

SB

83

<TARGET><BILL>SB 83</BILL><SUBJECT>SB
83</SUBJECT><COMM>SHSS30</COMM></TARGET>

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532



Governor Bill Walker
STATE OF ALASKA

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Governor@Alaska.Gov

March 7, 2017

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

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the protection of vulnerable adults and residents of long term care facilities.

This bill would amend provisions of AS 47.62, Office of the Long Term Care Ombudsman, to ensure alignment with 42 U.S.C. 3058(g) (Older Americans Act of 1965), as amended by S. 192, P.L. 114-144, (Older Americans Act Reauthorization Act of 2016), and implementing regulations, 45 C.F.R. Part 1327. The bill would also amend certain provisions of AS 47.24 (protection of vulnerable adults).

Under current State law, if a report of abuse or neglect of an older Alaskan is made directly to the Office of the Long Term Care Ombudsman, the Ombudsman is required to provide the report and the results of the Office's investigation to the Department of Health and Social Services (DHSS). This mandate potentially conflicts with federal requirements precluding the Ombudsman from disclosing the report unless there is consent; this bill would clarify that the Ombudsman may provide a report of abuse to DHSS, but only if the vulnerable adult provides consent to do so. The bill also would clarify that DHSS has the responsibility to investigate all reports of harm it receives regarding vulnerable adults and that DHSS may transfer reports to the Ombudsman for additional assistance in resolving any issues for residents in long term care facilities. The Ombudsman also would have discretion to investigate and resolve complaints for residents of facilities who are younger than 60 years of age, consistent with federal law.

Under current law, the Ombudsman may not disclose the person's identity without the consent of the identified person or the person's legal guardian, unless required by court order. Amendments, consistent with federal law, would allow the Ombudsman to disclose the person's identity for purposes of making a referral to an agency if the person or the resident representative is unable to provide consent and if certain other conditions are met. The bill includes a definition of "resident representative" consistent with federal regulations.

The Honorable Pete Kelly
Transmittal Ombudsman Vulnerable Adults
March 7, 2017
Page 2

This bill also amends AS 47.24 as it relates to the Department of Health and Social Services' handling of reports of harm to older Alaskans and the investigation of the reports. Additionally, it clarifies where reports of harm are to be lodged within DHSS.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Bill Walker". The signature is written in a cursive, flowing style.

Bill Walker
Governor

Enclosure

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/8/17

FURTHER: Finance

DATE TURNED

IN TO OFFICE: 3-27-17

Health and Social Services Committee considered SENATE BILL NO. 83

SB 83-PROTECT: VULNERABLE ADULTS/LONG TERM CARE

"An Act relating to the protection of vulnerable adults and residents of long term care facilities."

and recommends:

be replaced with SCS SB83 (HSS) Same Title Technical Title Change
 New Title/SCR No. _____

adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____

attached amendment(s)

adopt _____ Letter of Intent

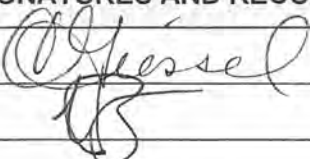

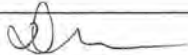
further referral to FIN Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DHS			✓	1
REV			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	Giessel			✓	
	Begich	✓			
CHAIR: 	Wilson			✓	

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	SB 83
Fiscal Note Number:	1
(S) Publish Date:	3/8/2017

Identifier: DHSS-SDSA-1-20-17
 Title: PROTECT: VULNERABLE ADULTS/LONG TERM CARE
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

Department: Department of Health and Social Services
 Appropriation: Senior and Disabilities Services
 Allocation: Senior and Disabilities Services Administration
 OMB Component Number: 2663

Expenditures/Revenues

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

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
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	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

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:	Duane Mayes, Director	Phone:	(907)269-2083
Division:	Senior and Disabilities Services	Date:	01/20/2017 11:00 AM
Approved By:	Shawnda O'Brien, Acting Assistant Commissioner	Date:	01/20/17
Agency:	Health and Social Services		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

Amends State Statutes to comply with Federal Statutes and Rules for the Office of Long Term Care Ombudsman.

Removes the option for mandatory reporters to meet reporting requirements by submitting report to the OLTCO and clarifies the difference in the role of the Long Term Care Ombudsman and the roles of Adult Protective Services and the (Health Care Services) licensing division.

