

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10201 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

that time, most of the chemical is out of the individual's body and they are then ready to engage in the therapeutic process. Detox time for inhalant users differs from this schedule in a number of ways. First, given that inhalants are stored in fatty tissue in the body and are slowly leached back into the blood stream, it may be several weeks before the direct action of the chemicals is no longer present. Second, although much of the neurological damage from inhalant use is reversible, this healing process takes considerable time. Finally, at the point that many inhalant users enter treatment, their nutritional and general health status is seriously compromised. As a result of these conditions, the detox period for many inhalant users is more extensive than for other drug users (Jumper-Thurman & Beauvais 1992; Fredlund 1994; Sharp & Rosenberg, in press). At the initiation of treatment, many users are lethargic, physically weakened and cognitively confused. Premature attempts to implement therapies that require energy and clarity of thought will only lead to failure and frustration, both on the part of the patient and the treatment staff.

There is no agreed upon standard period of detoxification for inhalant users although it is clear that the usual 30-45 day treatment regimen typically employed with substance abusers is inadequate. It may take this amount of time simply to get the user to the point where therapeutic gains can be made. The above, of course, is a generality and each patient must be assessed individually. Detox and total treatment time will vary according to the level and duration of solvent use, the basic health of the individual and the repertoire of other social resources that can be brought to bear on the process of recovery, and periodic assessment of cognitive function is required to monitor changes and determine readiness for more therapeutic interventions (Fredlund 1994).

LIFE SKILLS

Many solvent users have become socially marginalized throughout the time they have been involved with inhalants. Many lack basic social and health care skills; they may have experienced academic failure and have not developed the minimal competencies for holding a job. Further, they may be socially inept and have learned to interact with others only through aggressive (or even passive) means. All of these elementary issues are of importance in the early stages and throughout the course of recovery. Clearly, treatment must involve collaboration with a wide range of community resources. Given the initial level of deficits, aftercare and follow-up are of extreme importance when working with inhalant using patients. In addition, due to cognitive problems, organized activities should be brief (20 minutes) and varied and deal with concrete subject matter consistent with the limited attention span and capacity for abstract thought of clients experiencing acute effects of neurotoxicity.

PEERS

The social world of many inhalant users has become very constricted and they tend to associate only with a small group of individuals who are also heavily inhalant involved (Oetting & Webb 1992). This pattern is somewhat characteristic of all drug users but seems to occur more commonly among inhalant users. A major task of therapy, then, is to both break these peer bonds and to resocialize the users into a new peer environment. Lack of contact with the previous peerstructure is essential throughout the course of treatment.

FAMILY TREATMENT

Treatment of young drug users is significantly enhanced by the involvement of the family in the treatment regimen, and is best when individually tailored to client needs (Szapocznik & Kurtines 1989; Stanton & Todd 1982; Rubin & Babbs 1970). Children have many needs which, if unmet in the family, may foster drug use: "Any reliable prevention or treatment program must provide the means to substitute non-harmful activities that satisfy these users' needs for gratifications sought previously in solvent Sniffing" (Kerner 1988, 9). When designing treatment, it is essential to analyze the children's needs and

the role the family plays in satisfying those needs in order to teach drug abuse resiliency factors.

TREATMENT MATCHING

Matching clients with specific, individualized treatments is a relatively new focus in treatment of alcohol and drug addictions (Hester & Miller 1989; Gottheil et al. 1981). Because inhalant users are different from the general drug users, different treatment and prevention strategies must be applied (Giovacchini 1990), because "it is not clear if approaches to working with alcohol and marijuana-using youth are effective with inhalant-using youth" (Mata & Andrew 1988, 71). The challenge for inhalant treatment approaches is to tailor the regimens to the differing target populations. Some have even questioned whether inhalant abusers can be treated in a general drug abuse treatment program or whether dedicated programs are needed (Jumper-Thurman & Beauvais 1992).

There are three major considerations in client-treatment matching: (1) matching specific treatment to the specific needs of the youthful inhalant user and the user's family, (2) matching both the client's and the therapist's cultural status and cultural sensitivity, as well as the cultural relevance of the proposed interventions, and (3) matching the global therapeutic approach to the client's mental abilities and emotional development. From a global perspective there are at least seven therapeutic approaches: (1) *Behavioral*, which aims to control and/or change maladaptive behaviors and increase or teach adaptive behaviors; (2) *Cognitive*, which seeks to correct maladaptive cognition; (3) *Developmental*, which seeks to remedy structural deficits in ego development; (4) *Exploratory*, which seeks to increase understanding and resolution of intrapsychic problems and conflicts; (5) *Psychopharmacological*, which considers medications to be the prime treatment, or as treatment adjuncts; (6) *Supportive*, which offers help to manage problems in daily life by strengthening available coping skills; and (7) *Systemic*, which focuses on restructuring patterns of interactions and communications as well as roles in family or social systems. Given the complexity of inhalant abuse, most of these approaches may be appropriate and necessary.

There are at least ten needs that should be attended to in treatment, and which should be understood by the parents (Glenn 1981):

1. Children need to be able to exercise self-discipline, self-assessment, and self-control.
 2. Children need to develop self-esteem.
 3. Children need clearly defined limits.
 4. Children need the ability to operate successfully within a system (for example, if they skip homework one night, then they must do it in the morning; if they skip doing homework too often, then they lose the privilege of playing school sports).
 5. Children need confidence that they can affect what happens to them. If they see themselves as victims, they will turn to drugs; if they do not learn to operate within limits, then they will not learn how their own acts affect them.
 6. Children need the ability to make judgments, which they learn by being with mature adults (example combined with dialogue).
 7. Children need positive role models.
 8. Children need skills for working effectively with others.
 9. Children need to feel they are loved and valued.
 10. Children need open, honest communication with their parents.
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YOUTH ADVOCACY PROGRAM STUDY: METHOD

A Total of 175 Mexican-American youth (aged 13 to 17 when they entered the Youth Advocacy Program (YAP) between March 1981 and December 1985) were targeted for followup. An examination of inhalant use reported by these 175 clients at admission to the YAP showed that 35 (20 percent) used at least weekly in the 2 months prior to YAP (Weekly--Group 1), another 42 (24 percent) used at least once a month (Monthly--Group 2), 34 (19 percent) had used previously but not in the prior 2 months immediately before admission to the YAP (Experimental--Group 3), and 64 (37 percent) had never used inhalants (Never Used--Group 4). These clients stayed in the program an average of approximately 13 months, during which time they received individual counseling and participated in a variety of recreational activities, cultural enrichment, academic tutoring, and related life-skills training. Unfortunately, detailed client participation records were not available in this study for specifically evaluating these services.

Private face-to-face follow-up interviews provided information about drug use patterns and related problems over time. Behavioral outcome measures were examined in regard to acculturation and background factors, psychosocial adjustment indicators, and parental and peer relations. Clients were not assigned to be interviewed as part of the follow-up study until at least two years after entering YAP. The interview period began October 1987 and was completed in April 1988, an average of over four years after admission to the YAP.

Of the 175 cases in the target sample, 150 (86 percent) were successfully traced; 110 (63 percent) gave informed consent and were interviewed. Of the 110 completed cases, 79 percent of the mothers were also interviewed. Incentives of \$10 were paid for each completed interview. In order to conduct several basic toxicological evaluations of recent drug use and organ system functions, a subsample of the interviewed youth were asked to provide blood and urine specimens. For another \$10 incentive fee, 44 out of 59 youth who were asked agreed to participate (75 percent) and were taken to a medical laboratory where body fluids were obtained for analysis.

-- Dwayne Simpson, Ph.D.

Treatment of the inhalant abuser is often complicated by the presence of multidrug and polydrug use. During the early stages of treatment, questions about why the user takes drugs and the user's perceived needs assures the youth's active participation in the treatment process. During later stages of treatment focus can shift to more psychodynamic considerations. Finally, because quick action of the drug appeals to people who want instant gratification, aspects of treatment can focus on teaching the user how to delay gratification. The need for immediate gratification often affects all aspects of the user's life, and is an important topic for treatment.

A PERSPECTIVE FOR COUNSELORS

An understanding of the origins of inhalant abuse is necessary for effective treatment and prevention. Treatment regimens can be structured around what youth want but feel they do not have. Youth look for guides and teachers, and finding few or none, experience alienation. Youth also crave relation, security, affection and acceptance; gangs and peer groups often offer these. In fact, the ceremony of sharing drugs draws youth together and at the same time sets them apart. As families unravel, youth turn to one another for sustenance. Perhaps the family's most important legacy to the young is a sense of self, developed

through rich familial communications, rather than merely discipline or morality. What parents see as adolescent rebellion may be no more than the youths' imitation of their parent's patterns of escape (e.g., alcohol, coffee, tobacco, and pills). In this sense one does what one sees, namely to use drugs to change things or evade them.

It has been said that culture and class conditions can imprison youth, teaching them what to feel and avoid, what is allowed, and what is taboo. Drugs may offer a release from these pressures. On the other hand, some cultures sanction ceremonial drug use to achieve transcendence, and these rituals and ceremonies serve significant communal needs.

Given the indications that neither traditional psychotherapeutic approaches (Comstock 1978; Guyer-Christie 1978) nor standard drug rehabilitation (Dinwiddie et al. 1987) have been wholly successful with inhalant users, there is a need to explore alternative treatments, particularly with young adult users, such as vocational counseling and testing, job-training and placement, training in employment interviewing skills, methods to develop good work adjustment habits, and learning to conform to the work environment (Oetting 1990). The most formidable problem confronting treatment may be the specter of relapse: "The patient who is completely drug free, imbued with all types of motivation to remain drug free, but with no job, no insight into how to sustain a relationship, often [struggling with] major psychiatric problems--that is the person who is a big candidate for relapse" (McLellan 1990, 6).

YOUTH ADVOCACY PROGRAM STUDY: SUMMARY OF RESULTS

The study focused on "high-risk" youth whose average age at intake was just under 15, and average age at follow-up was 19. Analysis at intake indicated that the four groups of inhalant users -Weekly, Monthly, Experimental, and Never Used -were generally comparable in terms of sociodemographic characteristics, but use of alcohol and other drugs, as well as legal involvement measures, were directly associated with level of inhalant use. Followup analysis indicates that these trends remained intact: youth who were heavier inhalant users at intake continued to have more negative outcomes four years later.

The group of weekly inhalant users had lower employment rates, higher prevalence of arrests and illegal activity, and more drug use than the other groups. At least two-thirds of each group used illegal drugs in Year 4 of the follow-up, but this was true of 95 percent of the weekly users. About 45 percent of the weekly users consumed on average more than four ounces of 80-proof liquor equivalent per day. The only exception to the continued tendency to use more kinds of drugs by the weekly inhalant user group involved cocaine. Preadmission cocaine usage was 10 percent for the total sample, but it escalated to 31 percent at follow-up; in contrast to all other drug categories, the preadmission group of weekly inhalant users had the lowest level of cocaine prevalence in Year 4.

Based on the subsample of 44 individuals for whom blood specimens were collected and analyzed, laboratory results for one out of three youth showed evidence of liver problems, and were more pronounced among those with the most extensive histories of inhalant use. The use of other drugs was related to other blood test abnormalities, but not to liver problem indicators. Youth with more extensive inhalant use histories reported more cognitive problems involving clarity of thinking, decision making, concentration, and remembering details. Over one-fourth of these youth had experienced suicidal

and remembering details. Over one-fourth of these youth had experienced suicidal thoughts, and one-fifth had made at least one suicide attempt.

-- *Dwayne Simpson, Ph.D.*

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PREVENTION OF INHALANT USE

Selecting appropriate, effective, and viable prevention efforts is one of the most difficult problems in the inhalant abuse field. Prevention efforts must be timely, especially in inhalant work, because of the everchanging nature of use patterns, as well as the substances abused. Many drug findings are time-bound, thus results from two decades ago are no longer relevant to today's prevention efforts (Trimble 1990). Prevention approaches can be thwarted in often unanticipated ways; the following problems are the foremost among the many confronting prevention efforts.

A Relatively Infrequent Event. Because inhalant use is infrequent among adults, prevention efforts typically focus on drugs more commonly abused by adults; however, inhalant prevalence is relatively high among youth, and should be a priority focus of prevention efforts targeted at youth.

