ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
February 13, 2019
1:33 p.m.

MEMBERS PRESENT

Senator David Wilson, Chair
Senator Gary Stevens
Senator Cathy Giessel
Senator Tom Begich

MEMBERS ABSENT

Senator John Coghill, Vice Chair

OTHER LEGISLATORS PRESENT

Representative Andi Story

COMMITTEE CALENDAR

OVERVIEW: ALASKA PSYCHIATRIC INSTITUTE DHSS DIVISION OF BEHAVIORAL HEALTH

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

ADAM CRUM, Commissioner Designee
Department of Health and Social Services (DHSS)
Anchorage, Alaska
POSITION STATEMENT: Gave an overview of decision to issue private contract for the Alaska Psychiatric Institute (API).

ALBERT WALL, Deputy Commissioner
Family, Community, and Integrated Services
Department of Health and Social Services (DHSS)
Anchorage, Alaska
POSITION STATEMENT: Gave an overview of the decision to issue a private contract for the Alaska Psychiatric Institute.

KATE BURKHART, Ombudsman
Office of the Ombudsman
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions about the role of the ombudsman.

JEREMY BARR, Senior Vice President
Wellpath Recovery Solution
Nashville, Tennessee
POSITION STATEMENT: Testified about the contract for Alaska Psychiatric Institute.

ACTION NARRATIVE

1:33:53 PM
CHAIR DAVID WILSON called the Senate Health and Social Services Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Begich, Stevens, Giessel, and Chair Wilson.

Overview: Alaska Psychiatric Institute DHSS Division of Behavioral Health

1:34:05 PM
Chair Wilson announced the Department of Health and Social Services (DHSS) presentation on the Alaska Psychiatric Institute by Commissioner Designee Adam Crum and Deputy Commissioner Albert Wall. He noted that Jeremy Barr and Dr. Kevin Ann Huckshorn from Wellpath Recovery Solutions would be available for questions online. Chair Wilson asked the committee to wait until the end of the presentation for questions and pointed out that the committee would have another opportunity for DHSS budgetary questions.

1:35:25 PM
ADAM CRUM, Commissioner Designee, Department of Health and Social Services (DHSS), Anchorage, Alaska, noted that he had shared his history of volunteering to work with those in need during his confirmation hearing. Joining DHSS was an opportunity to further work with the most vulnerable and to fight for them, to provide for them, and to protect them. He is responsible for the patients at the Alaska Psychiatric Institute (API). He was aware that API had some issues, but he had never seen an

organization in such disarray as API. The current situation is the result of ongoing neglect and turmoil that has accumulated over the years, culminating with this recent crisis. Others have worked diligently to address API's issues, but the methods of the past have not worked.

1:36:50 PM
COMMISSIONER DESIGNEE CRUM said that, according to their records, 2010 was the last time API went more than six months without a major citation or violation. "We, as a state, have failed. We have failed the patients and those seeking treatment by having diminished capacity and quality of care. We have failed the employees by having constant management turnover," he said. Employees are fearful of being injured or losing their professional licenses. Senator Begich told him that as commissioner, he is the voice and advocate for those who do not have a voice. By addressing head-on this very serious issue at API, he is working to give voice to those in need. He cannot stand by and watch patients and staff struggle when he has the ability to do something. They have put forward a plan with defined deliverables that will bring stability, training, guidance, and support to API.

1:38:09 PM
ALBERT WALL, Deputy Commissioner, Family, Community, and Integrated Services, Department of Health and Social Services (DHSS), Anchorage, Alaska, said he would walk them through the gravity of the issues at API and exactly how they came to the decision to contract.

MR. WALL gave an overview of the presentation:

1. Staff and Patient Safety
2. Inability to Fulfill Its Mission
3. Pending Legal Issues with Extreme Risk of High Cost to the State
4. Ethical Treatment of Alaskans.

