

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

August 21, 2012

9:02 a.m.

**MEMBERS PRESENT**

Senator Bettye Davis, Chair  
Senator Dennis Egan  
Senator Fred Dyson

**MEMBERS ABSENT**

Senator Johnny Ellis  
Senator Kevin Meyer

**COMMITTEE CALENDAR**

MENTAL HEALTH GRIEVANCE PROCEDURES AT ALASKA PSYCHIATRIC  
INSTITUTE (API) AND OTHER INSTITUTIONS

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

RON ADLER, CEO and Director  
Alaska Psychiatric Institute (API)  
Anchorage, AK

**POSITION STATEMENT:** Provided patient statistics and information about the grievance procedures at API.

PAUL CORNILS, Chair  
API Advisory Board  
Anchorage, AK

**POSITION STATEMENT:** Described the work of the API consumer advisory board.

KATE BURKHART, Executive Director  
Alaska Mental Health Board, Advisory Board on Alcoholism and Drug Abuse, and Statewide Suicide Prevention Council  
Juneau, AK

**POSITION STATEMENT:** Testified that Alaska has committed to the idea that mental health clients are active participants in their

treatment who have taken a role in driving their grievance procedures, and she would hate to see state government take that away.

JIM GOTTSTEIN, President  
Law Project for Psychiatric Rights  
Anchorage, AK

**POSITION STATEMENT:** Testified during the hearing on grievance procedures at mental health treatment facilities and highlighted the problems with over-drugging.

FAITH MYERS, representing herself  
Anchorage, AK

**POSITION STATEMENT:** Testified during the hearing on grievance procedures at mental health treatment facilities and listed the complaints that API patients filed in one year.

DORRANCE COLLINS, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Testified that psychiatric patients are complaining about their treatment and the grievance procedure.

CHARLENE MILES, representing herself  
Anchorage, AK

**POSITION STATEMENT:** Testified during the hearing on grievance procedures at mental health treatment facilities and described a personal experience.

JAMILIA SAEIDS, representing herself  
Anchorage, AK

**POSITION STATEMENT:** Testified that there is a clear need to establish an easy procedure for individuals to object to their mental health treatment.

DARYL NELSON, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Advocated for the state to adopt mental health grievance procedures similar to those used by Medicare and Medicaid.

BONNIE NELSON, representing herself  
Anchorage, AK

**POSITION STATEMENT:** Testified that working on the grievance procedure at mental health treatment facilities is a good start.

KAREN PURDUE, President and CEO

Alaska State Hospital and Nursing Home Association (ASHNA) and former commissioner, Department of Health and Social Services Anchorage, KA

**POSITION STATEMENT:** Testified that community hospitals have done a good job helping people in the community so they are less likely to have to go to API.

SHIRLEY HOLLOWAY, representing herself  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of the efforts to come up with a functional procedure for individuals who need to file grievances.

MARK REGAN, Legal Director  
Disability Law Center (DLC)  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of amending the existing grievance statute.

#### **ACTION NARRATIVE**

[9:02:40 AM](#)

**CHAIR BETTYE DAVIS** called the Senate Health and Social Services Standing Committee meeting to order at 9:02 a.m. Present at the call to order were Senators Dyson, Egan and Chair Davis.

#### **MENTAL HEALTH GRIEVANCE PROCEDURES**

[9:03:09 AM](#)

CHAIR DAVIS announced the business before the committee was to listen to suggestions for changing the mental health grievance procedures at the Alaska Psychiatric Institute (API) and other institutions.

[9:04:14 AM](#)

THOMAS OBERMEYER, staff to Senator Davis, summarized Senator Davis's efforts to change the grievance procedures. Last session she introduced SB 55 to amend Title 47 and change [Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure]. The concern is that increasing numbers of mental health patients are appearing in both private and public institutions, yet one grievance procedure does not cover all institutions. Some of the suggestions were to hire an outside advocate and institute central data collection. He noted that the State of Maine has one of the best procedures for a central

advocacy reporting system and the State of Georgia has a state ombudsman.

Although AS 47.30.847(a) says that an impartial body within the treatment facility will hear patient grievances, it is difficult to have an impartial review when the entire process is internal, Mr. Obermeyer stated.