Limited Fiscal Resources. Because fiscal and personnel resources in many health care systems are limited, attention is directed to the drugs commonly abused by adults. Resources for inhalant research are limited in general, making it even more difficult to fund much-needed (but very expensive and methodologically complex) longitudinal studies (Cresson 1990).

Limiting Availability. In practice it has been impossible to limit availability of volatile, inhalable substances (WHO 1986). If legal sanctions are applied to limit the availability of the volatile substance, then users will shift to other easily available solvents with potentially more toxic effects. Limiting only the most detrimental solvents might be insufficient; it may be necessary to ban even mild or relatively harmless drugs if toxic interaction effects occur when these mild substances are mixed together. Because volatile solvents are licit rather than illicit drugs, they pose special problems in prevention because total prohibition is unlikely, and criminal sanctions are not a viable deterrent to their use.

Criminalization of the User. In some places it is illegal to sell inhalants to minors, or for minors to use inhalants for sniffing purposes; some inhalant abusers are mandated to treatment. Careful evaluations of such approaches have yet to be made. One report concluded, "In general, legal sanctions against inhalant abusers is not a preferred method of prevention. Such sanctions do not appear to reduce abuse and they create additional problems for users." (WHO 1986, 28)

Chemical Deterrents. Adding deterrents (foul-smelling or irritating substances) to solvents to discourage use is no longer a prime avenue of prevention for at least four reasons: (1) users would likely switch to other, potentially more toxic solvents if the deterrent were too noxious; (2) the user may not interpret their effects as noxious, or might even like the dare-devil aspects of use; (3) the legitimate uses and users of the substance might be adversely affected; and (4) commercial manufacturers would fear a reduction in product sales. Many of the deterrents that have been explored were deemed too noxious, too toxic, or unstable (Giovacchini 1990).

Chemical Reformulations. In developing prevention approaches, one must consider if the cure is an effective preventive procedure. In Canada, polish removers have been made "oily," which makes them less volatile and does not release fumes as rapidly. Although intoxication can occur, it takes longer for users to experience the effect. In another example, the solvent component of liquid correction fluids was replaced by a water-based component which was clearly safer, but took much longer to dry. Neither the legitimate consumers nor the illicit inhalers found the product satisfactory, and thus its use and sales diminished significantly.

Chemical Packaging. While some argue that labeling a product's side effects would deter use and alert parents, others note that product-labeling would also pinpoint products that give a high (Giovacchini

1990).

Information Dissemination vs. Media Contagion. Although it has been suggested that mass media reports should not contain detailed information on what products are being sniffed or just how it is being done (WHO 1986, 32), it is difficult to ride the line between information dissemination and censorship, and to prevent the exchange of information on drug practices between youth and their peers. For example, several companies produced an educational film on the detrimental effects of sniffing, but the films were never released because people argued as to whether the films would deter inhalant use, or introduce youngsters to a new mode of administration or new products and inadvertently increase use (Giovacchini 1990). The following issues must be considered carefully before disseminating information.

Target Groups. One must distinguish carefully the target groups of prevention messages. Prevention messages aimed at non-users will, by necessity, be unlike those aimed at the inhalant user (Ives 1986). In general, the non-user has different attitudes, often negative, toward inhalants than the user. At issue is whether the message should be abstinence (a potentially appropriate message for non-users) or harm reduction (a potentially more useful strategy for chronic inhalant abusers). A related issue is the role inhalants play in initiating subsequent drug use: if inhalants are effective gateway drugs to other use, then prevention efforts are best focused on those who have not yet begun any drug experimentation.

Stigma is a subtle but insidious problem that arises when media (as well as research) coverage identifies and links certain groups with inhalant abuse. For example, by the time Native American youth reach their senior year, only 4 percent are using inhalants seriously enough to warrant concern (Oetting et al. 1988). Therefore, to label all these youth as inhalant users is stigmatizing.

Since prevalence of inhalant abuse is not uniform across locales (Smart 1988), effective prevention efforts should target not only specific users, but also specific regions. Target areas could be populations with high prevalence rates, or communities with few social assets and undergoing rapid acculturation changes.

Abstinence vs. Harm Reduction. Prevention messages in the addictions can range from total abstinence to harm reduction. For example, in the alcohol field abstinence is a common message aimed at young people, while moderate, responsible drinking is a prevalent message with college students. Whether clean needles should be freely dispensed to intravenous drug users (a harm reduction approach), or whether they should not (an abstinence approach) is another case in point. The former approach is based on the notion that current treatments and prevention have not been successful; consequently, partial prevention successes (harm reduction) are worthwhile, albeit as a first step.

However, applying the harm reduction model to the use of inhalants should be seriously questioned. Unlike most other drugs, inhalants have the potential to kill, even for first time, naive users. Second, most inhalant use takes place at a very young age compared to other drugs and a message that says "Use it, but be careful" is inappropriate for this age group. It is one thing to counsel a college student about prudent use of marijuana, but quite another to give the same message to a 13 year old who is already experiencing psychological and social problems (Beauvais 1996).

Scare Tactics. Scare tactics have never been shown to be an effective deterrent to drug use. Children may not believe exaggerated negative messages since these conflict with their own observations of effects. As a result, children may disbelieve other prevention messages, since the source seems unreliable. Over-reliance on scare tactics (such as legal ramifications) may further remove youth from the social fabric and engender disrespect for the law, authority figures and social structures. In addition, programs emphasizing the negative social consequences of drug use may cause increased use, since inhalant users may regard rejection by "good kids" as an asset, not a liability, and only push inhalant

users to affirm their deviant peer culture groups (Oetting 1990).

Legislative Efforts. Legislative efforts against inhalant abuse are best categorized as semi-interdiction approaches with the aim of keeping the drugs out of the hands of youngsters. Because of commercial considerations, full interdiction is not feasible. Legislation has been product-based, abuser-based, and supply-based. Product-based legislation has included warning labels, use of deterrents, repackaging, and reformulation. Abuser-based legislation has made it illegal to sniff or to be high from sniffing (thus labeling the user as a criminal), and has sniffing. Supply-based legislation has placed age restrictions on purchasing, made it an offense to sell products to a minor for sniffing purposes, and placed a total prohibition on availability of some products.

Many of these efforts have been thwarted because of the following: (a) fear of drug substitution (users would switch to other drugs not legislatively controlled); (b) fear of media contagion (the problem of sniffing, if publicized, could cause the problem to escalate); (c) impracticability of adequately monitoring sales to youth; and (d) concern that if availability was limited, shoplifting would increase or black markets would be formed.

[Treatment of Inhalant Users](#) [Table of Contents](#) [Research Issues in Inhalant Use](#)

ANALYSIS, HB 114: (page 2)

Sections 1 and 2 of the bill create a new crime of misdemeanor abuse of inhalants to criminalize the inhaling of petroleum products and other household products or drugs. Section 2 further provides that any juveniles charged with this behavior will be processed through the district court as adults.

The creation of a new crime, as always, will increase the caseload and workload responsibilities of the Public Defender Agency. However, without hard data regarding the numbers of people engaging in this behavior and the ease of their detection, it is impossible to quantify how many people will be arrested, prosecuted and appointed to the Agency. Therefore, while the impact is certain, the actual numbers of cases and increased resources needed are not possible to quantify at this time.

Sections 3 through 15 add the use of inhalants to the protective custody process, which previously existed for persons, incapacitated by alcohol or drugs. As the Public Defender Agency is not appointed to represent people in this process, but rather the Office of Public Advocacy is, there will be no impact to the Agency although certain impact, but unquantifiable, to the Office of Public Advocacy.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 114
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to abuse of inhalants." BRU Criminal Division; Civil Division
Component 1st-4th Judicial Districts; Criminal
Sponsor Representative Kapsner Appeals/Special Lit; Human Services
Requester House HESS Committee Component No. 2198-99;2201/03/08/61/79

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
HB 114 creates a new class B misdemeanor crime for abuse of inhalants. Minors charged with this crime would be treated as adults, and the prosecution and sentencing would take place in District Court.

The Department of Law does not anticipate a significant fiscal impact from passage of this legislation. Expanding the civil commitment process to include inhalant abuse could potentially increase Civil Division costs. However, alcohol and drug civil commitments performed by assistant attorneys general are rare, and we expect the same to be the case with inhalants.

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 2/26/01 4:55 PM
Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 2/26/01
Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 114
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to abuse of inhalants." BRU: Legal and Advocacy
 Component: Public Defender
 Sponsor: Representative Kapsner Public Advocate
 Requester: (H) HESS Component Number: 1631 & 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	**	**	**	**	**	**
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached sheet.

Prepared by: Barbara Brink, Director/Brant McGee, Director Phone (907) 334-4414
 Division: Public Defender Agency/Office of Public Advocacy Date/Time 02/27/01
 Approved by: Jim Duncan, Commissioner Date 2/27/01
 Agency: Department of Administration

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HB

115

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 115
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title: Certifications for alcohol commitments

Dept. Affected: Health & Social Services
 BRU: Alcoholism and Drug Abuse Svcs
 Component: Alcohol and Drug Abuse Grants

Sponsor: Representative Kapsner
 Requester: House (HES)

Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will allow physicians assistants and advanced nurse practitioners to sign Certificates of Necessity and to perform other alcohol and drug abuse commitment functions under Title 47.

There will be no additional costs incurred by the Division of Alcoholism and Drug Abuse.

Prepared by: Ernest Turner
 Division: Alcoholism and Drug Abuse
 Approved by: Elmer A. Lindstrom, Special Assistant
 Agency: Department of Health & Social Services

Phone 465-5810
 Date/Time 1/26/01 12:55PM
 Date 3/17/01 3:03 PM

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Passel

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE KAPSNER

TO: CSHB 115(), Draft Version "F"

- 1 Page 2, line 5:
- 2 Delete "master"
- 3 Insert "clinical"

22-LS0059\F
Ford
2/15/01

CS FOR HOUSE BILL NO. 115()

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

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES KAPSNER, James

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the definition of 'mental health professional' for certain mental**
2 **health proceedings and treatments; relating to the services of certain medical**
3 **professionals in civil proceedings for the commitment of certain intoxicated persons;**
4 **allowing a physician assistant or advanced nurse practitioner to certify the need for**
5 **emergency treatment as a result of intoxication; and providing for an effective date."**

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

7 *** Section 1. AS 47.30.915(11) is amended to read:**

8 (11) "mental health professional" means a psychiatrist or physician
9 who is licensed to practice in this state or employed by the federal government; a
10 clinical psychologist licensed by the state Board of Psychologist and Psychological
11 Associate Examiners; a psychological associate trained in clinical psychology and
12 licensed by the Board of Psychologist and Psychological Associate Examiners; a
13 registered nurse with a master's degree in psychiatric nursing, licensed by the State

1 Board of Nursing; a marital and family therapist licensed by the Board of Marital
 2 and Family Therapy; a professional counselor licensed by the Board of
 3 Professional Counselors; and a master social worker licensed by the Board of
 4 Social Work Examiners [WITH A MASTER'S DEGREE IN SOCIAL WORK AND
 5 SUBSTANTIAL EXPERIENCE IN THE FIELD OF MENTAL ILLNESS];

6 * Sec. 2. AS 47.37.180(b) is amended to read:

7 (b) The certifying physician, physician assistant, advanced nurse
 8 practitioner, spouse, guardian, or relative of the person to be committed, or any other
 9 responsible person, may make a written application for commitment under this
 10 section, directed to the administrator of the approved public treatment facility. The
 11 application must state facts to support the need for emergency treatment and be
 12 accompanied by a physician's, physician assistant's, or advanced nurse
 13 practitioner's certificate supporting the need for emergency treatment and stating that
 14 the physician, physician assistant, or advanced nurse practitioner has examined the
 15 person sought to be committed within two days before the certificate's date.

16 * Sec. 3. AS 47.37.180(f) is amended to read:

17 (f) A copy of the written application for commitment and of the physician's,
 18 physician assistant's, or advanced nurse practitioner's certificate, and a written
 19 explanation of the person's right to legal counsel, shall be given to the person within
 20 24 hours after commitment by the administrator, who shall provide a reasonable
 21 opportunity for the person to consult with legal counsel.