MR. WALL said he wanted to start with a brief history of API to underscore a few issues. They knew there were many problems coming. They knew there was a bed shortage. They knew there were patients backing up in hospitals, but they did not know the full extent. In 1962, API was built with 225 beds. A 1992 study said that to facilitate inpatient psychiatric care in the state properly, 162 beds were needed. The old building was not fully utilized and that is what the study indicated. A group met in 1992 about the question of funding those beds and created a

compromise called the Alyeska Accord. All parties agreed the state could get by with 114 beds. In 1993, DHSS submitted a Certificate of Need for 114 beds, but only 72 were funded. From the start API has not been enough. It was not enough then, and it is not enough now. It is a highly volatile focal point. It is always in the news. It is the epicenter of inpatient psychiatric care for the state, but it is not the entire system of care, and the entire system of care is in jeopardy as well.

MR. WALL said that in 2005 the facility expanded from 72 to 80 beds, well below the number in the 1992 study and with an increase in population. More than one study a year since 2005 have had the same findings with growing alarm each year. They have repeatedly warned of the crisis and offered solutions and none worked. Some progress has been made at API to rectify certain circumstances, but it was too little, too slow, and too late.

MR. WALL said that the Centers for Medicare and Medicaid (CMS) services warned in 2017 that they would remove API's certification if it was not substantively in line with the plan of correction. There have been repeated assaults and injuries and at the present time, only enough staff for 35 beds out of 80 in the building.

MR. WALL said the culmination of this was that in January of this year, at what was supposed to be the last CMS survey team onsite to approve compliance with the recently accepted plan of correction, an unreported assault that caused a finding of Immediate Jeopardy was discovered. "The commissioner said enough is enough. We need help. We need expert help, and we need it immediately," said Mr. Wall.

MR. WALL said he wanted to talk about external forces that have an impact on operations and care. All eyes are on API. The media has a lot to say about it. Everyone has an opinion, but there are forces with authority over API.

MR. WALL said the level of scrutiny is intense, sometimes demoralizing to staff, but the organizations are there to keep them on point with issues of safety of patient care.

MR. WALL reviewed the role of Occupational Safety and Health Administration (OSHA):

- Federal agency that sets and enforces protective workplace safety and health standards.

- May levy fines on agencies not in compliance.

MR. WALL said OSHA is primarily concerned with staff safety. API has had OSHA findings with plans of correction.

MR. WALL reviewed the role of the Alaska ombudsman:

- Among many services this agency investigates complaints that involve state agencies and determines appropriate remedies.
- The Alaska Ombudsman initiated an investigation in July of 2018 and a preliminary report of findings was given to the Department yesterday evening.

MR. WALL said there were findings in that report, and they look forward to conversations with the ombudsman as they move forward.

MR. WALL reviewed the role of the Joint Commission:

- Is a national, not-for-profit accrediting organization which currently accredits nearly 21,000 health care organizations.
- Provides peer-to-peer standards for members, joint evaluations, hold each other to professional standards, and certify each other by those standards.
- May inform the Centers for Medicaid and Medicare Services of deficiencies.

MR. WALL said the Joint Commission can remove accreditation, which affects state licensure. They can act as agents of CMS under certain circumstances, and they can give a report of findings.

MR. WALL reviewed the state's Health Facilities Licensing and Certification:

- To operate in Alaska, a hospital must be licensed by the state under AS 47.32.
- The Department sets standards and requirements for licensure (through state regulations).
- If API does not maintain state licensure, it cannot operate.

MR. WALL reviewed the role for Centers for Medicare and Medicaid Services (CMS):

- Federal agency that provides oversight for healthcare services that receive federal funding
- API receives approximately $23 million per year in federal funding (CMS)
- API must meet federal requirements to receive funding
    - Conditions of Participation (CoP) (certification of compliance with the health and safety requirements)
- Survey: an on-site inspection
    - Triggered by a complaint/event or overall re/certification surveys

MR. WALL said CMS has a very strict survey, or investigation, process. A survey can happen at any time. It can be triggered by a complaint, an event, an overall recertification survey, or a scheduled event. A report is received some time after the survey, and CMS will work on any deficiencies noted in the report.

