

STATE OF ALASKA

EXECUTIVE ORDER NO. 102

2001



1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance
2 with AS 24.08.210, I order the following:

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 FINDINGS. As governor, I find that the transfer of the office of long term care
6 ombudsman from the Alaska Commission on Aging in the Department of Administration to
7 the Alaska Mental Health Trust Authority in the Department of Revenue would be in the best
8 interests of efficient administration. The transfer will permit closer coordination within state
9 government regarding mental health issues and the needs of older Alaskans and will provide
10 an independent agency to review the concerns of older Alaskans investigated by the office of
11 the long term care ombudsman.

12 * **Sec. 2.** AS 44.21.230(c) is amended to read:

13 (c) The commission may not investigate, review, or undertake any
14 responsibility for the longevity bonus program under AS 47.45 or [, EXCEPT FOR
15 ACTIVITIES OF THE OFFICE OF THE LONG TERM CARE OMBUDSMAN,] the
16 Alaska Pioneers' Homes under AS 47.55.

17 * **Sec. 3.** AS 47.24.010(f) is amended to read:

18 (f) A person listed in (a) of this section who reports to the long term care
19 ombudsman under AS 47.62.015 [AS 44.21.232], or to the Department of Health and

1 Social Services, that a vulnerable adult has been exploited, abused, or neglected in an
2 out-of-home care facility is considered to have met the duty to report under (a) of this
3 section.

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

5 (a) If a report received under AS 47.24.010 regards the abandonment,
6 exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of
7 age or older that is alleged to have been committed by or to have resulted from the
8 negligence of the staff or a volunteer of an out-of-home care facility, including a
9 facility licensed under AS 18.20, in which the vulnerable adult resides, and if the
10 Department of Health and Social Services licenses that type of facility, the Department
11 of Administration shall transfer the report for investigation to the long term care
12 ombudsman under AS 47.62.015 [AS 44.21.232] and the Department of Health and
13 Social Services.

14 * **Sec. 5.** AS 47.24.013(c) is amended to read:

15 (c) Upon receipt of a report from the department under (a) or (b) of this
16 section, the long term care ombudsman and the Department of Health and Social
17 Services shall

18 (1) conduct an investigation as appropriate under AS 47.62.015
19 [AS 44.21.232] or this title, respectively;

20 (2) coordinate and cooperate in their responses to and investigations of
21 the report if their jurisdictions overlap;

22 (3) provide the results of their actions or investigations to the central
23 information and referral service of the department within 60 days after the receipt of
24 the report.

25 * **Sec. 6.** AS 47.30.011(b) is amended to read:

26 (b) The purpose of the authority is to ensure an integrated comprehensive
27 mental health program and to administer the office of the long term care
28 ombudsman established in AS 47.62.010.

29 * **Sec. 7.** AS 47.30.011(c) is amended to read:

30 (c) The authority

31 (1) shall, as provided in AS 37.14.009, administer the trust established

1 under the Alaska Mental Health Enabling Act of 1956;

2 (2) may sue and be sued;

3 (3) may retain the services of independent counsel when, in the
4 judgment of the authority's board of trustees, independent counsel is needed;

5 (4) shall insure or indemnify and protect the board, a member of the
6 board, or an agent or employee of the authority against financial loss and expense,
7 including reasonable legal fees and costs, arising out of a claim, demand, suit, or
8 judgment by reason of alleged negligence, alleged violation of civil rights, or alleged
9 wrongful act resulting in death or bodily injury to a person or accidental damage to or
10 destruction of property if the board member, agent, or employee, at the time of the
11 occurrence, was acting under the direction of the authority within the course or scope
12 of the duties of the board member, agent, or employee; [AND]

13 (5) shall exercise the powers granted to it under AS 37.14.041, subject
14 to the limitations imposed by AS 37.14.045; and

15 (6) shall administer the office of the long term care ombudsman
16 established in AS 47.62.010.

