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of the act. In addition, provision is made for transmitting upon request, to a reporter, a summary of the findings of and action taken in response to a report. The act also provides for access to information contained in the register for purposes of pre-licensing and pre-employment screening of adult care agencies and workers.

The act further provides for the expungement from the state central register of all information identifying the subject of an abuse and neglect report unless an investigation determines that there is some credible evidence of abuse or neglect. In these cases (i.e., when reports are "indicated") the record of the report to the central register must be sealed no later than five years subsequent to the date of indication. (Even when records are sealed, aggregate non-identifying data would still be available for statistical and policy planning purposes.) The act also contains provisions whereby the subject of a report may request amendment, sealing or expungement of the record of the report as well as for fair hearings when the state agency does not comply with the person's request. Under the code, a person permitting or encouraging the release of confidential data contained in the state central register will be guilty of a misdemeanor.

(7) Taking a Disabled Adult into Protective Custody

Under provisions of the model statute, employees of the state agency, law enforcement officials, physicians or hospitals may take a disabled adult into protective custody or keep such person in their custody without the consent of the persons's

caretaker, if in their judgment the circumstances or conditions of the disabled adult present an imminent risk of death or of serious physical harm, and the disabled adult lacks the capacity to comprehend the nature and consequences of remaining in such a situation. In these cases, the state agency must be notified and must immediately initiate judicial proceedings provided for in the act for approval of short-term involuntary protective services.

(8) Provision of Protective Services; Judicial Proceedings for Short-Term Involuntary Services

The model embraces and codifies the principle that needed protective services are to be provided on a voluntary basis (i.e., the disabled adult requests such services and/or agrees to their provision). The model statute also establishes judicial procedures for the provision of short-term involuntary protective services when the state agency determines that protective services are needed but the disabled adult, who faces imminent risk of death or serious harm, lacks the capacity to understand this condition. However, (a) refusal of the disabled adult to accept protective services or (b) mental illness, will not in themselves be sufficient evidence of such lack of capacity.

Under the terms of the statute, such proceedings are to be commenced only by the state agency in courts of appropriate jurisdiction (to be determined by the state legislature). The petition to seek involuntary services must, among other things, state facts showing that the services requested are necessitated by the situation and condition of the disabled adult and

represent the least restrictive alternative available to protect the disabled adult (while still preserving his constitutional rights). Provisions are included for the appointment of counsel for the disabled adult as well as for a guardian ad litem in specific circumstances.

Proceedings for short-term involuntary protective services, which must have preference over all other issues in all courts, are to be commenced by service of an order to show cause returnable within forty-eight hours following its issuance. After a hearing at which the disabled adult is entitled to be present, in order to authorize the provision of short-term involuntary services, the court must find that all of the material allegations specified in the state agency's petition have been admitted or proven by clear and convincing proof. And, under the terms of the model code, no order may extend for more than seventy-two hours (with provision for only one seventy-two hour extension). Judicial orders may, among other things, provide for enjoining caretakers from interfering with the provision of protective services or with investigations of abuse and neglect; however, such orders may not order the removal of a disabled person to a mental hospital. Further, the code stipulates that issuance of a judgement for short-term involuntary protective services will not be evidence of the incompetency or incompetency of a disabled adult.

As may be inferred from the above recitation, the statutory scheme for involuntary protective orders presented here rests upon the assumption that only short-term interventions are constitutionally appropriate for adults, absent a finding of the

incompetency or other functional limitations of the adult. Indeed, the statute makes clear that longer term interventions may be sought but only upon the initiation of judicial proceedings under applicable provisions of state law relative to guardianship, conservatorship or incompetency, or for emergency admissions to mental hospitals. Such proceedings are not precluded from commencing simultaneously with proceedings for short-term involuntary protective services. Similarly, any such pending incompetency, guardianship, or conservator proceedings would not preclude the commencement of proceedings for short-term involuntary protective services.

(9) Education and Training; Cooperation of Other Agencies

In its concluding sections, the model statute requires the state agency to conduct a continuing education and publicity campaign, including specifically the training of employees in residential facilities, to encourage the fullest degree of reporting under the act. Further, to effectuate the purposes of the act, the state agency is authorized to request and receive cooperation, assistance and data from all state and local public and private agencies. Finally, agencies and facilities providing care and services to disabled adults must inform such persons of their rights to report cases of abuse or neglect and establish appropriate policies and procedures to facilitate such reporting.

(10) Oversight Responsibilities

Although no specific references are found in the code, states are encouraged to require notification of abuse/neglect

reports to such advocacy agencies as: (1) protection and advocacy agencies for developmentally disabled persons created pursuant to federal law, (2) aging ombudsman agencies also created pursuant to federal law or (3) other human rights advocacy committees or agencies which may exist or which are hereafter created by state legislatures. It is our belief that by including such notification, protection of disabled adults can be materially strengthened.

References Chapter V.

1. a. See References for Chapter II, p. 36.
 - b. Anne Lindeman, "Child Abuse Legislation", in Child Abuse and Neglect: Issues on Innovation and Implementation, Proceedings of the Second National Conference on Child Abuse and Neglect. DHEW Publication No. 78-30147. Washington, DC: U.S. Government Printing Office, 1978, pp. 340-343.
 - c. Harvey Abrams, Shirley Miller, Fred Krause, Site Visit Report, Florida, June 1980. Washington, D.C.: President's Committee on Mental Retardation, 1981.
2. Abuse and Neglect Reporting in Florida Residential Facilities for Developmentally Disabled Persons: 1974-1982. Miami, Florida: Barry University, School of Social Work, NCCAN/ADD Grant No. 90DJ0003, 1983.

B. Model State Code

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Section 1. Title

This act shall be known and may be cited as the Adult Abuse and Neglect Reporting Act of 198_

Section 2. Legislative Findings and Purpose

The legislature finds that disabled adults are in need of public protection to prevent them from suffering abuse and neglect at the hands of those responsible for their care, whether such care is in the home, in community settings, or in residential institutions. It is the purpose of this act to encourage the expeditious reporting and investigation of suspected abuse and neglect of disabled adults and facilitate the provision of protective services in appropriate circumstances, while protecting the civil and constitutional rights of disabled adults.

Section 3. Definitions

When used in this act and unless the specific context indicates otherwise:

1. "Abuse" means the infliction of physical injury by a caretaker so as to adversely affect the physical or emotional condition of the disabled adult, or failing to stop the infliction of such injury, including the commission of a sex offense as defined in the state's penal statutes.

2. "Adversely affect the emotional condition" means injury to the intellectual or psychological capacity of the disabled adult as evidenced by an observable impairment in his ability to function within his normal range of performance and behavior.

3. "Adversely affect the physical condition" means, but shall not be limited to, causing death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

4. "Caretaker" means a person, agency or organization, including an operator, employee or volunteer of such person, agency or organization, responsible for providing care and services to the disabled adult, as a result of family relationship, voluntary assumption of the responsibility, by contract or by operation of applicable provisions of state law.

5. "Department" means the state department of _____, which has primary responsibility for state efforts to facilitate the reporting and investigation of abuse and neglect of disabled adults and for the provision of protective services to disabled adults.

6. "Developmental disability" means a severe, chronic disability of a person which:

(a) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) is manifest before the age of twenty-two;

(c) is likely to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(e) reflects the person's need for a combination of special, inter-disciplinary or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

7. "Disabled adult" means a person eighteen years of age and older who suffers from a condition of physical or mental incapacitation due to mental retardation, epilepsy, cerebral palsy, autism, organic brain damage caused by advanced age or other physical degeneration in connection therewith, or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances, or due to other disabilities, including a developmental disability.

8. "Indicated report" means a report made pursuant to this act if an investigation determines that some credible evidence of the alleged abuse or neglect exists.

9. "Neglect" means the failure of a caretaker to provide the care and services necessary to maintain the physical and mental health of the disabled adult including but not limited to: food; clothing; shelter; medical, dental, optometric, psychiatric, or surgical care; and special care, treatment and supervision made necessary by reason of disability.

10. "Petitioner" means an official of the department initiating a proceeding pursuant to section 16 of this act.

11. "Protective services" mean those services the objective of which is to protect disabled adults from abuse and neglect. Such protective services shall include, but are not limited to: (a) evaluation of the need for protective services; (b) social casework for the purposes of planning and providing needed services; (c) maintenance of the disabled adult in his own home through the provision of home health care, homemaker services,

day care and chore services; (d) assistance in obtaining out-of-home services, including respite care, emergency housing and placement in residential settings, as necessary; (e) obtaining financial benefits to which the disabled adult is entitled; (f) assistance in obtaining medical assistance and legal services; (g) seeking the appointment of a guardian or conservator or initiating incompetency proceedings; (h) securing transportation to and from service providers; and (i) other protective services for adults which are consistent with the provisions of this act and included in the state's comprehensive annual social services plan, as required by Title XX of the federal Social Security Act.

12. "Respondent" means the disabled adult on whose behalf a petition is initiated pursuant to section 16 of this act.

13. "State central register" means the state central register of adult abuse and neglect established in the department pursuant to section 12 of this act.

14. "Subject of the report" means any disabled adult reported to the state central register and the person suspected of committing acts of abuse or neglect also named in the report.

15. "Unfounded report" means any report made pursuant to this act unless an investigation determines that some credible evidence of the alleged abuse or neglect exists.

Section 4. Persons and Officials Required to Report Cases of Suspected Abuse or Neglect of Disabled Adults

All persons coming into contact with the disabled adult, when they have reasonable cause to believe that the disabled adult has been subject to abuse or neglect, shall report or cause a report to be made in accordance with this section. This includes but is not limited to: physicians; surgeons; medical examiners; coroners; dentists; osteopaths; optometrists; chiropractors; podiatrists; medical residents; interns; psychologists; other mental health professionals; registered nurses; hospital personnel engaged in admission, examination, care or treatment of persons; Christian Science practitioners; school officials; social services workers; day care center workers; caretakers; police officers; and law enforcement officials. Whenever a person makes a report under this section in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, and does not wish to remain anonymous, he shall immediately notify the person in charge of such institution, school, facility, or agency or his designated agent, who then shall become responsible to report or cause reports to be made. However, nothing in this section is intended to require more than one report from any such facility, institution, school or agency.

Section 5. Reporting Procedure; Contents of Report

Reports of suspected abuse or neglect of disabled adults made pursuant to this act shall be made immediately by telephone and in writing within forty-eight hours after such oral report. Oral reports shall be made to the state central register and written reports shall be made to the department in a manner prescribed by the department. Reports shall include as much of the following information as possible: name and address of the disabled adult and his caretaker, if known; the disabled adult's age, sex and race; the nature and extent of abuse or neglect of the disabled adult including any evidence of prior abuse or neglect; the name and address of the person responsible for committing suspected acts of abuse or neglect, if known; family composition; the source of the report; the person making the report and where he can be reached, if not wishing to remain anonymous; the actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the disabled adult, or notifying the medical examiner or coroner; and any other information which the department may by regulation require, or the person making the report believes may be helpful in the furtherance of the purposes of this act. Written reports from persons reporting under this act, other than those who report anonymously, shall be admissible as evidence in any proceedings relating to abuse or neglect of a disabled adult.

Section 6. Obligation of Reporters

Persons reporting cases of suspected abuse or neglect of disabled adults may take or cause to be taken at public expense, photographs of the areas of trauma visible on a disabled adult who is subject to a report and, if medically indicated, medical and other health services personnel specified in section 4 may cause a radiological examination to be performed on the disabled adult. Any photographs or x-rays taken shall be sent to the department at the time the written report is sent, or as soon thereafter as possible. Whenever a person makes a report under this act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, and does not wish to remain anonymous, he shall immediately notify the person in charge of such institution, school, facility or agency, or his designated agent, who may then take or cause to be taken at public expense color photographs of visible trauma and may, if he is a medical or other health service professional specified in section 4 and if medically indicated, cause a radiological examination to be performed on the disabled adult.

Section 7. Mandatory Reporting to and Post-Mortem Investigation of Deaths by Medical Examiner or Coroner

Persons making reports of suspected abuse or neglect of disabled adults, who have reasonable cause to believe that a disabled adult died as a result of abuse or neglect shall notify the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the notification for investigation and shall report his findings to the police, the appropriate

state or district attorney, the department and if the institution making the report is a hospital, to the hospital.

Section 8. Immunity from Liability

Any person participating in good faith in the making of a report, the taking of photographs, the provision of protective services, or otherwise cooperating under the provisions of this act, shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any such person shall be presumed, providing that such liability did not result from the willful act or gross negligence of such person. Nothing contained in this section shall be deemed to grant immunity, civil or criminal, to any person suspected of having abused or neglected a disabled adult.

Section 9. Retaliatory Action By Employer Prohibited

No employer or supervisor may discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation or take any other action detrimental to any employee who files a report in accordance with the provisions of this act, by reason of such report. Any person making a report under this act shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes such detrimental changes in the employment status of the reporting party by reason of his making such report. There shall be a rebuttable presumption that any such detrimental change in the employment status of the reporter, if made within 90 days of the filing of a report under this act, is retaliatory.

Section 10. Penalties for Failure to Report

Persons required to report cases of suspected abuse or

neglect of disabled adults who knowingly and willfully fail to do so shall be guilty of a misdemeanor.

Section 11. Investigation: Content and Procedure

1. (a) Upon receipt of a report of suspected abuse or neglect of a disabled adult, the department shall commence, or cause to be commenced within twenty-four hours, an appropriate investigation of the report and the facts alleged therein, which investigation shall include: a determination of the nature, extent and cause of the suspected abuse or neglect; examination of evidence; identification, if possible, of the person alleged to be responsible for such abuse or neglect; the names and conditions of other adults in the place of residence; evaluation of caretakers, as appropriate; the environment of the residence of the disabled adult; the relationship of the disabled adult to the caretaker; an evaluation as to whether or not the disabled adult would consent to the provision of protective services; determination of the risk to such disabled adult if he continues to remain in the existing place of residence; and any other relevant information. After seeing to the safety of the disabled adult as provided in section 14, the department shall forthwith notify the subjects of the report in writing of the existence of the report and their rights pursuant to this act in regard to amendment or expungement.

(b) The investigation shall include an interview with the disabled adult which shall be conducted by a personal visit with the adult in the adult's place of residence, in an office of the department, or by any other means available to the depart-

ment.

(c) If the department determines a need exists in order to protect the disabled adult, the investigation may include a medical, psychological, social, vocational and educational evaluation and review of the circumstances, conditions and needs of the disabled adult.

2. The department shall determine within ninety days after receipt of the report, whether the report is "indicated" or "unfounded".

3. Based on such investigation and evaluation the department shall determine the need for and arrange for the provision of appropriate protective services, and monitor and evaluate the provision of such services.

Section 12. State Central Register of Adult Abuse and Neglect

1. There shall be established in the department a statewide central register of adult abuse and neglect reports made pursuant to this act.

2. The state central register shall be capable of receiving oral, electronic and written reports of abuse or neglect of disabled adults, of immediately identifying prior reports of disabled adult abuse or neglect involving the subject(s) of the report, and of monitoring the provision of protective services to disabled adults twenty-four hours a day, seven days a week. To effectuate this purpose, there shall be established a single statewide toll free telephone number that all persons may use to report cases of suspected abuse or neglect of disabled adults. Such oral reports shall be immediately transmitted orally or electronically by the state central register to the appropriate state or local office designated by the department to investigate suspected cases of abuse or neglect of disabled adults. If the records indicate a previous report concerning a subject of the report or other pertinent information, the appropriate state or local office shall be immediately notified of the fact.

3. The state central register shall include but not be limited to the following information: all the information in the written report; a record of the final disposition of the report, including protective services offered and provided, whether voluntarily or on an involuntary basis, pursuant to sections 15 and 16; plans for the provision of protective services; the names and identifying data, dates, and circumstances of any person

requesting or receiving information from the register; and any other information which the department believes may be helpful in the furtherance of the purposes of this act.

4. The state central register shall be operated in such a manner as to enable the department to: (a) monitor and evaluate the reporting and investigation of suspected abuse or neglect of disabled adults and the provision of protective services to such persons and to report thereon; (b) maintain and produce aggregate statistics for monitoring patterns of abuse or neglect of disabled adults; and (c) serve as a resource for the evaluation, management and planning of preventive and remedial services for disabled adults who have been subject to abuse or neglect.