[9:10:46 AM](#)

SENATOR DYSON asked what the argument is against having private institutions under the purview of this law.

MR. OBERMEYER answered that the institutions believe they can adequately handle any issues that arise. The problem is that complaints typically do not go beyond a chief executive officer and the state has no knowledge of what happened. He said a letter from North Star Behavioral Health indicated that juveniles should be handled differently because they might target individual employees and cause terminations, but there is no way of knowing whether that is a problem or not.

SENATOR DYSON said he assumes that private institutions did not object in CSSB 55, version 0, to the addition of [paragraphs 12-19] to AS 47.30.840(a).

MR. OBERMEYER described those as generic additions that most states have adopted.

SENATOR DYSON asked if the committee would hear about the kinds of abuses that have made it necessary to ensure that there is an appeal and review process.

CHAIR DAVIS said yes.

[9:15:09 AM](#)

RON ADLER, CEO and Director, Alaska Psychiatric Institute (API), informed the committee that API's policies and procedures on grievances evolve every year and undergo review on an ongoing basis. API welcomes the dialog and transparency, he stated.

MR. ADLER said that 2,955 individuals were admitted to API over the last two years; 98.24 percent were involuntary admissions and 1.76 percent were voluntary. Staff inform patients of the grievance process in both group and individual meetings which take place daily on each unit. Grievance forms and locked submittal boxes are located in an open area in each unit. Posted next to these boxes is the notice of patient rights and

responsibilities and telephone numbers for the Disability Law Center, Adult Protective Services, Ombudsman's Office, and API's Consumer and Family Specialist.

The grievance forms give patients four options; patients can comment, compliment the hospital or staff, complain about services or treatment, or formally lodge a grievance. API staff pick up the forms every day, and the consumer and family specialist meets with the patient within 48 hours to resolve the issue at the level the patient chooses. Level I complaints are resolved informally at the unit and level II complaints are resolved formally at the administrative level.

Level I complaints resolve within seven days. Patients exercise self-advocacy and problem solving skills, and API staff honors the API philosophy that patients actively participate in their own recovery.

Level II grievances receive a written, administrative-level response within 7 days and an outcome letter within 30 days. The director's contact information is included in case the patient disagrees with the findings.

MR. ADLER reiterated that a patient can submit a level II grievance on any issue of concern. Also important is that all allegations of abuse are immediately submitted as a level II grievance. These forms are not part of a patient's permanent medical record.

Policies and procedures for grievances were implemented in October 2007 following lengthy discussions between consumers and the advisory board. Two consumers presented a list of about 20 complaints based on their experiences while at the hospital. The process was further clarified on April 2, 2012 in direct response to a Disability Law Center investigation finding. National hospital accreditation agencies for Medicare and Medicaid recently gave API policy and documentation positive reviews. Site reviewers observed that patients are obviously comfortable filing complaints, and they gave kudos for the efforts to resolve complaints at the unit level.

CHAIR DAVIS asked where the complaint goes if the patient is unsatisfied with an administrative-level decision.

MR. ADLER answered that patients always have the ability to lodge a complaint with the Disability Law Center, Adult Protective Services, and the Office of the Ombudsman. He

confirmed that those complaints are confidential, and not shared with API.

[9:24:04 AM](#)

CHAIR DAVIS asked if API was overcrowded and if that was causing problems.

MR. ADLER answered no. The average daily census for the last two years suggests that the hospital is about 70 percent full. Almost everyone is admitted within 24 hours.

CHAIR DAVIS asked how many adolescents were currently in the hospital.

MR. ADLER responded that eight adolescents were in the hospital yesterday and the unit has ten beds.

SENATOR DYSON asked if API receives referrals for psychiatric evaluation from hospital emergency rooms.

MR. ADLER said sometimes.

SENATOR DYSON asked how long it takes to do a psychiatric evaluation.

MR. ADLER answered that 72 hours is generally granted to do the evaluation and make a report to the court. This includes treatment recommendations and a recommendation about whether the individual would benefit from a 30-day commitment.

SENATOR DYSON asked who pay the bills for most patients.

