



February 13, 2019

Alaska  
Psychiatric  
Institute

Commissioner  
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Deputy  
Commissioner  
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# Critical Issues at the Alaska Psychiatric Institute

1. Staff and Patient Safety
2. Inability to Fulfill It's Mission
3. Pending Legal Issues with Extreme Risk of High Cost to the State
4. Ethical Treatment of Alaskans



# A brief history of the Alaska Psychiatric Institute

**1962**

API built  
with 225  
beds

**1992**

A study  
indicates  
162 beds  
are  
needed

**1992**

“Alyeska  
Accord”  
114 beds

**1993**

DHSS  
submits  
CON for  
114 beds

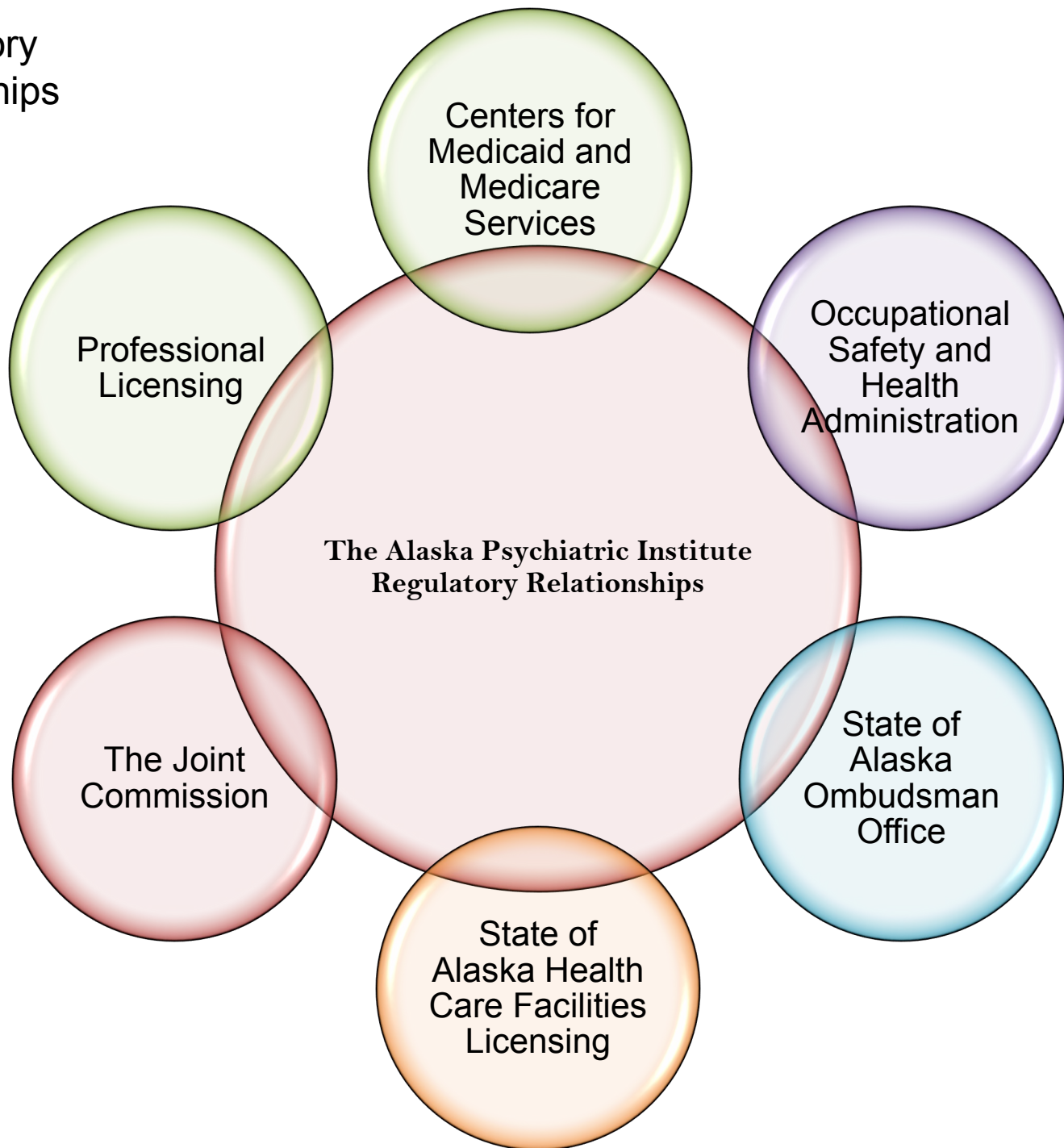
**2001**

72 beds  
funded

**2005**

Expands  
to 80  
beds

# Regulatory Relationships





# Occupational Safety and Health Administration

- **Federal agency that sets and enforces protective workplace safety and health standards.**
- **May levy fines on agencies not in compliance.**



