

**News Release**

**August 17, 2007**

## **Preliminary Report**

### **Are the Grievance Procedure Requirements for Grantees, Administrative Codes, Grievance Procedure Statutes fair to psychiatric patients and Behavioral Health Grantee's clients?**

#### **References:**

1. Alaska State Statute AS47.30.847—Patients' Grievance Procedure.
2. Administrative Code—7AAC 50.880 and 7AAC 71.220.
3. Federal regulation—482.12 concerning hospitals.
4. "State Behavioral Health Requirements for Grantee Grievance Procedures"—4 pages, Approved 6-18-2007.
5. DHSS/Behavioral Health compiled a book containing 80+ Grantee's grievance procedures and policies. The individual grievance procedures and policies have been reviewed.
6. Alaska State Statute AS47.30.660.
7. Fourteen page committee report – Jan 23,'07 and 2 page supplement- May 11,'07. Committee members consisted of AMHB members, API Governing Body members, API Hospital employees, Disability Law Center and members of the public. Committee recommendations supported by Alaska Mental Health Board.
8. State of Maine statute/ regulations, "Rights of Recipients of Mental Health Services."

There is some debate—we believe Behavioral Health must collect and oversee all grievance procedures per 7AAC 50.880 and 7AAC 71.220 while Behavioral Health states they must only collect and oversee Grantee grievance procedures. As additional information, two facilities' grievance procedures states that only those persons receiving state funding can have their grievances, unresolved to the satisfaction of the patient, referred to Behavioral Health for technical assistance.

Technically state run Alaska Psychiatric Institute is not a grantee—there is nothing written that says that API has to follow the 4 pages of Grantee requirements concerning grievance procedures.

Providence Hospital, Inc., main building, Anchorage, Single point of entry and psychiatric unit—their attorney, Robert Dickson, Esq. stated “Providence does not have to follow Alaska Statute 47.30.847—Patients’ grievance procedure—because of the wording in the statute as to who must follow it.” As non-attorneys, we have read AS47.30.847 and we agree—they don’t. Without asking, we believe that would include Bartlett, Juneau and Fairbanks Memorial, all of which do civil commitments or forced evaluations. Between the 3 hospitals, their psychiatric units handle thousands of psychiatric patients a year.

Even though it is an obligation of the state, DHSS and Behavioral Health have not indicated they are willing to review and document the type of grievances going through the 82 grantee facilities, etc., which would require all facilities to make the documentation of complaints and grievances available to Behavioral Health.

Almost without exception, patients in an acute care psychiatric facility and to a lesser extent, those in treatment, have dementia. It has always been recognized by patient advocates that those individuals need special protection and that should include persons with a developmental disability or individuals having a psychotic break due to alcohol, etc.

States wanting to exhibit best practices have all put special rules in place to protect those with dementia or diminished capacity and that means a special grievance procedure and supplying assistance in filing a grievance when necessary. A standard JCAHO grievance procedure is not good enough!

**There are 13 major obstacles to providing psychiatric patients and grantee clients a fair grievance procedure in Alaska.**

1. Front-loading of the patients’ grievance procedures.
2. Patients not having timely assistance in filing a grievance from somebody who has training as an advocate.
3. Patient grievances discounted and not logged in or processed by the facility.
4. Grievance Procedures not having clear timelines for resolution of a grievance.
5. Inadequate oversight of patient grievances and grievance procedures by the state / DHSS.
6. Unclear description of patient rights to file a grievance and appeals including timelines.
7. Statutes and regulations concerning grievance procedures do not cover all facilities in Alaska that provide care.
8. Patients not allowed to have a grievance heard in front of an impartial body.

9. Patients not receiving a written response to their grievance / complaint and appeals.
10. Patients and general public not allowed to testify at facilities.
11. Patients' grievances not resolved to the satisfaction of the patient are not forwarded to DHSS / Behavioral Health for technical assistance.
12. Patients not having access to an urgent grievance procedure especially in an in-patient setting.
13. Patients must depend on JCAHO regulations for filing a grievance and not state regulations.

