ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
February 25, 2014
3:10 p.m.

MEMBERS PRESENT

Representative Pete Higgins, Chair
Representative Wes Keller, Vice Chair
Representative Benjamin Nageak
Representative Lance Pruitt
Representative Lora Reinbold
Representative Paul Seaton
Representative Geran Tarr

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 214
"An Act relating to mental health patient rights, notifications, and grievance procedures."

- HEARD & HELD

CONFIRMATION HEARING(S):

State Medical Board

Sai-Ling Liu, D.O. - Nome

- CONFIRMATION(S) ADVANCED

PREVIOUS COMMITTEE ACTION

BILL: HB 214
SHORT TITLE: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES
SPONSOR(s): REPRESENTATIVE(s) HIGGINS, TARR, GATTIS

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	HSS, JUD, FIN
02/18/14	(H)	HSS AT 3:00 PM CAPITOL 106
02/18/14	(H)	Heard & Held
02/18/14	(H)	MINUTE(HSS)

02/25/14 (H) HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

BARBARA HENJUM, Acting Director
Central Office
Division of Behavioral Health
Department of Health and Social Services
Anchorage, Alaska
POSITION STATEMENT: Answered questions during the discussion of HB 214.

JASON HOOLEY, Special Assistant
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 214.

MELISSA RING, CEO
Alaska Psychiatric Institute (API)
Division of Behavioral Health
Department of Health and Social Services
Anchorage, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 214.

RON HALE, Hospital Administrator
Alaska Psychiatric Institute (API)
Division of Behavioral Health
Department of Health and Social Services
Anchorage, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 214.

LAURIE HERMAN, Director of Government Relations
Providence Health & Services, Alaska
Anchorage, Alaska
POSITION STATEMENT: Testified and answered questions during discussion of HB 214.

CINDY GOUGH, Director of Behavioral Health Services
Providence Alaska Medical Center
Anchorage, Alaska
POSITION STATEMENT: Testified during discussion of HB 214.

JOSHUA SONKISS, MD

North Pole, Alaska
POSITION STATEMENT: Testified during discussion of HB 214.

LAURA MCKENZIE, Director
Compliance Officer
Quality Improvement and Risk Management
North Star Behavioral Health
Anchorage, Alaska
POSITION STATEMENT: Testified during discussion of HB 214.

KAREN PERDUE, CEO and President
Alaska State Hospital and Nursing Home Association (ASHNHA)
Anchorage, Alaska
POSITION STATEMENT: Testified during discussion of HB 214.

KATE BURKHART, Executive Director
Alaska Mental Health Board
Division of Behavioral Health
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Testified during discussion of HB 214.

ANDREA SCHMOOK
Los Angeles, California
POSITION STATEMENT: Testified during discussion of HB 214.

SAI-LING LIU, D.O., Appointee
to the State Medical Board
Nome, Alaska
POSITION STATEMENT: Spoke as an appointee to the State Medical Board.

ACTION NARRATIVE

3:10:00 PM

CHAIR PETE HIGGINS called the House Health and Social Services Standing Committee meeting to order at 3:10 p.m. Representatives Higgins, Seaton, Pruitt, and Keller were present at the call to order. Representatives Tarr, Nageak, and Reinbold arrived as the meeting was in progress.

3:11:39 PM

The committee took an at-ease from 3:11 p.m. to 3:14 p.m.

HB 214-MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

3:14:34 PM

CHAIR HIGGINS announced that the first order of business would be HOUSE BILL NO. 214, "An Act relating to mental health patient rights, notifications, and grievance procedures."

3:15:37 PM

REPRESENTATIVE SEATON, referencing an earlier comment that the appeals process would not accomplish anything unless it was exempt from Civil Rule 82, clarified that this did not apply to administrative appeals. He shared that other mechanisms would be reviewed to ensure there were not constraints on people for making an appeal.

CHAIR HIGGINS acknowledged that proposed HB 214 was still a work in progress, and that suggestions for changes would be received to allow the bill to move forward.

3:17:53 PM

BARBARA HENJUM, Acting Director, Central Office, Division of Behavioral Health, Department of Health and Social Services, stated that her comments were on behalf of the Division of Behavioral Health and the Alaska Psychiatric Institute (API). She clarified that she was not speaking on behalf of other designated evaluation and treatment facilities, or any private community behavioral health centers. She reported that an earlier statement that the Department of Health and Social Services (DHSS) had submitted a zero fiscal note for previous versions of the proposed bill was incorrect, as the earlier fiscal note had reflected the cost of a 24/7 crisis line, staff costs to develop the program which included training to community providers and to DHSS staff for their function as investigators, and associated costs for buying services for the expanded grievance process from other departments.

