

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 5, 2020

3:06 p.m.

MEMBERS PRESENT

Representative Tiffany Zulkosky, Chair
Representative Ivy Spohnholz, Vice Chair
Representative Matt Claman
Representative Harriet Drummond (via teleconference)
Representative Geran Tarr
Representative Lance Pruitt

MEMBERS ABSENT

Representative Sharon Jackson

COMMITTEE CALENDAR

PRESENTATION: ADDRESSING GAPS IN THE CRISIS PSYCHIATRIC RESPONSE SYSTEM

- HEARD

HOUSE BILL NO. 86

"An Act relating to a state-owned inpatient mental health treatment hospital; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 183

"An Act relating to the duties of the Department of Health and Social Services; relating to the duties of the Department of Labor and Workforce Development; and relating to staffing and wage standards for the Alaska Psychiatric Institute."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 86

SHORT TITLE: MENTAL HEALTH HOSPITAL: CONTRACTS/BIDS

SPONSOR(s): REPRESENTATIVE(s) FIELDS

03/06/19	(H)	READ THE FIRST TIME - REFERRALS
03/06/19	(H)	HSS, L&C
03/26/19	(H)	HSS AT 3:00 PM CAPITOL 106
03/26/19	(H)	<Bill Hearing Rescheduled to 3/28/19>
03/28/19	(H)	HSS AT 3:00 PM CAPITOL 106
03/28/19	(H)	Heard & Held
03/28/19	(H)	MINUTE(HSS)
03/03/20	(H)	HSS AT 3:00 PM DAVIS 106
03/03/20	(H)	-- MEETING CANCELED --
03/05/20	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 183

SHORT TITLE: ALASKA PSYCHIATRIC INSTITUTE

SPONSOR(s): REPRESENTATIVE(s) FIELDS

01/21/20	(H)	PREFILE RELEASED 1/10/20
01/21/20	(H)	READ THE FIRST TIME - REFERRALS
01/21/20	(H)	HSS, L&C
03/03/20	(H)	HSS AT 3:00 PM DAVIS 106
03/03/20	(H)	-- MEETING CANCELED --
03/05/20	(H)	HSS AT 3:00 PM DAVIS 106

WITNESS REGISTER

HEATHER CARPENTER, Health Care Policy Advisor
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Testified during the presentation on addressing gaps in the crisis psychiatric response system.

STACIE KRALY, Chief Assistant Attorney General
Statewide Section Supervisor
Human Services Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the presentation on addressing gaps in the crisis psychiatric response system.

ALBERT WALL, Deputy Commissioner
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Answered questions during the presentation on addressing gaps in the crisis psychiatric response system.

REPRESENTATIVE ZACK FIELDS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint as the prime sponsor of HB 86.

JAKE METCALFE, Executive Director
Alaska State Employees Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 86.

CLINTON LASLEY, Deputy Commissioner
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 86.

ALBERT WALL, Deputy Commissioner
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 86.

BESSE ODOM, Staff
Representative Zack Fields
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the Sectional Analysis for the proposed committee substitute for HB 86 on behalf of Representative Fields, prime sponsor.

REPRESENTATIVE ZACK FIELDS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, explained the proposed committee substitute for HB 183.

BESSE ODOM, Staff
Representative Zack Fields
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the Sectional Analysis of the proposed committee substitute for HB 183 on behalf of Representative Fields, prime sponsor.

MARK REGAN, Legal Director
Disability Law Center of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 183.

ACTION NARRATIVE

[3:06:40 PM](#)

CHAIR TIFFANY ZULKOSKY called the House Health and Social Services Standing Committee meeting to order at 3:06 p.m. Representatives Zulkosky, Spohnholz, Claman, and Drummond (via teleconference) were present at the call to order. Representatives Pruitt and Tarr arrived as the meeting was in progress.

PRESENTATION: ADDRESSING GAPS IN THE CRISIS PSYCHIATRIC RESPONSE SYSTEM

[Contains discussion of HB 303, SB 238, and HB 304.]

[3:07:21 PM](#)

CHAIR ZULKOSKY announced that the first order of business would be a presentation, "Addressing Gaps in the Crisis Psychiatric Response System."

[3:08:13 PM](#)

HEATHER CARPENTER, Health Care Policy Advisor, Office of the Commissioner, Department of Health and Social Services (DHSS), relayed that there had been a high-visibility case which had resulted in a report to the courts on January 21, "Addressing Gaps in the Crisis Psychiatric Response System." She said Ms. Kraly would share an overview and then she would share the DHSS response and plan to implement the order by the judge.

[3:08:59 PM](#)

STACIE KRALY, Chief Assistant Attorney General, Statewide Section Supervisor, Human Services Section, Civil Division (Juneau), Department of Law, acknowledged that there had been "a long-time crisis within the acute psychiatric care in the Anchorage area." She reported that about a year and a half ago, two lawsuits were filed: the Public Defender Agency filed a claim for individuals that was predicated upon a writ of habeas corpus; and the Disability Law Center of Alaska (DLC) filed a lawsuit seeking injunctive relief so DHSS would not hold individuals in correctional facilities longer than necessary while waiting transportation to evaluation and stabilization centers for proper mental health evaluations. She reported the two cases were consolidated and the judge issued a 61-page decision in late October 2019 granting the relief sought by DLC, while the relief sought by the Public Defender Agency was left open and not dismissed, even though the habeas corpus petitions were moot because the individuals had been released from jail. She added that there was still an open question before the court for interim relief. The judge granted the injunction by DLC, and his findings articulated that the State of Alaska must develop a robust plan to meet these gaps in care and to meet the challenges that were identified in his order, which was released about six weeks after the decision by the court. She added that the parties were in active negotiations for settlement.

