



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

DIVISION OF BEHAVIORAL HEALTH
Anchorage Regional Office

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Anchorage Alaska 99503-5924
Main: 907 269 3600
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June 19, 2018

Faith Myers
3240 Penland Pkwy, Sp. 35
Anchorage AK 99508
Via email: faith.myers@gci.net

Dear Ms. Myers:

This letter is in response to questions you posed to the Department of Health and Social Services through written testimony to the House Health and Social Services Committee hearing on April 10, 2018. Although these questions were not addressed to the Department by the Committee, DHSS wanted to follow-up in response.

1. A psychiatric nurse with 18 year's work experience in a psychiatric facility stated that psychiatric hospital staff too often exaggerate injuries to collect workman's compensation. Is any of that happening at API?

We are not aware of any intentional exaggerated injuries by API employees. Workers' compensation claims in Alaska are managed and reviewed by the Workers' Compensation Board and its staff.

2. What is the number and type of patient injuries at API?

During CY2017, there were 90 API patient injuries requiring first aid, medical intervention or hospitalization, and another 26 that required no treatment. Of that 116, 36 injuries were the result of falls, 50 were the result of patient-on-patient assaults, 28 were the result of self-harm, and 2 resulted from medical conditions (seizure).

3. Is API above the state average on injuries to staff when compared to other psychiatric units around the state—Fairbanks, Juneau, etc.?

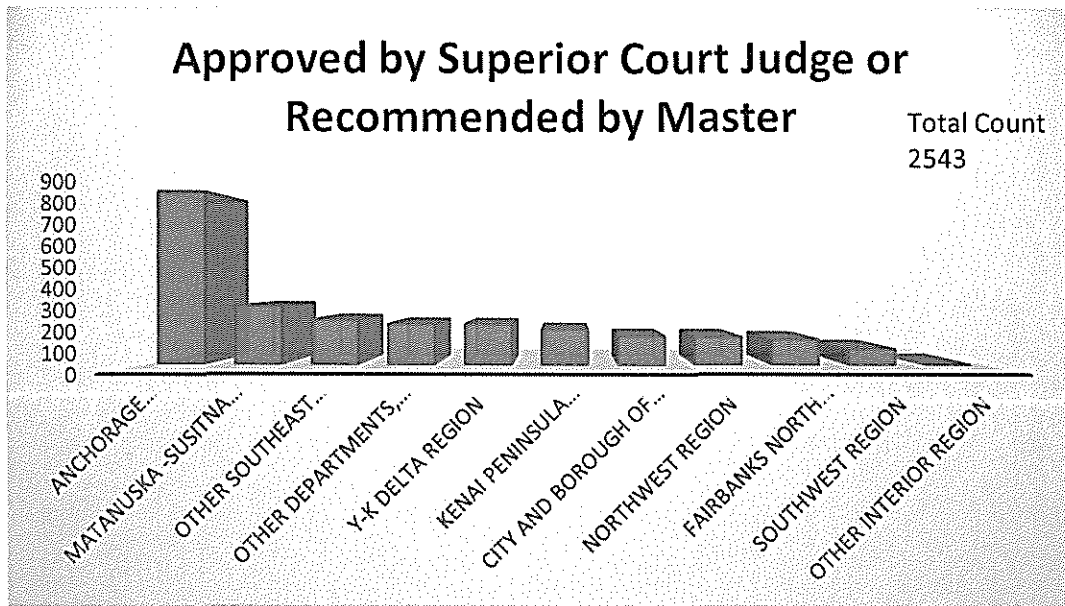
The division does not compare API's staff injury data to that from the mental health units at the two designated evaluation and treatment (DET) centers.

4. How many acute care psychiatric patients receive treatment in the various facilities in Alaska annually? That would include crisis treatment centers but not prisons and jails.

The following information is derived from FY2017 data reported by Designated Evaluation and Treatment (DET) facilities Bartlett and Fairbanks Memorial, and client count data from Type 2 Provider Providence Psychiatric ER (acute care is taken to mean those patients entering through the emergency department):

Bartlett Regional Hospital:	42
Fairbanks Memorial Hospital:	99
Providence Psychiatric ER:	4,485

5. How many individuals are brought in for forced psychiatric evaluation annually (the number in each facility)? We know the total number of forced psychiatric evaluations is into the thousands. DHSS should have ready access to the exact number.



Numbers are from the Alaska Court System detailing the number of CY2017 court-ordered hospitalizations for evaluation and court-ordered admissions. The information is complete through mid-November, 2017. The data is presented as aggregate information by regions of not less than 20,000 people.

6. What is the number of complaints filed by psychiatric patients—the total in Alaska and in each facility? And were the patients satisfied with their resolution? We know for an average there are 250 patient complaints in API annually.

In CY2017, API had 544 patient complaints; 108 were resolved satisfactorily prior to discharge. For the grievances we were unable to resolve prior to discharge, typically because our average length of stay is 7-9 days, API sent 436 letters, detailing actions API took to resolve the patient's complaint and information on elevating the grievance for a formal resolution or reporting to outside advocacy organizations for more assistance. We had no grievances that were elevated by a patient to the more formal resolution process.

The State does not have access to complaint information for non-state facilities.

7. Managers of psychiatric facilities/ units discount some patient complaints as being frivolous and do not investigate them. What is the number they discount?

We are not aware of any complaint being discounted, unless the patient is highly psychotic and not coherent or truly in touch with their present circumstances.