CHAIR HIGGINS clarified that the aforementioned fiscal note had not been adopted by the previous committee during an earlier hearing on a similar proposed bill.

REPRESENTATIVE SEATON asked if Ms. Henjum was referring to the current fiscal note [Included in members' packets]. He asked why, as current law required a grievance procedure, as well as an advocate employee, was there an increased cost for legal advice and administrative hearings.

MS. HENJUM offered her belief that the proposed bill would expand the role of Department of Health and Social Services for response to grievances filed in hospitals or other treatment facilities, as well as another level of review for each of these which could require advice from the Department of Law (DOL).

CHAIR HIGGINS explained that, as there were no longer attorneys based in DHSS, it was now necessary for the department to get legal advice from DOL, for which services DHSS would be billed.

REPRESENTATIVE SEATON asked for clarification to which of the procedures were new under the proposed bill.

MS. HENJUM replied that it would now be required for grievances at API and other hospitals to be sent to Department of Health and Social Services for response, even though these hospitals had their own existing grievance procedures.

CHAIR HIGGINS questioned the difference between complaints and grievances.

MS. HENJUM suggested that this difference was semantic.

CHAIR HIGGINS noted that, in 2013, there were 163 complaints and 15 grievances, and he asked what definition was used to determine each. He suggested a change in the language of the proposed bill to determine what issues would be moved to the next level after being heard by the department. He opined that grievances for patient rights could be moved on, while the others could be dealt with in-house.

MS. HENJUM acknowledged the common goal of the committee and DHSS for the Alaska mental health patient grievance procedures and the rights of this population.

REPRESENTATIVE SEATON asked if this appeal was referenced on page 3, lines 11-12, of the proposed bill. He pointed to page 4, lines 27-29, which stated that "The department shall review all grievances and responses to grievances for compliance with this section and intervene when necessary to protect rights under AS 47.30.840, and asked if this would include a normal procedure to protect the rights of individuals.

3:27:42 PM

JASON HOOLEY, Special Assistant, Office of the Commissioner, Department of Health and Social Services, said that the impartial body [page 3, line 12 of the proposed bill] would be the Office of Administrative Hearings [Department of Administration] and that the new requirements would include that DHSS intervene when necessary and review all the grievances and responses to grievances, to regularly monitor compliance with the established procedure in the proposed bill, and to analyze recommendations by the department to improve mental health evaluation treatment and procedures through a report to the governor and the legislature.

REPRESENTATIVE SEATON offered his belief that this should be the current duty of Department of Health and Social Services. He asked if the proposed bill required that this be a regular duty and therefore would account for the proposed fiscal note.

CHAIR HIGGINS directed attention to the fiscal note, which accounted for the cost for any legal opinions. He pointed out that only 15 cases in the prior year may have needed a legal opinion.

REPRESENTATIVE SEATON asked if a hearing by the Office of Administrative Hearings was billed to DHSS.

MR. HOOLEY, in response, said that the Division of Behavioral Health provided regulation oversight and site review. He stated that current grievance processes were required to be administered in-house, and that all of the grantees and designated evaluation and treatment facilities adhered to this requirement. He noted that there were additional requirements in the proposed bill for the department to act upon any of these procedures which were not resolved, in conjunction with DOL and the Office of Administrative Hearings. This was the basis of cost in the attached fiscal note.

3:32:10 PM

MS. HENJUM clarified that each licensed medical facility in Alaska was accredited by the Joint Commission, as well as the Centers for Medicare and Medicaid Services. Each of these entities, as well as the DHSS, required grievance procedures and policies and reviewed any grievance activities. She noted that site reviews of grantees by DHSS included a review for the appropriate management of grievance activities.

REPRESENTATIVE SEATON asked for clarification that the proposed bill would expand the oversight or simply change the timing for review of the grievance procedures and the unresolved grievances.

MS. HENJUM offered her belief that it would also expand the oversight role from hospitals.

CHAIR HIGGINS asked to confirm that the requirement for the department already included a review of the grievance procedures for hospitals and the other accredited institutions.

MS. HENJUM agreed that this was currently being conducted for behavioral health grantees, although she needed clarification that this also included hospitals. She suggested that much of the proposed bill was duplicative, as there was already federal law, state law, and accreditation standards, a multi-tiered system, all of which required grievance procedures and review of the grievance processes. She added that the Disability Law Center of Alaska was a federally designated protection and advocacy agency for individuals with mental illness in Alaska, and also reviewed concerns and complaints for these same types of issues.