3:12:04 PM

MS. CARPENTER highlighted parts of the 30-page report DHSS had submitted [included in members' packets]. There had been many hours worked with stakeholders, including the Alaska State Hospital and Nursing Home Association (ASHNHA) and the two designated evaluation and treatment facilities, Fairbanks Memorial Hospital ("Fairbanks Memorial") and Bartlett Regional Hospital ("Bartlett") in Juneau, she said. She added that there had been work with Department of Corrections (DOC) and the Alaska Mental Health Trust Authority (AMHTA). There had been requests to "not break what was working" in the Fairbanks region and in the Juneau region. She offered examples for both, which included that individuals are not allowed at DOC facilities on Title 47 holds. She stated that the plan had an Anchorage and Southcentral Alaska focus due to the input of the stakeholders.

MS. CARPENTER talked about the extensive background of the plan, including the history of the Alaska Psychiatric Institute (API), the history of designated evaluation and stabilization and designated evaluation and treatment (DES/DET) centers. She noted the plan also included discussion of the efforts to study the problem and efforts that were implemented, including the 1115 waiver and the efforts of Senate Bill 74 in 2016 to address behavioral health gaps. She shared that the 90-day plan has a stipulation that a statewide DES/DET coordinator will be hired and work from the Office of the Commissioner in DHSS. This will consolidate what is currently happening differently in each district and done by the Department of Law to track the active Title 47 individuals, to determine how long they are waiting for beds, and to help connect them to open beds. She reminded the committee that those beds could be at API or in any of the three DET facilities, Fairbanks Memorial with 20 beds, Mat-Su Regional Medical Center ("Mat-Su Regional") with 16 beds, and Bartlett with 12 beds. She opined this consolidation would allow for better response to the partners. She explained that the individual in the Office of the Commissioner would have a different relationship with providers; instead of working with a paralegal, he/she would be working "with somebody who is more health focused and very responsive."

[3:15:31 PM](#)

MS. KRALY, in response to Representative Spohnholz, explained there were two contractual arrangements with providers. She said a DES facility is a shorter-term facility, as in Bethel and Ketchikan. Those facilities offer a robust mental health evaluation to determine whether an individual meets the criteria for a 30-day commitment, although people are generally only kept in these facilities for seven days. She explained that DET is a more robust system, as mentioned earlier, where individuals could be committed for 30 days. She added that a commitment of longer than 30 days is usually at API.

[3:16:30 PM](#)

MS. CARPENTER directed attention to the "Fiscal Summary for Settlement" [included in members' packets] which included a budget amendment submitted for fiscal year 2021 (FY 21) which would be funded by Trust-authorized receipts as well as federal funds for the DES/DET coordinator position. She relayed DHSS also proposed to hire a statewide adult protective services worker dedicated to discharge planning from hospitals and DOC to appropriate placements for longer term care or connection with family members. She shared an anecdote for the prioritization of vulnerable individuals. She noted that this would be funded by AMHTA along with federal funds.

[3:18:18 PM](#)

MS. CARPENTER reported that the judge had declared it was necessary to identify procedures and mechanisms to evaluate someone subject to an evaluation order who had waited for admittance to a facility to determine whether that person still met the evaluation criteria or could be transported to an alternative facility. She shared, "This was a little bit of a particular pain point for our partner hospitals; however, the department has proposed our method of meeting this is that we will use a provider agreement to hire a pool of mental health professionals who can be dispatched to a non-DET facility to reevaluate individuals who have been waiting ... over 48 hours for admission into a longer-term facility." She noted DOC was

excited to have a mechanism to help with this need. She reported that this would be funded in partnership with \$300,000 from AMHTA and \$300,000 from the general fund.

[3:19:50 PM](#)

REPRESENTATIVE TARR asked whether the pool of professionals was an "on-call" group, and what type of services would be provided.

[3:20:12 PM](#)

MS. CARPENTER said that was exactly what had been envisioned.

[3:20:30 PM](#)

MS. CARPENTER moved on to report that DHSS would order the API wait list by priority, with clinical factors in mind, rather than chronologically. She reported that as the department had been ordered to focus on the respondents at DOC facilities, DHSS would partner with DOC to create a process for notification to DHSS for Title 47 admissions before the court order was issued. She stated the DES/DET coordinator would assist in finding appropriate evaluation placements outside DOC and local jails. She opined this would be a "pretty simple form for our partners" at DOC; however, there was not an automatic mechanism to know whether "they have somebody sitting in a DOC facility that has been titled." She declared that it was the intention of DHSS to meet the goals of the court for persons not charged with a crime but suffering from acute psychiatric needs and waiting in a DOC facility; however, DHSS could not guarantee this in all cases. She offered the example that sometimes in Rural Alaska, the local jail may be the only safe place to hold someone until transportation could be arranged to a hub community or larger city. She noted that Governor Mike Dunleavy had introduced three bills to "help address that process": HB 303 and SB 238, regarding involuntary commitment procedures; and HB 304, regarding psychiatric examinations commitment and sanity for criminal cases. In response to Representative Spohnholz, she deferred to Deputy Commissioner Wall to describe the intent behind the governor's bills.