This necessary clarification does not add additional duties and does not have a fiscal impact to the Adult Protection Unit. Historically, Adult Protection has always conducted investigations and made determinations on all allegations of maltreatment.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	SB 83
Fiscal Note Number:	2
(S) Publish Date:	3/8/2017

Identifier: DOR-OLTCO-1-20-17
 Title: PROTECT: VULNERABLE ADULTS/LONG TERM CARE
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

Department: Department of Revenue
 Appropriation: Alaska Mental Health Trust Authority
 Allocation: Long Term Care Ombudsman Office
 OMB Component Number: 2749

Expenditures/Revenues

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

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
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	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

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:	Kathryn Curry, Deputy Long Term Care Ombudsman	Phone:	(907)334-2535
Division:	Office of the Long Term Care Ombudsman	Date:	01/20/2017 01:00 PM
Approved By:	Jerry Burnett, Deputy Commissioner	Date:	01/20/17
Agency:	Department of Revenue		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

Amends State Statutes to comply with Federal Statutes and Rules for the Office of the Long Term Care Ombudsman (OLTCO);

Clarifies that the OLTCO may serve residents in long term care facilities who are under the age of 60; and

Removes the option for mandatory reporters to meet reporting requirements by submitting a report to the OLTCO and clarifies the differences in the roles of the Long Term Care Ombudsman, Adult Protective Services, and (Health Care Services) licensing division.

The bill has zero fiscal impact to the OLTCO.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

ALASKA COMMISSION ON AGING

P.O. Box 110693
Juneau, Alaska 99811-0693
Main: 907.465.3250
Fax: 907.465.1398

March 17, 2017

Senator David Wilson, Chair
Senate Health and Social Services
Alaska State Capitol, Room 115
Juneau, AK 99801-1182

Subject: Support for SB 83, Protect Vulnerable Adults/Long Term Care

Dear Senator Wilson:

The Alaska Commission on Aging offers our support for SB 83, a technical bill by request of the Governor, to align state statutes with new federal law and regulations concerning the Office of the Long-Term Care Ombudsman (OLTCO). According to its mission statement, the OLTCO advocates to protect the rights, health, safety, and welfare of vulnerable Alaskans who reside in Alaska's long-term care facilities that include nursing homes and assisted living homes.

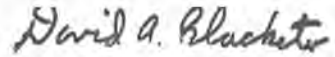
We believe that the changes being proposed in SB 83 will improve the efficiency and effectiveness of the OLTCO by: (1) Clarifying the difference in the roles of agencies (Adult Protective Services, Residential Licensing, and Health Care Facilities Licensing) within the Department of Health and Social Services and the OLTCO that respond to complaints involving vulnerable Alaskans who reside in long-term care facilities; (2) identifying the Vulnerable Adult Central Intake Office as the official repository for reports of harm; (3) removing the option for mandatory reporters to meet reporting requirements by submitting their reports to the OLTCO; (4) clarifying that the OLTCO may investigate and resolve complaints of residents in long-term care facilities who are younger than age 60; and (5) allowing the OLTCO in certain circumstances to share resident information with other agencies when the resident is unable to provide consent and has no representative to provide consent. These proposed amendments will ensure that the OLTCO can focus on the needs of residents living in long-term care facilities to the satisfaction of the resident.

The projected population growth of Alaska's senior population will increase demand on our state's long-term care infrastructure and the provision of high quality services delivered in safe living settings. In FFY2016, the OLTCO reported making 740 unannounced visits to senior assisted living homes in addition to all 18 nursing facilities. Although their staff is small, the OLTCO was able to accomplish this act by increasing the number of trained volunteer ombudsmen who are able to respond to complaints.

The Alaska Commission on Aging partners with the Office of the Long-Term Care Ombudsman on many projects related to the health and safety of Alaskans age 60 years and older. Regarding planning activities, the OLTCO has served on advisory committees with the Commission to develop and implement the Alaska State Plan for Senior Services and Alaska's Roadmap to Address Alzheimer's Disease and Related Dementia. We have also advocated for legislation to improve protection for seniors who use Power of Attorney documents and on policy initiatives for guardianship reform. We look forward to our continued partnership with the OLTCO to identify and resolve issues that directly affect the lives of older Alaskans.

For further information about our position, please contact Denise Daniello, ACoA's executive director (465-4879).

Sincerely,



David A. Blacketer
Chair, Alaska Commission on Aging

Sincerely,



Denise Daniello
ACoA Executive Director

Cc: Senator Natasha von Imhof, Vice Chair
Senator Cathy Giessel, Member
Senator Peter Micciche, Member
Senator Tom Begich, Member

LEGAL SERVICES

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

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

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

MEMORANDUM

March 21, 2017

SUBJECT: Vulnerable adults (CSSB 83(HSS); 30-GS1815\D)

TO: Senator David Wilson
Attn: Jody Simpson

FROM: Kate S. Glover *KSG*
Legislative Counsel

The committee substitute you requested is attached. The draft bill has been revised to conform to the *Manual of Legislative Drafting*. Please review it carefully and consider the following comments and questions.