MR. WALL reviewed Conditions of Participation for federal funding:

- Requirement: API must be in "substantial" compliance with each Condition of Participation (CoP).
- If a hospital is not in substantial compliance and does not correct by the deadline, CMS will de-certify the hospital and terminate its participation in Medicare and Medicaid.
- Termination results in a complete loss of this federal funding.

MR. WALL reviewed the three levels of citations that agencies can give. He noted that it is more complicated than can be shown on a slide.

Standard Level Deficiency
- Out of compliance with regulation

Condition Level Deficiency
- Very serious
- Hospital is not in substantial compliance with CoP

Immediate Jeopardy
- The hospital's deviation from regulatory standards is an immediate threat to patient health and safety

MR. WALL explained that the Standard Level Deficiency usually has to do with proper credentialing or proper documentation. One finding was that staff responsible for signing biohazard manifest documents at the time they arrived did not have evidence of EPA (Environmental Protection Agency) training for that substance.

MR. WALL said that an example of a Condition Level Deficiency was a finding that the forensic beds, the criminal restoration ward or Taku ward, did not meet the new ligature standards. That meant that there were items on the bed that a patient could use to harm themselves. New beds had to be purchased for that.

1:50:51 PM
MR. WALL said that Immediate Jeopardy is the showstopper and shared a definition of Immediate Jeopardy:

> "[a] situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment or death to a resident."
>
> - CMS State Operations Manual

MR. WALL said that CMS and the Joint Commission focus on patient safety and OSHA focuses on staff safety. On January 29 they did receive an Immediate Jeopardy finding.

MR. WALL reviewed the steps following a CMS report:

- Statement of Deficiencies is provided to hospital.
- Hospital has 10 calendar days to provide an acceptable Plan of Correction for each cited deficiency.
- If the hospital doesn't come into compliance by the deadline, the state agency certifies "noncompliance."

MR. WALL said the negotiation to create an acceptable plan of correction can take a while. When the commissioner was appointed, they were under a plan of correction that had not yet been accepted. The timeline on that is critical. The July CMS survey had substantial findings. They had 90 days to create a plan, have it accepted, and then show they were in compliance with the plan before the survey team came back. When the CMS survey team returned at the end of 90 days, they found DHSS did not have a plan and was still out of compliance. The senior leadership team had resigned at that time and they entered the second 90-day phase. After the second 90-day phase, there are no extensions. That was due November 26. On November 30, the survey

team showed up for the final inspection and was in the building when the earthquake hit. They went home and gave DHSS another 90 days to produce the plan of correction because of the state of emergency. That is when the commissioner came in and found no plan of correction and, without continuity in leadership, did not know what was in the plan in the first place.

MR. WALL reviewed API plans of correction:

- API has been under 2 Plans of Correction in the last 12 months, and 2 OSHA citations pending resolution.
- API has had 13 site visits from regulatory agencies in the last 12 months.
- The most recent two surveys identified 3 Condition Level Deficiencies and an incident of Immediate Jeopardy.
- Most recently, the incident of Immediate Jeopardy was identified on January 29th, after API had submitted its final Plan of Correction.

MR. WALL repeated that a finding of Immediate Jeopardy is a showstopper--someone is in immediate danger of harm. That incident involved unwanted contact between two patients and is still under investigation. They are still waiting for the final report from CMS.

MR. WALL said they were successful in certain regards. They had made some movement. They had had until the end of December to complete the plan of correction and get approval from CMS, which they did. After over 180 days of working with the federal government, a plan of correction was accepted in early January. He thought they were headed in the right direction, and then the survey team came back and found this.

