

## CHAPTER 87

## AN ACT

To provide for the commitment, hospitalization and care of the mentally ill; to designate the Department of Health as the Mental Health Authority of Alaska; providing penalties; providing for the repeal of certain statutes; declaring an emergency and providing for an effective date and for other purposes.

(H. B. 165)

Be it enacted by the Legislature of the Territory of Alaska:

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Section 100. **Purpose.** The purpose of this Act is to establish and provide modern procedures for the commitment, hospitalization, care and treatment of the mentally ill, and to establish a Mental Health Authority.

All rights and safeguards provided by this Act shall apply to all patients in a public or private hospital without regard to whether or not the cost of such patients' care or treatment is paid in whole or in part from Territorial funds.

Section 101. **Definitions.** When used in this Act, unless otherwise expressly stated or unless the context or subject matter requires:

(a) "Alaska" means the Territory of Alaska, or in the event Congress grants statehood, the State of Alaska.

(b) "Board" means the Board of Health created by Section 40-1-3, ACLA 1949, as amended, or its designee.

(c) "Commissioner" means a United States Commissioner acting in the capacity of an ex-officio probate judge and appointed pursuant to Section 6 of the Act of June 6, 1900 (31 Stat. 323; 48 U.S.C.A., Sec. 104), or his successor or equivalent serving in the office of probate judge in the event Alaska becomes a state.

(d) "Department" means the Department of Health, created by Section 40-1-2, ACLA 1949, as amended, or its designee.

(e) The term "designated examiner" means a licensed physician designated by the Department as specially qualified, under standards established by it for the purpose of this Act, in the diagnosis of mental illness; provided, that for areas in which no licensed physician so qualified is available, any licensed physician may be designated.

(f) "Head of a hospital" means the individual in charge of a hospital, or his designated representative, except that when the individ-

ual or his designee in charge of a hospital is not a licensed physician, authority placed in the head of a hospital by this Act (which involves in major part the exercise of medical judgment) shall be exercised by such licensed medical official of the hospital as shall be designated by the individual in charge of the hospital.

(g) "Hospital" means a public or private hospital or institution, or any part thereof, located in Alaska or in any state, equipped and otherwise qualified to provide care and treatment for the mentally ill.

(h) The term "designated hospital" means a "hospital" which has been designated and authorized by contract with the Department to provide care and treatment of the mentally ill.

(i) "Individual", as used in Sections 103, 104 and 108 of this Act, means a resident of, or a person in, Alaska.

(j) "Interested party" or "interested parties" means any interested responsible adult including but not limited to the legal guardian, spouse, parent or parents, adult children, or next of kin of an allegedly mentally ill individual or patient.

(k) "Licensed physician" means an individual licensed under the laws of Alaska to practice medicine; a medical officer of the Government of the United States while in Alaska in the performance of his official duties; or a medical officer of the Territory of Alaska; or a physician licensed under the laws of a state.

(l) "Mentally ill individual" means an individual having a psychiatric or other disease or senile changes which substantially impair

his mental health or who is mentally deficient.

(m) "Patient" means a resident of, or person in, Alaska, qualified under this Act for hospitalization as a mentally ill individual.

(n) "Peace Officer", when used in connection with cases which involve individuals who, because of mental illness, are likely to injure themselves or others if allowed to remain at liberty, includes any Territorial police officer, municipal or other local police officer, Territorial, municipal, or other local health officer, Public Health Nurse, U. S. Marshal or Deputy U. S. Marshal, or a person deputized by a Commissioner.

(o) "Resident of Alaska" means (i) a person who has been physically present and lived continuously in Alaska for one year immediately preceding his admission as a patient or immediately preceding his becoming a proposed patient, or (ii) a person who has shown an intention to make Alaska his home for an indefinite period of time and has lived in Alaska. Such intention may be evidenced by prior statements or it may be implied from facts which show that the person continues, in fact, to make Alaska his permanent home. A married woman shall be capable of establishing a residence apart from her husband, and an unemancipated minor shall take the residence of the parent or guardian with whom actually living.

(p) "State" or "States" includes all states of the United States, the District of Columbia, the Territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada.

**Section 102. Department Designated as Mental Health Authority: Powers and Duties Thereof.** The Department is hereby designated as the mental health authority of Alaska, and is hereby authorized and directed, through the Commissioner of Health or his designee, to develop and submit to the Surgeon General of the United States Public Health Service, and to administer, a complete and comprehensive program for the prevention of mental illness and the care and treatment of persons who are mentally ill, including in-patient and out-patient care and treatment of such persons, and to take such actions and undertake such obligations as may be necessary to participate in any Federal grant-in-aid program and to accept Federal or other financial aid from whatever sources for the study, examination, care and treatment of the mentally ill, and the Department, through the Commissioner of Health or his designee, is particularly authorized to take full advantage of the provisions of the Alaska Mental Health Enabling Act (P.L. 830, 84th Congress, 2nd Session, 70 Stat. 709).

