

HB

88

<TARGET><BILL>HB 88</BILL><SUBJECT>HB
88</SUBJECT><COMM>HHSS28</COMM></TARGET>

HOUSE BILL NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MILLETT

Introduced: 1/28/13

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act changing the terms 'mental retardation' and 'mentally retarded,' and making**
2 **conforming changes, in Alaska Statutes."**

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

4 *** Section 1.** AS 08.68.333(d) is amended to read:

5 (d) If the certified nurse aide is employed in a skilled nursing facility or a
6 nursing facility, other than an intermediate care facility for **persons with intellectual**
7 **and developmental disabilities** [THE MENTALLY RETARDED], that is
8 participating in the Medicaid or Medicare program, only the state survey and
9 certification agency may make, and report to the Board of Nursing, a finding that the
10 certified nurse aide has committed abuse, neglect, or misappropriation of property in
11 connection with the nurse aide's employment at the facility.

12 *** Sec. 2.** AS 12.47.130(5) is amended to read:

13 (5) "mental disease or defect" means a disorder of thought or mood
14 that substantially impairs judgment, behavior, capacity to recognize reality, or ability

1 to cope with the ordinary demands of life; "mental disease or defect" also includes
 2 intellectual and developmental disabilities that result in [MENTAL
 3 RETARDATION, WHICH MEANS A] significantly below average general
 4 intellectual functioning that impairs a person's ability to adapt to or cope with the
 5 ordinary demands of life;

6 * **Sec. 3.** AS 14.30.350(2) is amended to read:

7 (2) "child with a disability" means a child with one or more of the
 8 following:

9 (A) intellectual disability [MENTAL RETARDATION];

10 (B) learning disabilities;

11 (C) emotional disturbance;

12 (D) deafness;

13 (E) deaf-blindness;

14 (F) hearing impairment;

15 (G) orthopedic impairment;

16 (H) other health impairment;

17 (I) speech or language impairment;

18 (J) visual impairment;

19 (K) multiple disabilities;

20 (L) early childhood development delay;

21 (M) autism;

22 (N) traumatic brain injury;

23 (O) developmental disability;

24 * **Sec. 4.** AS 14.30.630(b) is amended to read:

25 (b) The agency shall

26 (1) provide special education services including

27 (A) itinerant outreach services to students who are deaf, deaf-
 28 blind, intellectually disabled, developmentally disabled [MENTALLY
 29 RETARDED], hearing impaired, blind and visually impaired, orthopedically
 30 disabled, health-impaired in other ways, and severely emotionally disturbed,
 31 and to students with multiple disabilities;

1 (B) special education instructional support and training of local
2 school district special education personnel; and

3 (C) other services appropriate to special education needs;

4 (2) provide for an annual audit of the agency;

5 (3) provide the department with a two-year plan of operation including
6 a description of the services to be offered by the agency, the method by which the
7 services will be evaluated, information on the number of students and school district
8 personnel to be served, a schedule of funds available to the agency from all sources,
9 and other information that may be required by the department by regulation;

10 (4) present an annual budget to the department.

11 * **Sec. 5.** AS 18.15.210 is amended to read:

12 **Sec. 18.15.210. Testing for certain other heritable diseases.** The department
13 shall administer and provide services for testing for other heritable diseases that lead
14 to intellectual disabilities, developmental disabilities, or both, [MENTAL
15 RETARDATION] and physical disabilities as screening programs accepted by current
16 medical practice and as developed.

17 * **Sec. 6.** AS 18.20.140 is amended to read:

18 **Sec. 18.20.140. Purpose.** The purpose of AS 18.20.140 - 18.20.220 is to make
19 an inventory of existing hospitals and medical facilities, community mental health
20 centers, and facilities for persons with intellectual and developmental disabilities
21 [THE MENTALLY RETARDED]; to survey the need for construction of hospitals
22 and medical facilities, community mental health centers, and facilities for persons
23 with intellectual and developmental disabilities [THE MENTALLY RETARDED];
24 and to develop a program and plan of construction for each.

25 * **Sec. 7.** AS 18.20.150(a) is amended to read:

26 (a) For each of the following groups of facilities, hospitals and medical
27 facilities (Group 1), community mental health centers (Group 2), and facilities for
28 persons with intellectual and developmental disabilities [THE MENTALLY
29 RETARDED] (Group 3), the department shall

30 (1) make a statewide inventory of existing public, nonprofit, and
31 proprietary facilities;

- 1 (2) survey the need for construction of these facilities;
- 2 (3) on the basis of the inventory and survey, develop a program for the
- 3 construction of public and other nonprofit facilities for each of these groups that will,
- 4 in conjunction with existing facilities, afford the necessary physical facilities for
- 5 furnishing adequate facility services to all residents of the state.

6 * **Sec. 8.** AS 18.20.210(3) is amended to read:

7 (3) "facility for persons with intellectual and developmental

8 disabilities [THE MENTALLY RETARDED]" means a facility specially designed for

9 the diagnosis, treatment, education, training, or custodial care of persons with

10 intellectual and developmental disabilities [THE MENTALLY RETARDED],

11 including facilities for training specialists and sheltered workshops for persons with

12 intellectual and developmental disabilities [THE MENTALLY RETARDED], but

13 only if the workshops are part of facilities that provide or will provide comprehensive

14 services for persons with intellectual and developmental disabilities [THE

15 MENTALLY RETARDED];

16 * **Sec. 9.** AS 18.20.210(4) is amended to read:

17 (4) "federal act" means Title VI of the Public Health Service Act (42

18 U.S.C. 291 et seq.) concerning hospitals and medical facilities and the Mental

19 Retardation Facilities and Community Mental Health Centers Construction Act of

20 1963 (P.L. 88-164) concerning facilities for persons with intellectual and

21 developmental disabilities [THE MENTALLY RETARDED] and community mental

22 health centers, both as now or hereafter amended;

23 * **Sec. 10.** AS 18.20.210(7) is amended to read:

24 (7) "nonprofit facility for persons with intellectual and

25 developmental disabilities [THE MENTALLY RETARDED]" and "nonprofit

26 community mental health center" mean, respectively, a facility for persons with

27 intellectual and developmental disabilities [THE MENTALLY RETARDED] and a

28 community mental health center that is owned and operated by one or more nonprofit

29 corporations or associations no part of the net earnings of which inures, or may

30 lawfully inure, to the benefit of any private shareholder or individual; and the term

31 "nonprofit private agency or organization" means an agency or organization that is

1 such a corporation or association or that is owned and operated by one or more of such
2 corporations or associations;

3 * **Sec. 11.** AS 18.80.300(15) is amended to read:

4 (15) "physical or mental impairment" means

5 (A) physiological disorder or condition, cosmetic
6 disfigurement, or anatomical loss affecting one or more of the following body
7 systems: neurological, musculoskeletal, special sense organs, respiratory
8 including speech organs, cardiovascular, reproductive, digestive, genito-
9 urinary, hemic and lymphatic, skin, and endocrine;

10 (B) mental or psychological disorder, including **intellectual**
11 **disability** [MENTAL RETARDATION], organic brain syndrome, emotional
12 or mental illness, and specific learning disabilities;

13 * **Sec. 12.** AS 36.30.170(k) is amended to read:

14 (k) In this section, "person with a disability" means an individual

15 (1) who has a severe physical or mental disability that seriously limits
16 one or more functional capacities in terms of employability; in this paragraph,
17 "functional capacities" means mobility, communication, self-care, self-direction,
18 interpersonal skills, work tolerance, or work skills;

19 (2) whose physical or mental disability

20 (A) results from amputation, arthritis, autism, blindness, burn
21 injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart
22 disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction,
23 **intellectual disability, developmental disability, or both** [MENTAL
24 RETARDATION], mental illness, multiple sclerosis, muscular dystrophy,
25 musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia,
26 other spinal cord conditions, sickle cell anemia, specific learning disability, or
27 end stage renal disease; in this subparagraph, "neurological disorders" include
28 stroke and epilepsy; or

29 (B) is a disability or combination of disabilities that are not
30 identified in (A) of this paragraph and that are determined on the basis of an
31 evaluation of rehabilitation potential to cause substantial functional limitation

1 comparable to a disability identified in (A) of this paragraph; and

2 (3) whose vocational rehabilitation can be expected to require multiple
3 vocational rehabilitation services over an extended period of time.