5. Reports made pursuant to this act as well as any other information obtained, reports written, or photographs and x-rays taken concerning such reports, in the possession of the department or any state or local office designated by it to investigate suspected cases of abuse or neglect of disabled adults, shall be confidential and shall only be made available to: (a) a person authorized by section 14 to take the disabled adult into protective custody when such person has before him a disabled adult whom he reasonably suspects may be abused or neglected and such person requires the information in the record to determine whether to take the disabled adult into protective custody; (b) any person who is the subject of a report; (c) a court, upon finding that the information in the record is necessary for the determination of an issue before the court; (d) a grand jury, upon finding that the information in the record is

necessary for the determination of charges before the grand jury; (e) any person engaged in a bona fide research purpose provided, however, that no information identifying the subject of the report shall be made available to the researcher unless it is absolutely necessary to the research purpose and the department gives prior approval and suitable arrangements have been made to maintain the confidentiality of such data; (f) employees or agents of the department responsible for investigating reports of suspected abuse or neglect of disabled adults; and (g) appropriate officials of the department responsible for administration or supervision of the department's program for reporting and investigation of suspected abuse or neglect of disabled adults and for the provision of protective services, when carrying out their official duties. . In addition, persons making reports shall receive, upon request, a summary of the findings of and action taken in response to the report, pursuant to the regulations of the department. A person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose of such disclosure is to initiate court action.

6. Unless an investigation of a report conducted pursuant to this act determines that there is some credible evidence of the alleged abuse or neglect, all information identifying the subject of the report shall be expunged from the state central register and from the records of any office or agency of the department designated to investigate suspected abuse or neglect

of disabled adults, forthwith.

7. In all other cases, the record of the report to the state central register shall be sealed no later than five years subsequent to the date the report is indicated. Once sealed, a record shall not otherwise be available unless the department, upon notice to the subject of the report, gives its approval for an appropriate reason. In any case and at any time, the department may amend, seal or expunge any record upon good cause shown and notice to the subject of the report.

8. At any time, a subject of a report may receive, upon request, a copy of all information contained in the state central register; provided, however, that the department shall not release data that would identify the person who made the report or who cooperated in a subsequent investigation, which it reasonably finds will be detrimental to the safety or interests of such person, without the written consent of such person.

9. Within thirty days time subsequent to the completion of the investigation, a subject of a report may request the department to amend, seal or expunge the record of the report. If the department refuses or does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the state central register should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this act. The burden of proof in such hearing shall be on the department. In such hearing, the fact that there was an

indicated report of abuse or neglect shall be presumptive evidence that the report was substantiated. The department may make any appropriate order respecting the amendment or expungement of the record to make it accurate or consistent with the requirements of this act.

10. Written notice of any expungement or amendment of any record made pursuant to the provisions of this act, shall be served upon each subject of such record.

11. Any person who willfully permits and any person who encourages the release of any data and information contained in the state central register to persons or agencies not permitted by this act shall be guilty of a misdemeanor.

Section 13. Additional Access to Information Contained in the State Central Register: Pre-Licensing and Pre-Employment Screening

1. (a) A public or private agency which has received an application for a certificate or license to receive, board or keep a disabled adult pursuant to applicable provisions of state law, shall inquire of the department and the department shall inform such agency, whether the applicant has been or is currently the subject of an indicated report on file with the state central register pursuant to this act.

(b) A public or private agency receiving, boarding, or keeping disabled adults shall inquire of the department and the department shall inform such agency, whether any person who is actively being considered for employment with adult care responsibilities has been or is currently the subject of an indicated report on file with the state central register pursuant to this act.

(c) Any person who has applied for a certificate or license, to receive, board or keep a disabled adult or who has applied to a public or private agency to be an employee with adult care responsibilities shall be notified by such agency at the time of application that the agency will inquire of the department whether such person has been or is the subject of an indicated report of abuse or neglect. The agency shall notify the applicant of the department's response.

(d) The department shall inform the agency that the person has been or currently is the subject of an indicated report of abuse or neglect only if: (i) the time for the subject of the report to request a fair hearing pursuant to subdivision 9

of section 12 of this act has expired without any such request having been made; or (ii) such request was made within such time and the fair hearing has been finally determined by the department and the record of the report has not been amended, sealed or expunged.

2. (a) Upon notification by the department that any person who has applied for a license or certificate to receive, board or keep a disabled adult is the subject of an indicated report of abuse or neglect, such agency shall determine on the basis of information it has available whether to approve such application; provided, however that if such application is approved such agency shall maintain a written record as part of the application file of the specific reasons why such person was determined to be appropriate to receive the placement of a disabled adult.

(b) Upon denial of such application by a public or private agency, such agency shall furnish the applicant with a written statement setting forth its reasons for the denial.

(c) If the reasons for such denial include the fact that the person is the subject of an indicated report of abuse or neglect, such person may request from the department, and shall be granted, a fair hearing in accordance with applicable provisions of state law.

(d) At any such hearing, the sole question before the department shall be whether the applicant has been shown by a fair preponderance of the evidence to have committed the act or acts of abuse or neglect giving rise to the indicated report and if so, whether such person has been rehabilitated so that the

health, safety and welfare of a disabled adult will not be endangered if such person's application for a license or certificate is approved. In such hearing, the burden of proof on the issue of the rehabilitation of the applicant shall be upon the applicant.

Section 14. Taking A Disabled Adult into Protective Custody

The department acting through designated employees, a police officer, or a law enforcement official, may take a disabled adult into emergency protective custody, or any such person or any person in charge of a hospital or similar institution or any physician treating a disabled adult may keep such person in his custody without the consent of such person's caretaker, whether or not medical treatment is required, if the circumstances or condition of the disabled adult are such that continuing in the care of such person's caretaker presents an imminent risk of death or of serious physical harm and such adult lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents such imminent danger to his health or safety. In such cases, the department shall be notified forthwith of the taking of such disabled adult into emergency protective custody and the department shall immediately initiate a judicial proceeding pursuant to section 16 of this act.

Section 15. Provision of Protective Services; Voluntary Basis

The department shall provide or arrange for the provision of protective services through the purchase of services from appropriate public and private agencies, to a disabled adult found to have been subject to abuse or neglect, when the

department has determined that based upon its investigation and evaluation pursuant to section 11, (1) the disabled adult requires such services; (2) the disabled adult has requested such services; and/or (3) when any interested party has requested the provision of such services on behalf of the disabled adult, and the disabled adult consents to their provision. Such services shall be discontinued upon the request of the disabled adult.

Section 16. Short-Term Involuntary Protective Services

1. In the event that the department determines that (a) the disabled adult is in need of protective services; (b) such person is in a situation or condition which poses an imminent risk of death or of serious physical harm; and (c) such person lacks the capacity to understand the nature and consequences of remaining in such situation or condition; the department shall initiate proceedings pursuant to this section in courts of appropriate jurisdiction for the short-term provision of involuntary protective services; provided, however, that (i) refusal of the disabled adult to accept protective services shall not in itself be sufficient evidence of such lack of capacity; and (ii) mental illness shall not in itself be sufficient evidence of such lack of capacity.

2. Jurisdiction and Venue

A petition for the provision of short-term involuntary protective services shall be made to a court of appropriate jurisdiction held in the county in which the disabled adult resides or is found or in a county adjacent to the county in which the disabled adult resides or is found.

3. Petition

(a) a special proceeding to obtain an order authorizing the provision of short-term involuntary protective services may only be initiated by the department.

(b) The petition shall state, insofar as the facts can be ascertained with reasonable diligence: (i) the name, age and physical description of the disabled adult; and (ii) the address or other location where the disabled adult can be found.

(c) The petition shall state facts showing: (i) that the disabled adult who is the subject of this petition meets the conditions set forth in subdivision 1 of this section; (ii) the specific short-term involuntary protective services petitioned for, how such services would remedy the situation or condition which poses an imminent risk of death or of serious physical harm to the disabled adult, and that such services with respect to extent or duration are the least restrictive alternative required to protect the disabled adult; (iii) that the short-term involuntary protective services being applied for are necessitated by the situation or condition described in subdivision 1 of this section; (iv) that the relief sought reflects, insofar as is possible, a comprehensive evaluation of the condition and service needs of the disabled adult; (v) that other voluntary protective services have been tried and have failed to remedy the situation and that a future, voluntary, less restrictive alternative would not be appropriate or would not be available; (vi) if a change in the disabled adult's physical location is being applied for, that remedy of the dangerous situation or condition described in subdivision 1 of this section is not appropriate in the existing physical surroundings of the disabled adult; (vii) any inconsistency known to the petitioner between the proposed short-term involuntary protective services and the disabled adult's religious beliefs; (viii) that, if it reasonably appears that the disabled adult does not understand the English language, that reasonable efforts have been made to communicate with the disabled adult in a language he

understands; (ix) that no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

(d) The petition shall be verified. Any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. Such affidavits shall be attached to the petition.

4. Commencement of proceedings

(a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services shall be commenced by service of an order to show cause, the petition and supporting affidavits, if any.

(b) The order to show cause shall set forth: (i) the protective services to be provided if the petition is granted; (ii) the date, place, and time of the hearing to determine whether the petition is to be granted; (iii) that the respondent is entitled to counsel at all stages of the proceedings, that upon granting the order to show cause, the court shall assign counsel, whose name, address and telephone number shall be included in the order, to assist the respondent, and that the respondent is free at any time to discharge the counsel assigned by the court; (iv) that if the respondent or retained counsel does not appear at the hearing to determine whether the petition is to be granted, the court will appoint a guardian ad litem; (v) that if the respondent discharges that assigned counsel prior to the hearing to determine if the petition is to

be granted, such counsel shall report this fact to the court no later than the commencement of the hearing and shall appear at the hearing unless otherwise relieved by the court; and (vi) that a copy of the order to show cause, the petition, and supporting affidavits, if any, shall be served upon the respondent.

(c) Petitioner shall cause the order to show cause, the petition, and supporting affidavits if any, to be delivered to the counsel assigned by the court.

(d) The order to show cause shall be made returnable within forty-eight hours following its issuance unless such forty-eight hour period ends on a day in which the court is not in session, in which case the return date shall be the first business day following issuance of the order to show cause.

5. Service

(a) Service of the order to show cause, the petition, and supporting affidavits, if any, shall be made upon the respondent by any of the methods permitted by applicable provisions of the state's civil practice law and rules. Notwithstanding any other provision of law to the contrary, Saturday and Sunday service is valid.

(b) The respondent shall be authorized to answer either orally or in writing.

6. Hearing

(a) Upon the return date designated in the order to show cause issued pursuant to subdivision 4 of this section, a hearing shall be held forthwith.

(b) The disabled adult shall be entitled to be present

at the hearing.

(c) Adjournments shall be permitted only for good cause shown. In granting adjournments the court shall consider the need to provide short-term involuntary protective services expeditiously.

(d) At the conclusion of the hearing, the court shall issue for the record a statement of its findings of fact and conclusions of law.

7. Preference

The special proceedings authorized by this act shall have preference over all other causes in all courts of appropriate jurisdiction.

8. Findings

After a hearing, the court must find in order to authorize the provision of short-term involuntary protective services that all of the material allegations as specified in paragraph (c) of subdivision 3 of this section have been admitted or proven by clear and convincing proof.

9. Judgement

(a) The court, upon making the findings required by subdivision 8 herein, shall direct the entry of a judgement authorizing the provision of short-term involuntary protective services to the disabled adult.

(b) A judgement authorizing short-term involuntary protective services to be provided to a disabled adult: (i) shall prescribe those specific protective services, as defined in section 3 of this act, which are to be provided and what person or persons are authorized or ordered to provide them; and

(ii) shall not provide for any forcible entry, unless the persons so entering are accompanied by a police officer or other duly authorized law enforcement official; and (iii) shall require persons acting under subparagraphs (i) and (ii) of this paragraph to submit a written report to the court within one week following the commencement of the ordered protective services.

(c) The judgement may order any other public or law enforcement official to render such assistance and cooperation as shall be within his legal authority, including action to enjoin a caretaker from interfering with the investigation of alleged acts of abuse and neglect pursuant to this act, or provision of protective services ordered by this section, as may be required to further the objectives of this act.

(d) The judgement shall not order the removal of a disabled adult to a mental hospital.

(e) Issuance of the judgement shall not be evidence of the competency or incompetency of the disabled adult.

(f) No order issued pursuant to this section shall extend for more than seventy-two hours. An original order may be renewed once for up to another seventy-two hour period upon showing by the petitioner to the court that continuation is necessary to remedy the original situation or condition. No further renewals shall be permitted.

(g) In no event shall the short-term involuntary services authorized to be provided to a disabled adult by the judgment be more extensive than those which are necessary to remedy the situation or condition which poses an imminent risk

of death or of serious physical harm to the disabled adult.

(h) Notice of the judgement rendered by the court shall be given to the respondent personally, or if personal service is not possible, in whatever other fashion the court shall prescribe.

10. Appeals

Appeals arising from the issuance of judgements pursuant to the provision of this section shall be expedited.

11. The assigned counsel and the guardian ad litem appointed by the court shall be reimbursed for their services pursuant to applicable provisions of state law.

12. Nothing in this section shall preclude the simultaneous commencement of incompetency, conservatorship or guardianship proceedings, or proceedings for emergency admission to mental hospitals under applicable provisions of state law. Any such pending proceedings shall not preclude commencement of a proceeding under this section.

13. No existing right or remedy of any character shall be lost, impaired or affected by reason of this section.

Section 17. Education and Training

The department, within appropriations available therefor, shall conduct a continuing publicity and education program including specifically the training of employees in residential facilities, to encourage the fullest degree of reporting of suspected abuse or neglect of disabled adults. The program shall include, but not be limited to, responsibility, obligations, and powers under this act as well as the identification and diagnosis

of abuse and neglect of disabled adults, and the procedures of the department and other duly authorized public and private agencies.

Section 18. Cooperation of Other Agencies

1. To effectuate the purposes of this act, the department may request and shall receive from departments, boards, bureaus or other agencies of the state, or any of its political subdivisions, including law enforcement agencies, or any duly authorized agency, or any other agency providing services to disabled adults such assistance, cooperation and data as will enable the department to fulfill its responsibilities.

2. All agencies, facilities, or institutions providing care and services to disabled adults shall inform such persons of their rights to report incidents of abuse or neglect, and shall establish appropriate policies and procedures to facilitate such reporting.

161-C: 25

PUBLIC SAFETY AND WELFARE

II. Any money realized by the division by proceedings under this chapter shall be distributed in accordance with the rules for distribution established by the division.

Source. 1977, 589:1. 1986, 331:19, eff. Amendments—1985. Designated the existing provisions of the section as par. I and added par. II.

161-C: 25 Unidentified Funds. All fees, costs, attorney fees, interest payments and funds received by the director, unidentifiable as to the support account against which they should be credited, shall be held in an administrative expense account from which the director may make disbursement for any expenses incurred in the administration of this chapter.

Source. 1977, 589:1, eff. July 1, 1977.

161-C: 26 Charging Off Uncollected Funds. Any support debt due the division from a responsible parent which the director deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset; provided, that at any time after 6 years from the date a support debt was incurred, the director may charge off as uncollectible any support debt upon which the director finds there is no available, practical, or lawful means by which said debt may be collected; provided further that no proceedings or action under the provisions of this chapter may be begun after expiration of said 6 year period to institute collection of a support debt. Nothing herein shall be construed to render invalid or nonactionable a support lien filed prior to the expiration of said 6 year period or an assignment of earnings or order to withhold and deliver executed prior to the expiration of said 6 year period.

Source. 1977, 589:1, eff. July 1, 1977.

161-C: 26-a Reporting to Credit Agencies.

I. Notwithstanding the provisions of RSA 359-C or any other law to the contrary, any obligor who owes child support arrearages payable to or through the division shall be deemed to have authorized disclosure of his financial records to consumer reporting agencies by the division.

II. Notwithstanding any other law to the contrary, any obligor who owes child support arrearage payable to or through the division shall be deemed to have authorized disclosure of his financial records to the division of human services by consumer reporting agencies.

III. The division shall give prior notice to the obligor that such financial disclosure is authorized and of the procedures through which he may contest the accuracy of the information to be disclosed.

IV. The division and any consumer reporting agency which discloses financial records under this section shall not be subject to civil liability or criminal prosecution which is based upon its disclosure under this section.