# Alaska Ombudsman

- **Among many services this agency investigates complaints that involve state agencies and determines appropriate remedies.**
- **The Alaska Ombudsman initiated an investigation in July of 2018 and the final report of findings was given to the Department yesterday evening.**



# The Joint Commission

- **Is a national, not-for-profit accrediting organization which currently accredits nearly 21,000 health care organizations.**
- **Provides peer-to-peer standards for members, joint evaluations, hold each other to professional standards, and certify each other by those standards.**
- **May inform the Centers for Medicaid and Medicare Services of deficiencies.**



## Health Facilities Licensing and Certification

- **To operate in Alaska, a hospital must be licensed by the state under AS 47.32.**
- **The Department sets standards and requirements for licensure (through state regulations).**
- **If API does not maintain state licensure, it cannot operate.**





## Centers for Medicare and Medicaid Services

- **Federal agency that provides oversight for healthcare services that receive federal funding**
- **API receives approximately \$23 million per year in federal funding (CMS)**
- **API must meet federal requirements to receive funding**
  - Conditions of Participation (CoPs) (certification of compliance with the health and safety requirements)
- **Survey: an on-site inspection**
  - Triggered by a complaint/event or overall re/certification surveys



## Conditions of Participation for federal funding

- **Requirement: API must be in “substantial” compliance with each Condition of Participation (CoP).**
- **If a hospital is not in substantial compliance and does not correct by the deadline, CMS will de-certify the hospital and terminate its participation in Medicare and Medicaid.**
- **Termination results in a complete loss of this federal funding.**



# Types of Citations

## Standard Level Deficiency

- Out of compliance with regulation

## Condition Level Deficiency

- Very serious
- Hospital is *not* in substantial compliance with CoP

## Immediate Jeopardy

- The hospital's deviation from regulatory standards is an immediate threat to patient health and safety



# Immediate Jeopardy

**“[a] situation in which the provider’s noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment or death to a resident.”**

**- CMS State Operations Manual**



# Plans of Correction

- **Statement of Deficiencies is provided to hospital.**
- **Hospital has 10 calendar days to provide an acceptable Plan of Correction for each cited deficiency.**
- **If the hospital doesn't come into compliance by the deadline, the state agency certifies "noncompliance."**



# API Plans of Correction

- **API has been under 2 Plans of Correction in the last 12 months, and 2 OSHA citations pending resolution.**
- **API has had 13 site visits from regulatory agencies in the last 12 months.**
- **The most recent two surveys identified 3 Condition Level Deficiencies and an incident of Immediate Jeopardy.**
- **Most recently, the incident of Immediate Jeopardy was identified on January 29<sup>th</sup>, *after* API had submitted its final Plan of Correction.**



# Seclusion & Restraint

## **CMS Standard:**

**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 imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.**

**42 CFR § 482.13**



# Seclusion & Restraint at API

- **Since 2011, there have been 7 separate independent reports indicating API uses seclusion & restraint inappropriately and/or excessively.**
  
- **Since 2017, API has been cited at least 7 separate times for deficiencies including violations of patient rights and use of seclusion & restraint.**
  
- **In June of 2018, the Alaska Ombudsman initiated an investigation into API based on 3 allegations:**
  1. API does not take reasonable and necessary action to prevent and/or mitigate the risk of harm to patients from use of force by API staff;
  2. API does not take reasonable and necessary action to prevent and/or mitigate the risk of harm to patients due to violence by other patients;
  3. API does not consistently comply with AS 47.30.825(d) or 42 CFR 482.13(e) in the use of seclusion and restraint.