8. DHSS has already answered one question. Psychiatric patients have a right to bring their grievance to an impartial body within a facility. (AS47.30.847) DHSS has said managers of facilities will choose the impartial body. Ask DHSS if that is fair to patients?

DHSS believes it is.

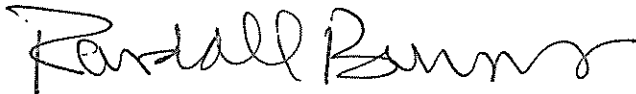
AS 47.30.847 is clear: an evaluation facility or a designated treatment facility (i.e., hospitals that have been so designated by the Division of Behavioral Health), must have established an impartial body that will hear and consider any grievances brought by a patient about the adequacy of their treatment, care or concerns about their rights as a patient. This statute also states that the evaluation or treatment facility must have a formal grievance procedure in place for the receipt of patient grievances and that patients should be aware of those procedures. Hospitals are entirely capable of creating an impartial body for this purpose. Any such a body is subject to review by the hospital's accreditation organization, which often requires the establishment of similar entities for the receipt of complaints from any patient. The statute does not suggest that the state is to establish or staff the grievance committee independent of the hospital and its staff.

9. A South Carolina study determined up to 47% of the individuals brought in for psychiatric treatment as a result will experience trauma that may cause or exacerbate Post-Traumatic Stress Disorder, one of the most costly mental illnesses in America.—What is the number of persons that experience psychiatric institutional trauma in Alaska? And would a requirement for treatment of institutional trauma in institutions reduce costs and patient tragedies?

We do not have a way to measure of the number of persons that experience trauma related to their psychiatric institutional placement. However, API is currently working with the Alaska Trauma Center to obtain additional training in trauma informed best practices for the staff in the facility.

Thank you for the opportunity to respond and for your continued advocacy for mental health in Alaska.

Sincerely,

A handwritten signature in black ink that reads "Randall Burns". The signature is written in a cursive, flowing style.

Randall P. Burns
Director

Cc: Valerie Nurr'araaluk Davidson, Commissioner
Karen Forrest, Deputy Commissioner
Tony Newman, Legislative Liaison

Trauma

Special Points of Interest:

- "Trauma" is defined by BDS, as "Sexual abuse, physical abuse, severe neglect, and/or witnessing of violence".
- Those with a history of traumatic abuse may refer to themselves as "trauma survivors".
- Between 50 and 90% of persons in mental health or substance abuse treatment have histories of trauma.

Thoughts from Maine Survivors:

"Trauma Survivors are not a new 'special population' We are everywhere!"

"Programs, training, services, policies need to be built into the system so they don't disappear with changes in administration, politics, etc."

Trauma-Sensitive Services are Key to Effective Treatment

With the establishment of Trauma Services in 1995, Maine was the first state in the nation to begin systematically addressing the interpersonal violence that has impacted the majority of people served through the Department of Behavioral and Developmental Services (BDS).

In January, 2001, Commissioner Lynn Duby authorized the Department-wide "Trauma Services Implementation Team" (TSIT). This team's purpose is to create and oversee activities which will integrate trauma into all aspects of the service system, so that all services are provided in a manner that is welcoming and appropriate to the special needs of trauma survivors. Our vision is of a system of services that understands and accommodates the vulnerabilities of trauma survivors, and delivers services in a way that avoids re-traumatization and facilitates consumer

participation in treatment.

When the effects of trauma are understood and adequately treated, even severely-affected survivors often reclaim their lives. Many of them then speak out and work on behalf of other abuse victims. The BDS Office of Program Development, through its Trauma Services staff, promotes the integration of trauma-sensitive practices through a variety of approaches. Some of these important initiatives include:

Trauma Support Line.

Through the Maine Coalition Against Sexual Assault, the Department provides a 24-hour Trauma Support Line for clients with complex mental health and/or substance abuse problems who have histories of sexual abuse trauma. This valuable service is now in its fourth year of operation, providing listening and support, advocacy, and referrals to callers statewide through ten local Sexual Assault Centers. The toll-free number is 1-800-871-7741 or TTY 1-888-458-5599.

A Trauma-Informed Service System.

The Department is supporting a systemic approach to the integration of an understanding about trauma into all public mental health and addictions core-service programs. As a first step, a model "trauma-informed service system" is being developed by Tri-County Mental Health Services in Rumford. If indicated by evaluation findings, this approach may be implemented widely throughout the system.

Publications and Resources.

BDS continues to respond to requests for the publication of In Their Own Words: Trauma Survivors and Professionals They Trust Tell What Hurts, What Helps, and What is Needed for Trauma Services. Over 8,000 copies of this heartfelt work by 130 Maine trauma survivors and 140 Maine service providers have been requested, distributed to and used by professionals, survivor/consumers, educators, trainers, policy makers and advocates from Maine, across the country, and in Canada.



State of Maine
Department of Behavioral
and Developmental Services

Lynn F. Duby, Commissioner

July 2002



State of Alaska
ombudsman

Reply to:

- 333 W. 4th Ave. Suite 305
Anchorage, AK 99510
(907) 269-5290
(800) 478-2624
(FAX) 269-5291
- P.O. Box 113000
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
(FAX) 465-3330

April 30, 2014

Faith Meyers
3240 Penland Pkwy, Sp. 35
Anchorage, Alaska 99508

RE: Ombudsman Complaint A2014-0718 (Closed)

Dear Ms. Meyers,

I am writing in response to your complaint against the Department of Health and Social Services, Health Facility Licensing unit. You complained that the agency has not provided you with a response to your question about AS 47.30.847 as it applies to medical hospitals that do “forced evaluations and civil commitments of psychiatric patients.”