1. Information and referral services: The draft bill changes "central information and referral service for vulnerable adults in the office of the department that handles adult protective services" to "vulnerable adult centralized intake office" in several sections. After speaking with Ms. Simpson, I added a section to the draft bill making the same change in AS 47.24.011. AS 47.65.290(7) uses the phrase "information and referral services" in a definition of "service program" that applies to programs for older Alaskans. Do you want to change this phrase as well?

2. Definition of "senior citizen housing" in AS 47.62.090: Version "A" of the bill removed the definition for "senior citizen housing," but that term is still used in AS 47.62.015(b). For that reason, the definition is not repealed in this draft. If you would like to amend the definition, or remove the reference to "senior citizen housing" in AS 47.62.015(b), please let me know.

3. Definition of "resident" in AS 47.62.090: In sections where the bill uses the term "resident" to mean "resident of a long term care facility," I have revised the language to say "resident of a long term care facility" to avoid confusion. Readers of the statutes may read the term "resident" and assume that it means a resident of the state. As the *Manual of Legislative Drafting* advises, words should not be given definitions that are contrary to customary usage. For that reason, I have incorporated the definition into the statutes, but retained the definition so that there is no ambiguity where the phrase is shortened to "resident."

KSG:dls
17-244.dls

Attachment

30-GS1815\D
Glover
3/21/17

CS FOR SENATE BILL NO. 83(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the protection of vulnerable adults and residents of long term care
2 facilities."

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

4 * **Section 1.** AS 47.24.010(a) is amended to read:

5 (a) Except as provided in (e) [AND (f)] of this section, the following persons
6 who, in the performance of their professional duties, have reasonable cause to believe
7 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
8 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
9 the belief, report the belief to the department's **vulnerable adult centralized intake**
10 **office** [CENTRAL INFORMATION AND REFERRAL SERVICE FOR
11 VULNERABLE ADULTS IN THE OFFICE OF THE DEPARTMENT THAT
12 HANDLES ADULT PROTECTIVE SERVICES]:

- 13 (1) a physician or other licensed health care provider;
- 14 (2) a mental health professional as defined in AS 47.30.915 and

1 including a marital and family therapist licensed under AS 08.63;

2 (3) a pharmacist;

3 (4) an administrator or employee of a nursing home, residential care,
4 or health care facility;

5 (5) a guardian or conservator;

6 (6) a police officer;

7 (7) a village public safety officer;

8 (8) a village health aide;

9 (9) a social worker;

10 (10) a member of the clergy;

11 (11) a staff employee of a project funded by the Department of
12 Administration for the provision of services to older Alaskans, the Department of
13 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

14 (12) an employee of a personal care or home health aide program;

15 (13) an emergency medical technician or a mobile intensive care
16 paramedic;

17 (14) a caregiver of the vulnerable adult;

18 (15) a certified nurse aide;

19 (16) an educator or administrative staff member of a public or private
20 educational institution.

21 * **Sec. 2.** AS 47.24.010(e) is amended to read:

22 (e) If a person making a report under this section believes that immediate
23 action is necessary to protect the vulnerable adult from imminent risk of serious
24 physical harm due to undue influence, abandonment, exploitation, abuse, neglect, or
25 self-neglect and the reporting person cannot immediately contact the department's
26 **vulnerable adult centralized intake office** [CENTRAL INFORMATION AND
27 REFERRAL SERVICE FOR VULNERABLE ADULTS], the reporting person shall
28 make the report to a police officer or a village public safety officer. The police officer
29 or village public safety officer shall take immediate action to protect the vulnerable
30 adult and shall, within 24 hours after receiving the report of harm, notify the
31 department. A person may not bring an action for damages against a police officer, a

1 village public safety officer, the state, or a political subdivision of the state based on a
2 decision under this subsection to take or not to take immediate action to protect a
3 vulnerable adult. If a decision is made under this subsection to take immediate action
4 to protect a vulnerable adult, a person may not bring an action for damages based on
5 the protective actions taken unless the protective actions were performed with gross
6 negligence or intentional misconduct; damages awarded in the action may include
7 only direct economic compensatory damages for personal injury.