MR. WALL said he wanted to segue between the conversation about oversight and investigations and regulatory bodies and take them to where the rubber hits the road, what it looks like in the hospital. He asked what an investigatory body looks for when it comes into a hospital. The biggest issue they have had is with seclusion and restraint. He reviewed the following CMS standard:

- All patients have the right to be free from physical or mental abuse, and corporal punishment.
- All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of

coercion, discipline, convenience, or retaliation by staff.

- Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.

42 CFR § 482.13

MR. WALL said it is a difficult balance in an inpatient psychiatric unit because patients are inherently at times dangerous to themselves and others. If they are in a high state of agitation, sometimes restraint and seclusion are necessary, but only for the safety of the patient or staff member and must be discontinued at the earliest possible time.

MR. WALL reviewed the reports about seclusion and restraint at API:

- Since 2011, there have been 7 separate independent reports indicating API uses seclusion & restraint inappropriately and/or excessively.
- Since 2017, API has been cited at least 7 separate times for deficiencies including violations of patient rights and use of seclusion & restraint.
- In June of 2018, the Alaska Ombudsman initiated an investigation into API based on 3 allegations:
  1. API does not take reasonable and necessary action to prevent and/or mitigate the risk of harm to patients from use of force by API staff;
  2. API does not take reasonable and necessary action to prevent and/or mitigate the risk of harm to patients due to violence by other patients;
  3. API does not consistently comply with AS 47.30.825(d) or 42 CFR 482.13(e) in the use of seclusion and restraint.

1:58:29 PM
MR. WALL said this brings them to the issue of staff safety. He reviewed the multiple Alaska Occupational Safety and Health citations:

- Multiple citations by Alaska Occupational Safety and Health (AKOSH)
  - o December 2014 findings: API failed to provide its employees with a safe work environment; and API failed to maintain its OSHA log from 2011 to 2013, including

not accurately reporting injuries or related incidents.
    - November 2017 findings: 24 reportable incidents during a 6 month timeframe; and API failed to maintain its OSHA log and accurately report injuries from 2014-2017.
- 2015 report found that API is seriously and "dangerously" understaffed, compensation is too low, and hiring takes too long. (Dvoskin report.)
- September 2018 report by attorney Bill Evans found that the hospital was an unsafe work environment for staff (including a cultural divide on the use of seclusion and restraints).
- September of 2018 – injury rates at API doubled.
- January 29, 2019 – surveyors found unreported "immediate jeopardy" incident.

MR. WALL pointed out that from 2011 to 2017 API was failing to track and report injuries. There was a litany of reports about unsafe conditions at API culminating in the incident of Immediate Jeopardy.

MR. WALL said he went through the stack of reports starting with 2005 and found what he considered the most poignant statement:

November 2011 WICHE Report "Critical area of need"

> "The pressures created by the combination of resource limitations, staffing shortages, recruitment challenges, admission and census increases, and limited access to decision support tools all combine to increase risk for the facility and the patients and staff of API. <u>This set of challenges has reached crisis proportions and it is not realistic to approach these issues with modest adjustments to existing processes</u>."

MR. WALL said that was written in 2011. For the next 8 years they have attempted to fix these issues with modest adjustments to existing processes and it has failed to work.

MR. WALL said most reports indicated staffing was a serious issue:

> "Alaska has unique staffing challenges, no doubt far above other rural communities. Staffing agencies are not readily available to provide experienced psychiatric nurses. API

went through a period of using frequent mandatory overtime due to the severe staff shortages." – May 2012 WICHE report

"Many of the leadership challenges cited…were related to difficulties in hiring senior staff." – March 2015 Dvoskin Report

"High-level RN Supervisor staff spend 60-70% of their time in the nursing office trying to 'call in staff to cover vacancies for the next shift.'" – November 2016 WICHE Report

MR. WALL said they have all tried to fix this problem. The legislature tried to fix this problem. The legislature took PCNs [Position Control Number] from other areas and 102 new PCNs went into API's budget over the last two years. The issues are very complex when it comes to this. This morning recruitment was open for 87 positions.

