

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

March 11, 2014

3:03 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. 301

"An Act relating to duties and procedures of the state medical examiner and the Department of Health and Social Services; and relating to death certificates."

- MOVED CSHB 301(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 214

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

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 301

SHORT TITLE: AUTOPSIES AND DEATH CERTIFICATES

SPONSOR(S): REPRESENTATIVE(S) HERRON

02/07/14	(H)	READ THE FIRST TIME - REFERRALS
02/07/14	(H)	HSS
02/20/14	(H)	HSS AT 3:00 PM CAPITOL 106
02/20/14	(H)	Heard & Held
02/20/14	(H)	MINUTE(HSS)
03/04/14	(H)	HSS AT 3:00 PM CAPITOL 106
03/04/14	(H)	Heard & Held

03/04/14 (H) MINUTE(HSS)  
03/11/14 (H) HSS AT 3:00 PM CAPITOL 106

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  
02/25/14 (H) Heard & Held  
02/25/14 (H) MINUTE(HSS)  
03/11/14 (H) HSS AT 3:00 PM CAPITOL 106

**WITNESS REGISTER**

REPRESENTATIVE BOB HERRON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as the sponsor of HB 301.

THOMAS STUDLER, Staff  
Representative Pete Higgins  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As staff for the bill sponsor, Representative Pete Higgins, introduced the committee substitute for HB 214.

FAITH MYERS  
Volunteer Mental Health Advocate  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 214.

DORRANCE COLLINS  
Volunteer Mental Health Advocate  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 214.

DON ROBERTS  
Kodiak, Alaska

**POSITION STATEMENT:** Testified in support of HB 214.

SCOTT CALDER

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 214.

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.

STACIE KRALY, Chief Assistant Attorney General-Statewide Section  
Supervisor

Human Services Section

Civil Division (Juneau)

Department of Law

Juneau, Alaska

**POSITION STATEMENT:** Testified during discussion of HB 214.

#### **ACTION NARRATIVE**

[3:03:10 PM](#)

**CHAIR PETE HIGGINS** called the House Health and Social Services Standing Committee meeting to order at 3:03 p.m. Representatives Higgins, Keller, Seaton, Reinbold, Pruitt, and Nageak were present at the call to order. Representative Tarr arrived as the meeting was in progress.

#### **HB 301-AUTOPSIES AND DEATH CERTIFICATES**

[3:04:15 PM](#)

CHAIR HIGGINS announced that the first order of business would be HOUSE BILL NO. 301, "An Act relating to duties and procedures of the state medical examiner and the Department of Health and Social Services; and relating to death certificates."

[In front of the committee was the proposed committee substitute (CS) for HB 301, labeled 28-LS1196\P, Mischel, 2/27/14, which the committee had adopted as the working draft on March 4, 2014.]

REPRESENTATIVE PRUITT moved to adopt proposed Amendment 1, labeled 28-LS1196\P.1, Mischel, 3/7/14, which read:

Page 2, lines 8 - 15:

Delete all material and insert:

"(f) The state medical examiner shall designate a location for conducting a post mortem examination that is in the community closest to where the death occurred if

(1) the state medical examiner has verified that a facility with adequate technology, personnel, and training is available at the location to enable the state medical examiner to direct a remote examination;

(2) the facility meets applicable standards, including inspection and accreditation, for conducting remote post mortem examinations established in the Forensic Autopsy Performance Standards by the National Association of Medical Examiners; and

(3) the cost of conducting the examination in the community closest to where the death occurred is less than the cost of conducting the examination or autopsy at another location, including the cost of transporting the body to and from another location to conduct the examination."

REPRESENTATIVE KELLER objected for discussion.

REPRESENTATIVE PRUITT said that this amendment would conform the proposed bill to the bill version in the Senate Finance Committee, and he suggested that any questions be directed to the bill sponsor.