4 * **Sec. 13.** AS 43.23.095(2) is amended to read:

5 (2) "disabled" means physically or mentally unable to complete and
6 sign an application due to a serious emotional disturbance, visual, orthopedic, or other
7 health impairment, or developmental disability that is attributable to **intellectual**
8 **disability** [MENTAL RETARDATION], cerebral palsy, epilepsy, autism, or other
9 cause; "disabled" does not mean "incompetent";

10 * **Sec. 14.** AS 47.05.055(b) is amended to read:

11 (b) If the certified nurse aide is employed in a skilled nursing facility or
12 nursing facility, other than an intermediate care facility for **persons with intellectual**
13 **and developmental disabilities** [THE MENTALLY RETARDED], that is
14 participating in the Medicaid or Medicare program, only the state survey and
15 certification agency may make, and report to the Board of Nursing, a finding that a
16 certified nurse aide has committed abuse, neglect, or misappropriation of property in
17 connection with the nurse aide's employment at the facility.

18 * **Sec. 15.** AS 47.07.020(b) is amended to read:

19 (b) In addition to the persons specified in (a) of this section, the following
20 optional groups of persons for whom the state may claim federal financial
21 participation are eligible for medical assistance:

22 (1) persons eligible for but not receiving assistance under any plan of
23 the state approved under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act,
24 Supplemental Security Income) or a federal program designated as the successor to the
25 aid to families with dependent children program;

26 (2) persons in a general hospital, skilled nursing facility, or
27 intermediate care facility, who, if they left the facility, would be eligible for assistance
28 under one of the federal programs specified in (1) of this subsection;

29 (3) persons under 21 years of age who are under supervision of the
30 department, for whom maintenance is being paid in whole or in part from public
31 funds, and who are in foster homes or private child-care institutions;

1 (4) aged, blind, or disabled persons, who, because they do not meet
2 income and resources requirements, do not receive supplemental security income
3 under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act), and who do not
4 receive a mandatory state supplement, but who are eligible, or would be eligible if
5 they were not in a skilled nursing facility or intermediate care facility to receive an
6 optional state supplementary payment;

7 (5) persons under 21 years of age who are in an institution designated
8 as an intermediate care facility for persons with intellectual and developmental
9 disabilities [THE MENTALLY RETARDED] and who are financially eligible as
10 determined by the standards of the federal program designated as the successor to the
11 aid to families with dependent children program;

12 (6) persons in a medical or intermediate care facility whose income
13 while in the facility does not exceed 300 percent of the supplemental security income
14 benefit rate under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act) but who
15 would not be eligible for an optional state supplementary payment if they left the
16 hospital or other facility;

17 (7) persons under 21 years of age who are receiving active treatment in
18 a psychiatric hospital and who are financially eligible as determined by the standards
19 of the federal program designated as the successor to the aid to families with
20 dependent children program;

21 (8) persons under 21 years of age and not covered under (a) of this
22 section, who would be eligible for benefits under the federal program designated as
23 the successor to the aid to families with dependent children program, except that they
24 have the care and support of both their natural and adoptive parents;

25 (9) pregnant women not covered under (a) of this section and who
26 meet the income and resource requirements of the federal program designated as the
27 successor to the aid to families with dependent children program;

28 (10) persons under 21 years of age not covered under (a) of this section
29 who the department has determined cannot be placed for adoption without medical
30 assistance because of a special need for medical or rehabilitative care and who the
31 department has determined are hard-to-place children eligible for subsidy under

1 AS 25.23.190 - 25.23.210;

2 (11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title
3 XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom
4 a supplemental security income is being paid under 42 U.S.C. 1381 - 1383c (Title
5 XVI, Social Security Act) because they meet all of the following criteria:

6 (A) they are 18 years of age or younger and qualify as disabled
7 individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

8 (B) the department has determined that

9 (i) they require a level of care provided in a hospital,
10 nursing facility, or intermediate care facility for persons with
11 intellectual and developmental disabilities [THE MENTALLY
12 RETARDED];

13 (ii) it is appropriate to provide their care outside of an
14 institution; and

15 (iii) the estimated amount that would be spent for
16 medical assistance for their individual care outside an institution is not
17 greater than the estimated amount that would otherwise be expended
18 individually for medical assistance within an appropriate institution;

19 (C) if they were in a medical institution, they would be eligible
20 for medical assistance under other provisions of this chapter; and

21 (D) home and community-based services under a waiver
22 approved by the federal government are either not available to them under this
23 chapter or would be inappropriate for them;

24 (12) disabled persons, as described in 42 U.S.C.
25 1396a(a)(10)(A)(ii)(XIII), who are in families whose income, as determined under
26 applicable federal regulations or guidelines, is less than 250 percent of the official
27 poverty line applicable to a family of that size according to the United States
28 Department of Health and Human Services, and who, but for earnings in excess of the
29 limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be
30 individuals with respect to whom a supplemental security income is being paid under
31 42 U.S.C. 1381 - 1383c; a person eligible for assistance under this paragraph who is

1 not eligible under another provision of this section shall pay a premium or other cost-
 2 sharing charges according to a sliding fee scale that is based on income as established
 3 by the department in regulations;

4 (13) persons under 19 years of age who are not covered under (a) of
 5 this section and whose household income does not exceed 175 percent of the federal
 6 poverty line as defined by the United States Department of Health and Human
 7 Services and revised under 42 U.S.C. 9902(2);

8 (14) pregnant women who are not covered under (a) of this section and
 9 whose household income does not exceed 175 percent of the federal poverty line as
 10 defined by the United States Department of Health and Human Services and revised
 11 under 42 U.S.C. 9902(2);

12 (15) persons who have been diagnosed with breast or cervical cancer
 13 and who are eligible for coverage under 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII).

14 * **Sec. 16.** AS 47.07.030(b) is amended to read:

15 (b) In addition to the mandatory services specified in (a) of this section and the
 16 services provided under (d) of this section, the department may offer only the
 17 following optional services: case management services for traumatic or acquired brain
 18 injury; case management and nutrition services for pregnant women; personal care
 19 services in a recipient's home; emergency hospital services; long-term care
 20 noninstitutional services; medical supplies and equipment; advanced nurse practitioner
 21 services; clinic services; rehabilitative services for children eligible for services under
 22 AS 47.07.063, substance abusers, and emotionally disturbed or chronically mentally ill
 23 adults; targeted case management services; inpatient psychiatric facility services for
 24 individuals [AGE] 65 years of age or older and individuals under [AGE] 21 years of
 25 age; psychologists' services; clinical social workers' services; midwife services;
 26 prescribed drugs; physical therapy; occupational therapy; chiropractic services; low-
 27 dose mammography screening, as defined in AS 21.42.375(e); hospice care; treatment
 28 of speech, hearing, and language disorders; adult dental services; prosthetic devices
 29 and eyeglasses; optometrists' services; intermediate care facility services, including
 30 intermediate care facility services for persons with intellectual and developmental
 31 disabilities [THE MENTALLY RETARDED]; skilled nursing facility services for

1 individuals under [AGE] 21 years of age; and reasonable transportation to and from
 2 the point of medical care.