[3:23:17 PM](#)

ALBERT WALL, Deputy Commissioner, Office of the Commissioner, Department of Health and Social Services, in response to Representative Spohnholz, explained that HB 303 and SB 238 addressed the two types of involuntary commitment to psychiatric hospitals. One was a psychiatric commitment performed under Title 12 for a criminal procedure, while the other was a psychiatric commitment performed under Title 47 for a civil procedure. He declared there had been longstanding issues on both sides concerning who had custody of the patient and what the procedure was for that commitment process. He explained that Title 12, the criminal procedure, had a requirement in statute that the evaluation be performed by two certified forensic psychologists. He declared that the State of Alaska had never been able to comply with the statute, as there were only about 275 certified forensic psychologists in the nation, and none in Alaska. He explained that the proposed bill was an effort to make Alaska statute more in line with what other states do.

[3:24:53 PM](#)

REPRESENTATIVE CLAMAN asked whether the current standard was for both psychiatrists and psychologists.

[3:25:00 PM](#)

MR. WALL clarified, "That is correct." He explained that although the statute allowed for either, even the psychiatrists working at API or a similar facility may not feel qualified in the area of forensics specifically and would disqualify themselves.

REPRESENTATIVE CLAMAN asked whether the number of forensic psychiatrists was even smaller.

MR. WALL expressed his agreement. He explained the proposed bill dealing with the civil involuntary process was about the "who and when" for the custody of a patient. He stated, as there had been some unclear practice for when DHSS custody would

begin in the evaluation process, the proposed bill would clarify that this would begin at the time the evaluation takes place. The proposed bill would also clarify that DET should have the full 72 hours for the evaluation process, as it often took this much time for a patient in crisis to stabilize enough for an effective evaluation.

[3:27:25 PM](#)

MS. CARPENTER continued with the presentation. She said DHSS recognized that full implementation of the plan would require the continuation of "several pieces," including forward movement with hospital partners to make improvements to the entire Behavioral Health system. The department plans to engage with hospitals and other front line behavioral providers on best practices and to ensure that tele-psychiatry is available. She said hospitals requested that the department connect [API] to the Emergency Department Information Exchange (EDIE) system so that emergency room (ER) doctors can find prior medication information for a patient. She added that DHSS would continue to support a full continuum of care, including the new options for crisis stabilization. She reported there was an extensive list of these considerations on pages 21 and 22 of the plan. She added that DHSS had recommended two changes to the Alaska Court System for amendment of court forms.

[3:28:52 PM](#)

REPRESENTATIVE TARR asked whether the best practices would include discussion about improvement for the grievance procedures.

MS. CARPENTER replied, "Absolutely." She said DHSS was also speaking with ASHNHA.

MS. CARPENTER suggested a modification for the two different notifications of rate forms into one form, so the DES/DET coordinator could encourage its use by the partners. She added DHSS had also asked the Alaska Court System to change its form for ordering an individual to be treated or placed at API or a DET facility. She explained that currently, the judge had the

discretion to determine which facility, which she opined could limit the options when attempting to quickly place a patient in an available bed. She said DHSS was asking that this be a more generic form, so the coordinator could find the most appropriate placement in conjunction with the partners.

[3:31:12 PM](#)

CHAIR ZULKOSKY asked whether the DET facilities can have a patient within their purview for up to 30 days.

MS. CARPENTER offered her understanding that the DET facilities do take the 30-day commitments and would likely move a longer-term patient to API.

CHAIR ZULKOSKY asked about the discharge and coordination process for patients arriving from other parts of the state after an extended stay at either API or another facility.

MS. CARPENTER explained that when an individual was admitted to a DET facility with a Title 47, DHSS would ensure that the transportation was paid. For example, Bartlett would often send a hospital staff member as a travel companion with an individual [in its Mental Health Unit] to ensure the patient was on the final plane to his/her home community. She reported that the Bartlett social worker would find out what the patient needed upon discharge and would set up these items with the providers in the patient's home community to make sure that the discharge was successful. She noted that as often there was not compensation for this extra work, DHSS had proposed funding administrative grants for DES and DET, pointing out that this was not compensated by Medicaid or the daily bed rate. She reported that DHSS had proposed \$125,000 for each DES facility and \$250,000 for each DET facility, which was detailed on the included spread sheet [included in members' packets]. She added that DHSS had also requested \$375,000 for contingency money to incentivize additional DES and DET providers.

CHAIR ZULKOSKY asked whether Bartlett had paid for the referenced travel support through "financial collaboration with the state."

MS. CARPENTER answered that the financial collaboration for the transportation would be handled by the Division of Behavioral Health, while the rest of the discharge planning was at the expense of the individual providers.

CHAIR ZULKOSKY asked for the percent of Alaskans discharged from a facility not into their home community.

MS. CARPENTER acknowledged that as there were a limited number of facilities, there would be "a lot of out of region placements."

[3:36:26 PM](#)

MS. CARPENTER reported that the plan included a commitment with the partners for a timely implementation of the "Crisis Now" model, which she had reviewed in Arizona. She reported on the three legs of the plan: an improved statewide call center, mobile crisis teams, and crisis stabilization with a full continuum of care.

