

CS FOR HOUSE BILL NO. 164(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 4/7/17

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

2 (3) a pharmacist;

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

5 (5) a guardian or conservator;

6 (6) a police officer;

7 (7) a village public safety officer;

8 (8) a village health aide;

9 (9) a social worker;

10 (10) a member of the clergy;

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

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

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

17 (14) a caregiver of the vulnerable adult;

18 (15) a certified nurse aide;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (c) The ombudsman may
 22 (1) subpoena witnesses, compel their attendance, require the
 23 production of evidence, administer oaths, and examine any person under oath in
 24 connection with a complaint described under (a) of this section; the powers described
 25 in this paragraph shall be enforced by the superior court;
 26 (2) pursue administrative, legal, or other appropriate remedies on
 27 behalf of **a resident of** [AN OLDER ALASKAN WHO RESIDES IN] a long term
 28 care facility in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (8) "resident representative" means

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

15 (i) support the resident in decision making;

16 (ii) access medical, social, or other personal information

17 of the resident;

18 (iii) manage financial matters; or

19 (iv) receive notifications;

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

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