmental agency. After completing an investigation, a governmental agency makes a decision whether an allegation, based on the preponderance of evidence, did in fact, occur. If so, the allegation results in a "substantiated finding." Due process is provided to the accused in the form of a fair hearing. Examples of substantiated findings by governmental agencies include adult abuse and/or neglect, child abuse and/or neglect, public assistance fraud, etc.

Q26. Can states include additional crimes or substantiated findings to the list provided in section 307 of the MMA?

A26. Yes. States can include other disqualifying crimes for their specific program's definition of "disqualifying information," in addition to the convictions listed in section 307 of the MMA.

Appeals Process

Q27. Will Alaska establish an appeal process as part of the state's background check program?

A27. Yes. Section 307 of the MMA requires each state to develop a process in which a prospective applicant may file an appeal regarding the results of the background check.

A prospective employee may choose to appeal the results of a background check for various reasons. These reasons include, but are not limited to:

- Inaccurate information obtained through the background check process (registries, state criminal history records, or national criminal history records).
- Inaccurate interpretation (by state agency or provider) of the background check results obtained.
- Disagreement with the state agency or provider fitness determination.

Q28. Why should the state need to establish the appeal process if the request is due to inaccurate FBI results?

A28. Because applicants who are denied employment on the basis of a background check may file an appeal for multiple reasons, the state must ensure the overall process is coordinated among the various agencies involved and that the applicant is afforded due process. While some information may be obtained from the search of national criminal records, it is at the state level where the interpretation of that information and fitness determination occurs. For example, if a fitness determination is made based on

incomplete information (e.g., arrest information with missing disposition) the state will have policies and procedures in place for tracking down the missing disposition.

Q29. Scenario: An applicant is disqualified based on disqualifying information obtained from a registry and/or databases search and the background check is terminated. The applicant subsequently appeals the decision and the disqualification is overturned. Should the background check resume from the point at which it was terminated, or is the applicant simply deemed qualified at that point?

A29. The background check would resume from the point at which it was terminated. An applicant would need to pass through the entire background check process before being deemed qualified to work as a direct patient access employee. It is possible that some additional disqualifying information may be discovered further on in the process.

SB125

How an entry is made in the Misconduct Registry

- Everything begins with a "report of harm". It can originate from a resident, another employee, a family member, or an officer or administrator of a facility. Reports are made to the Certification and Licensing (C&L) investigative unit. The owner or administrator of the facility may also choose to take action (i.e., terminate the employee, file a report with the police, or take other punitive action.) However, as a condition of licensure, the owner/administrator must report the incident to C&L investigative unit.
- C&L will then conduct the same level of investigation as would be done for a report of abuse, neglect or misconduct involving a Certified Nurse Aide:
 - C&L will first determine how to proceed with the "report of harm." It may require an on-site review, but not always.
 - The C&L investigative unit conducts the caregiver misconduct investigation in the same manner and fashion as is currently performed on a report of harm concerning a Certified Nurse Aide: either a determination that abuse, neglect or misconduct has occurred, or a determination that the report of harm cannot be substantiated.
- If it is a "substantiated finding", the facility administrator, the complainant, and the subject of the investigation are notified in writing. At this point, the subject must be immediately terminated if still employed. The subject is informed that he/she has to appeal the substantiated finding within a specific time frame (15 or 30 days, to be determined in regulation.) This is an administrative hearing under the existing statutory definition of hearings.
- If the subject declines to appeal, the finding is immediately entered into the Employee Misconduct Registry. Entry consists of "identifying information" (i.e., name, DOB and/or SSN) and an indication of "substantiated finding" (as would be done in the Certified Nurse Aide Registry if the subject is a certified nurse aide).
- If the subject chooses to have a hearing, until the hearing is completed he/she is prohibited from employment as a care provider, but entry is not made on the Employee Misconduct Registry.
- At the completion of the hearing, if the finding is upheld, the subject is then entered into the registry and is permanently barred from employment in the caregiver field. If the finding is not upheld, the subject may reapply for employment as a caregiver. No entry will be made in the Employee Misconduct Registry.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

April 12, 2005

SUBJECT: CSSB 125() (Work Order No. 24-GS1016G)

TO: Senator Fred Dyson
Chair of Senate Health, Education and Social Services Committee
Attn: Jason

FROM: Jean M. Mischel
Legislative Counsel 

I have the following comments about the CS.

1. The sections were reordered from the original Governor's bill to put them in numerical order. This is the normal style. While we sometimes make exceptions for bills that are nothing but a large section of new material and conforming changes, in this case there were two sections of new material --- AS 47.05.300 - 47.05.390 and AS 47.32 --- so the exception did not apply.
2. Please review secs. 11 and 13. In both sections there are references to a "child adoption agency" licensed under AS 47.35. However, current AS 47.35 doesn't mention "child adoption" agencies per se. Should these sections remain as drafted, or should the reference to AS 47.35 be deleted and secs. 11 and 13 be added to the list at sec. 53(b)?
3. Please compare sec. 14 (where the reference is merely changed) and sec. 43 (where the exclusion of AS 14.43.148(h)(1)(B)(iii) is completely repealed.) Since these are similar provisions, we wanted to make sure the different treatment was deliberate.
4. Section 34. I could not find in AS 47.32 any section giving a right to appeal to the superior court, nor could I find any provision making AS 47.32. subject to AS 44.62. I suspect that a lack of a right to judicial appeal would violate the Due Process Clause.
5. Section 42. This has a delayed effective date until July 1, 2006, which means that current AS 47.80.140 will remain in effect, even though it refers to law that is being repealed (AS 18.20.010 - 18.20.130, AS 47.33, and AS 47.35.010 - 47.35.010.) Will this work? Also note that we left sec. 42 out of the spanned references in secs. 51 and 53, because sec. 42 has a different effective date than the other sections listed.
6. Section 52. Should this also refer to sec. 35 (which adds AS 47.32.010(c))? Both sec. 19 and sec. 35 have the same delayed effective date.

Senator Fred Dyson
April 12, 2005
Page 2

7. Section 53. Subsection (b) was our way of dealing with the fact that the law would change, but the old licenses would still be valid for a while. Please review the bill to see if you think additional bill sections should be added to sec. 53(b). I left out AS 44.64.030(a)(36), added by sec. 16, since sec. 53(c) seemed to indicate that old hearing procedures would still be used, but this may have been wrong.

Subsection (d) may raise due process issues if the current licenses are due to expire after June 30, 2006. I am not sure how "vested" the rights to these licenses are, but thought I should at least raise the issue.

If I can be of assistance, please let me know.

JMM:med
05-251.med

Enclosure

24-GS1016G
Mischel
4/12/05

CS FOR SENATE BILL NO. 125()

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

BY

**Offered:
Refe:red:**

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensing, regulation, enforcement, and appeal rights of
2 ambulatory surgical centers, assisted living homes, child care facilities, child placement
3 agencies, foster homes, free-standing birth centers, home health agencies, hospices or
4 agencies providing hospice services or operating hospice programs, hospitals,
5 intermediate care facilities for the mentally retarded, maternity homes, nursing
6 facilities, residential child care facilities, residential psychiatric treatment centers,
7 runaway shelters, and rural health clinics; relating to criminal history requirements,
8 and a registry, regarding certain licenses, certifications, approvals, and authorizations
9 by the Department of Health and Social Services; making conforming amendments; and
10 providing for an effective date."

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

12 * Section 1. AS 09.55.560(1) is amended to read:

1 (1) "health care provider" means an acupuncturist licensed under
2 AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a
3 chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a
4 dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
5 optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an
6 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
7 physical therapist or occupational therapist licensed under AS 08.84; a physician or
8 physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a
9 psychological associate licensed under AS 08.86; a hospital as defined in
10 AS 47.32.900 [AS 18.20.130], including a governmentally owned or operated
11 hospital; an employee of a health care provider acting within the course and scope of
12 employment; an ambulatory surgical facility and other organizations whose primary
13 purpose is the delivery of health care, including a health maintenance organization,
14 individual practice association, integrated delivery system, preferred provider
15 organization or arrangement, and a physical hospital organization;

16 * Sec. 2. AS 09.65.095(b)(2) is amended to read:

17 (2) "hospital" means a hospital as defined in AS 47.32.900
18 [AS 18.20.130], including a governmentally owned or operated hospital.

19 * Sec. 3. AS 09.65.096(d)(2) is amended to read:

20 (2) "hospital" has the meaning given in AS 47.32.900 [AS 18.20.130]
21 and includes a governmentally owned or operated hospital;

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

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

25 (1) possesses a firearm during the commission of an offense under
26 AS 11.71.010 - 11.71.040;

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

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

1 (B) an entity [A CENTER], other than a private residence,
2 licensed as a child care facility under AS 47.32 [AS 47.33 OR AS 47.35] or
3 recognized by the federal government for the care of children; or

4 (3) discharges a firearm at or in the direction of

5 (A) a building with reckless disregard for a risk of physical
6 injury to a person; or

7 (B) a dwelling.

8 * Sec. 5. AS 11.61.220(a) is amended to read:

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

11 (1) is 21 years of age or older and knowingly possesses a deadly
12 weapon, other than an ordinary pocket knife or a defensive weapon,

13 (A) that is concealed on the person, and, when contacted by a
14 peace officer, the person fails to

15 (i) immediately inform the peace officer of that
16 possession; or

17 (ii) allow the peace officer to secure the deadly weapon,
18 or fails to secure the weapon at the direction of the peace officer,
19 during the duration of the contact;

20 (B) that is concealed on the person within the residence of
21 another person unless the person has first obtained the express permission of
22 an adult residing there to bring a concealed deadly weapon within the
23 residence;

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

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

28 (4) knowingly possesses a firearm

29 (A) within the grounds of or on a parking lot immediately
30 adjacent to an entity [A CENTER], other than a private residence, licensed as
31 a child care facility under AS 47.32 [AS 47.33 OR AS 47.35] or recognized

1 by the federal government for the care of children;

2 (B) within a

3 (i) courtroom or office of the Alaska Court System, or

4 (ii) courthouse that is occupied only by the Alaska

5 Court System and other justice-related agencies; or

6 (C) within a domestic violence or sexual assault shelter that
7 receives funding from the state;

8 (5) possesses or transports a switchblade or a gravity knife; or

9 (6) is less than 21 years of age and knowingly possesses a deadly
10 weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed
11 on the person.

12 * Sec. 6. AS 18.07.031(b) is amended to read:

13 (b) Notwithstanding the expenditure threshold in (a) of this section, a person
14 may not convert a building or part of a building to a nursing home that requires
15 licensure as a nursing facility under AS 47.32 [AS 18.20.020] unless authorized
16 under the terms of a certificate of need issued by the department.