[9:26:56 AM](#)

MR. ADLER explained that the API operating budget is between \$28 million and \$30 million depending on the amount of premium pay. A portion of that comes from federal Disproportionate Share Funds (DSH) that are allocated through the Social Security Administration Act for state psychiatric hospitals that are deemed institutions for mental disease (IMD). API's annual disproportionate share is about \$6.5 million, and state general funds match that amount. The rest of the funding comes from third-party reimbursement and additional general fund dollars.

SENATOR DYSON commented that virtually no one pays his or her own bills.

MR. ADLER clarified that private sector clients pay their own bills; API collects about \$6 million a year in third-party reimbursements.

SENATOR DYSON commented that private sector payments generally mean a third-party payer.

MR. ADLER responded that there are times when people write a check because of the co-pay associated with their insurance. One stipulation for federal DSH payments is that the institution has to make a good faith effort to collect hospital bills. When an API patient has a third-party insurer, the patient is invoiced for any co-pay and the hospital receives money for the services provided.

CHAIR DAVIS asked for a breakdown on the third-party payers.

MR. ADLER explained that API bills Medicaid for the population up to age 21 and over age 65. It also does business with TRICARE for veterans and active military, and all the other major insurance companies that operate within Alaska.

SENATOR DYSON asked if API does business with any Native health organizations.

MR. ADLER answered no.

[9:29:49 AM](#)

MR. ADLER reviewed the data that was collected on the grievance policy and procedure for the past fiscal year. Of 1,630 admissions, 168 complaints were filed and 22 grievances had to be resolved. Fifty-eight percent of the comments concerned how staff treated individuals. He said that a member of the advisory board reviews those grievances on a monthly basis.

CHAIR DAVIS asked who appoints the members of the advisory board and how long they serve.

MR. ADLER said the DHSS commissioner appoints the members after Paul Cornils, the current board chair, has reviewed the names. He said he didn't know how long the members serve.

CHAIR DAVIS noted that the Legislature did not confirm the members, and asked for a list of the current members.

MR. ADLER agreed to follow up with the information.

[9:33:27 AM](#)

MR. ADLER explained that the advisory board member who reviews the grievances submits that information to the full board. He described the constant feedback as a quality-assurance process. He opined that API is the only hospital in the nation with this level of transparency with a consumer-driven advisory board.

CHAIR DAVIS asked how many members were on the advisory board and an unidentified speaker in the audience said there were 11 members.

MR. ADLER said the number of actual grievances dropped between 2011 and 2012 and the number of comments increased. Over a five-year period, there were 8,004 admissions, 1,074 complaints, and 133 grievances filed.

[9:37:56 AM](#)

CHAIR DAVIS asked if any advisory board members wanted to testify.

[9:38:54 AM](#)

PAUL CORNILS, Chair, API Advisory Board, said he calls the board a consumer advisory board. There are quarterly meetings and subcommittee work takes place as necessary.

CHAIR DAVIS asked if he had any concerns to express about the grievance process.

MR. CORNILS said the current process developed over the course of a year and models the Maine Riverside Hospital process.

CHAIR DAVIS said she would appreciate it if each of the advisory board members would review SB 55 and comment on it as a board.

MR. CORNILS said he did not object to the bill as written. He offered his understanding that some people believe that some grievance issues rise to level III and that these should be addressed outside the hospital. He said he had no evidence that the current process wasn't working.

SENATOR DYSON asked if any grievances resulted in criminal charges for assault or rape.

MR. ADLER replied those issues are handled through the incident reporting process and seldom get as far as a grievance. The response is generally within 24 hours. He confirmed that there

were some of these grievances, but he wasn't sure if any resulted in criminal charges.

CHAIR DAVIS asked who would have that information.

MR. ADLER replied he would have to look back in the records.

SENATOR DYSON expressed surprise at the answer and expressed interest in getting the information.

CHAIR DAVIS asked Mr. Adler to follow up.

MR. ADLER committed to provide the information within 24 hours.

