YOUR MENTAL HEALTH RIGHTS IN ALASKA

MOST RECENTLY REVISED IN 2025

Please read this important notice carefully before proceeding!

This publication was prepared by the Disability Law Center of Alaska (DLC), the Protection and Advocacy agency for Alaska, and was originally made possible by funding support from the *U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services* through a grant to DLC.

This publication is designed to be **a general educational resource**-it is not an exhaustive legal guide. While it was last updated in the year that is listed just below the title, there is no guarantee that the information found in this publication is fully up to date or completely accurate at any time after the most recent update. This is because all laws and regulations-both state and federal-are subject to change by legislation and by court decisions at any time and without advanced notice.

Therefore, the information contained in this publication is **provided for informational purposes only and should never be construed as legal advice on any subject matter.** Readers should use the guide for general information and then ask questions about their own individual needs. You should not act or refrain from acting based on any content included in this publication without seeking legal or other professional advice. If you have questions about disability law as it relates to mental health issues, please consider contacting DLC for possible further help.

The most direct way to request assistance from DLC is by completing our Online Intake Form via our website at: https://www.dlcak.org/intake/online-intake-form. If you cannot access the internet, you may call our main line at 907-565-1002 (in Anchorage) or 1-800-478-1234 (toll-free statewide) and leave a message for one of our Intake team members.

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I. INTRODUCTION

This publication generally explains the rights of individuals with mental health concerns while they are residing in a mental health facility involuntarily or receiving outpatient mental health care while still subject to court supervision. The publication provides information that can be used by individuals and their support circles to engage in self-advocacy during this time.

If you need more information about the topics covered in this booklet or issues related to an individual with mental illness, such as housing, employment, or service animals, you can contact DLC to discuss your situation.

A. Recent Developments Related to Mental Health Treatment and Rights in Alaska

Beginning in 2018, a dispute about the appropriate treatment of people with mental health disabilities in Alaska led to the filing of a series of lawsuits by various advocacy agencies, including the Disability Law Center of Alaska In 2020, a legal settlement was reached between the State of Alaska Department of Health and Social Services and DLC which was intended to help address the mental health crisis in our state. The settlement focused on how mental health patients under what is referred to as Title 47 holds (involuntary commitments) were being confined for extended periods of time without receiving appropriate treatment from health care professionals. DLC's original lawsuit also targeted the elimination of the practice of holding mental health patients in emergency rooms and jails as they awaited services from a state-run mental health facility.

In 2022, the Alaska Legislature passed House Bill 172. The law was intended to help increase access to behavioral health crisis level services in Alaska and mandated that these services be provided in less restrictive settings whenever possible. To help support this outcome, the law added short-term treatment "crisis stabilization centers" (23-hour-stays) and "crisis residential centers (stays of up to a week) as new service options. These newly created service options are meant to allow individuals in behavioral health crisis to be diverted from institutional settings and permit examinations and evaluations for civil commitment to occur in less restrictive mental health facilities, when appropriate.

To ensure protection of psychiatric patient rights, the passage of HB 172 required the Department of Health (DOH), the Department of Family and Community Services (DFCS), and the Alaska Mental Health Trust Authority (the Trust) to submit a joint report to the Alaska Legislature a year after the act went into law. In September of 2023, a report titled *HB 172– Psychiatric Patient Rights in Alaska* was submitted to the Alaska Legislature. Contributions to the report were made by numerous critical public and private stakeholders. In addition to reporting on the overall state of behavioral health services in Alaska, the report also outlined and explained the rights of individuals with mental health disabilities while they are either residing in a mental health facility—voluntarily or involuntarily—or when receiving outpatient mental health care.

Around the same time, the Trust, Alaska Departments of Health and Family and Community Services, and a number of other partners began working together to implement improvements to Alaska's system of care for individuals experiencing a behavioral health crisis. This group successfully advocated for the State of Alaska to use the nationally recognized *Crisis Now* model

as a framework for mental health services in Alaska. *Crisis Now* is a model of behavioral health/psychiatric care designed to provide a short-term diversionary level of care in the least restrictive setting, and at the earliest moment possible, to support individuals in crisis, so they do not have to escalate to the highest level of care to have their needs addressed. *Crisis Now* is a model comprised of three central components:

1. A regional or statewide crisis call center that coordinates in real time with the other components to connect patients, providers, and families to services.