MS. HENJUM discussed concerns mentioned in previous committee testimony for API, stating that some were very old, and reported that API was continuing to evolve. She pointed to the API advisory board members and staff, which had been established for quality improvement, monitored the API grievance process, and made quick revisions if necessary. She stated that DHSS looked forward to collaboration with the bill sponsor to ensure a standardized process and meaningful supplement to patient's rights, currently enumerated in statute and in practice.

REPRESENTATIVE KELLER asked if there was a data base to track and address these grievances.

MS. HENJUM opined that there was not tracking to this "broad scope", although it was possible to obtain information about the current grantees and any grievances received.

CHAIR HIGGINS acknowledged that, although there was some duplication in the proposed bill, it was asking that the procedures be done better, "and that's what this bill's all about." As the sponsor, he stated that this was not a request to do new procedures, only that these procedures be standardized, so the administration could review them, as well.

He referenced a case with the Disability Law Center of Alaska, as an example for the necessity of the proposed bill, and read: "based on the information available it appears that both patients' complaints went straight to a risk management investigation track by API... and that API no longer followed the patient grievance policies and procedures that speak to the timelines and extensions. The notice of appeal to the Alaska Court System for the liability to file complaints with outside agencies are not included in the notice to the patient." He acknowledged that the aforementioned case was in 2011, and that there had been improvement since this case.

MS. HENJUM replied that there had been significant changes made to the grievance procedure at API as a result of the report from the Disability Law Center of Alaska.

REPRESENTATIVE TARR asked about the types of grievance incidences, and what type of treatment was included.

3:39:55 PM

MELISSA RING, CEO, Alaska Psychiatric Institute (API), Division of Behavioral Health, Department of Health and Social Services, said that, as she had only been with API for a few weeks, although she did not know of the actual nature of the grievances, she had an understanding for the types of complaints often made by people with mental illnesses. She expressed some of her concerns for the proposed bill which included the definition for a grievance. She offered that a grievance was often defined as a rights violation, per the rights outlined in the state statute and the Centers for Medicare and Medicaid Services. She declared that every patient complaint was approached with the seriousness, dignity, and respect which it deserved. She offered that often the patient was asking for a second opinion or another person, such as a patient advocate, to speak with. She expressed her concern that a broad definition of grievance as a complaint would result in "pretty high numbers." She expressed that for some of these rights violations, the person felt resolution after meeting with the patient advocate. She stated that the API definition of grievances would include some rights violations that were not resolved by the patient advocate, as well as some complaints that were not rights violations, which included court ordered hospital stays.

CHAIR HIGGINS interjected that these court decisions were initiated by a request from API for a decision.

MS. RING, in response, clarified that these requests were submitted with a medical opinion, not an administrator's opinion. She expressed her concern that every hospital within the service delivery system with psychiatric units would need to have the exact same process. She reported that she would follow any process as dictated by the State of Alaska. However, she pointed out, many private hospitals had their own process, which were often determined by an owner corporation. She directed attention to the various lists of rights from Centers for Medicare and Medicaid Services (CMS), The Joint Commission, and the State of Alaska, and questioned why all the groups did not use the same list. She expressed concern for "saddling our very important private partners with this type of governmental procedure." She offered her belief that, as every grievance would have to go to DHSS before and after resolution, there should be concern for patient privacy. She recommended that each party could submit its own grievance procedures for review, as well as a review of its aggregate of complaints and resolutions. She suggested that patients be invited to submit complaints to DHSS, CMS, or the Joint Commission to ensure oversight.

3:47:57 PM

REPRESENTATIVE TARR, referencing stories of patient rights violations, asked why patients would perceive this violation.

MS. RING acknowledged that mistakes were made and that patient rights were violated by hospitals. She shared that when explaining the grievance procedure as part of her staff presentation, she ensured that the process allowed patients to point out the mistakes, and to get a second opinion. She opined that it was a robust process for appropriately addressing the patient issues.

REPRESENTATIVE SEATON, directing attention to the six grievance procedures listed on page 3, lines 8-15, of the proposed bill. He asked if any of these would not be included in a grievance process.

MS. RING explained that each hospital would have its own standardized form [for filing a grievance]. She said that an appeal procedure that included an administrative appeal to an impartial body designated by the department would most likely not be in every grievance procedure; however, the offer for appeal to CMS and the Joint Commission would be included. She

expressed confidence that a standardized notice of the grievance and appeal procedure was already being done. She opined that timely records review and maintenance were a Joint Commission standard for grievances filed.