22 * Sec. 4. AS 47.37.190(a) is amended to read:

23 (a) A spouse or guardian, a relative, the certifying physician, physician
 24 assistant, advanced nurse practitioner, or the administrator in charge of an approved
 25 public treatment facility may petition the court for a 30-day involuntary commitment
 26 order. The petition must allege that the person is an alcoholic or drug abuser who (1)
 27 has threatened, attempted to inflict, or inflicted physical harm on another and that
 28 unless committed is likely to inflict physical harm on another; or (2) is incapacitated
 29 by alcohol or drugs. A refusal to undergo treatment does not constitute evidence of
 30 lack of judgment as to the need for treatment. The petition must be accompanied by a
 31 certificate of a licensed physician, physician assistant, or advanced nurse

INCLUDING AND UNBORN CHILD

1 practitioner who has examined the person within two days before submission of the
2 petition, unless the person whose commitment is sought has refused to submit to a
3 medical examination, in which case the fact of refusal must be alleged in the petition.
4 The certificate must set out the ~~physician's findings of the examination~~ in support of
5 the allegations of the petition. ^{MEDICAL EXAMINATION PROVIDER'S}

6 * Sec. 5. AS 47.37.200(a) is amended to read:

7 (a) At the hearing for a 30-day commitment required under AS 47.37.190(b),
8 the court shall hear all relevant testimony, including, if possible, the testimony of at
9 least one person [LICENSED PHYSICIAN] who has examined the person whose
10 commitment is sought ~~under AS 47.37.190(b) or~~ 47.37.190(a). The person whose
11 commitment is sought shall be present unless the court believes that being present is
12 likely to be injurious to the person, in which case the court may conduct the hearing
13 telephonically. The court may examine the person in open court, or, if advisable,
14 examine the person out of court. If the person has refused to be examined under
15 ~~AS 47.37.190(b) or~~ 47.37.190(a) [BY A LICENSED PHYSICIAN], the person shall
16 be given an opportunity to request examination by a court-appointed licensed
17 physician, physician assistant, or advanced nurse practitioner. If the person fails
18 to request a medical examination and there is sufficient evidence to believe that the
19 allegations of the petition are true, or, if the court believes that more medical evidence
20 is necessary, the court may issue a temporary order committing the person to a private
21 or public facility for a period of not more than five days for purposes of a diagnostic
22 examination.

23 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DYSON

TO: CSHB 115(), Draft Version "F"

1 Page 1, line 5, following "intoxication;":

2 Insert "relating to commitment based on intoxication or alcohol or drug abuse;"

3

4 Page 2, following line 5:

5 Insert a new bill section to read:

6 "* Sec. 2. AS 47.37.180(a) is amended to read:

7 (a) An intoxicated person who (1) has threatened, attempted to inflict, or
8 inflicted physical harm on another ~~or on~~ ^{THEIR OWN} an unborn child, or is likely to inflict
9 physical harm on another ~~or on~~ ^{THEIR OWN} an unborn child, unless committed, or (2) is
10 incapacitated by alcohol or drugs, may be committed to an approved public treatment
11 facility for emergency treatment. A refusal to undergo treatment does not constitute
12 evidence of lack of judgment as to the need for treatment."

13

14 Renumber the following bill sections accordingly.

15

16 Page 2, line 27, following "another":

17 Insert "or on ^{THEIR OWN} an unborn child"

18

19 Page 2, line 28, following "another":

20 Insert "or ^{THEIR OWN} an unborn child"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DYSON

TO: CSHB 115(), Draft Version "F"

1 Page 1, line 5, following "intoxication;":

2 Insert "relating to commitment based on alcohol or drug abuse"

3

4 Page 2, line 27, following "another":

5 Insert "^{THEIR OWN}or on an unborn child"

6

7 Page 2, line 28, following "another":

8 Insert "^{THEIR OWN}or on an unborn child"

CHAIR NOTES

March 22, 2001

Agenda

HB 115 Emergency Commitment Orders, (3 amendments)

HB 124 Nurses Home/Assisted Living Employees/Visitors Adopt CS (work order LS0087\O)

HB 142 ATAP Amendment, Adopt CS (work order GS1023\C)

HB 98 High School Diploma for Certain WW II Vets

SB 19 CSED/SSAN (same as HB 41). Adopt CS (work order GS1002\P)

*Note: if CS is adopted, then a House Concurrent Resolution must be done in order
To change the title*

LEGAL SERVICES

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

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


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

MEMORANDUM

March 20, 2001

SUBJECT: Sectional Summary of CSHB 115() - Draft Version "F"

TO: Representative Mary Kapsner
Attn: Trina

FROM: Michael F. Ford 
Legislative Counsel

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

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

Section 1. Amends the definition of "mental health professional" by adding licensed marital and family therapists, professional counselors, and a master social worker.

Section 2. Adds physician assistants and advanced nurse practitioners as authorized to make application for emergency treatment for intoxication.

Section 3. Adds physician assistants and advanced nurse practitioners as individuals authorized to sign a copy of a written application for commitment.

Section 4. Adds physician assistants and advanced nurse practitioners as individuals authorized to petition the court for a 30-day involuntary commitment order.

Section 5. Adds physician assistants and advanced nurse practitioners as individuals authorized to make a physical examination in connection with a 30-day involuntary commitment hearing. Makes certain technical changes.

Section 6. Effective date.

MFF:glc
01-259.glc

Representative Mary Kapsner

State Capitol • Juneau, Alaska 99801-1182
Phone: (907) 465-4942 • Fax: (907) 465-4589
E-Mail: Representative_Mary_Kapsner@legis.state.ak.us

House District 39
Lower Kuskokwim and Upper Bristol Bay

Sponsor Statement

HOUSE BILL NO. 115

Aktachuk
Akiak
Aleknagik
Atmautluak
Bethel
Chefornak
Clarks Point
Dillingham
Eek
Ekwik
Ekwok
Goodnews Bay
Kasigluk
Kipnuk
Koliganek
Kongiganak
Kwethluk
Kwigillingok
Manokotuk
Napakiak
Napaskiak
New Stuyahok
Numapitchuk
Oscarville
Platinum
Portage Creek
Quinhagak
Toqtaq
Tuntutuliak
Twin Hills

This bill proposes to change Title 47 Statute, Sections 37.180, 190, and 200 to allow physicians assistants and advanced nurse practitioners to sign medical certificates of necessity for treatment of individuals for alcohol and drug dependency. It also expands the definition of "mental health professional" under AS 47.30.915 to include Licensed Clinical Social Workers(LCSW), Licensed Marital and Family Therapists(LMFT) and Licensed Professional Counselors(LPC).

Current statutes require licensed physicians to examine persons for whom involuntary commitment is being sought and to complete a certificate of necessity for treatment. The certificate must accompany a petitioner's application to the court for commitment of an eligible alcoholic or drug dependent person. This requirement is burdensome, particularly in smaller communities where there is a shortage licensed physicians. The result is reduced access to treatment for those vulnerable Alaskans, many of whom move through both the criminal justice system and emergency medical facilities. The proposed change will allow communities where physicians may not be present to utilize physician's assistants and advanced nurse practitioners who staff local clinics to complete the required certificates of necessity for treatment.

When a person with mental health problems needs an evaluation for possible admittance to a mental health hospital facility, a "mental health professional" (MHP) is called upon to conduct the evaluation. The goal of the evaluation is to determine whether the individual has a mental illness and as a result is "gravely disabled" or is likely to cause "serious harm to self or others". If the MHP determines that the individual being evaluated fits the criteria for civil commitment, and the individual refuses voluntary hospitalization, a call is placed to a consulting psychiatrist or physician. If the consulting psychiatrist or physician concurs with the evaluation, the MHP contacts a judge who makes the decision to involuntarily commit the individual.

According to AS 47.30.915 (11) "mental health professional" is defined as "a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the state Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing and a social worker with a master's degree in social work and substantial experience in the

field of mental illness". This statute was written prior to the passage of state licensing requirements governing masters level mental health clinicians holding licenses as Licensed Clinical Social Workers, Licensed Marital and Family Therapists and Licensed Professional Counselors.

In mental health agencies across the state, there are approximately 140 mental health clinicians doing emergency services evaluations. Only half these clinicians fit the current definition of a Mental Health Professional. Licensure that includes masters level mental health clinicians enlarges the pool of Mental Health Professionals. Licensed Clinical Social Workers, Marital and Family Therapists and Professional Counselors are qualified to serve these needs. Expanding the pool of qualified professionals means quicker and better care and services for Alaskans. The Department of Health and Social Services encourages these changes.

4Rivers Counseling Services

P. O. Box 229 * McGrath, AK 99627-0229
(907) 524-3867 * In AK only: (800) 478-3781
FAX: (907) 524-3519 * e-mail: israel@mcgrathalaska.net

17 April, 2000

Ms. Pam Watts
Executive Director
Advisory Board on Alcoholism and Drug Abuse
Box 110608
Juneau, AK99811-0608

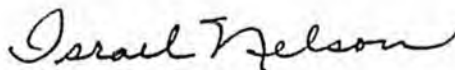
Dear Ms. Watts,

As you requested, accompanying this letter are copies of my letter to the Chief Justice of the Alaska Supreme Court and a response I received from Janna Stewart, Magistrate Education Coordinator.

Clearly, the only solution to the conundrum presented by the present provisions of Title 47 is a change of law. I am sending copies of these letters to the members of the Legislature from this part of the State with the hope that they can initiate a change of law.

I am pleased to report that the gentleman described in my letter was successfully finally admitted to a treatment program where he has been active for the last year. Only this morning his sister told me of her recent visit with him and her joy with his progress. So he was able to get help in spite of the limitations of the law.

Sincerely,



Israel Nelson, MSW, D. Min.
Executive Director

CC: Honorable Carl Morgan
Honorable Georgianna Lincoln
Honorable Beverly Masek
Honorable Mary Kapsner



Counseling Services

P.O. Box 229, McGrath, AK 99627 • (907) 524-3781

9 June, 1999

Honorable Warren Matthews, Chief Justice
Alaska Supreme Court
303 K Street
Anchorage, AK 99501

Mr. Chief Justice,

On 23 April, 1999, Ms. Naomi Norback requested the assistance of our staff to effect an emergency commitment of her brother to a medical facility because of his alcoholism. On several occasions his drinking led him to injure himself. He appears to be suffering from malnutrition. He was seen on an emergency basis by the Physician Assistant who supervises our health clinic.

Utilizing Section 47.37.180 (Emergency Commitment) of the Uniform Alcoholism and Intoxication Treatment Act, all of the appropriate documentation was completed and forwarded to the presiding judge of the Superior Court of Alaska at Bethel. While he found that all the documentation was in order, he refused to sign the commitment order because the patient had not been examined by a physician, as is required by the law.

McGrath is 221 air miles from Anchorage, 248 air miles from Fairbanks, and over 300 miles from Bethel. Our most direct and immediate access to urban settings where hospitals are located for emergency care is a commercial flight on Pen Air to Anchorage once a day. There is no physician here, only a Physician Assistant who practices under the supervision of a physician based in Fairbanks with the Tanana Chiefs Conference. Without a physician's signature, we could not proceed to commit the gentleman for care. Our next strategy was to utilize the powers of a police officer to effect commitment, but the local Village Public Safety Officer could not act because the gentleman was not posing an immediate threat to himself or others.

It appears to me that one part of Section 47.37.180 of the Uniform Alcoholism and Intoxication Treatment Act is too restrictive to be of use in Bush circumstances such as ours. Indeed, what am I as an alcoholism treatment professional supposed to do when I come upon a case of a person needing involuntary commitment to care where no physician is available to examine the patient, but, at best, a physician assistant may be available? I believe the intention of the law is correct and helpful. It appears, however, that this one provision renders it useless to me.

May I respectfully suggest that you encourage the Legislature to amend the law to allow for examination by a physician assistant in circumstances such as this. May I also respectfully suggest that you offer an interpretation of the spirit of the law to the presiding judge of the Bethel Superior Court so that we may proceed to provide care to a man I and his family are watching die by the day due to his alcoholism.

Sincerely,

Israel Nelson, MSW, D. Min.
Executive Director

CC: Ms. Naomi Norback
Box 282
McGrath, AK 99627 (Telephone (907) 524-3287)



*ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director*

Janna Stewart
Magistrate Education Coordinator

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8237
FAX (907) 264-8291

June 30, 1999

Isreal Nelson, Executive Director
4 Rivers Counseling Services
P. O. Box 229
McGrath, Alaska 99627

Dear Mr. Jones:

On behalf of Chief Justice Warren Matthews, I am responding to your June 9 letter regarding the requirements of the Uniform Alcoholism and Intoxication Treatment Act and an unsuccessful effort to commit a McGrath resident under AS 47.37.180 (emergency commitment) and AS 47.37.190 (involuntary commitment).