In response to your complaint, I contacted Stacie Kraly, Chief Assistant Attorney General with the State of Alaska Department of Law. According to Ms. Kraly, the statute AS 47.30.847 that you are referencing applies to API, not to the other Designated Evaluation and Treatment/ Designated Evaluation and Stabilization facilities in the state. While this statute does not apply to these facilities, each hospital in the state of Alaska must meet some sort of accreditation through organizations such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or the Commission on Accreditation of Rehabilitation Facilities (CARF), and those accrediting bodies require that facilities have a grievance process. Those organizations would be responsible for enforcing and evaluating the efficacy of those procedures.

If you have concerns that the Grievance Procedure at selected facilities is not being implemented or followed, I would suggest that you contact each facility and determine whom they are accredited through. You can then address your concerns or file a complaint with the corresponding accrediting body directly.

Also please note, legislation to amend this statute and make it apply to the facilities you questioned did not pass the legislature this session. (See HB 214).

Your complaint with our office is now closed, but I hope you find this information helpful.

Sincerely,

Melissa Wilson
Ombudsman Intake

Faith Myers

From: Amory Lelake [Amory.Lelake@akleg.gov]
Sent: Friday, May 03, 2013 10:01 AM
To: faith.myers@gci.net
Subject: FW: Mental health grievance procedure
Attachments: Myers_Collins.pdf

Faith,

Please see DHSS's response below.

Best,

Amory

From: Laughlin, Wilda J (HSS) [mailto:wilda.laughlin@alaska.gov]
Sent: Thursday, May 02, 2013 3:31 PM
To: Sen. Johnny Ellis; Amory Lelake
Cc: Streur, William J (HSS); Rep. Geran Tarr
Subject: Mental health grievance procedure

Senator Ellis,

Thank you for forwarding the attached letter dated April 3, 2013, from Faith Myers and Dorrance Collins regarding the meaning of "impartial body" in AS47.30.847, Patients' Grievance Procedures.

Under AS 47.30.847(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**. Additionally, under AS47.30.847(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.

The formal grievance procedure required for each facility under AS47.30.847(b) **will designate who the impartial body is for the facility**, as well as define the steps in the grievance procedure that would lead to an impartial body reviewing the grievance if it cannot be resolved at a lower level in the process. It is always desirable for a grievance to be resolved as quickly as possible. Each facility is responsible for developing its own grievance procedure which is reviewed and approved as part of its accreditation process.

Please let me know if you have further questions.

w.

Sec. 47.30.840. Right to privacy and personal possessions. (a) A person undergoing evaluation or treatment under AS 47.30.660 - 47.30.915

(1) may not be photographed without the person's consent and that of the person's guardian if a minor, except that the person may be photographed upon admission to a facility for identification and for administrative purposes of the facility; all photographs shall be confidential and may only be released by the facility to the patient or the patient's designee unless a court orders otherwise;

(2) at the time of admission to an evaluation or treatment facility, shall have reasonable precautions taken by the staff to inventory and safeguard the patient's personal property; a copy of the inventory signed by the staff member making it shall be given to the patient and made available to the patient's attorney and any other person authorized by the patient to inspect the document;

(3) shall have access to an individual storage space for the patient's private use while undergoing evaluation or treatment;

(4) shall be permitted to wear personal clothing, to keep and use personal possessions including toilet articles if they are not considered unsafe for the patient or other patients who might have access to them, and to keep and be allowed to spend a reasonable sum of the patient's own money for the patient's needs and comfort;

(5) shall be allowed to have visitors at reasonable times;

(6) shall have ready access to letter writing materials, including stamps, and have the right to send and receive unopened mail;

(7) shall have reasonable access to a telephone, both to make and receive confidential calls;

(8) has the right to be free of corporal punishment;

(9) has the right to reasonable opportunity for indoor and outdoor exercise and recreation;

(10) has the right, at any time, to have a telephone conversation with or be visited by an attorney;

(11) may not be retaliated against or subjected to any adverse change of conditions or treatment solely because of assertion of rights under this section.

(b) The patient's rights under (a)(4), (5), (7) and (9) of this section may be suspended temporarily, following the initial evaluation period, if the professional person in charge of the patient determines that granting the patient those rights will pose a threat to the safety or well-being of the patient or others.

Revised again in 1990.

Provided by Faith Myers / Dorrance Collins
(907) 929-0532

Passed 1981

Revised and passed 1984



THE STATE
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GOVERNOR SEAN PARNELL

Department of
Health and Social Services

OFFICE OF THE COMMISSIONER
Juneau

350 Main Street, Suite 404
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Fax: 907.465.3068

August 22, 2013

Mental Health Advocates
Faith Myers / Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins,

It is regretful that you found my letter dated July 16 not responsive to your request for answers to eight questions regarding the rights of disabled psychiatric patients and the duties of the Department of Health and Social Services, Division of Behavioral Health (DHSS/DBH). Your August 9 letter states that you want to know DHSS's/DBH policies and regulations rather than the law. However, DHSS/DBH's policies are based on the law and DHSS regulations have the force of law. The protection of mental health consumer rights is accomplished through federal law, state statutes, and DHSS regulations.

