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CS FOR HOUSE BILL NO. 214()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HIGGINS, TARR, AND GATTIS, Muñoz

A BILL

FOR AN ACT ENTITLED

"An Act relating to mental health patient rights, notifications, and grievance procedures; and relating to delegations of duties and powers relating to mental health by the Department of Health and Social Services."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 44.64.030(a) is amended by adding a new paragraph to read:

(51) AS 47.30.847(a)(3) (mental health patient grievance appeals).

*** Sec. 2.** AS 44.64.090 is amended by adding a new subsection to read:

(c) The office shall maintain the confidentiality of records pertaining to a mental health grievance appeal filed under AS 47.30.847 except as necessary to conduct the appeal among the parties to the appeal, unless the office has received the prior written consent of the person who filed the grievance.

*** Sec. 3.** AS 47.30.660(b) is amended to read:

(b) The department, in fulfilling its duties under this section and through its division responsible for mental health, shall

(1) administer a comprehensive program of services for persons with mental disorders, for the prevention of mental illness, and for the care and treatment of persons with mental disorders, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations that are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, prevention, examination, care, and treatment of persons with mental disorders;

(3) administer AS 47.30.660 - 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for persons with mental disorders;

(5) provide for the placement of patients with mental disorders in designated treatment facilities;

(6) enter into arrangements with governmental agencies for the care or treatment of persons with mental disorders in facilities of the governmental agencies in the state or in another state;

(7) enter into contracts with treatment facilities for the custody and care or treatment of persons with mental disorders; contracts under this paragraph are governed by AS 36.30 (State Procurement Code);

(8) enter into contracts, which incorporate safeguards consistent with AS 47.30.660 - 47.30.915 and the preservation of the civil rights of the patients with another state for the custody and care or treatment of patients previously committed from this state under 48 U.S.C. 46 et seq., and P.L. 84-830, 70 Stat. 709;

(9) prescribe the form of applications, records, reports, requests for release, and consents to medical or psychological treatment required by AS 47.30.660 - 47.30.915;

(10) require reports from the head of a treatment facility concerning the care of patients;

(11) visit each treatment facility at least annually to review methods of

care or treatment for patients;

(12) investigate complaints made by a patient or an interested party on behalf of a patient;

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, the authority to operate and maintain treatment facilities under (4) of this subsection and to provide for the placement of patients under (5) of this subsection, as necessary to operate a statewide system for the evaluation and treatment of mental health disorders; however, the department may not, under this paragraph, delegate duties involving investigation and oversight of a mental health facility that the department is required to perform in order to comply with federal and state law and with the mental health grievance procedure under AS 47.30.847 [ANY OF THE DUTIES AND POWERS IMPOSED UPON IT BY AS 47.30.660 - 47.30.915];

(14) after consultation with the Alaska Mental Health Trust Authority, adopt regulations to implement the provisions of AS 47.30.660 - 47.30.915;

(15) provide technical assistance and training to providers of mental health services; and

(16) set standards under which each designated treatment facility shall provide programs to meet patients' medical, psychological, social, vocational, educational, and recreational needs.

* **Sec. 4.** AS 47.30.840(a) is amended to read:

(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) **except as provided in (15) of this subsection,** 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;

(12) has the right to file a grievance under AS 47.30.847;

(13) has the right to a designated representative employed and clearly identified by an evaluation facility or unit or a designated treatment facility or unit to act as a patient advocate and to assist in the filing of a grievance under AS 47.30.847;

(14) has the right to select an individual to act as a patient advocate and to assist in the filing of a grievance under AS 47.30.847;

(15) who has been evaluated or treated in a locked evaluation facility or unit or a designated treatment facility or unit for more than three days

has the right to a reasonable opportunity to maintain natural support systems, including family, friends, and help networks;

(16) has the right to confidentiality of the person's records unless the person has consented in writing to the release of the records.