8 * **Sec. 3.** AS 47.24.011 is amended to read:

9 **Sec. 47.24.011. Duties of the department regarding services and protection**
10 **for vulnerable adults.** In order to facilitate the provision of supportive and protective
11 services for vulnerable adults, the department shall

12 (1) compile information on available supportive and protective
13 services for vulnerable adults in the state;

14 (2) establish, publicize, and maintain a **vulnerable adult centralized**
15 **intake office** [CENTRAL INFORMATION AND REFERRAL SERVICE FOR
16 VULNERABLE ADULTS];

17 (3) develop and coordinate a statewide system to serve vulnerable
18 adults who are in need of protective services;

19 (4) establish criteria and procedures for the authorization and
20 supervision of other state agencies or community-based service providers to serve as
21 designees of the department under this chapter;

22 (5) in accordance with this chapter, designate other state agencies or
23 community-based service providers to deliver supportive and protective services to
24 vulnerable adults who are in need of protective services;

25 (6) develop within the **vulnerable adult centralized intake office**
26 [CENTRAL INFORMATION AND REFERRAL SERVICE FOR VULNERABLE
27 ADULTS] a central registry for reports of vulnerable adults in need of protective
28 services;

29 (7) maintain confidentiality of records as provided for in
30 AS 47.24.050; and

31 (8) adopt regulations to carry out the purposes of this chapter.

1 * **Sec. 4.** AS 47.24.013(a) is amended to read:

2 (a) If a report received under AS 47.24.010 pertains to the undue influence,
3 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult [WHO
4 IS 60 YEARS OF AGE OR OLDER] that is alleged to have been committed by or to
5 have resulted from the negligence of the staff or a volunteer of an out-of-home care
6 facility, including a facility licensed under AS 47.32, in which the vulnerable adult
7 resides, the department **may forward** [SHALL TRANSFER] the report [FOR
8 INVESTIGATION] to the long term care ombudsman **for investigation** under
9 AS 47.62.015.

10 * **Sec. 5.** AS 47.24.013(b) is amended to read:

11 (b) The department shall investigate a report received under AS 47.24.010
12 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
13 neglect of a vulnerable adult [WHO IS LESS THAN 60 YEARS OF AGE] that is
14 alleged to have been committed by or to have resulted from the negligence of the staff
15 or a volunteer of an out-of-home care facility in which the vulnerable adult resides.

16 * **Sec. 6.** AS 47.24.013(d) is amended to read:

17 (d) If the long term care ombudsman **directly** receives [DIRECTLY] a report
18 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
19 neglect of a vulnerable adult in an out-of-home care facility, the ombudsman **may**
20 [SHALL] provide the report, and the results of the ombudsman's actions or
21 investigations regarding the report, to the **department's vulnerable adult centralized**
22 **intake office. The ombudsman shall obtain the informed consent of the**
23 **vulnerable adult or the vulnerable adult's resident representative before**
24 **providing the report to the department** [CENTRAL INFORMATION AND
25 REFERRAL SERVICE OF THE OFFICE OF THE DEPARTMENT THAT
26 HANDLES ADULT PROTECTIVE SERVICES]. The department may investigate the
27 report as described in AS 47.24.015 if the department determines that action is
28 appropriate. **In this subsection, "resident representative" has the meaning given in**
29 **AS 47.62.090.**

30 * **Sec. 7.** AS 47.24.015(a) is amended to read:

31 (a) Upon the department's receipt of a report under AS 47.24.010 [THAT IS

1 NOT TRANSFERRED UNDER AS 47.24.013], the department, or its designee, shall
2 promptly initiate an investigation to determine whether the vulnerable adult who is the
3 subject of the report suffers from undue influence, abandonment, exploitation, abuse,
4 neglect, or self-neglect. The department, or its designee, shall conduct an [A FACE-
5 TO-FACE] interview with the vulnerable adult [SUBJECT OF THE REPORT]
6 unless that person is unconscious or the department, or its designee, has determined
7 that an [A FACE-TO-FACE] interview could further endanger the vulnerable adult.

8 * **Sec. 8.** AS 47.62.015(a) is amended to read:

9 (a) The ombudsman shall investigate and resolve a complaint made by or on
10 behalf of an older Alaskan who resides in a long term care facility in the state if the
11 complaint relates to a decision, action, or failure to act by a provider or a
12 representative of a provider of long term care services, or by a public agency or social
13 services agency, that may adversely affect the health, safety, welfare, or rights of the
14 older Alaskan. At the discretion of the ombudsman, the ombudsman may
15 investigate and resolve a complaint made by or on behalf of a resident who is not
16 an older Alaskan if the complaint relates to a decision, action, or failure to act by
17 a provider or a representative of a provider of long term care services, or by a
18 public agency or social services agency, that may adversely affect the health,
19 safety, welfare, or rights of the resident.

20 * **Sec. 9.** AS 47.62.015(c) is amended to read:

21 (c) The ombudsman may

22 (1) subpoena witnesses, compel their attendance, require the
23 production of evidence, administer oaths, and examine any person under oath in
24 connection with a complaint described under (a) of this section; the powers described
25 in this paragraph shall be enforced by the superior court;

26 (2) pursue administrative, legal, or other appropriate remedies on
27 behalf of a resident of [AN OLDER ALASKAN WHO RESIDES IN] a long term
28 care facility in the state.

