

***Date:***

***To:***

**Please add the following to your 2014–15 agenda:**

**Grievance rights and rules for Alaska's disabled are fundamentally anchored in the 1940's–Inadequate.**

**One. Please help make improvements to the grievance procedure law for 25,000 psychiatric patients, some of which are disabled.**

**Two. Work to improve the rights and protection of the disabled in general.**

***From:***

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# **Legislative**

## Wish List 2015

**—Improve the Grievance Procedure Law for Psychiatric Patients AS47.30.847**

**—Require the state to have one main office that is responsible for helping the disabled with their complaints, investigations, etc.—similar to the State of Georgia '08 HB 535/AP—14 page grievance law**

**—Require changes in how the disabled are transported for mandatory treatment**

**—Require hospitals and psychiatric units to recognize and treat institutional trauma—it will speed recovery**

**—Require the Department of Health and Social Services(DHSS) to keep statistics of number and type of psychiatric patient complaints—and share the statistics**

**—Give All psychiatric patients receiving treatment enhanced grievance rights, shorter time for grievance resolution and an urgent grievance for individuals in crisis—Require that patients are informed of their rights (a uniform procedure)**

**Please help in the improvements of the rights for the disabled—Mental Health Trust Authority beneficiaries.**

## **Alaska must change how disabled psychiatric patients are protected in the complaint or appeal process and require more detail to patient complaints statistics.**

Up to 1970 many of Alaska's disabled were given (in a sense sold) to Morningside Psychiatric Hospital in Portland Oregon, simply because the hospital gave the lowest bid to provide care. The Alaska government did not have a clue how many disabled patients were complaining and even more important, the nature of the complaints. The voices of the patients were never heard by the state. Not much has changed even today. *And it has to change.*

All the way back to 2008 the state Ombudsman's Office issued a report critical of the Department of Health and Social Services (DHSS) for not keeping proper statistics of psychiatric patient's complaints. A state that does not want to keep statistics is not likely to try very hard to require private facilities to keep good records of patients' complaints.

The Alaska Mental Health Trust Authority beneficiaries fall into four main categories: The mentally ill, individuals with cognitive impairments, persons with Alzheimer's and persons who have alcoholism; a common thread is an individual needing assistance from the state because of their disability.

DHSS has an obligation by law to investigate complaints of Mental Health Trust Authority beneficiaries. DHSS also has the right through mutual agreement to delegate any and all of its responsibilities to private facilities and psychiatric units. DHSS should never have been given the authority to delegate the state's *obligation* of investigating disabled patient's complaints. But that is absolutely what is happening today.

The state and the Mental Health Trust Authority provide millions in funding for a multiple of programs for the disabled without the general public understanding the number and type of patient complaints; the disabled are left without a voice. Any state that does not readily know the details of patient complaints cannot make improvements. The disabled in Alaska must be given a voice that is heard by the state.

From the first day of statehood, the Alaska government had every good reason and the opportunity to write a grievance/appeal process law that would protect individuals with cognitive disabilities or Alzheimer's during treatment or care. Today there is a spider web of patient grievance rules in Alaska but no standardized due process or appeal process to the state.

Private medical hospitals perform the majority of the forced psychiatric evaluations and about a third of the civil commitments. There is no special grievance procedure for the disabled treated in private hospitals nor are patients adequately informed of their rights and are not properly protected.

Over the last 30 years, it is stunning the common sense rights disabled psychiatric patients had to be given in law by the Legislature to protect patients from the hospital staff during treatment: right to call an attorney and right to be free from corporal punishment, etc. "Alaska is not finished."

Any individual who has not been charged with a crime and are detained for forced psychiatric evaluation or treatment, their rights are to remain intact to the greatest extent possible. It is a nice national legal concept, but today in Alaska, psychiatric patients that are considered disabled by the state are left with a grievance procedure law AS47.30.847 with no due process requirements for appeals and no appeal process to the state. Also, patient rights are not intact when psychiatric facilities can decide when and even if patients and guardians can file a grievance or an appeal.

## **Alaska could reduce the effects of institutional trauma by providing early treatment**

Unnecessary mistreatment of psychiatric patients is an everyday occurrence in Alaska: institutional trauma affects 47% of the patients provided mandatory treatment (can cause PTSD)—hospitals generally refuse to recognize and treat institutional trauma--out-dated transportation methods--lack of rights--patients not properly informed of their rights, etc. For 5 years Alaska has been unable to legislatively pass necessary improvements to the grievance procedure law for the disabled.—It all adds up to a burden the disabled should not have to face.

You are asked to turn around and put your hands behind your back—the handcuffs click tight and you are placed in the back of a marked police car-- You are being transported by the Anchorage police to Providence Hospital's Psychiatric Unit for a forced psychiatric evaluation. Besides the trauma and humiliation, on the journey you are never informed that you have a right to call an attorney and when at Providence you are not verbally informed of your rights by a patient advocate and patient rights are not posted in each treatment room.

At Providence ( or any hospital that does forced psychiatric evaluations ), you are met by hospital staff and over the next 72 hours one of three things will happen: the majority of the individuals brought in for forced evaluation within a matter of hours will be released, and by law must be given transportation back to the point of pickup. And others within 72 hours will either be given medication to stabilize or will be transported to state-run Alaska Psychiatric Institute. If you ask to speak to a patient advocate or ask to file a complaint concerning mistreatment, you will be given a phone number that usually goes to an answering machine.

If you arrive at Providence voluntarily, claiming to be a danger to self or others, you will be assessed—if you don't fit the “hospital's” criteria for treatment, you will be released. As you are being escorted out the door, if you ask to speak to a patient advocate or ask to file a complaint, ninety percent of the time you will be given a phone number to an answering machine.