Your criticism of what these statutes require—a physician's certificate based on an examination of the respondent within two days—is well founded. It is difficult or impossible to meet that requirement in McGrath and in countless other rural Alaska communities where physicians are not available to provide direct services.

As you know, the lack of a physician's certificate made it impossible for the Bethel Superior Court Judge to issue a commitment order in the April case. According to that judge, and to the Superior Court Probate Master in Fairbanks who regularly deals with such cases, there is virtually no way to work around this unequivocal statutory requirement.

I understand that on occasion physicians have been willing to go "out on a limb" and sign certificates based on physical examinations performed by physician's assistants or nurse practitioners, but I cannot determine whether commitments have ever been authorized based on such efforts. I understand that this examination-by-proxy option was not available in the instant case, in any event.

In my review of these statutes and the pertinent implementation procedures, I consulted with Loren Jones, the Director of the Division of Alcoholism and Drug Abuse. I understand that he has spoken with you about the limitations of these statutes. I can only recommend, as he has, that you contact your state legislators and ask them to attempt to legislatively modify the

Puller

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DYSON

TO: CSHB 115(), Draft Version "F"

1 Page 1, line 5, following "intoxication;":

2 Insert "relating to commitment based on intoxication or alcohol or drug abuse;"

3

4 Page 2, following line 5:

5 Insert a new bill section to read:

6 "* Sec. 2. AS 47.37.180(a) is amended to read:

7 (a) An intoxicated person who (1) has threatened, attempted to inflict, or
8 inflicted physical harm on another or on an unborn child, or is likely to inflict
9 physical harm on another or on an unborn child, unless committed, or (2) is
10 incapacitated by alcohol or drugs, may be committed to an approved public treatment
11 facility for emergency treatment. A refusal to undergo treatment does not constitute
12 evidence of lack of judgment as to the need for treatment."

13

14 Renumber the following bill sections accordingly.

15

16 Page 2, line 27, following "another":

17 Insert "or on an unborn child"

18

19 Page 2, line 28, following "another":

20 Insert "or on an unborn child"

Pulled

AMENDMENT

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7 Page 2, line 28, following "another":

8 Insert "or on an unborn child"

Israel Nelson
June 30, 1999
Page Two

physician's certificate requirement. You can also contact Mr. Jones or his Anchorage regional coordinator, Suzanne Frey, to discuss the potential for support from the executive branch (from the Division, from the Department of Health and Social Services, or from the office of the Attorney General) for such legislative efforts.

Please let me add, on behalf of the judge in Bethel and of many of us who strive to provide quality justice system services throughout Alaska, that we certainly do understand how difficult it is to be faced with these situations. And while we appreciate the intention (or the "spirit" of the law, as you say)—to make available potentially life-saving care and intervention for persons in grave circumstances due to alcohol abuse—we cannot ignore the fact that the law also provides those same persons with the protections of due process: evidence, certifications, and findings, as well as notice, representation, and the right to a hearing.

Please let me know if I can be of assistance in any other way regarding this matter.

Sincerely,



Janna Stewart
Magistrate Education Coordinator

cc: Stephanie J. Cole, Administrative Director
Alaska Court System

HB

124

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 124 (HES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Assisted Living Home Licensure BRU: Institutions & Administration
 Component: Mental Health/DD Admin
 Sponsor: Rep. Halcro
 Requester: House (HES) Component Number: 310

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	100.0	100.0	100.0	100.0	100.0	100.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	100.0	100.0	100.0	100.0	100.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health	100.0	100.0	100.0	100.0	100.0	100.0
Other (Specify Type)						
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill expands the number of Assisted Living Homes (ALHs) required to be licensed by the state, to include those with only 1-2 residents. The population served in ALHs is made up of individuals who are the most vulnerable and dependent mentally ill, developmentally disabled and elderly individuals. Currently, the Division of Mental Health and Developmental Disabilities requires ALHs to be licensed if they serve three or more residents and receive federal or state funding. Health and safety issues are the primary factor driving DHSS toward licensing all ALHs, regardless of number of residents. With the increasing numbers of ALHs and consumers choosing to reside in them, the existing DMHDD 1 1/2 licensing staff positions (initially expected to do 135 homes per year) will not be able to provide adequate monitoring of all the homes to ensure the provision of a safe and healthy environment to each of DHSS' consumers. Presently there are 156 homes, with 11 more due to be licensed in the next month. These homes are reviewed once a year. In FY00 the staff made an additional 57 site visits for follow-up or complaint investigations. Anticipated, revised ALH regulations will enhance health and safety requirements and increase the time of the site review process. Additional staff will be needed to follow-up on Reports of Abuse and Neglect, and to complete a thorough evaluation of the quality of care at the time of initial license and renewal. The two positions listed above are requested in the budget but are not fully funded.

Prepared by: Sarah Brinkley, Admin. Manager Phone 465-3167
 Division: DMHDD Date/Time 3/17/01 3:34 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/17/01 3:34 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB124
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to criminal background
checks in assisted living & nursing homes..." BRU: AK Longevity Programs
 Component: AK Longevity Programs
 Sponsor: Rep. Halcro Management
 Requester: H(HESS) Component Number: 2263

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Division of Alaska Longevity Programs currently conducts background investigations on all new employees hired in the six Pioneers' Homes. The bill identifies barrier crimes that prohibit employment, but does not require any additional background checks beyond what is currently performed.

Prepared by: James L. Kohn, Director Phone 465-2159
 Division Division of Longevity Programs Date/Time 03/13/01
 Approved by: Jim Duncan, Commissioner Date 3/13/01
 Agency Department of Administration

For distribution information, call the Governor's Legislative Office

22-LS0087\O
Lauterbach
3/21/01

CS FOR HOUSE BILL NO. 124()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson, Stevens

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to criminal background checks that must be performed by nursing**
2 **facilities and assisted living homes; prohibiting nursing facilities and assisted living**
3 **homes from employing or allowing access by persons with certain criminal**
4 **backgrounds, with exceptions; relating to assisted living homes and to liability for acts**
5 **or omissions in the licensing, monitoring, or supervision of assisted living homes; and**
6 **providing for an effective date."**

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

8 *** Section 1. AS 18.20.302 is amended to read:**

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

1 REGULATIONS], unless the individual, before beginning employment, work, or
2 service,

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

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

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

10 (b) Within 30 days after employing, contracting with, or using the services
11 of an individual [AN INDIVIDUAL IN A PAID POSITION], a nursing facility shall
12 submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this
13 section. The Department of Public Safety shall submit the fingerprints to the Federal
14 Bureau of Investigation for a national criminal history record check and shall provide
15 the results to the Department of Health and Social Services. When the results are
16 received, the Department of Health and Social Services [DEPARTMENT] shall
17 advise the facility of

18 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
19 CHECK WAS COMPLETED; AND

20 (2)] whether the check shows that the individual has committed an
21 offense described in (c) of this section.

22 (c) A nursing facility may not employ, contract with, or use the services of
23 an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

24 (1) of an offense in which the victim was a resident of a nursing
25 facility or assisted living home at the time of the offense; in this paragraph,
26 "assisted living home" means an entity required to be licensed under AS 47.33 or
27 an entity located outside the state that would be required to be licensed under
28 AS 47.33 if it were located inside the state;

29 (2) of an unclassified felony, a class A felony, or an offense under
30 the laws of another jurisdiction that would have been, if it had been committed in
31 this state at that time, an unclassified felony or class A felony;

1 (3) under AS 11.51.200 or 11.51.210 or of a criminal offense in
2 another jurisdiction with elements substantially similar to the elements of an
3 offense under AS 11.51.200 or 11.51.210;

4 (4) within the previous 10 years, of a class B felony or an offense
5 under the laws of another jurisdiction that would have been, if it had been
6 committed in this state at that time, a class B felony;

7 (5) within the previous five years, of a class C felony, an offense
8 under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another
9 jurisdiction that would have been, if it had been committed in this state at that
10 time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

11 (6) of an offense listed in the department's regulations as being an
12 offense for which an individual should be prohibited access to a nursing facility
13 [COVERED BY THIS SECTION].

14 * Sec. 2. AS 18.20.302 is amended by adding a new subsection to read:

15 (d) This section does not apply to

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

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

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

23 (4) a contractor who does not

24 (A) provide services directly to one or more residents; and

25 (B) have unsupervised access to a part of the facility where
26 services are directly provided to residents.

27 * Sec. 3. AS 47.33.010(a) is amended to read:

28 (a) Except as provided in (b) of this section, this chapter applies to residential
29 facilities operated in the state that serve three or more adults who are not related to the
30 owner of the facility by blood or marriage and to residential facilities in the state
31 that receive state or federal payment for services, regardless of the number of

1 adults that the facility serves. The department shall consider a facility as a
2 residential facility if the facility [BY]

3 (1) provides [PROVIDING] housing and food service to its residents;
4 and

5 (2) provides [PROVIDING] or obtains [OBTAINING], or offers
6 [OFFERING] to provide or obtain, for its residents

7 (A) assistance with the activities of daily living;

8 (B) personal assistance; or

9 (C) a combination of services under (A) and (B) of this

10 paragraph.

11 * Sec. 4. AS 47.33.100 is amended to read:

12 Sec. 47.33.100. Criminal background check [FOR EMPLOYEES]. (a)

13 An assisted living home may not employ, contract with, use the services of, or allow
14 to reside in the home an individual, including an administrator, employee,
15 contractor, regular volunteer, care provider, or family member living in the
16 home [IN A PAID POSITION THAT THE APPLICABLE LICENSING AGENCY
17 HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS
18 REGULATIONS], unless the individual, before beginning employment, work,
19 service, or residence in the home,

20 (1) provides to the home a sworn statement as to whether the
21 individual has been convicted of an offense described in (c) of this section; [AND]

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

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

27 (b) Within 30 days after employing, contracting with, or using the services
28 of an individual or allowing an individual to reside in the home [AN
29 INDIVIDUAL IN A PAID POSITION], an assisted living home shall submit to the
30 Department of Public Safety the fingerprints obtained under (a)(3) of this section. The
31 Department of Public Safety shall submit the fingerprints to the Federal Bureau of

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Investigation for a national criminal history record check and shall provide the results to the applicable licensing agency. When the results are received, the applicable licensing agency [DEPARTMENT] shall advise the home of

[(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND CHECK WAS COMPLETED; AND

(2)] whether the check shows that the individual has committed an offense described in (c) of this section.

(c) An assisted living home may not employ, contract with, use the services of, or allow to reside in the home an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

(1) of an offense in which the victim was a resident of a nursing facility or assisted living home at the time of the offense; in this paragraph,

(A) "assisted living home" means an entity required to be licensed under this chapter or an entity located outside the state that would be required to be licensed under this chapter if it were located in the state;

(B) "nursing facility" has the meaning given in AS 18.20.390;

(2) of an unclassified felony, a class A felony, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, an unclassified felony or class A felony;

(3) under AS 11.51.200 or 11.51.210 or of a criminal offense in another jurisdiction with elements substantially similar to the elements of an offense under AS 11.51.200 or 11.51.210;

(4) within the previous 10 years, of a class B felony or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class B felony;

(5) within the previous five years, of a class C felony, an offense under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

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1 (6) of an offense listed in the regulations of the applicable licensing
2 agency as being an offense for which an individual should be prohibited access to
3 an assisted living home; in this paragraph, "assisted living home" has the
4 meaning given in (1)(A) of this subsection [COVERED BY THIS SECTION].

5 * Sec. 5. AS 47.33.100 is amended by adding a new subsection to read:

6 (d) This section does not apply to

7 (1) an individual who is a resident of the assisted living home and is
8 receiving residential services from the home under a contract made under this chapter;

9 (2) an individual who is providing services to a resident as an
10 employee of a care-providing entity that is not affiliated with the assisted living home;

11 (3) an individual residing in the assisted living home who is under 16
12 years of age;

13 (4) an individual who occasionally volunteers in an assisted living
14 home and who is supervised by and performs these volunteer services in close
15 physical proximity to the staff of the assisted living home;

16 (5) an individual who is not a care provider and who is

17 (A) visiting the home for less than 14 days in a calendar year;

18 and

19 (B) in the close physical proximity of the staff of the assisted
20 living home while visiting;

21 (6) a contractor who does not

22 (A) provide services directly to one or more residents; and

23 (B) have unsupervised access to a part of the home where
24 services are directly provided to residents.