# Safety at API

- **Multiple citations by Alaska Occupational Safety and Health (AKOSH)**
  - December 2014 findings: API failed to provide its employees with a safe work environment; and API failed to maintain its OSHA log from 2011 to 2013, including not accurately reporting injuries or related incidents.
  - November 2017 findings: 24 reportable incidents during 6 month timeframe; and API failed to maintain its OSHA log and accurately report injuries from 2014-2017.
- **2015 report found that API is seriously and “dangerously” understaffed, compensation is too low, and hiring takes too long. (Dvoskin report.)**
- **September 2018 report by attorney Bill Evans found that the hospital was an unsafe work environment for staff (including a cultural divide on the use of seclusion and restraints).**
- **September of 2018 – injury rates at API doubled.**
- **January 29, 2019 – surveyors found unreported “immediate jeopardy” incident.**



# Staffing at API

## November 2011 WICHE Report “Critical area of need”

**“The pressures created by the combination of resource limitations, staffing shortages, recruitment challenges, admission and census increases, and limited access to decision support tools all combine to increase risk for the facility and the patients and staff of API. This set of challenges has reached crisis proportions and it is not realistic to approach these issues with modest adjustments to existing processes.”**



## Continued

- **“Alaska has unique staffing challenges, no doubt far above other rural communities. Staffing agencies are not readily available to provide experienced psychiatric nurses. API went through a period of using frequent mandatory overtime due to the severe staff shortages.” – May 2012 WICHE report**
- **“Many of the leadership challenges cited...were related to difficulties in hiring senior staff..” – March 2015 Dvoskin Report**
- **“High-level RN Supervisor staff spend 60-70% of their time in the nursing office trying to ‘call in staff to cover vacancies for the next shift.’” – November 2016 WICHE Report**



# Staffing and Classification Studies

- **Classification studies are not performed specific to API (rather, examine defined job classes across all departments).**
- **There has not been a significant review completed of nurse job classes since the 1980s.**
  - Some adjustments to salaries were made in 1989, 2001, and 2006.
- **Current class study in progress: Phase 2 of Nurses Review.**
  - Will impact 674 positions, 18 job classes, from 3 departments (DHSS, DMVA, DOC).
  - Began October 2018, tentative completion date estimated March 2019.
- **Identified project: reviewing pay structures for exempt medical professionals (including psychiatrists).**
  - No current implementation date.



# Recruitment

## ▪ **Recent recruitment efforts:**

- GGU All Nursing Department staff are eligible for a specialized alternate workweek since July of 2016.
- GGU Health Practitioners I-II received a step increase effective August 2016.
- GGU Health Practitioner I's are eligible for a \$15,000 sign on bonus effective February of 2018.
- SU Nurse IIIs were converted to overtime eligible in June 2018.
- GGU Health Practitioners I's can volunteer for a weekend shift and receive a flat rate of \$500 effective July of 2018.
- Sign on bonus of \$10,000 was offered for Nurse positions beginning September 2018.



Continued

## CASE STUDY

**Occupational Therapist position has been vacant since December 19, 2017; in active recruitment for over a year with 0 qualified applicants.**

- **Position requirements include national board certification as occupational therapist and Alaska state licensure.**
- **Position is only range 17.**
- **API requested job classification study in 2018. None has been conducted.**



# Vacancies

- **Current unfilled clinical positions:**
  - 30 nurse vacancies (including Director of Nursing);
  - 5 psychiatrist vacancies (including Director of Psychiatry);
  - 1 medical officer vacancy (API's only general practitioner);
  - 3 psychologist vacancies; and
  - 4 forensic evaluator vacancies.
  
- **Locum Tenens/contract staff**
  - Initial nurse contract for 90 days.
  - Must train and onboard (approximately 3 weeks) followed by additional education prior to being on the floor.
  - Generally unsuccessful and depart API quickly.



# Forensic Psychiatric Services AS 12.47.010

- **Forensic patient:**
  - Has been charged with a crime.
  - Suspected to be incompetent to stand trial.
  - Two stages:
    - (1) Must be **evaluated** to see if they are incompetent.
    - (2) If found incompetent, is sent to API for "**restoration**" to competency.
      - Can be recommitted to API for multiple periods of restoration.
  - If "restored," criminal case proceeds.
  - Otherwise, person is deemed "unrestorable" and criminal case is dismissed.
    - (following dismissal, various possible outcomes including unconditional release or civil commitment).
- **Often, but not always, in custody at DOC.**
- **Criminal case cannot go forward until competency proceedings resolve.**