## **Alaska is neglecting its responsibility**

It is our contention that in 1956 the Alaska government willingly accepted a moral and legal obligation from the Federal government to write grievance, appeal and due process rules in law that would protect the disabled living in Alaska. Going by the standards of the 1950's; the first thing the Alaska government did was delegate most of its responsibility of protecting the disabled in the grievance process to private hospitals in and out of state. Alaska needs to accept its responsibility by moving patient rights six decades to the present--*writing and enforcing new grievance laws and rules for the disabled.*

A woman being treated in a private psychiatric facility is struck in the face and given a black eye. Male staff continually entered her bedroom while she is undressing, in a sense replaying early childhood trauma. She files a complaint. The private psychiatric facility would simply categorize the complaint as “complaints concerning staff.” The state would never know any of the details of the complaint unless the state went into the patient records. (Not going to happen) The disabled in Alaska are left without a voice under the current system of keeping patient grievance statistics. There has to be more detail in describing patient complaints when facilities are reporting to the state.

In the Alaska psychiatric patient grievance procedure law AS47.30.847, the general powers and duty of the state are delegated to private psychiatric treatment/designated evaluation and stabilization facilities. Including the power to write a patient grievance and appeal process. Psychiatric patients do not have a guarantee for due process for grievance appeals or an appeal to the state because each psychiatric unit has been granted the power by the state to say “no.”

Psychiatric institutions and units providing mandatory treatment hire and fire the patient advocate. The institutions decide how often the patient advocate works—how much contact they will have with patients. Will the advocate be available at night time? The three-day weekend? Psychiatric patients are one of the most vulnerable populations in our society. When psychiatric patients report a crime against them, they are often not believed. There should be a state requirement that the patient advocate is available to patients 24 hours a day in locked units, but there isn’t. As of now, it can be days before patients get help. And accountants working for an institution made that decision.

Every state has come up with their own solution of how to protect the disabled. A good rule of thumb is: never let providers of psychiatric services write the patient grievance/appeal process rules. The state of Georgia passed a 14 page grievance procedure law that covered all their disabled (’08 HB535/ AP). An independent body writes the patient grievance rules, investigates complaints, keeps statistics, etc. *Alaska needs to make similar improvements.*

# **Revise Psychiatric Patient Grievance Procedure Law**

## **AS47.30.847**

The Legislature in conjunction with an independent body (not a certification organization connected to the hospital) has to write the patient grievance and appeal process and provide enforcement. Doing the right thing will require new or revised laws and rules. We believe Alaska should do the right thing and move psychiatric patient grievance and appeal rights into the 21<sup>st</sup> century.

In 2015 through the House or the Senate, there must be a bill introduced to improve the grievance procedure rights for disabled psychiatric patients and others who are disabled.

### **Reference Information:**

In 1956 Congress granted the Territory of Alaska authority over its mental health laws.

Current psychiatric patient grievance law, AS47.30.847, was not written until 1992.

Medicare/ Medicaid see a grievance and a complaint as one and the same. Psychiatric facilities in Alaska see a complaint as informal and a grievance as formal—Psychiatric units can choose what a patient can file.

Most psychiatric patients and guardians in Alaska cannot file a grievance at the time of their choosing.

DHSS Grantee Grievance Procedure Requirements only covers some psychiatric facilities.

Jean M. Mischel, Legislative Counsel, Opinion put forth on March 12, 2014---the state's broad delegation of state authority and obligations to private psychiatric hospitals and units may be unlawful.

Through the State's Ombudsman's Office, April 30, 2014, Stacie Kraly, Chief Assistant Attorney General stated AS47.30.847, Psychiatric Patient Grievance Procedure Law, only applies to state-run API. Major patient advocacy organizations disagree but the law was so poorly written, no appeal process, no due process that the law should simply be revised.

Eleven rights granted to patients—AS47.30.840 written '81 to '84.

Private hospital—Morningside Psychiatric Hospital in Portland, Oregon treated Alaska psychiatric patients until 1971 when it closed its doors. Some patients were buried in unmarked graves. There were accusations of patient mistreatment—Morningside had the distinction of being near the hospital where “One flew over the Cuckoo's Nest” was filmed in 1975.

House Bill 214 sponsored by Rep. Pete Higgins; co-sponsored by Rep. Geran Tarr, Rep. Lynn Gattis and Rep. Cathy Munoz—HB 214 will have to be re-introduced next year.

**Alaska made a mistake in 1992 when it allowed providers of psychiatric services to write the psychiatric patient grievance procedures—set due process—appeals—choose the impartial body—choose how long the patient advocate will work, etc.**

***This law is a mistake!***

**Sec. 47.30.847. Psychiatric Patients' grievance procedures.** (a) A patient has the right to bring grievances about the patient's treatment, care or rights to an impartial body within an evaluation facility or designated treatment facility.

(b) An evaluation facility and a designated treatment facility shall have a formal grievance procedure for patient grievances brought under (a) of this section. The facility shall inform each patient of the existence and contents of the grievance procedure.

(c) An evaluation facility and a designated treatment facility shall have a designated staff member who is trained in mental health consumer advocacy who will serve as an advocate, upon a patient's request, to assist the patient in bringing grievances or pursuing other redress for complaints concerning care, treatment, and rights.

( 10 ch 109 SLA 1992 )

**Alaska has an obligation to write a new grievance procedure appeal process laws/rules for the disabled, including due process.**

--The Department of Health and Social Services Grantee Grievance Procedure Rules only covers some psychiatric facilities and requires no appeal process to the state.

--The Joint Commission requires no appeal process for patient complaints.

--The state has delegated most of its responsibility of protecting the disabled in the grievance process to private facilities and out-of-state certification organizations.

**Please help pass new grievance laws to protect the disabled.**