

# LEGAL SERVICES

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## MEMORANDUM

March 12, 2014

**SUBJECT:** Delegation of executive branch authority  
(CSHB 214(HSS) (Work Order No. 28-LS0869\C))

**TO:** Representative Pete Higgins  
Attn: Thomas Studler

**FROM:** Jean M. Mischel  
Legislative Counsel 

You have asked whether AS 47.30.660(b)(13), repealed in the above referenced bill, constitutes an excessive delegation of authority. That section provides that the Department of Health and Social Services shall:

(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 requires a delegation to the various entities described, on mutual agreement, of 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. 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

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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 unconstitutional excessive delegation of executive branch functions to nongovernmental and regulated entities.

If you have questions, please do not hesitate to contact me.

JMM:lem

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Enclosure