17 * Sec. 7. AS 18.20.130 is amended to read:

18 **Sec. 18.20.130. Definitions.** In AS 18.20.075 - 18.20.130 [AS 18.20.010 -
19 18.20.130],

20 (1) "department" means the Department of Health and Social Services;

21 (2) "governmental unit" means the state, a municipality, or other
22 political subdivision, or a department, division, board, or other agency of any of them;

23 (3) "hospital" means an institution or establishment, public or private,
24 devoted primarily to providing diagnosis, treatment, or care over a continuous period
25 of 24 hours each day for two or more nonrelated individuals suffering from illness,
26 physical or mental disease, injury or deformity, or any other condition for which
27 medical or surgical services would be appropriate.

28 * Sec. 8. AS 18.20.310(a) is amended to read:

29 (a) If the department finds that a nursing facility, or a partner, officer, director,
30 owner of five percent or more of the nursing facility's assets, or managing employee of
31 the nursing facility substantially failed or refused to comply with AS 08.68.340 -

1 08.68.390, AS 08.70, AS 18.20.075 - 18.20.085 [AS 18.20.010 - 18.20.130],
2 AS 47.07, or with a regulation adopted under any of those statutes, or, for a nursing
3 facility that provides Medicaid services under AS 47.07, failed or refused to comply
4 with the Medicaid requirements of 42 U.S.C. 1396r (Title XIX of the Social Security
5 Act, as amended) or a regulation adopted under that statute, the department may take
6 the following actions:

7 (1) ban the admission of new residents to the nursing facility;

8 (2) as provided in AS 18.20.320, deny payment under AS 47.07 and
9 AS 47.25.120 - 47.25.300 for any Medicaid or general relief-medical resident admitted
10 to the nursing facility after notice by the department of denial of payment; residents
11 who are eligible for Medicaid or general relief-medical are not responsible for
12 payment when the department takes action under this paragraph;

13 (3) assess a civil fine in accordance with AS 18.20.340;

14 (4) suspend or terminate the nursing facility's participation in the
15 Medicaid program;

16 (5) suspend, revoke, or refuse to renew the nursing facility's license
17 issued under this chapter;

18 (6) seek an appointment of temporary administration as provided in
19 AS 18.20.360 or of a receiver under AS 18.20.370;

20 (7) in case of an emergency, seek an order from the court either to
21 close the nursing facility or to transfer residents from that facility, or both.

22 * Sec. 9. AS 18.23.070(3) is amended to read:

23 (3) "health care provider" means an acupuncturist licensed under
24 AS 08.06; a chiropractor licensed under AS 08.20; a dental hygienist licensed under
25 AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a
26 dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72;
27 a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist
28 licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
29 psychologist and a psychological associate licensed under AS 08.86; a hospital as
30 defined in AS 47.32.900 [AS 18.20.130], including a governmentally owned or
31 operated hospital; and an employee of a health care provider acting within the course

1 and scope of employment;

2 * **Sec. 10.** AS 18.26.220 is amended to read:

3 **Sec. 18.26.220. Facility compliance with health and safety laws and**
4 **licensing requirements.** A medical facility constructed, acquired, improved,
5 financed, or otherwise under the provisions of this chapter and all actions of the
6 authority are subject to AS 18.07, AS 47.32 [AS 18.20], and any other present or
7 future state licensing requirements for the facilities or services provided under this
8 chapter. A medical facility issued a certificate of need under sec. 4, ch. 275, SLA
9 1976, by virtue of being in existence or under construction before July 1, 1976, must
10 fully meet the requirements of AS 18.07 in order to be eligible for funding under this
11 chapter.

12 * **Sec. 11.** AS 18.50.950(4) is amended to read:

13 (4) "child adoption agency" means a child adoption agency licensed as
14 a child placement agency under AS 47.32 or former AS 47.35;

15 * **Sec. 12.** AS 21.86.030(c) is amended to read:

16 (c) Nothing in this section relieves a health maintenance organization that
17 wishes to exercise the power described in (a)(1) of this section from the requirements
18 of

19 (1) AS 18.07, regarding obtaining a certificate of need;

20 (2) AS 47.32 [AS 18.20], regarding regulation of hospitals; and

21 (3) other statutes applicable to hospitals or other health care facilities.

22 * **Sec. 13.** AS 25.23.185(c) is amended to read:

23 (c) A child adoption agency licensed under former AS 47.35 and a child
24 placement agency licensed under AS 47.32 shall maintain records of the information
25 required to be furnished to the court under this section or under regulations of the
26 commissioner implementing this section. If a child adoption agency or child
27 placement agency ceases to place persons for adoption, it shall transfer its records to
28 the commissioner.

29 * **Sec. 14.** AS 25.27.244(s)(2) is amended to read:

30 (2) "license"

31 (A) means, except as provided in (B) of this paragraph, a

1 license, certificate, permit, registration, or other authorization that, at the time
2 of issuance, will be valid for more than 150 days and that may be acquired
3 from a state agency to perform an occupation, including the following:

4 (i) license relating to boxing or wrestling under
5 AS 05.10;

6 (ii) authorization to perform an occupation regulated
7 under AS 08;

8 (iii) teacher certificate under AS 14.20;

9 (iv) authorization under AS 18.08 to perform
10 emergency medical services;

11 (v) asbestos worker certification under AS 18.31;

12 (vi) boiler operator's license under AS 18.60.395;

13 (vii) certificate of fitness under AS 18.62;

14 (viii) hazardous painting certification under AS 18.63;

15 (ix) security guard license under AS 18.65.400 -
16 18.65.490;

17 (x) license relating to insurance under AS 21.27;

18 (xi) employment agency permit under AS 23.15.330 -
19 23.15.520;

20 (xii) registration as a broker-dealer, an agent, a state
21 investment adviser, or an investment adviser representative under
22 AS 45.55.030;

23 (xiii) certification as a pesticide applicator under
24 AS 46.03.320;

25 (xiv) certification as a storage tank worker or contractor
26 under AS 46.03.375;

27 (xv) certification as a water and wastewater works
28 operator under AS 46.30;

29 (xvi) commercial crewmember fishing license under
30 AS 16.05.480 other than an entry permit or interim-use permit under
31 AS 16.43;

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- (xvii) fish transporter permit under AS 16.05.671;
- (xviii) sport fishing operator license under AS 16.40.260;
- (xix) sport fishing guide license under AS 16.40.270;
- (B) does not include
 - (i) a vessel license issued under AS 16.05.490 or 16.05.530;
 - (ii) a license issued to a child care facility under AS 47.32 [AS 47.35];
 - (iii) a business license issued under AS 43.70;
 - (iv) an entry permit or interim-use permit issued under AS 16.43; or
 - (v) a driver's license issued under AS 28.15;

* **Sec. 15.** AS 37.05.146(c)(67) is amended to read:
 (67) fees received by the Department of Health and Social Services under AS 47.32 [AS 47.33.910 FOR LICENSING ASSISTED LIVING HOMES];

* **Sec. 16.** AS 44.64.030(a) is amended by adding a new paragraph to read:
 (36) AS 47.32 (licensing by the Department of Health and Social Services).

* **Sec. 17.** AS 47.05 010 is amended to read:
Sec. 47.05.010. Duties of department. The Department of Health and Social Services shall

- (1) administer adult public assistance, the Alaska temporary assistance program, and all other assistance programs, and receive and spend money made available to it;
- (2) adopt regulations necessary for the conduct of its business and for carrying out federal and state laws granting adult public assistance, temporary cash assistance, diversion payments, or self-sufficiency services for needy families under the Alaska temporary assistance program, and other assistance;
- (3) establish minimum standards for personnel employed by the department and adopt necessary regulations to maintain those standards;

1 (4) require those bonds and undertakings from persons employed by it
2 which in its judgment are necessary, and pay the premiums on them;

3 (5) cooperate with the federal government in matters of mutual
4 concern pertaining to adult public assistance, the Alaska temporary assistance
5 program, and other forms of public assistance;

6 (6) make the reports, in the form and containing the information, that
7 the federal government from time to time requires;

8 (7) cooperate with the federal government, its agencies or
9 instrumentalities in establishing, extending, and strengthening services for the
10 protection and care of homeless, dependent, and neglected children in danger of
11 becoming delinquent, and receive and expend funds available to the department by the
12 federal government, the state or its political subdivisions for that purpose;

13 (8) cooperate with the federal government in adopting state plans to
14 make the state eligible for federal matching in appropriate categories of assistance, and
15 in all matters of mutual concern, including adoption of the methods of administration
16 that are found by the federal government to be necessary for the efficient operation of
17 welfare programs;

18 (9) adopt regulations, not inconsistent with law, defining need,
19 prescribing the conditions of eligibility for assistance, and establishing standards for
20 determining the amount of assistance that an eligible person is entitled to receive; the
21 amount of the assistance is sufficient when, added to all other income and resources
22 available to an individual, it provides the individual with a reasonable subsistence
23 compatible with health and well-being; an individual who meets the requirements for
24 eligibility for assistance shall be granted the assistance promptly upon application for
25 it;

26 (10) grant to a person claiming or receiving assistance and who is
27 aggrieved because of the department's action or failure to act, reasonable notice and an
28 opportunity for a fair hearing by the department, and the department shall adopt
29 regulations relative to this;

30 (11) enter into reciprocal agreements with other states relative to
31 public assistance, welfare services, and institutional care that are considered advisable;

1 (12) establish the requirements of residence for public assistance,
2 welfare services, and institutional care that are considered advisable, subject to the
3 limitations of other laws of the state, or law or regulation imposed as conditions for
4 federal financial participation;

5 (13) establish the divisions and local offices that are considered
6 necessary or expedient to carry out a duty or authority assigned to it and appoint and
7 employ the assistants and personnel that are necessary to carry on the work of the
8 divisions and offices, and fix the compensation of the assistants or employees except
9 that a person engaged in business as a retail vendor of general merchandise, or a
10 member of the immediate family of a person who is so engaged, may not serve as an
11 acting, temporary or permanent local agent of the department, unless the
12 commissioner of health and social services certifies in writing to the governor, with
13 relation to a particular community, that no other qualified person is available in the
14 community to serve as local welfare agent; for the purposes of this paragraph, a
15 "member of the immediate family" includes a spouse, child, parent, brother, sister,
16 parent-in-law, brother-in-law or sister-in-law;

17 (14) provide education and health-related services and referrals
18 designed to reduce the number of out-of-wedlock pregnancies and the number of
19 induced pregnancy terminations in the state;

20 (15) investigate reports of abuse, neglect, or misappropriation of
21 property by certified nurse aides in facilities licensed by the department under
22 AS 47.32 [AS 18.20].