Except insofar as this Act specifically confers certain powers, duties, and functions upon others, the Department, through the Commissioner of Health or his designee, shall be charged with the administration of this Act. In addition to such authority as may be conferred upon it by other sections of this Act, the Department, through the Commissioner of Health or his designee, is hereby authorized to

(a) designate, operate, and maintain hospitals and other health facilities equipped and otherwise qualified to provide in-patient and out-patient care and treatment for individuals who are mentally ill;

(b) (i) take such action as may be necessary to carry out a program for the prevention of mental illness or for the furnishing of in-patient and out-patient care or treatment for persons who are mentally ill, including the procurement of services of specialists or other persons on a contractual or other basis; (ii) provide for the hospitalization of mentally ill patients in designated hospitals; (iii) enter into arrangements with the Surgeon General of the Public Health Service for the care or treatment of such patients in hospitals of the Public Health Service in Alaska or in any state; (iv) negotiate and enter into contracts with any hospitals for the custody and care or treatment of such patients; (v) negotiate and enter into contracts, which shall incorporate safeguards consistent with the provisions of this Act and the preservation of the civil rights of the patients, with any state for the custody and care or treatment of such patient or patients previously committed from Alaska pursuant to 48 U.S.C.A. 46, et seq., and P.L. 830, 84th Congress, 2nd Session, 70 Stat. 709;

(c) prescribe the form of applications, records, reports, and medical certificates required by this Act, and the information to be contained therein;

(d) require reports from the head of a hospital concerning the care of patients;

(e) visit each hospital to review methods of care or treatment for all patients;

(f) investigate complaints made by a patient or an interested party on behalf of a patient;

(g) delegate upon mutual agreement to any officer or agency of

Alaska, or any political subdivision thereof, or any hospital designated, any of the duties and powers imposed upon it by this Act; and

(h) provide for and pay the costs of transportation of patients and of such attendants as may be needed, where transportation is necessary for the purpose of securing appropriate examinations or hospitalization of such patients, or for returning a patient discharged or placed on convalescent status from a hospital to his home or place of convalescence.

**Section 103. Authority to Receive Patients.** The head of any designated hospital which has been designated by the Department pursuant to Section 102 is authorized to receive therein for observation, diagnosis, care, and treatment any individual whose admission is applied for by one of the following means:

Any individual, including minors, may be admitted to a hospital for observation, care and treatment if necessary, upon application by the individual or by an interested party, by a peace officer, by the Department, or by the head of any institution in which the individual may be, if the application is accompanied by a certificate of a licensed physician stating that on a basis of an examination held in not more than fifteen days prior to the individual's admission, such individual is in his opinion mentally ill, or has symptoms of mental illness, and because of his illness either (i) is likely to injure himself or others if allowed to remain at liberty, or (ii) is in need of custody and care or treatment in a hospital.

**Section 104. Emergency Hospital-**

**ization.**

(a) **With medical certification and endorsement** If the certificate by a licensed physician under Section 103 states a belief that the individual is (i) likely to injure himself or others if allowed to remain at liberty, or (ii) is in need of immediate hospitalization, any interested party or peace officer shall have authority, upon endorsement of the certificate for such purpose by the Department or by a Commissioner, to take the individual into custody, apply to a designated hospital for his admission, and transport him thereto.

(b) **Without medical certification or endorsement.** Any interested party or peace officer who has good and valid reason to believe that an individual is mentally ill, and because of his illness is likely to injure himself or others if not immediately restrained, pending examination or certification by a licensed physician or pending endorsement of such certification as provided in subsection (a) of this section may take the individual into custody, and transport him to the most accessible medical facility and secure a certificate for endorsement as is required under Section 104 (a), or take such steps as may be necessary to arrange for a judicial commitment under Section 108. Arrangement for transportation herein shall be allowed as is set forth in Section 113. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for such belief.

(c) **Utilization of designated hospitals.** Nothing in this Act shall be deemed to limit the availability and utilization of designated hospitals or designated parts thereof

for other appropriate purposes; provided, however, that the use of said designated hospitals or parts thereof shall be primarily for the care and treatment of the mentally ill.

**Section 105. Newly-Admitted Patients.**

(a) The head of the designated hospital shall cause to be held a preliminary examination within a period not to exceed 48 hours after the close of the day of admission of every patient, by a designated examiner, to determine if there is a reasonable necessity existing for the patient's continued hospitalization and immediate medical attention.