Source. 1985, 331:20, eff. Oct. 1, 1986.

CROSS REFERENCES

Disclosure of financial information or records by financial institutions and employers or obligors, see RSA 161-C: 3-a.

161-C: 27 Judicial Review. Any person who is aggrieved by any action of the director relative to the administrative process under this chapter may appeal to the superior court.

PROTECTIVE SERVICES TO ADULTS

161-D:

Source. 1977, 589:1. 1986, 331:21, eff. Amendments—1985. Amended section Oct. 1, 1985. generally.

161-C: 28 Rulemaking. The director is hereby authorized subject to RSA 541-A to adopt such rules not inconsistent with this chapter as may be necessary to the efficient administration of the functions with which he is charged under this chapter.

Source. 1977, 589:1. 1983, 242:4, eff. June 18, 1983. rules" and deleted "and regulations" thereafter.

Amendments—1983. Substituted "adopt" for "make and publish" preceding "such

161-C: 29 Separability of Provisions. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

Source. 1977, 589:1, eff. July 1, 1977.

CHAPTER 161-D

PROTECTIVE SERVICES TO ADULTS

161-D: 1 Purpose.
161-D: 2 Definitions.
161-D: 3 Reports of Adult Abuse; Investigations.
161-D: 3-a Immunity from Liability.
161-D: 3-b Abrogation of Privileged Communication.

161-D: 3-c Registry.
161-D: 3-d Penalty for Violation.
161-D: 4 Duties and Responsibilities.
161-D: 5 Guardianship.
161-D: 5-a Entry of Premises.
161-D: 5-b Court Ordered Examination.
161-D: 6 Rulemaking.

Implementation plan for creation of division of elderly and adult services—Generally. 1986, 128:4, eff. Sept. 1, 1986, provided in part: "All support services to all segments of the elderly and adult population of the state except income supplementation shall be consolidated in one administrative unit to the greatest extent possible. The commissioner of health and human services is, therefore, directed to consult with the director of the state council on aging and any other members of the director's staff or the commissioner's own staff or any other persons. The commissioner is then, after consulting with the members of the state council on aging, to prepare and submit an implementation plan creating a division of elderly and adult services by September 1, 1986. The plan shall be submitted to, and reviewed and approved by, a joint committee of the legislature consisting of the executive departments committee of the senate and the executive departments and administration committee of the house of representatives."

—Inclusion in plan of functions, powers, duties, etc., of division of human services relating to social services to the elderly and adults transferred to division of elderly and adult services. 1986, 128:12, eff. Jan 1, 1987, provided:

"I. The functions, powers, duties and responsibilities of the division of human services, under RSA 161:2, IV-a; RSA 161:2, XII; RSA 161:2, I; RSA 161:2, XII-a; RSA 161:9; and RSA 161-D which relate to social services for the elderly and adult populations, are hereby transferred to the division of elderly and adult services.

"II. The transfer provided for in paragraph I of this section shall include personnel, books, papers, records, equipment, unexpended appropriations or other funds, contracts, actions, and other property, resources or obligations of any kind of the division of human services. The transfer described in this section shall be included in the implementation plan under section 4 of this act (see 1986, 128:4, which is set out as a note above)."

161-D: 1 Purpose. The purpose of this chapter is to provide protection for incapacitated adults who are neglected, abused, and exploited. Implicit in this chapter is the philosophy that whenever possible family life should be strengthened and each adult should live in safe, sanitary conditions and live his own life without interruption from state government. Only when this principle should become impossible should legal proceedings be initiated in order to care for and protect such adults.

Source. 1977, 464: 1, eff. Sept. 10, 1977.

161-D: 2 Definitions. In this chapter:

I. "Adult" means any person who is 18 years of age or older who is found to manifest a degree of incapacity by reason of limited mental or physical function which may result in harm or hazard to himself or others or who is a person unable to manage his estate.

II. "Director" means the director of the division of human services, department of health and human services. [Amended 1983, 291: 1, I, II, eff. July 1, 1985.]

III. "Protective services" means services and action which will, through voluntary agreement or through appropriate court action, prevent neglect, abuse or exploitation of adults. Such services shall include, but not be limited to, supervision, guidance, counseling and, when necessary, assistance in the securing of sanitary and nonhazardous living accommodations, and mental and physical examinations. However, protective services shall not include voluntary commitment to the state hospital or the state school unless such commitments are made pursuant to RSA 195-B or RSA 171-A.

IV. "Abuse" means intentional use of physical force, non-accidental injury as the result of acts or omissions, mental anguish, or unreasonable confinement.

V. "Neglect" means a pattern of conduct rather than action or omission which results in deprivation of services that are necessary to maintain minimum mental and physical health.

VI. "Exploitation" means the illegal or improper use of an incapacitated adult or his resources for another's profit or advantage.

VII. "Serious bodily injury" means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body. [Added 1983, 59: 1, eff. July 18, 1983.]

Source. 1977, 464: 1. 1983, 59: 1, eff. July 18, 1983; 291: 1, eff. July 1, 1985.

Amendments—1983, Paragraph II: Chapter 291 substituted "division of human services" for "division of welfare" and

"department of health and human services" for "department of health and welfare".

Paragraph VII: Added by ch. 59.

161-D: 3 Reports of Adult Abuse; Investigations. Any health care professional, hospital personnel, social worker, clergy, law enforcement official, protection officer, volunteer, or person residing in the home having reasonable cause to believe that any adult protected under the provisions of this chapter has been subjected to physical abuse, neglect or exploitation or is living in hazardous conditions shall report or cause a report to be made as follows: [Amended 1981, 367: 1, eff. Aug. 22, 1981.]

I. An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, to the director or his authorized representative. When oral reports are made after working hours of the division of

human services, department of health and human services, or on weekends or holidays, such reports shall be made to the police department of the city, or to the sheriff of the county, in which the observation is made. Law enforcement officials receiving reports under this paragraph shall notify the director thereof within 72 hours of receipt of such reports. [Amended 1983, 291: 1, I, II, eff. July 1, 1985.]

II. Within 3 days following receipt by the director of such oral reports, an investigation shall be made by the director or his authorized representative and a written report shall be prepared which shall include the following:

(a) Name, age and address of such person being abused, neglected or exploited;

(b) Nature and extent of neglect, exploitation or injury suffered by such person;

(c) Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

III. Investigations shall not be made if the director or his authorized representative determines that the report is frivolous or without a factual basis.

IV. [Repealed 1981, 367: 4, eff. Aug. 22, 1981.]

Source. 1977, 464: 1. 1979, 367: 1. 1981, 367: 1. 1983, 291: 1, I, II, eff. July 1, 1985.

Amendments—1979. Amended section generally.

—1981. Introductory paragraph: Substituted "Any health care professional, hospital personnel, social worker, clergy, law enforcement official, protection officer, volunteer, or person residing in the home" for "All physicians and other practitioners

of the healing arts"; and inserted "or is living in hazardous conditions" preceding "shall report or cause a report to be made as follows:".

Paragraph IV: Repealed. Former par. IV related to investigation of complaints.

—1983. Paragraph I: Substituted "division of human services, department of health and human services" for "division of welfare, department of health and welfare" in the second sentence.

161-D: 3-a Immunity from Liability. Any person or agency participating in good faith in the making of a report of an alleged incident of adult abuse shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any investigation by the director or his authorized representative or in any judicial proceeding resulting from such report.

Source. 1979, 367: 2. 1983, 41: 1, eff. June 20, 1983.

Amendments—1983. Substituted "any person or agency" for "anyone" preceding "participating" and "of an alleged incident of adult abuse" for "pursuant to RSA

161-D: 3" following "report" in the first sentence and inserted "in any investigation by the director or his authorized representative or" preceding "in any judicial proceeding" in the second sentence.

161-D: 3-b Abrogation of Privileged Communication. The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to proceedings instituted pursuant to this chapter and shall not constitute grounds for failure to report as required by this chapter.

Source. 1979, 367: 2. 1981, 367: 2, eff. Aug. 22, 1981.

Amendments—1981. Provided privileged communications not grounds for failure to report.

161-D: 3-c Registry. There shall be established a state registry of abuse reports, made pursuant to this chapter, at the division of welfare for the purpose of maintaining a record of information on each case of alleged abuse reported. The registry shall be confidential and subject to the rules and regulations as to access established by the director of the division of welfare, and any unfounded report shall be expunged from the registry and applicable section of case records within a period of 6 months.

Source. 1979, 357: 2, eff. Aug. 22, 1979.

161-D: 3-d Penalty for Violation. Any person who knowingly fails to make the report required by RSA 161-D: 3 shall be guilty of a misdemeanor.

Source. 1979, 357: 2. 1981, 367: 3, eff. Aug. 22, 1981.

Amendments—1981. Deleted reference to any physician or other practitioner of the healing arts; and provided "Any person who knowingly fails to make . . ."

161-D: 4 Duties and Responsibilities.

I. The director or his authorized representative, upon the substantiation of a complaint of neglect, abuse, exploitation of an adult or an adult living in hazardous conditions, shall provide, when necessary, protective services to such adults.

II. The director or his authorized representative shall refer all cases of serious bodily injury to an adult to the office of the attorney general or to the county attorney for possible criminal prosecution. The director or his authorized representative may also report other cases of abuse or cases of exploitation as he deems appropriate, under procedures to be developed jointly by the division of human services and the attorney general, to the office of the attorney general or to the office of the county attorney for possible criminal prosecution. [Amended 1983, 291: 1, II, eff. July 1, 1985.]

Source. 1977, 464: 1. 1983, 69: 2, eff. July 18, 1983; 291: 1, II, eff. July 1, 1985.

Amendments—1983. Chapter 69 designated the existing provisions of the section as par. I and added par. II. Chapter 291 substituted "division of human services" for "division of welfare" following "Jointly by the" in the second sentence of par. II.

161-D: 5 Guardianship. (If all other remedies are exhausted) the director or his authorized representative may seek to have a guardian or conservator appointed by the probate court, pursuant to RSA 464-A, for any adult who is in need of protective services. *USE RSA 464-A*

Source. 1977, 464: 1. 1986, 51: 1, eff. July 4, 1986.

Amendments—1986. Substituted "RSA 461-A" for "RSA 464".

161-D: 5-a Entry of Premises. If an adult reported or suspected of being abused, exploited, neglected or living in hazardous conditions refuses, or a caretaker refuses, to allow the representative of the division of human services, department of health and human services, entrance to the premises for the purpose of investigating an alleged complaint of neglect, abuse, exploitation or a hazardous living condition, the probate court, in the county where the adult is found, upon a finding of probable cause, may order a police officer, probation officer or social worker to enter said premises in furtherance of such investigation.

Source. 1979, 372: 1. 1983, 291: 1, I, II, eff. July 1, 1985.

Amendments—1983. Substituted "division of human services, department of health and human services" for "division of welfare, department of health and welfare".

161-D: 5-b Court Ordered Examination. The probate court, at any time, may order a proposed ward to submit to a medical or psychiatric examination to be completed within 30 days by a certified psychologist, licensed psychiatrist or physician, or local community mental health center. A written report of such examination shall be forwarded to the court and shall contain, but not be limited to, the proposed ward's disease or disability, if any, his present mental status, and the prognosis. If the proposed ward objects to the evaluation, the probate court having jurisdiction shall be notified in writing within 5 days after notification of the time and place of such evaluation, and the court shall hold a hearing to consider the objection prior to ordering such evaluation or, upon good cause shown, may excuse the proposed ward from the provisions of this section.

Source. 1979, 372: 1, eff. Aug. 22, 1979.

161-D: 6 Rulemaking. The director shall adopt such rules under RSA 541-A as are necessary to carry out the purpose of this chapter, including, but not limited to, rules relative to access to records under RSA 161-D: 3-c.

Source. 1977, 464: 1. 1983, 242: 6, eff. June 18, 1983.

Amendments—1983. Amended section generally.

CHAPTER 161-E

PERSONAL CARE FOR THE SEVERELY PHYSICALLY DISABLED

161-E: 1 Definitions.

161-E: 3 Federal Funds.

161-E: 2 Services Provided.

161-E: 1 Definitions. In this chapter:

I. "Division" shall mean the division of human services, department of health and human services. [Amended 1983, 291: 1, eff. July 1, 1985.]

II. "Personal care attendant" shall mean a qualified non-family member who, in accordance with a plan of care prescribed by a physician and developed in conjunction with and reviewed by a registered nurse, assists severely physically disabled persons to maintain themselves in their homes and gain greater control over their own lives by providing medically oriented long-term maintenance and supportive care. This individual shall be approved by the division of vocational rehabilitation to provide such care.

III. "Severely physically disabled person" shall mean an individual who has been approved to participate in an independent living program of the division of vocational rehabilitation and who requires a minimum of 2 hours of medically oriented personal care per day in order to maintain himself or herself in a noninstitutional setting. Such care may include basic personal care and grooming, assistance with bladder and bowel care, assistance with medications, assistance with nutrition including meal preparation, essential household services, and medical transportation.

Source. 1979, 276: 1. 1983, 291: 1, eff. July 1, 1985.

Amendments—1983. Paragraph 1: Substituted "division of human services, department of health and human services" for "division of welfare, department of health and welfare".

PROTECTIVE LEGISLATION FOR THE
VULNERABLE AND HANDICAPPED

Introduction

Many of the most significant humanitarian achievements of modern civilization are due to advances in medical science. However, as scientific discoveries have prolonged life, they also have given rise to new ethical dilemmas which must be addressed in public policy.

This Section features three proposals designed to reflect humanitarian public policy toward the vulnerable and handicapped. The Section includes:

- (1) Vulnerable Adults Act, which addresses the issue of abuse and neglect of patients. This bill requires any person who knows or suspects that a patient has been abused or neglected to inform the appropriate health care officials. This legislation also fosters prompt investigation and fair disposition of such reports.
- (2) Basic Nursing Care Affirmation Act, which is designed to preserve traditional standards of medical care for all patients. This bill declares that patients are entitled to ordinary and basic care, including necessary food and water. This legislation also recognizes and preserves the traditional medical practice of allowing the removal of food and water from patients under certain conditions.
- (3) Assisted Suicide Prevention Act, which establishes that any person assisting in the suicide of another should be held legally accountable.

VULNERABLE ADULTS ACT

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. *[Short title.]* This Act may be cited as the Vulnerable Adults Act.

2
3 Section 2. *[Purpose.]* The legislature declares that the public policy of this
4 state is to protect adults who, because of physical or mental disability or
5 dependency on institutional services, are particularly vulnerable to abuse or
6 neglect; to provide safe institutional or residential services or living en-
7 vironments for vulnerable adults who have been abused or neglected; and to
8 assist persons charged with the care of vulnerable adults to provide safe en-
9 vironments.

10 In addition, it is the policy of this state to require the reporting of suspected
11 abuse or neglect of vulnerable adults, to provide for the voluntary reporting of

1 abuse or neglect of a vulnerable adult, to require the investigation of the
2 reports, and to provide protective and counseling services in appropriate cases.

3
4 Section 3. *[Definitions.]* As used in this Act:

5 (A) "Abuse" means:

- 6 (1) any act which constitutes a violation under *[cite appropriate*
7 *chapter relating to criminal conduct]*;
- 8 (2) nontherapeutic conduct which produces or could be expected to
9 produce severe/additional pain or injury and is not accidental, or
10 any repeated conduct which produces or could reasonably be ex-
11 pected to produce severe/additional mental or emotional distress;
- 12 (3) any sexual contact between a facility staff person and a resident or
13 client of that facility;
- 14 (4) the illegal use of a vulnerable adult's person or property for
15 another person's profit or advantage, or the breach of a fiduciary
16 relationship through the use of a person or a person's property for
17 any purpose not in the proper and lawful execution of a trust, in-
18 cluding, but not limited to, situations where a person obtains
19 money, property, or services from a vulnerable adult through the
20 use of undue influence, harassment, duress, deception, or fraud;
- 21 (5) counseling or ~~abetting~~ and abetting a suicide, or procuring any lethal
22 instrument or substance when a person knows or has reason to
23 know that a vulnerable adult intends to commit suicide.

24 (B) "Attending physician" means the physician with primary responsibility
25 for the care and treatment of a patient. If there is more than one physician car-
26 ing for the patient, these physicians, among themselves, shall designate the
27 "attending physician" for purposes of this Act.