29 * **Sec. 10.** AS 47.62.025 is amended to read:

30 **Sec. 47.62.025. Access to long term care facilities, residents of long term**
31 **care facilities [OLDER ALASKANS], and records. (a) A person may not deny**

1 access to a long term care facility or to a resident of a long term care facility [AN
2 OLDER ALASKAN] by the ombudsman or an employee, volunteer, or other
3 representative of the office.

4 (b) Notwithstanding the provisions of AS 47.62.015(c)(1), the ombudsman
5 may obtain medical or other records of a resident of [AN OLDER ALASKAN WHO
6 RESIDES IN] a long term care facility in the state only with the consent of the
7 resident or the person's resident representative or [OLDER ALASKAN OR THE
8 OLDER ALASKAN'S] legal guardian or, if the resident [OLDER ALASKAN] is
9 unable or incompetent to consent and does not have a resident representative
10 [LEGAL GUARDIAN], only with a subpoena or court order.

11 * **Sec. 11.** AS 47.62.030(b) is amended to read:

12 (b) The identity of a complainant or an older Alaskan or resident of a long
13 term care facility on whose behalf a complaint is made may only [NOT] be disclosed
14 with [WITHOUT] the consent of the identified person or the person's legal guardian
15 or resident representative or [, UNLESS REQUIRED] by court order. However, if
16 an older Alaskan is unable to provide consent and does not have a legal guardian,
17 or if a resident of a long term care facility is unable to provide consent and does
18 not have a resident representative, the ombudsman may disclose the identity of
19 an identified person for the purpose of making a referral to an agency or person,
20 if the ombudsman or an employee or volunteer of the office

21 (1) has reasonable cause to believe that an action, inaction, or
22 decision, including an action, inaction, or decision by a resident representative or
23 a legal guardian of an older Alaskan, may adversely affect the health, safety,
24 welfare, or rights of the older Alaskan or resident;

25 (2) has reasonable cause to believe the referral is in the best
26 interest of the older Alaskan or resident;

27 (3) obtains the approval of the ombudsman for the disclosure and
28 referral; and

29 (4) does not have evidence that the older Alaskan or resident
30 would disagree with the referral.

31 * **Sec. 12.** AS 47.62.060 is amended to read:

1 **Sec. 47.62.060. Cooperative agreements.** The authority shall enter into
2 cooperative agreements concerning the operations of the office, including protocols
3 for investigations, with state and local agencies that have jurisdiction over long term
4 care facilities or over the abuse and neglect of older Alaskans **or residents of long**
5 **term care facilities.**

6 * **Sec. 13.** AS 47.62.090(4) is amended to read:

7 (4) "older Alaskan" means a **person** [RESIDENT] who is 60 years of
8 age or older **and who resides in the state;**

9 * **Sec. 14.** AS 47.62.090 is amended by adding new paragraphs to read:

10 (7) "resident" means a person who resides in a long term care facility
11 in the state;

12 (8) "resident representative" means

13 (A) an individual chosen by a resident to act on behalf of the
14 resident to

15 (i) support the resident in decision making;

16 (ii) access medical, social, or other personal information
17 of the resident;

18 (iii) manage financial matters; or

19 (iv) receive notifications;

20 (B) a person authorized by federal or state law to act on behalf
21 of a resident.

22 * **Sec. 15.** AS 47.24.010(f), 47.24.013(c)(3), and 47.24.013(e) are repealed.

SENATE BILL NO. 83

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/8/17

Referred: Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the protection of vulnerable adults and residents of long term care
2 facilities."

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

4 * **Section 1.** AS 47.24.010(a) is amended to read:

5 (a) Except as provided in (e) [AND (f)] of this section, the following persons
6 who, in the performance of their professional duties, have reasonable cause to believe
7 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
8 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
9 the belief, report the belief to the department's vulnerable adult centralized intake
10 office [CENTRAL INFORMATION AND REFERRAL SERVICE FOR
11 VULNERABLE ADULTS IN THE OFFICE OF THE DEPARTMENT THAT
12 HANDLES ADULT PROTECTIVE SERVICES];

13 (1) a physician or other licensed health care provider;

14 (2) a mental health professional as defined in AS 47.30.915

1 [AS 47.30.915(11)] and including a marital and family therapist licensed under
2 AS 08.63;

3 (3) a pharmacist;

4 (4) an administrator or employee of a nursing home, residential care,
5 or health care facility;

6 (5) a guardian or conservator;

7 (6) a police officer;

8 (7) a village public safety officer;

9 (8) a village health aide;

10 (9) a social worker;

11 (10) a member of the clergy;

12 (11) a staff employee of a project funded by the Department of
13 Administration for the provision of services to older Alaskans, the Department of
14 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

15 (12) an employee of a personal care or home health aide program;

16 (13) an emergency medical technician or a mobile intensive care
17 paramedic;

18 (14) a caregiver of the vulnerable adult;

19 (15) a certified nurse aide;

20 (16) an educator or administrative staff member of a public or private
21 educational institution.