**Expanded explanation to the 13 major obstacles to providing psychiatric patients and grantee clients a fair grievance procedure in Alaska.**

1. Front-loading is when facilities require or ask patients to go through an informal complaint process before filing a grievance. In states with best practices, they have outlawed that requirement. As an example, Alaska Psychiatric Institute (API) went for a year and possibly for years without letting a patient file a formal grievance or having their grievance heard in front of an Impartial Body, etc. even though the hospital had 256 informal complaints in one year.

Facilities tend to bury patients in an informal complaint process. One grantee's grievance procedure states, "We are not required to investigate a grievance until a written report is received from a client, patient, or representative. Without a formal grievance, facilities can talk to the patient informally, but they do not have to investigate. Patients are unaware that the clock may not be moving forward on their informal complaint. These patients often do not get to file a formal grievance or have their complaint heard in front of an impartial body nor do they receive a written answer. Also, the patient's informal complaint when unresolved is not forwarded to Behavioral Health for technical assistance.

Alaska Statute AS47.30.847 states that a patient has a right to file a grievance. Nothing should be placed in the way of a patient filing a grievance when they want to. That is API committee and Alaska Mental Health Board recommendations in 2007.

Almost without exception, patients have been complaining for weeks before asking to file a grievance. Why should the patient be asked to file an additional informal complaint.

2. Patients with diminished capacity often require assistance from an advocate to file a grievance. AS47.30.847 states that all facilities must have a specific staff member with some training as an advocate who will assist the patient in filing a grievance or other redress.

Alaska Statute 47.30.847 states that a trained person in psychiatric advocacy must be supplied to assist the patient in the grievance process but state regulations and Behavioral Health requirements for grantee grievance procedures do not mention nor expand on “a trained person in advocacy” in their regulations and requirements nor do they talk about the degree of training necessary, nor is there any oversight by the state.

Also, the reviewed 82 grantee grievance procedures do not make it clear that their facilities must have a specific staff member who is trained as a mental health advocate who will at the patient’s request assist the patient in bringing grievance or other redress.

Almost every facility requires some of their staff to take CPR training. It would not be a burden, even to small facilities to have someone with some training in advocacy. As per the Alaska statute, AS47.30.847, they would be the person designated to assist the patient.

3. Behavioral Health has given facilities the option of discounting any patient’s grievance that the facility wants to call frivolous or unfounded. Behavioral Health has given facilities that option by their silence on that point in the regulations.

At the present time, any complaints/grievance determined by the facility staff to be frivolous or unfounded is not processed, and not forwarded to Behavioral Health. Patients cannot pursue the grievance outside of the facility because they have not received a final answer from the facility. This procedure gives the facility a license to cherry-pick which complaints/grievances they do and do not want to address—and dismissing those they do not as unfounded or frivolous.

Standards similar to those adopted by the API committee should be adopted by “Behavioral Health Requirements for Grantee Grievance Procedures.”

“Patients cannot be denied the right to file a grievance.” “Grievances deemed to be unfounded or frivolous at level 2 cannot be appealed past that point.” Patients are given a written notice of final decision and of the patient’s right that they can take their grievance to the court system or other avenues ( which should include a review by Behavioral Health).

4. State statute / regulations need to have a clear timeline for all grievance procedures similar to Maine's "Rights of Recipients for Mental Health Services."
5. The state is required by statute to investigate patient complaints/grievances. For the most part DHSS has delegated that responsibility to hospital/facility employees and JCAHO, etc. The state is presently only offering technical assistance for grievances that are not resolved after 35+ days, even if the patient is having trouble filing a grievance.

There are certain types of grievances that should within one day go straight to a specific office of the state at the beginning of the grievance process for resolution or oversight and that would include denial of rights or treatment, sexual allegations of any type, and assault/abuse issues. Presently there is no one state office to assist patients in that manner.