25 * Sec. 6. AS 47.33.300(a) is amended to read:

26 (a) Subject to (c) of this section, a resident of an assisted living home has the
27 right to

28 (1) live in a safe and sanitary environment;

29 (2) be treated with consideration and respect for personal dignity,
30 individuality, and the need for privacy, including privacy in

31 (A) a medical examination or health-related consultation;

- 1 (B) the resident's room or portion of a room;
- 2 (C) bathing and toileting, except for any assistance in those
- 3 activities that is specified in the resident's assisted living plan; and
- 4 (D) the maintenance of personal possessions and the right to
- 5 keep at least one cabinet or drawer locked;
- 6 (3) possess and use personal clothing and other personal property,
- 7 unless the home can demonstrate that the possession or use of certain personal
- 8 property would be unsafe or an infringement of the rights of other residents;
- 9 (4) engage in private communications, including
- 10 (A) receiving and sending unopened correspondence;
- 11 (B) having access to a telephone, or having a private telephone
- 12 at the resident's own expense; and
- 13 (C) visiting with persons of the resident's choice, subject to
- 14 visiting hours established by the home;
- 15 (5) close the door of the resident's room at any time, including during
- 16 visits in the room with guests or other residents;
- 17 (6) at the resident's own expense unless otherwise provided in the
- 18 residential services contract, participate in and benefit from community services and
- 19 activities to achieve the highest possible level of independence, autonomy, and
- 20 interaction with the community;
- 21 (7) manage the resident's own money;
- 22 (8) participate in the development of the resident's assisted living plan;
- 23 (9) share a room with a spouse if both are residents of the home;
- 24 (10) have a reasonable opportunity to exercise and to go outdoors at
- 25 regular and frequent intervals, when weather permits;
- 26 (11) exercise civil and religious liberties;
- 27 (12) have access to adequate and appropriate health care and health
- 28 care providers of the resident's own choosing, consistent with established and
- 29 recognized standards within the community;
- 30 (13) self-administer the resident's own medications, unless specifically
- 31 provided otherwise in the resident's assisted living plan;

1 (14) receive meals that are consistent with religious or health-related
2 restrictions;

3 (15) receive the prior notice of relocation of the home or the home's
4 intent to terminate the residential services contract of the resident required by
5 AS 47.33.080, [AND] 47.33.360, and 47.33.370 [RESPECTIVELY];

6 (16) present to the home grievances and recommendations for change
7 in the policies, procedures, or services of the home;

8 (17) at the resident's own expense unless otherwise provided in the
9 residential services contract, have access to and participate in advocacy or special
10 interest groups;

11 (18) at the resident's own expense unless otherwise provided in the
12 residential services contract, intervene or participate in, or refrain from participating
13 in, adjudicatory proceedings held under this chapter, unless provided otherwise by
14 other law; and

15 (19) reasonable access to home files relating to the resident, subject to
16 the constitutional right of privacy of other residents of the home.

17 * Sec. 7. AS 47.33.360(a) is amended to read:

18 (a) An assisted living home may not terminate a residential services contract
19 with a resident of the home against the resident's will, except as provided in
20 AS 47.33.370 or unless

21 (1) the resident engages [FOR MEDICAL REASONS;

22 (2) FOR ENGAGING] in a documented pattern of conduct that is
23 harmful to the resident, other residents, or staff of the home;

24 (2) the resident violates [(3) FOR VIOLATION OF] the terms of the
25 residential services contract, including failure to pay costs incurred under the contract;

26 (3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS
27 ORDERED BY THE RESIDENT'S PHYSICIAN;

28 (5) WHEN] the home is closing; or

29 (4) [(6) WHEN] the home can no longer provide or arrange for
30 services in accordance with the resident's needs and the resident's assisted living plan.

31 * Sec. 8. AS 47.33.360(b) is amended to read:

1 (b) At least 30 days before terminating the residential services contract with a
2 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
3 provide written notice of the proposed contract termination to the resident or the
4 resident's representative, [AND TO] the resident's service coordinator, if any, the
5 applicable licensing agency, and the long-term care ombudsman. The notice must
6 state the

7 (1) basis for the termination; and

8 (2) resident's right to contest the termination in the manner provided in
9 the contract, which must include an offer by the home to participate in a case
10 conference as described in (c) of this section.

11 * **Sec. 9.** AS 47.33.360(c) is amended to read:

12 (c) Before terminating the residential services contract with a resident under
13 [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a
14 case conference if requested by the resident or the resident's representative. The case
15 conference must include the resident, the resident's representative, if any, the resident's
16 advocate, if any, the resident's service coordinator, if any, the home administrator, and
17 appropriate care providers who shall [MAY] discuss the justification for, and the
18 appropriateness of, the contract termination.

19 * **Sec. 10.** AS 47.33 is amended by adding a new section to article 3 to read:

20 **Sec. 47.33.370. Emergency involuntary termination of contract.** (a) An
21 assisted living home may terminate a residential services contract with a resident of
22 the home against the resident's will and with less than 30 days' notice if at least one of
23 the following emergency reasons exists and is supported by written documentation in
24 the resident's file in the home:

25 (1) a medical reason;

26 (2) an emergency transfer from the home is ordered by the resident's
27 physician;

28 (3) imminent danger to the resident or others in the home because the
29 home is unable to meet the resident's needs or assure the health and safety of others,
30 for purposes of this paragraph, "imminent danger to the resident or others" includes
31 imminent danger

1 (A) to the resident caused by the resident's self-destructive
2 behavior; and

3 (B) of serious physical assault by the resident;

4 (4) the intentional damage or destruction of property in excess of \$300.

5 (b) A resident's refusal or failure to take prescribed medication or otherwise
6 follow the resident's assisted living plan does not constitute a medical or other reason
7 for emergency involuntary termination of a residential services contract unless the
8 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
9 section.

10 (c) An assisted living home that proposes to terminate a residential services
11 contract for any reason listed in (a) of this section shall provide written notice of the
12 proposed contract termination not less than 72 hours before termination to the resident,
13 the resident's representative, if any, the resident's service coordinator, if any, the
14 applicable licensing agency, and the long-term care ombudsman. If the resident does
15 not have a service coordinator, notice under this subsection shall also be given to adult
16 protective services personnel of the Department of Administration. The notice must
17 state the following:

*if Resident is 60 yrs old
own*

18 (1) the reason under (a) of this section for the proposed termination of
19 the residential services contract and the specific facts on which proposed termination
20 is based;

21 (2) the alternatives to termination of the residential contract that have
22 been attempted by the home;

23 (3) the location to which the resident will be discharged, if known;

24 (4) the date and time proposed for termination of the contract and
25 discharge of the resident;

26 (5) the resident's right to request a case conference that must be held, if
27 requested, before termination of the contract.

28 (d) After the notice is provided under (c) of this section, the assisted living
29 home shall participate in a case conference if requested by the resident, the resident's
30 representative, if any, the resident's advocate, if any, or the resident's service
31 coordinator, if any. If the resident does not have a service coordinator and a case

1 conference is requested by the resident or the resident's representative or advocate,
2 adult protective services personnel assigned by the Department of Administration shall
3 be requested by the assisted living home to participate in the conference. If the
4 request for a case conference is received before termination of the resident's contract,
5 the assisted living home may not terminate the contract until the case conference has
6 been held. A case conference requested under this subsection shall be held by the
7 assisted living home within 72 hours of the request and must include the resident, the
8 resident's representative, if any, the resident's advocate, if any, the home administrator,
9 and appropriate care providers who shall discuss the justification for, and the
10 appropriateness of, the proposed contract termination.

11 * Sec. 11. AS 47.33.410 is amended by adding a new subsection to read:

12 (g) A licensing agency under (a) and (b) of this section, its officers, its
13 employees, and the state are not liable for civil damages as a result of an act or
14 omission in the licensing, monitoring, or supervision of an assisted living home under
15 this chapter. This subsection does not preclude liability for civil damages as a result
16 of gross negligence or reckless or intentional misconduct.

17 * Sec. 12. AS 47.33.550(a) is amended to read:

18 (a) A licensing agency may revoke an assisted living home license, deny
19 renewal of an assisted living home license, suspend operations of an assisted living
20 home, suspend the ability of an assisted living home to take in new residents, place
21 conditions on the ability of an assisted living home to take in new residents, restrict
22 the type of care that an assisted living home may provide to residents, or assess an
23 administrative fine, as the agency considers appropriate, on one or more of the
24 following grounds:

25 (1) a violation of a provision of this chapter, a regulation adopted
26 under this chapter, an order in a notice of violation issued under this chapter, or a term
27 of a license issued under this chapter;

28 (2) a criminal conviction of an administrator of an assisted living home
29 if the conviction is

30 (A) for an offense involving a resident of the home;

31 (B) a felony; [OR]

1 (C) a misdemeanor involving alcohol, a controlled substance,
2 an imitation controlled substance, or physical or sexual abuse; or

3 (D) an offense described in AS 47.33.100(c);

4 (3) obtaining, retaining, or attempting to obtain or retain a license
5 under this chapter by fraud or misrepresentation.

6 * Sec. 13. AS 47.33.550(f) is amended to read:

7 (f) If an assisted living home requests a hearing under (d) of this section, the
8 hearing shall be held within 120 [60] days after the licensing agency receives the
9 request. The department's decision following a hearing under this section is a final
10 administrative order.

11 * Sec. 14. AS 47.33.550 is amended by adding new subsections to read:

12 (j) A licensing agency may summarily suspend operations of an assisted living
13 home before a final hearing is held or during an appeal if the licensing agency finds
14 that the home poses a clear and imminent danger to the public health and safety. The
15 assisted living home is entitled to a hearing before the licensing agency to appeal the
16 summary suspension within 10 days after the order of suspension is issued. To
17 request a hearing, the assisted living home must notify the licensing agency of the
18 request within 24 hours, excluding weekends and holidays, after the order of
19 suspension was received. The assisted living home may appeal, to a court of
20 competent jurisdiction, an adverse decision of the licensing agency on an appeal of a
21 summary suspension.

22 (k) If a license is suspended or revoked under this section, the facility may not
23 be operated or maintained as an assisted living home and may not house or provide
24 assisted living services to a facility resident.

25 * Sec. 15. AS 47.33 is amended by adding a new section to read:

26 **Sec. 47.33.563. Court-ordered temporary administration and**
27 **receivership.** (a) If the licensing agency determines that the health or safety of the
28 residents of an assisted living home is imminently jeopardized as the result of the
29 assisted living home's failure or refusal to comply with a state or federal statute or
30 regulation or local ordinance, the licensing agency may petition the superior court for
31 an order for appointment of temporary administration to oversee the operation of the

1 assisted living home in order to ensure the health and safety of the residents of the
2 assisted living home while orderly closure of the assisted living home occurs or the
3 deficiencies necessitating temporary administrator are corrected.

4 (b) The licensing agency may petition the superior court for establishment of a
5 receivership for an assisted living home if the licensing agency finds that one of the
6 following conditions exists and the owner, operator, or administrator of the home has
7 demonstrated an inability or unwillingness to take action necessary to immediately
8 correct the following alleged conditions:

9 (1) the assisted living home is operating without a license;

10 (2) the health, safety, or welfare of the residents of the assisted living
11 home is imminently jeopardized;

12 (3) the assisted living home demonstrates a pattern and practice of
13 violating state or federal statutes or regulations or local ordinances in such a way that
14 care of residents is jeopardized.

15 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **APPLICABILITY.** (a) AS 18.20.302, as amended by secs. 1 and 2 of this Act,
18 applies to persons hired or retained by a nursing home or allowed regular access to the
19 residents of a nursing home on or after July 1, 2001, except that the offenses described in
20 AS 18.20.302(c) include offenses committed before, on, or after July 1, 2001.

21 (b) AS 47.33.100, as amended by secs. 4 and 5 of this Act, applies to employment of,
22 contracting with, using the services of, and allowing the residence of an individual in an
23 assisted living home on or after July 1, 2001, except that the offenses described in
24 AS 47.33.100(c), as amended by sec. 4 of this Act, include offenses committed before, on, or
25 after July 1, 2001.

26 (c) AS 47.33.410(g), added by sec. 11 of this Act, applies to acts or omissions
27 occurring on or after July 1, 2001.