Alaska's mental health system encompasses a broad spectrum of community providers, services provided by general acute care hospitals, designated treatment and evaluation facilities, and a state-operated hospital. The rights of mental health consumers in these various settings are protected by statutes as well as regulations adopted by DHSS. While it is difficult to answer fully all of your questions without additional information, I offer the following general supplemental responses to your questions:

1. Question: *Do disabled psychiatric patients have a legal right by state law or regulations to assistance in the protection of their rights?*

Answer: Under federal law, The Disability Law Center of Alaska is designated as the protection and advocacy system for Alaska. The Disability Law Center assists individual mental health consumers in the protection of their rights. This assistance varies according to the individual circumstances and may include coaching for self-advocacy or even the filing of lawsuits to enforce or protect mental health consumers' rights. Alaska Statute 47.30.847(c) requires a designated staff member within the facility to assist mental health consumers who may be receiving inpatient treatment at the Alaska

Psychiatric Institute or any of the designated treatment and evaluation facilities, to advocate and assist the patient with grievances or protection of the patient's rights. Alaska Statute 47.30.700(a) requires the appointment of a lawyer to represent and assist mental health consumers who are subject to an order for involuntary evaluation and treatment.

2. Question: *Do psychiatric patients have a legal right by state law or regulations to file an appeal concerning their complaints within a psychiatric facility or unit and to a state agency?*

Answer: Alaska Statute 47.30.847, and DHSS regulations adopted by reference in 7 AAC 72.012, and found at 7 AAC 12.890, explain the grievance procedures for these mental health consumers. When consumers are subject to involuntary evaluation and treatment, they may have additional means of appealing the outcome of certain complaints within the context of court proceedings.

3. Question: *Is DHSS/DBH required by state law or state regulations to investigate disabled psychiatric patient complaints?*

Answer: Yes, see Alaska Statute 47.30.660(b)(12).

4. Question: *Is DHSS/DBH required by state law or state regulations to keep statistics of psychiatric patient complaints in psychiatric facilities, unit, and clinics?*

Answer: No. However, Alaska Statute 47.30.660(b)(10) requires reports from treatment facilities concerning the care of patients.

5. Question: *Is DHSS/DBH required by state law or state regulations to advocate for the advancement of better rights for psychiatric patients?*

Answer: No. However, Alaska Statute 47.30.550 charges the department with adopting regulations to *assure* patient rights and to safeguard the confidential nature of their records and information when receiving services provided under Title 47, Chapter 30. The Alaska Mental Health Board is required to advocate for the needs of mental health consumers under Alaska Statute 47.30.666(4).

6. Question: *Is DHSS/DBH required by state law or state regulations to make reports to the Alaska legislature and the general public concerning the number and type of complaints from psychiatric patients while receiving treatment and what needs to be done to improve the rights for psychiatric patients?*

Faith Meyers / Dorrance Collins
August 22, 2013
Page 3

Answer: No.

7. Question: *Is DHSS/DBH required by state law or state regulations to inform disabled psychiatric patients of their rights?*

Answer: Mental health consumers have the right to be informed of their rights in various settings. Sometimes notice of these rights is required by state law or regulation to be delivered orally, in writing, and/or by posting the list of rights.

8. Question: *Are psychiatric facilities, units, clinics required by state law or state regulations to post the phone number of the state agencies that will assist psychiatric patients with their complaints?*

Answer: Designated evaluation and treatment facilities are required by regulation to post a notice of patients' rights. Community mental health centers are required by regulation to post a bill of client rights.

Thank you for your diligence in championing for the rights of Alaska's psychiatric patients.

Sincerely,



William J. Streur
Commissioner

cc: Governor Sean Parnell
Senator Johnny Ellis
Representative Geran Tarr
Mike Lesmann, Special Assistant
State Ombudsman's Office



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of
Health and Social Services**

DIVISION OF BEHAVIORAL HEALTH
Alaska Psychiatric Institute

3700 Piper Street
Anchorage, Alaska 99508-4677
Main: 907.269.7100
Fax: 907.269.7128

July 16, 2013

Mental Health Advocates
Faith Myers /Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins,

Thank you for your thoughtful inquiry regarding psychiatric patients' rights. Unfortunately, the Department of Health and Social Services, Division of Behavioral Health is not able to respond in detail to all of your questions because the majority would require additional facts and legal analysis.

Generally speaking, persons receiving treatment at community mental health centers have the rights outlined in 7 AAC 71.200 – 7 AAC 71.220. Grievance procedures at community mental health centers are addressed in 7 AAC 71.220. Patients subject to involuntary or voluntary treatment at Designated Evaluation and Treatment Facilities or the Alaska Psychiatric Institute have a number of rights defined by statute in AS 47.30.670 – AS 47.30.915. Grievance procedures for these patients may be found in AS 47.30.847.

Specific answers to your questions require an understanding of the specific facts involved. Since The Disability Law Center of Alaska is the designated protection and advocacy system for the State of Alaska, your questions are best directed to and answered by The Disability Law Center of Alaska, 3330 Arctic Blvd., Anchorage, AK 99503, telephone (907) 565-1002.

Sincerely,

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William J. Streur
Commissioner

cc: Senator Johnny Ellis
Representative Geran Tarr
Mike Lesmann



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Department of
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OFFICE OF THE COMMISSIONER
JUNEAU

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Juneau, Alaska 99801-1169
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Fax: 907.465.3068

March 5, 2013

Prepared by the Division of Behavioral Health

Thank you for your interest in Alaska's mental health patient grievance procedure.

The department considers transparency to be one of the greatest strengths of the statewide Behavioral Health system. In comparison to other state behavioral health systems, our numbers are relatively small, with about 27,000 individuals receiving services. We believe numerous avenues are currently available to this population that allow resolution of problems much faster than a multi-tiered grievance process mandated in Statute.