MS. CARPENTER declared that these were funded through the 1115 behavioral health waiver. She noted that there was a Medicaid funding mechanism to fund the bulk of the services. She reported that DHSS recognized that successful implementation of the plan required several appropriation item requests through the Alaska State Legislature. She stated that money had been requested through a judgement and claims line in the supplemental budget for crisis placement provider agreements, \$678,000 from the UGF funded with Medicaid receipts. She explained that this was for placements of individuals with civil psychiatric needs in which API or a DET facility might not be the best placement. She pointed out that these individuals could have complex medical needs as well as behavioral health needs.

[3:38:50 PM](#)

MS. CARPENTER said DHSS was requesting disproportionate share (DISH) hospital funding, which would be \$4.5 million

undesignated general fund (UGF) money matched with \$4.5 million federal funding. She pointed out that there had been a two-year appropriation in 2018 of \$14 million to expand services.

MS. CARPENTER said DHSS sees DISH as important for stability in psychiatric crisis response. She said Alaska Regional Hospital ("Alaska Regional") was able to get \$2 million over two years for a category of DISH funding called "substance abuse treatment provider." Alaska Regional was qualified because of its contract with the MyHealth Clinic, to which Alaska Regional referred patients for outpatient substance abuse treatment. The DISH funding received was critical to keeping that clinic open, she stated, and if the DISH funding ended at the end of FY 20, then analyzation of services would need to take place and only some allowed to continue. Ms. Carpenter offered by way of example a social worker who had been dedicated to the ER, who, without funding, would likely be shifted to assisting with discharge planning for Medicaid patients with longer lengths of stay. Telepsychiatry has been implemented in the past year to complement the tele-behavioral health program, Ms. Carpenter related, adding that a behavioral health response team had been put in place with the funding as well. Even though DISH funding is for uncompensated care, all payers have benefited from the additional positions.

MS. CARPENTER offered as a last example Fairbanks Memorial, which received \$2.2 million to set up a single point of entry psychiatric emergency room. Fairbanks Memorial had been one of Alaska Regional's providers for 20 years, and funds it had received for the single point of entry allowed it to improve quality of care in the ER with patients who were seeking help with behavioral and mental health services. In order to accomplish this, Fairbanks Memorial had hired additional personnel including social workers, security officers, psychiatrists, and legal assistants. Ms. Carpenter acknowledged the work Fairbanks Memorial had done for behavioral health, and relayed details about the number of encounters during its single point of entry, in which they tripled the requirement of its contract.

[3:42:50 PM](#)

MS. CARPENTER related the last fiscal piece was increasing DET secure transport by \$500,000, which went back to Chair Zulkosky's comment about making sure there were enough resources to get individuals back to their home communities.

[3:43:09 PM](#)

CHAIR ZULKOSKY asked how many beds were available at Bartlett, Mat-Su Regional, and Fairbanks Memorial, as well as at the DES facilities.

MS. CARPENTER said she would follow up with DES information, but noted that Fairbanks Memorial had 20 beds, Bartlett 12, and Mat-Su 16, for a total of 48 beds outside API. In response to a follow-up question, she offered her understanding that API had 50 beds, but she said she would get back to the committee with that information.

[3:44:17 PM](#)

The committee took an at-ease from 3:44 p.m. to 3:49 p.m.

HB 86-MENTAL HEALTH HOSPITAL: CONTRACTS/BIDS

[3:49:00 PM](#)

CHAIR ZULKOSKY announced that the next order of business would be HOUSE BILL NO. 86, "An Act relating to a state-owned inpatient mental health treatment hospital; and providing for an effective date." [Before the committee, adopted as a work draft on 3/28/19, was the proposed committee substitute (CS) for HB 86, Version 31-LS0623\U, Marx, 3/26/19.]

[3:49:08 PM](#)

REPRESENTATIVE SPOHNHOLZ, in response to Chair Zulkosky, [renewed] the motion to adopt the proposed committee substitute (CS) for HB 86, Version 31-LS0623\U, Marx, 3/26/19, as the working draft.

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CHAIR ZULKOSKY objected for the purpose of discussion.

[3:49:43 PM](#)

REPRESENTATIVE ZACK FIELDS, Alaska State Legislature, as prime sponsor of HB 86, using a PowerPoint presentation, shared some history and facts about API on slides 2-3. He said API had far fewer beds than were needed to meet present needs, which created a myriad of problems ranging from people with psychiatric illnesses not receiving treatment, which put Alaskans at risk and necessitated hospitals' holding of psychiatric patients in the ER, guarded one-on-one, effectively driving up the cost of health care. Representative Fields noted the controversy surrounding attempted privatization of API since the introduction of HB 86; some headlines from news stories could be seen on slide 4 of the PowerPoint. The state was not permanently privatizing API, he said; Wellpath (WP) continued to have shorter-duration contracts to provide some management services. What HB 86 would do was prevent overall privatization of the entire facility, he related, while not prohibiting privatization of certain functions within API.

[3:51:45 PM](#)

REPRESENTATIVE FIELDS related there were many troubling examples of negligent care at WP facilities across the U.S., and Correct Care Solutions, which was the former name of WP, had been sued about 1,400 times since 2003, including substantiated claims of wrongful death and inadequate care.

