

CS FOR HOUSE BILL NO. 214(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/8/14

Referred: Finance

Sponsor(s): REPRESENTATIVES HIGGINS, TARR, AND GATTIS, Muñoz

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mental health patient rights, notifications, and grievance**
2 **procedures; and relating to delegations of duties and powers relating to mental health**
3 **by the Department of Health and Social Services."**

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

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

6 (51) AS 47.30.847(a)(3) (mental health patient grievance appeals).

7 * **Sec. 2.** AS 44.64.090 is amended by adding a new subsection to read:

8 (c) The office shall maintain the confidentiality of records pertaining to a
9 mental health grievance appeal filed under AS 47.30.847 except as necessary to
10 conduct the appeal among the parties to the appeal, unless the office has received the
11 prior written consent of the person who filed the grievance.

12 * **Sec. 3.** AS 47.30.660(b) is amended to read:

13 (b) The department, in fulfilling its duties under this section and through its
14 division responsible for mental health, shall

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

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

10 (3) administer AS 47.30.660 - 47.30.915;

11 (4) designate, operate, and maintain treatment facilities equipped and
12 qualified to provide inpatient and outpatient care and treatment for persons with
13 mental disorders;

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

16 (6) enter into arrangements with governmental agencies for the care or
17 treatment of persons with mental disorders in facilities of the governmental agencies
18 in the state or in another state;

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

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

26 (9) prescribe the form of applications, records, reports, requests for
27 release, and consents to medical or psychological treatment required by AS 47.30.660
28 - 47.30.915;

29 (10) require reports from the head of a treatment facility concerning
30 the care of patients;

31 (11) visit each treatment facility at least annually to review methods of

1 care or treatment for patients;

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

4 (13) delegate upon mutual agreement to another officer or agency of it,
5 or a political subdivision of the state, or a treatment facility designated, **the authority**
6 **to operate and maintain treatment facilities under (4) of this subsection and to**
7 **provide for the placement of patients under (5) of this subsection, as necessary to**
8 **operate a statewide system for the evaluation and treatment of mental health**
9 **disorders; however, the department may not, under this paragraph, delegate**
10 **duties involving investigation and oversight of a mental health facility that the**
11 **department is required to perform in order to comply with federal and state law**
12 **and with the mental health grievance procedure under AS 47.30.847** [ANY OF
13 THE DUTIES AND POWERS IMPOSED UPON IT BY AS 47.30.660 - 47.30.915];

14 (14) after consultation with the Alaska Mental Health Trust Authority,
15 adopt regulations to implement the provisions of 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. 4.** AS 47.30.840(a) is amended to read:

22 (a) A person undergoing evaluation or treatment under AS 47.30.660 -
23 47.30.915

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

29 (2) at the time of admission to an evaluation or treatment facility, shall
30 have reasonable precautions taken by the staff to inventory and safeguard the patient's
31 personal property; a copy of the inventory signed by the staff member making it shall

1 be given to the patient and made available to the patient's attorney and any other
 2 person authorized by the patient to inspect the document;

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

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

10 (5) **except as provided in (15) of this subsection,** shall be allowed to
 11 have visitors at reasonable times;

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

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

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

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

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

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

23 **(12) has the right to file a grievance under AS 47.30.847;**

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

28 **(14) has the right to select an individual to act as a patient**
 29 **advocate and to assist in the filing of a grievance under AS 47.30.847;**

30 **(15) who has been evaluated or treated in a locked evaluation**
 31 **facility or unit or a designated treatment facility or unit for more than three days**

has the right to a reasonable opportunity to maintain natural support systems, including family, friends, and help networks;

(16) has the right to confidentiality of the person's records unless the person has consented in writing to the release of the records.

* Sec. 5. AS 47.30.847 is repealed and reenacted to read:

Sec. 47.30.847. Patient grievance procedure. (a) The department shall establish a standardized statewide mental health patient grievance procedure for the benefit of any person who is undergoing evaluation or treatment at an evaluation facility or unit or designated treatment facility or unit under AS 47.30.660 - 47.30.915. The grievance procedure must include

(1) a telephone call center operated by the department for filing and reviewing a grievance;

(2) a standardized form for filing a grievance;

(3) an appeal procedure that includes an administrative appeal to the office of administrative hearings under AS 44.64;

(4) a standardized notice of the grievance and appeal procedure;

(5) regular monitoring of compliance with the procedure;

(6) timely records review and maintenance by the department;

(7) maintenance of confidentiality of the grievance records, including appeal documents and decisions, unless the grievant provides prior written consent to release some or all of the records; and

(8) a process for designating a grievance by category as follows:

(A) category 1 for a grievance related to the physical or social environment under the control of the facility or unit;

(B) category 2 for a grievance related to patients' rights as provided in AS 47.30.825 and 47.30.830 and regulations of the department;

(C) category 3 for a grievance that alleges a criminal act.