* **Sec. 5.** AS 47.30.847 is repealed and reenacted to read:

Sec. 47.30.847. Patient grievance procedure. (a) The department shall establish a standardized statewide mental health patient grievance procedure for the benefit of any person who is undergoing evaluation or treatment at an evaluation facility or unit or designated treatment facility or unit under AS 47.30.660 - 47.30.915. The grievance procedure must include

(1) a telephone call center operated by the department for filing and reviewing a grievance;

(2) a standardized form for filing a grievance;

(3) an appeal procedure that includes an administrative appeal to the office of administrative hearings under AS 44.64;

(4) a standardized notice of the grievance and appeal procedure;

(5) regular monitoring of compliance with the procedure;

(6) timely records review and maintenance by the department;

(7) maintenance of confidentiality of the grievance records, including appeal documents and decisions, unless the grievant provides prior written consent to release some or all of the records; and

(8) a process for designating a grievance by category as follows:

(A) category 1 for a grievance related to the physical or social environment under the control of the facility or unit;

(B) category 2 for a grievance related to patients' rights as provided in AS 47.30.825 and 47.30.830 and regulations of the department;

(C) category 3 for a grievance that alleges a criminal act.

(b) An evaluation facility or unit and a designated treatment facility or unit shall comply with the grievance procedure established in (a) of this section, regardless of the availability of a less formal procedure for comments and suggestions. Once filed, all grievances shall be processed on a single form and completed to resolution

unless the grievance is withdrawn by the grievant. The facility or unit shall

(1) provide a form approved by the department for submission of a grievance and a secure box for deposit of grievances; the contents of the box must be reviewed each day a patient is being treated or evaluated; the form must be readily accessible to the patient and easily understood by the patient or easily explained by a staff member in a language and method understandable to the patient; the original and a copy of a completed form submitted to the facility or unit must be kept in the patient's record of admission or an administrative file for the patient;

(2) maintain a complete record of all documents, including the grievance and appeals and responses to the grievance and appeals; and

(3) for a category 2 or 3 grievance, deliver to the department within 24 hours an electronic copy of the initial grievance and all documents received under (2) of this subsection.

(c) Unless an extension of time of not more than five business days is agreed to by a grievant or the grievant's representative, an evaluation facility or unit or a designated treatment facility or unit shall mail or hand deliver a written response to the patient and an electronic copy of the response to the department within five calendar days after receipt by the department of a grievance or request for additional review. The response must include the reasons for the decision and a description of the appeal process. The grievant may request review by the commissioner within 30 calendar days.

(d) A grievant may not file a grievance or an appeal later than one year after being discharged from an evaluation facility or unit or a designated treatment facility or unit. The facility or unit shall make a good faith effort to mail a response to a grievant who has been discharged from the facility.

(e) The department shall review all grievances and responses to grievances for compliance with this section and intervene when necessary to protect rights under AS 47.30.840.

(f) An evaluation facility or unit and a designated treatment facility or unit shall prepare and file an annual report with the department that describes the

(1) number of category 1, 2, and 3 grievances submitted;

(2) general issue raised in each grievance; and

(3) resolution, including litigation, of all grievances submitted.

(g) The department shall provide to the governor and to the legislature an annual report of the number, locations, and category of grievances filed under this section and recommendations of the department to improve mental health evaluation, treatment, and procedures in the state. The report must preserve the confidentiality of a person who is the subject of a grievance. The department shall make the report available to the public.

(h) Nothing in this section applies to a facility or unit or designated treatment facility that only provides outpatient services.

(i) In this section,

(1) "grievance" means a complaint or concern filed by telephone or in writing by a grievant using a form provided by an evaluation facility or unit or a designated treatment facility or unit;

(2) "grievant" means a patient of an evaluation facility or unit or a designated treatment facility or unit, or the patient's representative;

(3) "unit" means a portion of a health care facility dedicated to the evaluation or treatment of mental health patients.

* **Sec. 6.** AS 47.30.855 is amended by adding new subsections to read:

(b) The department shall provide to an evaluation facility or unit or designated treatment facility or unit for posting and distribution a standardized notice that is designed to be easily understood and that separately describes patient rights, available assistance, and the grievance procedure described in AS 47.30.847.

(c) A person in charge of an evaluation facility or unit or designated treatment facility or unit shall ensure that each patient or patient's representative receives a written copy of the standardized notice provided by the department under (b) of this section and of the grievance procedure described in AS 47.30.847.

(d) In this section, "unit" has the meaning given in AS 47.30.847.

* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MENTAL HEALTH SERVICE DELEGATION; TRANSITION. The Department of

1 Health and Social Services shall, as soon as feasible, implement the changes made to
2 AS 47.30.660(b)(13), as amended by sec. 3 of this Act, including amending or terminating
3 agreements made under delegations under that paragraph as it read before the effective date of
4 this Act.