(b) At the end of the 48-hour period, any patient so admitted pursuant to Section 103 and 104, shall, without need of application therefor, be discharged if a preliminary examination has not been held or if, upon examination, the designated examiner refuses or fails to certify to the head of the designated hospital that in his opinion the patient is mentally ill and either is likely to injure himself or others if allowed at liberty, or is in need of custody and care or treatment in a hospital and because of his illness lacks sufficient insight or capacity to make responsible decision therefor. All other patients shall be discharged when, in the opinion of the head of the designated hospital, there is no further need for their hospitalization. Notice of discharge shall be given to (1) the Department, and (2) the Commissioner or person responsible for the order of hospitalization, who shall have an additional 48 hours within which to make other arrangements under Section 108 or otherwise.

(c) Any patient admitted under Sections 103 and/or 104 may remain for treatment on a voluntary basis under the same conditions prescribed for patients admitted under Section 103 of this Act, with the conditions stated in Section 106 applying with respect to discharge. If a patient admitted under Section 103 or 104 elects to remain for treatment on a voluntary basis, it is the duty of the head of the designated hospital in such instance to ascertain that such patient has at the time sufficient insight or capacity to make responsible application for his own hospitalization and the head of the hospital or his designee shall certify his opinion thereto. In these instances, notice shall be given of the patient's decision to remain on a voluntary basis to the court that issued the order.

**Section 106. Right to Discharge on Application: Emergency Detention.**

(a) Any individual after 30 days following admission to a designated hospital under authority of Section 103 or any individual admitted to a designated hospital under authority of Section 104 shall be forthwith discharged therefrom upon his request or upon the request in writing of an interested party or peace officer, except that:

(i) if admitted upon his own application, his discharge may be conditioned upon his agreement;

(ii) if under eighteen years of age and admitted pursuant to Section 103, his discharge prior to becoming eighteen years of age may be conditioned upon the consent of his parent or guardian;

(iii) if the head of a designated hospital, within 48 hours from the

receipt of the request, files with any Commissioner a certification that in his opinion the discharge of the patient would be unsafe to the patient or others, the discharge may be postponed for such period not to exceed five days for the commencement of commitment proceedings pursuant to Section 108; provided, that if the Commissioner finds that because of justifiable circumstances, proceedings for judicial hospitalization cannot reasonably be instituted in such time, the discharge may be postponed for a period not to exceed fifteen days.

(b) The head of the designated hospital shall provide reasonable means and arrangements for informing patients of their right to discharge, as provided in this section and other sections of this Act, and for assisting them in making and presenting requests for discharge under this section.

**Section 107. Petition for Judicial Determination.** Any patient hospitalized pursuant to Sections 103, 104, or 108 shall be entitled to have the need for his continued hospitalization determined or redetermined on his own petition or that of an interested party, or peace officer, to the Commissioner. Upon receipt of the petition, the Commissioner shall conduct proceedings in accordance with Section 108, except that such proceedings shall not be required to be conducted if (a) the petition is filed sooner than six months after the issuance of an order of hospitalization under Section 108; or (b) sooner than one year after the filing of a previous petition under this section; or (c) if the petition is filed sooner than thirty days after the voluntary application and admission of a patient.

**Section 108. Hospitalization Upon Court Order; Judicial Procedure; Not an Adjudication of Legal Incompetency.**

(a) An interested party, a licensed physician, a peace officer or the head of an institution in which the individual may be hospitalized, or the Department may, by filing an application with a Commissioner, commence proceedings for the hospitalization of an individual by judicial commitment. Any such application shall be accompanied by a certificate of a licensed physician, stating that he has examined the individual within the preceding fifteen (15) days and is of the opinion that the individual is mentally ill and should be hospitalized, or by a written statement by the applicant that the individual has refused to submit to examination by a licensed physician; provided, that the Department may authorize a Commissioner to accept a written statement by the applicant that no licensed physician is reasonably available, in lieu of any certificate required by this Section.

(b) Upon receipt of an application, the Commissioner shall give notice thereof to the proposed patient, to his legal guardian, if any, and to one or more of the other interested parties, if any. If, however, the Commissioner has reason to believe that notice would be likely to be injurious to the proposed patient, notice to him may be omitted.

