



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Health  
and Social Services

OFFICE OF THE COMMISSIONER

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March 17, 2022

The Honorable Liz Snyder  
The Honorable Tiffany Zulkosky  
Co-Chairs, House Health and Social Services Committee  
Alaska State House of Representatives  
Alaska State Capitol Room  
Juneau, AK 99801

Dear Representatives:

As discussed in House HSS Committee hearings on HB 172 Mental Health Facilities & Meds, the department has worked closely with several stakeholders and would like to offer our support for the following amendments to HB 172 ver. O.

**Amendments from Mr. Gottstein Letter dated 3/7/2022**

- **New Section to amend AS 47.30.915(9) – Definition of “gravely disabled”**

(9)"**gravely disabled**" means a condition in which a person as a result of mental illness

(A)is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or

(B)**is so incapacitated that the person is incapable of surviving safely in freedom [WILL IF NOT TREATED, SUFFER OR CONTINUE TO SUFFER SEVERE AND ABNORMAL MENTAL, EMOTIONAL, OR PHYSICAL DISTRESS, AND THIS DISTRESS IS ASSOCIATED WITH SIGNIFICANT IMPAIRMENT OF JUDGEMENT, REASON, OR BEHAVIOR CAUSING A SUBSTANTIAL DETERIORATION OF THE PERSON’S ABILITY TO FUNCTION INDEPENDENTLY];**

- **New Section to amend AS 47.30.839 – Court-ordered administration of medication**

**Sec. 47.30.839. Court-ordered administration of medication.**

(a) An evaluation facility or designated treatment facility may use the procedures described in this

section to obtain court approval of administration of psychotropic medication if

(1) there have been, or it appears that there will be, repeated crisis situations as described in AS 47.30.838(a)(1) and the facility wishes to use psychotropic medication in future crisis situations; or

(2) the facility wishes to use psychotropic medication in a noncrisis situation and has reason to believe the patient is incapable of giving informed consent.

(b) An evaluation facility or designated treatment facility may seek court approval for administration of psychotropic medication to a patient by filing a petition with the court, requesting a hearing on the capacity of the person to give informed consent and on a proposed use of psychotropic medication. The petition shall provide specific information regarding the factors listed in AS 47.30.837(d)(2)(A)-(E).

(c) A patient who is the subject of a petition under (b) of this section is entitled to an attorney to represent the patient at the hearing. If the patient cannot afford an attorney, the court shall direct the Public Defender Agency to provide an attorney. The court may, upon request of the patient's attorney, direct the office of public advocacy to provide a guardian ad litem for the patient.

(d) Upon the filing of a petition under (b) of this section, the court shall direct the office of public advocacy to provide a visitor to assist the court in investigating the issue of whether the patient has the capacity to give or withhold informed consent to the administration of psychotropic medication. The visitor shall gather pertinent information and present it to the court in written or oral form at the hearing. The information must include documentation of the following:

(1) the patient's responses to a capacity assessment instrument administered at the request of the visitor;

(2) any expressed wishes of the patient regarding medication, including wishes that may have been expressed in a power of attorney, a living will, an advance health care directive under AS 13.52, or oral statements of the patient, including conversations with relatives and friends that are significant persons in the patient's life as those conversations are remembered by the relatives and friends; oral statements of the patient should be accompanied by a description of the circumstances under which the patient made the statements, when possible.

(e) Within 72 hours after the filing of a petition under (b) of this section, the court shall hold a hearing to determine the patient's capacity to give or withhold informed consent as described in AS 47.30.837 and the patient's capacity to give or withhold informed consent at the time of previously expressed wishes regarding medication if previously expressed wishes are documented under (d)(2) of this section. The court shall consider all evidence presented at the hearing, including evidence presented by the guardian ad litem, the petitioner, the visitor, and the patient. The patient's attorney may cross-examine any witness, including the guardian ad litem and the visitor.

(f) If the court determines that the patient is competent to provide informed consent, the court shall order the facility to honor the patient's decision about the use of psychotropic medication.

- (g) If the court determines by clear and convincing evidence that
- (1) the patient is not competent to provide informed consent and **[BY CLEAR AND CONVINCING EVIDENCE]** was not competent to provide informed consent at the time of previously expressed wishes documented under (d)(2) of this section;
  - (2) the proposed use of medication is in the best interests of the patient, considering, at a minimum, the factors listed in AS 47.30.837(d)(2)(A)-(E); and
  - (3) there is no feasible less intrusive alternative,

the court shall approve the facility's proposed use of psychotropic medication. The court's approval under this subsection applies to the patient's initial period of commitment if the decision is made during that time period. If the decision is made during a period for which the initial commitment has been extended, the court's approval under this subsection applies to the period for which commitment is extended.