MR. WALL said there are unique challenges. One is the way in which staff is classified:

- Classification studies are not performed specific to API (rather, examine defined job classes across all departments).
- There has not been a significant review completed of nurse job classes since the 1980s.
  - Some adjustments to salaries were made in 1989, 2001, and 2006.
- Current class study in progress: Phase 2 of Nurses Review
  - Will impact 674 positions, 18 job classes, from 3 departments (DHSS, DMVA, DOC).
  - Began October 2018, tentative completion date estimated March 2019.
- Identified project: reviewing pay structures for exempt medical professionals (including psychiatrists).
  - No current implementation date.

MR. WALL said that over time the system has been a problem. No differentiation is made between all nurses and nurses at a psychiatric institute. Licensed professionals are faced with working for 30 percent less pay as well as being subject to violence and trouble among the staff, or they can go across the street to two other hospitals and get paid more. He said someone must be called ideologically to work at API. There has been no

significant review of the nurse jobs classes, which is where the greatest need is. There have been salary increases, but not a whole classification study. There is a classification study going on now, but it is an effort that is too little, too late. He said we have arrived at a place of crisis.

2:03:09 PM
MR. WALL said some encouraging things have happened and reviewed recent recruitment efforts:

- GGU All Nursing Department staff are eligible for a specialized alternate workweek since July of 2016.
- GGU Health Practitioners I-II received a step increase effective August 2016.
- GGU Health Practitioner I's are eligible for a $15,000 sign on bonus effective February of 2018.
- SU Nurse IIIs were converted to overtime eligible in June 2018.
- GGU Health Practitioners I's can volunteer for a weekend shift and receive a flat rate of $500 effective July of 2018.
- Sign on bonus of $10,000 was offered for Nurse positions beginning September 2018.

MR. WALL said the pay and bonus improvements happened very recently and have not made a significant impact yet. They hired six new nurses and lost six nurses.

MR. WALL said not all problems have to do with the whole classification. He presented a case study of a position that pays too little to attract anyone:

Occupational Therapist position has been vacant since December 19, 2017; in active recruitment for over a year with 0 qualified applicants.

- Position requirements include national board certification as occupational therapist and Alaska state licensure.
- Position is only range 17.
- API requested job classification study in 2018. None has been conducted.

MR. WALL reviewed clinical vacancies at API:

Current unfilled clinical positions:

- 30 nurse vacancies (including Director of Nursing);

- 5 psychiatrist vacancies (including Director of Psychiatry);
- 1 medical officer vacancy (API's only general practitioner);
- 3 psychologist vacancies; and
- 4 forensic evaluator vacancies.

Locum Tenens/contract staff

- Initial nurse contract for 90 days.
- Must train and onboard (approximately 3 weeks) followed by additional education prior to being on the floor.
- Generally unsuccessful and depart API quickly.

MR. WALL said many of these, with the exception of the nurses, have had no applicants. When people see ongoing trouble in an organization, new applicants don't want to work there. A medical doctor looking at where to work would have to think hard about whether to work there.

COMMISSIONER DESIGNEE CRUM said overall morale is not helped when newspapers call API the worst hospital in the United States.

MR. WALL said he has talked about some of the challenges they face with the regulatory oversight. Another problem is an even deeper issue, a human, ethical question. Two types of individuals go to API. Sometimes they are there for a civil commitment. Sometimes criminal charges bring someone to API, a forensic patient. He reviewed the statutory obligation for a forensic patient:

Forensic Psychiatric Services AS 12.47.010

Forensic patient:

- Has been charged with a crime.
- Suspected to be incompetent to stand trial.
- Two stages:
    1. Must be evaluated to see if they are incompetent.
    2. If found incompetent, is sent to API for "restoration" to competency. – Can be recommitted to API for multiple periods of restoration.
- If "restored," criminal case proceeds.
- Otherwise, person is deemed "unrestorable" and criminal case is dismissed.