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REPRESENTATIVE BOB HERRON, Alaska State Legislature, explained that proposed Amendment 1 put into statute the issues that had been brought up during the previous hearings on the bill. He said that the state medical examiner would work toward the "adequate technology, personnel, and training" in order to use telemedicine carts for remote examinations in order to determine whether remains were transported to the medical examiner in Anchorage. He noted that there was clarification for the return of the body to an appropriate location, instead of the place of death.

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REPRESENTATIVE KELLER removed his objection to proposed Amendment 1. There being no further objection, Amendment 1 was passed.

REPRESENTATIVE HERRON explained that the statewide non-profits could use this package as a revenue neutral model [Included in members' packets] for a memorandum of understanding [MOU] to use in working with the state medical examiner.

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REPRESENTATIVE KELLER moved to report CSHB 301, Version 28-LS1196\P, Mischel, 2/27/14, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 301(HSS) was moved from the House Health and Social Services Standing Committee.

The committee took an at-ease from 3:09 p.m. to 3:14 p.m.

**HB 214-MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES**

[3:14:55 PM](#)

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

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 214, labeled 28-LS0869\C, Mischel, 3/7/14, as the working draft. There being no objection, it was so ordered.

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THOMAS STUDLER, Staff, Representative Pete Higgins, Alaska State Legislature, stated that the proposed bill was "a mental health patient rights and grievance bill." He stated that the committee substitute, Version C, had some significant changes. He said that Section 1 of the proposed bill had remained unchanged. Directing attention to Section 2, he explained that the records could be made public during the appeal process, so this clause was added to maintain the confidentiality. He explained that in Section 3, AS 47.30.840(a)(5) was amended to include "except as provided in (14) of this subsection" which would allow a person being evaluated by in-patient care to have visitors at reasonable times. He reported that paragraph (13) had been amended by removing, "employed by and clearly

identified by an evaluation facility or unit or designated treatment facility or unit," and would now allow the right for a designated representative who was not an employee, as an advocate, when filing a grievance. He stated that paragraph (15) had been added, "has the right to confidentiality of the person's record unless the person has consented in writing to the release of the records." He moved on to Section 4 of the CS, which replaced the 24 hour call center with "a telephone call center." He noted that it was also possible to call 211 for assistance or an advocate. He shared that paragraph (3) was amended by removing "to an impartial body designated by the department" which gives the authority for administrative appeals to the Office of Administrative Hearings so that it comported with Section 2. He noted that paragraph (6) was amended, adding "by the department" for the records review and maintenance. He explained paragraph (7) which added "maintenance of confidentiality of the grievance records, including the appeal documents and decisions, unless the grievance provides prior written consent to release some or all of the records;" to clarify that the records were confidential. He detailed that paragraph (8) was added, as this was a process for designating the grievances by categories. He explained that Category 1 was a grievance related to the physical or social environment under the control of the facility; Category 2 was a grievance related to patients' rights, and Category 3 was a grievance which alleged that a criminal act had occurred. He offered his belief that the categorical breakdown "separated the wheat from the chaff."

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CHAIR HIGGINS stated that the facilities could handle many of the grievances within the facility, and that the administration would deal with a review of the worst offenses.

MR. STUDLER explained that AS 47.30.847(b)(1) was amended by removing "patient records" and adding "patient's record of the admission or an administrative file for the patient," to relieve confusion that the grievance could be placed into the medical records. He directed attention to AS 47.30.847(b)(3) which was amended by adding "for a category 2 and 3 grievance, delivered to the department with 24 hours." He said that AS 47.30.847(b)(4) had been deleted. He reported that AS 47.30.847(c) had been amended to change business days to calendar days for a written response to a grievance, and then the review by the commissioner was changed from five business days to thirty calendar days. He said that AS 47.30.847(d) had

been deleted. Directing attention to AS 47.30.847(f), he said that it was amended by changing "quarterly" to "annual" report and AS 47.30.847(f)(1) was amended, adding "category 1, 2, and 3." He reported that AS 47.30.847(g) was amended by changing the "biennial" report to an "annual" report from the department, as well as changing "type" to "category." He concluded by stating that Section 6 was added, repealing AS 47.30.660(b)(13) which had delegated department authority to private institutions.