23 * Sec. 18. AS 47.05.055(a) is amended to read:

24 (a) If the department has reason to believe that a certified nurse aide employed
25 in a facility licensed by the department under AS 47.32 as a hospital or nursing
26 home [AS 18.20] has committed abuse, neglect, or misappropriation of property in
27 connection with the person's duties as a certified nurse aide at the facility, the
28 department shall investigate the matter. The department shall conduct proceedings to
29 determine whether [IF] a finding of abuse, neglect, or misappropriation of property
30 should be made. These proceedings shall be conducted under AS 44.62.330 -
31 44.62.630. A finding under this subsection that a certified nurse aide has committed

1 abuse, neglect, or misappropriation of property shall be reported by the department to
2 the Board of Nursing.

3 * Sec. 19. AS 47.05 is amended by adding new sections to read:

4 **Article 3. Criminal History; Registry.**

5 **Sec. 47.05.300. Applicability.** (a) The provisions of AS 47.05.310 -
6 47.05.390 apply to any individual or entity that is required by statute or regulation to
7 be licensed or certified by the department or that is eligible to receive payments, in
8 whole or in part, from the department to provide for the health, safety, and welfare of
9 persons who are served by the programs administered by the department.

10 (b) Those individual service providers subject to AS 47.05.310 - 47.05.390
11 under (a) of this section include

12 (1) public home care providers described in AS 47.05.017;

13 (2) providers of home and community-based waiver services financed
14 under AS 47.07.030(c); and

15 (3) case managers to coordinate community mental health services
16 under AS 47.30.530.

17 **Sec. 47.05.310. Criminal history; criminal history check; compliance.** (a)
18 If an individual has been charged with, convicted of, found not guilty by reason of
19 insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the
20 standards for licensure or certification established by the department by regulation,
21 that individual may not own, an entity, or be an officer, director, partner, member, or
22 principal of the business organization that owns an entity. In addition, an entity may
23 not

24 (1) allow that individual to operate the entity;

25 (2) hire or retain that individual at the entity as an employee,
26 independent contractor, or volunteer of the entity;

27 (3) allow that individual to reside in the entity if not a recipient of
28 services; or

29 (4) allow that individual to be present in the entity if the individual
30 would have regular contact with individuals who receive services from the entity,
31 unless that individual is a family member of or visitor of an individual who receives

1 services from the entity.

2 (b) The department may not issue or renew a license or a certification for an
3 entity that is in violation of (a) of this section or that would be in violation based on
4 the information received as part of the application process.

5 (c) The department may not issue or renew a license or certification for an
6 entity if an individual is applying for a license, license renewal, certification, or
7 certification renewal for the entity and that

8 (1) individual has been found by a court or agency of this or another
9 jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under
10 AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another
11 jurisdiction; or

12 (2) individual's name appears on the centralized registry established
13 under AS 47.05.330 or a similar registry of this state or another jurisdiction.

14 (d) An entity shall provide to the department a release of information
15 authorization for a criminal history check for an individual who is not a recipient of
16 services from the entity and, after the entity has been issued a license, license renewal,
17 certification, or certification renewal by the department,

18 (1) who intends to become an owner of the entity, or an officer,
19 director, partner, member, or principal of the business organization that owns the
20 entity;

21 (2) whom the entity intends to hire or retain as the operator of the
22 entity's business;

23 (3) whom the entity intends to hire or retain as an employee,
24 independent contractor, or volunteer of the entity; or

25 (4) who will be present in the entity or at the places of operation of
26 entity, and would have regular contact with individuals who receive services from the
27 entity, but who is not a family member or visitor of an individual who receives
28 services from the entity.

29 (e) An individual for whom a release of information authorization has been
30 provided to the department shall submit the individual's fingerprints to the department,
31 with the fee established under AS 12.62.160, for a report of criminal justice

1 information under AS 12.62 and for submission by the Department of Public Safety to
2 the Federal Bureau of Investigation for a national criminal history record check. The
3 Department of Public Safety shall provide the report of criminal justice information
4 and the results of the national criminal history record check to the department for its
5 use in considering an application for a license, license renewal, certification, or
6 certification renewal, or in considering other approval or selection regarding an entity,
7 for compliance with the standards established in this section. For purposes of
8 obtaining access to criminal justice information maintained by the Department of
9 Public Safety under AS 12.62, the department is a criminal justice agency conducting
10 a criminal justice activity. The department may waive the requirement for fingerprint
11 submission if an individual is unable to provide fingerprints due to a medical or
12 physical condition that is documented by a licensed physician.

13 (f) The provisions of this section do not apply if the department grants an
14 exception from a requirement of (a) - (e) of this section under a regulation adopted by
15 the department.

16 (g) The department shall adopt regulations listing those criminal offenses that
17 are inconsistent with the standards for licensure or certification by the department.

18 (h) An individual service provider is subject to the provisions of (a) - (g) of
19 this section as if the individual service provider were an entity subject to those
20 provisions.

21 (i) For purposes of (b) and (c) of this section, in place of nonissuance or
22 nonrenewal of a license or certification, an entity or individual service provider that is
23 not required to be licensed or certified by the department or a person wishing to
24 become an entity or individual service provider that is not required to be licensed or
25 certified by the department is instead ineligible to receive a payment, in whole or in
26 part, from the department to provide for the health, safety, and welfare of persons who
27 are served by the programs administered by the department if the entity, individual
28 service provider, or person

29 (1) is in violation of (a) of this section or would be in violation based
30 on information received by the department as part of an application, approval, or
31 selection process;

1 (2) has been found by a court or agency of this or another jurisdiction
2 to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10,
3 AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction; or

4 (3) appears on the centralized registry established under AS 47.05.330
5 or a similar registry of this state or another jurisdiction.

6 **Sec. 47.05.320. Criminal history use standards.** The department shall by
7 regulation establish standards for the consideration and use by the department, an
8 entity, or an individual service provider of the criminal history of an individual
9 obtained under AS 47.05.310.

10 **Sec. 47.05.330. Centralized registry.** (a) The department shall by regulation
11 provide for a centralized registry to facilitate the licensing or certification of entities
12 and individual service providers, the authorization of payments to entities or
13 individual service providers by the department, and the employment of individuals by
14 entities and individual service providers.

15 (b) Except for the name of each victim being redacted before the information
16 is placed on the registry, the registry shall consist of the following information for an
17 entity or individual service provider, an applicant on behalf of an entity or individual
18 service provider, or an employee of an entity or individual service provider:

19 (1) orders, judgments, and adjudications finding that the applicant or
20 the employee committed abuse, neglect, or exploitation under AS 47.10, AS 47.24,
21 AS 47.62, or a substantially similar provision in another jurisdiction;

22 (2) orders under a state statute or a substantially similar provision in
23 another jurisdiction that a license or certification of the entity or individual service
24 provider to provide services related to the health, safety, and welfare of persons was
25 denied, suspended, revoked, or conditioned.

26 (c) As a condition for applying for licensure or certification of an entity or
27 individual service provider, or for payment to an entity or individual service provider
28 by the department, an applicant must agree to submit timely to the registry the
29 information required under this section relating to the entity, any individual, the
30 applicant, and employees of the entity or individual service provider.

31 (d) The department shall prescribe by regulation the form or format by which

1 an applicant must submit required information to the registry.

2 (e) Notwithstanding any contrary provision of law, the department may also
3 submit information described in this section to the registry. An entity or individual
4 that is exempt from department licensure or certification and that does not receive
5 money from the department for its services may voluntarily submit information
6 described in this section to the department for placement in the registry.

7 (f) Information contained in the registry is a public record under AS 40.25 and
8 is subject to public inspection and copying.

9 (g) A person who, in good faith, submits information to the registry in
10 accordance with this section is immune from civil or criminal liability that might
11 otherwise exist for submitting information to the registry.

12 (h) A person about whom information is placed in the registry may request the
13 department to delete or modify the information to correct inaccuracies. The
14 department shall investigate the request and make necessary deletions or
15 modifications.

16 **Sec. 47.05.340. Regulations.** The department shall adopt regulations to
17 implement AS 47.05.300 - 47.05.390.

18 **Sec. 47.05.390. Definitions.** In AS 47.05.300 - 47.05.390, unless the context
19 otherwise requires,

20 (1) "criminal history records" has the meaning given in AS 12.64.010;

21 (2) "criminal justice activity" has the meaning given in AS 12.62.900;

22 (3) "criminal justice agency" has the meaning given in AS 12.62.900;

23 (4) "criminal justice information" has the meaning given in
24 AS 12.62.900;

25 (5) "department" means the Department of Health and Social Services;

26 (6) "entity" includes an entity listed in AS 47.32.010(b);

27 (7) "individual service provider" means an individual described in
28 AS 47.05.300(a), and includes those listed in AS 47.05.300(b);

29 (8) "license" includes a provisional license.

30 * **Sec. 20.** AS 47.10.141(b) is amended to read:

31 (b) A peace officer shall take into protective custody a minor described in (a)

1 of this section if the minor is not otherwise subject to arrest or detention. Unless (c) of
2 this section applies, when a peace officer takes a minor into protective custody under
3 this subsection,

4 (1) the peace officer shall

5 (A) return the minor to the minor's parent or guardian at the
6 parent's or guardian's residence if the residence is in the same community
7 where the minor was found and if the minor's parent or guardian consents to
8 the return, except that the officer may not use this option if the officer has
9 reasonable cause to believe that the minor has experienced physical or sexual
10 abuse in the parent's or guardian's household;

11 (B) take the minor to a nearby location agreed to by the minor's
12 parent or guardian if the parent or guardian does not consent to return of the
13 minor under (A) of this paragraph and the officer does not have reasonable
14 cause to believe that the minor has experienced physical or sexual abuse in the
15 parent's or guardian's household; or

16 (C) if disposition of the minor is not made under (A) or (B) of
17 this paragraph, take the minor to

18 (i) an office specified by the Department of Health and
19 Social Services;

20 (ii) a program for runaway minors licensed by the
21 department under AS 47.10.310;

22 (iii) a shelter for runaways that has a permit from the
23 department under AS 47.32 [AS 47.35.085] that agrees to shelter the
24 minor;

25 (iv) a facility or contract agency of the department; or

26 (v) another suitable location and promptly notify the
27 department if an office specified by the department, a licensed program
28 for runaway minors, a shelter for runaways that will accept the minor,
29 or a facility or contract agency of the department does not exist in the
30 community;

31 (2) if the peace officer plans to take the minor to an office, program,

1 shelter, or facility under (1)(C) of this subsection, the peace officer shall give the
2 highest priority to taking the minor to an office, program, shelter, or facility that is
3 semi-secure;

4 (3) a minor under protective custody may not be housed in a jail or
5 other detention facility but may be housed in a semi-secure portion of an office,
6 program, shelter, or other facility under (1) (C) of this subsection;

7 (4) the peace officer, immediately upon taking a minor into protective
8 custody, shall

9 (A) advise the minor of available mediation services and of the
10 right to social services under AS 47.10.142(b); and

11 (B) if the identity of the minor's parent or guardian is known,
12 advise the minor's parent or guardian that the minor has been taken into
13 protective custody and that counseling services for the minor's parent or
14 guardian and the minor's household may be available under AS 47.10.142(b).