22 * **Sec. 2.** AS 47.24.010(e) is amended to read:

23 (e) If a person making a report under this section believes that immediate
24 action is necessary to protect the vulnerable adult from imminent risk of serious
25 physical harm due to undue influence, abandonment, exploitation, abuse, neglect, or
26 self-neglect and the reporting person cannot immediately contact the department's
27 **vulnerable adult centralized intake office** [CENTRAL INFORMATION AND
28 REFERRAL SERVICE FOR VULNERABLE ADULTS], the reporting person shall
29 make the report to a police officer or a village public safety officer. The police officer
30 or village public safety officer shall take immediate action to protect the vulnerable
31 adult and shall, within 24 hours after receiving the report of harm, notify the

1 department. A person may not bring an action for damages against a police officer, a
2 village public safety officer, the state, or a political subdivision of the state based on a
3 decision under this subsection to take or not to take immediate action to protect a
4 vulnerable adult. If a decision is made under this subsection to take immediate action
5 to protect a vulnerable adult, a person may not bring an action for damages based on
6 the protective actions taken unless the protective actions were performed with gross
7 negligence or intentional misconduct; damages awarded in the action may include
8 only direct economic compensatory damages for personal injury.

9 * **Sec. 3.** AS 47.24.013(a) is amended to read:

10 (a) If a report received under AS 47.24.010 pertains to the undue influence,
11 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who
12 [IS 60 YEARS OF AGE OR OLDER THAT] is alleged to have been committed by or
13 to have resulted from the negligence of the staff or a volunteer of an out-of-home care
14 facility, including a facility licensed under AS 47.32, in which the vulnerable adult
15 resides, the department may forward [SHALL TRANSFER] the report [FOR
16 INVESTIGATION] to the long term care ombudsman for investigation under
17 AS 47.62.015.

18 * **Sec. 4.** AS 47.24.013(b) is amended to read:

19 (b) The department shall investigate a report received under AS 47.24.010
20 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
21 neglect of a vulnerable adult who [IS LESS THAN 60 YEARS OF AGE THAT] is
22 alleged to have been committed by or to have resulted from the negligence of the staff
23 or a volunteer of an out-of-home care facility in which the vulnerable adult resides.

24 * **Sec. 5.** AS 47.24.013(d) is amended to read:

25 (d) If the long term care ombudsman receives directly a report regarding the
26 undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a
27 vulnerable adult in an out-of-home care facility, the ombudsman may [SHALL]
28 provide the report, and the results of the ombudsman's actions or investigations
29 regarding the report, to the department's vulnerable adult centralized intake office.
30 The ombudsman shall obtain the informed consent of the vulnerable adult or the
31 vulnerable adult's resident representative before providing the report to the

1 **department** [CENTRAL INFORMATION AND REFERRAL SERVICE OF THE
 2 OFFICE OF THE DEPARTMENT THAT HANDLES ADULT PROTECTIVE
 3 SERVICES]. The department may investigate the report as described in AS 47.24.015
 4 if the department determines that action is appropriate. **In this subsection, "resident**
 5 **representative" has the meaning given in AS 42.62.090.**

6 * **Sec. 6.** AS 47.24.015(a) is amended to read: 47

7 (a) Upon the department's receipt of a report under AS 47.24.010 [THAT IS
 8 NOT TRANSFERRED UNDER AS 47.24.013], the department, or its designee, shall
 9 promptly initiate an investigation to determine whether the vulnerable adult who is the
 10 subject of the report suffers from undue influence, abandonment, exploitation, abuse,
 11 neglect, or self-neglect. The department, or its designee, shall conduct **an** [A FACE-
 12 TO-FACE] interview with the **vulnerable adult** [SUBJECT OF THE REPORT]
 13 unless that person is unconscious or the department, or its designee, has determined
 14 that **an** [A FACE-TO-FACE] interview could further endanger the vulnerable adult.