[3:52:58 PM](#)

REPRESENTATIVE FIELDS, referencing slides 5-6, shared with the committee a timeline of API's relationship with WP and the latter's corporate history. Referencing slides 7-8, Representative Fields noted there had been a high turnover of numerous positions under WP. Staff were concerned with WP management, he related, and there has been criticism, including in the media, of WP's failure to bring conditions at API where

they needed to be. Referencing slide 9, Representative Fields noted that the legislature had looked at API management in a recent comprehensive study in 2017, examining a wide range of options for managing the facility ranging from wholesale privatization to partial privatization to modified state management. In the study, full privatization entailed decreased quality of service and higher costs, and recommended state management with outsourcing what they considered non-core services. Consistent with the 2017 study, HB 86 would ensure public management with opportunities to outsource certain functions, but not management of the whole facility.

[3:55:24 PM](#)

REPRESENTATIVE FIELDS noted public support for continued public management of API, as exemplified on slide 10. Pacific Consulting Group (PCG) had looked at private management of facilities such as API, and when those facilities were privately managed for profit, it cost a significant amount of extra money in terms of profit margin on top of basic operations of the facility. In conclusion, Representative Fields stated that the for-profit model was incompatible with the basic mission of API because it created an ongoing incentive for the private owner to provide inadequate staffing to meet patients' and employees' needs.

[3:56:19 PM](#)

REPRESENTATIVE FIELDS said HB 86 had some adjusted terminology and did allow for privatization of certain functions, a good balance to ensure the entity that ran API had a public mission but there was flexibility to run the facility and adjust to current needs.

[3:57:01 PM](#)

REPRESENTATIVE PRUITT confirmed API had been managed by the state prior to the last election. He then asked, when looking at the Ombudsman's report and some things that occurred under state management including the sexual assaults in 2018 and 2019, why state management would be better than a private entity. He

also mentioned HB 86 seemed to group all private entities in with WP, when the important consideration was that the most vulnerable of the population were properly cared for, no matter who managed the facility.

[3:58:44 PM](#)

REPRESENTATIVE FIELDS expressed that the issue was complex and said he was aware of three bills all addressing different aspects of problems with API. He admitted that passing HB 86 would not, in and of itself, solve the problems. Representative Fields said he appreciated the committee's hearing another bill he introduced addressing API staffing and capacity issues. He said the sexual assault and other safety-related incidences were related to inadequate staffing. He said he has a problem with "a profit motive." He said he would not have the same problem with a non-profit running the facility because the same problems did not exist in terms of incentives. He said the legislature must appropriate sufficient money "to run the facility" while recognizing that not having sufficient funds "creates the public safety and cost ripple effect." He said he thinks HB 86 would be one part of a broader solution. In the last year, WP has had a chance to fix problems with API and they have not done so, he added.

[4:00:48 PM](#)

JAKE METCALFE, Executive Director, Alaska State Employees Association, testified in support of HB 86 and said he agreed with Representative Fields' statements. Mr. Metcalfe shared the Alaska State Employees Association (ASEA) experience with its staff at the facility. Understaffing and underfunding had been problems for a long time, he related, including with WP. One of the more concerning aspects, he shared, were the discussions of outsourcing having created a high amount of instability in the workplace: according to ASEA calculations, 75 people have left in the last year for the reason of uncertainty regarding what will happen at the facility. Employees do not want to work for a private contractor; they want leadership, he shared. Some of those who have left had been at API their entire careers, he added.

MR. METCALFE blamed the privatization for the employees' departure. They had been told a feasibility study would be done, he related, at the end of February when it had been announced that WP would come in as the contractor. It had not been done, which resulted in litigation. There had been a feasibility study scheduled for April [2019], and then June, and then September, and then December, before the February date was missed, and [at the time of Mr. Metcalfe's testimony] one more had been scheduled for March 9. The inability to get a study done, or to provide the results, has created moral issue in the workplace. Mr. Metcalfe referenced the 2017 study Representative Fields had brought up, which showed privatization would only be successful by a major cut in staff. This created safety problems for staff and patients alike, he reiterated.

MR. METCALFE noted there had been problems not only with staff but with leadership, as there had been between five and seven chief executive officers (CEOs) during the current administration, in addition to another six prior to the privatization effort. Leadership had changed every couple of months, both under state management and with WP in the facility. From ASEA's standpoint, Mr. Metcalfe stated, the situation was "privatization by attrition," both within leadership and among staff who took care of people in need. Among neither group was the instability welcome, he said, and the way to fix the problem was to have the state run it and to staff it properly.

[4:07:28 PM](#)

REPRESENTATIVE PRUITT said that sexual assaults were due not to a lack of funding but to failure by staff, and since WP has been at the helm there has been additional training of staff.

[4:09:23 PM](#)

MR. METCALFE replied he had been with ASEA since 2018 and knew from experience dealing with API what the record was like prior to that time. He said he also knew from his experience dealing with WP and the privatization issue he would stand by API as a state-run facility as opposed to one run by WP. He admitted

this stance did not account for perfection of all staff, and it was possible additional training may in certain cases be required. Mr. Metcalfe shared some background prior to the transition to WP. He said that in his experience the problem was with the transition to WP, but API had been underfunded and understaffed for many years. He said stable leadership and adequate staff were needed on all levels, and if that were able to happen, issues such as sexual assault would be able to be prevented. He reiterated understaffing would not work at a hospital that is at full capacity. State-run programs implement decisions by policy makers that the funding and staffing will be adequate because of the constitutional obligation to provide the service to people, he added.