2. Centrally deployed, 24/7 mobile crisis teams (ideally, a clinician and a peer) to respond in-person to individuals in crisis.

3. 23-hour crisis stabilization and up-to-one-week crisis residential treatment, which may be operated as separate or as joint facilities, offering a safe, supportive, and appropriate behavioral health crisis placement for those who cannot be stabilized by call center clinicians or mobile crisis team response.[1]

Because advocacy for the implementation the *Crisis Now* model and the *HB 172–Psychiatric Patient Rights in Alaska* report have been so influential in our state's approach to mental health treatment and services in Alaska in recent years, both have been relied on to a large extent during the revision of this booklet.

B. Disability Defined

Generally defined, a disability is a physical or mental impairment that substantially limits one or more major life activities. A "major life activity" includes activities such as walking, hearing, seeing, breathing, learning, speaking, or working. Disabilities include, but are not limited to, mental illness, hearing, mobility, visual impairments, developmental disabilities, alcoholism (in some circumstances), environmental illnesses, chemical sensitivities, and HIV/AIDS. However, it is important to note that there can be different definitions of what a disability is, found in both federal and state laws, and the differences in the definitions can be important when determining the rights of individuals with disabilities in any given context (employment, education, etc.).

When it comes to individuals experiencing a mental health crisis, the federal laws regarding discrimination primarily protect you if you have a mental health disability or have a history of such a disability. For example, under the Americans with Disabilities Act (ADA), a disability includes a mental impairment that substantially limits a major life activity or major bodily function. Mental impairments include psychological disorders and mental illnesses, such as bipolar disorder, schizophrenia, major depression, anxiety disorders, obsessive-compulsive disorder, post-traumatic stress disorder (PTSD), and personality disorders.

The ADA does not include an exhaustive list of conditions that will always be considered disabilities. Instead, it requires a focus on the effect of the condition: does the impairment limit at least one of the individual's major life activities? If so, it is a disability. The laws protect not only

[1] See *Crisis Stabilization in Alaska: Understanding HB 172,* published in September of 2022 at https://health.alaska.gov/Commissioner/Documents/PDF/Crisis-Stabilization-in-Alaska-HB-172.pdf.

the person with a disability, but also those who are associated with people with disabilities. For example, it would be unlawful to deny a person housing due to his/her relationship with a person who has a mental illness.

C. Guiding Principles: Alaska's State Mental Health Policy

On a number of occasions in the past, in an attempt to protect the legal rights of individuals experiencing a mental illness, the Alaska Legislature has made major revisions to the Alaska civil commitment statutes (AS 47.30.660 and 47.30.670 to 47.30.915). These revisions have sought to strike a balance between an individual's constitutional right to physical liberty and the state's interest in protecting society from individuals who are found to be dangerous to others or to themselves. The Alaska civil commitment statutes seek to strike this balance by providing for due process safeguards at all stages of involuntary civil commitment proceedings. As part of this process, the state has developed guiding principles related to setting out Alaska's state mental health policies related to the civil commitment process. The following principles of modern mental health policies have been adopted by the state[2].

1) Persons are to be given every reasonable opportunity to accept voluntary treatment before being subjected to involvement with the judicial system.

2) Persons are to be treated in the least restrictive alternative environment consistent with their treatment needs.

3) Treatment should occur as promptly as possible and as close to the individual's home as possible.

4) A system of mental health community facilities and support services should be available to individuals with mental health issues.

5) Patients should be informed of their rights and be informed of and allowed to participate in their treatment program as much as possible; and,

6) Persons who are mentally ill but not dangerous to others should only be committed if there is a reasonable expectation of improving their mental condition.

Most of the information in this booklet is related to Principle # 5: patients should be informed of their rights and be informed of and allowed to participate in their treatment program as much as possible.

All people have certain basic legal rights, including people who have a mental illness and people in mental health facilities. Sometimes these rights can be restricted by a judge, or in emergencies, by a mental health professional. It is important for individuals with mental health disabilities and their support groups to know when, and how, rights may be restricted. If you are placed in a mental health facility through an involuntary commitment process, this booklet contains information that you may want to know about your rights. The following information is not a complete statement of all rights but tries to highlight those patient rights provisions that are most relevant. <u>It is not legal advice</u>.