15 * **Sec. 21.** AS 47.10.392 is amended to read:

16 **Sec. 47.10.392. Certificate required.** A private residence may not be held
17 out publicly as a shelter for runaway minors unless the residence

18 (1) is designated a shelter for runaways by a corporation that is
19 licensed to make the designation under AS 47.32 [AS 47.35.085]; and

20 (2) has a valid permit from the department signifying that designation.

21 * **Sec. 22.** AS 47.10.399(2) is amended to read:

22 (2) "shelter for runaways" or "shelter for runaway minors" means a
23 private residence whose legal occupant agrees to shelter, with or without
24 compensation, a runaway minor accepted into the residence by the legal occupant and
25 that

26 (A) is not simultaneously licensed under AS 47.10.310 as a
27 program for runaway minors;

28 (B) has been designated a shelter for runaways by a corporation
29 licensed for that purpose under AS 47.32 [AS 47.35.085]; and

30 (C) has a permit issued by the department under AS 47.32
31 [AS 47.35.085].

1 * **Sec. 23.** AS 47.10.990(10) is amended to read:

2 (10) "foster care" means care provided by a person or household under
3 a foster home license required under AS 47.32 [AS 47.35.015];

4 * **Sec. 24.** AS 47.10.990(24) is amended to read:

5 (24) "secure residential psychiatric treatment center" has the meaning
6 given "residential psychiatric treatment center" in AS 47.32.900 [AS 47.35.900].

7 * **Sec. 25.** AS 47.12.990(14) is amended to read:

8 (14) "secure residential psychiatric treatment center" has the meaning
9 given "residential psychiatric treatment center" in AS 47.32.900; [AS 47.35.900.]

10 * **Sec. 26.** AS 47.24.013(a) is amended to read:

11 (a) If a report received under AS 47.24.010 regards the abandonment,
12 exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of
13 age or older that is alleged to have been committed by or to have resulted from the
14 negligence of the staff or a volunteer of an out-of-home care facility, including a
15 facility licensed under AS 47.32 [AS 18.20], in which the vulnerable adult resides, the
16 department shall transfer the report for investigation to the long term care ombudsman
17 under AS 47.62.015.

18 * **Sec. 27.** AS 47.24.017(d) is amended to read:

19 (d) If the protective services under this section include the placement of a
20 vulnerable adult in an assisted living home at the state's expense, the minimum daily
21 reimbursement rate to the assisted living home for the vulnerable adult is \$70. The
22 department may, under its regulations, provide for a daily rate higher than \$70 if the
23 additional care provided to the vulnerable adult in the assisted living home justifies the
24 additional reimbursement. In this subsection, "assisted living home" means an assisted
25 living home licensed under AS 47.32 [AS 47.33].

26 * **Sec. 28.** AS 47.25.071(b) is amended to read:

27 (b) To qualify for a grant under (a) or (d) of this section, the child care facility
28 must

29 (1) be currently licensed under AS 47.32 [AS 47.35] and applicable
30 municipal licensing requirements;

31 (2) participate in the day care assistance program under AS 47.25.001 -

1 47.25.095; and

2 (3) provide care under a payment system as provided in (g) of this
3 section.

4 * **Sec. 29.** AS 47.25.095(2) is amended to read:

5 (2) "child care facility" means an establishment licensed as a child
6 care facility under AS 47.32 [AS 47.35], including day care center, family day care
7 homes, and schools for preschool age children, that provides care for children not
8 related by blood, marriage, or legal adoption to the owner, operator, or manager of the
9 facility;

10 * **Sec. 30.** AS 47.25.095(4) is amended to read:

11 (4) "day care facility" means a center or home licensed in accordance
12 with the provisions of AS 47.32 as a child care facility [AS 47.35] or recognized by
13 the federal government for the care of children;

14 * **Sec. 31.** AS 47.25.195(f)(1) is amended to read:

15 (1) "assisted living home" means an assisted living home licensed
16 under AS 47.32 [AS 47.33];

17 * **Sec. 32.** AS 47.30.915(5) is amended to read:

18 (5) "evaluation facility" means a health care facility that has been
19 designated or is operated by the department to perform the evaluations described in
20 AS 47.30.660 - 47.30.915, or a medical facility licensed under AS 47.32
21 [AS 18.20.020] or operated by the federal government;

22 * **Sec. 33.** AS 47.31.100(4) is amended to read:

23 (4) "evaluation facility" means a health care facility that has been
24 designated by the department to perform the evaluations described in AS 47.30.670 -
25 47.30.915, including a facility licensed under AS 47.32 [AS 18.20.020] or operated by
26 the federal government;

27 * **Sec. 34.** AS 47 is amended by adding a new chapter to read:

28 **Chapter 32. Centralized Licensing and Related Administrative Procedures.**

29 **Sec. 47.32.010. Purpose and applicability.** (a) The purpose of this chapter
30 is to establish centralized licensing and related administrative procedures for the
31 delivery of services in this state by the entities listed in (b) of this section. These

1 procedures are intended to promote safe and appropriate services by setting standards
2 for licensure that will reduce predictable risk; improve quality of care; foster
3 individual and patient rights; and otherwise advance public health, safety, and welfare.

4 (b) This chapter and regulations adopted under this chapter apply to the
5 following entities:

- 6 (1) ambulatory surgical centers;
- 7 (2) assisted living homes;
- 8 (3) child care facilities;
- 9 (4) child placement agencies;
- 10 (5) foster homes;
- 11 (6) free-standing birth centers;
- 12 (7) home health agencies;
- 13 (8) hospices, or agencies providing hospice services or operating
14 hospice programs;
- 15 (9) hospitals;
- 16 (10) intermediate care facilities for the mentally retarded;
- 17 (11) maternity homes;
- 18 (12) nursing facilities;
- 19 (13) residential child care facilities;
- 20 (14) residential psychiatric treatment centers;
- 21 (15) rural health clinics;
- 22 (16) runaway shelters.

23 **Sec. 47.32.020. Requirement to obtain a license.** (a) An entity may not
24 operate a facility described in AS 47.32.010(b) without first obtaining a license under
25 this chapter unless the entity is exempt under regulations adopted under AS 47.32.030.

26 (b) If an entity encompasses more than one type of activity listed in
27 AS 47.32.010(b), the entity shall apply for and receive a separate license under this
28 chapter before operating that type of activity unless exempt under regulations adopted
29 under AS 47.32.030.

30 **Sec. 47.32.030. Powers of the department.** (a) The department may

- 31 (1) administer and enforce the provisions of this chapter;

1 (2) coordinate and develop policies, programs, and planning related to
2 licensure and operation of entities listed in AS 47.32.010(b);

3 (3) adopt regulations necessary to carry out the purposes of this
4 chapter, including regulations that

5 (A) establish fees for licensing of each type of entity listed in
6 AS 47.32.010(b);

7 (B) impose requirements for licensure, including standards for
8 license renewal, that are in addition to the requirements of this chapter or of
9 any other applicable state or federal statute or regulation;

10 (C) impose requirements and standards on licensed entities that
11 are in addition to those imposed by this chapter or by any other applicable state
12 or federal statute or regulation, including

13 (i) requirements and standards necessary for an entity or
14 the state to receive money from the department from any source,
15 including federal money;

16 (ii) record-keeping requirements;

17 (iii) reporting requirements; and

18 (iv) requirements and standards regarding health, safety,
19 and sanitation;

20 (D) provide for waivers, variances, and exemptions from the
21 requirements of this chapter, including the requirement to obtain a license, if
22 the department finds it necessary for the efficient administration of this
23 chapter; and

24 (E) establish requirements for the operation of entities licensed
25 under this chapter;

26 (4) investigate

27 (A) entities described in AS 47.32.010(b);

28 (B) applicants for licensure, including individuals named in an
29 application; and

30 (C) other persons that the department has reason to believe are
31 operating an entity required to be licensed under this chapter, or are residing or

1 working in an entity for which licensure has been sought under this chapter;
2 this subparagraph does not apply to persons receiving services from an entity
3 for which licensure has been sought under this chapter;

4 (5) inspect and monitor licensed entities for compliance with this
5 chapter, regulations adopted under this chapter, and any other applicable statutes or
6 regulations;

7 (6) enter into contracts and agreements necessary to carry out the
8 functions, powers, and duties of the department under this chapter;

9 (7) enter into agreements with private entities, municipalities, and
10 individuals to investigate and make recommendations to the department regarding the
11 licensure and monitoring of entities under this chapter;

12 (8) require an individual who is or will be operating an entity to
13 complete training related to the operation of the entity;

14 (9) waive the application requirements for an entity seeking licensure
15 if the entity submits documentation verifying that it

16 (A) has a license issued by an organization or other agency that
17 has licensing authority under state or federal law if the standards for that
18 licensure are approved by the department under this chapter or regulations
19 adopted under this chapter;

20 (B) has accreditation from a nationally recognized organization
21 if the standards for that accreditation are equal to or more stringent than the
22 standards for licensure under this chapter or regulations adopted under this
23 chapter; or

24 (C) is an entity that federal law does not require to be licensed.

25 (b) Nothing in this chapter obligates the department to provide financial
26 support to an entity licensed under this chapter.

27 **Sec. 47.32.040. Application for license.** A person shall apply to the
28 department for a license under this chapter. The application must be made to the
29 department on a form provided by the department or in a format approved by the
30 department, and must be accompanied by

31 (1) any fee established by regulation; and

1 (2) documents and information required by regulation.

2 **Sec. 47.32.050. Provisional license; biennial license.** (a) The department
3 may issue a provisional license to an entity for which application is made under
4 AS 47.32.040 if, after inspection and investigation, the department determines that the
5 application and the entity meet the requirements of this chapter, regulations adopted
6 under this chapter, and any other applicable statutes or regulations. A provisional
7 license is valid for a period not to exceed one year, except that the department may
8 extend a provisional license for one additional period not to exceed one year.