## Forensic Unit (Taku)

- **API has only 10 forensic beds (Taku unit).**
- **Waitlist for initial evaluation: 54**
- **Waitlist for admission: 28**
- **Multiple judges threatening to hold state in contempt for failure to evaluate/admit for restoration.**
- **Due process challenges to delayed evaluation and admission (resulting in potential dismissal of criminal case).**
- **Defendants being held longer in DOC waiting for API than the length of their potential sentence if convicted.**
- **Statutes require DHSS to conduct restoration.**
- **Statutes do not require that DHSS perform the evaluations, but API has traditionally been held responsible for them.**



# Legal involvement

- **October 19, 2018 – DLC complaint filed [CIVIL]**
  - Alleging due process violations for those facing civil commitment – being held for prolonged period without opportunity to be heard; being held in DOC pending admission to API.
  - Seeking injunction for immediate admission to API for all court-referred patients and for API staff to conduct evaluations for 30-day commitments anywhere in the state.
  - This case has been consolidated with Public Defender Agency cases involving delays in civil commitment evaluations.
- **November 2018: Public Defender Agency begins filing “habeas corpus” motions in criminal cases [FORENSIC]**
  - Complaining of delay in admission for restoration. The relief requested is release.
- **2018: Public Defender Agency begins filing motions for “alternatives to evaluation at designated evaluation facilities”**
  - Requesting that the judge order DHSS to immediately evaluate individuals waiting for transfer to API.



# Civil Commitments AS 47.30.700

- **Two methods of initiating a civil commitment:**
  - 1) “Any adult” petitions a judge
  - 2) A peace officer or psychiatrist/physician/psychologist applies for examination.
- **If the judge grants the petition, the person is delivered to an evaluation facility designated by DHSS to receive a 72 hour evaluation.**
  - If the facility determines that the person meets commitment criteria: that is the person suffers from a mental illness and (1) is gravely disabled or (2) is a threat to self or others, they will petition the court for a 30 day commitment;
  - If at any time in the process the facility determines that the person no longer meets criteria, the person must be released;
  - If there is a petition for a commitment, an evidentiary hearing is held and a superior court judge determine whether the person can be civilly committed for up to 30 days, successive commitment can occur at 90 and 180 days and at those latter hearings the individual is entitled to a jury trial. Through this entire process they are represented by the Public Defender Agency.
- **There are only three Designated Evaluation and Treatment (DET) facilities. Only DET facilities can perform the 72 hour evaluation.**
  - API, Fairbanks Memorial Hospital (20 bed, 4 acute), and Bartlett Regional Hospital (12 bed);
  - All other facilities including Emergency Rooms are not designated to provide evaluation and/or treatment services because they have not applied to become a DET.



## Civil Commitment Status

- **Current waitlist for admission to API for initial 72-hour evaluation: 19.**
- **Capacity (beds occupied) 35.**
- **Units closed due to inadequate staffing.**



# Illustrations of Potential Consequences from Other States



# Washington

- **Trueblood case – federal class action lawsuit for unconstitutional delays in forensic cases**
  - 2015 trial resulted in ruling that DSHS was violating class members' constitutional rights.
  - Court ordered the Washington State Department of Social and Health Services (DSHS) to move individuals facing criminal charges out of jail and into treatment facilities within seven or fourteen days when they are eligible for competency evaluation and restoration services (respectively).
  - **Contempt order of July 7, 2016 fined DSHS \$500 per day per person (for exceeding the 7 day deadline) and \$1,000 per day per person (for exceeding the 14 day deadline).**
  - **As of June 2018, fines for failure to comply with court orders exceeded \$55 million.**
  - Settlement agreement approved by court December 2018 requires the State to make changes in five substantive areas:
    - competency evaluations; competency restoration services; crisis triage and diversion support; education and training; and workforce development.
  
- **CMS decertified (July 2018) – loss of \$53 million federal funding per year**
  - Hospital had been at risk of losing funding since 2015.
  - **State had recently spent \$360 million into state hospitals and \$560 million in mental health spending.**
  - Federal officials cited hospital for its quality assessment and improvement program, nursing services, and safety issues.