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REPRESENTATIVE SEATON directed attention to page 4, line 24, and asked for clarification.

MR. STUDLER replied that, in the originally proposed bill, the grievant had five days to appeal to the commissioner after the proposed resolution by the institution, and the CS would now allow thirty days for appeal to the commissioner.

REPRESENTATIVE SEATON, referring to page 4, line 21, asked about the sequence for five calendar days.

MR. STUDLER explained that those five days referred to the time frame for the institution to report its resolution to the department.

CHAIR HIGGINS directed attention to the flow charts for Grievance Procedures [Included in members' packets].

MR. STUDLER addressed the flow chart titled "Current in Statute AS.47.30.847 Grievance Procedure," explaining that it was "pretty simplistic" as it started with the patient's right to file a grievance, which was sent to the evaluation facility for a formal grievance procedure inside the facility, and was concluded with an evaluation by a designated staff member. He pointed to a second flow chart, titled "CS HB 214 Version C Grievance Procedure." This proposed procedure would begin with an approved, standardized DHSS grievance form and policy to avoid any confusion. The notice of grievance process would be standardized, and the complaint box would be reviewed daily by the facilities, which would maintain a complete record of all the documents as the complaint moved forward. He noted that the facility must respond to category 2 and 3 complaints to a department within 24 hours, as well as responding to the complainant within five calendar days. This response to the complainant must include a description of the appeal process,

with an electronic copy sent to DHSS. The complainant would then have 30 calendar days to appeal this response to the commissioner. After this review by the commissioner, the complainant could make a final appeal to the Office of Administrative Appeals, which he described as "a fair and impartial board that has no dog in this fight."

MR. STUDLER said:

the reasonable minds, I know, will bear out on this and that we will have a good, fair, and impartial process that an individual who is in a mental health facility, and most certainly in a diminished capacity at that time, has the right to file a grievance and is being given the right guidance to file that to make sure that their rights are, in fact, protected.

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CHAIR HIGGINS opened public testimony.

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FAITH MYERS, Volunteer Mental Health Advocate, reading from a prepared statement, shared that both the States of Georgia and Maine had made extensive improvements to the psychiatric patient grievance procedure laws and rules, and now had top ratings for quality of psychiatric patient care. She stated her support for proposed CSHB 214.

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DORRANCE COLLINS, Volunteer Mental Health Advocate, reading from a prepared statement, stated that the Alaska psychiatric patient grievance law was a "throwback to the methods that were used 100 years ago." He referenced a letter from 2010 by the Disability Law Center which stated that the law was "inadequate to protect the rights of mental health patients to file a meaningful grievance." He referenced a letter written in 2007 by the Alaska Mental Health Board, the Alaska Mental Health Trust Authority Board of Directors, and the Anchorage chapter of the [National Alliance on Mental Illness], which called for a revision of the law as it was "inadequate to protect the rights of mental health patients to file a meaningful grievance." He declared his support for the proposed HB 214.

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DON ROBERTS stated his support for proposed CSHB 214. He declared that there were strong emotions from the patients as it was about their livelihood and their treatment as citizens, and that any "coercive authority of the state to restrict people's movements" should be addressed.

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SCOTT CALDER expressed his support for the proposed CS, and the external review and appeal, especially "in areas where the coercive power of the state is involved." He asked the committee to review page 4, line 26, of the proposed CS, and suggested that the period to file an appeal or a grievance be extended beyond the one year, as written.