[9:46:08 AM](#)

KATE BURKHART, Executive Director, Alaska Mental Health Board, Advisory Board on Alcoholism and Drug Abuse, and Statewide Suicide Prevention Council, said her comments were on behalf of the boards for which she works. She informed the committee that the AMHB has a seat on the API consumer advisory board; until recently it was filled by Andrea Schmook, a mental health consumer who in the past spent time at API. She has represented AMHB very well over the years and has been a major participant in the quality assurance committee. She provided ongoing updates and conversations about how API has gone through the quality improvement and procedure review over the years.

She said that in 2007 AMHB received stakeholder input with a list of concerns about patient grievances at API. The Alaska Mental Health Board decided to assemble an ad hoc committee, and Ms. Schmook served on both committees to ensure information sharing and work coordination. API and the advisory board focused on grievance procedures at the state psychiatric hospital and the ad hoc committee focused on grievance procedures that were in place in community mental health centers.

MS. BURKHART said API addressed those stakeholder concerns by developing a consumer driven grievance procedure, and AMHB would recommend that any legislative action reinforce and respect that consumer-driven process. Alaska has committed to the idea that mental health clients are active participants in their treatment who have taken a role in driving their grievance procedures. She said she would hate to see state government take that away.

[9:49:25 AM](#)

CHAIR DAVIS emphasized that she liked the process and wanted to make it better.

MS. BURKHART explained that the majority of mental health services in Alaska are voluntary and provided through non-profit community mental health centers. API and non-profit hospitals in Fairbanks, Juneau, and Anchorage provide all the involuntary commitment services in the state. She relayed that the distinction that the boards have made consistently through this process is that a grievance procedure for someone undergoing forced mental health treatment should focus strictly on protecting the patient. Community mental health centers also have grievance procedures as required by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the Centers for Medicare and Medicaid Services and (CMS).

She directed attention to the packets and explained that in 2009 the boards compared the grievance procedures required by CMS and JCAHO to the procedures that API had developed over the last couple of years. The document shows the requirements under which Alaska's community health centers and hospitals already operate. She cautioned that any ensuing legislation should not conflict with these federal requirements or be overly bureaucratic such that the people receiving services find the process un navigable. It should promote the idea of patient-centered care that the community mental health centers have embraced.

[9:52:48 AM](#)

MS. BURKHART suggested that having a separate grievance procedure for mental health consumers furthers their stigma. If the goal is to protect patients and ensure respectful and dignified treatment, the focus should be on a comprehensive, universal patient protection and grievance procedure. It should not distinguish mental health consumers.

SENATOR DYSON asked if individuals identified as vulnerable to suicidal are often committed by court order.

MS. BURKHART answered yes. She relayed that the boards regularly receive comments from individuals concerning their experience with community and institutional mental health services. The boards respond in force to those complaints so that is another avenue for consumers.

[9:57:05 AM](#)

JIM GOTTSTEIN, President, Law Project for Psychiatric Rights, reviewed the things he wanted the committee to consider

including the book, "Anatomy of an Epidemic" and a law review article he wrote about involuntary commitment and forced drugging cases. He questioned the grievance statistics that Mr. Adler presented and emphasized that it did not have to be the case that more than 98 percent of the commitments are forced. He said the preamble to the current Alaska commitment statute says that people should have the opportunity for voluntary participation before initiating any legal proceedings, but that isn't honored because it's so easy to haul these people in, lock them up, and drug them against their will.

He pointed out that in Myers v. Alaska Psychiatric Institute, the Alaska Supreme Court ruled that Alaska's forced drugging statute was unconstitutional to the extent that it did not require proof that drugging was in the person's best interest and there was no less intrusive alternative. Dr. Loren Mosher testified that in his entire career he had never had to call the police to keep someone from committing personal grievous harm, because he and the patient agreed beforehand how to move forward with treatment.

MR. GOTTSTEIN stated that the ubiquitous use of psychiatric drugs is causing massive problems. They knock down symptoms in the short term, but in the long term they dramatically increase not only health problems but also the number of people who do not recover. This is borne out by the statistic that shows that on average, people in the public mental health system die 25 years earlier than the general population. It demonstrates how little value these people have. In the U.S. 5-20 percent of mental health recipients recover; Finland uses the "Open Dialog" approach to treatment and 80 percent of mental health recipients recover.