(b) An evaluation facility or unit and a designated treatment facility or unit shall comply with the grievance procedure established in (a) of this section, regardless of the availability of a less formal procedure for comments and suggestions. Once filed, all grievances shall be processed on a single form and completed to resolution

1 unless the grievance is withdrawn by the grievant. The facility or unit shall

2 (1) provide a form approved by the department for submission of a
3 grievance and a secure box for deposit of grievances; the contents of the box must be
4 reviewed each day a patient is being treated or evaluated; the form must be readily
5 accessible to the patient and easily understood by the patient or easily explained by a
6 staff member in a language and method understandable to the patient; the original and
7 a copy of a completed form submitted to the facility or unit must be kept in the
8 patient's record of admission or an administrative file for the patient;

9 (2) maintain a complete record of all documents, including the
10 grievance and appeals and responses to the grievance and appeals; and

11 (3) for a category 2 or 3 grievance, deliver to the department within 24
12 hours an electronic copy of the initial grievance and all documents received under (2)
13 of this subsection.

14 (c) Unless an extension of time of not more than five business days is agreed
15 to by a grievant or the grievant's representative, an evaluation facility or unit or a
16 designated treatment facility or unit shall mail or hand deliver a written response to the
17 patient and an electronic copy of the response to the department within five calendar
18 days after receipt by the department of a grievance or request for additional review.
19 The response must include the reasons for the decision and a description of the appeal
20 process. The grievant may request review by the commissioner within 30 calendar
21 days.

22 (d) A grievant may not file a grievance or an appeal later than one year after
23 being discharged from an evaluation facility or unit or a designated treatment facility
24 or unit. The facility or unit shall make a good faith effort to mail a response to a
25 grievant who has been discharged from the facility.

26 (e) The department shall review all grievances and responses to grievances for
27 compliance with this section and intervene when necessary to protect rights under
28 AS 47.30.840.

29 (f) An evaluation facility or unit and a designated treatment facility or unit
30 shall prepare and file an annual report with the department that describes the

31 (1) number of category 1, 2, and 3 grievances submitted;

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

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

3 (g) The department shall provide to the governor and to the legislature an
4 annual report of the number, locations, and category of grievances filed under this
5 section and recommendations of the department to improve mental health evaluation,
6 treatment, and procedures in the state. The report must preserve the confidentiality of a
7 person who is the subject of a grievance. The department shall make the report
8 available to the public.

9 (h) Nothing in this section applies to an evaluation facility or unit or
10 designated treatment facility or unit that only provides outpatient services.

11 (i) In this section,

12 (1) "grievance" means a complaint or concern filed by telephone or in
13 writing by a grievant using a form provided by an evaluation facility or unit or a
14 designated treatment facility or unit;

15 (2) "grievant" means a patient of an evaluation facility or unit or a
16 designated treatment facility or unit, or the patient's representative;

17 (3) "unit" means a portion of a health care facility dedicated to the
18 evaluation or treatment of mental health patients under AS 47.30.660 - 47.30.915.

19 * **Sec. 6.** AS 47.30.855 is amended by adding new subsections to read:

20 (b) The department shall provide to an evaluation facility or unit or designated
21 treatment facility or unit for posting and distribution a standardized notice that is
22 designed to be easily understood and that separately describes patient rights, available
23 assistance, and the grievance procedure described in AS 47.30.847.

24 (c) A person in charge of an evaluation facility or unit or designated treatment
25 facility or unit shall ensure that each patient or patient's representative receives a
26 written copy of the standardized notice provided by the department under (b) of this
27 section and of the grievance procedure described in AS 47.30.847.

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

29 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **MENTAL HEALTH SERVICE DELEGATION; TRANSITION.** The Department of

1 Health and Social Services shall, as soon as feasible, implement the changes made to
2 AS 47.30.660(b)(13), as amended by sec. 3 of this Act, including amending or terminating
3 agreements made under delegations under that paragraph as it read before the effective date of
4 this Act.