28 (C) "Caretaker" means an individual or facility who has responsibility for
29 the care of a vulnerable adult as a result of family relationship, or who has
30 assumed responsibility for all or a portion of the care of a vulnerable adult
31 voluntarily, by contract, or by agreement.

32 (D) "Facility" means a hospital or other entity required to be licensed pur-
33 suant to *[cite appropriate chapter relating to hospitals and medical facilities]*, a
34 nursing home required to be licensed to serve adults pursuant to *[cite ap-
35 propriate chapter relating to nursing homes]*; an agency, day care facility, or
36 residential facility required to be licensed to serve adults pursuant to *[cite ap-
37 propriate chapter]*; or a home health agency certified for participation in Titles
38 XVIII or XIX of the Social Security Act, 42 USC 1395, *et seq*

39 (E) "Licensing agency" means:

- 40 (1) the *[designate appropriate commissioner of health]* for a facility
41 required to be licensed or certified by the *[designate appropriate*
42 *department of health]*.

1 (2) the [designate appropriate commissioner of human services] for a
2 facility required to be licensed or certified;

3 (3) any licensing board which regulates persons pursuant to [cite ap-
4 propriate chapter relating to administrative procedure]; and

5 (4) any agency responsible for credentialing human services occupa-
6 tions.

7 (F) "Life-resuscitating procedure" means any medical procedure or in-
8 tervention that uses any means to restore a vital function of a person.

9 (G) "Life-sustaining procedure" means any medical procedure or interven-
10 tion that uses mechanical or other artificial means to sustain, or supplant a
11 vital function of a person terminally ill and serves only to artificially prolong
12 the moment of death. "Life-sustaining procedure" does not include the usual
13 care provided to patients, which would include routine care necessary to sus-
14 tain patient comfort and the usual and typical provision of nutrition which in
15 the medical judgment of the attending physician such person can tolerate, and
16 subject to the provisions of Section 6 of this Act.

17 (H) "Local law enforcement officials" refers to local law enforcement
18 agents or other officials assigned to investigate a specific incidence of alleged
19 abuse.

20 (I) "Necessary food and water" means nutrition and hydration, irrespec-
21 tive of the manner of provision or assistance, sufficient to maintain the patient
22 at his highest possible level of health as determined by his attending physician
23 in accordance with ordinary and accepted standards of medical care, but does
24 not include nutrition and hydration, when, in the judgments of the patient's
25 attending physician and a second consulting physician:

26 (1) the administration of nutrition or hydration will unavoidably and
27 in itself cause severe, intractable or long-standing pain to the pa-
28 tient;

29 (2) the administration of nutrition or hydration is not medically feasi-
30 ble, in that

31 (a) the patient is unable to ingest nutrients or incorporate fluids,
32 or

33 (b) no technique or procedure is reasonably available to the atten-
34 ding physician for such administration; or

35 (3) the death of the patient from a terminal illness is imminent.

36 (J) "Neglect" means:

37 (1) failure by a caretaker to supply the vulnerable adult with necessary
38 food, water, clothing, shelter, health care, or supervision;

39 (2) the absence or likelihood of absence of necessary food, water,
40 clothing, shelter, health care, or supervision for a vulnerable
41 adult; or

42 (3) the absence or likelihood of absence of necessary financial

1 management to protect a vulnerable adult against abuse. Nothing
2 in this Section shall be construed to require a facility to provide
3 financial management or supervise financial management for a
4 vulnerable adult except as otherwise required by law.

5 (K) "Report" means any report received by local law enforcement officials,
6 welfare agency, or licensing agency, pursuant to this Act.

7 (L) "Terminally ill" means the incurable condition of a person caused by
8 injury, disease or illness which, regardless of the application of life-sustaining
9 procedures will, within reasonable medical judgment, produce death, and
10 where the application of life-resuscitating procedures serve only to postpone
11 the moment of death of the person.

12 (M) "Vulnerable adult" means any person 18 years of age or older:

13 (1) who is a resident or inpatient of a facility;

14 (2) who receives services from a facility, except a person receiving out-
15 patient services for treatment of chemical dependency or mental
16 illness;

17 (3) who, regardless of residence or type of service received, is unable
18 or unlikely to report abuse or neglect without assistance because
19 of impairment of mental or physical function or emotional status.

20

21 Section 4. [Persons mandated to report.]

22 (A) Those persons mandated to report an incident of alleged abuse will in-
23 clude persons who have knowledge of the abuse or neglect of a vulnerable
24 adult, have reasonable cause to believe that a vulnerable adult is being or has
25 been abused or neglected, or who have knowledge that a vulnerable adult has
26 sustained a physical injury which is not reasonably explained by the history of
27 injuries provided by the caretaker or caretakers of the vulnerable adult. Such
28 persons shall immediately report the information to the local law enforcement
29 officials. Upon receiving a report, the local law enforcement officials shall im-
30 mediately notify the state Department of Justice and the appropriate licensing
31 agency or agencies. The above specifically refers to:

32 (1) a professional or his delegate engaged in the care of vulnerable
33 adults, in education, in social services, law enforcement, or in any
34 of the regulated occupations referenced in Sections 3(1)(3) and
35 3(1)(4);

36 (2) an employee of a rehabilitation facility certified by the [designate
37 appropriate commissioner of vocational rehabilitation]; or

38 (3) an employee of or a person providing services in a facility;

39 (4) medical examiners or coroners, in instances in which they believe
40 that a vulnerable adult has died as a result of abuse or neglect

41 (B) Nothing in this section shall be construed to require the reporting or
42 transmittal of information regarding an incident of abuse or neglect or

1 suspected abuse or neglect if the incident previously has been reported or
2 transmitted to the appropriate person or entity.

3
4 Section 5. *[Report.]* All reports received by local law enforcement officials,
5 welfare agency or licensing agency shall immediately be transmitted to the
6 state governing agency. Each of the three above-mentioned authorities shall
7 develop and disseminate procedures to coordinate their investigatory ac-
8 tivities.

9 (A) A person required to report under Section 4 of this Act shall make an
10 oral report immediately by telephone or otherwise, and shall make a written
11 report as soon as possible thereafter to the local law enforcement officials or
12 licensing agency. The written report shall be of sufficient content to:

- 13 (1) identify the vulnerable adult, the caretaker, the nature and extent
14 of the suspected abuse or neglect;
- 15 (2) state any evidence of previous abuse or neglect;
- 16 (3) state the name and address of the reporter; and
- 17 (4) list of any other information that the reporter believes might be
18 helpful in investigating the suspected abuse or neglect.

19 (B) Written reports received by local law enforcement officials shall be for-
20 warded immediately to the local welfare agency. The local law enforcement of-
21 ficial may keep copies of any reports received. Copies of written reports
22 received by a local welfare agency shall be forwarded immediately to the local
23 law enforcement officials and the appropriate licensing agency or agencies.

24
25 Section 6. *[Report not required.]*

26 (A) Where federal law specifically prohibits a person from disclosing pa-
27 tient identifying information in connection with a report of suspected abuse or
28 neglect under this Act, that person need not make a required report unless the
29 vulnerable adult, or the vulnerable adult's guardian, conservator, or legal
30 representative, has consented to disclosure in a manner which conforms to
31 federal requirements. Facilities whose patients or residents are covered by such
32 a federal law shall seek consent of the disclosure of suspected abuse or neglect
33 from each patient or resident, or his guardian, conservator, or legal represen-
34 tative, upon his admission to the facility. Persons who are prohibited by
35 federal law from reporting an incident of suspected abuse or neglect shall
36 promptly seek consent to make a report.

37 (B) Except as provided in Section 3(A)(1), verbal or physical aggression oc-
38 curring between patients, residents, or clients of a facility, or self-abusive
39 behavior of these persons does not constitute "abuse" for the purposes of Sec-
40 tion 4 unless it causes serious harm. The operator of the facility or a designee
41 shall record incidents of aggression and self-abusive behavior in a manner that
42 facilitates periodic review by local law enforcement officials and licensing

1 agencies.

2 (C) Nothing in this Section shall be construed to require a report of abuse,
3 as defined in Section 3(A)(4), solely on the basis of the transfer of money or
4 property by gift or as compensation for services rendered.

5
6 Section 7. *[Immunity from liability.]*

7 (A) A person making a voluntary or mandated report under Section 4 or
8 participating in an investigation under this Act is immune from any civil or
9 criminal liability that otherwise might result from the person's actions, if the
10 person is acting in good faith.

11 (B) A person employed by a local law enforcement authority or licensing
12 agency who is conducting or supervising an investigation or enforcing the law
13 in compliance with Sections 12, 13, or 14 or any related rule or provision of
14 law is immune from any civil or criminal liability that might otherwise result
15 from the person's actions, if the person is acting in good faith and exercising
16 due care.

17
18 Section 8. *[Falsified reports.]* A person who intentionally makes a false
19 report under the provisions of this Act shall be liable in a civil suit for any ac-
20 tual damages suffered by the person or persons so reported.

21
22 Section 9. *[Failure to report.]*

23 (A) A person required by this Act to report, who intentionally fails to
24 report, is guilty of a misdemeanor.

25 (B) A person required to report by this Act who negligently or intentionally
26 fails to report is liable for damages caused by the failure.

27
28 Section 10. *[Evidence not privileged.]* No evidence regarding the abuse or
29 neglect of the vulnerable adult shall be excluded in any proceeding arising out
30 of the alleged abuse or neglect on the grounds of lack of competency under
31 *[cite appropriate evidentiary code section].*

32
33 Section 11. *[Duties of local law enforcement officials upon receipt of a
34 report.]* In carrying out these duties, the local law enforcement official shall
35 notify and seek the help of the local welfare agency.

36 (A) The local law enforcement officials shall immediately investigate and
37 offer emergency and continuing protective social services for purposes of
38 preventing further abuse or neglect and for safeguarding and enhancing the
39 welfare of the abused or neglected vulnerable adult. Local law enforcement of-
40 ficials may enter facilities and inspect and copy records as part of investiga-
41 tions. In cases of suspected sexual abuse, the local law enforcement official
42 shall immediately arrange for and make available to the victim appropriate

1 medical examination and treatment. The investigation shall not be limited to
2 the written records of the facility, but shall include every other available
3 source of information. When necessary in order to protect the vulnerable
4 adult from further harm, the local law enforcement officials shall seek
5 authority to remove the vulnerable adult from the situation in which the
6 neglect or abuse occurred. The local law enforcement officials shall also invest-
7 gate to determine whether the conditions which resulted in the reported
8 abuse or neglect place other vulnerable adults in jeopardy of being abused or
9 neglected and offer protective social services that are called for by its deter-
10 mination. In performing any of these duties, the local law enforcement offi-
11 cials shall maintain appropriate records.

12 (B) If the report indicates, or if the local law enforcement officials find,
13 that the suspected abuse or neglect occurred at a facility, or while the vulner-
14 able adult was or should have been under the care of or receiving services from
15 a facility, or that the suspected abuse or neglect involved a person licensed by a
16 licensing agency to provide care or services, the local welfare agency shall im-
17 mediately notify each appropriate licensing agency, and provide each licensing
18 agency with a copy of the report and its investigative findings.

19 (C) When necessary in order to protect a vulnerable adult from serious
20 harm, the local law enforcement official shall immediately intervene on behalf
21 of that adult to help the family, victim, or other interested person by seeking
22 any of the following:

- 23 (1) a restraining order or a court order for removal of the perpetrator
24 from the residence of the vulnerable adult pursuant to *[cite ap-*
25 *propriate rule of civil procedure]*;
- 26 (2) the appointment of a guardian or conservator, or guardianship or
27 conservatorship pursuant to *[cite appropriate chapter relating to*
28 *guardianship]*;
- 29 (3) replacement of an abusive or neglectful guardian or conservator
30 and appointment of a suitable person as guardian or conservator,
31 pursuant to *[cite appropriate chapter relating to guardianship]*; or
32 (4) a referral to the prosecuting attorney for possible criminal prose-
33 cution of the perpetrator under *[cite appropriate criminal pro-*
34 *cedure section]*.

35 (D) The expenses of legal intervention must be paid by the county in the
36 case of indigent persons, under *[cite appropriate section relating to indigency]*.

37 (E) In guardianship and conservatorship proceedings, if a suitable relative
38 or other person is not available to petition for guardianship or conservator-
39 ship, a county employee shall present the petition with representation by the
40 county attorney. The county attorney shall contract with or arrange for a
41 suitable person or nonprofit organization to provide ongoing guardianship
42 services. If the county presents evidence to the probate court that it has made a

1 diligent effort and no other suitable person can be found, a county employee
2 may serve as guardian or conservator. The county shall not retaliate against
3 the employee for any action taken on behalf of the ward or conservatee even if
4 the action is adverse to the county's interest. Any person retaliated against in
5 violation of this Section shall have a cause of action against the county and
6 shall be entitled to reasonable attorney fees and costs of the action if the action
7 is upheld by the court.
8

9 Section 12. *[Notification of neglect or abuse in a facility.]*

10 (A) When a report is received that alleges abuse or neglect of a vulnerable
11 adult while in the care of a facility required to be licensed under *[cite ap-*
12 *propriate chapter relating to nursing homes]*, or *[cite appropriate chapter*
13 *relating to day care or residential facilities]*, the local law enforcement officials
14 investigating the report shall notify the guardian or conservator of a
15 vulnerable adult under guardianship or conservatorship who is alleged to have
16 been abused or neglected. The local law enforcement officials shall notify the
17 person, if any, designated to be notified in case of an emergency regarding a
18 vulnerable adult not under guardianship or conservatorship who is alleged to
19 have been abused or neglected, unless consent is denied by the vulnerable
20 adult. The notice shall contain the following information:

- 21 (1) the name of the facility;
- 22 (2) the fact that a report of alleged abuse or neglect of a vulnerable
23 adult in the facility has been received;
- 24 (3) the nature of the alleged abuse or neglect;
- 25 (4) notice that the agency is conducting an investigation;
- 26 (5) any protective or corrective measures being taken pending the out-
27 come of the investigation; and
- 28 (6) notice that a written memorandum will be provided when the in-
29 vestigation is completed.

30 (B) In a case of alleged abuse or neglect of a vulnerable adult while in the
31 care of a facility required to be licensed under *[cite appropriate section relating*
32 *to day care or residential facilities]*, the local law enforcement officials may
33 also provide the information in subsection (A) to the guardian or conservator
34 of any other vulnerable adult in the facility who is under guardianship or con-
35 servatorship, and to the person, if any, designated to be notified in case of an
36 emergency regarding any other vulnerable adult in the facility who is not under
37 guardianship or conservatorship, unless consent is denied by the vulnerable
38 adult, if the investigative agency knows or has reason to believe the alleged
39 neglect or abuse has occurred.

40 (C) When the investigation under Section 12 is completed, the local welfare
41 agency shall provide a written memorandum to every guardian or conservator
42 or other person notified by the agency of the investigation under subsection

1 (A) or (B). The memorandum shall protect the identity of the reporter and the
2 alleged victim and shall not contain the name or, to the extent possible, reveal
3 the identity of the alleged perpetrator or of those interviewed during the in-
4 vestigation. The memorandum shall contain the following information:

- 5 (1) the name of the facility investigated;
- 6 (2) the nature of the alleged neglect or abuse;
- 7 (3) the investigator's name;
- 8 (4) a summary of the investigative findings;
- 9 (5) a statement of whether the report was found to be sustained, in-
10 conclusive, or false; and
- 11 (6) the protective or corrective measures that are being or will be
12 taken.

13 (D) In a case of neglect or abuse of a vulnerable adult while, in the care of a
14 facility required to be licensed under *[cite appropriate sections relating to day
15 care or residential facilities]*, the local law enforcement officials may also pro-
16 vide the written memorandum to the following individuals if the report is un-
17 substantiated or if the investigation is inconclusive and the report is a second
18 or a subsequent report of neglect or abuse of a vulnerable adult while in the
19 care of the facility:

- 20 (1) the guardian or conservator of any other vulnerable adult in the
21 facility who is under guardianship or conservatorship;
- 22 (2) any other vulnerable adult in the facility who is not under guar-
23 dianship or conservatorship; and
- 24 (3) the person, if any, designated to be notified in case of an emergen-
25 cy regarding any other vulnerable adult in the facility who is not
26 under guardianship or conservatorship, unless consent is denied
27 by the vulnerable adult.