9 (b) Before expiration of a provisional license issued under (a) of this section,
10 the department shall inspect and investigate the entity to determine whether the entity
11 is operating in compliance with this chapter, regulations adopted under this chapter,
12 and any other applicable statutes or regulations. After inspection and investigation
13 under this subsection and before expiration of a provisional license, the department
14 shall issue a biennial license for the entity if the department finds that

15 (1) the entity meets the requirements for biennial licensure established
16 in this chapter, regulations adopted under this chapter, and other applicable statutes
17 and regulations;

18 (2) a ground for nonrenewal of a license does not exist; and

19 (3) any applicable fee has been paid.

20 (c) The department may place one or more conditions on a provisional or
21 biennial license issued under this section in order to further the purposes of this
22 chapter.

23 **Sec. 47.32.060. License renewal.** (a) At least 90 days before expiration of a
24 biennial license, a licensed entity that intends to remain licensed shall submit an
25 application for renewal of the license on a form provided by the department or in a
26 format approved by the department, accompanied by

27 (1) all documents and information identified in regulation as being
28 required for renewal of the license; and

29 (2) any fee established by regulation.

30 (b) Before expiration of a biennial license, the department or its representative
31 may inspect an entity that is the subject of a renewal application to determine whether

1 the entity is operating in compliance with this chapter, regulations adopted under this
2 chapter, and other applicable statutes or regulations. After any inspection and
3 investigation under this subsection and before expiration of the biennial license, the
4 department shall renew a biennial license if the department finds that

- 5 (1) the licensed entity meets the requirements for renewal;
- 6 (2) a ground for nonrenewal of a license does not exist; and
- 7 (3) any applicable fee has been paid.

8 (c) If an application for renewal of a license is submitted but the department is
9 unable to complete its review of the application before the expiration of the biennial
10 license, the license is automatically extended for six months or until the department
11 completes its review and either approves or denies the application, whichever occurs
12 earlier.

13 (d) The department may place one or more conditions on a renewed license
14 issued under this section to further the purposes of this section.

15 (e) The department shall adopt regulations establishing the grounds for
16 nonrenewal of a license for purposes of AS 47.32.050 and this section.

17 **Sec. 47.32.070. Denial of or conditions on license.** (a) If the department
18 denies an application for or places conditions on a provisional or biennial license or
19 license renewal, the department shall provide the applicant or entity with a notice of
20 the action by certified mail. The notice must contain a written statement of the reason
21 for the action and information about requesting a hearing under (b) of this section.

22 (b) An applicant or entity that receives a notice of action under (a) of this
23 section may appeal the department's decision by requesting a hearing within 15 days
24 after receipt of the notice. The appeal must be on a form provided by the department
25 or in a format approved by the department.

26 **Sec. 47.32.080. Posting of license; license not transferable.** (a) A license
27 issued under this chapter shall be posted in a conspicuous place on the licensed
28 premises. Any notice of a variance issued by the department shall be posted near the
29 license.

30 (b) A license issued under this chapter is not transferable unless authorized by
31 the department.

1 **Sec. 47.32.090. Complaints and investigation.** (a) A person who believes
2 that an entity has violated an applicable statute or regulation or a condition of a license
3 issued under this chapter may file a verbal or written complaint with the department.

4 (b) The department may investigate a complaint filed under this section. The
5 department may decline to investigate a complaint if the department reasonably
6 concludes and documents that the complaint is without merit based on information
7 available to the department at the time of the complaint. The department may
8 consolidate complaints if the department concludes that a single investigation would
9 further the efficient administration of this chapter.

10 (c) A licensed entity may not take retaliatory action against a person who files
11 a complaint. Except as provided in AS 47.32.160, a complainant against whom a
12 retaliatory action has been taken may recover treble damages in a civil action upon a
13 showing that the action was taken in retaliation for the filing of a complaint.

14 **Sec. 47.32.100. Cooperation with investigation.** An entity shall cooperate
15 with an investigation initiated by the department. An investigated entity shall

16 (1) permit representatives of the department to inspect the entity;
17 review records, including files of individuals who received services from the entity;
18 interview staff; and interview individuals receiving services from the entity; and

19 (2) upon request, provide the department with information and
20 documentation regarding compliance with applicable statutes and regulations.

21 **Sec. 47.32.110. Right of access and inspection.** (a) A designated agent or
22 employee of the department shall have right of access to an entity

23 (1) to determine whether an application for licensure or renewal is
24 appropriate;

25 (2) to conduct a complaint investigation;

26 (3) to conduct a standard inspection;

27 (4) to inspect documents, including personnel records, accounts, the
28 building, or the premises;

29 (5) to interview staff or residents; or

30 (6) if the department has reasonable cause to believe that the entity is
31 operating in violation of this chapter or the regulations adopted under this chapter.

1 (b) If an entity denies access, the department may petition the court for an
2 order permitting access, or the department may seek to revoke the entity's license
3 under AS 47.32.140.

4 (c) Upon petition of the department and after a hearing held upon reasonable
5 notice to the entity, the court shall issue an order to an officer or employee of the
6 department authorizing the officer or employee to enter for any of the purposes
7 described in (a) of this section.

8 **Sec. 47.32.120. Report.** (a) Within 10 working days after completing an
9 investigation or inspection under AS 47.32.090 - 47.32.110, the department shall
10 prepare a report of the results of the investigation or inspection and mail a copy of the
11 report to the entity. The report shall include a description of

12 (1) any violation, including a citation to each statute or regulation that
13 has been violated; and

14 (2) any enforcement action the department intends to take under
15 AS 47.32.130 or 47.32.140.

16 (b) An entity that receives a copy of a report under this section may submit a
17 written response to the report to the department. The department may require an entity
18 to submit a response to a report received under this section.

19 (c) Within 14 days after the entity receives a copy of the report under this
20 section, upon request of the complainant, the department shall provide a copy of the
21 report to the complainant.

22 **Sec. 47.32.130. Enforcement action: immediate revocation or suspension.**

23 (a) If the department's report of investigation or inspection under AS 47.32.120
24 concludes that the department has reasonable cause to believe that a violation of an
25 applicable statute or regulation has occurred that presents an immediate danger to the
26 health, safety, or welfare of an individual receiving services from the entity, the
27 department, without an administrative hearing and without providing an opportunity to
28 cure or correct the violation, may immediately revoke or suspend the entity's license
29 or, if the entity is not licensed under this chapter, may revoke the entity's ability to
30 become licensed under this chapter or to provide services as an entity exempted under
31 this chapter. A suspension or revocation under this subsection takes effect

1 ..nmediately upon initial notice to the entity from the department, is in addition to any
2 enforcement action under AS 47.32.140, and continues until a final determination
3 under (c) of this section or AS 47.32.150.

4 (b) Notice unde. this section shall be provided as follows:

5 (1) the department shall provide initial notice to the entity at the time
6 the department determines that an immediate suspension or revocation is required;
7 initial notice may be oral, except that, if an entity representative is not present at the
8 entity, the department shall post written notice on the front door of the entity; the
9 initial notice must provide information regarding the entity's appeal rights:

10 (2) the department shall provide formal written notice to the entity
11 within 14 working days after the immediate revocation or suspension decision; formal
12 written notice must include

13 (A) a copy of the department's report under AS 47.32.120, a
14 statement of the entity's right to submit a written response to the report, and
15 any department requirement that the entity submit a written response to the
16 report:

17 (B) a description of any enforcement action the department
18 intends to take under AS 47.32.140(d) or (f); and

19 (C) information regarding the entity's appeal rights.

20 (c) An entity to which a notice has been provided under this section may
21 appeal the department's decision to impose the enforcement action, including an
22 enforcement action the department intends to take under AS 47.32.140(d) or (f), by
23 filing a written request for a hearing, on a form provided by the department, within 15
24 days after receipt of the notice. If a hearing is not timely requested under this
25 subsection, the department's notice constitutes a final administrative order for which
26 the department may seek the court's assistance in enforcing.

27 **Sec. 47.32.140. Enforcement actions.** (a) If the department's report of
28 investigation or inspection under AS 47.32.120 concludes that the department has
29 reasonable cause to believe that a violation of an applicable statute or regulation has
30 occurred, the department shall provide notice to the entity of the violation and an
31 opportunity to cure the violation within a reasonable time specified by the department.

1 The notice must include a copy of the department's report under AS 47.32.120, a
 2 statement that the entity may submit a written response to the report, any department
 3 requirement that the entity submit a written response to the report, a description of any
 4 enforcement action the department intends to take under (d) or (f) of this section, and
 5 information regarding the entity's appeal rights.

6 (b) An entity receiving a notice under (a) of this section, or a notice under
 7 AS 47.32.130(b)(2) that contains the information specified in AS 47.32.130(b)(2)(B),
 8 shall submit a plan of correction to the department for approval. Once it has cured its
 9 violations, the entity shall submit to the department an allegation of compliance.
 10 Upon receipt of the allegation of compliance, the department may conduct a follow-up
 11 investigation or inspection to determine compliance. The department may take one or
 12 more enforcement actions under (d) and (f) of this section regardless of whether the
 13 entity achieves compliance under this subsection.

14 (c) If the department believes that an entity has not voluntarily corrected the
 15 violation or entered into a plan of correction with the approval of the department, the
 16 department may require that the entity participate in a plan of correction under
 17 regulations of the department. Once the entity has cured its violations, it shall submit
 18 to the department an allegation of compliance. Upon receipt of the allegation of
 19 compliance, the department may conduct a follow-up investigation or inspection to
 20 determine compliance. The department may take one or more enforcement actions
 21 under (d) and (f) of this section regardless of whether the entity achieves compliance
 22 under this subsection.

23 (d) The department may take one or more of the following enforcement
 24 actions under this section:

25 (1) delivery of a warning notice to the licensed entity and to any
 26 additional person who was the subject of the investigation or inspection;

27 (2) modification of the term or scope of the entity's existing license,
 28 including changing a biennial license to a provisional license or adding a condition to
 29 the license;

30 (3) suspension of the entity's operations for a period of time set by the
 31 department;

1 (4) suspension of or a ban on the entity's provision of services to
2 individuals not already receiving services from the entity for a period of time set by
3 the department;

4 (5) nonrenewal of the entity's license;

5 (6) revocation of the entity's license or, if the entity is not licensed
6 under this chapter, revocation of the entity's ability to become licensed under this
7 chapter;

8 (7) issuance of an order requiring closure, immediate or otherwise, of
9 the entity regardless of whether the entity is licensed or unlicensed;

10 (8) denial of payments under AS 47.07 for the entity's provision of
11 services to an individual not already receiving services from the entity;

12 (9) assumption of either temporary or permanent management of the
13 entity or pursuit of a court-ordered receiver for the entity;

14 (10) reduction of the number of individuals receiving services from the
15 entity under the license;

16 (11) imposition of a penalty authorized under law;

17 (12) inclusion in the registry established under AS 47.05.330;

18 (13) requirement that the entity prepare and submit a plan of
19 correction.