    - (following dismissal, various possible outcomes including unconditional release or civil commitment).
- Often, but not always, in custody at DOC.
- Criminal case cannot go forward until competency proceedings resolve.

MR. WALL said they must evaluate and provide care to a forensic patient as a statutory requirement. It is complicated and they are not in compliance. The examination requires two forensic psychiatrists. They don't have two forensic psychiatrists in the state. They simply don't have the staff and beds to treat individuals in this category. Unfortunately, an unconscionable thing occurs. These individuals end up in jail without diagnosis. They have charges but no conviction. They sit in jail for a long time without treatment.

2:08:40 PM
MR. WALL presented information on the API forensic unit. He noted that these were yesterday's figures:

- API has only 10 forensic beds (Taku unit).
- Waitlist for initial evaluation: 54
- Waitlist for admission: 28
- Multiple judges threatening to hold state in contempt for failure to evaluate/admit for restoration.
- Due process challenges to delayed evaluation and admission (resulting in potential dismissal of criminal case).
- Defendants being held longer in DOC waiting for API than the length of their potential sentence if convicted.
- Statutes require DHSS to conduct restoration.
- Statutes do not require that DHSS perform the evaluations, but API has traditionally been held responsible for them.

MR. WALL said they have evaluated 28 people who need treatment who can't get in the hospital because they have no place to put them. "There is a very in-depth legal and financial question that we have with this problem, but I want to sit on the ethical thing for just a second and ask you, if you walk into a situation that we did, and you are appointed to take care of a group of people, and you find 50, 60, 70, 80 plus sitting in jail without treatment and some of them without conviction, and no place to go, what is your choice and what do you do. We have

a very limited bandwidth to take care of people. It is our moral obligation to do so," he said.

MR. WALL said that on the legal side, they end up in court. They have an ongoing case that he cannot talk much about, but it has immense ramifications. He reviewed legal involvement on the civil and criminal side:

- October 19, 2018 – DLC complaint filed [CIVIL]
  - Alleging due process violations for those facing civil commitment – being held for prolonged period without opportunity to be heard; being held in DOC pending admission to API.
  - Seeking injunction for immediate admission to API for all court-referred patients and for API staff to conduct evaluations for 30-day commitments anywhere in the state.
  - This case has been consolidated with Public Defender Agency cases involving delays in civil commitment evaluations.
- November 2018: Public Defender Agency begins filing "habeas corpus" motions in criminal cases [FORENSIC]
  - Complaining of delay in admission for restoration. The relief requested is release.
- 2018: Public Defender Agency begins filing motions for "alternatives to evaluation at designated evaluation facilities"
  - Requesting that the judge order DHSS to immediately evaluate individuals waiting for transfer to API.

2:10:29 PM
MR. WALL reviewed Civil Commitments AS 47.30.700:

- Two methods of initiating a civil commitment:
  1. "Any adult" petitions a judge
  2. A peace officer or psychiatrist/physician/psychologist applies for examination.
- If the judge grants the petition, the person is delivered to an evaluation facility designated by DHSS to receive a 72 hour evaluation.
  - If the facility determines that the person meets commitment criteria: that is the person suffers from a mental illness and (1) is gravely disabled

or (2) is a threat to self or others, they will petition the court for a 30 day commitment;
    - If at any time in the process the facility determines that the person no longer meets criteria, the person must be released;
    - If there is a petition for a commitment, an evidentiary hearing is held and a superior court judge determine whether the person can be civilly committed for up to 30 days, successive commitment can occur at 90 and 180 days and at those latter hearings the individual is entitled to a jury trial. Through this entire process they are represented by the Public Defender Agency.
- There are only three Designated Evaluation and Treatment (DET) facilities. Only DET facilities can perform the 72 hour evaluation.
    - API, Fairbanks Memorial Hospital (20 bed, 4 acute), and Bartlett Regional Hospital (12 bed);
    - All other facilities including Emergency Rooms are not designated to provide evaluation and/or treatment services because they have not applied to become a DET.