REPRESENTATIVE SEATON stated that he was not hearing any disagreement, as long as there was a standardized form within the institution.

3:52:52 PM

RON HALE, Hospital Administrator, Alaska Psychiatric Institute (API), Division of Behavioral Health, Department of Health and Social Services, echoed the sentiments of Ms. Ring.

REPRESENTATIVE SEATON asked if the form provided was approved by the department. He asked what grievance procedures would be onerous to an institution, and whether any aspects of the proposed bill would de-rail or complicate the existing procedure.

MR. HALE replied that he would use whatever standardized form was determined by the department. He suggested asking some of the other non-state facilities.

CHAIR HIGGINS offered an anecdote regarding his office procedure. He suggested discussion with the other facilities to standardize the forms and the procedures.

3:56:02 PM

LAURIE HERMAN, Director of Government Relations, Providence Health & Services, Alaska, addressing the February 18, 2014 testimony of Lorraine Lamoureux, declared that Providence Health & Services, Alaska categorically denied all of these allegations made by Ms. Lamoureux regarding Providence [Alaska Medical Center] and Bret Bohn. She stated that federal and state privacy laws did not allow any discussion for specifics regarding care. She reported that the Office of Public Advocacy (OPA) was the guardian for Bret Bohn and would have to authorize the disclosure of any information regarding his medical care, and that there had not been any such authorization. She stated that Adult Protective Services had filed an emergency petition for appointment of a temporary guardian for Bret Bohn. The court had appointed an attorney to represent Mr. Bohn as his temporary guardian, as well as a court visitor to act as an independent investigator for the court. She pointed out that

Mr. Bohn's parents had participated in these proceedings, all of which were on public record. She explained that the appointment by the court of a temporary or permanent guardian gave them the sole authority for health care decisions for the patient, which included decisions regarding medication, and length of hospital stay. She noted that Providence Health & Services Alaska conferred with and obtained the necessary consent from the guardian regarding treatment. She stated that visitation was only restricted if the patient requested, or if it was medically necessary and in the best interest of the patient. She noted that there were many types of medical situations which restricted visitation, including those by family members. She declared that Providence Health & Services Alaska attempted to work with the family and the patient to reinstitute this visitation as soon as this was in the best interest of the patient, and requested by the patient. If a guardian had been appointed, then Providence Health & Services Alaska also conferred with them regarding any restrictions on visitation.

3:59:48 PM

CINDY GOUGH, Director of Behavioral Health Services, Providence Alaska Medical Center, read from a prepared statement, stating that Providence Alaska Medical Center had served Alaskans since 1902, and that it currently served in eight communities with acute care, physician clinics, long term and assisted living, palliative and hospice care, and home health. She reported that it was the state's largest private employer. She stated that all of the staff at Providence cared about "Alaskans who suffer with behavioral health illnesses, and we all want to see that they receive excellent care and are put on a path to a healthy life." She offered her belief that the proposed bill was not necessary and was not in best interest of patients and care givers. She declared that the Joint Commission, as well as federal laws for participation in Medicare and Medicaid, required that Providence meet certain guidelines regarding grievances, procedures, and visitation. She declared that professional ethics mandated respect for the patients, their rights, and their best interests. She reported that Providence had policies and procedures in place in the Behavioral Health unit that covered many of the points addressed in the proposed legislation, which included the right to file a complaint, access to file a complaint 24/7, and a designated on-site patient advocate. She declared that it was not necessary to add another layer of state mandated grievance policy, and would not result in tangible patient benefits. She stated that this proposed bill would only impose additional reporting and

paperwork on the staff, instead of focusing on patient care and treatment. She offered that facilities should have the option to develop grievance and other procedures tailored to their own facilities and patient populations, within federal guidelines, applicable accreditation standards, and its own professional ethics. She raised issues of concern regarding visitation in the proposed bill, which included lack of definitions for a "reasonable opportunity," "natural support systems," and "help networks," as referred to on page 2, lines 29-31, and page 3, line 1 of the proposed bill. She opined that this lack of precise definitions would increase the likelihood of disputes. She pointed out that the proposed bill mandated visitation, but did not contain any exception for restrictions on visitation which were medically necessary for the health of the patient. She declared that family members were included in the treatment of the patients at Providence unless the patient wished to not have visitors or the physician determined that the medical needs of the patient required restrictions on visitations. She declared that the proposed bill did not allow that health care providers be allowed to exercise their medical judgment when such restrictions were medically necessary. She emphasized that Providence took great interest and care to ensure that the grievance procedure was handled quickly and properly. She shared that Adult Protective Services, the Joint Commission, the Alaska State Medical Board, and the Disability Law Center were other avenues for patient grievances. She offered her belief that the complex grievance procedures in the proposed bill were unnecessary and would replace valuable patient care time with labor intensive processes which did not advance patient care or treatment.