28 (E) In determining whether to exercise the discretionary authority granted
29 under subsections (B) and (D), the local law enforcement officials shall con-
30 sider the seriousness and extent of the alleged abuse or neglect and the impact
31 of notification on the residents of the facility. The facility shall be notified
32 whenever this discretion is exercised.

33 (F) Where federal law specifically prohibits the disclosure of patient identi-
34 fying information, the local law enforcement officials shall not provide any
35 notice under subsection (A) or (B) or any memorandum under subsection (C)
36 or (D) unless the vulnerable adult has consented to disclosure in a manner
37 which conforms to federal requirements.

38
39 Section 13. *[Duties of licensing agencies upon receipt of report.]* A licensing
40 agency shall investigate immediately all reports or other information which in-
41 dicates that a vulnerable adult may have been abused or neglected at a facility
42 it has licensed, or that a person it has licensed or credentialed to provide health

1 care or services may be involved in the abuse or neglect of a vulnerable adult,
2 or that such a facility or person has failed to comply with the requirements of
3 this Act. Subject to the *[cite appropriate administrative procedure sections]*,
4 the licensing agency shall have the right to enter facilities and inspect and copy
5 records as part of its investigations. The investigation shall not be limited to
6 the written records of the facility, but shall include every other available
7 source of information. The licensing agency shall issue orders and take actions
8 designed to prevent further abuse or neglect of vulnerable adults. Such actions
9 may include the suspension or revocation of a person's license or the facility's
10 license.

11 Section 14. *[Records.]*

12 (A) Each licensing agency shall maintain summary records of reports of
13 alleged abuse or neglect and alleged violations of the requirements of this sec-
14 tion with respect to facilities or persons licensed or credentialed by that agen-
15 cy. As part of these records, the agency shall prepare an investigation
16 memorandum. The investigation memorandum shall be a public record and a
17 copy shall be provided to any public agency which referred the matter to the
18 licensing agency for investigation. It shall contain a complete review of the
19 agency's investigation, including, but not limited to:

- 20 (1) the name of the facility investigated;
- 21 (2) a statement of the nature of the alleged abuse or neglect or other
22 violation of the requirements of this Section;
- 23 (3) a statement of pertinent information obtained from medical or
24 other records reviewed;
- 25 (4) the investigator's name;
- 26 (5) a summary of the investigation's findings;
- 27 (6) a statement of whether the report was found to be substantiated,
28 inconclusive, or false; and
- 29 (7) a statement of any action taken by the agency.

30 The investigation memorandum shall protect the identity of the reporter and
31 of the vulnerable adult and may not contain the name or, to the extent possi-
32 ble, the identity of the alleged perpetrator or of those interviewed during the
33 investigation. During the licensing agency's investigation, all data collected
34 pursuant to this Act shall be classified as investigative data pursuant to *[cite
35 appropriate administrative code section]*. After the licensing agency's in-
36 vestigation is complete, the data on individuals collected and maintained shall
37 be private data on individuals. All data collected pursuant to this Section shall
38 be made available to prosecuting authorities and law enforcement officials,
39 local welfare agencies, and licensing agencies investigating the alleged abuse or
40 neglect. Notwithstanding any law to the contrary, the name of the reporter
41 shall be disclosed only upon a finding by the court that the report was false
42

1 and made in bad faith.

2 (B) Notwithstanding any law to the contrary:

3 (1) all data maintained by licensing agencies, treatment facilities, or
4 other public agencies which relates to reports which, upon in-
5 vestigation, are found to be false may be destroyed two years after
6 the finding is made;

7 (2) all data maintained by licensing agencies, treatment facilities, or
8 other public agencies which relates to reports which, upon in-
9 vestigation, are found to be inconclusive may be destroyed four
10 years after the finding is made;

11 (3) all data maintained by licensing agencies, treatment facilities, or
12 other public agencies which relates to reports which, upon investi-
13 gation, are found to be substantiated may be destroyed seven
14 years after the finding is made.
15

16 Section 15. *[Abuse prevention plans.]*

17 (A) Each facility, except home health agencies, shall establish and enforce
18 an ongoing written abuse prevention plan. The plan shall contain an assess-
19 ment of the physical plant, its environment, and its population identifying fac-
20 tors which may encourage or permit abuse, and a statement of specific
21 measures to be taken to minimize the risk of abuse. The plan shall comply with
22 any rules governing the plan promulgated by the licensing agency.

23 (B) Each facility shall develop an individual abuse prevention plan for each
24 vulnerable adult residing or receiving services there. The plan shall contain an
25 individualized assessment of the person's susceptibility to abuse, and a state-
26 ment of the specific measures to be taken to minimize the risk of abuse to that
27 person. For the purpose of this clause, the term "abuse" includes self-abuse.
28

29 Section 16. *[Internal reporting of abuse and neglect.]* Each facility shall
30 establish and enforce an ongoing written procedure in compliance with the
31 licensing agencies' rules for insuring that all cases of suspected abuse or
32 neglect are reported and investigated promptly.
33

34 Section 17. *[Enforcement.]*

35 (A) A facility that has not complied with this Section within 60 days of the
36 effective date of passage of temporary rules is ineligible for renewal of its
37 license. A person who is required by Section 4 to report and who is licensed or
38 credentialed to practice an occupation by a licensing agency, who willfully
39 fails to comply with this Act shall be disciplined after a hearing by the ap-
40 propriate licensing agency.

41 (B) Licensing agencies shall as soon as possible promulgate rules necessary
42 to implement the requirements of Sections 14, 15, 16, 17, 18, and 19(A). Agen-

1 cies may promulgate temporary rules pursuant to *[cite appropriate ad-*
2 *ministrative procedure section]*.

3 (C) The *[cite appropriate commissioner of human services]* shall promul-
4 gate rules as necessary to implement the requirements of Section 12.
5

6 Section 18. *[Retaliation prohibited.]*

7 (A) A facility or person shall not retaliate against any person who reports in
8 good faith suspected abuse or neglect pursuant to this Act, or against a
9 vulnerable adult with respect to whom a report is made.

10 (B) Any facility or person which retaliates against any person because of a
11 report of suspected abuse or neglect is liable to that person for actual damages
12 and, in addition, a penalty of up to \$1,000.

13 (C) There shall be a rebuttable presumption that any adverse action, as
14 defined below, within 90 days of a report, is retaliatory. For purposes of this
15 clause, the term "adverse action" refers to action taken by a facility or person
16 involved in a report against the person making the report or the person with
17 respect to whom the report was made and includes, but is not limited to:

- 18 (1) discharge or transfer from the facility;
- 19 (2) discharge from or termination of employment;
- 20 (3) demotion or reduction in remuneration for services;
- 21 (4) restriction or prohibition of access to the facility or its residents;
22 or
- 23 (5) any restriction of rights set forth in *[cite appropriate section*
24 *enumerating employee rights]*.
- 25

26 Section 19. *[Outreach.]* The *[designate appropriate commissioner of*
27 *human services]* shall establish an aggressive program, using a variety of
28 media, to educate those required to report, as well as the general public, about
29 the requirements of this Act.
30

31 Section 20. *[Penalty.]* Any caretaker, operator, employee or volunteer
32 worker thereof, who intentionally abuses or neglects a vulnerable adult, or be-
33 ing a caretaker, knowingly permits conditions to exist which result in the abuse
34 or neglect of a vulnerable adult, is guilty of a *[specify misdemeanor]*
35

36 Section 21. *[Severability clause.]*

37 Section 22. *[Repealer clause.]*

38 Section 23. *[Effective date.]*
39
40

3 accused of mistreating mentally retarded patients

By C.L. GILBERT
and DON HUNTER
Daily News reporters

Prosecutors on Monday charged three former state employees with harassing, endangering or assaulting residents of a home for the mentally retarded in Valdez.

The 39 misdemeanor charges include allegations that one of the accused endangered two residents of Harborview Developmental Center by pushing them from their wheelchairs into a therapy pool and used masking tape to bind a resident's eyes, mouth and legs. The charges also include accusations of kicking residents and hitting

them with basketballs.

Harborview is a state-operated home for the mentally retarded. It employs about 130 workers who care for about 70 residents, many of whom also have extreme physical disabilities.

The three former employees charged are Steve Stone, 31, his brother, Jeffrey Stone, 25, and Artie R. Collins, 25. They were among four employees fired last October by Harborview Director Pat Londo.

The Stone brothers and Collins denied mistreating residents and have appealed

See Back Page, THREE

Daily News
6-11-85

Three charged with mistreating residents at state home

Continued from Page A-1

their dismissals. An arbitrator is expected to rule on their request for reinstatement next month.

None of the three could be reached for comment Monday. Steve Stone was said to be out on a fishing boat.

The charges, filed in Valdez, are based on a Valdez police officer's interviews with other Harborview employees and with college interns who worked at the institution in 1983 and 1984.

The fourth employee fired was not mentioned in the charges.

Monday, Londo said the four were fired because "we felt they were causing some discomfiture for residents. We did not use the word 'abuse' (then) because we did not feel we could say there was abuse," he said.

Londo refused to discuss the charges further because the arbitration is not concluded. A state labor negotiator familiar with the case, Bruce Cummings, said some of the charges may involve informa-

tion that was not available to Harborview officials at the time of the dismissals.

Robert Watts, field office manager for the Alaska Public Employees Association, said he was surprised by the charges. He said he suspects the filing may be the result of pressure brought to bear on prosecutors by other state officials concerned about losing the arbitration case.

"It's real curious, because in our past discussions with various people, including (District Attorney) Gene Cyrus, it looked like they were not going to file charges because they were not going to be able to prove anything," he said. "They indicated in mid-April that they had finished the investigation and decided not to file charges."

Watts also said some of the charges — the swimming pool and tape incidents — are new and were never brought up during the initial dismissals and subsequent hearings.

"If, in fact, something like that had occurred, I would think it would have been brought up," he said.

The union subpoenaed all reports of incidents involving residents during the time period of the allegations, Watts said. He said he doesn't remember seeing anything approaching the seriousness of the charges.

"We asked for signed statements, and they didn't provide them, and we asked them to bring people forward (who had witnessed abuses) and they did not," Watts said.

The union would not have appealed the dismissals if officials believed the accusations were true, he said.

Each charge of fourth-degree assault and reckless endangerment is punishable by up to one year in prison and a \$5,000 fine. Each harassment charge is punishable by up to 90 days in jail and a \$1,000 fine, said Cyrus.

Steve Stone is charged with three counts of harassment and two counts of reckless endangerment against two residents. One harassment charge is based on statements from three employees at Harborview who said Stone used masking tape to

immobilize a non-ambulatory resident subject to seizures.

Another employee described an incident in early 1983, in which Steve Stone allegedly pulled two residents from their wheelchairs and pushed them into a therapy pool, pulling them out on after they had gone under water.

"Neither one of them could have brought himself to the surface independently or could float by himself without a life jacket," the officer's statement said.

Collins is charged with counts of both fourth-degree assault and harassment against six residents.

He is accused of hitting two residents in the head and chest with a basketball, and kicking residents in the legs, buttocks, chest and stomach.

Jeffrey Stone faces six fourth-degree assault and six harassment charges against six patients. Four employees quoted by the officer said Stone hit three residents in the head with a basketball and kicked three others.

HB

348

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would change the composition of the Medicaid Rate Commission, which was established in the Department of Health and Social Services in 1983.

Currently, the Medicaid Rate Commission has four public or provider representatives and one state government representative. The latter is either the commissioner of health and social services or the commissioner of administration (or the appointed designee of either). The purpose of the Medicaid Rate Commission is to establish the rates for payments made to hospitals, nursing homes, and a variety of other health care facilities for services provided to Medicaid and general relief medical assistance recipients. The commission currently commits the state to a distribution of over \$80,000,000 yearly. With the present composition of the commission, the state lacks budgetary control because it cannot contain the growth of the rates approved by the commission.

Historically, boards with the authority to commit the state to some level of expenditure or indebtedness have had a voting majority of cabinet or top-level administrative officials. This bill brings the composition of the commission into conformance with other rate-setting bodies by placing a total of three department heads (or, in place of the third department head, one of the division directors of the office of management and budget) on that rate-setting body. Two other governor-appointed members would represent health care providers and consumers, respectively. The commission would, of course, continue to make its decisions based upon presentations made to it by health care providers.

POSITION PAPER

CS FOR HOUSE BILL NO. 348

"An Act relating to payment rates for health facilities and to the Medicaid Rate Advisory Commission."

EFFECT OF THE BILL

CSHB 348 changes the relationship between the Medicaid Rate Commission (MRC) and the Department of Health and Social Services by making the MRC advisory to the Department with regard to the setting of reimbursement rates for facilities providing health care through the Medicaid program. Currently, the MRC acts independently of the Department even though the rates which the MRC sets are binding on the Department.

DISCUSSION

The MRC currently sets medical facility rates by adopting regulations over which the executive or legislative branch have no approval or disapproval authority. The rates set by the MRC are binding on the State; the Medicaid program must reimburse facilities at the rate established by the Commission. This creates the situation in which the State has the obligations, without the needed authority, to (1) manage within its budget, (2) meet all federal Medicaid standards concerning maximum allowable rates, (3) ensure the greatest access to health care within our appropriation, and (4) try to manage the ever escalating costs of health care.

Each year, the legislature appropriates general fund dollars to fund the Medicaid program. This appropriation is based on projections of utilization (the degree to which each individual requires medical services), the number of eligible individuals who require service, the benefit or particular service which the State chooses to provide each eligible individual and the price of services. When the combination of utilization, eligibles and price require the expenditure of more funds than appropriated, the Department requests supplemental appropriations to maintain the program.

If the supplemental appropriation is not forthcoming, the program must, by statute, eliminate services such as dental care and care for the developmentally disabled, and reduce the number of eligible individuals to the extent necessary to meet budget limitations. For example, a proposed \$3 million regulation change currently being considered by the MRC is not budgeted in the FY 89 request. If the regulations go into effect and the money is not provided by the legislature through a supplemental, services would have to be eliminated.

As the above scenario indicates, the MRC, in addition to obligating the State to payments to providers also has the potential to effect the provision of all Medicaid services to eligible recipients. As an independent agency, the MRC does this without significant consideration for the overall health policy of the State.

DEPARTMENT POSITION

This legislation would authorize the Department of Health and Social Services to set Medicaid reimbursement rates for facilities after consultation with the MRC. In addition to the recommendations of the Commission, the department, prior to setting rates, would be required to consider the factors pertaining to rate setting which are currently identified in statute. The composition of the Rate Commission would not be affected by CSHB 348.

The Department of Health and Social Services supports CSHB 348 as a balanced approach to rate setting. With the passage of this bill, the health provider industry would retain its representation on the MRC and communicate rate recommendations directly to the Commissioner. While affording health care providers access to the rate setting process, the changes proposed in CSHB 348 provide the executive and legislative branches of government the authority they need to efficiently manage State general funds.

Approved by:

Myra M. Munson
Myra M. Munson
Commissioner
Department of Health
and Social Services

Date:

3-29-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Payment
Rates for Health Facilities...
Sponsor: _____
Requestor: Governor

Agency Affected: Health and Social Services
BRU: Medicaid Rate Commission
Components: Medicaid Rate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Kim Busch, Director *Kim Busch*
Division: Medical Assistance
Approved by Commissioner: Nyra Nunson *Nyra Nuunson*
Agency: Health and Social Services

Phone: 465-3355
Date: 3/28/88
Date: 3/29/88

Distribution (by preparer):
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March 2, 1988

Representative Fran Ulmer
Chairman
House State Affairs Committee
P.O. Box V
Juneau, AK 99811

Re: HB 348

Dear Representative *Fran* Ulmer:

I would like to take this opportunity to voice my support for House Bill 348 "An Act relating to the composition of the Medicaid Rate Commission."

As I am sure you are aware, the entitlement programs in general and the Medicaid budget in particular represent an ever increasing portion of the Department of Health & Social Services Budget. From FY 86 - FY 88, a period when the vast majority of state funded programs were sustaining double-digit percentage budget reductions, state general funds for Medicaid increased by 12.2%. If you add the FY 88 request for supplemental funding pending before the House Finance Committee, the increase is approximately 37.1%. I have attached a spreadsheet which more clearly demonstrates the growth in this program during this period.

While some of these increased costs can be attributed to expansion of services and increased caseloads, it is also true that a significant

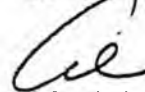
portion of the increased costs are directly related to the rate increases awarded to Medicaid eligible facilities by the Medicaid Rate Commission.