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BARBARA HENJUM, Acting Director, Central Office, Division of Behavioral Health, Department of Health and Social Services, expressed that her division had some thoughts for consideration with the proposed CS, Version C. She reasserted the DHSS belief that the current statutory protections and agency policies and procedures of federal, state, treatment providers, and accreditation agencies adequately afforded the necessary protections for mental health patients. Directing attention to Version C, she stated that, as Section 6 repealed AS 47.30.660(b)(13), this would eliminate the ability of DHSS to operate designated evaluation treatment and stabilization facilities. She noted that this would eliminate these services at Fairbanks Memorial Hospital, Bartlett Regional Hospital, and other hospitals. She asked that this repeal be reconsidered. She directed attention to page 3, lines 12-13, and suggested that the grievance process should be directed at a state operated psychiatric hospital, a unit designated by DHSS under regulations, or a designated treatment facility, and not at community mental health centers where constituents were served in a voluntary or outpatient program.

MS. HENJUM asked that the multi-tiered grievance approach be thoroughly deliberated by the House Health and Social Services Standing Committee. She declared that criminal acts should be further defined under category 3, and the intent of the language should be clarified. She emphasized that alleged crimes for physical or sexual abuse should immediately engage law enforcement for investigation, as these were not grievances to be treated by the department or the treatment entity, and should

be treated as alleged criminal acts. She said that category 1 grievances involving the designated treatment facility's physical or social environment should also be clarified, as these minor complaints could be handled immediately and informally in-house. She offered her belief that a one year period to allow for filing of a grievance seemed excessive, as it was very difficult to investigate a grievance filed 11 months after a patient left the hospital. She declared that this provision delayed justice for the patient, as well as the hospital and its staff. She said that subsequent appeals to the commissioner and the Office of Administrative Hearings provided additional levels of intervention; however, she asked, what meaningful remedy would be available at that point for many category 1 offenses, especially one year after the discharge of the patient. She said that alleged crimes were and should be immediately referred to law enforcement outside the provider and the department. She declared that most other matters should be handled immediately and informally within the treatment entity, if possible, as was currently the case.

CHAIR HIGGINS asked Ms. Henjum to repeat the consequence of repeal of AS 47.30.660(b)(13).

MS. HENJUM said that this was the authority for DHSS to designate evaluation and stabilization programs in other hospitals, and that its repeal would remove the ability to provide those acute care services closer to the patient's homes.

CHAIR HIGGINS asked for her to provide her testimony in writing. He offered his understanding that deletion of this would send the grievances up the chain of command, instead of dealing with them in-house.

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STACIE KRALY, Chief Assistant Attorney General-Statewide Section Supervisor, Human Services Section, Civil Division (Juneau), Department of Law, opined that Chair Higgins' understanding for the repeal of AS 47.30.660(b)(13) may have been the intent of the amended CS, but it had a much broader statutory authority for DHSS to enter into contracts with patient facilities. She explained that, as Alaska Psychiatric Hospital (API) was the only state hospital, a system of care had been created by contracting with local provider community hospitals for those mental health services similar to API. She detailed that these services could include a 72 hour commitment for evaluation and determination for involuntary commitment, as well as a 30 day

stay. She pointed out that this repeal had "wiped out that entire system" as it was the statutory authority for DHSS to delegate these agreements with these providers. She stated that this repeal was much broader than what was intended. She suggested that there could be a "more surgical way to do that."

CHAIR HIGGINS asked for a written suggestion, declaring "we're here to work with you, too, 'cause we want to make sure this works."

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REPRESENTATIVE KELLER expressed his support of the repeal, opining that "it highlights a very interesting subsection of law that's a pretty broad delegation of authority."

MS. KRALY, in response to Representative Tarr, said that it was AS 47.30.660(b)(13).

REPRESENTATIVE SEATON offered his belief that the system had been changed to allow this authority because there was no local treatment.

CHAIR HIGGINS stated a need for the language change. He stated that the purpose of proposed HB 214 was not to hinder facilities, but to make things better for everyone.

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CHAIR HIGGINS closed public testimony and said that HB 214 would be held over for appropriate changes.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 3:48 p.m.