4:05:49 PM

CHAIR HIGGINS asked how many grievances were filed at Providence during the previous year.

MS. GOUGH replied that there had been ten, which included grievances and patient complaints, within the psychiatric emergency department and the behavioral health unit.

REPRESENTATIVE KELLER asked if the ten grievances were written.

MS. GOUGH explained that there had been other complaints within the division that were resolved, and that these ten grievances had been designated to an advocate for resolution.

REPRESENTATIVE KELLER asked if the patients were aware that the advocate was easily accessible.

MS. GOUGH stated that patients were given all of this written information along with their patient rights upon admittance.

CHAIR HIGGINS asked to clarify patient rights.

MS. GOUGH replied that these rights included the hospital patient rights and those statutorily driven rights.

CHAIR HIGGINS stated that the proposed bill incorporated those rights, and added three more rights, which could require a change in procedures. He asked "what's the real push back on this bill, other than the fact that you have your own procedures." He offered his belief that "your real heartache with this is that you don't want to have oversight from the administration."

MS. GOUGH stated that she had outlined her areas of concern during her testimony.

CHAIR HIGGINS asked to clarify that she did not like the oversight on procedures by the administration.

MS. HERMAN, in response, stated that one size did not fit all, as patient populations varied in each facility. She asked for a closer definition on visitation, page 2, line 31, which she considered could lead to more disputes.

CHAIR HIGGINS stated his agreement, and suggested deleting "reasonable."

MS. HERMAN asked for a definition for "natural support system."

4:10:46 PM

REPRESENTATIVE TARR, noting that "reasonable" was used in the existing statute and the proposed bill, offered her belief that there was a legal definition for "reasonable." She asked if there was more appropriate, specific language consistent with other policy language to allow for this intent, especially with regard to the controversial case related to the proposed bill.

MS. HERMAN offered to work on language for greater clarity to the aforementioned definitions. She stated that there could not be any comment on a specific case.

CHAIR HIGGINS declared that it was not the intent "to decide right or wrong on any specific case, that's not the purpose behind this bill." He emphasized that the proposed bill was written to review and improve specific procedures.

REPRESENTATIVE PRUITT suggested caution for discussion of a specific case.

REPRESENTATIVE KELLER asked Ms. Herman what the response would be if a legislator called her office with a specific problem from a constituent.

MS. HERMAN replied that state and federal patient protection regulations would not allow discussion specific to the care of a patient.

CHAIR HIGGINS expressed his agreement.

4:14:48 PM

JOSHUA SONKISS, MD, reported that he was a medical doctor, as well as a board certified psychiatrist with specialty training in the diagnosis and treatment of mental illness. He stated that he had an additional board certification in forensic psychiatry, a medical subspecialty which dealt with "the interface of mental illness and the law." He said that he was the Medical Director of the Behavioral Health unit at Fairbanks Memorial Hospital, as well as the president-elect of the Alaska Psychiatric Association. He shared that he was currently providing outpatient mental health services to residents on the North Slope. He shared some information on his personal life to convey to the committee that "like my patients, I'm not just a label, I'm a whole human being." He offered to provide factual information necessary before consideration of the proposed bill. He stated that he had provided written testimony to the committee. He asked that the committee gather and consider as much factual information as possible before making a decision on the proposed bill. He expressed caution to not base a decision on impassioned testimony by a few individuals. He addressed earlier testimony regarding an alleged conspiracy between hospitals and state agencies "to profit by depriving patients of their rights." He reminded the committee that courts decided whether a patient should be detained by the mental health system, and that medical ethics and case law required that medical professionals make these requests. He shared that the vast majority of mental health care services were not delivered

