



February 25, 2014

Representative Pete Higgins, Chairman
House Health and Social Services Committee
Alaska State Capitol, Room 424
Juneau, Alaska 99801

Re: HB 214 – Mental Health Patient Grievances

Representative Higgins,

On behalf of the Alaska Mental Health Board, I would like to thank you and your staff your attention to the needs of individuals experiencing mental illness. The Alaska Mental Health Board supports patients' rights and efforts to provide additional protections to mental health consumers and other vulnerable populations. We agree that a patient grievance procedure can be an effective tool for ensuring that quality medical care is provided to people in way that promotes personal dignity. We do not believe that HB 214, as currently drafted, will achieve the intent of providing mental health consumers with an accessible grievance procedure or assure that quality health care is provided.

I. Scope

HB 214 defines a "unit" subject to its provisions as "a portion of a health care facility dedicated to the evaluation or treatment of mental health patients." This subjects all providers of mental health treatment – community based behavioral health centers (CBHC) as well as hospitals – to the procedure contemplated in the bill. While we agree that individuals committed to treatment involuntarily must be afforded additional protections, such as legal counsel, court oversight, and patient advocacy, this is not the case for individuals who seek mental health services voluntarily or to manage a chronic health care condition. We believe that the intrusion of government oversight in these voluntary health care settings, especially where the health care is provided in collaboration with the individual pursuant to a person-center treatment plan, will in fact reduce the effectiveness of the health care services by impairing the relationship between the provider and the client.

The Alaska Mental Health Board does not support the inclusion of CBHCs in the scope of HB 214. This is not because we think clients of CBHCs should not have the ability to express their complaints for resolution. It is because the adversarial nature of the grievance procedure laid out in HB 214 will interfere with the patient-centered, collaborative approach to treatment advocates have worked so hard to instill in our system – and because it conflicts with the existing grievance procedure requirements laid out by the Centers for Medicare and Medicaid Services (CMS) and the accreditors of our CBHCs. A matrix showing what is **already mandated** for our CBHCs is enclosed. From that, you can see that HB 214 would impose a complex and conflicting system

for CBHC clients seeking to have a complaint resolved. For example, HB 214 mandates a written grievance procedure, while the federal and accrediting organizations require access through oral grievances, telephone, or even third party communications.

There is benefit in establishing a grievance procedure that consolidates these layers in a way that makes it easy for patients to access and navigate the process. We support investigating how to do this rather than creating a more complex and confusing system at significant cost to the State of Alaska.

II. Jurisdiction and Authority

The administrative process described in HB 214 in AS 47.30.847(a)(3) causes concerns. Except for API and the corrections system, Alaska's mental health providers are private entities. While the acceptance of Medicaid and Medicare dollars does make them subject to CMS regulations, and the acceptance of state grants requires adherence to DBH's grievance policy, these funds do not convert non-profit providers into executive branch agencies. Thus, referral of a matter involving a health care grievance to an administrative hearing may not be possible.

The Office of Administrative Hearings (OAH) has very specific jurisdiction pursuant to Alaska law (AS 44.64.030(a)), as well as jurisdiction over matters expressly referred pursuant to a written agreement with an executive agency (AS 44.64.030(b)). The OAH can hear a matter involving an agency, which is defined as an "agency of the executive branch of state government, including an officer, a division, or another subunit of an agency, a board or commission, a public corporation, and the University of Alaska" (AS 44.64.200(3)). The regulations of the OAH reflect this limited jurisdiction over executive agency actions (*see* 2 AAC 64.010 *et seq.*). The OAH cannot hear a dispute between private parties, which is what an unresolved grievance between a health care provider and a health care consumer would be.

III. Stigma and Minimization of Serious Offenses

In the proposed AS 47.30.847(b)(4), HB 214 provides an "urgent level of review" for grievances involving sexual or physical abuse, denial of "lifesaving" medical care, or denial of "basic care of human rights." Were these acts to be committed against a mental health consumer by a mental health provider, they would be criminal acts. As such, they should not be minimized or reduced to "grievances." Both the current grievance procedure at API and the requirements of the Joint Commission, which accredits our hospitals and some of our CBHCs, require the immediate involvement of proper investigator authorities when abuse or unlawful conduct is reported.

Assault, abuse, and denial of emergency care should be considered crimes and reported to law enforcement immediately for investigation and prosecution if appropriate. Unfortunately, crimes against persons with disabilities often go unaddressed. Either the victim is blamed or they are undervalued to the point where crimes committed against them no longer matter. To codify this attitude in statute is unacceptable.

IV. Allocation of Resources

The Alaska Mental Health Board, with its partners the Advisory Board on Alcoholism and Drug Abuse and the Statewide Suicide Prevention Council, solicits public input in budget and policymaking decisions from consumers and stakeholders throughout Alaska. In addition to formal public comment during meetings, the boards hold town hall meetings, teleconferences, planning summits, and use social media to provide Alaskans with a way to communicate their priorities, concerns, and ideas about the public behavioral health system. Every year, we hear from hundreds of constituents statewide about the struggle to access treatment services and recovery supports like aftercare, housing, and employment due to the limited capacity of our system. The consistent call for action from our constituents is to expand access to treatment services and supports. In the past ten years, we have had public comment on the issue of mental health grievances from less than five constituents. Thus, as the mental health planning and advisory council, based on the input from the public, **we cannot support allocating more than \$750,000 in public dollars to a new and complicated grievance infrastructure – especially when the behavioral health budget has been effectively flat-funded for more than five years.**

In closing, the Alaska Mental Health Board is grateful for your strong advocacy on behalf of Alaska's most vulnerable citizens. We appreciate the effort you and your staff have made to include stakeholders and consumers in the dialogue about how to improve our mental health patient grievance procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kate Burkhart", with a long, sweeping horizontal line extending to the right.

J. Kate Burkhart
Executive Director

cc: Brenda Moore, Chairman AMHB