Under current law, the rate commission operates outside the normal policy/budget process and the composition of the commission further aggravates the problems inherent in this situation. House Bill 348 would provide for a majority of the members of the commission to be state policy-makers and presumably more sensitive to the overall policy and budget priorities of the state.

To illustrate just how out of step with the normal budget process the current commission appears to be, I have attached a copy of a notice of proposed changes in the regulations of the Medicaid Rate Commission which came across my desk last week. If the commission adopts these regulations as written, the state will be obligated for an additional \$2.9 million for FY 89 with further increases in succeeding years. These funds are not in the current Governor's FY 89 budget request nor will the regulations likely be approved in time for submission as a budget amendment. As a practical matter what we have here is a FY 89 supplemental request. We are set-up for a FY 89 Medicaid supplemental before we have even approved the original FY 89 budget!

In conclusion, I urge the State Affairs Committee to give favorable consideration to HB 348. I am under no illusions that this will solve all our Medicaid funding problems; but I am convinced it is a worthwhile step in the right direction. In the absence of additional cost containment measures in this area, I fear that further erosion in funds for other vital health & social services programs is inevitable.

Sincerely,



Al Adams
Chairman

House Finance Committee

cc Rep. Mark Boyer
Chairman
House Finance HESS Budget Subcommittee

ATTACHMENT A MEDICAID BUDGET FY 87 ACTUAL-FY 89 (GENERAL FUNDS ONLY)

	A	B	C	D	E	F	G	H	I	J
1	COMPONENT	FY 87 ACT	FY 88 AUTH	FY 88 SUPP	FY 88 TOTAL	FY 89 GOV	FY 89 REGS	FY 89 TOTAL	FY 89 V FY 87	FY 89 V FY 87
2									AMOUNT	%
3										
4	MEDICAID-NON FACILITY	12,556.1	10,972.6	4,970.0	15,942.6	17,213.2	0.0	17,213.2	4,657.1	37.1%
5	MEDICAID-FACILITY	22,822.4	26,598.2	3,375.0	29,973.2	33,112.1	2,900.0	36,012.1	13,189.7	57.8%
6										
7	TOTAL	35,378.5	37,570.8	8,345.0	45,915.8	50,325.3	2,900.0	53,225.3	17,846.8	50.4%

FY 88 TOTAL=AUTHORIZED PLUS PROPOSED SUPPLEMENTAL; FY 89 TOTAL=FY 89 GOVERNOR PLUS PROPOSED NEW REGULATIONS

EL

NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS
OF THE MEDICAID RATE COMMISSION

Notice is given that the Medicaid Rate Commission, under authority vested by AS 47.07.070 and AS 47.07.073, proposes to amend regulations in Title 7 AAC 43 of the Alaska Administrative Code, dealing with establishment of a rate setting process for payment of services for Medical Assistance programs to facilities, to implement AS 47.07, as follows:

1. 7 AAC 43.685(b)(2) is proposed to be amended by identifying capital and various insurance and employee benefits costs as passthrough costs.
2. 7 AAC 43.685(b)(3) is proposed to be amended by adding various insurance and employee benefits costs as facility budgeted costs for rate setting.
3. 7 AAC 43.691(a)(1) is proposed to be amended to substitute actual passthrough costs for budgeted passthrough costs when calculating year end conformance.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the proposed action at a hearing to be held in Room 336 of the Frontier Building, 3601 "C" Street, Anchorage, Alaska at 1:30 p.m. on March 18, 1988.

This action is expected to require an increased general fund appropriation of \$2,900,000 in fiscal year 1989, \$3,500,000 in fiscal year 1990, and \$4,300,000 in fiscal year 1991.

STATEMENT
HEALTH ASSOCIATION OF ALASKA

March 15, 1988

House Committee on State Affairs
HB 348 - MEDICAID RATE COMMISSION

The Health Association of Alaska, representing acute and long term health care facilities, is opposed to H.B. 348, an act relating to the composition of the Medicaid Rate Commission.

Purpose of Medicaid Rate Commission:

The purpose of the Commission is to establish a fair rate of payment to health facilities for services rendered to Medicaid and General Relief Medical (GRM) beneficiaries.

The major activities of the Commission are to develop and implement a new rate setting system, audit facility data, prepare and negotiate the State Plans with the Federal Government for federal funding, and report proposed Medical Assistance expenditures for current and subsequent state fiscal years. The rate setting is a public process wherein the Commission deliberates the proposed rates and sets the rates.

Current Composition of Medicaid Rate Commission:

1. Licensed Health Facility CEO
2. Commissioner of Administration or Commissioner of Health and Social Services or their designee
3. Licensed physician
4. Certified Public Accountant
5. Consumer

Intent of HB 348:

Replace licensed health facility CEO, physician, and CPA with a health care provider, Commissioner of Administration, Commissioner of Health and Social Services, and/or a third Commissioner or a director of a division of the Office of Management and Budget.

Reasons Why Health Association of Alaska Opposes HB 348:

1. The intent of HB 348 is to control health care facility costs by having three of the five members of the Commission represent state government.

That is contrary to legislative intent. Hospital and long term health care facility rates established by the Commission should not be budget driven, but should reflect a fair rate of payment for services rendered.

State government and the public need to have the data compiled by the Commission, and know that fair and equitable rates are established by utilizing that data.

(MORE)

Concern is that needed rate increases will be denied solely for the reason that the Department of Health and Social Services will be required to seek additional funding from the Legislature to underwrite such increases. The fact that health facility costs, generated by people in need, must compete with other health and social service programs is recognized, but it does not negate the fact that hospitals cannot subsidize state programs.

It should be noted that a recent survey (by Providence Hospital) showed that hospital uncompensated care (bad debt/charity) costs increased from \$5,339,000 in 1982 to \$10,368,000 in 1986. Medicaid paid hospitals only \$20,978.00 in 1986. Liability insurance premium costs increased from \$3,147,000 in 1986 to \$5,377,000 in 1988. (Data from Medicaid Rate Commission.)

2. The Certified Public Accountant, physician, and licensed health facility CEO are needed on the Commission, as is the consumer and the representative of the Department of Health and Social Services.

Establishing health facility costs is extremely complex, and the involvement of individuals who are in the everyday business of providing health services and cost accounting contribute significantly to the deliberations of the Commission.

#

FOR: Harlan Knudson
Health Association of Alaska
319 Seward Street, #11
Juneau, AK 99801
586-1790

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.

3-29-88

1:30 p.m.

EXPLANATION OF COMMITTEE SUBSTITUTES FOR HB 348

CS #1 - Changes to the Medicaid Rate Commission to Advising the Department on Medicaid Facility Rates.

CS #2 - Links Medicaid Rate Commission Set Facility Rates to Approval of Federal State Plan to Ensure Continued Federal Funding.

CS #3 - Eliminates the Medicaid Rate Commission

CS #1

HOB
348

Changing the Medicaid Rate Commission to Advising the Department of
Medicaid Facility Rates.

file
H.
JP

Purpose

~~This proposed amendment would change the focus of the Medicaid Rate Commission from a rate setting body to one giving advice to the Department of Health and Social Services. Upon consideration of that advice and review of available funding, the department adopts fair facility rates for Medicaid based on federal requirements and state statutes.~~

Section 1. AS 47.07.040 is amended to read:

Sec. 47.07.040. State plan for provision of medical assistance. The department shall prepare a state plan in accordance with the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act, Medical Assistance) and submit it for approval to the United States Department of Health and Human Services. The plan shall designate that the Department of Health and Social Services is the single state agency to administer this plan. The department shall act for the state in any negotiations relative to the submission and approval of the plan, The department [,INCLUDING THE MEDICAID RATE COMMISSION,] may make those arrangements or regulatory changes, not inconsistent with law, as may be required under federal law to obtain and retain approval of the United State Department of Health and Human Services to secure for the state the optimum federal payment under the provisions of 42 U.S.C. 1396-1396p (Title XIX, Social Security Act, Medical Assistance). In addition, the department shall provide a report to the legislature no later than March 15 of each year concerning the status

of this program and recommendations, with supporting fiscal data, as to any changes in the coverage of eligible persons or services to be provided.

* Sec. 2. AS 47.07.070 is amended to read:

Sec. 47.07.070 Payment to Health Facilities. (a) The commission shall advise the department on the prospective [DETERMINE PROSPECTIVELY THE] rate of payment to a health facility under this chapter and AS 47.25.120-47.25.300 based on a fair rate for reasonable costs incurred by the facility. The department shall set the rates of payment to a health facility. The department [COMMISSION] shall by regulation list the factors it considers in making its rate determination under this section, after consultation with the commission.

(b) In determining a rate of payment to a health facility under this section, the department [COMMISSION] shall consider the proportionate share of the facility's financial requirements for patient care for

(1) cost of current operations, including salaries and wages, purchased services, supplies, insurance, leases, depreciation, taxes, interest expense, maintenance and other health facility operating expenses; and

(2) education, research, and appropriate capital development.

(c) In determining a rate of payment to a health facility under this section, the department [COMMISSION] may consider whether the rate of utilization of the facility has been reduced because of improvident or careless development of the facility.

(d) In determining a rate of payment to a health facility under this section, the department [COMMISSION] shall consider the appropriation limit set by the legislature for the department's programs under this chapter and under AS 47.25.120-47.25.300, and available federal revenue.

* Sec. 3. AS 47.07.073 is amended to read:

Sec. 47.07.073 Uniform Accounting, Budgeting, and Financing Reporting.

(a) The department [COMMISSION] by regulation shall require a uniform system of accounting, budgeting, and financial reporting for health facilities receiving prospective payments under this chapter. The regulations shall provide for reporting revenues, expenses, assets, liabilities, and units of service. The department [COMMISSION] shall specify the date the system become effective for each health facility.

(b) In adopting regulations as under this section, the department [COMMISSION] shall consider

(1) accounting, budgeting, and financial reporting procedures used by health facilities;

(2) variations among health facilities in the types of health care services provided by health facilities;

(3) the size and organizational structure of health facilities;

(4) the methods used by health facilities to obtain payments; [AND]

(5) other factors the department [COMMISSION] considers relevant, and [.]

(6) the recommendations of the commission.

(c) The department [COMMISSION] may waive or modify a requirement for accounting, budgeting, or financial reporting for a health facility if waiver or modification is

(1) necessary to avoid excessive costs to the facility; and

(2) consistent with the policies of this chapter.

(d) Notwithstanding other provisions of this section, the department [COMMISSION] may, by regulation, modify the system of accounting, budgeting and financial reporting required under this section for a health facility having fewer than 25 acute care beds in order to reduce the operating costs of that facility.

Sec. 4. AS 47.07.075 is amended to read:

Sec. 47.07.075. Application of Administrative Procedure Act. Action of the department [COMMISSION] under AS 47.07 and AS 47.25.120-AS 25.300 are subject to the provisions of the Administrative Procedure Act (AS 44.62).

Sec. 5. AS 47.07.110 is amended to read:

Sec. 47.07.110. Medicaid Rate Advisory Commission established. The Medicaid Rate Advisory Commission is established in the Department of Health and Social Services.

Sec. 6. AS 47.07.180 is amended to read:

Sec. 47.07.180. Duties. (a) The commission shall review proposed payment rates [AND MAY REVIEW BUDGETS] of health facilities and advise the department on [ESTABLISH] payment rates for health facilities under this chapter and AS 47.25.120-47.25.300.

(b) The commission shall advise [CONSULT WITH] the department on the state plan as it relates to health facilities. [THE COMMISSION MAY NOT CHANGE THE UNIT OF PAYMENT WITHOUT THE WRITTEN CONSENT OF THE DEPARTMENT.]

(c) When the department enters into a substantially revised state plan under AS 47.07.040, and when, as part of the the revised state plan, the department [COMMISSION] adopts regulations which substantially change

the methods used or the factors considered in determining the prospective payment rates, the commission may, at its discretion, recommend the department redetermine the prospective payment rates for all facilities from the effective date of the new regulations forward. Each redetermined rate will be effective from the date of the department's [COMMISSION'S] new order as to each facility.

[(D) BY MARCH 1 OF EACH YEAR, THE COMMISSION SHALL DEVELOP FOR THE FISCAL YEAR STARTING THE NEXT JULY 1 AN ANNUAL ESTIMATE OF MEDICAL ASSISTANCE PROGRAM EXPENDITURES IN HEALTH FACILITIES UNDER THE JURISDICTION OF THE COMMISSION. THE ESTIMATE SHALL CONSIDER ANTICIPATED UTILIZATION AND PAYMENT RATES FOR EACH FACILITY. THE METHODOLOGY USED BY THE COMMISSION TO DEVELOP THE ESTIMATE SHALL BE CONSISTENT WITH THE REGULATIONS GOVERNING THE COMMISSION'S RATE-SETTING PROCESS.]

Sec. 7. AS 47.07.190 is amended to read:

Sec. 47.07.190. Employment of personnel. The department [COMMISSION] may employ and determine the salary of an executive director, who shall provide staff assistance to the commission. With the approval of the department [COMMISSION], the executive director may select and employ additional staff. The commission shall be assisted by the officers and personnel of the department as the commissioner of health and social services shall direct. The executive director of the commission is in the exempt service under AS 39.25.

Sec. 8. AS 47.07.900(4) is amended to read:

(4) "commission" means the Medicaid Rate Advisory Commission;

~~Sec. 9. Sections 1-7 of this Act take effect immediately under AS
01.10.070(c).~~

POSITION PAPER

HOUSE BILL 348

"Relating to the Composition of the Medicaid Rate Commission"

Purpose

HB 348 would modify the membership of the Medicaid Rate Commission (MRC). Currently, AS 47.07.120 requires the following membership on the MRC:

1. The chief executive officer of a health facility licensed by the state but not owned or operated by the State or federal government and that is subject to the budget review process of the Commission.
2. The Commissioner of Administration, Commissioner of Health and Social Services or the appointed designee of either commissioner.
3. A physician licensed to practice medicine in the State who is actively engaged in the practice of medicine and who is not employed by the State.
4. A certified public accountant with relevant experience.
5. A person representing consumers of health services who does not have a direct or indirect interest in any entity that provides health care services.

HB 348 changes the membership of the MRC to the following:

1. Commissioner of Administration or designee;
2. Commissioner of Health and Social Services or designee;
3. A third Commissioner or designee or director of a division or office of management and budget designated by the governor;
4. A representative of the health care provider community appointed by the governor;
5. A representative of health care consumers appointed by the governor.

Discussion

The MRC which was created by the legislature in 1984 is nearly unique in the nation in its rate setting authority. The MRC sets all the rates for inpatient care in hospitals and nursing homes

and for some other kinds of care provided in facilities. The total medicaid funds paid to providers through the MRC exceeded \$65 million last year.

The MRC sets rates by adopting regulations over which the executive or legislative branch have no approval or disapproval authority. This creates a situation in which the State has the obligations, without the needed authority, to (1) manage within its budget, (2) meet all Federal medicaid standards concerning maximum rates, (3) ensure the greatest access to health care within our appropriation, and (4) try to manage ever escalating costs of health care. This is impossible to do without authority over the activities of the MRC.

AS 47.07.070 requires the Medicaid Rate Commission to determine prospectively the rate of payment that the medicaid program will apply to health care facilities as reimbursement for the treatment of medicaid eligible individuals. Principles used in determining this rate are provided in statute while specific factors which are considered in determining the rate are adopted in regulation. HB 348 will neither change the scope of the MRC's authority to set rates nor alter the statutory basis upon which rates are determined.

However, HB 348 will (1) associate the MRC more closely to the development of health policy by the legislature and the executive branch and (2) provide more administrative control over an agency which has the authority to obligate the state to expenditures of over \$65 million per year.

The MRC has the authority to control the amount of general funds which are paid to health facilities. The rates which are established by the MRC have the force of law; once established, they must be paid by the medicaid program as the health services are provided. The MRC obligates the State to pay these rates, and because Medicaid is an entitlement program, the State must pay for all eligible individuals who receive service, based on the service priority as established by law.

It is unique in Alaska to invest a body composed of a majority of non-State members with the authority to indent the State. Boards with similar or comparable powers, such as the Alaska Housing Finance Corporation (AHFC), the Alaska Power Authority and the Alaska Public Utilities Commission, contain majority representation from the executive branch. The five member AHFC board, for example, has two public members and three cabinet officials.