3 * **Sec. 17.** AS 47.07.045(b) is amended to read:

4 (b) Before the department may terminate payment for services provided under
 5 (a) of this section,

6 (1) the recipient must have had an annual assessment to determine
 7 whether the recipient continues to meet the standards under (a) of this section;

8 (2) the annual assessment must have been reviewed by an independent
 9 qualified health care professional under contract with the department; for purposes of
 10 this paragraph, "independent qualified health care professional" means,

11 (A) for a waiver based on intellectual [MENTAL
 12 RETARDATION] or developmental disability, a person who is qualified under
 13 42 CFR 483.430 as a qualified intellectual disability [MENTAL
 14 RETARDATION] professional;

15 (B) for other allowable waivers, a registered nurse licensed
 16 under AS 08.68 who is qualified to assess children with complex medical
 17 conditions, older Alaskans, and adults with physical disabilities for medical
 18 assistance waivers; and

19 (3) the annual assessment must find that the recipient's condition has
 20 materially improved since the previous assessment; for purposes of this paragraph,
 21 "materially improved" means that a recipient who has previously qualified for a
 22 waiver for

23 (A) a child with complex medical conditions, no longer needs
 24 technical assistance for a life-threatening condition, and is expected to be
 25 placed in a skilled nursing facility for less than 30 days each year;

26 (B) intellectual [MENTAL RETARDATION] or
 27 developmental disability, no longer needs the level of care provided by an
 28 intermediate care facility for persons with intellectual and developmental
 29 disabilities [THE MENTALLY RETARDED] either because the qualifying
 30 diagnosis has changed or the recipient is able to demonstrate the ability to
 31 function in a home setting without the need for waiver services; or

1 (C) an older Alaskan or adult with a physical disability, no
2 longer has a functional limitation or cognitive impairment that would result in
3 the need for nursing home placement, and is able to demonstrate the ability to
4 function in a home setting without the need for waiver services.

5 * **Sec. 18.** AS 47.07.055(a) is amended to read:

6 (a) The estate of an individual who received medical assistance payments is
7 subject to a claim for recovery of the medical assistance after the individual's death
8 that, except as provided in (b) of this section, may be secured by a lien filed against
9 the individual's real property during the individual's lifetime if the

10 (1) individual was an inpatient in a nursing facility, intermediate care
11 facility for persons with intellectual and developmental disabilities [THE
12 MENTALLY RETARDED], or other medical institution;

13 (2) department required the individual, as a condition of receiving
14 medical assistance under this chapter, to spend for medical expenses all but a minimal
15 amount of that individual's income; and

16 (3) department determined during the individual's lifetime, after notice
17 and opportunity for hearing, that the individual could not reasonably be expected to be
18 discharged from the institution and to return home.

19 * **Sec. 19.** AS 47.07.055(e) is amended to read:

20 (e) In addition to recovery of medical assistance upon sale of property subject
21 to a lien authorized under (a) - (d) of this section, after an individual's death, the
22 individual's estate is subject to a claim for reimbursement for medical assistance
23 payments made on behalf of the individual under this chapter for the following
24 services to the extent that those services were provided when the individual was 55
25 years of age or older:

26 (1) services received while an inpatient in a nursing facility,
27 intermediate care facility for persons with intellectual and developmental
28 disabilities [THE MENTALLY RETARDED], or other medical institutions; and

29 (2) home and community-based services provided through a waiver
30 received from the federal government that allows home and community-based services
31 to be covered under this chapter for persons who are eligible for coverage under this

1 chapter while in an institution but who are able to avoid institutionalization because of
2 the provision of home and community-based services.

3 * **Sec. 20.** AS 47.07.900(11) is amended to read:

4 (11) "health facility" includes a

5 (A) hospital, skilled nursing facility, intermediate care facility,
6 intermediate care facility for **persons with intellectual and developmental**
7 **disabilities** [THE MENTALLY RETARDED], rehabilitation facility, inpatient
8 psychiatric facility, home health agency, rural health clinic, and outpatient
9 surgical clinic; and

10 (B) birthing center if birthing centers are authorized for
11 coverage under the state plan approved under AS 47.07.040 by the United
12 States Department of Health and Human Services;

13 * **Sec. 21.** AS 47.25.195(f)(2) is amended to read:

14 (2) "health facility" includes a hospital, skilled nursing facility,
15 intermediate care facility, intermediate care facility for **persons with intellectual and**
16 **developmental disabilities** [THE MENTALLY RETARDED], rehabilitation facility,
17 inpatient psychiatric facility, home health agency, rural health clinic, and outpatient
18 surgical clinic.

19 * **Sec. 22.** AS 47.30.056(b) is amended to read:

20 (b) Expenditures under (a)(1) of this section must provide for a reasonable
21 level of necessary services to **persons who**

22 (1) **are** [THE] mentally ill;

23 (2) **have an intellectual disability, a developmental disability, or**
24 **both** [THE MENTALLY DEFECTIVE AND RETARDED];

25 (3) **are** chronic alcoholics suffering from psychoses;

26 (4) [SENILE PEOPLE WHO] as a result of [THEIR] senility, suffer
27 major mental illness; and

28 (5) **need** [OTHER PERSONS NEEDING] mental health services, as
29 the legislature may determine.

30 * **Sec. 23.** AS 47.30.056(e) is amended to read:

31 (e) In (b)(2) of this section, **"persons who have an intellectual disability,**

1 **developmental disability, or both** ["THE MENTALLY DEFECTIVE AND
2 RETARDED"] includes persons with the following neurologic or mental disorders:

3 (1) cerebral palsy;

4 (2) epilepsy;

5 (3) [MENTAL RETARDATION];

6 (4) autistic disorder;

7 **(4)** [(5)] severe organic brain impairment;

8 **(5)** [(6)] significant developmental delay during early childhood
9 indicating risk of developing a disorder listed in this subsection;

10 **(6)** [(7)] other severe and persistent **intellectual disability or**
11 **developmental disability** [MENTAL DISORDERS] manifested by behaviors and
12 symptoms similar to those manifested by persons with disorders listed in this
13 subsection.

14 * **Sec. 24.** AS 47.30.580 is amended to read:

15 **Sec. 47.30.580. Comprehensive services.** Plans and regulations adopted under
16 AS 47.30.520 - 47.30.620 must allow local programs sufficient administrative and
17 program flexibility so that local community mental health programs may be joined
18 with other programs such as **intellectual and developmental disability** [MENTAL
19 RETARDATION] programs, drug abuse programs, alcoholism programs, and
20 comprehensive mental health services programs.