He emphasized the importance of both due process and a realistic appeal process, and stated support for the provision in SB 55 to amend Rule 82 so it would not apply to patients who appeal an adverse decision. This is very important because the Office of the Attorney General has a policy of seeking attorney's fees whenever it wins a case. That was an issue in the Myers case.

[10:05:23 AM](#)

SENATOR DYSON surmised that the reason the attorney general might want to recover attorney fees is to dampen frivolous suits. He asked if that was a real concern in his constituency.

MR. GOTTSTEIN opined that the policy intended to discourage lawsuits in general.

SENATOR DYSON asked if suits claiming over-drugging have been successful nationally.

MR. GOTTSTEIN said no, but that is a goal of the Law Practice for Psychiatric Rights.

SENATOR DYSON expressed surprise at the lack of criminal negligence and/or civil suits if inappropriate drugging is such a problem and causing so many people to die.

MR. GOTTSTEIN responded that the tort system is probably not a good system for resolving these issues. The assumption is that people diagnosed with serious mental illness do not have income potential so lawyers aren't very interested. Nevertheless, it is important to have an effective and speedy grievance procedure. Mr. Adler testified that API usually handles the grievance within 24 hours, but there needs to be a formal procedure to ensure that happens.

He emphasized the importance of having an effective grievance procedure for people who are forcibly committed and drugged against their will. The facts don't show that they do. Private facilities should be subject to the same rules when they are operating under the state's involuntary commitment procedures.

10:11:47 AM

FAITH MYERS, representing herself, listed the complaints that API patients filed in one year: 54 related to respect and dignity; 7 related to privacy; 3 related to communications; 1 related to religion; 4 were HIPAA issues; 14 related to discharge issues; 1 related to the right to refuse treatment; 3 were sexual allegations; 44 were complaints about treatment; 18 related to safety; 11 related to dietary issues; 17 related to medication; 4 were complaints regarding medical treatment; 11 were complaints against doctors or therapists; and 28 related to basic rights, 6 of which were about smoking.

She relayed that when she filed a complaint as a patient in a psychiatric institution she did not receive a written response and was not able to file an appeal. She also filed a complaint at Providence Hospital psychiatric unit concerning physical abuse. It took 40 days to receive a written resolution denying the claims and there was no information about any appeal process. She noted that a psychiatric hospital can grant itself a 30-60 day extension to solve a patient's complaint without informing the patient.

MS. MYERS said the local newspapers support the claim that the current psychiatric patient grievance procedures are not working. She cited examples and highlighted that a common thread is that the psychiatric patients received unreasonable responses to their complaints. She urged the state to shorten the response time to patient complaints and to provide greater oversight and protection. The average stay for a patient is 14 days so 30 days is too long for a patient in a psychotic state to wait to receive an answer to a complaint. She urged the Legislature to amend AS 47.30.847 to include due process for complaints, an appeal process, and an urgent grievance requirement. The committee substitute for SB 55 is a good start.

10:16:09 AM

DORRANCE COLLINS, representing himself, stated that psychiatric patients are complaining about their treatment and the grievance procedure. He said a person with a mental illness doesn't have to break a law to be handcuffed and transported to a locked psychiatric unit. They often arrive with legitimate complaints.

He noted that the grievance and appeal processes vary depending on the facility. Some psychiatric facilities have an appeal process for patient complaints and some do not. Some resolve patient complaints in 7 days and some take 30 days. Some psychiatric facilities have an informal complaint process but no timeframe for completion. Some facilities give grievance and appeal information to patients and some do not. Almost every psychiatric facility can grant itself a 30-day extension to resolve a patient complaint, but is not obliged to inform the patient or state. Patient advocacy organizations may help a patient file a complaint, but it may take 30 days or more to get a response.

MR. COLLINS said that psychiatric patients will find alternative solutions if they do not receive a response to a complaint or appeal within a reasonable period. Those solutions are often tragic. He emphasized that psychiatric patients need to be given, by law, the right to file a complaint when they choose and with detailed due process. They need the right to file an appeal, including an appeal that goes beyond the walls of the institution. Patients need access to a grievance procedure that is shorter than 7 days, and help filing the grievance if needed. Finally, the state should be required to keep statistics on the number and type of complaints filed by psychiatric patients and the resolutions. Access to this information should be public. He

said AS 47.30.847 needs amendment and HB 55 is a good starting point.