17 * **Sec. 8.** AS 47.33.310(b) is amended to read:

18 (b) An assisted living home shall post in a prominent place in the home

19 (1) a copy of the rights set out in AS 47.33.300;

20 (2) the name, address, and phone number of the long term care
21 ombudsman hired under AS 47.62.010 [AS 44.21.231] and, if relevant to residents, of
22 the advocacy agency for persons with a developmental disability or mental illness;

23 (3) the telephone number of an information or referral service for
24 vulnerable adults; and

25 (4) a copy of the grievance procedure established under AS 47.33.340.

26 * **Sec. 9.** AS 47 is amended by adding a new chapter to read:

27 **Chapter 62. Office of the Long Term Care Ombudsman.**

28 **Sec. 47.62.010. Office established.** (a) The office of the long term care
29 ombudsman is established in the Alaska Mental Health Trust Authority
30 (AS 47.30.011).

31 (b) The ombudsman shall be hired by the authority. A member of the

1 authority who has a financial interest in a long term care facility in the state, or who
2 has any other conflict of interest, may not participate in the hiring of the ombudsman.
3 The ombudsman is a full-time position in the classified service.

4 (c) The ombudsman may not have a financial interest in a long term care
5 facility in the state. The authority shall adopt regulations to ensure that the
6 ombudsman, and employees and volunteers of the office, do not have a conflict of
7 interest or an appearance of a conflict of interest.

8 **Sec. 47.62.015. Duties and powers of the long term care ombudsman.** (a)
9 The ombudsman shall investigate and resolve a complaint made by or on behalf of an
10 older Alaskan who resides in a long term care facility in the state if the complaint
11 relates to a decision, action, or failure to act by a provider or a representative of a
12 provider of long term care services, or by a public agency or social services agency,
13 that may adversely affect the health, safety, welfare, or rights of the older Alaskan.

14 (b) The ombudsman may investigate and resolve a complaint made by or on
15 behalf of an older Alaskan relating to the long term care or residential circumstances
16 of the older Alaskan. Complaints under this subsection may relate to any issue not
17 covered under (a) of this section, including the older Alaskan's landlord, senior citizen
18 housing, a public assistance program, a public grant program for services to older
19 Alaskans, public utilities, health care facilities, and health care providers.

20 (c) The ombudsman may

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

25 (2) pursue administrative, legal, or other appropriate remedies on
26 behalf of an older Alaskan who resides in a long term care facility in the state.

27 **Sec. 47.62.020. Training and certification of staff.** (a) The ombudsman
28 shall provide for the training and certification of office staff, including volunteers and
29 other representatives of the office. Training must include instruction in federal, state,
30 and local laws and policies relating to long term care facilities in the state, and in
31 investigative techniques. The ombudsman may require other appropriate training.

1 The ombudsman may decertify a person under this section for good cause in
2 accordance with regulations adopted by the authority.

3 (b) An employee, volunteer, or other representative of the office may not
4 investigate a complaint under AS 47.62.015 unless certified as having completed
5 training under this section and approved by the ombudsman as qualified to investigate
6 the complaint.

7 **Sec. 47.62.025. Access to long term care facilities, older Alaskans, and**
8 **records.** (a) A person may not deny access to a long term care facility or to an older
9 Alaskan by the ombudsman or an employee, volunteer, or other representative of the
10 office.

11 (b) Notwithstanding the provisions of AS 47.62.015(c)(1), the ombudsman
12 may obtain medical or other records of an older Alaskan who resides in a long term
13 care facility in the state only with the consent of the older Alaskan or the older
14 Alaskan's legal guardian or, if the older Alaskan is unable or incompetent to consent
15 and does not have a legal guardian, only with a court order.

16 **Sec. 47.62.030. Confidentiality.** (a) Records obtained or maintained by the
17 ombudsman are confidential, are not subject to inspection or copying under
18 AS 40.25.110 - 40.25.120 and, except as provided in (b) of this section, may be
19 disclosed only at the discretion of the ombudsman.