(c) As soon as practicable after notice of the commencement of proceedings is given, or it is determined that notice to the proposed patient should be omitted, the Commissioner shall appoint one or more designated examiners to examine the proposed patient and

report to the Commissioner his or their findings as to the mental condition of the patient and his need for care or treatment in a hospital. The Commissioner may consider the choice of the patient in appointing an examiner. If the designated examiner reports that the proposed patient refuses to submit to an examination, the Commissioner shall give notice to the proposed patient and order him to submit to such examination. Such an order may direct that the proposed patient be taken into custody and detained pending a hearing.

(d) The examination shall be held at a hospital or other medical facility, at the home of the proposed patient, or other suitable place, whether within or without Alaska, not likely to have a harmful effect on his health.

(e) If the report of the designated examiner or examiners states that the proposed patient is not mentally ill, the Commissioner shall, without taking any further action, terminate the proceedings and dismiss the application. Otherwise, he shall forthwith fix a date for, and give notice of, a hearing to be held not more than fifteen days from receipt of the report of the designated examiner.

(f) The proposed patient, the applicant, the legal guardian and other interested parties, as determined by the Commissioner, shall be given notice and afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses, and the Commissioner may, in his discretion, receive the testimony of any other person. The proposed patient shall not be required to be present, and the Commissioner is authorized to exclude all persons not necessary for the conduct of the proceedings.

The hearings shall be conducted as informally as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The entire proceeding may be recorded stenographically or with the use of mechanical recording devices as the Commissioner may approve. The Commissioner shall, in any event, prepare and maintain a summary record of all relevant and material evidence which may be offered concerning the mental condition and the residence of the proposed patient and may relax the rules of evidence to the extent of receiving affidavits, certificates of licensed physicians and other writings of similar apparent authenticity and reliability. An opportunity to be represented by counsel or advisor shall be afforded to every proposed patient, and if neither he nor others provide counsel or advisor the Commissioner shall appoint such. If, not less than two days prior to the date fixed for the hearing, the proposed patient or his counsel or advisor, files a written request with the Commissioner therefor, the Commissioner shall summon and impanel a jury of six adult residents of the Precinct in which the Commissioner officiates, preferably from the United States District Court's jury list or the last voters' list, if available, to hear and consider the evidence concerning the mental condition and residence of the proposed patient.

(g) If, upon completion of the hearing and consideration of the record, the Commissioner, or in the event the right to a jury has been exercised pursuant to subsection (f) hereof, the jury, finds the proposed patient is

(i) mentally ill; and

(ii) (A) because of his illness is likely to injure himself or others if allowed to remain at liberty; or (B) is in need of immediate care or treatment in a hospital, and because of his illness, lacks sufficient insight or capacity to make responsible decisions concerning hospitalization,

the Commissioner shall order his hospitalization for an indeterminate period; otherwise, he shall terminate the proceedings and dismiss the application. If the Commissioner orders the hospitalization of the proposed patient, a finding shall be made as to the residence of the patient. A copy of such finding and the summary of proceedings shall accompany the patient to the hospital.

(h) The order of hospitalization shall be directed to the Department and it shall be the responsibility of the Department to assure the carrying out of such order.

(i) Notwithstanding any other provision of this Act, except for Section 119, commitment proceedings under this section shall not be commenced with respect to a patient admitted pursuant to Section 103 unless release of the patient has been requested according to the provisions of Section 106.

(j) An order for hospitalization pursuant to this section shall not be deemed to constitute a judicial determination of legal incompetency, except to the extent provided under Section 115(b). Proceedings for a determination of legal incompetency of, and the appointment of a guardian for, any patient who has been ordered hospitalized may be instituted prior, concurrently with, or following the completion of proceedings under this section, where the circumstances

of the case so require and the condition of the patient permits.

**Section 109. Commitment or Transfer to an Agency of the United States; Continuing Jurisdiction of Commissioner.**

(a) If, at any time before or during the commitment proceeding conducted pursuant to Section 108, the Commissioner receives a certificate from an agency of the United States showing that accommodations are available and that the individual is eligible for care, he may, if the individual is found to be in need of hospitalization, order the individual to be placed in the custody of such agency for hospitalization. When any such individual is admitted, pursuant to the order of a Commissioner, to any hospital or institution operated by any agency of the United States within or without Alaska, he shall be subject to the rules and regulations of such agency. The head of any hospital or institution operated by such agency and in which the individual is so hospitalized shall, with respect to such individual, be vested with the same powers as the Department or the head of a hospital, concerning the detention, transfer, custody, conditional release, or discharge of patients; provided, however, jurisdiction shall be retained in the Commissioner to inquire at any time into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

(b) An order of a court of competent jurisdiction of any state to any agency of the United States, authorizing hospitalization of any individual, shall have the same force

and effect as to the individual while in Alaska as in the jurisdiction in which the court entering the order is situated; and the courts of the jurisdiction issuing the order shall be deemed to have retained jurisdiction of the individual so hospitalized for the purpose of inquiring into his mental condition and of determining the necessity for continuance of his hospitalization, as is provided in subsection (a) of this section with respect to individuals ordered hospitalized by the Commissioner. Consent is hereby given to the application of the law of the state in which is located the court issuing the order for hospitalization, with respect to the authority of the head of any hospital or institution operated in Alaska by any agency of the United States to retain custody, transfer, conditionally release or discharge the individual hospitalized. Nothing in this section shall prevent the Territory from entering into a contract with any Federal agency for the custody and care or treatment of persons coming under the jurisdiction or assistance of the Federal agency.