6. There are unclear descriptions of patient rights to file a grievance and appeals including timelines in the statutes, regulations, and "Behavioral Health Requirements" stating when patients can file a grievance.

There should be a single grievance procedure similar to the state of Maine's instead of 82 different grantee grievance procedures with 82 different timelines for grievance resolution.

7. Statutes and regulations have to be revised to cover all facilities in the State of Alaska that treat psychiatric patients or those with dual diagnosis.
8. Patients have a clear right by Alaska statute AS47.30.847 to have their grievance heard in front of an Impartial Body. An impartial body can consist of a single person. The state is asking the 82 grantee facilities to appoint their own impartial body, which may include facility employees—that is not fair to patients. Patients have to be allowed to have their right to have their grievance heard in front of somebody impartial. A Board of Directors is also not acceptable and may not necessarily be impartial.
9. Federal regulations concerning hospitals and grievances states that the patient must receive a written answer to their grievance. "In the resolution to the grievance, the hospital must provide the patient with written notice of its decision that contains the name of the facility, contact person, steps taken on behalf of the patient to investigate the grievance, the results of the grievance process and the date of completion."

There should be a uniform grievance procedure form in all 82 grantee facilities that patients fill out to file a grievance and appeals—the same form is used to give a written answer to the patient when facilities answer a grievance or appeals. The state should at minimum set strict standards on

approximately what the forms should look like. The forms recommended by the API committee and Alaska Mental Health Board and in the API grievance procedure draft should be the standard. They are very simple forms to emulate.

10. Behavioral Health's 4 pages of requirements for grantee grievance procedures state that the 82 grantees must allow patients and former patients a significant amount of input and we would include the public. Providence hospital, which is a non-profit, has a governing body and an advisory council. Neither allow public testimony at their Board meetings. The same with North Star and the other major facilities. Consumers and the general public are not allowed to have input, which is an additional reason that there needs to be more detail in the state statute and regulations concerning grievance procedures.
11. Too many of the 82 grantee's grievance procedures say the facility will only forward grievances that are unresolved after 35 days to DHSS/Behavioral Health or don't say anything. Whereas it is supposed to say "all grievances unresolved to the satisfaction of the patient" are also supposed to be forwarded to DHSS.

Also, some of the 82 grantees give patients a number at DHSS that patients can call for technical assistance concerning their grievance, but when the given number is called, the patient gets a receptionist who does not know who to forward the calls to.

12. Civilly committed patients or inpatients should have the right to file an urgent grievance on any subject. An urgent grievance simply requires that at least 2 people look at a grievance within 24 hours—the patient advocate and the facility CEO or designee (Out-patient is one working day). The grievance is resolved or immediately sent back to level one. They do that in other states so that patients can protect themselves which they have a right to do. API presently has an urgent grievance procedure at the recommendation of API Governing Body, API Committee and AMHB.
13. The Joint Commission on Accreditation of Hospital Organizations (JCAHO) and Medicaid/Medicare fully expects states to develop their own grievance procedures and regulations and authority to investigate individual patient complaints/grievances.

JCAHO has very specific standards. It is not a concern if a grievance is front-loaded. JCAHO does not even have to acknowledge a complaint from an individual patient for a minimum of 30 days and may not investigate literally for months. It is not JCAHO's responsibility to write and enforce state statutes and regulations. That is the citizen's of Alaska's job.

**Conclusion:**

The present grievance procedure statutes and regulations in Alaska are not fair and when compared nationally do not exhibit best practices in the nation. Alaska cannot let outside certification organizations be the ones who set standards for patient rights. Alaska state statutes AS47.30.847 and administrative codes, Behavioral Health requirements for grantee grievance procedures and the Alaska state statute that requires the state to investigate complaints (AS47.30.660) must be revised to enhance psychiatric patient rights and to exhibit best practices.

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