21 * **Sec. 25.** AS 47.30.915(12) is amended to read:

22 (12) "mental illness" means an organic, mental, or emotional
23 impairment that has substantial adverse effects on an individual's ability to exercise
24 conscious control of the individual's actions or ability to perceive reality or to reason
25 or understand; **intellectual disability, developmental disability, or both** [MENTAL
26 RETARDATION], epilepsy, drug addiction, and alcoholism do not per se constitute
27 mental illness, although persons suffering from these conditions may also be suffering
28 from mental illness;

29 * **Sec. 26.** AS 47.32.010(b) is amended to read:

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

- 1 (1) ambulatory surgical centers;
- 2 (2) assisted living homes;
- 3 (3) child care facilities;
- 4 (4) child placement agencies;
- 5 (5) foster homes;
- 6 (6) free-standing birth centers;
- 7 (7) home health agencies;
- 8 (8) hospices, or agencies providing hospice services or operating
- 9 hospice programs;
- 10 (9) hospitals;
- 11 (10) intermediate care facilities for **individuals with an intellectual**
- 12 **disability or related condition** [THE MENTALLY RETARDED];
- 13 (11) maternity homes;
- 14 (12) nursing facilities;
- 15 (13) residential child care facilities;
- 16 (14) residential psychiatric treatment centers;
- 17 (15) rural health clinics;
- 18 (16) runaway shelters.

19 * **Sec. 27.** AS 47.32.900(14) is amended to read:

- 20 (14) "intermediate care facility for **individuals with an intellectual**
- 21 **disability or related condition** [THE MENTALLY RETARDED]" has the meaning
- 22 given in 42 C.F.R. 440.150;

Alaska Legislature

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District 24

House Bill 88

Sponsor Statement

A society is judged rightly by the manner in which it regards those members who have a disability. Respect and inclusiveness is a hallmark of a compassionate and dignified culture, and nowhere is this more apparent than in the language used for people with intellectual disabilities. "Mental retardation," originally a clinical term introduced with good intentions, has been transformed into a derogatory term that is sometimes used to degrade and insult people with intellectual disabilities. We have recognized the power of words to inflict pain with regard to race, and have taken great strides to foster an environment that rectifies that wrong. Yet even today, many do not recognize the hurtful, dehumanizing and exclusive effects of the word "retard(ed)."

House Bill 88 seeks to update state health, education and labor policy by removing the terms "mental retardation" and "mentally retarded" and replace them with "intellectual and developmental disabilities." While neither expanding nor diminishing services, rights, responsibilities or educational opportunities of individuals with intellectual and/or developmental disabilities, these changes provide the more respectful and inclusive language these women and men of our state deserve. These changes will also make our state statutes consistent with language in federal law, the Centers for Disease Control, the World Health Organization, and the White House through the President's Committee for People with Intellectual Disabilities.

More than 40 states have adopted "people first" language in their state statutes. Alaska should not be an outlier when it comes to matters such as this. Implementing House Bill 88 rectifies this. I respectfully urge your support for this legislation.



February 5, 2013

The Honorable Pete Higgins, Chair
House Health and Social Services Committee
Alaska State House of Representatives
State Capitol, Room 106
Juneau, AK 99801

Re: HB 88: Intellectual and Developmental Disability

Dear Chair Higgins:

The Disability Law Center of Alaska provides legal advocacy services to Alaskans with disabilities in a variety of practice areas, including special education, Medicaid benefits, and employment. Based on our nearly 36 years of experience, we enthusiastically support the goal of HB 88, which is to remove from Alaska statutes the phrase "mental retardation" and its variants, and replace it with "intellectual and developmental disabilities."

In her Sponsor Statement, Representative Millett correctly notes that what began as a clinical term has morphed into a "derogatory term that is sometimes used to degrade and insult people with intellectual disabilities." The brother of the young woman behind Rosa's Law, while testifying before the Maryland General Assembly, stated:

What you call my sister is how you will treat her. If you believe she's 'retarded,' it invites taunting, stigma. It invites bullying, and it also invites the slammed doors of being treated with respect and dignity.

Words matter. Alaskans with intellectual and developmental disabilities deserve to be treated with respect and dignity and we look to the House Health and Social Services Committee to lead the way toward this positive change. HB 88 is a significant step in the direction of including all individuals in the community we call Alaska.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

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February 4, 2013

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The Honorable Pete Higgins, Chair
The Honorable Wes Keller, Vice-Chair
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State Capitol, Room 106
Juneau, AK 99801

via email: Rep.Pete.Higgins@akleg.gov
Rep.Wes.Keller@akleg.gov

**Re: HB 88: Intellectual and Development Disabilities
ACLU Letter of Support**

Dear Chair Higgins & Vice-Chair Keller:

Thank you for the opportunity to provide this Letter of Support with respect to House Bill 88.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. From that perspective, we are pleased to support this legislation, which will revise relevant Alaska statutes to refer to individuals as having “intellectual and developmental disabilities” rather than as “mentally retarded.”

The Revised Terms Better Respect Alaskans

As Representative Millett stated in the Sponsor statement, “‘Mental retardation,’ originally a clinical term introduced with good intentions, has been transformed into a derogatory term that is sometimes used to degrade and insult people with intellectual disabilities.” Language, particularly

language in the laws of a State, can lead to unfair and improper treatment – either intentional or otherwise. The ACLU has consistently worked to end invidious discrimination and supports the proposed change.

By Matching the Language of Other Jurisdictions, the Bill Improves Research Ability

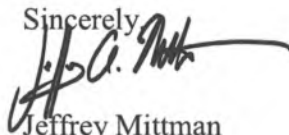
Representative Millett noted that other jurisdictions, such as “federal law, the Centers for Disease Control, the World Health Organization, and the White House through the President’s Committee for People with Intellectual Disabilities,” use “intellectual and developmental disabilities” in lieu of “mental retardation.” By conforming the language of the Alaska Statutes to these other entities, Alaska better enables researchers and policymakers to search for one term – “intellectual and developmental disabilities” – instead of two, and thus HB 88 has the additional salutary effect of reducing transaction costs of comparing legislation, reviewing evidence, and devising policy.

Conclusion

We hope that this Letter of Support aids the Health and Social Services Committee in its evaluation and expected passage of House Bill 88.

Thank you again for letting us share our thoughts. Please feel free to contact the undersigned if you have any questions or wish additional information.

Sincerely



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Benjamin Nageak
Representative Lance Pruitt
Representative Lora Reinbold
Representative Paul Seaton
Representative Geran Tarr
Sponsor, Representative Charisse Millett

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 88 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB088-EED-TLS-2-1-13
Title: STATUTORY REFS TO MENTAL RETARDATION
Sponsor: MILLETT
Requester: House Health & Social Services

Department: Department of Education and Early Development
Appropriation: Teaching and Learning Support
Allocation: Student and School Achievement
OMB Component Number: 2796

Expenditures/Revenues

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

(Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial Version

Prepared By: Paul R. Prussing, Deputy Director	Phone: (907)465-8721
Division: Teaching and Learning Support	Date: 01/31/2013 05:15 PM
Approved By: Mike Hanley	Date: 02/01/13
Commissioner	

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB088

Analysis

Requires two statute changes for the Department of Education & Early Development:
Line 6, Sec. 3: AS 14.30.350(20); and,
Line 24, Sec. 4: AS 14.30.630(b).
No anticipated fiscal impact to the department.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 88 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB088-DHSS-ASS-2-2-13
Title: STATUTORY REFS TO MENTAL RETARDATION
Sponsor: MILLETT
Requester: House Health & Social Services Committee

Department: Department of Health and Social Services
Appropriation: Departmental Support Services
Allocation: Administrative Support Services
OMB Component Number: 320

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services	10.0						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	10.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1004 Gen Fund	10.0						
Total	10.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/15

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Sarah Woods, Deputy Director	Phone:	(907)465-1631
Division	Finance & Management Services	Date:	02/01/2013 06:00 PM
Approved By:	William J. Streur, Commissioner	Date:	02/01/13
	Dept. of Health & Social Services		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB088

Analysis

HB 88 replaces the terms "mental retardation" and "mentally retarded" with the term "intellectual and developmental disabilities" in Alaska statutes.