[2] AS 47.30.655(1) through (6).

II. YOUR RIGHTS WHILE IN A MENTAL HEALTH FACILITY

A. Your Rights Under Emergency Commitment to a Mental Health Facility

If you are detained under Alaska Title 47 (the involuntary commitment law), you should be immediately notified orally and in writing of your rights under this section. Your guardian, if any, should also be notified. If you request it, an adult designated by you should also be notified of your rights under this section.[3]

A hospital, but not including short-term treatment facility, must inform you or your representative (give you formal notice) of your rights as a patient in advance of furnishing or discontinuing patient care, whenever possible.[4]

The standard for detaining you against your will for evaluation and short-term treatment is called the civil commitment standard. To meet this standard, it must be reasonably believed that your mental illness could lead you to be dangerous to yourself or others (likely to cause serious harm), or to be gravely disabled.[5]

Under Alaska law, there are two ways you can be detained against your will. One procedure depends on a judge or magistrate being asked to issue a pickup order, which directs law enforcement to bring you to a place where you can get short-term treatment and be evaluated for longer-term civil commitment.[6] The other procedure depends on a peace officer or mental health professional putting a hold on you without prior authorization from a judge or magistrate, on the theory that taking you into custody must be done immediately and there is not time to get a pickup order from the judge or magistrate.[7]

Alaska law gives the judge, magistrate, peace officer, or mental health professional three options for getting you short-term treatment and an evaluation. The first option is a crisis stabilization center or crisis residential center, but you might also go to an evaluation facility (such as Bartlett Regional Hospital or API itself); the third possibility is that you stay where you're being held, and the system sends "evaluation personnel" there to evaluate you.[8]

If you're detained and the system cannot get you to an evaluation facility or crisis center because, for example, those places are closed to new admissions, the Division of Family and Community Services and the Court System are directed to find alternative ways for you to be evaluated. While you're waiting for an evaluation, you're not supposed to be held at a jail, and if

[3] AS 47.30.725 (a).

[4] 42 CFR section 482.13 (a) (1);42 CFR section 485.614 (a) (1).

[5] See AS 47.30.700(b); AS 47.30.705(a).

[6] AS 47.30.700(a).

[7] AS 47.30.705(a).

[8] AS 47.30.915(10) and AS 47.30.715; for crisis stabilization centers, see AS 47.30.707; for crisis residential centers, see AS 47.30.708.

you're being held at a hospital that doesn't do evaluations, both mental health professionals and the court is supposed to pay close attention to getting you to an appropriate placement.

If you are detained for a mental health evaluation, and not released or voluntarily admitted for treatment within 72 hours of arrival at the facility, or if you are evaluated within 72 hours of your first encounter with evaluation personnel, and they are recommending you be involuntarily committed, you are entitled to a court hearing to be set for not later than the end of that 72-hour period. The hearing is to determine whether there is cause to support your continued detention for an additional 30 days, based on the grounds that you are mentally ill, and that as a result of that illness, there is a serious risk of you harming yourself or doing serious harm to others, or that you are "gravely disabled."[9]

A person cannot be involuntarily committed as "gravely disabled" because they are considered at risk of harming themselves unless the person is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or if the person's level of incapacity is so substantial that the respondent is incapable of surviving safely in freedom.[10]

If you are a person who is being subjected to the involuntary commitment process through the court proceedings set out in Title 47 of the Alaska Statutes, you have the right to communicate immediately (at the hospital or facilities' expense) with your guardian, if any, or an adult designated by you, as well as to communicate with any attorney designated to represent by the court to represent you, or an attorney of your choice.[11]

If you are being held in a place other than an evaluation facility, crisis stabilization, or residential center, and you are not getting a mental health evaluation, your court-appointed lawyer can ask the judge to let you out. In this situation, your lawyer would be claiming that the State is denying you "substantive due process." There have been court decisions during the past few years that holding someone at a hospital for a two-week period violates substantive due process. The Alaska Legislature passed a law in 2024 giving facilities protection from lawsuits if they hold people for up to a week; however, you and your lawyer can ask for help sooner than that, for example, by asking for you to be moved to a facility where the system can do an evaluation.