28 (d) AS 47.33.550(a), as amended by sec. 12 of this Act, applies to an individual
29 employed as an administrator of an assisted living home on or after July 1, 2001, except that
30 the offenses described in AS 47.33.550(a)(2)(D) include offenses committed before, on, or
31 after July 1, 2001.

1 * Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION: REGULATIONS. Notwithstanding sec. 19 of this Act, the
4 Department of Administration and the Department of Health and Social Services may
5 immediately proceed to adopt regulations necessary to implement the changes made by this
6 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
7 before July 1, 2001.

8 * Sec. 18. Section 17 of this Act takes effect immediately under AS 01.10.070(c).

9 * Sec. 19. Except as provided in sec. 18 of this Act, this Act takes effect July 1, 2001.

22-LS0087/L
Lauterbach
3/14/01

CS FOR HOUSE BILL NO. 124()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting nursing facilities and assisted living homes from employing or
2 allowing access by persons with certain criminal backgrounds, with exceptions; relating
3 to assisted living homes and to liability for acts or omissions in the licensing, monitoring,
4 or supervision of assisted living homes; and providing for an effective date."

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

6 * Section 1. AS 18.20.302(c) is amended to read:

7 (c) A nursing facility may not hire or retain an employee or allow a person
8 who is 16 years of age or older to have regular access to the residents of a nursing
9 home, other than as a personal visitor to a resident of the home, if the employee
10 or person [WHO] has been convicted

11 (1) of an offense in which the victim was a resident of a nursing
12 facility or assisted living home at the time of the offense; in this paragraph,
13 "assisted living home" means an entity required to be licensed under AS 47.33 or
14 an entity located outside the state that would be required to be licensed under

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AS 47.33 if it were located inside the state;

(2) of an unclassified felony, a class A felony, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, an unclassified felony or class A felony;

(3) under AS 11.51.200 or 11.51.210 or of a criminal offense in another jurisdiction with elements substantially similar to the elements of an offense under AS 11.51.200 or 11.51.210;

(4) within the previous 10 years, of a class B felony or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class B felony;

but defined in REGULATION

(5) within the previous five years, of a class C felony, a class A misdemeanor, or an offense under the laws of another jurisdiction that would have been, if it had been committed in this state at that time, a class C felony or class A misdemeanor; or

(6) of an offense listed in the department's regulations as being an offense for which a person should be prohibited access to a nursing facility [COVERED BY THIS SECTION].

* Sec. 2. AS 47.33.010(a) is amended to read:

(a) Except as provided in (b) of this section, this chapter applies to residential facilities operated in the state that serve three or more adults who are not related to the owner of the facility by blood or marriage and to residential facilities in the state that receive state or federal payment for services, regardless of the number of adults that the facility serves. The department shall consider a facility as a residential facility if the facility [BY]

(1) provides [PROVIDING] housing and food service to its residents;
and

(2) provides [PROVIDING] or obtains [OBTAINING], or offers [OFFERING] to provide or obtain, for its residents

(A) assistance with the activities of daily living;

(B) personal assistance; or

(C) a combination of services under (A) and (B) of this

1 paragraph.

2 * Sec. 3. AS 47.33.100 is amended to read:

3 Sec. 47.33.100. Criminal background check [FOR EMPLOYEES]. (a)

4 An assisted living home may not employ, contract with, use the services of, or allow
5 to reside in the home an individual, including an administrator, employee,
6 contractor, regular volunteer, care provider, or family member living in the
7 home [IN A PAID POSITION THAT THE APPLICABLE LICENSING AGENCY
8 HAS DETERMINED IS COVERED BY THIS SECTION, ACCORDING TO ITS
9 REGULATIONS], unless the individual, before beginning employment, work,
10 service, or residence in the home,

11 (1) provides to the home a sworn statement as to whether the
12 individual has been convicted of an offense described in (c) of this section; [AND]

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

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

18 (b) Within 30 days after employing, contracting with, or using the services
19 of an individual or allowing an individual to reside in the home [AN
20 INDIVIDUAL IN A PAID POSITION], an assisted living home shall submit to the
21 Department of Public Safety the fingerprints obtained under (a)(3) of this section. The
22 Department of Public Safety shall submit the fingerprints to the Federal Bureau of
23 Investigation for a national criminal history record check and shall provide the
24 results to the applicable licensing agency. When the results are received, the
25 applicable licensing agency [DEPARTMENT] shall advise the home of

26 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
27 CHECK WAS COMPLETED; AND

28 (2)] whether the check shows that the individual has committed an
29 offense described in (c) of this section.

30 (c) An assisted living home may not employ, contract with, use the services
31 of, or allow to reside in the home an individual [HIRE OR RETAIN AN

1 EMPLOYEE] who has been convicted

2 (1) of an offense in which the victim was a resident of a nursing
3 facility or assisted living home at the time of the offense; in this paragraph,

4 (A) "assisted living home" means an entity required to be
5 licensed under this chapter or an entity located outside the state that
6 would be required to be licensed under this chapter if it were located in
7 the state;

8 (B) "nursing facility" has the meaning given in
9 AS 18.20.390;

10 (2) of an unclassified felony, a class A felony, or an offense under
11 the laws of another jurisdiction that would have been, if it had been committed in
12 this state at that time, an unclassified felony or class A felony;

13 (3) under AS 11.51.200 or 11.51.210 or of a criminal offense in
14 another jurisdiction with elements substantially similar to the elements of an
15 offense under AS 11.51.200 or 11.51.210;

16 (4) within the previous 10 years, of a class B felony or an offense
17 under the laws of another jurisdiction that would have been, if it had been
18 committed in this state at that time, a class B felony;

19 (5) within the previous five years, of a class C felony, a class A
20 misdemeanor, or an offense under the laws of another jurisdiction that would
21 have been, if it had been committed in this state at that time, a class C felony or
22 class A misdemeanor; or

23 (6) of an offense listed in the regulations of the applicable licensing
24 agency as being an offense for which a person should be prohibited access to an
25 assisted living home; in this paragraph, "assisted living home" has the meaning
26 given in (1)(A) of this subsection [COVERED BY THIS SECTION].

27 * Sec. 4. AS 47.33.100 is amended by adding a new subsection to read:

28 (d) This section does not apply to

29 (1) an individual who is a resident of the assisted living home and is
30 receiving residential services from the home under a contract made under this chapter;

31 (2) an individual who is providing services to a resident as an

1 employee of a care-providing entity that is not affiliated with the assisted living home;
2 (3) an individual residing in the assisted living home who is under 16
3 years of age;

4 (4) an individual who occasionally volunteers in an assisted living
5 home and who is supervised by and performs these volunteer services in close
6 physical proximity to the staff of the assisted living home;

7 (5) an individual who is not a care provider and who is

8 (A) visiting the home for less than 14 days in a calendar year;

9 and

10 (B) in the close physical proximity of the staff of the assisted
11 living home while visiting;

12 (6) a contractor who does not

13 (A) provide services directly to one or more residents; and

14 (B) have unsupervised access to a part of the home where
15 services are directly provided to residents.

16 * Sec. 5. AS 47.33.300(a) is amended to read:

17 (a) Subject to (c) of this section, a resident of an assisted living home has the
18 right to

19 (1) live in a safe and sanitary environment;

20 (2) be treated with consideration and respect for personal dignity,
21 individuality, and the need for privacy, including privacy in

22 (A) a medical examination or health-related consultation;

23 (B) the resident's room or portion of a room;

24 (C) bathing and toileting, except for any assistance in those
25 activities that is specified in the resident's assisted living plan; and

26 (D) the maintenance of personal possessions and the right to
27 keep at least one cabinet or drawer locked;

28 (3) possess and use personal clothing and other personal property,
29 unless the home can demonstrate that the possession or use of certain personal
30 property would be unsafe or an infringement of the rights of other residents;

31 (4) engage in private communications, including

- 1 (A) receiving and sending unopened correspondence;
- 2 (B) having access to a telephone, or having a private telephone
- 3 at the resident's own expense; and
- 4 (C) visiting with persons of the resident's choice, subject to
- 5 visiting hours established by the home;
- 6 (5) close the door of the resident's room at any time, including during
- 7 visits in the room with guests or other residents;
- 8 (6) at the resident's own expense unless otherwise provided in the
- 9 residential services contract, participate in and benefit from community services and
- 10 activities to achieve the highest possible level of independence, autonomy, and
- 11 interaction with the community;
- 12 (7) manage the resident's own money;
- 13 (8) participate in the development of the resident's assisted living plan;
- 14 (9) share a room with a spouse if both are residents of the home;
- 15 (10) have a reasonable opportunity to exercise and to go outdoors at
- 16 regular and frequent intervals, when weather permits;
- 17 (11) exercise civil and religious liberties;
- 18 (12) have access to adequate and appropriate health care and health
- 19 care providers of the resident's own choosing, consistent with established and
- 20 recognized standards within the community;
- 21 (13) self-administer the resident's own medications, unless specifically
- 22 provided otherwise in the resident's assisted living plan;
- 23 (14) receive meals that are consistent with religious or health-related
- 24 restrictions;
- 25 (15) receive the prior notice of relocation of the home or the home's
- 26 intent to terminate the residential services contract of the resident required by
- 27 AS 47.33.080, [AND] 47.33.360, and 47.33.370 [RESPECTIVELY];
- 28 (16) present to the home grievances and recommendations for change
- 29 in the policies, procedures, or services of the home;
- 30 (17) at the resident's own expense unless otherwise provided in the
- 31 residential services contract, have access to and participate in advocacy or special

1 interest groups;

2 (18) at the resident's own expense unless otherwise provided in the
3 residential services contract, intervene or participate in, or refrain from participating
4 in, adjudicatory proceedings held under this chapter, unless provided otherwise by
5 other law; and

6 (19) reasonable access to home files relating to the resident, subject to
7 the constitutional right of privacy of other residents of the home.

8 * **Sec. 6.** AS 47.33.360(a) is amended to read:

9 (a) An assisted living home may not terminate a residential services contract
10 with a resident of the home against the resident's will, except as provided in
11 AS 47.33.370 or unless

12 (1) the resident engages [FOR MEDICAL REASONS;

13 (2) FOR ENGAGING] in a documented pattern of conduct that is
14 harmful to the resident, other residents, or staff of the home;

15 (2) the resident violates [(3) FOR VIOLATION OF] the terms of the
16 residential services contract, including failure to pay costs incurred under the contract;

17 (3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS
18 ORDERED BY THE RESIDENT'S PHYSICIAN;

19 (5) WHEN] the home is closing; or

20 (4) [(6) WHEN] the home can no longer provide or arrange for
21 services in accordance with the resident's needs and the resident's assisted living plan.

22 * **Sec. 7.** AS 47.33.360(b) is amended to read:

23 (b) At least 30 days before terminating the residential services contract with a
24 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
25 provide written notice of the proposed contract termination to the resident or the
26 resident's representative [,] and to the resident's service coordinator, if any. The notice
27 must state the

28 (1) basis for the termination; and

29 (2) resident's right to contest the termination in the manner provided in
30 the contract, which must include an offer by the home to participate in a case
31 conference as described in (c) of this section.

1 * **Sec. 8.** AS 47.33.360(c) is amended to read:

2 (c) Before terminating the residential services contract with a resident under
3 [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a
4 case conference if requested by the resident or the resident's representative. The case
5 conference must include the resident, the resident's representative, if any, the resident's
6 advocate, if any, the resident's service coordinator, if any, the home administrator, and
7 appropriate care providers who may discuss the appropriateness of the contract
8 termination.

9 * **Sec. 9.** AS 47.33 is amended by adding a new section to article 3 to read:

10 **Sec. 47.33.370. Emergency involuntary termination of contract.** (a) An
11 assisted living home may terminate a residential services contract with a resident of
12 the home against the resident's will and with less than 30 days' notice if at least one of
13 the following emergency reasons exists and is supported by written documentation in
14 the resident's file in the home:

15 (1) a medical reason;

16 (2) an emergency transfer from the home is ordered by the resident's
17 physician;

18 (3) imminent danger to the resident or others in the home because the
19 home is unable to meet the resident's needs or assure the health and safety of others,
20 for purposes of this paragraph, "imminent danger to the resident or others" includes
21 imminent danger

22 (A) to the resident caused by the resident's self-destructive
23 behavior; and

24 (B) of serious physical assault by the resident;

25 (4) the intentional damage or destruction of property in excess of \$300.