[4:13:30 PM](#)

REPRESENTATIVE PRUITT said that funding and bed levels had been increased in 2017, and one of the sexual assaults was in spring of 2018. Even when additional funding was given, assaults happened, he stated.

[4:15:38 PM](#)

MR. METCALFE said funding had been increased but it had not been enough, as API had been underfunded for years prior to 2017, and the 2017 funding had in fact been a "Band-Aid funding approach." As far as WP was concerned, Mr. Metcalfe stated 70 staff had left since the WP takeover, including six to seven new CEOs. Mr. Metcalfe repeated that WP lacked leadership and admitted the cause may be other bills which addressed wage issues and other changes. He stated that privatization had not been successful in psychiatric facilities; the state had made the decision to care properly and responsibly for its vulnerable people and not "ship them out."

[4:18:52 PM](#)

REPRESENTATIVE PRUITT clarified that the state still did manage the facility with WP as a consultant.

[4:19:33 PM](#)

REPRESENTATIVE SPOHNHOLZ pointed out API was still a public institution. There had been a contract last year for the takeover of the hospital which had not been awarded. A look at the records, she continued, showed Centers for Medicare & Medicaid Services (CMS) citations at API had started to rise in 2015 and coincided with many years of tough fiscal situations. Costs had to be cut in many areas and the budget had to be managed, she imparted, and API had been under-resourced, especially when taking into consideration the high level of training needed to support patients. Representative Spohnholz asked whether there was any language in HB 86 that would prevent API from contracting with experts to help improve outcomes.

[4:21:15 PM](#)

REPRESENTATIVE FIELDS replied there was not.

[4:21:19 PM](#)

CHAIR ZULKOSKY asked about the status of the new feasibility study being conducted by API on privatization and state management.

[4:21:50 PM](#)

CLINTON LASLEY, Deputy Commissioner, Office of the Commissioner, Department of Health and Social Services, replied the feasibility study was due to DHSS March 9. He said it had four focal points: maintaining a state-run facility with enhancements to try to get back to the 80-bed capacity; looking at privatization, whether through a for-profit or non-profit organization; providing an option for public corporation while remaining a state-owned facility; and contracting out some services, as was currently done.

[4:23:24 PM](#)

CHAIR ZULKOSKY asked when DHSS began the feasibility study Mr. Lasley referenced.

MR. LASLEY replied the contract had been awarded in October [2019] and had been due to be finalized at the end of February, but the contractor did ask for some additional information, and an extension had been granted until March 9.

[4:23:48 PM](#)

REPRESENTATIVE SPOHNHOLZ asked what DHSS was seeking to understand or learn after a privatization study which consisted of 98 pages had just been done in 2017.

[4:24:22 PM](#)

MR. LASLEY replied there were now four options, which was a different approach. Instead of "just a typical privatization study," the feasibility study at hand looked at the best mechanism to run the hospital, he stated.

REPRESENTATIVE SPOHNHOLZ asked how many state psychiatric hospitals in the U.S. were privately run.

MR. LASLEY replied he did not know.

REPRESENTATIVE SPOHNHOLZ asked whether there was a model in other places DHSS was trying to follow or if it was on a general fact-finding mission.

[4:25:52 PM](#)

ALBERT WALL, Deputy Commissioner, Office of the Commissioner, Department of Health and Social Services, regarding why another privatization study would be done in such quick succession, stated that the older study, began in 2016 and published in 2017, showed that beginning in 2013 there had been a series of state-run hospitals having the same problems as API. There were laws which required states to care for inpatient psychiatric patients in a timely fashion, and many states had been failing in that regard. Because of these failures, many states were experiencing lawsuits. Mr. Wall related that in a presentation to the Senate Health and Social Services Standing Committee in February 2019, new findings, court orders, and rulings across

different states had been revealed. Other states, through U.S. Department of Justice injunctions, had been appointed court monitors for their state-run hospitals, and DHSS had wanted to take this into account in a privatization study to bring it up to date.

[4:28:03 PM](#)

REPRESENTATIVE FIELDS noted that in the 2017 feasibility study PCG did look at eight privatization options, and PCG's letter to the committee did address privatization in different states and proclaimed it a "disaster."

[4:28:56 PM](#)

BESSE ODOM, Staff, Representative Zack Fields, Alaska State Legislature, on behalf of Representative Fields, prime sponsor, presented the Sectional Analysis for the proposed committee substitute (CS) for HB 86, labeled 31-LS0623\U, Marx, 3/26/19, [included in members' packets], which read as follows [original punctuation provided]:

Section 1. This section amends AS 36.30.300, the statute on Single Source Procurements, to add a new subsection, (f) that prohibits creation of contracts relating to the ownership or management of an inpatient mental health treatment hospital established under AS 47.30.660 (c) (see Section 4)

Section 2. This section amends AS 36.30.310, the statute on Emergency Procurement, to add a new subsection, (b) that prohibits the use of these statutes to create contracts relating to the ownership or management of an inpatient mental health treatment hospital established under AS 47.30.660 (c) (See Section 4)

Section 3. This section amends AS 47.30.660 (b) to correspond with a new subsection in AS 47.30.660 (c), that is established in Section 4.