20 (e) The department may not take action under (d)(9) of this section unless the
21 commissioner has reasonable cause to believe that continued management by the
22 entity while the entity is attempting to cure a violation would be injurious to the
23 health, safety, or welfare of an individual who is receiving a service from the entity.

24 (f) In addition to any other enforcement actions the department may take
25 under this section, the department may assess a civil fine against an entity for a
26 violation of an applicable statute or regulation, taking into account the type and size of
27 the entity and the type and severity of the violation. A fine assessed under this
28 subsection may not exceed \$2,500 a day for each day of violation for a continuing
29 violation or \$25,000 for a single violation.

30 (g) An entity to which a notice has been provided under this section regarding
31 an enforcement action under (d) or (f) of this section may appeal the department's

1 decision to impose the enforcement action by filing a written request for a hearing, on
2 a form provided by the department, within 15 days after receipt of the notice of the
3 enforcement action.

4 (h) An enforcement action under (d) or (f) of this section may not be imposed
5 until

6 (1) the time period for requesting a hearing under AS 47.32.130(c) or
7 under (g) of this section, as applicable, has passed without a hearing being requested;
8 or

9 (2) a final agency decision has been issued following a hearing
10 requested under AS 47.32.130(c) or under (g) of this section, as applicable.

11 (i) If a hearing is not timely requested under AS 47.32.130(c) or under (g) of
12 this section, as applicable, the department's notice regarding an enforcement action
13 under (d) or (f) of this section constitutes a final administrative order. The department
14 may seek the court's assistance in enforcing the final administrative order.

15 (j) An entity against which an enforcement action under (d) or (f) of this
16 section has been taken may not apply for a license or license renewal until after the
17 time period set by the department in its final administrative order under
18 AS 47.32.130(c), this section, or AS 47.32.150, as applicable. If a time period has not
19 been set, a final administrative order against the entity has the effect of a permanent
20 revocation and the entity may not apply for a license or license renewal. If the
21 ownership, control, or management of an entity changes, the department may allow
22 the entity to seek licensure if the entity submits documents showing the change.

23 (k) Assessment of a civil fine under this section does not preclude imposition
24 of a criminal penalty under AS 47.32.170.

25 **Sec. 47.32.150. Hearings.** (a) Upon receipt of a timely request for a hearing
26 by an entity regarding an enforcement action under AS 47.32.130(a) or
27 47.32.140(d)(3), (5), (6), (7), or (9), the department shall request the chief
28 administrative law judge appointed under AS 44.64.020 to appoint an administrative
29 law judge employed or retained by the office of administrative hearings to preside
30 over a hearing conducted under this section. AS 44.64.060 applies to the hearing.

31 (b) Upon receipt of a timely request for a hearing by an entity regarding an

1 enforcement action under AS 47.32.070 or 47.32.140(d)(1), (2), (4), (8), (10), (11),
2 (12), or (13), the department shall conduct a hearing in front of an officer appointed by
3 the commissioner. A hearing under this subsection may be conducted on the record,
4 in an informal manner, and shall not be conducted under AS 44.62 or AS 44.64. The
5 appointed hearing officer may be a state employee.

6 (c) The decision following a hearing conducted under (a) or (b) of this section
7 constitutes a final agency administrative order.

8 (d) A hearing conducted under this section shall take place within 120 days
9 after the department's receipt of the request for hearing. A hearing may be held on an
10 expedited basis upon a showing of good cause. An expedited hearing shall be held
11 within 60 days after the department's receipt of the request for a hearing.

12 **Sec. 47.32.160. Immunity.** (a) The department, its employees, and its agents
13 are not liable for civil damages as a result of an act or omission in the licensure
14 process, the monitoring of a licensed entity, or any activities under this chapter.

15 (b) A volunteer who works for a hospice program licensed under this chapter
16 is not liable for damages for personal injury, wrongful death, or property damage for
17 an act or omission committed in the course of hospice-related duties unless the act or
18 omission constitutes gross negligence, recklessness, or intentional misconduct.

19 (c) An entity that obtains information about an employee under a criminal
20 history check under AS 47.05.310 may use that information only as provided in
21 regulations adopted by the department under AS 47.05.320. However, if that entity
22 reasonably relies on that information in denying employment for an individual
23 selected for hire as an employee, including during a period of provisional
24 employment, the entity is not liable in an action brought by the individual based on the
25 employment determination resulting from the information.

26 **Sec. 47.32.170. Criminal penalty.** A person who intentionally or with
27 criminal negligence violates a provision of this chapter or a regulation adopted under
28 this chapter related to the health and safety of persons served by an entity required to
29 comply with this chapter is guilty of a class B misdemeanor.

30 **Sec. 47.32.180. Confidentiality; release of certain information.** (a) Except
31 as otherwise provided by law, the following are confidential and may not be disclosed

1 to the public without a court order: complaints; investigations; inspections; records
2 related to a complaint, investigation, or inspection; and the identity of a complainant
3 and of individuals receiving services from an entity.

4 (b) With the exception of information that identifies a complainant or a
5 recipient of services from an entity, a copy of the department's report of investigation
6 or inspection under AS 47.32.120, an entity's written response to the report, and
7 information regarding any department imposition of an enforcement action under
8 AS 47.32.130 or 47.32.140 are public records under AS 40.25. The department shall
9 make this information available to the public for inspection and copying within
10 timeframes specified in AS 40.25 or regulations adopted under AS 40.25 after the

11 (1) entity receives its copy of the report of investigation under
12 AS 47.32.120, if the department has determined that an enforcement action under AS
13 47.32.130 or 47.32.140 will not be taken regarding the entity;

14 (2) department's notice of enforcement action under AS 47.32.130 or
15 47.32.140 becomes a final administrative order without a hearing under
16 AS 47.32.130(c) or 47.32.140(i); or

17 (3) issuance of a decision following a hearing under AS 47.32.150.

18 **Sec. 47.32.190. Access to information.** Notwithstanding any contrary
19 provision of law, the divisions of the department assigned public health and public
20 assistance functions shall have access to any information compiled or retained by
21 other divisions within the department, regardless of the nature of the information or
22 whether the information is considered confidential, in order to assist in administering
23 the provisions of this chapter.

24 **Sec. 47.32.200. Notice of changes from an entity.** (a) An entity shall
25 provide the department with written notice of a change of mailing address at least 14
26 days before the effective date of the change.

27 (b) An entity shall notify the department within 24 hours after having
28 knowledge that an administrator, employee, volunteer, or household member, as
29 required by the type of entity under department regulations, has been

30 (1) convicted of, has been charged by information or complaint with,
31 or is under indictment or presentment for an offense listed in regulations adopted

1 under AS 47.05.310 or a law or ordinance of this or another jurisdiction with similar
2 elements; or

3 (2) found to have neglected or abused a child as described in AS 47.10.

4 (c) An entity shall notify the department within 24 hours after having
5 knowledge of any allegation or suspicion of abuse, neglect, or misappropriation of
6 money or other property of an individual receiving services from the entity. The entity
7 shall conduct an investigation and make a written report to the department within five
8 days following notification to the department under this subsection.

9 (d) Not less than 20 days before the effective date of a decision to relinquish
10 the entity's license, the entity shall notify the department of the decision.

11 (e) Not more than one day after signing a contract for sale of the licensed
12 entity, the entity shall notify the department of the sale.

13 (f) Not less than 30 days before an entity wishes to change the location of the
14 entity, the entity shall notify the department of the change.

15 **Sec. 47.32.900. Definitions.** In this chapter.

16 (1) "ambulatory surgical center"

17 (A) means a facility that

18 (i) is not a part of a hospital or a physician's general
19 medical practice; and

20 (ii) operates primarily for the purpose of providing
21 surgical services to patients who do not require hospitalization; and

22 (B) includes a facility that performs invasive diagnostic or
23 therapeutic services;

24 (2) "assisted living home"

25 (A) means a residential facility that serves three or more adults
26 who are not related to the owner by blood or marriage, or that receives state or
27 federal payment for services regardless of the number of adults served; the
28 department shall consider a facility to be an assisted living home if the facility

29 (i) provides housing and food services to its residents;

30 (ii) offers to provide or obtain for its residents
31 assistance with activities of daily living; or

1 (iii) provides or offers any combination of these
2 services;

3 (B) does not include

4 (i) a correctional facility;

5 (ii) an emergency shelter;

6 (iii) a program licensed under AS 47.10.310 for
7 runaway minors;

8 (iv) a type of entity listed in AS 47.32.010(b)(5), (8),
9 (9), (10), (11), or (12);

10 (3) "child placement agency" means an agency that arranges for
11 placement of a child

12 (A) in a foster home, residential child care facility, or adoptive
13 home; or

14 (B) for guardianship purposes;

15 (4) "commissioner" means the commissioner of health and social
16 services;

17 (5) "department" means the Department of Health and Social Services;

18 (6) "entity" means an entity listed in AS 47.32.010(b);

19 (7) "foster home" means a place where the adult head of household
20 provides 24-hour care on a continuing basis to one or more children who are apart
21 from their parents;

22 (8) "free-standing birth center" means a facility that is not a part of a
23 hospital and that provides a birth service to maternal clients;

24 (9) "frontier extended stay clinic" means a rural health clinic that is
25 authorized to provide 24-hour care to one or more individuals;

26 (10) "home health agency" means a public agency or private
27 organization, or a subdivision of a public agency or private organization, that
28 primarily engages in providing skilled nursing services in combination with physical
29 therapy, occupational therapy, speech therapy, or services provided by a home health
30 aide to an individual in the individual's home, an assisted living home, or another
31 residential setting; in this paragraph.