15 * **Sec. 7.** AS 47.62.015(a) is amended to read:

16 (a) The ombudsman shall investigate and resolve a complaint made by or on
 17 behalf of an older Alaskan who resides in a long term care facility in the state if the
 18 complaint relates to a decision, action, or failure to act by a provider or a
 19 representative of a provider of long term care services, or by a public agency or social
 20 services agency, that may adversely affect the health, safety, welfare, or rights of the
 21 older Alaskan. **At the discretion of the ombudsman, the ombudsman may**
 22 **investigate and resolve a complaint made by or on behalf of a resident who is not**
 23 **an older Alaskan if the complaint relates to a decision, action, or failure to act by**
 24 **a provider or a representative of a provider of long term care services, or by a**
 25 **public agency or social services agency, that may adversely affect the health,**
 26 **safety, welfare, or rights of the resident.**

27 * **Sec. 8.** AS 47.62.015(c) is amended to read:

28 (c) The ombudsman may
 29 (1) subpoena witnesses, compel their attendance, require the
 30 production of evidence, administer oaths, and examine any person under oath in
 31 connection with a complaint described under (a) of this section; the powers described

1 in this paragraph shall be enforced by the superior court;

2 (2) pursue administrative, legal, or other appropriate remedies on
3 behalf of a resident of [AN OLDER ALASKAN WHO RESIDES IN] a long term
4 care facility in the state.

5 * **Sec. 9.** AS 47.62.025 is repealed and reenacted to read:

6 **Sec. 47.62.025. Access to long term care facilities, residents, and records.**

7 (a) A person may not deny access to a long term care facility or to a resident by the
8 ombudsman or an employee, volunteer, or other representative of the office.

9 (b) Notwithstanding the provisions of AS 47.62.015(c)(1), the ombudsman
10 may obtain medical or other records of a resident of a long term care facility in the
11 state only with the consent of the resident or the person's resident representative or
12 legal guardian; if the resident is unable or incompetent to consent and does not have a
13 resident representative, only with a subpoena or court order.

14 * **Sec. 10.** AS 47.62.030(b) is repealed and reenacted to read:

15 (b) The identity of a complainant or an older Alaskan or resident on whose
16 behalf a complaint is made may only be disclosed with the consent of the identified
17 person or the person's legal guardian or resident representative, or by court order.
18 However, if an older Alaskan is unable to provide consent and does not have a legal
19 guardian, or if a resident is unable to provide consent and does not have a resident
20 representative, the ombudsman may disclose the identity of an identified person for
21 the purpose of making a referral to an agency or person, if the ombudsman or an
22 employee or volunteer of the office

23 (1) has reasonable cause to believe that an action, inaction, or decision,
24 including an action, inaction, or decision by a resident representative or a legal
25 guardian of an older Alaskan, may adversely affect the health, safety, welfare, or
26 rights of the older Alaskan or resident;

27 (2) has reasonable cause to believe the referral is in the best interest of
28 the older Alaskan or resident;

29 (3) obtains the approval of the ombudsman for the disclosure and
30 referral; and

31 (4) does not have evidence that the older Alaskan or resident would

1 disagree with the referral.

2 * **Sec. 11.** AS 47.62.060 is amended to read:

3 **Sec. 47.62.060. Cooperative agreements.** The authority shall enter into
4 cooperative agreements concerning the operations of the office, including protocols
5 for investigations, with state and local agencies that have jurisdiction over long term
6 care facilities or over the abuse and neglect of older Alaskans or residents.

7 * **Sec. 12.** AS 47.62.090 is amended to read:

8 **Sec. 47.62.090. Definitions.** In AS 47.62.010 - 47.62.090,

9 (1) "authority" means the Alaska Mental Health Trust Authority
10 established in AS 47.30.011;

11 (2) "long term care facility" means an assisted living home, as defined
12 in AS 47.32.900, and a nursing facility, as defined in AS 47.32.900;

13 (3) "office" means the office of the long term care ombudsman;

14 (4) "older Alaskan" means a person [A RESIDENT] who is 60 years
15 of age or older and who resides in the state;

16 (5) "ombudsman" means the long term care ombudsman hired under
17 AS 47.62.010;

18 (6) "resident" means a person who resides in a long term care
19 facility in the state;

20 (7) "resident representative" means

21 (A) an individual chosen by a resident to act on behalf of
22 the resident to

23 (i) support the resident in decision-making;

24 (ii) access medical, social, or other personal
25 information of the resident;

26 (iii) manage financial matters; or

27 (iv) receive notifications;

28 (B) a person authorized by federal or state law to act on
29 behalf of a resident ["SENIOR CITIZEN HOUSING" HAS THE MEANING
30 GIVEN "SENIOR HOUSING" IN AS 18.56.799].

31 * **Sec. 13.** AS 47.24.010(f), 47.24.013(c)(3), and 47.24.013(e) are repealed.