Section 4. This section amends AS 47.30.660 to add a new subsection, (c), that requires the Department of Health and Social Services manage an "inpatient mental health treatment hospital" in the State. It prohibits the state from delegating or contracting for the ownership or management of such a facility. It also defines "inpatient mental health treatment hospital" for the purposes of this section.

Section 5. This section amends the uncodified law of the State of Alaska to define the applicability of new subsections established in Section 1, Section 2, Section 3 and Section 4, to contracts entered into, amended, extended or renewed after the effective date of this Act.

Section 6. This section amends the uncodified law of the State of Alaska to state if this Act takes effect after February 1st 2019, it is retroactive to February 1st 2019.

Section 7. This section provides for an effective date; it would take effect immediately on passage under AS 01.10.070 (c).

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CHAIR ZULKOSKY removed her objection to the [renewed] motion to adopt the proposed committee substitute (CS) for HB 86, Version 31-LS0623\U, Marx, 3/26/19, as the working draft. There being no further objection, Version U was [once again] before the committee.

CHAIR ZULKOSKY announced that HB 86 would be held over.

HB 183-ALASKA PSYCHIATRIC INSTITUTE

[4:32:19 PM](#)

CHAIR ZULKOSKY announced that the final order of business would be HOUSE BILL NO. 183, "An Act relating to the duties of the

Department of Health and Social Services; relating to the duties of the Department of Labor and Workforce Development; and relating to staffing and wage standards for the Alaska Psychiatric Institute."

[4:32:29 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt the proposed committee substitute (CS) for HB 183, Version 31-LS1211\S, Marx, 3/3/20, as the working draft.

[4:32:44 PM](#)

CHAIR ZULKOSKY objected for the purpose of discussion.

[4:32:55 PM](#)

REPRESENTATIVE ZACK FIELDS, Alaska State Legislature, as prime sponsor of HB 183, gave a PowerPoint presentation. Referencing slide 2 of the PowerPoint, he explained that HB 183 would address staffing and capacity issues in order to provide safe conditions at the Alaska Psychiatric Institute (API). The proposed legislation would also address the need in the community for public safety and a cost-effective healthcare system by addressing staff retention and correcting wage disparities that currently exist. A low, but necessary, floor had been set for maintaining bed counts, according to Representative Fields. Bed count statistics were included in slides 3 and 4 of the presentation. He said HB 183 would also require an annual report by the Department of Health and Social Services (DHSS) on related activities, including staffing standards. In terms of bed counts, Representative Fields said even 80 beds would be a lower amount than several decades ago. At lower bed counts, API was full or almost full most of the time, he related. Moving on to slide 4, he pointed out that the bed count in the Adolescents Acute Care level was zero, which was a big problem for public safety in the broader community as well as for Alaskans who needed safe treatment.

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REPRESENTATIVE FIELDS said he had heard from health care providers how dangerous it was when a lack of capacity at API forced hospitals to hold psychiatric patients in the ER, often for days, if not weeks. When that happened, he related, the patients required one-on-one guards, which was not safe for medical providers or Alaskans headed to the emergency room (ER) for different issues. The costs were then passed on directly to private health insurance payers including the state itself, he added. He said providers were not only unable to get reimbursed for these costs, but the administration was passing on more costs to private payers, in this case the state. Situations that created uncompensated care got passed directly back to the state, he explained, which put pressure on premium cost growth and made it more difficult to find sustainable fiscal solutions.

REPRESENTATIVE FIELDS, directing attention to slides 6 through 9, addressed the problem of ER holds for psychiatric patients, a result of inadequate capacity at API, which was a problem in Southcentral, Southeast, and the Interior. He highlighted the importance of adequate staffing and related the story of assault on an aide in 2019. He said the state department recognized the lack of adequate staff when it issued a very large fine. According to Representative Fields, the problems of violence continued to grow.

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REPRESENTATIVE FIELDS said there was a disconnect between staff inadequacies not being addressed and belief in the mission of API among the same staff. In this way staff were making a sacrifice to work at API as they put themselves in harm's way, he related. According to slide 10, staff left API because of bad management and mishandling of safety concerns, and staff were also concerned about constant changing of management including CEOs and doctors. He said the least employees deserved was fair compensation as they would be safer working elsewhere where they would be paid fairly. Referencing slide 11, he said HB 183, in its attempt to deal with staffing and capacity issues, was consistent with the 2019 Ombudsman's report and the 2017 feasibility study. He noted that staffing issues had been addressed in the past, but, echoing what Mr. Metcalfe

had said, they were not addressed in such a way that sufficed to meet the real needs at API.

[4:39:57 PM](#)

REPRESENTATIVE TARR asked about the prevailing rate of wages for similar work and, since there was only one state-run facility, whether North Star Behavioral Health System ("North Star") was the comparison. She asked whether there was potential to limit the ability of the union to negotiate for something better or whether it was "not less than" language.

REPRESENTATIVE FIELDS replied it would be a new policy to establish a prevailing wage; however, prevailing wages were nothing new. He confirmed "not less than" language ensured a prevailing wage floor was consistent with collective bargaining agreements, and if the state and unions wanted to set wages higher for comparable positions due to API's challenging work environment, then that would be the state's and union's prerogative. In terms of comparable positions, the prevailing wage language was based on comparable positions in other sectors. He added that other prevailing wages in the broader market should be looked at, not just North Star and API.