#### Section 110. Detention Under Special Circumstances.

(a) Pending his removal to a hospital, a patient taken into custody under Section 104 or 108 or ordered to be hospitalized pursuant to Section 108, or pending the hearing under Section 108, may be detained in a medical facility, his home, a licensed foster home, or any other suitable facility under such reasonable conditions as the Department may fix, but he shall not, except because of and during an extreme emergency, be detained in a non-medical facility used for the detention of individuals charged with or convicted of penal offenses.

The Department shall take such reasonable measures, including provision for medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

(b) Notwithstanding any other provision of this Act, no patient shall be released or discharged from custody during the pendency of proceedings for judicial hospitalization if, in the opinion of the head of the hospital, it would be unsafe to the patient or others, unless the Commissioner, upon the application of the patient or of an interested party, determines justifiable reason exists for release or discharge.

(c) No patient held on order of a court or judge in any action or proceeding arising out of a criminal offense shall be discharged except after 15 days written notice to such court or judge.

**Section 111. Writ of Habeas Corpus.** Any individual detained pursuant to this Act shall be entitled to a writ of habeas corpus upon proper petition by himself or interested party to any court generally empowered to issue the writ of habeas corpus in the jurisdiction in which he is detained.

**Section 112. Appeal From Decision or Order of United States Commissioner.** Any person adjudged to be mentally ill may appeal to the District Court for the District of Alaska or, in the event of statehood, to the appropriate court, from any decision or order of a Commissioner pursuant to this Act, within five days of the date of the decision or order, and said court shall hear the case either de novo without jury or upon the record sent up from the Commissioner, at the option of the District Judge.

While such appeal is pending, the decision or order of the Commissioner shall, unless otherwise directed by the court, be given full force and effect as if no appeal had been taken. Any appeal from a final or interlocutory decision of the District Court in a proceeding under this Act shall be governed by the law applicable generally to appeals from the District Court for the District of Alaska.

**Section 113. Transportation.** Whenever an individual is about to be hospitalized under the provisions of this Act, the Department shall arrange, upon the request of a person having a proper interest in the individual's hospitalization, and is authorized to pay for the individual's transportation to the designated hospital, with appropriate medical or nursing attendants and by such available means as may be appropriate and suitable; provided, that the Department is authorized to pay return transportation of an individual and appropriate medical and nursing attendants after a finding within the provisions of this Act that such individual is not mentally ill. Whenever practicable, the individual to be hospitalized shall be permitted to be accompanied by one or more of his relatives or friends, who shall travel at their own expense. When necessary, the Department shall arrange for a peace officer or other suitable person to accompany the individual.

**Section 114. Notice of Hospitalization.** Whenever a patient has been admitted to a hospital pursuant to this Act other than upon his own application, the head of the designated hospital shall notify immediately the patient's legal guardian, parent or parents, spouse, or next-of-kin, if known. The head of the designated hospital admitting an

individual under any provision of this Act, or discharging an individual so admitted, shall forthwith make a report thereof to the appropriate Commissioner, if any, and to the Department.

**Section 115. Right to Humane Care and Treatment; Consent to Surgery, Certain Psychiatric Therapies and Autopsies.**

(a) The Department shall be guided by the principles of humane care and treatment, and, to the extent that facilities, equipment and personnel are available, shall provide medical care or treatment in accordance with the highest standards of accepted medical practice.

(b) Consent to surgery, such psychiatric therapies as the Department shall determine, and autopsies must be obtained for any patient prior to the undertaking of any such surgery, certain psychiatric therapies or autopsies from any one of the following persons: spouse, guardian, either parent or oldest adult child; provided, however, that if no such relative or guardian be found in Alaska within a reasonable time, or in the case of an emergency, the Commissioner of Health or his designee, upon being notified of all the pertinent facts pertaining to such medical action, may give such consent in lieu of any guardian or relative; provided, further, that when the head of the hospital is of the opinion that the patient has insight or capacity to make a responsible decision that the patient's consent shall be secured prior to any such surgery or psychiatric therapies, and such consent shall be determinative, and no further consent or denial thereof from any guardian or relative shall be necessary. Any person giving such consent, or any person who acts

after such consent has been given and is duly authorized to perform the act undertaken by him, shall not be liable civilly or criminally if said act was done by him in his official capacity or in the capacity set forth above.