B. Your Rights During Commitment Hearings

If behavioral health professionals working in a mental health hospital or facility determine, in their judgment, that you should be involuntarily committed for up to 30 days, you are entitled to a 30-day commitment hearing, during which you have the right to be represented by an attorney, to present evidence, and to cross-examine witnesses who testify at the hearing.[12] You have the right to be present at the commitment hearings and can be excluded only if you are not able to

[9] AS 47.30.725 (b).

[10] AS 47.30.915(9)(A), (B).

[11] AS 47.30.725 (c).

[12] AS 47.30.725 (d).

give informed consent, and the court finds that an incapacity exists, and it would be severely injurious to your mental or physical health to attend the hearing.[13] You also have the right to view and copy all petitions and reports in the court file.[14]

At a commitment hearing, you have the right to be free from the effects of medication to the maximum extent possible before the hearing, unless a licensed physician (in the case of medication) or a mental health professional (in the case of alternative treatment) determines that medication or other treatment is necessary to prevent bodily harm to you or others, or prevent the deterioration of your mental condition in a manner that later might not allow you to recover, or if it is needed to allow you to appropriately prepare for and participate in the proceedings.[15]

A court may commit you to a treatment facility only if it finds by clear and convincing evidence that you are mentally ill, and as a result, it is likely you may cause harm to yourself or others, or that you are "gravely disabled". If the court finds that there is a viable, less restrictive treatment alternative available, that you have been advised of and you have refused, the court may still order the less restrictive alternative treatment if the treatment program is willing to accept you for treatment. The court must specifically state to you, and give you written notice, that if commitment or other involuntary treatment beyond 30 days is to be pursued, you then have the right to a full hearing or jury trial.[16]

If behavioral health professionals are advising the court that they believe you may need to be subjected to an involuntary commitment period that goes beyond 30 days, you have the right to retain an independent licensed physician or other mental health professional to examine you and to testify on your behalf. If you are indigent (lack financial resources) and make a request of the court to do so, the court shall appoint an independent licensed physician or other mental health professional to examine you and testify on your behalf. The court must consider your request for a specific physician or mental health professional.[17]

C. Informed Consent and Collaborative Decision-Making

A patient (themselves or through their representative) receiving mental health services has the right to make informed decisions regarding care, including being informed of health status, being involved in care planning and treatment, and being able to request or refuse treatment.[18]

If you can give informed consent, you have the right to give and withhold consent to medication and treatment in all situations that do not involve a crisis or impending crisis as described in AS 47.30.838 (a) (1).

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[13] 47.30.735 (b) (1).

[14] AS 47.30.735 (b) (2).

[15] AS 47.30.725 (e).

[16] AS 47.30.735 (c), (d), (e).

[17] AS 47.30.745 (e).

[18] 42 CFR section 482.13 (b) (2).

You have the right to formulate advance directives (legal documents that express your wishes regarding medical care in the event you become unable to make decisions for yourself due to illness, injury, or other incapacities), and to have hospital staff and practitioners who provide care in the hospital comply with these directives. You may create an advance health care directives either in writing or orally, and those directives may be designed to take effect only if or when a specified condition arises.[19] A health care provider or a health care institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for admission, discharge, or providing health care.[20]

D. Treatment Planning

Individuals who are involuntarily committed shall be placed in the designated treatment facility closest to their home unless another treatment facility in the state has a program more suited to the respondent's condition or another treatment facility is closer to respondent's friends or relatives who could benefit the respondent through their visits, or the respondent wants to be further removed from home and the mental health professional seeking the commitment concurs in the desirability of removed placement.[21]

A person who is involuntarily committed, and the following persons, at the request of that person, are entitled to participate in formulating the patient's individualized treatment plan and to participate in the evaluation process as much as possible, at a minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in the treatment program, and being informed as to the patient's present medical and psychological condition and prognosis:

(1) the patient's counsel.
(2) the patient's guardian.
(3) a mental health professional previously engaged in the patient's care outside of the facility,
(4) a representative of the patient's choice.
(5) a person designated as the patient's agent or surrogate with regard to mental health treatment decisions under AS 13.52, and
(6) the adult designated under AS 47.30.725.[22]

E. Written Notice of Rights

A written notice that sets out other rights you are entitled to while residing in a facility, which are listed in 7-AAC-12.890 (a), must be posted in a conspicuous location.[23] In addition, a copy of these rights must be given to you, a family member, or your legal representative. Your rights under this regulation include the rights:

[19] 42 CFR section 482.13 (b) (3); AS 13.52.10.