[4:42:11 PM](#)

REPRESENTATIVE SPOHNHOLZ pointed out the disparity for wages, referencing psychiatric nurses at Providence Health & Services being paid \$12 per hour more than those at API. She asked how the number of 55 beds was reached, as 50 beds were currently operational, but the facility had capacity for 80 beds.

REPRESENTATIVE FIELDS answered that the lowest and most conservative number was decided upon based on a look back at the need for occupied beds. He questioned whether a higher number would be safer for the community and said the lower number was chosen in order to determine the number of patients who would be able to be treated at API instead of at less appropriate facilities.

REPRESENTATIVE SPOHNHOLZ opined that the staffing ratios should be appropriate, and she indicated that forcing slots to be open when there was no capacity to fill them was what led to the current staffing issue. She added that API needed to work toward functioning at its full capacity, as there used to be 160 inpatient beds; considering population growth, anything less than full capacity could not be justified.

REPRESENTATIVE FIELDS said that he would be supportive and defer to the will of the committee regarding the correct number of beds. Addressing Representative Tarr's question, he said DHSS had contended prevailing wages would conflict with collective bargaining agreements, and that unions that represent employees have stated that was not their view.

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REPRESENTATIVE TARR commented things become more expensive when they were not done right the first time. She indicated that this is a time for not being "penny wise, ... pound-foolish" when there is a choice to have a high-functioning facility with adequate staffing.

[4:45:58 PM](#)

BESSE ODOM, Staff, Representative Zack Fields, Alaska State Legislature, on behalf of Representative Fields, prime sponsor, presented the Sectional Analysis for HB 183, beginning with AS 18.05.020, the statute regarding submission of an annual report by DHSS to the legislature. Under HB 183, the report must include: the number of employees who vacated positions during the reporting period; the number of funded positions that are vacant; a description of efforts made to recruit and retain employees; the number and cost of additional positions if additional positions are deemed necessary; and the amount and purpose of additional funding if additional funding is deemed necessary.

MS. ODOM related that Section 2 amended AS 23.10.055(b), the statute regarding employee compensation rate, with conforming language that reflected Section 3 of HB 183. Version S would

amend the language to "hospital employee" rather than "health care provider", she explained. Section 3 amends AS 47.30.660 to increase and maintain bed counts, implement staffing standards, and establish wages as determined by the Department of Labor and Workforce Development (DLWD). Section 4 would define applicability of HB 183 to contracts entered, amended, extended, or renewed on or after the effective date.

[4:47:36 PM](#)

CHAIR ZULKOSKY removed her objection to the motion to adopt the proposed committee substitute (CS) for HB 183, Version 31-LS1211\S, Marx, 3/3/20, as the working draft. There being no further objection, Version S was before the committee.

[4:47:50 PM](#)

MARK REGAN, Legal Director, Disability Law Center of Alaska (DLC), said DLC was the plaintiff in one of the lawsuits that led to the requirement there be a plan for fixing problems in the civil commitment evaluation system. He informed the committee he was there to testify as to API's role regarding the decision whether folks needed longer-term commitments. For DLC, the problem got bad in Fall 2018 when there was the report of working conditions at API followed by a collapse in the capacity of the facility, which had been up around 80 and included 70 civil beds and 10 forensic beds and had gone down to about half of that very quickly amid a myriad of problems. Mr. Regan related one of the problems was that word had gone out from API and from DHSS what would need to happen was when someone potentially dangerous to self or to others was picked up, that person, if in Southcentral Alaska, would typically be taken to API for evaluation - but that API had been at capacity and not taking people. Then word went out from API that some people that fit the above description would have their liberties taken away from them and would have to stay either in a correctional facility such as the Anchorage Correctional Complex or even in jail with people who had been accused of crimes until a place opened at API and they could be evaluated there.

MR. REGAN stated there was no problem in transferring the patients; there was a real problem with API being unable to evaluate them and they were forced to sit in a hospital ER. The lawsuit was regarding what the law said should be done with people experiencing these types of problems. He said DLC thought it was the responsibility of the state government, and principally DHSS, to care for and minimize the length of time people would be required to stay in jails and ERs.

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MR. REGAN stated what would happen with HB 183 was there would be a requirement that staffing would be at 55 civil beds, for a total of 65 with the 10 forensic beds, which would be better than what it was now, as only 40 were available for civil patients at the time of his testimony. The question from DLC's perspective, according to Mr. Regan, was whether it would be enough to solve the problem such as the one that arose in the fall of 2018. He answered it would probably not be and offered some alternatives for the committee to consider: DLC had proposed to the court that DHSS send evaluators to locations people were to determine whether they would need civil commitment. He also mentioned, as an alternative, an off-site Crisis Now facility, which would enable a place that was not API to conduct evaluations in a non-institutional setting. Together with a rebuilding of capacity at API, DLC believed that the problem of people being stuck in jail or in hospital emergency rooms could be reduced. Mr. Regan added that according to the way the law was written, evaluation was supposed to take place immediately. He added that the problem did not start in Fall 2018 but had been happening sporadically for many years.

[4:56:08 PM](#)

CHAIR ZULKOSKY said the committee would return to invited testimony on HB 183 at its next meeting.

CHAIR ZULKOSKY announced that HB 183 was held over.

[4:57:08 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.