Sections 1 -27 deals with the term "mentally retarded" in its various forms and replaces that term with various forms of "intellectual and developmental disabilities". These changes occur in the authorities for DHSS regulations in over 158 locations in the administrative code. It will require a large regulation project that is not complex and is mostly just changing terminology.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 88 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB088-DHSS-API-2-4-13
Title: STATUTORY REFS TO MENTAL RETARDATION
Sponsor: MILLETT
Requester: House Health & Social Services Committee

Department: Department of Health and Social Services
Appropriation: Behavioral Health
Allocation: Alaska Psychiatric Institute
OMB Component Number: 311

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services	***	***	***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	***	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Melissa Stone, Director
Division: Behavioral Health
Approved By: William J. Streur, Commissioner
Dept. of Health and Social Services

Phone: (907)269-3410
Date: 02/04/2013 03:00 PM
Date: 02/04/13

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB088

Analysis

HB 88 replaces the terms "mental retardation" and "mentally retarded" in Alaska statute with the term "intellectual and developmental disabilities." Including the term "intellectual disabilities" potentially broadens the scope of persons subject to affected statutes. Although it does not appear that there is an intent to broaden the category of people who may be affected under AS 12 (criminal competency statutes) or AS 47.30 (civil commitment statutes), the legislation could be read to inadvertently subject those with Intellectual disabilities/developmental disabilities to civil commitment under Title 47.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 88 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB088-DCCED-CBPL-02-01-13
Title: STATUTORY REFS TO MENTAL RETARDATION
Sponsor: MILLETT
Requester: Health and Social Services

Department: Department of Commerce, Community and
Economic Development
Appropriation: Corporations, Business and Professional
Licensing
Allocation: Corporations, Business and Professional
Licensing
OMB Component Number: 2360

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Don Habeger, Director	Phone: (907)465-2538
Division: Corporations, Business and Professional Licensing	Date: 02/01/2013 06:00 PM
Approved By: JoEllen Hanrahan, Director	Date: 02/01/13
Administrative Services	

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB 88

Analysis

House Bill 88 seeks to update state health, education and labor policy by removing the terms "mental retardation" and "mentally retarded" and replace them with "intellectual and developmental disabilities". Section one of this bill will amend a section of the Board of Nursing statutes in Title 8. No other sections of this bill effect the Department.

The Division of Corporations, Business and Professional Licensing does not anticipate a fiscal impact from this legislation.

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2/5/13

CS FOR HOUSE BILL NO. 88()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MILLETT, Lynn, Gruenberg, Peggy Wilson, Thompson, Gara, Kerttula, Nageak, Drummond, Hawker, Muñoz, Higgins, Chenault, Holmes, LeDoux, Austerman, Reinbold, Josephson, Tammie Wilson, Tuck

A BILL

FOR AN ACT ENTITLED

1 **"An Act changing the terms 'mental retardation' and 'mentally retarded,' and making**
2 **conforming changes, in Alaska Statutes."**

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

4 *** Section 1.** AS 08.68.333(d) is amended to read:

5 (d) If the certified nurse aide is employed in a skilled nursing facility or a
6 nursing facility, other than an intermediate care facility for **persons with intellectual**
7 **and developmental disabilities** [THE MENTALLY RETARDED], that is
8 participating in the Medicaid or Medicare program, only the state survey and
9 certification agency may make, and report to the Board of Nursing, a finding that the
10 certified nurse aide has committed abuse, neglect, or misappropriation of property in
11 connection with the nurse aide's employment at the facility.

12 *** Sec. 2.** AS 12.47.130(5) is amended to read:

13 (5) "mental disease or defect" means a disorder of thought or mood
14 that substantially impairs judgment, behavior, capacity to recognize reality, or ability

1 to cope with the ordinary demands of life; "mental disease or defect" also includes
 2 **intellectual and developmental disabilities that result in** [MENTAL
 3 RETARDATION, WHICH MEANS A] significantly below average general
 4 intellectual functioning that impairs a person's ability to adapt to or cope with the
 5 ordinary demands of life;

6 * **Sec. 3.** AS 14.30.350(2) is amended to read:

7 (2) "child with a disability" means a child with one or more of the
 8 following:

- 9 (A) **intellectual disability** [MENTAL RETARDATION];
- 10 (B) learning disabilities;
- 11 (C) emotional disturbance;
- 12 (D) deafness;
- 13 (E) deaf-blindness;
- 14 (F) hearing impairment;
- 15 (G) orthopedic impairment;
- 16 (H) other health impairment;
- 17 (I) speech or language impairment;
- 18 (J) visual impairment;
- 19 (K) multiple disabilities;
- 20 (L) early childhood development delay;
- 21 (M) autism;
- 22 (N) traumatic brain injury;
- 23 **(O) developmental disability;**

24 * **Sec. 4.** AS 14.30.630(b) is amended to read:

25 (b) The agency shall

26 (1) provide special education services including

27 (A) itinerant outreach services to students who are deaf, deaf-
 28 blind, **intellectually disabled, developmentally disabled** [MENTALLY
 29 RETARDED], hearing impaired, blind and visually impaired, orthopedically
 30 disabled, health-impaired in other ways, and severely emotionally disturbed,
 31 and to students with multiple disabilities;

1 (B) special education instructional support and training of local
2 school district special education personnel; and

3 (C) other services appropriate to special education needs;

4 (2) provide for an annual audit of the agency;

5 (3) provide the department with a two-year plan of operation including
6 a description of the services to be offered by the agency, the method by which the
7 services will be evaluated, information on the number of students and school district
8 personnel to be served, a schedule of funds available to the agency from all sources,
9 and other information that may be required by the department by regulation;

10 (4) present an annual budget to the department.

11 * **Sec. 5.** AS 18.15.210 is amended to read:

12 **Sec. 18.15.210. Testing for certain other heritable diseases.** The department
13 shall administer and provide services for testing for other heritable diseases that lead
14 to intellectual disabilities, developmental disabilities, or both, [MENTAL
15 RETARDATION] and physical disabilities as screening programs accepted by current
16 medical practice and as developed.

17 * **Sec. 6.** AS 18.20.140 is amended to read:

18 **Sec. 18.20.140. Purpose.** The purpose of AS 18.20.140 - 18.20.220 is to make
19 an inventory of existing hospitals and medical facilities, community mental health
20 centers, and facilities for persons with intellectual and developmental disabilities
21 [THE MENTALLY RETARDED]; to survey the need for construction of hospitals
22 and medical facilities, community mental health centers, and facilities for persons
23 with intellectual and developmental disabilities [THE MENTALLY RETARDED];
24 and to develop a program and plan of construction for each.

25 * **Sec. 7.** AS 18.20.150(a) is amended to read:

26 (a) For each of the following groups of facilities, hospitals and medical
27 facilities (Group 1), community mental health centers (Group 2), and facilities for
28 persons with intellectual and developmental disabilities [THE MENTALLY
29 RETARDED] (Group 3), the department shall

30 (1) make a statewide inventory of existing public, nonprofit, and
31 proprietary facilities;

1 (2) survey the need for construction of these facilities;

2 (3) on the basis of the inventory and survey, develop a program for the
3 construction of public and other nonprofit facilities for each of these groups that will,
4 in conjunction with existing facilities, afford the necessary physical facilities for
5 furnishing adequate facility services to all residents of the state.