CSSB 83

PROTECT: VULNERABLE ADULTS/LONG TERM CARE

SECTIONAL ANALYSIS

Section 1 is a technical amendment to AS 47.24.010(a) to update the name of the entity responsible for receiving reports to the department “vulnerable adult centralized intake office”.

Section 2 is a technical amendment to AS 47.24.010(e) to update the name of the entity responsible for receiving reports to the department “vulnerable adult centralized intake office”.

Section 3 is a technical amendment to AS 47.24.011 to update the name of the entity responsible for receiving reports to the department “vulnerable adult centralized intake office”.

Section 4 amends AS 47.24.013(a) to remove the requirement to forward reports of maltreatment to the Long Term Care Ombudsman’s office. Adds passive language to allow the DHSS to transfer reports for Long Term Care Ombudsman’s investigation as defined under AS.62.015. CS provides correct citation on line 9 for AS 47.62.015.

Section 5 amends AS 47.24.013(b) to delete reference to DHSS’s obligation to investigate reports for vulnerable adult’s age 60 or less. The Department of Health and Social Services is responsible for reports involving vulnerable adults ages 18 and older.

Section 6 amends AS 47.24.013(d) to remove the Long Term Care Ombudsman’s obligation to mandatorily provide a report to the DHSS Central Intake. Aligns state law with federal law requiring the Long Term Care Ombudsman’s office to only forward information of a complainant or resident with appropriate consent or court order. (45 CFR 1327.11(e)(3)). Amended to reflect current Department of Human and Social Services responsibility for vulnerable adult centralized intake.

Section 7 amends AS 47.24.015(a) to remove reference to reports transferred to the Office of Long Term Care Ombudsman under 47.24.013. Updates legislative language to appropriately reference subjects of reports are vulnerable adults. Removes requirement for face to face interview.

Section 8 amends AS 47.62.015(a) to add language to align state law with federal law by providing the Long Term Care Ombudsman the authority to investigate and resolve a complaint for a person residing in a long term care facility who is not defined as an older Alaska.

Section 9 amends AS 47.62.015(c) to include all residents of a long term care facility.

Section 10 amends AS 47.62.025 to define access to long term care facilities, older Alaskan, and records. Title amended to include all ages of residents of long term care facilities. Section (a) amended to include all ages of residents of long term care facilities. Section (b) amended to include all ages of residents of long term care facilities and amended to allow for consent to be provided by the resident or the resident's representative or by subpoena. CS clarifies resident is a resident of a long term care facility.

Section 11 amends AS 47.62.030(b) to include all ages of residents. Amended to allow for disclosures with consent. Adds authority for resident representative to give consent. Amended to align state law with federal law to clarify limited circumstances when the Office of Long Term Care Ombudsman has authority to report resident-identifying information without obtaining resident or resident representative consent. CS clarifies resident is a resident of a long term care facility.

Section 12 amends AS 47.62.060 to include all ages of residents of long term care facilities.

Section 13 amends AS 47.62.090(4) to revise the definition of "older Alaskan" as an individual who lives in Alaska since definition of "resident" was added to mean individual living in a long term care facility.

Section 14 amends AS 47.62.0900 to add a new section to define resident as an individual who resides in a long term care facility. Also to align state law with federal law to define resident representative and authority the resident representative has to act on behalf of the resident. CS retains AS 47.62.900(6) definition for senior citizen housing.

Section 15 repeals AS 47.24.010(f), AS 47.24.013(c)(3), and AS 47.24.013(e). AS 47.24.010(f) is repealed as Federal statute and regulations prohibit representatives of the Office Long Term Care Ombudsman from abuse reporting requirements when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order. (45 CFR 1327.11(e)(3)). Therefor mandatory reporting to the Office of Long Term Care Ombudsman does not fulfill a mandatory reporter's obligation under law to make mandatory reports of maltreatment. AS 47.24.013(c)(3) repeals the requirement for the Office of the Long Term Care Ombudsman to provide results of investigation to the DHSS. OAA Section 712(d)(2)(B) establishes strict disclosure limitations. The Long Term Care Ombudsman program is intended to be a safe, person-centered place for residents to bring their concerns. Residents can be assured that their information will not be disclosed without their consent, the consent of the resident representative, or court order. AS 47.24.013(e) is repealed as the Office of the Long Term Care Ombudsman is not the appropriate agency to officially substantiate abuse or neglect complaints on behalf of DHSS. The Office of the Long Term Care Ombudsman represents the interests of residents, rather than the interests of the DHSS. (See OAA Section 712(a)(3)(E), (a)(5)(B)(iv); 45 CFR 1327.13(a)(5), 1327.19(a)(4)).