[20] AS 47.30.817.

[21] AS 47.30.760.

[22] AS 47.30.825 (b).

[23] 7 AAC 12.890 (b).

(1) to associate and communicate privately with person(s) of your choice.
(2) to have reasonable access to a telephone to make and receive confidential calls.
(3) to mail and receive unopened correspondence.
(4) to be informed of the facility's grievance procedure for handling complaints relating to patient, client, or resident care.
(5) to be free from physical or chemical restraints except as specified in AS 47.30.825 or 7 AAC 12.258.
(6) to be treated with consideration and with recognition of your dignity and individuality.
(7) to have the confidentiality of your medical records and treatment be maintained.
(8) to be free from unnecessary or excessive medications.
(9) to private visits from your spouse, and to share a room if both spouses are patients, clients, or residents in the facility, unless medical reasons or space problems require separation.
(10) to be informed in a language and in terms that you understand, before or at the time of admission and during the stay, of services that are available in the facility and their cost, including any costs for services or personal care items not covered by the facility's basic per diem rate or not covered under 42 U.S.C. 1395 - 1396 v (Titles XVIII or XIX of the Social Security Act);
(11) to be informed, in a language and in terms that you understand, about your medical health and diagnosed mental health condition by the practitioner responsible for treatment.
(12) to refuse to participate in experimental research, psychosurgery, lobotomy, electroconvulsive therapy, or aversive conditioning.
(13) to participate in the development of a plan of care, or discharge plan, and to receive instructions for self-care and treatment that include explanation of adverse symptoms and necessary precautions, as appropriate.
(14) to be informed, in a language and in terms that you understand, of the rights listed in this subsection and of all the rules and regulations governing patient, client, or resident conduct and responsibility.
(15) to be informed of the professional training and experience of the practitioner responsible for your treatment.
(16) to be informed by a practitioner of different options related to your treatment which are being recommended by the practitioner responsible for treatment, including the risks and benefits of each option.

F. Rights of Minors and Adults with Guardians

When a minor or adult with a guardian is detained at or admitted or committed to a treatment facility, the facility shall inform the parent or guardian of the location of the minor as soon as possible. When a minor or adult with a guardian (if the center or facility is aware of the guardianship) is involuntarily admitted to a crisis stabilization center, crisis residential center, or evaluation or treatment facility, the facility shall inform the parent or guardian of the location of the minor or adult with a guardian as soon as possible.[24]

[24] AS 47.30.693 and AS 47.30.700 (c).

All notices required to be served on the minor or adult with a guardian shall also be served on the parent or guardian, and they shall be notified that they may appear as parties in any commitment proceeding, and that as parties, they are entitled to retain their own attorney or have an attorney from the Public Guardian Section of the Office of Public Advocacy appointed for them. A minor respondent has the same rights to waiver and informed consent as an adult. However, the minor shall be represented by counsel in waiver and consent proceedings.[25]

A minor's parent or guardian may admit the minor to a designated treatment facility for 30 days if the professional person in charge believes that the minor is gravely disabled or is suffering from mental illness, and as a result is likely to cause serious harm to the minor or others, there is no less restrictive alternative for the minor's treatment, and there is reason to believe that the minor's mental condition could be improved by the course of treatment or would deteriorate if untreated. A guardian ad litem (GAL) shall be appointed as soon as possible for a minor admitted under AS 47.30.690 to monitor the best interests of the minor.[26]

A parent or guardian of a minor may file a notice to withdraw the minor from a facility where they have been detained or committed. After receiving a notice to withdraw a minor from a facility, the facility may discharge the minor to the custody of the parent or guardian. If, however, in the opinion of the treating physician, release of the minor would be seriously detrimental to the minor's health, the treating physician may discharge the minor to the custody of the parent or guardian after advising the parent or guardian that this action is against medical advice or refuse to discharge the minor and initiate involuntary commitment proceedings.[27]

Before administering psychotropic medication to a minor patient in a non-crisis situation under AS 47.30.836, the mental health professional shall consult with the parent of guardian of the minor, evaluate the minor for drug withdrawal and medical psychosis caused by currently prescribed drugs or self-medication, and review all available information regarding the minor's family history, diet, medications, and other contributing factors. When determining whether a minor patient should be given psychotropic medication in a crisis situation, a mental health professional shall, to the extent time and the nature of the crisis permit, consult with a parent or guardian of the minor.[28]

G. The Right to be Free from Inappropriate Seclusion or Restraint

All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the patient, a staff member, or others from harm. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, staff member, or others and must be discontinued at the earliest possible time. Restraint includes a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard

[25] AS 47.30.775.