10:19:40 AM

CHARLENE MILES, representing herself, described an incident when she was an inpatient at the Fairbanks hospital. The police came into the ward and arrested another patient after throwing him to the ground and handcuffing him. The process was very chaotic and frightening to the other patients, but the staff did nothing to deescalate their anxiety. When she tried to talk about the incident, the staff told her it was not her concern. Because of that incident, she is afraid of seeking additional psychiatric help at that hospital. She emphasized the importance of knowing that a psychiatric ward is a safe place and more than just a time-out chair. In conclusion, she offered her belief that returning veterans very quickly will overwhelm the capabilities of the Fairbanks hospital psychiatric ward.

10:24:29 AM

JAMILIA SAEIDS, representing herself, described herself as a psychiatric survivor, the parent of children with psychiatric difficulties, a professional mental health clinician, and mental health care specialist and advocate. She said there is a clear need to establish an easy procedure for individuals to object to their mental health treatment. The procedure must be readily accessible, the complaint review impartial, and the institutional response timely.

The current law covering grievance procedures, AS 47.30.850, is vague, does not provide due process or appeal procedures, and has no provision for immediate, urgent grievances. The evidence indicates that grievances are not resolved quickly; oftentimes it is well after discharge. She emphasized that it is in the community's best interest to do everything possible to facilitate the recovery of an individual experiencing mental health issues. The absence of a workable grievance procedure undermines recovery and can have dire consequences for a community. She urged legislators to pass some version of SB 55; it is a substantial improvement over current law.

10:28:47 AM

DARYL NELSON, representing himself, said he has advocated for all disabilities his entire life. He suggested adopting mental health grievance procedures similar to those used by Medicare and Medicaid. He described over-drugging and the harm it does; sometimes it's like being in a straitjacket. There has to be a better solution.

[10:33:16 AM](#)

BONNIE NELSON, Daryl's mother, said her son made her strong. She said working on the grievance procedure is a good start. She expressed hope that next session there would be time to look at not only the grievance procedure but also what the grievances are about. She said she has been helping Daryl design an open dialog program together with Senator Dyson so that people can gather to talk about their out-of-control feelings without being afraid that they will be locked up in a psychiatric unit and lose their self-determination.

MS. NELSON described the range of mental health treatments that she and other family members have undergone. No one was forced into treatment or an institution, but some of the experiences were frightening and traumatic.

She concluded that learning how to deal with emotions should not be a within a medical model; it should be an educational process.

[10:41:17 AM](#)

KAREN PURDUE, President and CEO, Alaska State Hospital and Nursing Home Association (ASHNA), and former commissioner of the Department of Health and Social Services (DHSS), said the community hospitals have done a good job helping people in the community so they are less likely to have to go to API. ASHNA wants to incent community hospitals to care for patients in the community, but providing this care can be overwhelming.

ASHNA has formed a behavioral health committee to explore ways that community hospitals can be more involved in finding solutions. She said she would like to work to avoid grievances by giving patients what they need when they need it. She also questioned the need for community hospitals to have a separate grievance system for mental health patients because hospitals already have rigorous complaint procedures in place.

[10:44:52 AM](#)

MS. PURDUE suggested the committee also take a serious look at the capacity at API and if it is sufficient to meet the needs over the next decade or two. The hospital has a capacity of 80 beds, but just 50 beds cycle.

SENATOR DYSON asked if grievance procedures should apply universally to both private and public institutions. He also

asked if institutions should be required to report grievances regularly.

MS. PURDUE said she supports transparency and a trend analysis of complaints would be good.

SENATOR DYSON repeated the first question.

MS. PURDUE said she was concerned in particular about community hospitals whose business is much more than mental health treatment. She suggested looking at the complaint procedures already in place in community hospitals and cautioned against applying anything extraordinary.

SENATOR DYSON asked if community hospitals include for-profit hospitals.

MR. PURDUE named just two for-profit hospitals. Alaska Regional Hospital operates as a community hospital and North Star Behavioral Health treats children.