The proposal you forwarded has been suggested several times by two mental health consumers who had complaints arising from an episode of care at the Alaska Psychiatric Institute in 2003. In 2005, the consumers raised their concerns to what was then referred to as the Alaska Psychiatric Institute Governing Body. Under the leadership of Aileen Smith, Chair, a consumer in recovery from mental illness, the Governing Body made 20 recommendations to the API Chief Executive Officer. The hospital implemented many of the suggestions, including a robust grievance process.

The API Governing Body has evolved to the API Advisory Board (a consumer driven body), which established a joint Quality Improvement subcommittee with participants comprised of Board members and API staff. The group monitors the API Grievance process quarterly, and if improvements are necessary, makes revisions quickly. It is the only API Policy and Procedure that is afforded this level of review on an ongoing basis.

The remainder of the system of care outside of API has multiple points of input(s) to determine if patient's rights are threatened. Each licensed medical facility in the state is accredited by the Joint Commission (JC) and Centers for Medicare and Medicaid Services (CMS). The Joint Commission has a link on its website to submit a complaint about any hospital that carries JC accreditation and takes necessary action if it receives ongoing complaints about a hospital.

The Alaska Mental Health Trust (Trust) authority beneficiary boards, the Alaska Mental Health Board/Advisory Board on Alcoholism and Drug Abuse, hold three meetings each year with concrete opportunities for public comments. In addition to the formal venue, there is an informal process where

DHSS

March 5, 2013

Page 2

consumers meet and converse with Board members. The Director of the Division of Behavioral Health, behavioral health staff, and several Trust Program Managers routinely attend these meetings. Consumers and family members can easily raise concerns about mistreatment at any facility. The Division of Behavioral Health follows up on each issue.

As the designated federal Protection and Advocacy agency for the mentally ill in Alaska, the Alaska Disability Law Center is also an active participant to assure patient rights. The most vulnerable population is often managed under guardianship by the Office of Public Advocacy, which resides under the Department of Administration. OPA reports allegations of patient rights violation or neglect and abuse to the Ombudsman, and in the case of a licensed medical facility, to the state office of Licensing & Certification, which has investigative authority for CMS in Alaska. There are also informal pathways to the Commissioner's Office, the Behavioral Health Division Director and the API CEO through the National Alliance for the Mentally Ill and the Alaska Peer Consortium.

The department is available to discuss this topic in further detail upon request. Thank you for taking the time to understand the concerns brought forth in this response to your inquiry.



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Specific answers to your questions require an understanding of the specific facts involved. Since The Disability Law Center of Alaska is the designated protection and advocacy system for the State of Alaska, your questions are best directed to and answered by The Disability Law Center of Alaska, 3330 Arctic Blvd., Anchorage, AK 99503, telephone (907) 565-1002.

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William J. Streur
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Under AS 47.30.847(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**. Additionally, under AS47.30.847(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.

The formal grievance procedure required for each facility under AS47.30.847(b) **will designate who the impartial body is for the facility**, as well as define the steps in the grievance procedure that would lead to an impartial body reviewing the grievance if it cannot be resolved at a lower level in the process. It is always desirable for a grievance to be resolved as quickly as possible. Each facility is responsible for developing its own grievance procedure which is reviewed and approved as part of its accreditation process.

Please let me know if you have further questions.

w.

Faith Myers

From: Amory Lelake [Amory.Lelake@akleg.gov]
Sent: Friday, May 03, 2013 10:01 AM
To: faith.myers@gci.net
Subject: FW: Mental health grievance procedure
Attachments: Myers_Collins.pdf

Faith,

Please see DHSS's response below.

Best,

Amory

From: Laughlin, Wilda J (HSS) [mailto:wilda.laughlin@alaska.gov]
Sent: Thursday, May 02, 2013 3:31 PM
To: Sen. Johnny Ellis; Amory Lelake
Cc: Streur, William J (HSS); Rep. Geran Tarr
Subject: Mental health grievance procedure

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Cc: Streur, William J (HSS); Rep. Geran Tarr
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Please let me know if you have further questions.

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THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of
Health and Social Services**

DIVISION OF BEHAVIORAL HEALTH
Alaska Psychiatric Institute

3700 Piper Street
Anchorage, Alaska 99508-4677
Main: 907.269.7100
Fax: 907.269.7128

July 16, 2013

Mental Health Advocates
Faith Myers / Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins,

Thank you for your thoughtful inquiry regarding psychiatric patients' rights. Unfortunately, the Department of Health and Social Services, Division of Behavioral Health is not able to respond in detail to all of your questions because the majority would require additional facts and legal analysis.

Generally speaking, persons receiving treatment at community mental health centers have the rights outlined in 7 AAC 71.200 – 7 AAC 71.220. Grievance procedures at community mental health centers are addressed in 7 AAC 71.220. Patients subject to involuntary or voluntary treatment at Designated Evaluation and Treatment Facilities or the Alaska Psychiatric Institute have a number of rights defined by statute in AS 47.30.670 – AS 47.30.915. Grievance procedures for these patients may be found in AS 47.30.847.

Specific answers to your questions require an understanding of the specific facts involved. Since The Disability Law Center of Alaska is the designated protection and advocacy system for the State of Alaska, your questions are best directed to and answered by The Disability Law Center of Alaska, 3330 Arctic Blvd., Anchorage, AK 99503, telephone (907) 565-1002.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Streur".