[26] AS 47.30.690.

[27] AS 47.30. 695.

[28] AS 47.30.836 (b); AS 47.30.838 (e).

treatment or dosage for the patient's condition. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the patient, a staff member, or others from harm. The use of seclusion or restraint is subject to numerous limitations and conditions including monitoring times, training for staff and the reporting of deaths that occur. [29]

A locked, quiet room, or other form of physical restraint, may not be used unless a patient is likely to physically harm self or others unless restrained. The form of restraint used shall be that which is in the patient's best interest, and which constitutes the least restrictive alternative available. When practicable, the patient shall be consulted as to the patient's preference among forms of adequate, medically advisable restraints including medication, and that preference shall be honored. However, nothing in this section is intended to limit the right of staff to use a quiet room at the patient's request or with the patient's knowing concurrence when considered in the best interests of the patient.

Patients placed in a quiet room or other physical restraint shall be checked at least every 15 minutes or more often if good medical practice indicates. Patients in a quiet room must be visited by a staff member at least once every hour and must be given adequate food and drink and access to bathroom facilities. At no time may a patient be kept in a quiet room or other form of physical restraint against the patient's will longer than necessary to accomplish the purposes set out in this subsection. All uses of a quiet room or other restraint shall be recorded in the patient's medical record, the information including but not limited to the reasons for its use, the duration of use, and the name of the authorizing staff member.[30] For a specialized hospital,[31] guidelines for the use of seclusion and restraint must include:

(A) the location of a seclusion room which allows for direct supervision and observation by staff.
(B) construction of a seclusion room which minimizes opportunities for concealment, escape, injury, or suicide, including locks and doors which open outwards.
(C) recording in a patient's medical record the time the patient spent in seclusion or restraints;
(D) visiting a patient who is in restraints or seclusion at least hourly, and providing the patient with adequate opportunity for exercise, access to bathroom facilities, and time out of restraints or seclusion.
(E) limiting the use of restraints or seclusion to situations in which alternative means will not protect the patient or others from injury; and
(F) when practicable, consultation with the patient regarding the patient's preference among available forms of adequate, medically advisable restraints, including medication.[32]

H. Patient Safety

[29] 42 CFR section 482.13; 42 CFR section 482.614; 42 CFR section 485.902; 42 CFR section 485.910.

[30] AS 47.30.825 (d).

[31] A hospital which is primarily engaged in the treatment of one specific type of illness or disability-such as a suicide prevention facility.

[32] 7 AAC 12.215(d)(7).

A patient has the right to receive care in a safe setting free from all forms of abuse or harassment.[33] A patient has the right to have intimate care provided by a staff member who is the gender that the patient requests.[34] Commitment hearings shall be conducted in a physical setting least likely to have a harmful effect on the mental or physical health of the respondent, within practical limits.[35]

I. Medications

If you can give informed consent,[36] you have the right to give or withhold consent to medication and treatment in all situations that do not involve a crisis or impending crisis as described in AS 47.30.838 (a) (1). In addition, a facility is required to follow the procedures required by AS 47.30.836-839 before administering psychotropic medication. Absent informed consent, an individual may only be administered psychotropic medication in a non-crisis situation if it is proven by clear and convincing evidence that it is in the patient's best interests and no less intrusive alternative is available. When seeking a patient's informed consent, the evaluation or designated treatment facility shall give the patient information that is necessary for informed consent in a manner that ensures maximum comprehension by the patient. An evaluation facility or designated treatment facility may administer medication or other treatment to an involuntarily committed patient only in a manner that is consistent with the provisions of AS 47.30.818-865 (more on this below).[37]

When practicable, the patient shall be consulted as to the patient's preference among forms of adequate, medically advisable restraints including medication, and that preference shall be honored.[38]

An evaluation or designated treatment facility may only administer psychotropic medication in a non-crisis situation if the patient (1) has the capacity to give informed consent to the medication and gives that consent, (2) has authorized the use of psychotropic medication in an advance health care directive or authorized an agent or surrogate to consent, or (3) is determined by a court to lack the capacity to give informed consent to the medication and the court approves use of the medication.[39]

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[33] 42 CFR 482.13 (c) (2)-(3).