CHAIR DAVIS said the reason for bringing this to the public is that mental health patients often can't speak for themselves. She expressed optimism that subsequent legislation would improve on SB 55, but it is a good start.

[10:51:24 AM](#)

SHIRLEY HOLLOWAY, representing herself, said she is speaking as a mother and she applauds the efforts to come up with a functional procedure for individuals who need to file grievances. She said the state and nation needs a comprehensive mental health plan because accessing help can be a nightmare. When her daughter was admitted to API, she was hopeful that she would receive a comprehensive diagnosis and treatment, but she was released very soon and committed suicide. Ms. Holloway said she is advocating for continued work.

[10:53:06 AM](#)

MARK REGAN, Legal Director, Disability Law Center (DLC), said the DLC believes the grievance statute needs modification. It needs to include specifics about procedures for raising a complaint, getting timely processing with a result, and appeal outside the institution to the commissioner level or court. The idea behind SB 55 is good.

MR. REGAN noted that the committee had two different things before it. The first is the statement of rights that people

ought to have in an institution. The second is a description of the procedures that institutions are supposed to use. He said the right to an individualized plan and review of that plan is good, but it also needs to include discharge planning. He noted that the rights listed in SB 55 come out of the commitment and treatment statutes and should be cross-referenced.

[10:57:35 AM](#)

He addressed how the procedure should work. Currently API is under requirements from CMS and the JCAHO system to have a grievance procedure. CMS requires all hospitals to have timelines in their grievance procedures. The most important ones for patients are timelines for a decision and a response. Subsequent legislation should include similar timelines. An outside tracking system is also valuable.

[11:00:13 AM](#)

SENATOR DYSON asked him to comment on the lack of criminal and civil actions that been filed, given the national statistics.

MR. REGAN said his response is similar to Mr. Gottstein's; individual personal injury actions against people working at institutions are difficult and take a long time. Regarding criminal actions, he said it is not the way to run an institution to assume that somebody who does something wrong will be punished in a criminal process. One reason the grievance process is so important is that it can call attention to an issue relatively quickly. That is probably why the current statute requires a grievance procedure. All regulatory agencies at the federal level require all hospitals to have one, and it would be a good idea for the committee to push forward to develop a more detailed process.

[11:06:09 AM](#)

SENATOR DYSON asked about the potential for criminal action if a patient called 911 to report an assault or a guardian reported an assault or inappropriate restraint. He said the longevity statistics for people with mental health issues are alarming.

MR. REGAN said SB 55 lists the right of informed consent and other rights on freedom from restraint. Psychiatric institutions have authority that the federal government recognizes to impose seclusion and restraint under some circumstances. The Disability Law Center has a special responsibility to investigate and respond to complaints and bring them to the attention of the institution. That has been done at API and there have been differences of opinion. A provision in SB 55 provides a way to

resolve issues and change procedures at an institution even when the individual who filed the grievance is no longer a patient. That is accomplished by API's current procedures, but it would be cemented by reintroduction of SB 55.

SENATOR DYSON asked if the process is working for patients or their guardians who call the police with a criminal complaint.

MR. REGAN said he didn't know if criminal cases have been prosecuted, but a police officer who is investigating what happened at an institution would have many layers to navigate.

SENATOR DYSON asked him to think about ways the Legislature could improve the process.

MR. REGAN said there are a number of ways to help things work better and the criminal system is one, but not the first.

[11:09:21 AM](#)

CHAIR DAVIS invited written comments to improve SB 55; that information will be submitted to the new HSS committee in January. She expressed particular interest in receiving comments on the grievance processes used by Georgia and Maine. She asked if there were closing comments.

DORRANCE COLLINS said both Maine and Georgia had the JCAHO system but patients in those states were systematically abused and some died. It was the law that helped.

[11:11:53 AM](#)

JIM GOTTSTEIN said he probably gets one call every two weeks from someone who was dissatisfied with their treatment at API. It illustrates the magnitude of the problem.

[11:13:59 AM](#)

CHAIR DAVIS thanked the participants and committee members and adjourned the Senate Health and Social Services Standing Committee meeting at 11:13 a.m.