

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR PETE KELLY

Introduced: 3/8/99

Referred: Health, Education and Social Services

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to confidential mental health records; relating to mental health
2 services and programs; relating to liability for payment for mental health
3 evaluation and treatment services; and providing for an effective date."

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

5 * **Section 1.** AS 08.02 is amended by adding a new section to read:

6 **Sec. 08.02.040. Access to certain mental health information and records**
7 **by the state.** (a) Notwithstanding AS 08.29.200, AS 08.63.200, AS 08.86.200,
8 AS 08.95.900, another provision of this title, or a regulation adopted under this title,
9 a licensee or an entity employing or contracting with a licensee may disclose
10 confidential patient mental health information, communications, and records to the
11 Department of Health and Social Services when disclosure is required under
12 AS 47.30.540, 47.30.845, or AS 47.31. Information, communications, and records
13 received by the Department of Health and Social Services under this section are
14 confidential medical records of patients and are not open to public inspection and

1 copying under AS 09.25.110 - 09.25.120.

2 (b) In this section, "licensee" has the meaning given in AS 08.01.110.

3 * **Sec. 2.** AS 47.30.540(b) is amended to read:

4 (b) An entity designated by the department to receive money under
5 AS 47.30.520 - 47.30.620 shall ensure a broad base of community support as
6 evidenced by a governing board reasonably representative of the professional, civic,
7 and citizen groups in the community and including persons with mental disorders or
8 family members of persons with mental disorders. No more than two members, or 40
9 percent of the membership, whichever is greater, may be providers of services under
10 the program. In order to receive money [FUNDS] under AS 47.30.520 - 47.30.620,
11 a local community entity shall agree to

12 (1) give priority to mental health programs and services consistent with
13 the priorities set out in AS 47.30.056 and that provide the maximum services for the
14 least expenditure of money from the mental health trust settlement income account;

15 (2) furnish services through a qualified staff meeting reasonable
16 standards of experience and training;

17 (3) conform to a state cost accounting system showing the true cost
18 of services rendered, collect fees for services according to a schedule based on an
19 analysis of reasonable ability to pay, and provide that a person may not be refused
20 services because of inability to pay for those services;

21 (4) maintain adequate clinical and administrative records and furnish
22 periodic reports to the department, **including the information or records described**
23 **in AS 47.30.585 and 47.30.590;**

24 (5) furnish the authority and the department an annual report of the
25 preceding fiscal year, including an evaluation of the effectiveness of the previous year's
26 programs and their costs; [AND]

27 (6) furnish the authority and the department satisfactory needs
28 assessments for the population and area it serves and an annual update of a long-range
29 planning and budget statement that describes program goals for the coming year, the
30 steps and resources necessary to implement the goals, the projected means by which
31 these resources will be secured, and the procedures necessary to evaluate the program;

1 and

2 (7) provide written notice prepared by the department to each
 3 person receiving services financed in whole or in part by the department under
 4 AS 47.30.520 - 47.30.620 that informs the person that information and records
 5 about them and their services will be furnished to the department under
 6 AS 47.30.585 and 47.30.590.

7 * **Sec. 3.** AS 47.30 is amended by adding a new section to read:

8 **Sec. 47.30.585. Service and program monitoring and evaluation.** (a) The
 9 department shall

10 (1) monitor and evaluate services and programs financed under
 11 AS 47.30.520 - 47.30.620 and review patient eligibility for those services and
 12 programs;

13 (2) adopt regulations to collect the patient, service, and program records
 14 and information necessary to perform the duties identified in (1) of this subsection; and

15 (3) have access to the patient's name and information individually
 16 identifying the patient as necessary to perform the duties identified in (1) of this
 17 subsection.

18 (b) Confidential patient records and information collected by the department
 19 under (a) of this section are not open to public inspection and copying under
 20 AS 09.25.110 - 09.25.120.

21 * **Sec. 4.** AS 47.30.590 is amended to read:

22 **Sec. 47.30.590. Patient rights and the confidential nature of records and**
 23 **information.** The department shall adopt regulations to assure patient rights and to
 24 safeguard the confidential nature of records and information about the recipients of
 25 services provided under this chapter. The regulations must require that entities
 26 identified in AS 47.30.540(b) develop and include in any plan submitted for approval
 27 adequate provisions for safeguarding confidential information. The regulations must
 28 provide for disclosure of confidential **records and** information **to the department,** to
 29 parents or guardians, to mental health professionals providing services to a recipient,
 30 and to other appropriate service agencies when it is in the defined best interests of the
 31 patient **or necessary to monitor or evaluate services or programs financed by the**