[34] AS 18.20.095 (a).

[35] AS 47.30.735 (b).

[36] A patient has the capacity to give informed consent if the patient is competent to make mental health or medical treatment decisions and the consent is voluntary and informed. See AS 47.30.837 (a). Competency is usually determined in the court proceedings set out under Title 47.

[37] AS 47.30.825 (c); AS 47.30.839(g); AS 47.30.837 (b); See also: Myers v. Alaska Psychiatric Institute 138 P.3d 238 (2006).

[38] AS 47.30.825 (d).

[39] AS 47.30.836.

An evaluation or designated treatment facility may seek court approval to administer psychotropic medication to a patient in a non-crisis situation when it has reason to believe that the patient is incapable of giving informed consent.[40]

J. The Right to Access a Grievance Process

Under Federal Regulations, a hospital or treatment facility must establish a process for prompt resolution of patient grievances.[41] The grievance process must specify time frames for review of the grievance and the provision of a response, and the hospital must review, investigate, and resolve each patient's grievance within a reasonable time frame. Grievances that involve issues such as neglect or abuse should be reviewed immediately, given the seriousness of the allegations and the potential for harm.[42]

A patient has a right to bring grievances regarding treatment, care, or rights violations (including inappropriate restraint or seclusion) through a formal process to an impartial body within an evaluation or designated treatment facility. An evaluation or 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. A patient, client, or a nursing facility resident has the right to be informed of the facilities' grievance procedure for handling complaints relating to patient, client, or resident care.[43] See the later sections of this document for suggestions about how to make a complaint about your mental health services.

K. Discharge Planning

A hospital must have an effective discharge planning process that focuses on the patient's goals and treatment preferences and includes the patient's caregivers/support persons as active partners in the discharge planning for post-discharge care. Psychiatric hospitals must also have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.[44]

An individual, upon discharge from a mental health facility, shall be given a discharge plan specifying the kinds and amount of care and treatment the patient should have after discharge and such other steps as the patient might take to benefit the patient's mental health after leaving the facility. The individual shall have the right to participate, as far as practicable, in helping to formulate their discharge plan. [45]

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[40] AS 47.30.839 (a) (2).

[41] 42 CFR section 482.13 (a) (2).

[42] See CMS Conditions of Participation, State Operations Manual, Appendix A.

[43] AS 47.30.847 (a) – (c); Alaska Regulation 7 AAC 12.890 (a) (4).

[44] 42 CFR 482.43; 42 CFR 482.62(a)-(g).

[45] AS 47.30.825 (i).

L. Rights Related to Outpatient Commitment for Individuals Originally Committed Involuntarily to Inpatient Facilities

A person who was originally committed to involuntary inpatient care *may* be released before the expiration of the commitment period if a provider of outpatient care accepts that person for specified outpatient treatment, for a period of time not to exceed the duration of the commitment, and if the professional in charge finds that:

(1) It is not necessary to treat the person as an inpatient to prevent the respondent from harming self or others; and

(2) there is reason to believe that the person's mental condition would improve as a result of the outpatient treatment.

A copy of the conditions for early release shall be given to the individual and to their attorney and guardian, if any, as well as the provider of outpatient care, and the court.[46]

However, and importantly: a person who is ordered by the court to receive involuntary outpatient treatment may later be required to undergo inpatient treatment if the provider of outpatient care finds that:

(1) the respondent is mentally ill and is likely to cause serious harm to self or others or is still gravely disabled.
(2) the respondent's behavior since the hearing resulting in court-ordered treatment indicates the respondent now needs inpatient treatment to protect self or others.
(3) there is reason to believe that the respondent's mental condition will improve as a result of inpatient treatment; and
(4) there is an inpatient facility appropriate for the respondent's needs that will accept the respondent as a patient.

[46] AS 47.30.795 (a)-(b).

III. HOW TO MAKE A COMPLAINT ABOUT INPATIENT MENTAL HEALTH SERVICES

If you are receiving inpatient services and you think that your rights have been violated, there are several steps you can take to have your complaint investigated.