1 (A) "public agency" means an agency operated by the state or a
2 local government;

3 (B) "subdivision" means a component of a multi-function
4 facility or home health agency, such as the home health care division of a
5 hospital or the division of a public agency, that independently meets the
6 requirements for licensure as a home health agency;

7 (11) "hospice" or "agency providing hospice services or operating
8 hospice programs" means a program that provides hospice services;

9 (12) "hospice services" means a range of interdisciplinary palliative
10 and supportive services

11 (A) provided in a home or at an inpatient facility to persons
12 who are terminally ill and to those persons' families in order to meet their
13 physical, psychological, social, emotional, and spiritual needs; and

14 (B) based on hospice philosophy; for purposes of this
15 subparagraph "hospice philosophy" means a philosophy that is life affirming,
16 recognizes dying as a normal process of living, focuses on maintaining the
17 quality of remaining life, neither hastens nor postpones death, strengthens the
18 client's role in making informed decisions about care, and stresses the delivery
19 of services in the least restrictive setting possible and with the least amount of
20 technology necessary by volunteers and professionals who are trained to help a
21 client with the physical, social, psychological, spiritual, and emotional issues
22 related to terminal illness so that the client can feel better prepared for the
23 death that is to come;

24 (13) "hospital" means a public or private institution or establishment
25 devoted primarily to providing diagnosis, treatment, or care over a continuous period
26 of 24 hours each day for two or more unrelated individuals suffering from illness,
27 physical or mental disease, injury or deformity, or any other condition for which
28 medical or surgical services would be appropriate; "hospital" does not include a
29 frontier extended stay clinic;

30 (14) "intermediate care facility for the mentally retarded" has the
31 meaning given in 42 C.F.R. 440.150;

1 (15) "licensed entity" means an entity that has a license issued under
2 this chapter;

3 (16) "maternity home" means a place of residence the primary function
4 of which is to give care, with or without compensation, to pregnant individuals,
5 regardless of age, or that provides care, as needed, to mothers and their newborn
6 infants;

7 (17) "nursing facility" means a facility that is primarily engaged in
8 providing skilled nursing care and related services for those who, because of their
9 mental or physical condition, require care and services above the level of room and
10 board; "nursing facility" does not include a facility that is primarily for the care and
11 treatment of mental diseases;

12 (18) "residential child care facility" means a place, staffed by
13 employees, where one or more children who live apart from their parents receive 24-
14 hour care on a continuing basis;

15 (19) "residential psychiatric treatment center" means a secure or semi-
16 secure facility, or an inpatient program in another facility, that provides, under the
17 direction of a physician, psychiatric diagnostic, evaluation, and treatment services on a
18 24-hour-a-day basis to children with severe emotional or behavioral disorders;

19 (20) "runaway shelter" means a facility housing a runaway child;

20 (21) "rural health clinic"

21 (A) means a facility or clinic that is authorized to provide
22 health care services and is located in a rural area;

23 (B) includes a frontier extended stay clinic;

24 (C) does not include a rehabilitation agency or a facility
25 primarily for the care and treatment of mental diseases.

26 * **Sec. 35.** AS 47.32.010, added by sec. 34 of this Act, is amended by adding a new
27 subsection to read:

28 (c) The provisions of AS 47.05.300 - 47.05.390, regarding criminal history,
29 criminal history checks, criminal history use standards, and a centralized registry,
30 apply to entities listed in (b) of this section, as provided in AS 47.05.300.

31 * **Sec. 36.** AS 47.33.010 is amended to read:

1 **Sec. 47.33.010. Applicability.** (a) Except as provided in (b) of this section,
2 this chapter applies to residential facilities operated in the state that serve three or
3 more adults who are not related to the owner of the facility by blood or marriage by

4 (1) providing housing and food service to its residents; and
5 (2) providing or obtaining, or offering to provide or obtain for its
6 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 (b) Notwithstanding (a) of this section, this chapter does not apply to

12 (1) a correctional facility;

13 (2) a facility for treatment of alcoholism that is regulated under
14 AS 47.37;

15 (3) an emergency shelter;

16 (4) a medical facility, including a nursing home, licensed under
17 AS 47.32 [AS 18.20];

18 (5) a program for runaway minors licensed under AS 47.10.310; or

19 (6) a maternity home licensed under AS 47.32 [AS 47.35].

20 * **Sec. 37.** AS 47.33.070(a) is amended to read:

21 (a) An assisted living home shall maintain, for each resident of the home, a
22 file that includes

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

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

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

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

30 (5) a copy of the residential services contract between the home and
31 the resident;

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

3 (7) written acknowledgment by the resident or the resident's
4 representative that the resident has received a copy of and has read, or has been read
5 the

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

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

8 (C) resident's right to protection from retaliation under
9 AS 47.33.350;

10 (D) provisions of AS 47.32.160 [AS 47.33.510], regarding
11 immunity; and

12 (E) home's house rules;

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

15 (9) a copy of the resident's living will, if any, or an advance health care
16 directive made under AS 13.52, if any; and

17 (10) a copy of a power of attorney or other written designation,
18 including an advance health care directive made under AS 13.52, of an agent,
19 representative, or surrogate by the resident.

20 * **Sec. 38.** AS 47.40.021 is amended to read:

21 **Sec. 47.40.021. Licensing and supervision.** Facilities providing services that
22 are purchased by the department under AS 47.40.011 - 47.40.091 [,] shall, if required
23 by the department, be licensed and supervised under AS 47.32 [AS 47.35].

24 * **Sec. 39.** AS 47.40.110 is amended to read:

25 **Sec. 47.40.110. Licensing and supervision.** A person providing services
26 purchased by the Department of Health and Social Services under AS 47.40.100 -
27 47.40.120 shall, if required to be licensed under AS 47.32 [AS 47.35], be licensed and
28 supervised in the same manner as foster homes and maternity homes under AS 47.32
29 [AS 47.35].

30 * **Sec. 40.** AS 47.55.010(d) is amended to read:

31 (d) The department may employ the necessary subordinate officers and

1 employees, and shall prescribe methods for operation of the homes, standards of care
2 and service to home residents, and rules governing personnel. The methods for
3 operation and standards of care and services to residents prescribed under this
4 subsection shall be the same as the methods for operation and standards of care
5 established by the department for an assisted living home licensed under AS 47.32
6 [AS 47.33].

7 * **Sec. 41.** AS 47.62.090(2) is amended to read:

8 (2) "long term care facility" means an assisted living home, as defined
9 in AS 47.32.900, [THAT IS REQUIRED TO BE LICENSED UNDER AS 47.33] and
10 a nursing facility, [HOME] as defined in AS 47.32.900 [AS 08.70.180];

11 * **Sec. 42.** AS 47.80.140 is repealed and reenacted to read:

12 **Sec. 47.80.140. Licensing and certificates of need.** (a) A person may not
13 establish or operate a residential facility until the facility has been licensed under
14 AS 47.32.

15 (b) A certificate of need is required as a prerequisite for the licensing of a
16 residential facility established after July 1, 1978, and not otherwise provided for in
17 AS 18.07.031 - 18.07.111. A certificate shall be issued and regulated in the same
18 manner as provided in AS 18.07.031 - 18.07.111 for certificates of need for health
19 care facilities. This subsection does not apply to an assisted living home licensed
20 under AS 47.32.

21 * **Sec. 43.** AS 14.43.148(h)(1)(B)(iii) is repealed.

22 * **Sec. 44.** AS 18.05.040(a)(10); AS 18.18.005, 18.18.010, 18.18.020, 18.18.030,
23 18.18.040, 18.18.100, 18.18.200, 18.18.300, 18.18.310, 18.18.320, 18.18.330, 18.18.340,
24 18.18.350, 18.18.390, 18.18.410, 18.18.420, 18.18.430, 18.18.440, 18.18.450, 18.18.460,
25 18.18.470, and 18.18.490 are repealed.

26 * **Sec. 45.** AS 18.20.010, 18.20.020, 18.20.030, 18.20.040, 18.20.050, 18.20.060,
27 18.20.070, 18.20.090, 18.20.110, 18.20.120, 18.20.130(2), 18.20.230, 18.20.240, 18.20.250,
28 18.20.260, and 18.20.302 are repealed.

29 * **Sec. 46.** AS 44.62.330(a)(15), 44.62.330(a)(17), and 44.62.330(a)(41) are repealed.

30 * **Sec. 47.** AS 44.64.030(a)(15), 44.64.030(a)(16), 44.64.030(a)(33), and
31 AS 44.64.030(a)(34) are repealed.

1 * **Sec. 48.** AS 47.33.100, 47.33.400, 47.33.410, 47.33.420, 47.33.430, 47.33.500,
2 47.33.510, 47.33.520, 47.33.530, 47.33.540, 47.33.550, 47.33.560, 47.33.570, 47.33.910,
3 47.33.920, 47.33.990(8), 47.33.990(11), and 47.33.990(14) are repealed.

4 * **Sec. 49.** AS 47.35.005, 47.35.010, 47.35.015, 47.35.017, 47.35.019, 47.35.021,
5 47.35.022, 47.35.023, 47.35.025, 47.35.027, 47.35.029, 47.35.033, 47.35.037, 47.35.039,
6 47.35.043, 47.35.045, 47.35.047, 47.35.048, 47.35.085, 47.35.105, 47.35.110, 47.35.120,
7 47.35.130, 47.35.132, 47.35.140, 47.35.800, 47.35.810, 47.35.820, and 47.35.900 are
8 repealed.

9 * **Sec. 50.** AS 47.37.270(2) and 47.37.270(3) are repealed.

10 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **APPLICABILITY REGARDING CERTAIN SECTIONS; DEPARTMENT ACTION.**

13 (a) The changes made by secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act apply to

14 (1) applications or requests submitted within the 90 days before, or submitted
15 on or after, the effective dates of sec. 34 of this Act for initial licensure, certification, or other
16 approval of an entity listed in AS 47.32.010(b), enacted by sec. 34 of this Act; and

17 (2) applications submitted within the 90 days before, or submitted on or after,
18 the effective date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act for renewal of a
19 license issued before the effective date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act
20 under a statute repealed or amended by this Act, and regarding a type of entity listed in
21 AS 47.32.010(b), enacted by sec. 34 of this Act.

22 (b) The Department of Health and Social Services may not make a final determination
23 regarding an application or request described in (a) of this section earlier than the effective
24 date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act.

25 * **Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **APPLICABILITY REGARDING SEC. 19 OF THIS ACT; DEPARTMENT**
28 **ACTION.** (a) The changes made by sec. 19 of this Act apply to

29 (1) applications or requests submitted within the 30 days before, or submitted
30 on or after, the effective date of sec. 19 of this Act for initial licensure, certification, or other
31 approval or selection as any of the following:

1 (A) an entity or individual service provided that is subject to
2 AS 47.05.300 - 47.05.390, enacted by sec. 19 of this Act;

3 (B) an entity listed in AS 47.32.010(b), enacted by sec. 34 of this Act,
4 that is not described in (A) of this paragraph; and

5 (2) applications or requests submitted within the 30 days before, or submitted
6 on or after, the effective date of sec. 19 of this Act, for renewal of a license, certification, or
7 other approval or selection for an entity or individual service provider that is subject to
8 AS 47.05.300 - 47.05.390, enacted by sec. 19 of this Act.