6 * **Sec. 8.** AS 18.20.210(3) is amended to read:

7 (3) "facility for persons with intellectual and developmental
8 disabilities [THE MENTALLY RETARDED]" means a facility specially designed for
9 the diagnosis, treatment, education, training, or custodial care of persons with
10 intellectual and developmental disabilities [THE MENTALLY RETARDED],
11 including facilities for training specialists and sheltered workshops for persons with
12 intellectual and developmental disabilities [THE MENTALLY RETARDED], but
13 only if the workshops are part of facilities that provide or will provide comprehensive
14 services for persons with intellectual and developmental disabilities [THE
15 MENTALLY RETARDED];

16 * **Sec. 9.** AS 18.20.210(4) is amended to read:

17 (4) "federal act" means Title VI of the Public Health Service Act (42
18 U.S.C. 291 et seq.) concerning hospitals and medical facilities and the Mental
19 Retardation Facilities and Community Mental Health Centers Construction Act of
20 1963 (P.L. 88-164) concerning facilities for persons with intellectual and
21 developmental disabilities [THE MENTALLY RETARDED] and community mental
22 health centers, both as now or hereafter amended;

23 * **Sec. 10.** AS 18.20.210(7) is amended to read:

24 (7) "nonprofit facility for persons with intellectual and
25 developmental disabilities [THE MENTALLY RETARDED]" and "nonprofit
26 community mental health center" mean, respectively, a facility for persons with
27 intellectual and developmental disabilities [THE MENTALLY RETARDED] and a
28 community mental health center that is owned and operated by one or more nonprofit
29 corporations or associations no part of the net earnings of which inures, or may
30 lawfully inure, to the benefit of any private shareholder or individual; and the term
31 "nonprofit private agency or organization" means an agency or organization that is

1 such a corporation or association or that is owned and operated by one or more of such
2 corporations or associations;

3 * **Sec. 11.** AS 18.80.300(15) is amended to read:

4 (15) "physical or mental impairment" means

5 (A) physiological disorder or condition, cosmetic
6 disfigurement, or anatomical loss affecting one or more of the following body
7 systems: neurological, musculoskeletal, special sense organs, respiratory
8 including speech organs, cardiovascular, reproductive, digestive, genito-
9 urinary, hemic and lymphatic, skin, and endocrine;

10 (B) mental or psychological disorder, including intellectual
11 disability [MENTAL RETARDATION], organic brain syndrome, emotional
12 or mental illness, and specific learning disabilities;

13 * **Sec. 12.** AS 36.30.170(k) is amended to read:

14 (k) In this section, "person with a disability" means an individual

15 (1) who has a severe physical or mental disability that seriously limits
16 one or more functional capacities in terms of employability; in this paragraph,
17 "functional capacities" means mobility, communication, self-care, self-direction,
18 interpersonal skills, work tolerance, or work skills;

19 (2) whose physical or mental disability

20 (A) results from amputation, arthritis, autism, blindness, burn
21 injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart
22 disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction,
23 intellectual disability, developmental disability, or both [MENTAL
24 RETARDATION], mental illness, multiple sclerosis, muscular dystrophy,
25 musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia,
26 other spinal cord conditions, sickle cell anemia, specific learning disability, or
27 end stage renal disease; in this subparagraph, "neurological disorders" include
28 stroke and epilepsy; or

29 (B) is a disability or combination of disabilities that are not
30 identified in (A) of this paragraph and that are determined on the basis of an
31 evaluation of rehabilitation potential to cause substantial functional limitation

1 comparable to a disability identified in (A) of this paragraph; and
 2 (3) whose vocational rehabilitation can be expected to require multiple
 3 vocational rehabilitation services over an extended period of time.

4 * **Sec. 13.** AS 43.23.095(2) is amended to read:

5 (2) "disabled" means physically or mentally unable to complete and
 6 sign an application due to a serious emotional disturbance, visual, orthopedic, or other
 7 health impairment, or developmental disability that is attributable to **intellectual**
 8 **disability** [MENTAL RETARDATION], cerebral palsy, epilepsy, autism, or other
 9 cause; "disabled" does not mean "incompetent";

10 * **Sec. 14.** AS 47.05.055(b) is amended to read:

11 (b) If the certified nurse aide is employed in a skilled nursing facility or
 12 nursing facility, other than an intermediate care facility for **persons with intellectual**
 13 **and developmental disabilities** [THE MENTALLY RETARDED], that is
 14 participating in the Medicaid or Medicare program, only the state survey and
 15 certification agency may make, and report to the Board of Nursing, a finding that a
 16 certified nurse aide has committed abuse, neglect, or misappropriation of property in
 17 connection with the nurse aide's employment at the facility.

18 * **Sec. 15.** AS 47.07.020(b) is amended to read:

19 (b) In addition to the persons specified in (a) of this section, the following
 20 optional groups of persons for whom the state may claim federal financial
 21 participation are eligible for medical assistance:

22 (1) persons eligible for but not receiving assistance under any plan of
 23 the state approved under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act,
 24 Supplemental Security Income) or a federal program designated as the successor to the
 25 aid to families with dependent children program;

26 (2) persons in a general hospital, skilled nursing facility, or
 27 intermediate care facility, who, if they left the facility, would be eligible for assistance
 28 under one of the federal programs specified in (1) of this subsection;

29 (3) persons under 21 years of age who are under supervision of the
 30 department, for whom maintenance is being paid in whole or in part from public
 31 funds, and who are in foster homes or private child-care institutions;

1 (4) aged, blind, or disabled persons, who, because they do not meet
2 income and resources requirements, do not receive supplemental security income
3 under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act), and who do not
4 receive a mandatory state supplement, but who are eligible, or would be eligible if
5 they were not in a skilled nursing facility or intermediate care facility to receive an
6 optional state supplementary payment;

7 (5) persons under 21 years of age who are in an institution designated
8 as an intermediate care facility for persons with intellectual and developmental
9 disabilities [THE MENTALLY RETARDED] and who are financially eligible as
10 determined by the standards of the federal program designated as the successor to the
11 aid to families with dependent children program;

12 (6) persons in a medical or intermediate care facility whose income
13 while in the facility does not exceed 300 percent of the supplemental security income
14 benefit rate under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act) but who
15 would not be eligible for an optional state supplementary payment if they left the
16 hospital or other facility;

17 (7) persons under 21 years of age who are receiving active treatment in
18 a psychiatric hospital and who are financially eligible as determined by the standards
19 of the federal program designated as the successor to the aid to families with
20 dependent children program;

21 (8) persons under 21 years of age and not covered under (a) of this
22 section, who would be eligible for benefits under the federal program designated as
23 the successor to the aid to families with dependent children program, except that they
24 have the care and support of both their natural and adoptive parents;

25 (9) pregnant women not covered under (a) of this section and who
26 meet the income and resource requirements of the federal program designated as the
27 successor to the aid to families with dependent children program;

28 (10) persons under 21 years of age not covered under (a) of this section
29 who the department has determined cannot be placed for adoption without medical
30 assistance because of a special need for medical or rehabilitative care and who the
31 department has determined are hard-to-place children eligible for subsidy under

1 AS 25.23.190 - 25.23.210;

2 (11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title
3 XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom
4 a supplemental security income is being paid under 42 U.S.C. 1381 - 1383c (Title
5 XVI, Social Security Act) because they meet all of the following criteria:

6 (A) they are 18 years of age or younger and qualify as disabled
7 individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

8 (B) the department has determined that

9 (i) they require a level of care provided in a hospital,
10 nursing facility, or intermediate care facility for persons with
11 intellectual and developmental disabilities [THE MENTALLY
12 RETARDED];

13 (ii) it is appropriate to provide their care outside of an
14 institution; and