A. Treatment Team

Making a complaint about your mental health services begins with your treatment team. Your treatment team includes the psychiatrist, psychologist, case worker, nurse, a representative from the direct care staff (aide), and other representatives, as necessary. Your treatment team develops, with your participation, your individual treatment plan. Your treatment team also must review your treatment plan periodically. You can talk to your treatment team about your complaint during review of your treatment plan, or at any other time you feel the need to. Additionally, you can consult the facility's grievance procedure for making a complaint. If your treatment team cannot help you, ask to talk to the unit director. If you do not feel you received a proper response, contact the facility's Patient Advocate.

B. Patient Advocate

If you do not feel you received a proper response to your complaint from your treatment team, contact the facility's Patient Advocate. The Patient Advocate is the staff member at each facility responsible for protecting the legal and human rights of individuals receiving services from the facility. The Patient Advocate's job is to assist the patient in bringing grievances or help pursue other redress for complaints concerning care, treatment, and rights. The duties of the Patient Advocate may include:

- Meeting with you to discuss your complaint;
- With your permission, the advocate may rewrite your complaint or add to it to make sure it is complete and clearly written;
- Trying to resolve the problem during the meeting if possible;
- Providing a process for resolving complaints (arranging a special meeting to discuss your complaint with the treatment team);
- Problem-solving and providing individual advocacy services;
- Representing you at facility committee meetings when necessary; and
- Referring your complaint to the next level for further investigation.

You may make a complaint with the Patient Advocate, or someone may file it on your behalf. You may make it verbally or in writing, but we suggest you follow up any verbal complaint with a written one.

C. Disability Law Center of Alaska

If you are not satisfied with a facility's response to your complaint, you may contact that Disability Law Center. The Disability Law Center operates independently of any state agency that provides care or treatment. We have legal access to any facility in the State which provides care or treatment. The authority to investigate incidents of abuse and neglect extends to private residences and facilities and public facilities. To make a complaint of abuse or neglect, or if you believe your rights have been violated while a patient at a mental health facility, you may contact one of our regional offices. The most direct option for requesting assistance is by completing our Online Intake Form on our website at: https://www.dlcak.org/intake/online-intake-form. If you cannot access the internet, you may contact one of our regional offices at the contact information listed below:

Anchorage Office:

3330 Arctic Blvd., Suite 103
Anchorage, Alaska 99503

(907) 565-1002

Juneau Office:

8711 Teal Street, Ste 303
Juneau, Alaska 99801

(907) 586-1627

Toll free in Alaska: 1 (800) 478-1234
Requesting assistance online: https://www.dlcak.org/intake/online-intake-form

IV. HOW TO MAKE A COMPLAINT ABOUT OUTPATIENT MENTAL HEALTH SERVICES

If you are receiving treatment for mental illness in an outpatient capacity and you are not satisfied with the care and treatment you are receiving, you may ask the facility to address your concerns. Each provider that accepts state funding, including Medicaid and Medicare, must have a complaint process that allows a patient to file a grievance. While the grievance procedure is different for each provider, the following apply to filing a grievance:

1. Try to resolve the matter directly with your provider in person before filing a grievance;

2. If you cannot informally resolve the matter, inquire about the patient grievance process used by the provider;

3. Follow the grievance process and submit your grievance in writing and keep a copy;

4. If you are not satisfied with the provider's response to your grievance, you may appeal the response to the Director of the Division of Behavioral Health. Submit your appeal to the following address in writing:

   Director
   Division of Behavioral Health
   3601 C Street, Ste #878
   Anchorage AK 99503

   Phone (907) 269-3600

5. If you are not satisfied with the Division of Behavioral Health's response to your grievance, you may submit an appeal to the State of Alaska Americans with Disabilities Act Coordinator at this address:

   State of Alaska ADA Coordinator
   50 W 7th Avenue, Suite 1960
   Anchorage, AK 99501
   Phone: (907) 375-7716
   Phone (TTY): 711 for Alaska Relay
   Fax: (907)375-7719
   Voice/TTY: (907) 465-6929
   Main: (907) 465-2814
   Fax: (907) 465-2856
   Toll-free Voice/TTY: (800) 478-2815

If, after following these steps, you do not receive a satisfactory response you may contact the Disability Law Center using the information provided on the previous page.