

SENATE BILL NO. 55

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY SENATORS DAVIS, Wielechowski, Ellis

Introduced: 1/19/11

Referred: Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mental health patient rights, notifications, and grievance
2 procedures."

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

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

5 (41) AS 47.30.847(b)(4)(C) (mental health patient grievance appeals).

6 * **Sec. 2.** AS 47.30.840(a) is amended to read:

7 (a) A person undergoing evaluation or treatment under AS 47.30.660 -
8 47.30.915

9 (1) may not be photographed without the person's consent and that of
10 the person's guardian if a minor, except that the person may be photographed upon
11 admission to a facility for identification and for administrative purposes of the facility;
12 all photographs shall be confidential and may only be released by the facility to the
13 patient or the patient's designee unless a court orders otherwise;

14 (2) at the time of admission to an evaluation or treatment facility, shall

1 have reasonable precautions taken by the staff to inventory and safeguard the patient's
 2 personal property; a copy of the inventory signed by the staff member making it shall
 3 be given to the patient and made available to the patient's attorney and any other
 4 person authorized by the patient to inspect the document;

5 (3) shall have access to an individual storage space for the patient's
 6 private use while undergoing evaluation or treatment;

7 (4) shall be permitted to wear personal clothing, to keep and use
 8 personal possessions including toilet articles if they are not considered unsafe for the
 9 patient or other patients who might have access to them, and to keep and be allowed to
 10 spend a reasonable sum of the patient's own money for the patient's needs and
 11 comfort;

12 (5) shall be allowed to have visitors at reasonable times;

13 (6) shall have ready access to letter writing materials, including
 14 stamps, and have the right to send and receive unopened mail;

15 (7) shall have reasonable access to a telephone, both to make and
 16 receive confidential calls;

17 (8) has the right to be free of corporal punishment;

18 (9) has the right to reasonable opportunity for indoor and outdoor
 19 exercise and recreation;

20 (10) has the right, at any time, to have a telephone conversation with or
 21 be visited by an attorney;

22 (11) may not be retaliated against or subjected to any adverse change
 23 of conditions or treatment solely because of assertion of rights under this section;

24 **(12) has the right to file a grievance under AS 47.30.855;**

25 **(13) has the right to a designated representative employed and**
 26 **clearly identified by a treatment facility to act as a patient advocate and to assist**
 27 **in the filing of a grievance under AS 47.30.847.**

28 * **Sec. 3.** AS 47.30.847 is repealed and reenacted to read:

29 **Sec. 47.30.847. Patient grievance procedure.** (a) A person undergoing
 30 evaluation or treatment at a public or private evaluation facility or unit or designated
 31 treatment facility or unit under AS 47.30.660 - 47.30.915 has the right, at any time, to

1 bring to an impartial body and to have immediately processed as a formal grievance
 2 suggestions about, complaints about, and appeals related to the person's treatment,
 3 care, or rights at the evaluation facility or unit or designated treatment facility or unit.
 4 The facility or unit may not deny the immediate processing of the person's formal
 5 grievance based on the availability of a less formal procedure. The person may
 6 designate a representative to bring and appeal a grievance on the person's behalf.

7 (b) An evaluation facility or unit and a designated treatment facility or unit
 8 shall provide a formal grievance procedure that includes due process for all patient
 9 grievances on any subject brought under (a) of this section, regardless of the
 10 availability of a less formal procedure for comments and suggestions. Once filed, all
 11 grievances shall be processed on a single form and completed to resolution. The
 12 grievance procedure must include

13 (1) a form for submission of a grievance and a secure box for deposit
 14 of grievances; the contents of the box must be reviewed each day patients are being
 15 treated or evaluated; the form must be readily accessible to the patient and easily
 16 understood by the patient or easily explained by a staff member in a language and
 17 method understandable to the patient; the original and a copy of a completed form
 18 submitted to the facility must be kept in the patient's record; the form must contain the
 19 heading "Alaska Department of Health and Social Services, Division of Mental
 20 Health, Grievance Reporting Form," and include

21 (A) the name of the grievant and the grievant's contact
 22 information, including the grievant's address and telephone number;

23 (B) the date and time of the completion of the grievance form;

24 (C) the name and physical location of the service provider;

25 (D) the date on which the event giving rise to the grievance
 26 took place;

27 (E) the names of persons involved in the event giving rise to
 28 the grievance;

29 (F) a narrative description of the event giving rise to the
 30 grievance;

31 (G) the specific issue to be addressed;