The State's incurs obligations as a result of MRC decisions even though only one of the members of the MRC is a representative of State government (four are public members). The MRC, as currently established, sets rates, and consequently expends general

funds, independently from either the legislature or the executive branch. HB 348 would alter the composition of the MRC so that a majority of the members of the Commission would be representatives of the executive branch, thereby providing more policy control over the Commission's decisions, and, bringing the Commission's membership more in line with other State boards of comparable responsibility.

Although the MRC obligates the State to payments which exceed 50 percent of the State's medicaid budget of \$121 million, the MRC is not charged with making rate decisions within the context of health care policy. The MRC establishes rates within the context of a methodology which considers facility cost data but not the impact of the rate and subsequent expenditure on other health programs. However, by not considering the impact of the rate on the overall health care policy, and by virtue of the amount of medicaid dollars obligated by the commission, the MRC is implicitly involved in establishing priorities for the provision of medicaid services.

For example, the MRC is currently considering adoption of new regulations to allow budgeted costs of certain expenses to be included in the rate, even when the budgeted amount exceeds inflation and, may have been, or be, driven by management practice or decision. This rate change, which could cost the State up to \$3 million, is proposed even though the State is currently in jeopardy of having the Federal government reject the current State medicaid plan because rates exceeds the federal upper limits.

Each year, the legislature appropriates general fund dollars to fund the medicaid program. This appropriation is based on projections of utilization (the degree to which each individual requires medical services), the number of eligible individuals who require service, the benefit or particular service which the State chooses to provide each eligible individual and the price of services. Should the combination of utilization, eligibles and price require the expenditure of more funds than appropriated, the department may request supplemental appropriations to maintain the program.

If the supplemental appropriation is not forthcoming, the program must, by statute, eliminate services such as dental care and care for the developmentally disabled, and reduce the number of eligible individuals to the extent necessary to meet budget limitations. The proposed \$3 million regulation change currently being considered is not budgeted in the FY 89 request. If the regulations go into effect and the money is not provided by the legislature through a supplemental, services would have to be eliminated.

As the cost and quantity of institutional care continues to increase, health care policy choices which require favoring one set of services over another become more complex and difficult for legislators and other policy makers to make. If prevention services are to be reduced, or new community services which enhance life outside institutions cannot be developed because of institutional costs, then policy makers will be unable to formulate health policies which respond to the needs of the society as a whole. The restructuring of the MRC as proposed by HB 348 will integrate the decisions of the MRC with other aspects of health care policy.

Position

The Department strongly supports the passage of HB 348 as an effective means of integrating the MRC into state policy and as a way for the State to gain control of an agency which has the authority to obligate state general fund dollars.

Approved by:

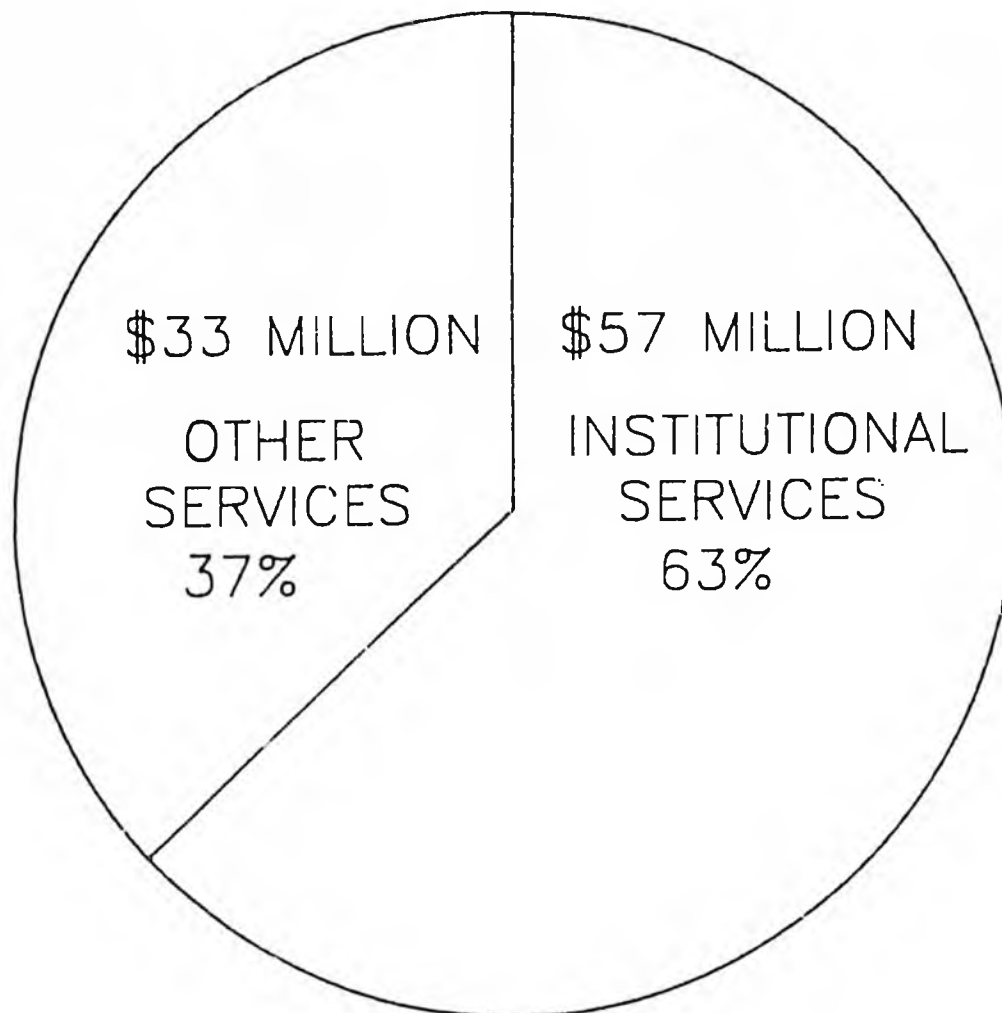
Myrle Munson
Myrle Munson,
Commissioner

Date:

March 2, 1988

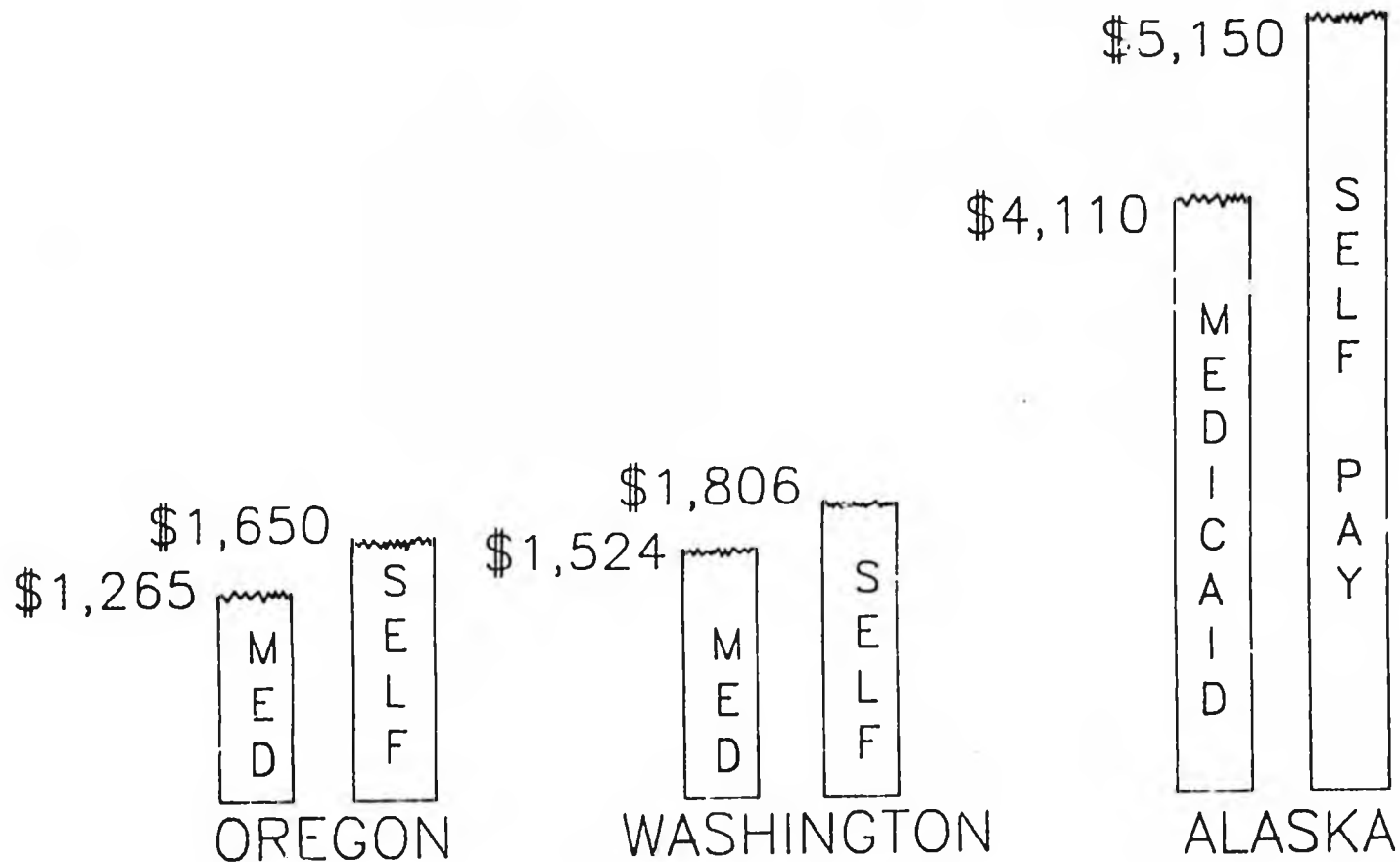
A

MEDICAID EXPENDITURES
BY TYPE OF SERVICE
FISCAL YEAR 1987



B

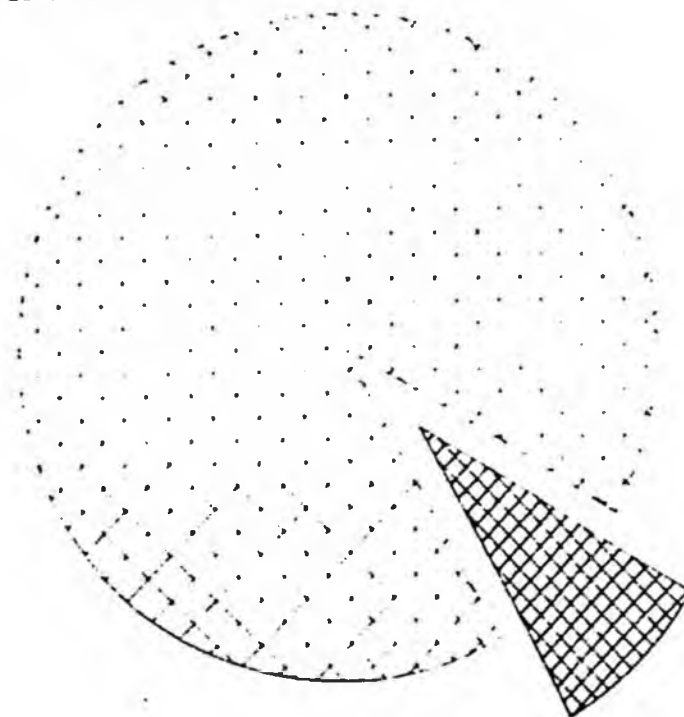
NURSING HOME CARE TYPICAL MONTHLY COST TO MEDICAID AND SELF-PAYING PATIENTS



C

PERCENTAGE OF PATIENTS
 MEDICAID AND NON-MEDICAID
 INTERMEDIATE AND SKILLED NURSING
 1982 THROUGH JUNE, 1987

91.4% MEDICAID PATIENTS



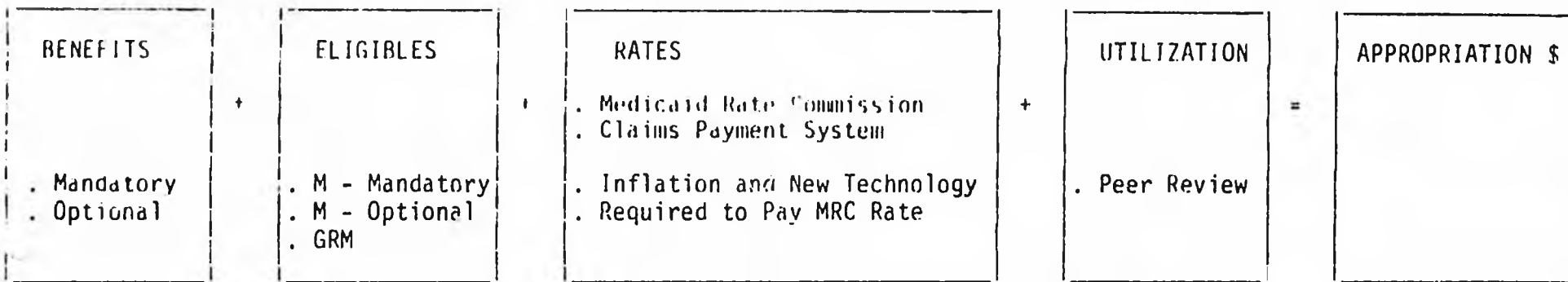
8.6% NON-MEDICAID PATIENTS

CALENDAR YEAR	ANNUAL AVERAGES		PERCENT MEDICAID	
	OCCUPIED	MEDICAID		NON-MEDICAID
1981	476	450.7	25.2	94.7%
1982	469	439.4	29.5	93.7%
1983	474	442.8	30.8	93.5%
1984	492	444.4	47.8	90.3%
1985	507	454.4	52.6	89.6%
1986	508	449.7	58.1	88.6%
1987	530	469.8	60.5	88.6%

ONLY THE FIRST SIX MONTHS AVERAGE IS GIVEN FOR 1987

D

FY89 MEDICAL ASSISTANCE



PROGRAM INCREMENTS:

- . No new benefits/services
 - . 4.2% in Medicaid Facilities
 - . 4.5% in all other programs
 - . Healthy baby bill implement SOBRA option
 - . 3.8% for all programs
- . No adjustment for Change in Utilization Patterns
- . Base Adjustment for Unmet Need

ADMINISTRATIVE INCREMENTS FOR COST MANAGEMENT

- . Hearing Officer 2.0
- . Auditors 94.6
- . Physicians Services 99.5
- . Pharmacists Services 103.5
- . Continue Pre-Admission Screening 211.8
- . Continued Third Party Liability Recoveries

Implementation of the Medicaid Management Information System impacts each of the four areas above.

COMPARISON OF OREGON TO ALASKA

	ALL DEPTS -----	ALL DEPTS- NO NURSING -----	NURSING -----
AVERAGE WAGE PER HOUR			
ALASKA FACILITIES	\$10.85	\$10.98	\$10.75
OREGON FACILITIES	\$7.18	\$7.56	\$7.03
ALASKA RATIO TO OREGON	1.51	1.45	1.53

AVERAGE HOURS PER PATIENT DAY

ALASKA FACILITIES	6.95	3.08	3.86
OREGON FACILITIES	5.01	1.42	3.59
ALASKA RATIO TO OREGON	1.39	2.17	1.08

COMPARISON OF OREGON'S HIGHEST COST FACILITIES TO ALASKA'S
AVERAGE PER PATIENT DAY COSTS

FACILITY	WAGE PER HOUR	ALL- HRS. PER DAY	NURSING WAGE PER HR.	NURSING - HRS. PER DAY	NON-NURSING WAGE PER HR.	NON-NURSIN HRS. PER DAY
ALASKA FACILITIES						
DEFOLI	\$10.91	7.32	\$11.27	4.12	\$10.45	3.20
HERITAGE	\$11.40	6.85	\$11.63	3.53	\$11.16	3.32
OUR LADY	\$10.55	7.56	\$10.20	4.25	\$11.00	3.31
ST. ANN	\$10.22	7.90	\$9.55	4.43	\$11.08	3.47
WESLEYAN	\$11.17	5.10	\$11.12	2.99	\$11.24	2.11
AVERAGE	\$10.85	6.95	\$10.75	3.86	\$10.98	3.08
OREGON FACILITIES						
CAPITOL VIEW	\$6.70	4.74	\$7.12	3.46	\$5.56	1.28
FRIENDSHIP	\$8.10	6.66	\$6.81	4.70	\$11.19	1.96
MT. VIEW CONV. CTR.	\$6.60	3.72	\$6.78	2.63	\$6.17	1.09
PORTLAND ADVENTIST	\$7.14	4.56	\$6.99	3.63	\$7.73	0.93
ROBISON	\$7.34	5.39	\$7.44	3.54	\$7.15	1.85
AVERAGE	\$7.18	5.01	\$7.03	3.59	\$7.56	1.42

Linking Medicaid Rate Commission Set Facility Rates to Approval of Federal State Plan to Ensure Continued Federal Funding

Purpose

This proposed amendment would require any rate set by the Medicaid Rate Commission to comply with federal Medicaid program requirements. The amendment links the effect dates of changes in regulations to the approval of the Medicaid state plan by federal funding authorities. If the rates do not meet with federal requirements and the state plan is not approved, federal funding for the Medicaid program is jeopardized. If the rates for hospitals and other facilities go into effect prior to the federal approval of the plan, the state Medicaid program is at risk whether the federal government will participate in federal funding for these facilities.