26 (b) A resident's refusal or failure to take prescribed medication or otherwise
27 follow the resident's assisted living plan does not constitute a medical or other reason
28 for emergency involuntary termination of a residential services contract unless the
29 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
30 section.

31 (c) An assisted living home that proposes to terminate a residential services

1 contract for any reason listed in (a) of this section shall provide written notice of the
2 proposed contract termination within 72 hours, but not less than 24 hours, before
3 termination to the resident, the resident's representative, if any, and the resident's
4 service coordinator, if any. If the resident does not have a service coordinator, notice
5 under this subsection must also be given to adult protective services personnel of the
6 Department of Administration. An assisted living home shall request a conference
7 with the resident, the resident's representative, if any, the resident's advocate, if any,
8 and the resident's service coordinator. If the resident does not have a service
9 coordinator, adult protective services personnel assigned by the Department of
10 Administration shall be requested to participate in the conference.

11 (d) The notice provided under (c) of this section must state the following:

12 (1) the reason under (a) of this section for the proposed termination of
13 the residential services contract and the specific facts on which proposed termination
14 is based;

15 (2) the alternatives to termination of the residential contract that have
16 been attempted by the home;

17 (3) the location to which the resident will be discharged, if known;

18 (4) the date, time, and location of the conference requested under (c) of
19 this section.

20 * **Sec. 10.** AS 47.33.410 is amended by adding a new subsection to read:

21 (g) A licensing agency under (a) and (b) of this section, its officers, its
22 employees, and the state are not liable for civil damages as a result of an act or
23 omission in the licensing, monitoring, or supervision of an assisted living home under
24 this chapter. This subsection does not preclude liability for civil damages as a result
25 of gross negligence or reckless or intentional misconduct.

26 * **Sec. 11.** AS 47.33.550(a) is amended to read:

27 (a) A licensing agency may revoke an assisted living home license, deny
28 renewal of an assisted living home license, suspend operations of an assisted living
29 home, suspend the ability of an assisted living home to take in new residents, place
30 conditions on the ability of an assisted living home to take in new residents, restrict
31 the type of care that an assisted living home may provide to residents, or assess an

1 administrative fine, as the agency considers appropriate, on one or more of the
2 following grounds:

3 (1) a violation of a provision of this chapter, a regulation adopted
4 under this chapter, an order in a notice of violation issued under this chapter, or a term
5 of a license issued under this chapter;

6 (2) a criminal conviction of an administrator of an assisted living home
7 if the conviction is

8 (A) for an offense involving a resident of the home;

9 (B) a felony; [OR]

10 (C) a misdemeanor involving alcohol, a controlled substance,
11 an imitation controlled substance, or physical or sexual abuse; or

12 (D) an offense described in AS 47.33.100(c);

13 (3) obtaining, retaining, or attempting to obtain or retain a license
14 under this chapter by fraud or misrepresentation.

15 * Sec. 12. AS 47.33.550(f) is amended to read:

16 (f) If an assisted living home requests a hearing under (d) of this section, the
17 hearing shall be held within 120 [60] days after the licensing agency receives the
18 request. The department's decision following a hearing under this section is a final
19 administrative order.

20 * Sec. 13. AS 47.33.550 is amended by adding new subsections to read:

21 (j) A licensing agency may summarily suspend operations of an assisted living
22 home before a final hearing is held or during an appeal if the licensing agency finds
23 that the home poses a clear and imminent danger to the public health and safety. The
24 assisted living home is entitled to a hearing before the licensing agency to appeal the
25 summary suspension within 10 days after the order of suspension is issued. To
26 request a hearing, the assisted living home must notify the licensing agency of the
27 request within 24 hours, excluding weekends and holidays, after the order of
28 suspension was received. The assisted living home may appeal, to a court of
29 competent jurisdiction, an adverse decision of the licensing agency on an appeal of a
30 summary suspension.

31 (k) If a license is suspended or revoked under this section, the facility may not

1 be operated or maintained as an assisted living home and may not house or provide
2 assisted living services to a facility resident.

3 * **Sec. 14.** AS 47.33 is amended by adding a new section to read:

4 **Sec. 47.33.563. Court-ordered temporary administration and**
5 **receivership.** (a) If the licensing agency determines that the health or safety of the
6 residents of an assisted living home is imminently jeopardized as the result of the
7 assisted living home's failure or refusal to comply with a state or federal statute or
8 regulation or local ordinance, the licensing agency may petition the superior court for
9 an order for appointment of temporary administration to oversee the operation of the
10 assisted living home in order to ensure the health and safety of the residents of the
11 assisted living home while orderly closure of the assisted living home occurs or the
12 deficiencies necessitating temporary administration are corrected.

13 (b) The licensing agency may petition the superior court for establishment of a
14 receivership for an assisted living home if the licensing agency finds that one of the
15 following conditions exists and the owner, operator, or administrator of the home has
16 demonstrated an inability or unwillingness to take action necessary to immediately
17 correct the following alleged conditions:

18 (1) the assisted living home is operating without a license;

19 (2) the health, safety, or welfare of the residents of the assisted living
20 home is imminently jeopardized;

21 (3) the assisted living home demonstrates a pattern and practice of
22 violating state or federal statutes or regulations or local ordinances in such a way that
23 care of residents is jeopardized.

24 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** (a) AS 18.20.302(c), as amended by sec. 1 of this Act, applies to
27 persons hired or retained by a nursing home or allowed regular access to the residents of a
28 nursing home on or after July 1, 2001, except that the offenses described in AS 18.20.302(c)
29 include offenses committed before, on, or after July 1, 2001.

30 (b) AS 47.33.100, as amended by secs. 3 and 4 of this Act, applies to employment of,
31 contracting with, using the services of, and allowing the residence of an individual in an

1 assisted living home on or after July 1, 2001, except that the offenses described in
2 AS 47.33.100(c), as amended by sec. 3 of this Act, include offenses committed before, on, or
3 after July 1, 2001.

4 (c) AS 47.33.410(g), added by sec. 10 of this Act, applies to acts or omissions
5 occurring on or after July 1, 2001.

6 (d) AS 47.33.550(a), as amended by sec. 11 of this Act, applies to an individual
7 employed as an administrator of an assisted living home on or after July 1, 2001, except that
8 the offenses described in AS 47.33.550(a)(2)(D) include offenses committed before, on, or
9 after July 1, 2001.

10 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITION: REGULATIONS. Notwithstanding sec. 18 of this Act, the
13 Department of Administration and the Department of Health and Social Services may
14 immediately proceed to adopt regulations necessary to implement the changes made by this
15 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
16 before July 1, 2001.

17 * Sec. 17. Section 16 of this Act takes effect immediately under AS 01.10.070(c).

18 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2001.

22-LS0087P
Lauterbach
4/5/01

CS FOR HOUSE BILL NO. 124()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HALCRO, Hayes, Dyson, Stevens

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal background checks that must be performed by nursing
2 facilities and assisted living homes; prohibiting nursing facilities from employing
3 persons with certain criminal backgrounds; prohibiting assisted living homes from
4 employing or allowing the residence of persons with certain criminal backgrounds, with
5 exceptions; relating to liability for acts or omissions in the licensing, monitoring, or
6 supervision of assisted living homes; relating to assisted living homes and nursing
7 facilities; and providing for an effective date."

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

9 * **Section 1.** AS 18.20.302 is amended to read:

10 **Sec. 18.20.302. Criminal background check [FOR EMPLOYEES].** (a) A
11 nursing facility may not employ an individual, including an administrator [IN A
12 PAID POSITION THAT THE DEPARTMENT HAS DETERMINED IS COVERED
13 BY THIS SECTION, ACCORDING TO ITS REGULATIONS], unless the individual,

1 before beginning employment,

2 (1) provides to the facility a sworn statement as to whether the
3 individual has been convicted of an offense described in (c) of this section or of an
4 offense in which the victim was a resident of a nursing facility or assisted living
5 home at the time of the offense; in this paragraph, "assisted living home" means
6 an entity required to be licensed under AS 47.33 or an entity located outside the
7 state that would be required to be licensed under AS 47.33 if it were located
8 inside the state;

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

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

13 (b) Within 30 days after employing an individual [AN INDIVIDUAL IN A
14 PAID POSITION], a nursing facility shall submit to the Department of Public Safety
15 the fingerprints obtained under (a)(3) of this section. The Department of Public Safety
16 shall submit the fingerprints to the Federal Bureau of Investigation for a national
17 criminal history record check and shall provide the results to the Department of
18 Health and Social Services. When the results are received, the Department of
19 Health and Social Services [DEPARTMENT] shall advise the facility of

20 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
21 CHECK WAS COMPLETED; AND

22 (2)] whether the check shows that the individual has committed an
23 offense described in (c) of this section.

24 (c) A nursing facility may not employ an individual [HIRE OR RETAIN AN
25 EMPLOYEE] who has been convicted

26 (1) of an unclassified felony, a class A felony, or an offense under
27 the laws of another jurisdiction that would have been, if it had been committed in
28 this state at that time, an unclassified felony or class A felony;

29 (2) under AS 11.51.200 or 11.51.210 or of a criminal offense in
30 another jurisdiction with elements substantially similar to the elements of an
31 offense under AS 11.51.200 or 11.51.210;

1 (3) within the previous 10 years, of a class B felony or an offense
 2 under the laws of another jurisdiction that would have been, if it had been
 3 committed in this state at that time, a class B felony;

4 (4) within the previous five years, of a class C felony, an offense
 5 under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another
 6 jurisdiction that would have been, if it had been committed in this state at that
 7 time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

8 (5) of an offense listed in the department's regulations as being an
 9 offense for which an individual should be prohibited access to a nursing facility
 10 [COVERED BY THIS SECTION].

11 * **Sec. 2.** AS 18.20.302 is amended by adding a new subsection to read:

12 (d) A nursing facility administrator shall provide safeguards to ensure that
 13 contractors, volunteers, and other persons entering the nursing facility do not abuse,
 14 neglect, or exploit a resident of the facility.

15 * **Sec. 3.** AS 47.33.010(a) is amended to read:

16 (a) Except as provided in (b) of this section, this chapter applies to residential
 17 facilities operated in the state that serve three or more adults who are not related to the
 18 owner of the facility by blood or marriage and to residential facilities in the state
 19 that receive state or federal payment for services, regardless of the number of
 20 adults that the facility serves. The department shall consider a facility as a
 21 residential facility if the facility [BY]

22 (1) provides [PROVIDING] housing and food service to its residents;
 23 and

24 (2) provides [PROVIDING] or obtains [OBTAINING], or offers
 25 [OFFERING] to provide or obtain, for its residents

26 (A) assistance with the activities of daily living;

27 (B) personal assistance; or

28 (C) a combination of services under (A) and (B) of this

29 paragraph.

30 * **Sec. 4.** AS 47.33.100 is amended to read:

31 **Sec. 47.33.100. Criminal background checks [CHECK FOR**

1 **EMPLOYEES].** (a) An assisted living home may not employ or allow to reside in
2 the home an individual, including an administrator [IN A PAID POSITION THAT
3 THE APPLICABLE LICENSING AGENCY HAS DETERMINED IS COVERED
4 BY THIS SECTION, ACCORDING TO ITS REGULATIONS], unless the individual,
5 before beginning employment or residence in the home,

6 (1) provides to the home a sworn statement as to whether the
7 individual has been convicted of an offense described in (c) of this section or of an
8 offense in which the victim was a resident of a nursing facility or assisted living
9 home at the time of the offense; in this paragraph,

10 (A) "assisted living home" means an entity required to be
11 licensed under this chapter or an entity located outside the state that
12 would be required to be licensed under this chapter if it were located in
13 the state;

14 (B) "nursing facility" has the meaning given in
15 AS 18.20.390; [AND]

16 (2) provides to the home the results of a name-check criminal
17 background investigation that was completed by the Department of Public Safety no
18 more than 30 days before the individual begins employment or residence in the
19 home [IS HIRED]; and

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

21 (b) Within 30 days after employing or allowing an individual to reside in
22 the home [AN INDIVIDUAL IN A PAID POSITION], an assisted living home shall
23 submit to the Department of Public Safety the fingerprints obtained under (a)(3) of this
24 section. The Department of Public Safety shall submit the fingerprints to the Federal
25 Bureau of Investigation for a national criminal history record check and shall provide
26 the results to the applicable licensing agency. When the results are received, the
27 applicable licensing agency [DEPARTMENT] shall advise the home of

28 [(1) THE DATE ON WHICH THE FINGERPRINT BACKGROUND
29 CHECK WAS COMPLETED; AND

30 (2)] whether the check shows that the individual has committed an
31 offense described in (c) of this section.