20 (b) The identity of a complainant or an older Alaskan on whose behalf a
21 complaint is made may not be disclosed without the consent of the identified person or
22 the person's legal guardian, unless required by court order.

23 **Sec. 47.62.035. Immunity from liability.** (a) A person who, in good faith,
24 makes a complaint described in AS 47.62.015 is immune from civil or criminal
25 liability that might otherwise exist for making the complaint.

26 (b) The ombudsman, or an employee, volunteer, or other representative of the
27 office, is immune from civil or criminal liability for the good faith performance of
28 official duties.

29 **Sec. 47.62.040. Interference with the long term care ombudsman and**
30 **retaliation prohibited.** (a) A person may not intentionally interfere with the
31 ombudsman, or an employee, volunteer, or representative of the office, in the

1 performance of official duties under AS 47.62.015.

2 (b) If a person makes a good faith complaint described in AS 47.62.015, an
3 employer or supervisor of the person, or a public or private agency or entity that
4 provides benefits, services, or housing to the person, may not discharge, demote,
5 transfer, reduce the pay or benefits or work privileges of, prepare a negative work
6 performance evaluation of, deny or withhold benefits or services, evict, or take other
7 detrimental action against the person because of the complaint. The person making
8 the complaint may bring a civil action for compensatory and punitive damages against
9 an employer, supervisor, agency, or entity that violates this subsection. In the civil
10 action there is a rebuttable presumption that the detrimental action was retaliatory if it
11 was taken within 90 days after the complaint was made.

12 (c) A person who violates this section is guilty of a class B misdemeanor.

13 **Sec. 47.62.050. Legal counsel for the long term care ombudsman.** The
14 attorney general shall provide legal advice and representation in connection with any
15 matter relating to the powers, duties, and operation of the office, and in any legal
16 action brought against the ombudsman or an employee, volunteer, or other
17 representative of the office. If the attorney general cannot provide legal advice or
18 representation because of a conflict of interest, the ombudsman may employ private
19 legal counsel.

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

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

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

27 (2) "long term care facility" means an assisted living home that is
28 required to be licensed under AS 47.33 and a nursing home as defined in
29 AS 08.70.180;

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

31 (4) "older Alaskan" means a resident who is 60 years of age or older;

1 (5) "ombudsman" means the long term care ombudsman hired under
2 AS 47.62.010;

3 (6) "senior citizen housing" has the meaning given "senior housing" in
4 AS 18.56.799.

5 * **Sec. 10.** AS 44.21.231, 44.21.232, 44.21.233, 44.21.234, 44.21.235, 44.21.236,
6 44.21.237, 44.21.238, 44.21.239, 44.21.240(2), 44.21.240(3), 44.21.240(5), and 44.21.240(6)
7 are repealed.

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

10 **TRANSITION.** (a) Litigation, hearings, investigations, and other proceedings
11 pending under a law repealed by this Order, or in connection with functions transferred by
12 this Order, continue in effect and may be continued and completed notwithstanding a transfer
13 or repeal provided for in this Order.

14 (b) Contracts, rights, liabilities, and obligations created by or under a law repealed by
15 this Order, and in effect on March 9, 2001, remain in effect notwithstanding this Order's
16 taking effect. Records, equipment, appropriations, and other property of an agency of the
17 state whose functions are transferred under this Order shall be transferred to implement the
18 provisions of this Order. The Alaska Commission on Aging shall transfer to the office of the
19 long term care ombudsman in the Alaska Mental Health Trust Authority, federal money
20 appropriated and granted for the purposes of that office under 42 U.S.C. 3001-3058ee (Older
21 Americans Act).

22 * **Sec. 12.** This Order takes effect March 10, 2001.

DATED: January 8, 2001

/s/ Tony Knowles
Tony Knowles
Governor