* Section 1. AS 47.07.070(a) is amended to read:

The commission shall determine prospectively the rate of payment to a health facility under this chapter and AS 47.25.120-47.25.300 based on a fair rate for reasonable costs incurred by the facility. The rates of payment must be in accordance with provisions of 42 U.S.C. 1396p(Title XIX, Social Security Act, Medical Assistance). The commission shall by regulation list the factors it considers in making its rate determinations under this section. Regulations that require modification of the state plan become effective only after federal approval of the state plan or the amended state plan, except with the prior written approval of the department.

* Sec. 2. AS 47.07.180(c) is amended to read:

When the department enters into a federally approved substantially revised state plan under AS 47.07.040, and when, as part of the federally approval revised state plan, the commission adopts regulations which substantially change the methods used or the factors considered in determining the prospective payment rates, the commission may, at its discretion, redetermine the prospective payment rates for all facilities from the beginning of the first quarter in which the federally approved revised state plan is in effect [THE EFFECTIVE DATE OF THE NEW REGULATIONS FORWARD]. Each redetermined rate will be effective from the date of the commission's new order as to each facility.

* Sec. 3. Sections 1 and 2 of this Act take effect immediately under AS 01.10.070(c).

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 348 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Medicaid Rate Commission and
7 prospective payments to health facilities for certain
8 medical services; and providing for an effective
9 date."

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

11 * Section 1. AS 39.25.120(c) is amended by adding a new paragraph to
12 read:

13 (21) executive director for prospective payments to health
14 facilities in the Department of Health and Social Services.

15 * Sec. 2. AS 47.07.040 is amended to read:

16 Sec. 47.07.040. STATE PLAN FOR PROVISION OF MEDICAL ASSISTANCE.
17 The department shall prepare a state plan under [IN ACCORDANCE WITH]
18 the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social Security
19 Act, Medical Assistance) and submit it for approval to the United
20 States Department of Health and Human Services. The plan shall desig-
21 nate [THAT] the Department of Health and Social Services as [IS] the
22 single state agency to administer this plan. The department shall act
23 for the state in [ANY] negotiations relative to the submission and
24 approval of the plan. The department [, INCLUDING THE MEDICAID RATE
25 COMMISSION,] may make those arrangements or regulatory changes, not
26 inconsistent with law, as may be required under federal law to obtain
27 and retain approval of the United States Department of Health and
28 Human Services to secure for the state the optimum federal payment
29 under the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social

1 Security Act, Medical Assistance). In addition, the department shall
2 provide a report to the legislature by [NO LATER THAN] March 15 of
3 each year concerning the status of this program and recommendations,
4 with supporting fiscal data, as to [ANY] changes in the coverage of
5 eligible persons or services to be provided.

6 * Sec. 3. AS 47.07 is amended by adding a new section to read:

7 Sec. 47.07.065. PROSPECTIVE PAYMENT SYSTEM. The department
8 shall adopt regulations necessary to implement a system of prospective
9 payments to health facilities under this chapter.

10 * Sec. 4. AS 47.07.071 is amended to read:

11 Sec. 47.07.071. REPORTS BY HEALTH FACILITIES. Not later than
12 120 days after the end of the [EACH] fiscal year of a health facility,
13 the facility shall submit to the department [COMMISSION] a report on
14 the facility's financial performance during the fiscal year.

15 * Sec. 5. AS 47.07.072 is amended to read:

16 Sec. 47.07.072. REPORT BY THE DEPARTMENT [COMMISSION]. Not
17 later than September 30 of each year, the department [COMMISSION]
18 shall submit to the governor a report on the prospective payments made
19 under this chapter during the current fiscal year and an estimate of
20 the prospective payments that will be made during the remainder of the
21 current fiscal year and the next fiscal year. The report shall state
22 the assumptions that are used as a basis for the estimates.

23 * Sec. 6. AS 47.07.190 is amended to read:

24 Sec. 47.07.190. EMPLOYMENT OF PERSONNEL. The commissioner
25 [COMMISSION] may employ and determine the salary of an executive
26 director for prospective payments to health facilities. With the
27 approval of the commissioner [COMMISSION], the executive director may
28 select and employ additional staff. [THE COMMISSION SHALL BE ASSISTED
29 BY THE OFFICERS OR PERSONNEL OF THE DEPARTMENT AS THE COMMISSIONER OF

1 HEALTH AND SOCIAL SERVICES SHALL DIRECT.] The executive director [OF
2 THE COMMISSION] is in the partially exempt service under AS 39.25.120
3 [AS 39.25].

4 * Sec. 7. AS 47.07.900 is amended by adding a new paragraph to read:

5 (11) "commissioner" means the commissioner of health and
6 social services.

7 * Sec. 8. AS 47.25.195(b) is amended to read:

8 (b) A health facility receiving a payment under this chapter is
9 subject to the requirements of AS 47.07 [AS 47.07.070 - 47.07.075].

10 * Sec. 9. AS 47.25.195(d) is amended to read:

11 (d) If insufficient money is appropriated to fund medical assis-
12 tance under AS 47.25.120 - 47.25.300 when taking into consideration
13 projected use and the health facility payment rates established under
14 AS 47.07 [IN ACCORDANCE WITH (b) OF THIS SECTION], the department may,
15 by regulation, establish at any time in the fiscal year a prospective
16 pro rata reduction of the facilities' established payment rates that
17 will be paid by the department for services provided by facilities
18 under AS 47.25.120 - 47.25.300;

19 * Sec. 10. AS 47.25.195(e) is amended to read:

20 (e) Notwithstanding (a) - (d) of this section, the department
21 may enter into agreements with any facility to provide services at a
22 payment rate lower than the rate established under AS 47.07 [IN ACCOR-
23 DANCE WITH (b) OF THIS SECTION].

24 * Sec. 11. AS 39.25.110(23); AS 47.07.070, 47.07.073, 47.07.074, 47.-
25 07.075, 47.07.110, 47.07.120, 47.07.130, 47.07.140, 47.07.150, 47.07.160,
26 47.07.170, 47.07.180, and 47.07.900(4) are repealed.

27 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
28
29

Sund

MAR 20 1988

ALASKA CODE REVISION COMMISSION
LEGISLATIVE AFFAIRS AGENCY
POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811

March 27, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
Room C-122 State Capitol Building
Juneau, Alaska 99811

Re: HB 322; An Act revising the corporations code.

Dear Representative Sund:

This letter is in response to your recent request for information about HB 322, the corporations code bill.

Existing AS 10.05.010 et seq., Alaska's corporation code, was adopted from Oregon law in 1957. Oregon had previously passed its version of the American Bar Association Model Act, adopted by the ABA in 1953. As such, Alaska's corporation code is approximately 35 years old, having been amended to a small degree in 1976 and 1980. Most of the amendments dealt with specific sections of the code and no attempt was made to overhaul the entire code.

The existing Title 10 is poorly organized and horribly out of date. In order to locate all sections of the code dealing with a specific corporation matter, it is necessary to review the entire title to insure that no provisions have been overlooked. The index provides little guidance to anyone seeking to determine rights and obligations, as well as corporate procedures, under the existing law. It is written in language that makes the code difficult to use by the lay person.

In response to the great need to update and organize the corporation code, the Alaska Code Revision Commission undertook a complete rewrite of the code beginning in about 1980. In furtherance of this effort, the Commission engaged the services of Professor Daniel Wm. Fessler to serve as the reporter for the code revision project. Professor Fessler teaches corporate and business organization law at the University of California, Davis law school. He is presently the reporter for Corbin On Contracts and his texts on corporations and business associations are used

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in law schools throughout the United States. The Alaska Code Revision Commission is a legislatively created commission with representatives from all three branches of government as well as public members. Work on the corporations code continued through the period 1980 to the present, with the greatest emphasis on the period from 1981 to 1984. The Commission has spent more than \$350,000.00 in consulting fees, has spent literally thousands of man hours in drafting and research, has conducted more than 30 public meetings on the code, has made several presentations to the Alaska Bar Association and attorney groups, and has had a commissioner or its consultant testify before a number of legislative committees. The draft bill has drawn the most articulate statements of corporation law from Alaska, California, New York, Oregon, Washington and Delaware. It is a "middle of the road" bill, meaning that there is a balance between a strong management or strong shareholder corporation model. By using the optional incorporation provisions found in the draft, an incorporator can easily create either a strong management or strong shareholder corporation.

The most controversial provision of the draft bill, Section 488, has been removed from the draft. This provision dealt with secondary liability of officers and directors in the event the corporation became insolvent. Other criticisms of the bill have focused upon provisions of the draft which are only re-statements or inclusions of existing Alaska law. While the "financial" provisions of the draft will certainly remove some flexibility from the manner in which corporations declare dividends, they have not been the subject of much attention by businesses or attorneys.

To summarize, the following features of the draft strongly argue in favor of its adoption by the Legislature as a new code for Alaskan corporations:

1. The code uses a "cookbook" approach to organization. All general topics are included in sections dealing only with those topics. One need only look to one section to determine how to incorporate or to dissolve. Under the existing code, it is necessary to review the entire code to make sure that no provision has been overlooked.

2. The topic headings are informative as to the area of substantive law that is covered in each section. The code is written in lay language whenever possible. The design of the format and its organization has been accomplished so that the lay person can easily discover how to incorporate and how to carry on business in the corporate form, thus minimizing the need to have an attorney guide you through simple incorporation matters.

3. The draft bill contains important incorporation and reporting requirements needed by the Division of Corporations. The Commission worked closely with the Division in the drafting of its corporations bill so as to insure that the Division's needs would be addressed.

4. The draft bill addresses important needs and unique problems of Alaska native corporations. The Commission worked closely with a special subcommittee of the Alaska Federation Of Natives in the drafting of the bill.

5. Much of existing Alaska law is continued in the present draft, although the language has been rewritten in many instances to make it more understandable to the lay person.

6. Because the language is concisely drafted, internal inconsistencies existing in present Alaska law have been resolved, and because of its superior organization and lengthy commentary indicating the source of its provisions, the draft should reduce considerably the need for litigation over the meaning of the language contained in HB 322.

7. The draft contains important new sections not currently found in Title 10. They include:

a. A new section dealing with corporation financial activities, specifically defining the conditions when a distribution is appropriate;

b. A new section dealing with shareholder derivative actions, an area only minimally covered by rules of the Alaska Supreme Court under existing law;

c. A new, expanded section dealing with all matters involved in corporation dissolution;

d. New sections dealing with conflicts of interest by directors, minority shareholder rights, rights and obligations of various classes of shares, and the purchase of shares of a deceased shareholder.

e. A number of optional provisions for the Articles that will determine corporate bias for management or shareholders. These provisions can be easily selected and inserted by the incorporator depending upon what type of corporation is desired.

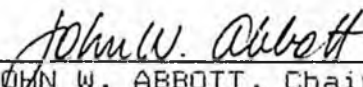
8. While drawing heavily from the best laws of other states, the draft has been carefully crafted to address corporate problems unique to Alaska. The draft can be truly characterized as an Alaska drafted code. Additionally, the draft incorporates a great many of the substantive provisions found in the recently adopted ABA revised model business corporations act.

No attempt has been made by the Commission to address the extremely complex problem of corporate takeovers. Because of the radical and rapid changes that have taken place in the past 5 or 6 years, such an undertaking would require much study and a considerable expenditure of time in order to even formulate a policy for dealing with takeovers.

The existing Title 10 is woefully outdated and poorly organized. It is difficult for the lay person and even the practitioner to use. It is full of anachronistic provisions and internal inconsistencies. It does not reflect changes in corporation law that have occurred over the past 35 years. It doesn't even contain much needed sections dealing with shareholder derivative actions, conflict of interest, indemnification of officers and directors or financial accountability. The draft has previously been approved by the Division of Corporations, the Alaska Federation of Natives and Alaska Airlines, the largest private (non-native) corporation in Alaska. It is organized and written so that it can be easily used by the lay person, but contains all of the features needed by the practitioner to advise a corporate client on sophisticated matters. There is nothing in the draft that would discourage outside business from choosing Alaska as a domicile for incorporation because the corporation can be tailored to the needs of any business. It should encourage businesses to locate in Alaska because the rights and obligations of the corporation are so clearly spelled out in the draft. Finally, the code should greatly decrease the need for litigation because of the lengthy and comprehensive commentary accompanying the draft.

If you have any questions concerning the draft, please contact me and I will attempt to answer those questions.

Very truly yours,



JOHN W. ABBOTT, Chairman

ALASKA CODE REVISION COMMISSION
LEGISLATIVE AFFAIRS AGENCY
POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811

March 27, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
Room C-122 State Capitol Building
Juneau, Alaska 99811

Re: HB 322; An Act revising the corporations code; Amendment
to Section 10.06.678

Dear Representative Sund:

Recently, I have had brought to my attention a problem involving inconsistency between two sections of the corporations code. These sections were taken directly, without any language change, from existing Alaska law. The sections deal with the ability of a corporation to initiate an action in Alaskan courts. The sections are as follows:

Sec. 10.06.678. CONTINUED EXISTENCE OF DISSOLVED CORPORATIONS; PURPOSES; ABATEMENT OF ACTIONS; DISTRIBUTION OF OMITTED ASSETS.

(a) A corporation that is dissolved voluntarily or involuntarily continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. A dissolved corporation does not continue to exist for the purpose of continuing business except so far as necessary for winding up the business.
(emphasis supplied)

...

Sec. 10.06.848. FAILURE TO PAY TAX OR MAKE REPORT AS PRECLUDING SUIT BY CORPORATION. A domestic or foreign corporation may not commence or maintain a suit, action, or proceeding in

a court in this state without alleging and proving that it has paid its biennial corporation tax last due and has filed its biennial report for the last reporting period. . . .

As you can see, Sec. 10.06.678 allows a dissolved or dissolving corporation to initiate an action as a plaintiff while Section 10.06.848 specifically prohibits the bringing of an action if the corporation has not filed its biennial report or paid its fees - one of the most common reasons for involuntary dissolution.

Since Sec. 10.06.678 implements a good policy requiring corporations to be in good standing if they wish to avail themselves of Alaskan courts, it is preferable that this section be left intact. The only real sanction that the state has over a corporation after it dissolves is to deny it the use of the courts as a plaintiff. Nothing in the language would prohibit the dissolved corporation from defending an action brought against it. While Section 10.06.648 thoughtfully allows actions for the purpose of marshaling assets of the corporation, it is my belief that a better approach would be to disallow the corporation access to the courts while involuntarily dissolved. The corporation will have a two-year period in which to seek reinstatement by curing the non-compliance. The only bad result that can occur is if a statute of limitations period runs prior to the reinstatement. On balance, it seem preferable to require that a corporation be in good standing if it desires to bring an action. Of course, in any judicial supervised dissolution, this question could be easily addressed. When the dissolution is involuntarily, however, a problem is created.

In summary, it is my recommendation that Section 10.06.648 be amended to delete any reference to the corporation's ability to initiate an action, thus leaving in place the proscription of Section 10.06.848. The net result will be in all cases that a corporation not in good standing will be unable to initiate an action and the internal inconsistency between the two sections will be resolved.

Please let me know if you have any questions concerning these two sections or the proposed reconciliation.

Very truly yours,


JOHN W. ABBOTT, Chairman