MR. WALL said the system on the civil commitment side is borne on the back of a single evaluation by a clinician, usually in an emergency room. The outcome is either someone is a danger to themselves or others and must go somewhere to get treatment or someone is not. The hospitals are left in a terrible bind with patients in the emergency room that they cannot let go but they also cannot treat. Today 14 people are in that situation, three of whom are juveniles and two of them are in the Department of Corrections because they have no other place to put them. So now people are there without criminal charges.

2:11:45 PM
MR. WALL said that what happens to states in Alaska's situation is a legal issue. They are obligated by federal and state laws to take care of inpatient psychiatric patients in a certain way. They are failing to do so. "And when you fail to obey your own laws, there are consequences," he said.

MR. WALL presented a slide on the Trueblood case:

Trueblood case – federal class action lawsuit for unconstitutional delays in forensic cases

- 2015 trial resulted in ruling that DSHS was violating class members' constitutional rights.

- Court ordered the Washington State Department of Social and Health Services (DSHS) to move individuals facing criminal charges out of jail and into treatment facilities within seven or fourteen days when they are eligible for competency evaluation and restoration services (respectively).
- Contempt order of July 7, 2016 fined DSHS $500 per day per person (for exceeding the 7 day deadline) and $1,000 per day per person (for exceeding the 14 day deadline).
- As of June 2018, fines for failure to comply with court orders exceeded $55 million.
- Settlement agreement approved by court December 2018 requires the State to make changes in five substantive areas:
    - competency evaluations; competency restoration services; crisis triage and diversion support; education and training; and workforce development.

CMS decertified (July 2018) – loss of $53 million federal funding per year

- Hospital had been at risk of losing funding since 2015.
- State had recently spent $360 million into state hospitals and $560 million in mental health spending.
- Federal officials cited hospital for its quality assessment and improvement program, nursing services, and safety issues.

MR. WALL said the ramifications of being in their situation are immense. In the Trueblood case in 2015, the court ordered the state to pay for patient treatment and at one point, fined the Washington State Department of Social and Health Services over $100,000 a day in general funds. As of June 2018, fines for failure to comply with the court order exceeded $55 million. That does not include paying for treatment. The settlement agreement approved by the court in December ordered the state to designate funding to pay for services. In July 2018 CMS decertified the hospital and it lost $53 million of federal funding per year.

MR. WALL said they have two sides of this problem, patient and staff safety. They also have clinical compliance. They must fix the problem before the court intervenes and there is the ethical

dilemma of how to care for people with no voice. That is what they are faced with.

MR. WALL said he would move from the dilemma to the decision to hire Wellpath. They started talking to contractors early in the process because when they got into office, there was no plan of correction. They were out of compliance and being threatened with decertification, so they sought help.

MR. WALL reviewed what they were looking for in a contractor.

1. To ensure the safety of our staff and patients;
2. To bring the hospital into rapid compliance with regulatory authorities; and
3. To prepare the facility to increase its bed capacity to 80 beds by 1 July.

MR. WALL called these goals ambitious, but absolutely critical. He reviewed the following timeline:

- National Association of State Mental Health Program Directors was contacted on December 18th.
- Wellpath Recovery Solutions contacted on December 20th.
- Liberty Healthcare Corporation was contacted on January 8th.
- Noel Rae of NetworxHealth (Virginia Mason Health System) was met with on January 22nd.