9 (b) The Department of Health and Social Services may not make a final determination
10 regarding an application or request described in (a) of this section earlier than the effective
11 date of sec. 19 of this Act.

12 (c) In this section,

13 (1) "entity" includes an entity subject to AS 47.05.300 - 47.05.390, enacted by
14 sec. 19 of this Act, and an entity listed in AS 47.32.010(b), enacted by sec. 34 of this Act, that
15 is not subject to AS 47.05.300 - 47.05.390, enacted by sec. 19 of this Act;

16 (2) "individual service provider" has the meaning given in AS 47.05.390,
17 enacted by sec. 19 of this Act.

18 * **Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **TRANSITION: CURRENTLY LICENSED OR APPROVED FACILITIES.** (a)
21 Notwithstanding AS 47.32.020, enacted by sec. 34 of this Act, a facility that is a type of entity
22 listed in AS 47.32.010(b), enacted by sec. 34 of this Act, and that on the effective date of secs.
23 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act is being operated under a valid license or under
24 an approval issued by the department under a statute repealed or amended by this Act, may
25 continue to be operated under that license or approval as provided in this section.

26 (b) References to AS 47.32 in the following sections are interpreted to include, until
27 June 30, 2006, the relevant former licensing provision repealed in this Act:

28 (1) AS 11.61.195(a), as amended by sec. 4 of this Act;

29 (2) AS 11.61.220(a), as amended by sec. 5 of this Act;

30 (3) AS 25.27.244(s)(2), as amended by sec. 14 of this Act;

31 (4) AS 47.05.010, as amended by sec. 17 of this Act;

- 1 (5) AS 47.05.055(a), as amended by sec. 18 of this Act;
- 2 (6) AS 47.10.141(b), as amended by sec. 20 of this Act;
- 3 (7) AS 47.10.392, as amended by sec. 21 of this Act;
- 4 (8) AS 47.10.399(2), as amended by sec. 22 of this Act;
- 5 (9) AS 47.10.990, as amended by secs. 23 and 24 of this Act;
- 6 (10) AS 47.24.013(a), as amended by sec. 26 of this Act;
- 7 (11) AS 47.24.017(d), as amended by sec. 27 of this Act;
- 8 (12) AS 47.25.071(b), as amended by sec. 28 of this Act;
- 9 (13) AS 47.25.095(2), as amended by sec. 29 of this Act;
- 10 (14) AS 47.25.095(4), as amended by sec. 30 of this Act;
- 11 (15) AS 47.25.195(f)(1), as amended by sec. 31 of this Act;
- 12 (16) AS 47.30.915(5), as amended by sec. 32 of this Act;
- 13 (17) AS 47.31.100(4), as amended by sec. 33 of this Act;
- 14 (18) AS 47.33.070(a), as amended by sec. 37 of this Act; and
- 15 (19) AS 47.55.010(d), as amended by sec. 40 of this Act.

16 (c) Until renewal or expiration of a current license under (d) or (e) of this section, the
17 requirements and standards, including department oversight, monitoring, and enforcement
18 actions, regarding operation of a facility that is authorized to continuing operating under this
19 section are those that were in effect in statute or regulation on the day before the effective date
20 of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act.

21 (d) Unless the terms of the facility's current license provide for an earlier expiration
22 date, and unless an enforcement action taken by the department as provided in (c) of this
23 section affects the validity of the current license, the expiration date of the current license of a
24 facility described in (a) of this section is June 30, 2006.

25 (e) Application for license renewal must be made under AS 47.32.060, enacted by
26 sec. 34 of this Act, by the date required by that statute, for a facility described in (a) of this
27 section for which renewal of licensure is desired before expiration of the facility's current
28 license. For purposes of renewal of a license under this subsection and AS 47.32.060, enacted
29 by sec. 34 of this Act, the current license for the facility is considered to be a biennial license
30 under AS 47.32.

31 (f) In this section,

1 (1) "current license" means a license or approval described in (a) of this
2 section;

3 (2) "department" means the Department of Health and Social Services.

4 * **Sec. 54.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 **TRANSITION: CERTAIN APPLICATIONS PENDING FOR MORE THAN 90**
7 **DAYS.** (a) An application for licensure or approval regarding a facility that is a type of
8 entity listed in AS 47.32.010(b), enacted by sec. 34 of this Act, that was submitted more than
9 90 days before the effective date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act under
10 a statute repealed or amended by this Act and that is pending department action on the
11 effective date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act shall continue to be
12 processed, and either granted or denied, by the department under the applicable statutes and
13 regulations that were in effect on the day before the effective date of secs. 1 - 18, 20 - 34, 36 -
14 41, and 43 - 50 of this Act.

15 (b) Until renewal or expiration of the license or approval under (c) or (d) of this
16 section, the requirements and standards, including department oversight, monitoring, and
17 enforcement actions, regarding operation of a facility licensed or approved as provided in (a)
18 of this section are those that were in effect in statute or regulation on the day before the
19 effective date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this Act.

20 (c) Unless an enforcement action taken by the department as provided in (b) of this
21 section affects the validity of the license or approval, a license or approval issued by the
22 department on or after the effective date of secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50 of this
23 Act under the provisions of (a) of this section expires June 30, 2006.

24 (d) Application must be made under AS 47.32.060, enacted by sec. 34 of this Act, by
25 the date required by that statute, for a facility described in (a) of this section for which a
26 license or approval was issued under (a) of this section and for which renewal of a license is
27 desired, before expiration of the license or approval issued under (a) of this section. For
28 purposes of renewal of a license under this subsection and AS 47.32.060, enacted by sec. 34
29 of this Act, the license or approval issued under (a) of this section regarding the facility is
30 considered to be a biennial license under AS 47.32.

31 (e) In this section,

1 (1) "department" means the Department of Health and Social Services;

2 (2) "license" includes a renewed license.

3 * Sec. 55. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: PENDING APPLICATIONS AND OTHER REQUESTS
6 REGARDING SEC. 19 OF THIS ACT. (a) An application or other request for licensure,
7 certification, or other approval or selection as an entity or individual service provider that
8 would be subject to AS 47.05.300 - 47.05.390, enacted by sec. 19 of this Act, that was
9 submitted more than 30 days before the effective date of sec. 19 of this Act and is pending
10 department action on the effective date of sec. 19 of this Act shall continue to be processed,
11 and either granted or denied, by the department under the applicable statutes and regulations
12 that were in effect on the day before the effective date of sec. 19 of this Act. In this
13 subsection,

14 (1) "entity" means an entity that would be subject to AS 47.05.300 -
15 47.05.390, enacted by sec. 19 of this Act;

16 (2) "individual service provider" has the meaning given in AS 47.05.390,
17 enacted by sec. 19 of this Act.

18 (b) In this section,

19 (1) "department" means the Department of Health and Social Services;

20 (2) "license" includes a renewed license.

21 * Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITION: REGULATIONS. (a) The Department of Health and Social Services
24 may proceed to adopt regulations necessary to implement secs. 1 - 18, 20 - 34, 36 - 41, and 43
25 - 50 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
26 but not before the effective date of the statutory changes.

27 (b) The Department of Health and Social Services may proceed to adopt regulations
28 necessary to implement secs 19 and 35 of this Act. The regulations take effect under
29 AS 44.62 (Administrative Procedure Act).

30 * Sec. 57. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS. The lieutenant
2 governor shall certify to the revisor of statutes the effective date of the regulations adopted by
3 the Department of Health and Social Services under sec. 56 of this Act.

4 * **Sec. 58.** Sections 51, 54, and 56 of this Act take effect immediately under
5 AS 01.10.070(c).

6 * **Sec. 59.** Section 41 of this Act takes effect July 1, 2006.

7 * **Sec. 60.** Sections 19 and 35 of this Act take effect on the effective date of the regulations
8 adopted by the Department of Health and Social Services under sec. 56(b) of this Act, or
9 March 1, 2006, whichever is earlier, but in no event earlier than July 2, 2005.

10 * **Sec. 61.** Except as provided in secs. 58 - 60 of this Act, this Act takes effect July 2, 2005.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DYSON

TO: CSSB 125(), Draft Version "G"

1 Page 1, line 7, following "clinics;":

2 Insert "relating to possession of a firearm at licensed entities and facilities;"

3

4 Page 4, line 1, following "children":

5 Insert "except that a person 21 years of age or older may possess an unloaded
6 firearm in the trunk of a motor vehicle or encased in a closed container of a motor
7 vehicle"

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/2/05

FURTHER: Judiciary
Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4.13.05

Health, Education and Social Services Committee considered SENATE BILL NO. 125

SB 125 LICENSING MEDICAL OR CARE FACILITIES

"An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 125 (HES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
 New Title

House Bill:

- Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DLAW	2/28	X			1
HSS	2/28			X	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>Gary Miller</i>	✓			
<i>[Signature]</i>			✓	
<i>Lydia Green</i>	✓			
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			



Municipality of Anchorage

151, 15th (1905th) • Anchorage, Alaska 99510-6850 • 828 "L" Street • <http://www.muni.org>



Mayor Mark Begich

Department of Health and Human Services

April 18, 2005

Senator Fred Dyson, Chair
Senate House, Education and Social Services Committee
Senator Ralph Seekins, Chair
Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Senators Dyson and Seekins:

I write to seek your support for an important change to SB125, which relates to the protection of children in child care facilities.

On April 13, 2005, I testified before the Senate HESS Committee on SB 125 containing the new statute relating to child care and other licensing authority, AS 47.32.030. I testified that the language needed to be re-inserted into the statute which allows the State to delegate to the home rule Municipalities, which request it, the authority to license child care facilities. Senator Dyson indicated that the Commissioner said that Anchorage is correct about the problem with the deletion of the language and assured me that this language would be included in the next version. He also reported that the bill would next go to the Judiciary Committee and thanked me for my testimony.

In reviewing the latest version of SB 125 dated 4/14/05, it does not contain this important language, but I understand that the State Department of Health and Social Services will be recommending an amendment to add the language.

The specific language from the current AS 47.35.010 (c) that we strongly recommend be re-inserted into AS 47.32.030 "Powers of Department" is as follows:

"The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to child care facilities under this chapter to a municipality that has adopted an ordinance providing for child care licensing under home rule powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. A municipality to which these powers have been delegated may adopt, by ordinance, additional requirements for child care facilities operating within its boundaries if the requirements meet or exceed the requirements adopted by the department."

We will work with the Senate Judiciary Committee and then the House to ensure the language is re-inserted. If you have further suggestions or questions, please let me know. I thank you for your on-going assistance to improve services for children.

Sincerely,

Martha M. Anderson

Martha M. Anderson
Manager, Child & Adult Care Program

cc: Virginia Tonkus

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