William J. Streur
Commissioner

cc: Senator Johnny Ellis
Representative Geran Tarr
Mike Lesmann

Attn: Ms. Julie Bradshaw

August 18th, '06

As part of a API committee examining patient grievance procedure / complaint procedure and the 5 unit manuals, we are requesting the following information which will be necessary for us to make an informed opinion.

Following is the information we need:

1. Over the last 12 months how many complaints have been filed?
2. How many grievances have been filed over the last 12 months?
3. A written answer is required to a formal grievance. How many times has the hospital replied to a patient in writing?
4. How many complaints concerning Individual treatment plans, hospital treatment and discharge plans?
5. How many grievances concerning Individual treatment plans, hospital treatment and discharge plans have been filed by patients?
6. Estimate how many complaints are turned down because the patient advocate or hospital feels they are frivolous or unfounded?
7. We would like to have a copy (blank) of the form used by the patient to file a complaint , a blank copy of the comment form used by the patients, and the form used to file a grievance and also a blank copy of the form used by the patient advocate to document and log the complaints / grievances.
8. Also include any other relevant information concerning API grievance procedure / complaint procedure.

Please provide us the information you can next week; if some information is more difficult we will come out on two different occasions and pick it up. Thank you for your help.

Faith Myers / Dorrance Collins
929-0532

Ms. Julie Bradshaw was an API employee serving as the Patient Advocate.

Information Provided by API

1. Over the last 12 months how many complaints have been filed?

API is currently updating how we track complaints so questions like this can be easily answered. API currently tracks patient comments in a 19 category comment form database which does not provide us with clear answers on how many were complaints. I did pull the last 12 months worth of comment forms (July 05 – July 06) and reviewed them individually for complaints.

337 comment forms filled out in the 12 month period

81 were compliments or positive comments

256 were negative comments or complaints.

2. How many grievances have been filed over the past 12 months?

The Consumer and Family Specialist (CFS) address complaints directly with the patient for resolution and this usually happens within hours of the CFS receiving the complaints. In March the hospital developed a new policy and procedure that allows patients a more formal process if they do not feel their complaint has been adequately resolved. That new process would at the patient's request identify the complaint as a grievance (a complaint not resolved to the patient's satisfaction by the CFS working directly with the patient and staff). Since implementing this process API has not had a patient request a complaint to be addressed through the grievance process.

3. A written answer is required to a formal grievance. How many times has the hospital replied in writing?

API has not had a patient request to engage in the grievance process at this time because the CFS address complaints directly with the patient for a resolution within hours of the CFS receiving the complaints, so we have not had the opportunity to respond to formal grievance in writing.

4. How many complaints concerning individual treatment plans, hospital treatment and discharge plans?

The categories that API has these broken down into do not match your question directly; the closest are "Treatment Team Issues" and "Discharge Request". Here is the list of categories and the positive (P) and negative (N) numbers for each:

1. Respect & Dignity = P-1 N-54
2. Privacy = N-7
3. Communication = P-3 N-7
4. Religious = P-1 N-1
5. HIPPA = N-4
6. Discharge Request = P-2 N-14
7. Right to Refuse Treatment = N-1
8. Not Addressable = P-2 N-3

- 9. Sexual =N-3
- 10. Treatment Team Issues = P-1 N-44
- 11. Safety =P-2 N-18
- 12. Dietary =P-3 N-11
- 13. Medication =N-17
- 14. Medical =N-4
- 15. Praise or Compliment = P-61
- 16. Other = P-5 N-17 +(6 about the hospital being to cold)
- 17. Doctors/Therapist = N-11
- 19. Rights = N-28 +(6 about the right to smoke)

Total =337

5. How many grievances concerning individual treatment plans, hospital treatment and discharge plans.

As noted earlier the formal grievance process started in March 2006 and API has not had a request by a patient to move their complaint into the grievance process.

6. Estimate how many complaints are turned down because the patient advocate or hospital feels they are frivolous or unfounded.

All complaints are explored and reviewed with the patient by the Consumer and Family Specialist without being judged as frivolous and unfounded and earnest attempts are made to resolve all complaints.

7. We would like to have a copy of the forms used by the patient to file a complaint, the forms to file a grievance and the forms used by the patient advocate to document and log the complaint / grievances.

Attached: Patient Comment Form

This is what patients use to lodge a complaint. The Patient Form can also be used to request that an unresolved complaint be addressed as a grievance or the patient or their representative can verbally request their complaint be reconsidered as a grievance.

Patient Complaint Interview Form

Patient Complaint Log

8. Also include any other relevant information concerning API complaint / grievances procedure.

The complaint and grievance process has been through considerable change over the last 12 months. In March of this year API replaced the two pages "Patients' Rights Complaints" Policy and Procedure with a more comprehensive eight page "Patients' Complaints and Grievances Procedures". The new policy and procedure

has greatly improved API's accountability in responding to complaints and provides a clear course of action for patient complaints and grievances. With implementation we have recently regenerated the "Comments Form". This form has not changed, but was put into an electronic format so the Consumer and Family Specialist (CFS) will be able to print cleaner copies for patients' use. API also recently finished the development of the "Patient Complaint Interview Form" to provide the CFS with the needed form to document complaints and the outcome of the interview. In concurrence with that form API also developed the "Patient Complaint Log" form. This log allows API to focus on patient complaints. The current log utilized by the CFS documents all patient comments from compliments to complaints. Though we like positive comments, blending them with complaints in this data base has made it difficult to clearly analyze areas of complaints. We are working on gathering clearer and more useful information on complaints by separating that information. The new "Patient Complaint Log" will also allow API to monitor our ability to respond in a timely manner.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 26, 2015

SUBJECT: State obligations with respect to psychiatric hospitals
(Work Order No. 29-LS0406)

TO: Senator Johnny Ellis
Attn: Amory Lelake

FROM: Kate S. Glover *KSG*
Legislative Counsel

You have asked two questions regarding the state's obligations with respect to psychiatric hospitals. First, you have asked whether the state's broad delegation of authority and obligations to private psychiatric hospitals and units is unlawful. Second, you have asked whether the state has an obligation to require that individuals detained for psychiatric evaluations or treatment are informed of their rights. Both questions are discussed below.