by psychiatrists, as other medical specialists wrote more prescriptions than psychiatrists. He declared that there was not a rational basis to impose the provisions of the proposed bill solely on mental health out-patient clinics, and not to include "the thousands of family practitioners, pediatricians, gynecologists, and others who diagnose and treat mental illness in our state." He addressed previous testimony that psychiatric patients were cut off from their families. He reported that the Behavioral Health unit received weekly calls from anxious family members asking about their loved ones. He pointed out that it was not allowable to provide information or contact, as the Health Insurance Portability and Accountability Act (HIPAA) prevented health care workers from providing patient information without patient consent. He noted that most mental health care workers wanted to communicate with family members; however, patients often did not want to speak with family members. When there was not patient consent to speak with families, under HIPAA, the health care workers were not allowed to even acknowledge the patient had been admitted to the facility. Although many people felt that these HIPAA requirements should be changed, the proposed bill would not change these requirements and it would not protect privacy violators from severe penalties. He asked that committee members seek information on physical and sexual assault statistics in mental health versus other health care settings. He stated that judges had expert knowledge for due process rights for psychiatric patients, and that a review of state and federal privacy laws would explain the family perception that contact had been prevented. He expressed concern that the lack of a methodical and determined search for facts would allow for the committee to be misled by misinformation and misunderstanding for the rights of patients with mental illness.

4:21:29 PM

REPRESENTATIVE TARR asked if the ability of the courts to make the correct decision was limited during court intervention, or did they rely on [health care] professionals for the necessary information.

DR. SONKISS replied that the experienced judges who made frequent civil commitment decisions were the best. He noted that, as there was a bias by judges and society to not commit patients, mental health professionals had to be well prepared, and that patient rights were well protected in Alaska.

CHAIR HIGGINS stated that the proposed bill was not intended to diagnose or treat mental [health] patients. He emphasized that the purpose of the proposed bill was to "give adequate notice, standardize forms, advocate assistance, rapid written administrative response, and a right to appeal." He noted that it also addressed telephonic access. He asked for clarification that non-support of the proposed bill was a declaration against these rights.

DR. SONKISS replied that this assessment was incorrect. He stated that he was "very much in support of those rights, and I've written and advocated in favor of those rights." He expressed his agreement that, historically, those rights had been violated. He explained that the reality for mental illness and civil rights had changed over the last 40 years, and that psychiatric patient rights "are better protected than the rights of any other class of citizen in the country." He expressed his agreement for maintaining vigilance in protection of these rights. He pointed out that the addition of another administrative layer to processes already in place and enforced by agencies more powerful than the State of Alaska did not add much, and that the money to fund this administrative layer would be taken from the already financially stretched clinical services. He emphasized that the vast majority of mental health care prescriptions were written by doctors, not psychiatrists, outside the mental health clinics, and he questioned why the proposed bill did not address these other outpatient clinics.

CHAIR HIGGINS said that this response did not address his question.

REPRESENTATIVE TARR noted that the written testimony from Dr. Sonkiss was not in her packet, and she asked to receive it.

4:27:55 PM

LAURA MCKENZIE, Director, Compliance Officer, Quality Improvement and Risk Management, North Star Behavioral Health, read from a prepared statement:

> Mr. Chairman and the Committee – thank you for this opportunity to provide testimony regarding North Star Behavioral Health's concerns regarding House Bill 214, mental health patient rights and grievances.
>
> I would like to start by stating that North Star has been in business for over 28 years, and provides

voluntary behavioral health treatment exclusively for children and adolescents at both our acute hospital, and residential treatment facilities. We welcome external oversight and community agency involvement in our facilities, and fully support our patients having access to grievance procedures.

We view their feedback as an important tool in our performance improvement efforts, and take our responsibilities for their treatment seriously. North Star is committed to providing the children in our facilities and the employees who care for them, a safe environment that complies with, or exceeds all local, state and federal requirements. As part of that culture of safety is continuous monitoring of all patients to prevent the unlikely occurrence of serious events such as sexual or physical abuse which are crimes, not grievances as outlined in this bill. North Star program(s) are licensed by the State of Alaska, the Center for Medicaid and Medicare Services and accredited by the Joint Commission on Accreditation of Health Care Organizations. Monitoring is also conducted by external organizations such as the Disability Law Center, State of Alaska Office of Children's Services, the Division of Behavioral Health, and the Division of Juvenile Justice. Additionally inherent with treating children, each patient has one or more of the following who monitor and participate in care: parents, family, Guardian Ad Litem(s), Social Workers, external community treatment providers and school personnel. One can surmise from reviewing all involved parties that multiple levels of monitoring and or investigation are already in place.