- 1 (H) the grievant's suggested resolution of the grievance;
- 2 (I) the investigative steps taken to formulate the facility's or
3 unit's response;
- 4 (J) the response and date of response by the facility or unit;
- 5 (K) the signature of the grievant at each level, including the
6 initial grievance;
- 7 (L) the signature of the reviewer and date of review for each
8 level of review; and
- 9 (M) options for the grievant to check following each response
10 by the facility or unit, as follows:
- 11 (i) I agree;
- 12 (ii) I do not agree;
- 13 (iii) submit to level two review;
- 14 (iv) submit to level three review, a formal hearing
15 before the office of administrative hearings;
- 16 (2) signed verification of the information provided under (1) of this
17 subsection;
- 18 (3) a written response to the grievant on the form required by (1) of
19 this subsection within five business days after receipt of the grievance and after each
20 level of requested review;
- 21 (4) three levels of review, as follows:
- 22 (A) level one, an initial and immediate review by a supervisory
23 staff member to determine whether a grievant's treatment, care, or rights have
24 been adversely affected and, if so, implementation of a mutually agreed upon
25 resolution of the grievance;
- 26 (B) level two, if a resolution is not agreed upon or implemented
27 under a level one review, a grievant may initiate a review within 20 days after
28 the determination is made under level one; a chief executive officer or the
29 commissioner's designee for a facility shall make written findings and issue a
30 decision within five days after initiation of a level two review; if the level two
31 review results in a finding of no adverse effect, no additional review is

1 necessary, but the decision may be appealed under (C) of this paragraph by a
 2 grievant, and the written decision must include a list of options for the grievant
 3 to resolve the grievance, including a level three appeal;

4 (C) level three, a grievant may appeal the final written decision
 5 made under level two to the office of administrative hearings (AS 44.64.010)
 6 under AS 44.62.330 - 44.62.630 within 30 days after receipt of the findings of
 7 the level two review; the hearing officer shall make findings and
 8 recommendations to the commissioner, who shall make a final written decision
 9 on or before the fifth day after the commissioner receives the
 10 recommendations;

11 (5) maintenance of a complete record of all documents, including the
 12 grievance and appeals and responses to the grievance and appeals;

13 (6) immediate delivery of a copy of the initial grievance and of all
 14 documents maintained under (5) of this subsection to

15 (A) the division of the department that is responsible for
 16 behavioral health;

17 (B) the person responsible for the next level of review; and

18 (C) the person in charge of the facility or unit; and

19 (7) in addition to the three levels of review provided under (4) of this
 20 subsection, an urgent level of review to be conducted by the chief executive officer or
 21 a designee of a private facility or unit or by the commissioner for a public facility
 22 within 24 hours after receipt of a grievance that alleges

23 (A) sexual abuse;

24 (B) physical abuse; or

25 (C) denial of

26 (i) lifesaving treatment or procedures;

27 (ii) lifesaving medications; or

28 (iii) basic care or human rights, as defined by the
 29 commissioner.

30 (c) Unless an extension of time of not more than five days is agreed upon by a
 31 patient or the patient's representative, an evaluation facility or unit or a designated

1 treatment facility or unit shall mail or hand deliver a written response to the patient
 2 within five days after receipt of a grievance or request for additional review. The
 3 response must include the reasons for the decision and a description of the appeal
 4 process. The grievant may request review at the next level if a written response is not
 5 timely.

6 (d) An evaluation facility or unit and a designated treatment facility or unit
 7 shall have a designated staff member who is trained in mental health consumer
 8 advocacy who shall, on a patient's request, serve as an advocate to assist the patient in
 9 bringing grievances or pursuing other redress for complaints concerning care,
 10 treatment, and rights.

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

14 (f) The burden of proof required for all grievance reviews shall be on the
 15 facility or unit against which a grievance is filed to prove compliance or remedial
 16 action sufficient to comply with applicable laws and procedures.

17 (g) The department shall review all grievances and responses to grievances for
 18 compliance with this section and intervene in all level three appeals.

19 (h) A public or private mental health treatment facility or unit shall prepare
 20 and file a quarterly report with the department that describes the

21 (1) number of grievances submitted;

22 (2) general issue raised in each grievance; and

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

24 (i) Nothing in this section shall be interpreted to prohibit informal dispute
 25 resolution or mediation by the written agreement of the grievant, the facility or unit,
 26 and the department at any time during the grievance process but before a lawsuit
 27 concerning the subject of the grievance is filed by a grievant.

28 (j) In this section,

29 (1) "facility" means a hospital or clinic in which mental health patients
 30 receive evaluation or treatment and for which public funds are provided;

31 (2) "grievance" means a complaint, concern, or suggestion made by a

1 grievant on a form provided by a public or private mental health treatment or
2 evaluation facility or unit;

3 (3) "grievant" means a patient of a public or private mental health
4 treatment or evaluation facility or unit or the patient's representative;

5 (4) "unit" means a discrete portion of a facility dedicated to the
6 treatment or evaluation of mental health patients.

7 * **Sec. 4.** AS 47.30.855 is amended by adding new subsections to read:

8 (b) The department shall provide to a facility for posting and distribution a
9 standardized notice that is designed to be easily understood and that separately
10 describes patient rights, available assistance, and grievance procedure.

11 (c) A person in charge of a facility shall ensure that each patient or patient's
12 representative receives a written copy of the standardized notice provided by the
13 department under (b) of this section and of the formal grievance procedure described
14 in AS 47.30.847(b).

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