Delegation of authority to private psychiatric hospitals

AS 47.30.660(b)(13) authorizes the Department of Health and Social Services (the department) to delegate many of its duties to other entities:

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.660 - 47.30.915;

This provision gives the department the legal authority to delegate the general powers and duties of the department under AS 47.30.660, and more specific authority pertaining to, for example, voluntary commitments for mental illness under AS 47.30.670, involuntary commitments for mental illness under AS 47.30.700, mental health patient rights under AS 47.30.825, grievance procedures under AS 47.30.847, and diligent inquiry after departure of a patient from a mental health facility or death in a facility under AS 47.30.900.

There is an argument that this statute creates an unconstitutional delegation of executive branch functions to nongovernmental and regulated entities. The delegation provides no specific standard under which a nongovernmental organization would exercise departmental authority, other than the express duties applicable to the department. A delegation may result in the authority of a mental health treatment facility to essentially regulate itself, for departmental purposes, in the care and treatment of mental health

patients. Aside from the policy implications of such a broad delegation, the delegation may be unlawful due to its breadth. The Alaska Supreme Court has stated:

The constitutionality of a delegation is determined on the basis of the scope of the power delegated and the specificity of the standards to govern its exercise. "When the scope increases to immense proportions . . . the standards must be correspondingly more precise." The essential inquiry is whether the specified guidance 'sufficiently marks the field within which the administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will.'

State v. Fairbanks North Star Borough, 736 P.2d 1140, 1143 (Alaska 1987) (internal quotes and citations omitted).

While the delegation in AS 47.30.660(b)(13) has not been challenged to my knowledge, the provision may be interpreted as an unconstitutionally excessive delegation of executive branch functions to nongovernmental and regulated entities. HB 214, from in the 28th Legislature, included an amendment to this section, which would have limited the department's authority to delegate some of its duties. If you believe there is a problem with the department's delegation of authority, you may wish to review CSHB 214(JUD), section 3, to decide whether you would like to include a provision similar to this in the bill you have previously requested pertaining to mental health facilities in Ms. Lelake's email: cited AS 47.30.847, dealing with patient grievance procedures, as an example of unlawful delegation of department obligations. This statute is not necessarily a delegation of authority. It requires treatment facilities to have formal grievance procedures, but that does not eliminate the department's obligation to investigate complaints under AS 47.30.660(b)(12).

Obligation to inform individuals detained for psychiatric evaluation of their rights

AS 47.30.725 requires individuals who are detained for psychiatric commitment proceedings to be informed of their rights, orally and in writing. Among the rights of which an individual must be informed is the right to an attorney. There is no specific requirement to specifically inform an individual detained for commitment proceedings of the rules and policies related to grievance procedures. The request you submitted for a draft bill would include additional requirements for informing patients of rights related to grievance procedures. In addition, AS 47.30.855 requires the posting of rights provided in AS 47.30.817 - 47.30.855, including the grievance procedure in AS 47.30.847, in all treatment facilities "in places accessible to all patients." If you would like to expand the list of rights under AS 47.30.725, please let me know.

If I may be of further assistance, please advise.

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MEMORANDUM

May 10, 2018

SUBJECT: Mental health legislation review (Work Order No. 30-LS1537)

TO: Representative Geran Tarr
Attn: Diana Rhoades

FROM: Allison M. Laffen *AML*
Legislative Counsel

You've asked whether legislation similar to HB 535 from the 2007 Georgia Legislature could be drafted in Alaska.

HB 535 appears to do the following: (1) creates the office of disability services ombudsman to promote the safety, well-being and rights of consumers; a "consumer" is defined as a person who has been or is a recipient of certain disability services or a person seeking disability services; and (2) directs the governor to appoint a medical review group to conduct medical reviews of all deaths of consumers in state hospitals or state operated community residential services.¹ The bill also includes numerous details regarding implementing (1) and (2), including details regarding organizational structure, authority, and duties.

Based on your constituent's email, her concern appears to relate to protecting the recipients of mental health services in the state. You may want to review relevant Alaska Statutes regarding mental health services in Alaska. Mental health is addressed in AS 47.30; AS 47.30.655 - 47.30.660 relate to the State Mental Health Policy, and AS 47.30.817 - 47.30.865 relate to patient rights. AS 47.30.847 in particular relates to patients' grievance procedures.

Note that Alaska has two ombudsmen under current law. AS 24.55.010 creates the office of the ombudsman in the legislative branch. Under AS 24.55.100 and 24.55.110, the ombudsman has broad jurisdictional authority to investigate complaints of administrative acts of agencies, including the Department of Health and Social Services, and state owned and operated treatment facilities, and the administrative acts of a corporation of the state government (such as the Mental Health Trust Authority (MHTA)).² AS 47.62.010

¹ Note that I am unfamiliar with the laws in Georgia, and do not know how sections of this bill would interact with existing provisions of Georgia statutes.