**Section 116. Mechanical Restraints.** Mechanical restraint shall not be applied to a patient unless determined by the head of the hospital or his designee to be required by the medical needs of the patient. Every use of a mechanical restraint and reasons therefor shall be made a part of the clinical record of the patient over the signature of the head of the hospital or his designee.

**Section 117. Right to Communicate and Receive Visitors; Exercise of Civil Rights.**

(a) Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient shall be entitled to

(i) communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(ii) receive visitors; and

(iii) exercise all civil rights, except as modified under Section 115(b), including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized by this section on

the right of communication, every patient shall be entitled to communicate by sealed mail with the Department, Governor, and with the Commissioner, if any, who ordered his hospitalization.

(c) Any limitations imposed by the head of a hospital on the exercise of these rights by a patient and the reasons for such limitations shall be made a part of the clinical record of the patient.

**Section 118. Transfer of Patients Generally.**

(a) The Department may authorize the transfer of a patient from one hospital to another within or without Alaska, if it determines that it would be consistent with the medical needs of the patient to do so. In all such transfers, due consideration shall be given to the relationship of the patient to his family, legal guardian, or friends, so as to maintain such relationships and encourage visits beneficial to the patient.

(b) Upon receipt by the Department of a certificate from an agency of the United States that accommodations are available for the care of any individual theretofore hospitalized in any hospital for care or treatment of the mentally ill, and that such individual is eligible for care or treatment in a hospital or institution of such agency, the Department may authorize his hospitalization by such agency of the United States. Any person hospitalized as provided in this Section by any agency of the United States, shall be deemed to be hospitalized by that agency pursuant to the original order of hospitalization.

(c) Whenever a patient is moved from one hospital to another, written notice thereof shall be

given to the appropriate Commissioner, if any, his legal guardian, if any, parent or parents, and spouse, or, if none be known, to any other interested party.

**Section 119. Return of Non-Resident Patients; Authority to Enter into Compacts.**

(a) The admission papers of any person hospitalized pursuant to this Act shall include a statement as to his residence. The Department is authorized to return any patient who is not a resident of Alaska to the state in which he has residence. If the state in which he has residence does not consent to accept him as a patient, the Department may order the discharge of the patient; provided, that nothing herein shall prevent the Department from initiating proceedings for judicial hospitalization with respect to such patient, pursuant to Section 108 of this Act, if the patient is certified by the head of a hospital to be mentally ill and (i) dangerous to himself or to others if allowed at liberty, or (ii) in need of immediate custody and care or treatment, and lacking sufficient insight and capacity to make responsible decisions concerning hospitalization.

(b) For the purpose of facilitating the return of such non-resident patients, the Department may enter into a reciprocal agreement or compact with any state, providing for the prompt return, under appropriate supervision, of residents of such state who are mentally ill. Mentally ill residents of Alaska who have been hospitalized outside Alaska may be admitted, with the approval of the Department, to a hospital designated by the Department.

(c) The Department is hereby authorized to enter into reciprocal

agreements or contracts with any state, providing for custody and care or treatment of mentally ill residents of Alaska by such state, and for the custody and care or treatment of mentally ill residents of such state by Alaska, each on a reimbursable basis.

(d) In taking action under subsections (a) and (b) of this section, due consideration shall be given to the relationship of the patient to his family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient.

**Section 120. Contract Care Outside Alaska; Rights Under State Law.** Nothing in this Act shall be deemed to alter or impair the application or availability to any patient, while hospitalized in a state outside Alaska, pursuant to contractual arrangements under this Act, of any rights, remedies, or protective safeguards provided by the laws of Alaska or of such state.

**Section 121. Release on Convalescent Status.** The head of a designated hospital may release any patient on convalescent status when he believes that such status is in the best interest of the patient. Convalescent status shall, so far as practicable, include provisions for continuing responsibility to and by the hospital, and for a plan of treatment on an out-patient basis or under the direction of a licensed physician. Periodically, at intervals consistent with good medical practice and with then-existing circumstances, the head of the designated hospital shall re-examine the facts relating to the condition of the patient on a convalescent status and, if he determines that hospitalization is no longer necessary, he shall discharge the patient.