1 **department under AS 47.30.520 - 47.30.620.**

2 * **Sec. 5.** AS 47.30.660(b) is amended to read:

3 (b) The department, in fulfilling its duties under this section and through its
4 division of mental health and developmental disabilities, shall

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

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

14 (3) administer AS 47.30.660 - 47.30.915;

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

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

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

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

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

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

1 47.30.915;

2 (10) collect patient information on a schedule determined by the
 3 department from facilities designated by the department to provide evaluation
 4 and treatment services and require reports from the head of a treatment facility
 5 concerning the care of **those** patients;

6 (11) visit each treatment facility at least annually to review methods
 7 of care or treatment for patients;

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

10 (13) delegate upon mutual agreement to another officer or agency of
 11 it, or a political subdivision of the state, or a treatment facility designated, any of the
 12 duties and powers imposed upon it by AS 47.30.660 - 47.30.915;

13 (14) after consultation with the Alaska Mental Health Trust Authority,
 14 adopt regulations to **interpret or** implement the provisions of **this chapter**
 15 [AS 47.30.660 - 47.30.915];

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

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

21 * **Sec. 6.** AS 47.30.845 is amended to read:

22 **Sec. 47.30.845. Confidential records.** Information and records obtained in
 23 the course of a screening investigation, evaluation, examination, or treatment are
 24 confidential and are not public records, except as the requirements of a hearing under
 25 **AS 47.30.670 - 47.30.915** [AS 47.30.660 - 47.30.915] may necessitate a different
 26 procedure. Information and records may be copied and disclosed under regulations
 27 established by the department only to

28 (1) a physician or a provider of health, mental health, or social and
 29 welfare services involved in caring for, treating, or rehabilitating the patient;

30 (2) the patient or an individual to whom the patient has given written
 31 consent to have information disclosed;

- 1 (3) a person authorized by a court order;
- 2 (4) a person doing research or maintaining health statistics [,] if the
3 anonymity of the patient is assured [,] and the facility recognizes the project as a bona
4 fide research or statistical undertaking;
- 5 (5) the Department of Corrections in a case in which a prisoner
6 confined to the state prison is a patient in the state hospital on authorized transfer
7 either by voluntary admission or by court order;
- 8 (6) a governmental or law enforcement agency when necessary to
9 secure the return of a patient who is on unauthorized absence from a facility where the
10 patient was undergoing evaluation or treatment;
- 11 (7) a law enforcement agency when there is substantiated concern over
12 imminent danger to the community by a presumed mentally ill person;
- 13 **(8) the department in a case in which services provided under**
14 **AS 47.30.670 - 47.30.915 are paid for in whole or in part by the department or**
15 **a person has applied for or has received assistance from the department for those**
16 **services.**

17 * Sec. 7. AS 47.30.910 is repealed and reenacted to read:

18 **Sec. 47.30.910. Liability for expense of placement in an evaluation or**
19 **treatment facility.** (a) A patient, the patient's legal representative acting in a
20 representative capacity, the patient's spouse, or the patient's parents if the patient is
21 under the age of 18 shall pay or contribute to the payment of charges for the care,
22 transportation, and treatment of the patient when the patient is hospitalized under
23 AS 47.30.670 - 47.30.915. Charges assessed when a patient is hospitalized at a facility
24 operated by the department or a facility designated by the department to provide
25 services under AS 47.30.670 - 47.30.915 may not exceed the actual cost of care and
26 treatment.

27 (b) The department may order payment by the patient or by the person
28 responsible for payment for the patient's care and treatment under this section. The
29 department may investigate to determine the patient's ability to pay and may require
30 sworn statements of income by the patient, the patient's legal representative acting in
31 a representative capacity, the patient's spouse, or the patient's parent. The

1 commissioner may impose full liability for the patient's actual cost of care and
 2 treatment on the patient, the patient's legal representative acting in a representative
 3 capacity, the patient's spouse, or the patient's parent for refusal to supply a sworn
 4 statement of income. In order to impose liability for the cost of a patient's care, an
 5 order for payment shall be issued by the department within six months after the date
 6 on which the charge was incurred. The order remains in effect unless modified by
 7 subsequent court or department order.

8 (c) If a person described under (a) of this section cannot pay or contribute to
 9 the payment of charges under this section, the patient may apply for assistance under
 10 AS 47.31.

11 (d) The department may charge or accept money or property from a person for
 12 the care or treatment of a patient. Money paid by the patient or on the patient's behalf
 13 to the department under this section shall be deposited in the general fund.