15 (iii) the estimated amount that would be spent for
16 medical assistance for their individual care outside an institution is not
17 greater than the estimated amount that would otherwise be expended
18 individually for medical assistance within an appropriate institution;

19 (C) if they were in a medical institution, they would be eligible
20 for medical assistance under other provisions of this chapter; and

21 (D) home and community-based services under a waiver
22 approved by the federal government are either not available to them under this
23 chapter or would be inappropriate for them;

24 (12) disabled persons, as described in 42 U.S.C.
25 1396a(a)(10)(A)(ii)(XIII), who are in families whose income, as determined under
26 applicable federal regulations or guidelines, is less than 250 percent of the official
27 poverty line applicable to a family of that size according to the United States
28 Department of Health and Human Services, and who, but for earnings in excess of the
29 limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be
30 individuals with respect to whom a supplemental security income is being paid under
31 42 U.S.C. 1381 - 1383c; a person eligible for assistance under this paragraph who is

1 not eligible under another provision of this section shall pay a premium or other cost-
2 sharing charges according to a sliding fee scale that is based on income as established
3 by the department in regulations;

4 (13) persons under 19 years of age who are not covered under (a) of
5 this section and whose household income does not exceed 175 percent of the federal
6 poverty line as defined by the United States Department of Health and Human
7 Services and revised under 42 U.S.C. 9902(2);

8 (14) pregnant women who are not covered under (a) of this section and
9 whose household income does not exceed 175 percent of the federal poverty line as
10 defined by the United States Department of Health and Human Services and revised
11 under 42 U.S.C. 9902(2);

12 (15) persons who have been diagnosed with breast or cervical cancer
13 and who are eligible for coverage under 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII).

14 * **Sec. 16.** AS 47.07.030(b) is amended to read:

15 (b) In addition to the mandatory services specified in (a) of this section and the
16 services provided under (d) of this section, the department may offer only the
17 following optional services: case management services for traumatic or acquired brain
18 injury; case management and nutrition services for pregnant women; personal care
19 services in a recipient's home; emergency hospital services; long-term care
20 noninstitutional services; medical supplies and equipment; advanced nurse practitioner
21 services; clinic services; rehabilitative services for children eligible for services under
22 AS 47.07.063, substance abusers, and emotionally disturbed or chronically mentally ill
23 adults; targeted case management services; inpatient psychiatric facility services for
24 individuals [AGE] 65 years of age or older and individuals under [AGE] 21 years of
25 age; psychologists' services; clinical social workers' services; midwife services;
26 prescribed drugs; physical therapy; occupational therapy; chiropractic services; low-
27 dose mammography screening, as defined in AS 21.42.375(e); hospice care; treatment
28 of speech, hearing, and language disorders; adult dental services; prosthetic devices
29 and eyeglasses; optometrists' services; intermediate care facility services, including
30 intermediate care facility services for persons with intellectual and developmental
31 disabilities [THE MENTALLY RETARDED]; skilled nursing facility services for

1 individuals under [AGE] 21 years of age; and reasonable transportation to and from
2 the point of medical care.

3 * **Sec. 17.** AS 47.07.045(b) is amended to read:

4 (b) Before the department may terminate payment for services provided under
5 (a) of this section,

6 (1) the recipient must have had an annual assessment to determine
7 whether the recipient continues to meet the standards under (a) of this section;

8 (2) the annual assessment must have been reviewed by an independent
9 qualified health care professional under contract with the department; for purposes of
10 this paragraph, "independent qualified health care professional" means,

11 (A) for a waiver based on intellectual [MENTAL
12 RETARDATION] or developmental disability, a person who is qualified under
13 42 CFR 483.430 as a qualified intellectual disability [MENTAL
14 RETARDATION] professional;

15 (B) for other allowable waivers, a registered nurse licensed
16 under AS 08.68 who is qualified to assess children with complex medical
17 conditions, older Alaskans, and adults with physical disabilities for medical
18 assistance waivers; and

19 (3) the annual assessment must find that the recipient's condition has
20 materially improved since the previous assessment; for purposes of this paragraph,
21 "materially improved" means that a recipient who has previously qualified for a
22 waiver for

23 (A) a child with complex medical conditions, no longer needs
24 technical assistance for a life-threatening condition, and is expected to be
25 placed in a skilled nursing facility for less than 30 days each year;

26 (B) intellectual [MENTAL RETARDATION] or
27 developmental disability, no longer needs the level of care provided by an
28 intermediate care facility for persons with intellectual and developmental
29 disabilities [THE MENTALLY RETARDED] either because the qualifying
30 diagnosis has changed or the recipient is able to demonstrate the ability to
31 function in a home setting without the need for waiver services; or

1 (C) an older Alaskan or adult with a physical disability, no
2 longer has a functional limitation or cognitive impairment that would result in
3 the need for nursing home placement, and is able to demonstrate the ability to
4 function in a home setting without the need for waiver services.

5 * **Sec. 18.** AS 47.07.055(a) is amended to read:

6 (a) The estate of an individual who received medical assistance payments is
7 subject to a claim for recovery of the medical assistance after the individual's death
8 that, except as provided in (b) of this section, may be secured by a lien filed against
9 the individual's real property during the individual's lifetime if the

10 (1) individual was an inpatient in a nursing facility, intermediate care
11 facility for **persons with intellectual and developmental disabilities** [THE
12 MENTALLY RETARDED], or other medical institution;

13 (2) department required the individual, as a condition of receiving
14 medical assistance under this chapter, to spend for medical expenses all but a minimal
15 amount of that individual's income; and

16 (3) department determined during the individual's lifetime, after notice
17 and opportunity for hearing, that the individual could not reasonably be expected to be
18 discharged from the institution and to return home.

19 * **Sec. 19.** AS 47.07.055(e) is amended to read:

20 (e) In addition to recovery of medical assistance upon sale of property subject
21 to a lien authorized under (a) - (d) of this section, after an individual's death, the
22 individual's estate is subject to a claim for reimbursement for medical assistance
23 payments made on behalf of the individual under this chapter for the following
24 services to the extent that those services were provided when the individual was 55
25 years of age or older:

26 (1) services received while an inpatient in a nursing facility,
27 intermediate care facility for **persons with intellectual and developmental**
28 **disabilities** [THE MENTALLY RETARDED], or other medical institutions; and

29 (2) home and community-based services provided through a waiver
30 received from the federal government that allows home and community-based services
31 to be covered under this chapter for persons who are eligible for coverage under this

1 chapter while in an institution but who are able to avoid institutionalization because of
2 the provision of home and community-based services.

3 * **Sec. 20.** AS 47.07.900(11) is amended to read:

4 (11) "health facility" includes a

5 (A) hospital, skilled nursing facility, intermediate care facility,
6 intermediate care facility for **persons with intellectual and developmental**
7 **disabilities** [THE MENTALLY RETARDED], rehabilitation facility, inpatient
8 psychiatric facility, home health agency, rural health clinic, and outpatient
9 surgical clinic; and

10 (B) birthing center if birthing centers are authorized for
11 coverage under the state plan approved under AS 47.07.040 by the United
12 States Department of Health and Human Services;

13 * **Sec. 21.** AS 47.25.195(f)(2) is amended to read:

14 (2) "health facility" includes a hospital, skilled nursing facility,
15 intermediate care facility, intermediate care facility for **persons with intellectual and**
16 **developmental disabilities** [THE MENTALLY RETARDED], rehabilitation facility,
17 inpatient psychiatric facility, home health agency, rural health clinic, and outpatient
18 surgical clinic.