Section 122. **Readmission.** At any time prior to such discharge the head of the designated hospital from which the patient is given convalescent status may readmit the patient. If there is reason to believe that it is to the best interest of the patient to be rehospitalized, the Department or the head of the designated hospital may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, shall, upon the endorsement by any Commissioner, authorize any peace officer to take the patient into custody and transport him to the designated hospital, or if the order is issued by the Department to a hospital designated by it.

Section 123. **Discharge Upon Medical Review.** The head of a designated hospital shall cause the condition of every patient to be reviewed as frequently as is consistent with good medical practice, and whenever the head of a designated hospital determines that the conditions justifying hospitalization no longer exist, the patient shall be discharged and the Department so notified. If the patient was admitted on other than his own application, notice of such discharge shall also be given to any one of the following persons: the patient's legal guardian, parent or parents, spouse, or next-of-kin, if known, and, if the patient was hospitalized by judicial process, to the Commissioner who ordered him to be committed.

Section 124. **Provision for Personal Needs of a Patient on Discharge or Placement on Convalescent Status.** The Department shall make such arrangements as may be necessary to insure:

(a) That no patient is discharged

or placed on convalescent status from a designated hospital without suitable clothing; and

(b) That any indigent patient discharged or placed on convalescent status is furnished suitable transportation to his permanent residence in Alaska or other suitable place at the discretion of the Department, and a reasonable amount of money to meet his immediate needs.

Section 125. **Disposition of Personal Effects and Unclaimed Funds of Patients.** All articles of personal property remaining in the custody of the head of the designated hospital and belonging to a patient who has died prior to his release on convalescent status or discharge, or who has departed therefrom without authority, if unclaimed by such patient, or his legal heirs or representatives, within the period of one year after the decease of such patient or the date of his leaving the hospital, shall be disposed of in such manner as the Department may prescribe, and any proceeds resulting therefrom shall be covered into the general fund without the necessity of legal action. Any monies remaining to the credit of such patient, if unclaimed by his legal heirs or representatives or by such patient within the period of one year after the decease of such patient or the date of his leaving the hospital, shall be covered into the general fund without the necessity of legal action.

Section 126. **Disposition of Funds Subject to Claim After Death or Departure Without Authority.** The Department shall cause diligent inquiry to be made in every instance after departure without authority or death of any patient, to ascertain his whereabouts or that of his legal

heirs or representatives, and shall turn over to the proper party or parties any monies or articles of personal property in the custody of the head of the hospital to the credit of such person. Claims to such monies or articles of personal property, including any claims by Alaska, may be presented to the Department at any time. Claims by Alaska shall have priority, as set forth in Section 128. In the event a claim other than by Alaska is established by clear and convincing evidence more than one year after the death or departure without authority of a patient, it shall be certified to the Alaska Legislature for consideration, which may, in its discretion pay the same.

**Section 127. Disclosure of Information.**

(a) All certificates, applications, records and reports, other than an order of a court or Commissioner made for the purposes of this Act, and directly or indirectly identifying a patient or former patient or an individual whose hospitalization has been sought under this Act, together with clinical information relating to such patients, shall be kept confidential and shall not be disclosed by any person except insofar as

(i) the individual identified, or his legal guardian, if any (or if he be a minor, his parent or legal guardian), shall consent; or

(ii) disclosure may be necessary to carry out any of the provisions of this Act; or

(iii) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information concerning current medical condition to the members of the family of a patient or to his relatives or friends.

(c) Any person violating any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$500.00 or imprisonment for not more than one year, or both.

**Section 128. Liability for Expense of Hospitalization and Transportation; Lien; Claim Against Estate.**

(a) It shall be the duty of a patient, or his legal representative acting in a representative capacity, spouse, parents, adult children, in that sequence, to pay or contribute to the payment of the charges for the care or treatment of such patient when hospitalized pursuant to the provisions of this Act, in such manner and proportion as the Department may find not detrimental to the patient's rehabilitation and to be within their ability to pay; provided, that such charges shall in no case exceed the actual cost of such care or treatment as may be determined by the Department. The order of the Department relating to the payment of charges by persons other than the patient, or his legal representative, shall be prospective in effect and shall relate only to charges to be incurred subsequent to the order; provided, however, that if any of the above-named persons intentionally conceal their ability to pay, such persons shall be ordered to pay to the extent of their ability the charges accruing during the period of such concealment. The Department may cause to be made such investigations as may be necessary to determine such ability

to pay, and may require sworn statements of income by such persons.

(b) As used in subsection (a), the term "Actual cost of such care and treatment" shall mean either the rate provided for by any contract entered into pursuant to this Act, or, in the absence of such contract, a per diem rate fixed by the Department, and shall include expenses of transportation incidental to examination or hospitalization.