14 (e) In this section, "actual cost of the care and treatment" means

15 (1) the rate provided for by a contract entered into under AS 47.30.660;

16 or

17 (2) in the absence of a contract under AS 47.30.660, a daily rate
 18 determined by the department.

19 * **Sec. 8.** AS 47 is amended by adding a new chapter to read:

20 **Chapter 31. Mental Health Treatment Assistance Program.**

21 **Sec. 47.31.005. Applicability.** This chapter applies only to those patients who
 22 have received treatment at a facility designated by the department as an evaluation
 23 facility or a treatment facility under AS 47.30.

24 **Sec. 47.31.010. Eligibility for assistance.** (a) The department shall provide
 25 financial assistance under this chapter to a patient who

26 (1) does not have the available means to pay or contribute to the
 27 payment of charges assessed by a facility;

28 (2) has no other third party to pay for the evaluation or treatment
 29 provided under AS 47.30; and

30 (3) meets the criteria in this chapter.

31 (b) To be eligible for assistance under this chapter, a patient must have

- 1 (1) been admitted for inpatient treatment at a facility;
 2 (2) been determined by the patient's treating physician to be suffering
 3 from a mental illness and
 4 (A) as a result, is likely to cause serious harm to the patient or
 5 to others; or
 6 (B) is gravely disabled; and
 7 (3) a gross monthly household income that does not exceed 185 percent
 8 of the federal poverty guideline for this state for the month in which service was
 9 provided.

10 **Sec. 47.31.015. Application for assistance.** (a) To receive assistance under
 11 this chapter, a patient must apply in writing on a form provided by the department.
 12 A patient must apply for assistance within 90 days after the date of discharge from the
 13 facility.

14 (b) A patient who applies for assistance under this chapter must agree to
 15 release records and information to the department necessary to verify eligibility for the
 16 assistance.

17 **Sec. 47.31.020. Decision on eligibility.** (a) Within 30 days after receiving
 18 a complete application, the department shall give notice in writing of an eligibility
 19 determination to the patient or the patient's legal representative. If the patient is found
 20 ineligible, the notice must contain the reason for the denial and an explanation of the
 21 patient's right to an administrative appeal of the denial.

22 (b) The department shall provide a copy of the notice of eligibility or
 23 ineligibility to the facility at which the patient was treated.

24 **Sec. 47.31.025. Eligible services; rates.** The department shall identify the
 25 type and level of services for which assistance is available under this chapter. The
 26 department shall establish the rates of payment for those services.

27 **Sec. 47.31.030. Payment.** If the department determines that a patient is
 28 eligible for assistance under this chapter, the department shall provide for payment of
 29 assistance directly to the facility. By endorsing the check received from the
 30 department or authorizing the endorsement by the facility's agent, the facility certifies
 31 that the claim for which the check is payment is true and accurate unless written notice

1 of an error is sent to the department by the facility within 30 days after the date the
2 check is presented by the facility for payment.

3 **Sec. 47.31.035. Appeals.** (a) A patient or the patient's legal representative
4 may appeal a denial of assistance by sending written notice of objection to the
5 department within 30 days after the date of the notice of denial. The written notice
6 of objection must include an explanation of the reasons for the objection and may
7 include documentation supporting the objection. AS 44.62 (Administrative Procedure
8 Act) does not apply to the appeal.

9 (b) The commissioner or the commissioner's designee shall review the notice
10 of objection and issue a decision within 90 days after its receipt. The commissioner
11 or the commissioner's designee may request additional information on the appeal from
12 either the patient, the facility, or department staff. A request for additional information
13 suspends the time period for the appeal until the department determines that the
14 additional information has been received.

15 (c) The decision on the appeal under (b) of this section is a final agency
16 decision and may be appealed to the superior court under the Alaska Rules of
17 Appellate Procedure.

18 **Sec. 47.31.900. Regulations.** The department may adopt regulations to
19 interpret or implement this chapter.

20 **Sec. 47.31.990. Definitions.** In this chapter, unless the context otherwise
21 requires,

22 (1) "commissioner" means the commissioner of health and social
23 services;

24 (2) "department" means the Department of Health and Social Services;

25 (3) "facility" means a facility designated by the department as an
26 evaluation facility or a treatment facility under AS 47.30;

27 (4) "gravely disabled" has the meaning given in AS 47.30.915;

28 (5) "gross monthly household income" means all earned or unearned
29 income from any source of a member of the patient's household;

30 (6) "household" means persons who reside together in one residence
31 as a family unit;

- 1 (7) "likely to cause serious harm" has the meaning given in
2 AS 47.30.915;
3 (8) "mental illness" has the meaning given in AS 47.30.915.
4 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).