19 * **Sec. 22.** AS 47.30.056(b) is amended to read:

20 (b) Expenditures under (a)(1) of this section must provide for a reasonable
21 level of necessary services to **persons who**

22 (1) **are** [THE] mentally ill;

23 (2) **have an intellectual disability, a developmental disability, or**
24 **both** [THE MENTALLY DEFECTIVE AND RETARDED];

25 (3) **are** chronic alcoholics suffering from psychoses;

26 (4) [SENILE PEOPLE WHO] as a result of [THEIR] senility, suffer
27 major mental illness; and

28 (5) **need** [OTHER PERSONS NEEDING] mental health services, as
29 the legislature may determine.

30 * **Sec. 23.** AS 47.30.056(e) is amended to read:

31 (e) In (b)(2) of this section, **"persons who have an intellectual disability,**

1 **developmental disability, or both** ["THE MENTALLY DEFECTIVE AND
2 RETARDED"] includes persons with the following neurologic or mental disorders:

3 (1) cerebral palsy;

4 (2) epilepsy;

5 (3) [MENTAL RETARDATION];

6 (4)] autistic disorder;

7 **(4)** [(5)] severe organic brain impairment;

8 **(5)** [(6)] significant developmental delay during early childhood
9 indicating risk of developing a disorder listed in this subsection;

10 **(6)** [(7)] other severe and persistent **intellectual disability or**
11 **developmental disability** [MENTAL DISORDERS] manifested by behaviors and
12 symptoms similar to those manifested by persons with disorders listed in this
13 subsection.

14 * **Sec. 24.** AS 47.30.580 is amended to read:

15 **Sec. 47.30.580. Comprehensive services.** Plans and regulations adopted under
16 AS 47.30.520 - 47.30.620 must allow local programs sufficient administrative and
17 program flexibility so that local community mental health programs may be joined
18 with other programs such as **intellectual and developmental disability** [MENTAL
19 RETARDATION] programs, drug abuse programs, alcoholism programs, and
20 comprehensive mental health services programs.

21 * **Sec. 25.** AS 47.30.915(12) is amended to read:

22 (12) "mental illness" means an organic, mental, or emotional
23 impairment that has substantial adverse effects on an individual's ability to exercise
24 conscious control of the individual's actions or ability to perceive reality or to reason
25 or understand; **intellectual disability, developmental disability, or both** [MENTAL
26 RETARDATION], epilepsy, drug addiction, and alcoholism do not per se constitute
27 mental illness, although persons suffering from these conditions may also be suffering
28 from mental illness;

29 * **Sec. 26.** AS 47.32.010(b) is amended to read:

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

- 1 (1) ambulatory surgical centers;
- 2 (2) assisted living homes;
- 3 (3) child care facilities;
- 4 (4) child placement agencies;
- 5 (5) foster homes;
- 6 (6) free-standing birth centers;
- 7 (7) home health agencies;
- 8 (8) hospices, or agencies providing hospice services or operating
- 9 hospice programs;
- 10 (9) hospitals;
- 11 (10) intermediate care facilities for **individuals with an intellectual**
- 12 **disability or related condition** [THE MENTALLY RETARDED];
- 13 (11) maternity homes;
- 14 (12) nursing facilities;
- 15 (13) residential child care facilities;
- 16 (14) residential psychiatric treatment centers;
- 17 (15) rural health clinics;
- 18 (16) runaway shelters.

19 * **Sec. 27.** AS 47.32.900(14) is amended to read:

- 20 (14) "intermediate care facility for **individuals with an intellectual**
- 21 **disability or related condition** [THE MENTALLY RETARDED]" has the meaning
- 22 given in 42 C.F.R. 440.150;

23 * **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 CHANGES IN THE TERMS "MENTAL RETARDATION" AND "MENTALLY
26 RETARDED"; CONSTRUCTION. Nothing in this Act shall be construed to alter the
27 coverage, eligibility, rights, responsibilities, or definitions referred to in the provisions
28 amended by this Act.

29 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 REGULATIONS; INSTRUCTION. The Department of Law is instructed, to the

1 extent practicable, to change the Alaska Administrative Code to reflect the changes in
2 terminology consistent with this Act by replacing references to "mental retardation" and
3 "mentally retarded" with "persons with intellectual and development disabilities," modified as
4 appropriate to the context of the usage, as follows:

5 (1) "mentally retarded" to "intellectually disabled or developmentally
6 disabled" or "intellectually disabled, developmentally disabled";

7 (2) "the mentally retarded" to "individuals with intellectual and developmental
8 disabilities";

9 (3) "mental retardation" or "mental retardation and developmental disabilities"
10 to "intellectual and developmental disability," "intellectual disability or developmental
11 disability," or "intellectual disability, developmental disability, or both";

12 (4) "mental retardation professional" to "qualified intellectual disability
13 professional";

14 (5) "intermediate care facility for the mentally retarded" to "intermediate care
15 facility for individuals with an intellectual disability or related condition," and the
16 abbreviation "ICF/MR" to "ICF/IID."

LEGAL SERVICES

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MEMORANDUM

January 30, 2013

SUBJECT: Sectional Summary of HB 88 (Work Order No. 28-LS0400\A)

TO: Representative Charisse Millett
Attn: Akis Gialopsos

FROM: Jean M. Mischel
Legislative Counsel



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

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

Section 1. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of intermediate care facilities employing a certified nurse aid.

Section 2. Replaces "mental retardation" with "intellectual and developmental disabilities that result in" in the context of the definition of "mental disease or defect" that negates a culpable mental state to commit a crime.

Section 3. Replaces "mentally retardation" with "intellectual disability" and developmental disability" in the context of the definition of a "child with a disability" for educational purposes.

Section 4. Replaces students who are "mentally retarded" with "intellectually disabled, developmentally disabled" in the context of outreach services by the special education services agency.

Section 5. Replaces "mental retardation" with "intellectual disabilities, developmental disabilities, or both" in the context of testing for heritable diseases in newborns.

Sections 6 - 10. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of inventories of facilities for certificate of need purposes.

Section 11. Replaces "mental retardation" with "intellectual disability" in the context of the definition of physical or mental impairment for purposes of the state commission on human rights.

Section 12. Replaces "mental retardation" with "intellectual disability, developmental disability, or both" in the context of defining "persons with a disability" for purposes of the state procurement code.

Section 13. Replaces "mental retardation" with "intellectual disability" in the context of defining "disabled" under the permanent fund dividend provisions.

Section 14. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of intermediate care facilities employing a certified nurse aid in a Medicaid or Medicare program.

Section 15. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of categorical needs under the Medicaid program.

Section 16. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of optional Medicaid services provided in intermediate care facilities.

Section 17. Replaces "mental retardation" with "intellectual or developmental disability," and "the mentally retarded" with "person with intellectual and developmental disabilities" in the context of home- and community-based services under the Medicaid program

Section 18 - 20. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of the state Medicaid program.

Section 21. Replaces "the mentally retarded" with "persons with intellectual and developmental disabilities" in the context of state public assistance.

Sections 22 - 23. Makes various changes to eliminate the use of "mentally defective and retarded" in the context of the use of money in the mental health trust account.

Section 24. Replaces "mental retardation" with "intellectual and developmental disability" in the context of mental health programs.

Section 25. Replaces "mental retardation" with "intellectual and developmental disability" in the context of the definition of "mental illness" for purposes of state mental health programs and admissions.

Sections 26 - 27. Replaces "the mentally retarded" with "individuals with an intellectual disability or related condition" for purposes of statewide licensing of intermediate care facilities, consistent with federal law.

JMM:ljw
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