As part of the requirements for licensure and operation we must have a grievance procedure that is patient friendly, efficient, and responsive to concerns. You have previously heard testimony that behavioral health patients do not have rights, or have fewer rights than prisoners. This is not accurate as patients at North Star have rights in 30 different categories, just like adults in other hospitals. We maintain a vigorous program that is written into policy and shared at multiple points. Information about this process is given to every patient and parent upon admission as part of the intake paperwork,

and also in the parent or patient handbook. Additionally, we have this information posted on every unit, and groups regarding rights and grievance procedures are held with the patients. We have a designated Patient Advocate who is responsible for responding to grievances. We have installed locked boxes on each unit so that patients can submit concerns directly to the Advocate. The Advocate's picture is even on the box to assist patients with identifying him when making a complaint. We have additional management staff trained and available during times the Advocate is not on duty to assure continuous access to this process at all times. Additionally, we provide the contact information for State of AK Facilities Licensing, Disability Law Center, and the Joint Commission to all employees as part of orientation; it is printed in the patient and parent handbook and it is posted on our website. Complaints are investigated and a written response is given within a couple of days, not 2 weeks as previous testimony would allege. Parents/guardians and other support systems are involved in all aspects of treatment, and that includes complaint resolution. Concerns are then reviewed each month for trends and opportunities to improve by the Quality Council, Medical Executive Committee, and the Governing Board each quarter. Additional review of the complaint data is done by external agencies during annual, tri-annual and unannounced regulatory surveys. Inquiries and surveys in response to complaints are not uncommon, and can last up to four days while involving multiple departments.

A complaint received last month from a patient stated: "wake up time is too early on the weekends." This is a typical complaint we receive and clearly would not rise to the level necessitating investigation and response by an external party. Another point worth discussion is the inherent benefit of having an internal advocate who can investigate and work with the clinical team to address concerns, thus preventing triangulation and preserving the therapeutic alliance between patient and treatment team. Please note, that all patients are admitted to North Star on a voluntary basis and with the consent of their parent who can discharge their child at any time of they are unhappy. As you can see, a patient receiving treatment at North

Star Behavioral Health already has the participation of up to ten separate agencies and entities. It is questionable, how the addition of the process outlined in this bill will add value. HB 214 is unnecessary, redundant, and an inefficient use of resources given the onerous regulations and oversight already provided to health care facilities. I am available to answer any questions that the committee may have.

4:34:17 PM

CHAIR HIGGINS reiterated that the proposed bill was asking for standardization of forms. He stressed that the proposed bill was not redundant. He acknowledged that the proposed bill would also send grievances to the next level for resolution, which he opined was not unreasonable. He stated that the proposed bill was "not redundance, you're doing it already, and the administration in statute is supposed to do this already, too, so we're just adding three new statutes to it."

MS. MCKENZIE offered that, as the Division of Behavioral Health and the [Division of Corporations, Business, and Professional] Licensing already existed, there was a redundancy to add another state division.

CHAIR HIGGINS explained that the proposed bill created an alignment within the division, as its purpose was not to create more bureaucracy, but to streamline and to get patient satisfaction.

4:36:32 PM

KAREN PERDUE, CEO and President, Alaska State Hospital and Nursing Home Association (ASHNHA), observed that there had been repeated statements that effective licensing and accreditation bodies already existed. She reported that patient grievances lodged with state or federal agencies could prompt unannounced visits and investigations, as these bodies monitored the implementation of complaint procedures and did follow up investigations on individual complaints. She declared that there was a difference for a process to monitor whether a complaint procedure was in place, and the process for a procedure to appeal individual complaints to the department. She explained that there was concern for the expense to private facilities. She said that an appeal process could be in a state hearing for a private patient in a private hospital. She opined that her experience determined that this was "unusual" as

private hospitals were not familiar with the handling of individual patient grievances at the state appeal level.

CHAIR HIGGINS explained that the proposed bill governed due process and grievance procedures in "all state and private mental health hospitals, clinics, and units, which receive public funds." He said that bill was not applicable if a facility did not receive public funds.

MS. PERDUE said that Fairbanks Memorial Hospital, Bartlett Regional Hospital, and Providence Alaska Medical Center all received some form of state funding for assistance with the management of patients. She pointed out that patients were occasionally diverted to Bartlett Regional or Fairbanks Memorial Hospitals, as API was usually quite full, and these facilities were provided with Medicaid funding for these services. She stated that Providence Alaska Memorial Center assisted with its psychiatric emergency room. She emphasized that a legitimate complaint process required bodies and expertise, and that this cost needed to be reflected in a fiscal note.

