



March 24, 2008

Faith Myers & Dorrance Collins
3240 Penland Parkway, Space 35
Anchorage, Alaska 99508

Re: Authority of Health Facilities Licensing & Certification (HFL&C)

Dear Faith & Dorrance:

I'm sorry I didn't respond earlier to your remaining questions, noted in your letter to us dated March 11, 2008. Specifically, the outstanding question was you wanting to know our understanding of how much authority HFL&C had in bringing about changes in psychiatric facility patients' rights.

In answering that question, I can only speak from my own experience while working in that section, and what I believe (not know) happens now. First of all, in the letter you included from HFL&C, your inquiry was specific to a statute (i.e., AS 47.30.847). That unit's involvement in changes to statutes has historically only come into play when directed by the Commissioner to either assist in the development of new or revised legislation, or comment on something being considered.

How that may have changed since I was last there, I don't really know. To the degree that it may have changed, I would anticipate that HFL&C would be further removed, rather than to play a bigger role. This is especially more likely given the fact that they now have someone whose primary responsibility is to write regulations and review proposed legislation; that person is not a part of HFL&C per se; at least not part of the section that does inspections or investigations.

The upshot, then, at least from my perspective, is that you would have to start with the Commissioner if you wanted something to come from the department that is responsible for licensing and certifying health facilities. Remember too, however, that licensing and certification only handles "health facilities" (e.g., API, North Star, Bartlett, etc.), and not the other 70+ Behavioral Health grantees you often refer to. But then again, the Commissioner is over all of that. From my observation and experience, it is the exception more than the rule that the Department puts forward proposed legislation. If it was proposed, it would probably come from the Governor's Office. Changes in regulations is the usual course.

Something else I will speak to, though you didn't ask about it in your letter, is HFL&C's statement that, in order to conduct an on-site investigation at a facility such as API, they would have to first get permission/approval from CMS. That's not entirely accurate.

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Here's how it works:

If HFL&C receives a complaint about a hospital, any hospital that is accredited under the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) they are required to send the complaint on to the Centers for Medicare/Medicaid Services (CMS). CMS will review the complaint, and either direct/approve HFL&C to go in and investigate, or they will not. Their decision is generally based on such things as scope, severity, actual harm, degree for potential harm, and how closely the reported infraction matches to federal requirements.

Should CMS not authorize HFL&C to conduct the investigation, HFL&C always retains the prerogative of going in under its licensing authority. CMS has no control over what the State does or doesn't do under its own regulations and statutes. The only exceptions to this are health care facilities under Indian Health Services (IHS), such as the Alaska Native Medical Center. In IHS facilities, the feds are the only ones who can make the decision.

I hope this information is helpful, and that I've answered your questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald A. Cowan', with a long horizontal flourish extending to the right.

Ronald A. Cowan, MSSW
Legal Advocate II/Investigator