(c) The amount of liability for such care and treatment determined by the Department pursuant to subsection (a) of this section not paid for by the patient or by someone in his behalf, shall constitute a lien in favor of Alaska against all property of the patient. Said unpaid amount of liability shall also be an indebtedness owing Alaska by the patient or those liable for his care and shall be a first, prior and preferred claim against the estate of such beneficiary or person liable for his care, after death, and after expenses of administration and all just claims for medical care and burial expenses have been paid. Said claim based upon information submitted by the Department, shall be prepared and filed by the Attorney General's office.

(d) The Department is authorized to accept from any person any monies or property for the care or treatment of any patient or for other purposes, even if such payment is not required by an order of the Department under subsection (a), so long as the total payments received under subsection (a) and this subsection do not exceed the actual cost of care or treatment.

(e) All monies paid by the patient or on his behalf, pursuant to

this section, shall be covered into the Treasury of Alaska to the credit of the Department, for expenditure by the Department for the administration of this Act.

**Section 129. Fees and Expenses For Judicial Proceedings.** A Commissioner, the witnesses, and the jurymen, if any, in proceedings for judicial hospitalization shall be entitled to such fees, compensation and mileage as shall be established by law. All compensation, mileage, fees, and all other expenses arising from judicial hospitalization proceedings shall be audited and allowed by the district judge of the division in which said proceedings are held, and when so audited and allowed shall be paid by the clerk of the court in said division in the same manner and from the same fund as he pays the other incidental expenses of the court. To the extent that services of a United States Marshal or Deputy Marshal are utilized to carry out the provisions of this Act, such marshal or deputy marshal shall be entitled to fees and actual expenses from the same source and in the same manner as for their other official duties.

**Section 130. Department May Promulgate and Issue Regulations.** The Department is hereby granted authority to promulgate and issue appropriate regulations to implement the provisions of this Act and to cover matters not expressly touched upon or anticipated but necessarily implied by the provisions hereof. All such regulations shall be filed with the Secretary of Alaska, and when so filed shall have the force and effect of law.

**Section 131. Commitments Previously Ordered Under Title 48 U.S.C.A. 46, Et Seq., and P.L. 830,**

**84th Congress, 2nd Session.** All commitments previously ordered under Title 48 U.S.C.A. 46, et seq., and P.L. 830, 84th Congress, 2nd Session, or under any laws of the Territory, shall remain fully effective unless the status of any of the same are altered or otherwise changed pursuant to the provisions of this Act.

**Section 132. Transfer of Patients Committed Pursuant to Title 48 U.S.C.A. 46, Et Seq., and P.L. 830, 84th Congress, 2nd Session.** Any Mental patient committed from Alaska pursuant to Title 48 U.S.C.A. 46, et seq., and P.L. 830, 84th Congress, 2nd Session, may be transferred anytime after February 22, 1957, to any designated hospital or other facility as shall be determined by the Department and to the same extent and in the same manner as a patient can be transferred who is committed pursuant to this Act.

**Section 133. Criminal Penalties.** Whoever intentionally causes, or attempts to cause, or conspires with any other person to cause any individual to be committed to any hospital under this Act, knowing or having reasonable grounds for believing that such individual is not mentally ill, and in need of hospitalization, shall be fined a sum not exceeding \$10,000.00 or imprisoned not more than ten years,

or both such fine and imprisonment. The court in its discretion may order all or any part of an imposed fine to be paid over to the injured individual.

**Section 134. Federal Statutes Superseded by Proclamation of the Governor.** Pursuant to Title III, Section 301, of Public Law 830, 84th Congress, 2nd Session, the governor of Alaska may, by proclamation, declare to be superseded by this Act, all of the laws cited in said Section 301 of Public Law 830, 84th Congress, 2nd Session, and that the same shall be repealed as of the effective date specified in said proclamation.

**Section 135. Repealing Chapter 175, SLA 1955, and Chapter 62, SLA 1951.** Chapter 175, SLA 1955, and Chapter 62, SLA 1951 are hereby repealed.

**Section 136. Severability.** The fact that any Section, subsection, sentence, clause or phrase of this Act is declared invalid for any reason shall not affect the remaining portions of this Act.

**Section 137. Declaration of an Emergency and Setting an Effective Date.** An emergency is hereby declared to exist and this Act shall be in full force and effect as of the effective date specified in the Governor's proclamation.

Approved March 26, 1957

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## CHAPTER 88

### AN ACT

**Amending Section 37-2-8, (12), ACLA 1949, as amended, relative to the authority of the Territorial Board of Education to discontinue the**