² Note that the ombudsman does not have jurisdiction over private state contractors.

Representative Geran Tarr
May 10, 2018
Page 2

establishes the office of the long term care ombudsman in the MHTA; the long term care ombudsman investigates and resolves certain complaints made on or behalf of an older Alaskan who resides in a long term care facility.³

Current Alaska law also provides for risk management in hospitals under AS 18.20.075, hospital records retention under AS 18.20.085, hospital licensure accreditation, and inspection under AS 47.32, mental health patient rights under AS 18.20.095, and medical review organizations under AS 18.23.005 - 18.23.070.

Legislation similar to HB 535 from the 2007 Georgia Legislature could be drafted in Alaska but may result in the repeal and amendment of current Alaska law serving a similar purpose. Do you know specifically which provisions of HB 535 you are interested in having drafted for Alaska? It appears that many of the duties of the office of disability services ombudsman proposed in HB 535 are currently covered by the existing ombudsmen in Alaska and current law establishing patients' rights and grievance procedures. It might be helpful if I knew more specific details about your concerns with existing law and the specific goals or outcomes that you are hoping to achieve with this bill.

If I may be of further assistance, please advise.

AML:mlp
18-293.mlp

³ AS 42.62.015(a).

SARAH PALIN, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

August 13, 2008

Ms. Faith Myers
Mr. Dorrance Collins
3240 Penland Pkwy, Sp 35
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins:

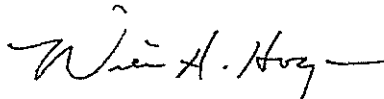
Thank you for your letters regarding grievances and/or complaints filed in Behavioral Health Grantee facilities. As stated previously in correspondence to you, "the mission of the Division of Behavioral Health (DBH) is to manage an integrated and comprehensive behavioral health system based on sound policy, effective practices and partnerships."

The community mental health centers and hospitals that we form partnerships with for behavioral health care, including inpatient services, are private entities governed by their own boards of directors with policies and procedures in place. According to the conditions of grant award all centers are to post their grievance procedures and offer assistance to anyone who wishes to file a grievance.

Inpatient facilities must follow procedures set forth by their accrediting bodies such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) through their own governing bodies. The Division of Behavioral Health is not involved at this local level and does not require or maintain records of any grievance activities of private providers. If you desire such records you should direct your inquiries to the executive directors or governing bodies of these entities.

Please be advised that the private providers must also protect consumer records and be in compliance with the privacy rule of the Health Insurance Portability and Accountability Act (HIPAA). Again, we applaud your dedication and advocacy on behalf of the people of Alaska.

Sincerely,



William H. Hogan
Commissioner

cc: Melissa Stone, Director, Division of Behavioral Health
Beth Leibowitz, Ombudsman's Office

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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LAA.Legal@akleg.gov
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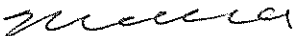
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 5, 2020

SUBJECT: AS 47.30.847 and patient grievance procedures
(Work Order No. 31-LS1676)

TO: Representative Geran Tarr
Attn: Karla Hart

FROM: Marie Marx 
Legislative Counsel

You have asked whether AS 47.30.847, relating to patient grievance procedures, applies to all mental health facilities in the state. You also asked whether the state could require private mental health facilities which receive public funds to report injury and grievance data, and suggested adding intent language to the operating budget to that effect.

AS 47.30.847 does not apply to all mental health facilities in the state but does apply to more than just facilities owned or managed by the state. Under AS 47.30.847, a patient has the right to bring a grievance about the patient's treatment, care, or rights to an impartial body within an evaluation facility or designated treatment facility. An evaluation facility is "a health care facility that has been designated or is operated by the department to perform the evaluations described in AS 47.30.660 - 47.30.915, or a medical facility licensed under AS 47.32 or operated by the federal government."¹ A designated treatment facility is "a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons under AS 47.30.670 - 47.30.915 but does not include correctional institutions."² AS 47.30.847 applies to all facilities that fall under these definitions, including private ones.

AS 47.30.847 could be amended so that it requires private mental health facilities in the state that receive public funds to report specified data. You may wish to review HB 214 from the 28th Legislature. Among other things, HB 214 proposed expanding application

¹ AS 47.30.915(7).

² AS 47.30.915(5).

Representative Geran Tarr
March 5, 2020
Page 2

of AS 47.30.847 to include all state and private facilities which receive public funds,³ and also proposed mandatory grievance data reporting by these facilities.

Adding intent language to the operating budget to mandate injury and grievance data reporting raises an issue under art. II, sec. 13, of the Alaska Constitution, which provides that "bills for appropriations shall be confined to appropriations." The legislature's power to attach intent or qualifying language to an appropriation has significant limits. In *Alaska Legislative Council v. Knowles*, the Alaska Supreme Court established a five-part test for substantive contingencies related to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is appropriate, to an appropriations bill.⁴

Language that falls outside this standard is unenforceable because it violates the confinement clause of the Alaska Constitution. Intent language requiring that private facilities report injury and grievance data may be deemed to have the effect of amending existing law. Thus, if challenged, a court may find the language unconstitutional and unenforceable.

If you would like legislation drafted related to AS 47.30.847, or if I may be of further assistance, please let me know.

MYM:kwg
20-142.kwg

³ Representative Pete Higgins, "Sponsor Statement," *available at* http://www.akleg.gov/basis/get_documents.asp?session=28&docid=22800 (last visited March 4, 2020).

⁴ 21 P.3d 367, 377 (Alaska 2001).