# Pennsylvania

- **J.H. v. Dallas – federal class action lawsuit filed October 2015 on behalf of those awaiting competency/restoration**
- **January 2016 settlement agreement and June 2017 settlement agreement:**
  - State to create at least 60 new placement options within 120 days.
  - State to make *available* at least \$1 million for supportive housing within 90 days.
  - State to create at least 60 more new placement options within 180 days.
  - *No “jail based” restoration treatment counts; no in-jail evaluations count against these requirements.*
  - Within 60 days, DHS must assess every person on the waiting list and every forensic patient to determine who would be eligible for less restrictive placement.
  - State to pay attorney fees and costs.
  - State to hire independent consultant to conduct assessment of competency restoration systems and identify methods to reduce wait times.
  - State to make available a *new* minimum security unit of 50 new forensic beds within 6 months.
  - State to make available 29 more community treatment slots within 6 months.
  - State will convert at least 30 civil beds to forensic beds within 9 months.



# Utah

- ***Disability Law Center vs. State of Utah* - for delays in competency restoration admission**
- **June 2017 settlement Agreement:**
  - 72-hour screening deadline for all pretrial detainees determined by court to be incompetent.
  - Legislature to appropriate \$3 million in 2017 for new offsite forensic facility (capacity 22+ patients).
  - Jail-based treatment only allowed for individuals already stabilizing and likely to be restored within 60 days.
  - Maximum wait time to be reduced to 60 days (within 6 months), 30 days (within 12 months), and 14 days (within 18 months of approval).
  - A court-approved "Monitor" oversees compliance with settlement and reports quarterly.





# Louisiana

- **Cooper v. Kliebert – Advocacy Center filed suit for state failing to admit to an inpatient psychiatric facility individuals found Not Guilty by Reason of Insanity (NGRI) and Incompetent to Stand Trial (resulting in confinement in jail).**
- **November 2016 Settlement Agreement**
  - State to pay \$466,000 in attorney fees and costs.
  - Within 90 days, state to implement procedures for expedited admission.
  - Within 245 days, admit all NGRI/incompetent individuals to forensic unit (or appropriate place) within 15 days of receiving an Order. If it is demonstrably impossible within 15 days, state has up to 30 days.
  - All individuals to receive an assessment within 5 calendar days of an order.
  - All new individuals to be admitted within 2 days of assessment.
  - State to submit monthly reports to plaintiffs' counsel with lists of individuals and explanation for delay in placement of more than 15 days.
  - State to pay plaintiffs' expert to develop plan at \$400/hr plus up to \$30,000 travel costs.
  - Within 180 days, meet to plan for less restrictive placements and legislative proposals.
  - Within 245 days, state must increase available beds enough to admit individuals within timeframe; and make plan for supportive housing opportunities with mental health services including increased community beds.
  - Jail-based competency restoration and mental health treatment do not count.



# The decision to contract

## Goals of seeking a contractor:

1. To ensure the safety of our staff and patients;
  2. To bring the hospital into rapid compliance with regulatory authorities; and
  3. To prepare the facility to increase its bed capacity to 80 beds by 1 July.
- 
- National Association of State Mental Health Program Directors was contacted on December 18<sup>th</sup>.
  - Wellpath Recovery Solutions contacted on December 20<sup>th</sup>.
  - Liberty Healthcare Corporation was contacted on January 8<sup>th</sup>.
  - Noel Rae of NetworxHealth (Virginia Mason Health System) was met with on January 22<sup>nd</sup>.



# Immediate Jeopardy Finding

**On January 29<sup>th</sup> the CMS survey team returned for its final visit and had an Immediate Jeopardy finding on the first day of their visit. This radically altered the timeline for any contractor. We now needed an emergency process to ensure the safety of our patients and staff immediately.**

## **Steps taken:**

- 1. Removed the perpetrator to another ward alone;**
- 2. Implemented new safety protocol including 24/7 video surveillance with communication to the wards;**
- 3. Implemented an hourly reporting system for each ward to monitor every patient on an hourly basis including behavioral risk mitigation; and**
- 4. Requested a nationally recognized specialist in psychiatric treatment and safety, and NASHMPD to come to API immediately for safety oversight.**



# Wellpath Recovery Solutions

**Was chosen for the following reasons:**

- 1. Was available immediately;**
- 2. Had specific inpatient psychiatric experience including both civil and criminal commitments;**
- 3. Has a team of nationally recognized experts that has the experience and track record to bring non-compliant hospitals back into compliance rapidly.**



# Documents

<http://dhss.alaska.gov/API/Pages/AdminChanges.aspx>