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Senator Bettye Davis

SB 55 - "An Act relating to a mental health patient rights, notifications, and grievance procedures."

SPONSOR STATEMENT

SB 55 amends the one-paragraph mental health grievance procedure provided under AS 47.30.847. This bill governs due process and grievance procedures in all state and private mental health hospitals, clinics, and units which receive public funds. Prompted by the 8,000-10,000 admissions to mental health facilities and units in Alaska each year where there are relatively few formal grievances filed, this bill requires adequate notice, forms, advocate assistance, rapid written administrative response, right to appeal, and telephonic access to a state monitored call center to lodge a complaint immediately.

Mental health patients are among the most vulnerable in Alaska. Among the thousands of individuals civilly committed or brought into locked hospital psychiatric units for forced evaluations each year, some are in handcuffs, shackles or strapped to a gurney, involuntarily medicated without consent of family or legal representative, or court ordered to receive or continue psychiatric treatment in public, private, or non-profit psychiatric clinics. There are hundreds of patient assaults and staff injuries each year. There are also thousands of children who are voluntarily committed each year usually in private facilities. Although sometimes treated with psychotropic drugs, children are considered better protected by the state, family members, legal representatives, and attorney advocates.

Current statutes and regulations do little to protect psychiatric patients civilly committed 30 to 60 days, individuals detained for forced evaluation up to 7 days, or individuals detained in a jail or in a psychiatric emergency room or private unit while waiting for space in a psychiatric hospital. State and federal courts have consistently ruled that individuals who have not committed a crime and are locked up for psychiatric evaluation and treatment should not be treated like criminals and their rights are to remain intact to the greatest extent possible. Ironically, prisoners in Alaska's correctional system are afforded a much more comprehensive grievance procedure with due process rights and protections under the law than mental health patients.

Upon admission to a mental health facility patients often experience an immediate loss of liberty and freedom, arbitrary exercise of authority, and may be institutionally traumatized in the process. Because of the exceptional circumstances under which mental health patients are admitted and treated, due process requires special safeguards in transparent, readily available grievance procedures and more state oversight. This bill will reduce unnecessary patient trauma, assaults, unintentional injury or death, and attendant liability and litigation experienced in other states before statutory reform.

New grievance procedures under SB 5 require detailed complaint forms, three levels of administrative review requiring written answers by within 5 days by supervisory and executive staff at levels one and two, including response to urgent grievances within 24 hours. A level three final administrative appeal to the commissioner must be answered within 14 days after filing or by default is denied. A commissioner's final decision may be appealed to Superior Court within 30 days. A grievance may be filed at any time, but there is a statutory limitation of one year after being discharged from the facility or unit. All grievances filed shall become part of the patient's permanent record. Mental health facilities and units must file periodic reports of the number and type of grievances and resolutions, including litigation. The bill allows for a personal representative to act in the interest of the patient in the grievance process, as well as providing a patient advocate appointed in the mental health facility or unit.

Although it is counterintuitive that more verbal and written complaints are not reported to the state or documented each year, including an estimated 250 at the Alaska Psychiatric Institute which may treat an estimated 1200 to 1500 patients per year, many facilities in this rapidly growing area of mental health are privately held and not presently compelled to report to the state Division of Behavioral Health. Private hospitals presently may only report mental health complaints to the Joint Commission for the Accreditation of Hospital Organizations (JCAHO), not the state. Furthermore, JCAHO reportedly may only review grievance procedures in participating hospitals every 2-3 years. Also, many grievances in the past have been handled verbally without creating a patient record and in-patient stays are often very short from a couple of days up to a week or two. Passage of SB 55 will improve mental health treatment, grievance reporting, and state oversight.