(h) If an evaluation facility or designated treatment facility wishes to continue the use of psychotropic medication without the patient's consent during a period of commitment that occurs after the period in which the court's approval was obtained, the facility shall file a request to continue the medication when it files the petition to continue the patient's commitment. The court that determines whether commitment shall continue shall also determine whether the patient continues to lack the capacity to give or withhold informed consent by following the procedures described in (b) — (e) of this section. The reports prepared for a previous hearing under (e) of this section are admissible in the hearing held for purposes of this subsection, except that they must be updated by the visitor and the guardian ad litem.

(i) If a patient for whom a court has approved medication under this section regains competency at any time during the period of the patient's commitment and gives informed consent to the continuation of medication, the evaluation facility or designated treatment facility shall document the patient's consent in the patient's file in writing.

- Note – the department drafted this amendment in a slightly different way than Mr. Gottstein but shared the language in advance and received acceptance to it in this form.
- **Amend Section 13 on page 4, line 30 – the new AS 47.30.707** by inserting the following language after “*determines that there is probable cause to believe that*”: “the respondent is suffering an acute behavioral health crisis and, as a result, is likely to cause harm to self or others or is gravely disabled and”
  - Note – This clarification was also requested by the Alaska Court System. DHSS drafted this slightly different than proposed by Mr. Gottstein to ensure the probable cause standard applies to all of the findings, not just that the acute crisis will resolve.
- **Amend Section 13 on page 5, line 26 – the new AS 47.30.708** by inserting the following language after “*crisis*”: “and, as a result, is likely to cause harm to self or others or is gravely disabled,”

- Note – this clarification was also requested by the Alaska Court System
- **Amend Section 26 on page 13, line 10 – the section regarding the report to the legislature by inserting the following language after “could”:** “improve patient outcomes and”

**Amendments suggested by the Alaska Court System:**

- Page 5, line 3 – Delete “AS 47.30.700” and insert “this section”
- Page 5, line 3 – Delete “under AS 47.30.700-47.30.707
- Page 5, line 22 – Insert “under AS 47.30.707” after “obtained”
- Page 5, line 23 – Delete “AS 47.30.700 and insert “this section”
- Page 5, line 29 – Insert “ex parte” after “the court grants an”

The suggestions by the Alaska Court System are to ensure clarity and ease for implementation by the court system of the new statutes.

**Amendments requested by DHSS:**

- Section 13, Page 5, line 7 – Insert “The respondent may remain at the crisis stabilization center until admission to a crisis residential center.” after “order the respondent released.”
  - This language was in ver. A of the bill but removed in the committee substitute through oversight of DHSS. We are requesting it to added so a patient in an involuntary situation is not forced out of the crisis stabilization center at hour 24 before admission and transportation, if needed, can be arranged to a crisis residential center.
- Section 24, Page 12, lines 26 – amend the definition of “crisis residential center” by inserting “ for an involuntary admission” after the word “days”
  - This language provides DHSS the flexibility it needs in our licensing definition since there can be instances through our 1115 services to allow an individual to stay longer than seven days through departmental approval. However, that longer stay should only happen in a voluntary basis.

**Amendments requested by the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA):**

- Section 4, Page 2, line 13 – Insert “and employing agency” after “arresting officer”
- Section 6, Page 2, line 31 - Insert “and employing agency” after “arresting officer”
- Section 10, Page 3, line 20 – Insert “and employing agency’s” after “peace officer’s”
- Section 10, Page 3, line 21 – Insert “and employing agency” after “peace officer”

ANDVSA reached out to DHSS and the Alaska Mental Health Trust Authority to request small but important amendments to the alternative to arrest statutes found in Sections 1-10 of the committee substitute. They wanted to ensure victim notification would happen even if the arresting officer was off duty on the day of a release. We are requesting the addition of all notifications to also go to the employing agency to ensure notification will happen in these important situations.

Thank you for your consideration. DHSS and our partners would be happy to discuss any of these

amendments if the committee chooses to consider their addition to HB 172 Mental Health Facilities & Meds.

Sincerely,

A handwritten signature in black ink that reads "Heather R Carpenter". The signature is written in a cursive style with a large, stylized 'H' and 'C'.

Heather Carpenter  
Health Care Policy Advisor

CC: Mr. Adam Crum, Commissioner, DHSS  
Mr. Al Wall, Deputy Commissioner, DHSS  
Ms. Gennifer Moreau-Johnson, Division of Behavioral Health, DHSS  
Mr. Steve William, CEO, Alaska Mental Health Trust Authority  
Mr. Vasilios Gialopsos, Legislative Director, Office of Governor Mike Dunleavy