1 (c) An assisted living home may not employ or allow to reside in the home
 2 an individual [HIRE OR RETAIN AN EMPLOYEE] who has been convicted

3 (1) of an unclassified felony, a class A felony, or an offense under
 4 the laws of another jurisdiction that would have been, if it had been committed in
 5 this state at that time, an unclassified felony or class A felony;

6 (2) under AS 11.51.200 or 11.51.210 or of a criminal offense in
 7 another jurisdiction with elements substantially similar to the elements of an
 8 offense under AS 11.51.200 or 11.51.210;

9 (3) within the previous 10 years, of a class B felony or an offense
 10 under the laws of another jurisdiction that would have been, if it had been
 11 committed in this state at that time, a class B felony;

12 (4) within the previous five years, of a class C felony, an offense
 13 under AS 11.56.840 or AS 11.61.130, or an offense under the laws of another
 14 jurisdiction that would have been, if it had been committed in this state at that
 15 time, a class C felony or an offense under AS 11.56.840 or AS 11.61.130; or

16 (5) of an offense listed in the regulations of the applicable licensing
 17 agency as being an offense for which an individual should be prohibited access to
 18 an assisted living home; in this paragraph, "assisted living home" has the
 19 meaning given in (a)(1)(A) of [COVERED BY] this section.

20 * Sec. 5. AS 47.33.100 is amended by adding new subsections to read:

21 (d) This section does not apply to an individual

22 (1) who is a resident of the assisted living home and is receiving
 23 residential services from the home under a contract made under this chapter;

24 (2) residing in the assisted living home who is under 16 years of age;

25 or

26 (3) who is not a care provider and who is

27 (A) residing in the home for less than 14 days in a calendar
 28 year; and

29 (B) in the close physical proximity of the staff of the assisted
 30 living home while visiting.

31 (e) The administrator of an assisted living home shall provide safeguards to

1 ensure that contractors, volunteers, and other persons entering the home do not abuse,
2 neglect, or exploit a resident of the home.

3 * Sec. 6. AS 47.33.300(a) is amended to read:

4 (a) Subject to (c) of this section, a resident of an assisted living home has the
5 right to

6 (1) live in a safe and sanitary environment;

7 (2) be treated with consideration and respect for personal dignity,
8 individuality, and the need for privacy, including privacy in

9 (A) a medical examination or health-related consultation;

10 (B) the resident's room or portion of a room;

11 (C) bathing and toileting, except for any assistance in those
12 activities that is specified in the resident's assisted living plan; and

13 (D) the maintenance of personal possessions and the right to
14 keep at least one cabinet or drawer locked;

15 (3) possess and use personal clothing and other personal property,
16 unless the home can demonstrate that the possession or use of certain personal
17 property would be unsafe or an infringement of the rights of other residents;

18 (4) engage in private communications, including

19 (A) receiving and sending unopened correspondence;

20 (B) having access to a telephone, or having a private telephone
21 at the resident's own expense; and

22 (C) visiting with persons of the resident's choice, subject to
23 visiting hours established by the home;

24 (5) close the door of the resident's room at any time, including during
25 visits in the room with guests or other residents;

26 (6) at the resident's own expense unless otherwise provided in the
27 residential services contract, participate in and benefit from community services and
28 activities to achieve the highest possible level of independence, autonomy, and
29 interaction with the community;

30 (7) manage the resident's own money;

31 (8) participate in the development of the resident's assisted living plan;

- 1 (9) share a room with a spouse if both are residents of the home;
- 2 (10) have a reasonable opportunity to exercise and to go outdoors at
- 3 regular and frequent intervals, when weather permits;
- 4 (11) exercise civil and religious liberties;
- 5 (12) have access to adequate and appropriate health care and health
- 6 care providers of the resident's own choosing, consistent with established and
- 7 recognized standards within the community;
- 8 (13) self-administer the resident's own medications, unless specifically
- 9 provided otherwise in the resident's assisted living plan;
- 10 (14) receive meals that are consistent with religious or health-related
- 11 restrictions;
- 12 (15) receive the prior notice of relocation of the home or the home's
- 13 intent to terminate the residential services contract of the resident required by
- 14 AS 47.33.080, [AND] 47.33.360, and 47.33.370 [RESPECTIVELY];
- 15 (16) present to the home grievances and recommendations for change
- 16 in the policies, procedures, or services of the home;
- 17 (17) at the resident's own expense unless otherwise provided in the
- 18 residential services contract, have access to and participate in advocacy or special
- 19 interest groups;
- 20 (18) at the resident's own expense unless otherwise provided in the
- 21 residential services contract, intervene or participate in, or refrain from participating
- 22 in, adjudicatory proceedings held under this chapter, unless provided otherwise by
- 23 other law; and
- 24 (19) reasonable access to home files relating to the resident, subject to
- 25 the constitutional right of privacy of other residents of the home.

26 * **Sec. 7.** AS 47.33.360(a) is amended to read:

27 (a) An assisted living home may not terminate a residential services contract

28 with a resident of the home against the resident's will, except as provided in

29 AS 47.33.370 or unless

30 (1) the resident engages [FOR MEDICAL REASONS;

31 (2) FOR ENGAGING] in a documented pattern of conduct that is

1 harmful to the resident, other residents, or staff of the home;

2 (2) the resident violates [(3) FOR VIOLATION OF] the terms of the
3 residential services contract, including failure to pay costs incurred under the contract;

4 (3) [(4) WHEN EMERGENCY TRANSFER OUT OF THE HOME IS
5 ORDERED BY THE RESIDENT'S PHYSICIAN;

6 (5) WHEN] the home is closing; or

7 (4) [(6) WHEN] the home can no longer provide or arrange for
8 services in accordance with the resident's needs and the resident's assisted living plan.

9 * Sec. 8. AS 47.33.360(b) is amended to read:

10 (b) At least 30 days before terminating the residential services contract with a
11 resident under [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall
12 provide written notice of the proposed contract termination to the resident or the
13 resident's representative, [AND TO] the resident's service coordinator, if any, the
14 applicable licensing agency, and the long-term care ombudsman. The notice must
15 state the

16 (1) basis for the termination; and

17 (2) resident's right to contest the termination in the manner provided in
18 the contract, which must include an offer by the home to participate in a case
19 conference as described in (c) of this section.

20 * Sec. 9. AS 47.33.360(c) is amended to read:

21 (c) Before terminating the residential services contract with a resident under
22 [(a)(2), (3), (5), OR (6) OF] this section, the assisted living home shall participate in a
23 case conference if requested by the resident or the resident's representative. The case
24 conference must include the resident, the resident's representative, if any, the resident's
25 advocate, if any, the resident's service coordinator, if any, the home administrator, and
26 appropriate care providers who shall [MAY] discuss the justification for, and the
27 appropriateness of, the contract termination.

28 * Sec. 10. AS 47.33 is amended by adding a new section to article 3 to read:

29 **Sec. 47.33.370. Emergency involuntary termination of contract.** (a) An
30 assisted living home may terminate a residential services contract with a resident of
31 the home against the resident's will and with less than 30 days' notice if at least one of

1 the following emergency reasons exists and is supported by written documentation in
2 the resident's file in the home:

3 (1) a medical reason;

4 (2) an emergency transfer from the home is ordered by the resident's
5 physician;

6 (3) imminent danger to the resident or others in the home because the
7 home is unable to meet the resident's needs or assure the health and safety of others,
8 for purposes of this paragraph, "imminent danger to the resident or others" includes
9 imminent danger

10 (A) to the resident caused by the resident's self-destructive
11 behavior; and

12 (B) of serious physical assault by the resident;

13 (4) the intentional damage or destruction of property in excess of \$300.

14 (b) A resident's refusal or failure to take prescribed medication or otherwise
15 follow the resident's assisted living plan does not constitute a medical or other reason
16 for emergency involuntary termination of a residential services contract unless the
17 resident's conduct constitutes a reason for termination under (a)(3) or (4) of this
18 section.

19 (c) An assisted living home that proposes to terminate a residential services
20 contract for any reason listed in (a) of this section shall provide written notice of the
21 proposed contract termination not less than 72 hours before termination to the resident,
22 the resident's representative, if any, the resident's service coordinator, if any, the
23 applicable licensing agency, and the long-term care ombudsman. If the resident does
24 not have a service coordinator, notice under this subsection shall also be given to adult
25 protective services personnel of the Department of Administration. The notice must
26 state the following:

27 (1) the reason under (a) of this section for the proposed termination of
28 the residential services contract and the specific facts on which proposed termination
29 is based;

30 (2) the alternatives to termination of the residential contract that have
31 been attempted by the home;

1 (3) the location to which the resident will be discharged, if known;

2 (4) the date and time proposed for termination of the contract and
3 discharge of the resident;

4 (5) the resident's right to request a case conference that must be held, if
5 requested, before termination of the contract.

6 (d) After the notice is provided under (c) of this section, the assisted living
7 home shall participate in a case conference if requested by the resident, the resident's
8 representative, if any, the resident's advocate, if any, or the resident's service
9 coordinator, if any. If the resident does not have a service coordinator and a case
10 conference is requested by the resident or the resident's representative or advocate,
11 adult protective services personnel assigned by the Department of Administration shall
12 be requested by the assisted living home to participate in the conference. If the
13 request for a case conference is received before termination of the resident's contract,
14 the assisted living home may not terminate the contract until the case conference has
15 been held. A case conference requested under this subsection shall be held by the
16 assisted living home within 72 hours of the request and must include the resident, the
17 resident's representative, if any, the resident's advocate, if any, the home administrator,
18 and appropriate care providers who shall discuss the justification for, and the
19 appropriateness of, the proposed contract termination.

20 * **Sec. 11.** AS 47.33.410 is amended by adding a new subsection to read:

21 (g) A licensing agency under (a) and (b) of this section, its officers, its
22 employees, and the state are not liable for civil damages as a result of an act or
23 omission in the licensing, monitoring, or supervision of an assisted living home under
24 this chapter. This subsection does not preclude liability for civil damages as a result
25 of gross negligence or reckless or intentional misconduct.

26 * **Sec. 12.** AS 47.33.550(a) is amended to read:

27 (a) A licensing agency may revoke an assisted living home license, deny
28 renewal of an assisted living home license, suspend operations of an assisted living
29 home, suspend the ability of an assisted living home to take in new residents, place
30 conditions on the ability of an assisted living home to take in new residents, restrict
31 the type of care that an assisted living home may provide to residents, or assess an

1 administrative fine, as the agency considers appropriate, on one or more of the
2 following grounds:

3 (1) a violation of a provision of this chapter, a regulation adopted
4 under this chapter, an order in a notice of violation issued under this chapter. or a term
5 of a license issued under this chapter;

6 (2) a criminal conviction of an administrator of an assisted living home
7 if the conviction is

8 (A) for an offense involving a resident of the home;

9 (B) a felony; [OR]

10 (C) a misdemeanor involving alcohol, a controlled substance,
11 an imitation controlled substance, or physical or sexual abuse; or

12 **(D) an offense described in AS 47.33.100(c);**

13 (3) obtaining, retaining, or attempting to obtain or retain a license
14 under this chapter by fraud or misrepresentation.

15 * Sec. 13. AS 47.33.550(f) is amended to read:

16 (f) If an assisted living home requests a hearing under (d) of this section, the
17 hearing shall be held within 120 [60] days after the licensing agency receives the
18 request. The department's decision following a hearing under this section is a final
19 administrative order.

20 * Sec. 14. AS 47.33.550 is amended by adding new subsections to read:

21 (j) A licensing agency may summarily suspend operations of an assisted living
22 home before a final hearing is held or during an appeal if the licensing agency finds
23 that the home poses a clear and imminent danger to the public health and safety. The
24 assisted living home is entitled to a hearing before the licensing agency to appeal the
25 summary suspension within 10 days after the order of suspension is issued. To
26 request a hearing, the assisted living home must notify the licensing agency of the
27 request within 24 hours, excluding weekends and holidays, after the order of
28 suspension was received. The assisted living home may appeal, to a court of
29 competent jurisdiction, an adverse decision of the licensing agency on an appeal of a
30 summary suspension.

31 (k) If a license is suspended or revoked under this section, the facility may not