4:40:37 PM

KATE BURKHART, Executive Director, Alaska Mental Health Board, Division of Behavioral Health, Department of Health and Social Services, stated that she spoke on behalf of the board, and that the board was appointed by the governor. She stated that, although she had provided written comment, she would offer ideas for improvement of the proposed bill "if it must pass." She declared that the board did not feel a statutory grievance procedure was necessary or was a benefit to its constituents, even though the mental health population was especially vulnerable and needed additional protection. She reported that, if the House Health and Social Services Standing Committee insisted upon passage of a bill related to this topic, the board believed that the bill should be very basic, reflect the grievance issues related to treatment, care, or patient rights, and apply solely to those facilities which provided involuntary mental health services pursuant to AS 47. She explained that the board did not believe that any bill related to a statutory grievance procedure should apply to community behavioral health centers, based on the same rationale offered by previous testimony. She offered support for the right to a trained patient advocate, and that patients should have the right to make the grievance in writing and in other ways. She questioned the use of a standardized form, as federal regulations required the opportunity to make a grievance by telephone, in person, or

by e-mail, in a manner that allowed for a patient to best communicate. She directed attention that not all patients were capable of communication in writing or in English, and that a limitation for grievances to a standardized form would not meet the needs of patients. She suggested that a proposed bill, instead of establishing a policy and procedure in statute, should direct the Department of Health and Social Services to promulgate regulations that require a written grievance procedure, adequate notice of that procedure, and notice of the patient advocate. She pointed out that the providers were already offering access to informal and formal grievance procedures and the opportunity to file a civil action. She reiterated concerns for equating grievances about abuse, physical, and sexual assault, with complaints about wake up times. She encouraged that any provisions for emergency grievances be limited to seclusion, restraint, safety, and welfare. She suggested that a discreet definition for grievances should be a written or oral complaint related to treatment, care, or rights, with a provision that neither the patient nor the advocate can be penalized for accessing the grievance procedure. She encouraged that the committee weigh the allocation of resources, as the vast majority of constituent input to the Alaska Mental Health Board was about access to services. She declared that a redirection of limited resources away from clinical services toward administrative processes was not supported by the majority of her constituents.

REPRESENTATIVE TARR asked if those suggestions could be submitted in writing.

MS. BURKHART said that they had already been submitted.

4:46:02 PM

ANDREA SCHMOOK shared that she was a former patient at API in 1977, and had received services at Anchorage Community Mental Health until her recovery from a serious mental illness in 1984. She said that she was forcibly treated against her will and committed to API in 1977. She shared that she had been a consumer advocate for mental health in state hospitals, she did contract consulting at API, she had established and developed the API office of Consumer Family Affairs, and she had served on the Alaska Mental Health Board. She reported that the advisory board at API had developed a grievance policy that was currently in place. She reported that proposed HB 214 was similar to the [grievance] policy at API. She suggested that some of the problems in the proposed bill were in the definitions and she

stated that the proposed bill was too hospital prescriptive and should not include community behavioral health centers, as some requirements in the proposed bill did not make sense for community centers. She noted that the proposed bill used "patient" whereas in a community behavioral health center, a person was a "client," therefore the language of the proposed bill would need to define each. She suggested removal of the references to designated facilities, as it was impossible for community behavioral health centers to meet the standards in the proposed bill. She stated that she had submitted her written testimony. She said that the proposed bill needed to be re-written in order to be less prescriptive. She noted that API already had its own grievance policies, which were occasionally revised. She pointed out that community behavioral health centers were accredited, and had policy and grievance requirements approved by the Centers for Medicare and Medicaid Services. She reminded the committee that the proposed bill would be costly for staff time, during a time when staff resources were already limited. She noted that a grievance policy must be culturally significant to the individuals being served, so that its access is meaningful and easy for the patient.

CHAIR HIGGINS left public testimony open and HB 214 was held over.

CONFIRMATION HEARING(S):
State Medical Board

4:53:24 PM

CHAIR HIGGINS announced that the final order of business would be the confirmation to the State Medical Board. He reminded the committee that signing the confirmation committee report does not reflect the intent of any member to vote for or against an individual in any other session for the purpose of confirmation.

SAI-LING LIU, D.O., Appointee to the State Medical Board, in response to Representative Keller, explained that her clinical work in the region for the last 24 years had given her an excellent background, which had prepared her to participate in a "broader aspect for the state."

4:55:50 PM

REPRESENTATIVE KELLER made a motion to advance the confirmation of Sai-Ling Liu, D.O., appointee to the State Medical Board, to

the joint session for consideration. There being no objection, the confirmation was advanced.

4:57:06 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:57 p.m.