2:16:38 PM
MR. WALL explained that the National Association of State Mental Health Program Directors (NASHMPD) is the association for states that run inpatient psychiatric facilities. They have specialists and can give guidance and give information about what other states are doing. The conversation in his head at that time was how were they going to move through this issue, should he hire a contractor to get the plan of correction together and submitted to CMS, should he hire a contractor that does some sort of administrative services oversight of the whole thing, should he hire a contractor and do a privatization of the whole thing immediately, what were their options and could they intervene.

MR. WALL said his first contact with Wellpath was not even about API. It was about health care in other facilities, but it led to a conversation about that. He asked the same kind of questions with Liberty Healthcare Corporation on January 8. He met with Noel Rae of NetworxHealth at API January 22. During this

timeline, each day they were learning more concerning facts about API. The depth of issue was bigger than they had thought.

MR. WALL said the plan of correction was accepted in early January. He thought they had more breathing room at this point, except that on January 29 the CMS survey team returned and had an Immediate Jeopardy finding. He wanted to stress how unusual and grave that was. To his knowledge, they had never have had an Immediate Jeopardy finding before at API.

MR. WALL said the steps had to be immediate:

- Removed the perpetrator to another ward alone;
- Implemented new safety protocol including 24/7 video surveillance with communication to the wards;
- Implemented an hourly reporting system for each ward to monitor every patient on an hourly basis including behavioral risk mitigation; and
- Requested a nationally recognized specialist in psychiatric treatment and safety, and NASHMPD to come to API immediately for safety oversight.

MR. WALL said that the amount of time between discovering the incident and getting a specialist on the ground was very quick. They found out about it Thursday night and a specialist was there on the ground Monday with the safety protocol in place in the interim.

MR. WALL said the final decision on Wellpath had to made right after the Immediate Jeopardy was found. He reviewed the reasons Wellpath Recovery Solutions was chosen:

1. Was available immediately;
2. Had specific inpatient psychiatric experience including both civil and criminal commitments;
3. Has a team of nationally recognized experts that has the experience and track record to bring noncompliant hospitals back into compliance rapidly

MR. WALL said not many companies have a pool of psychiatric specialists who can jet out immediately and intervene.

MR. WALL gave the website for the documentation: http://dhss.alaska.gov/API/Pages/AdminChanges.aspx. He said an email address had been set up for all questions and concerns at api.info@alaska.gov.

CHAIR WILSON recognized Representative Andi Story in the room.

2:22:07 PM
SENATOR STEVENS asked if hiring Wellpath gives them more time to deal with the certification or accreditation process. He also asked if there were a lawsuit, would the state or Wellpath be sued.

COMMISSIONER DESIGNEE CRUM answered that as they evaluated the process and saw the depth of the crisis, they reached out to the accrediting bodies. Their biggest concern was that the state of Alaska had failed to correct problems over the years, to make substantive change. Alaska had gotten good at saying they were going to address the problem, but nothing truly was done. API was not shut down years ago because it is a critical aspect of the behavioral health system in Alaska. He told them that they would take a proactive and aggressive approach to actually improving patient and employee safety as well as psychiatric outcomes. They are working with the accrediting bodies, but the accrediting bodies have given them no guarantees. This is them showing they are taking truly substantive steps.

SENATOR STEVENS said then they had more time to address certification and restated his question about who is responsible legally.

MR. WALL responded that this did not give them more time. They are still waiting for the CMS report. They could get a CMS report any day that they have been decertified or they could receive a report that they are being conditionally certified under certain conditions. They could also receive a report that says they are certified with a plan of correction. The contract with Wellpath takes those eventualities into account. If they are decertified, their task is to recertify them within the 90 days CMS window. If they are not decertified, their task is to implement the plan of correction and bring them back into rapid compliance. Decertification is a huge issue, but they still have the ombudsman report, the OSHA violations, the Joint Commission, and another finding by CMS. This is going to be an ongoing, reiterative process. He did not think they would be given any more extensions.

MR. WALL said the legal responsibility depends on the circumstances--a direct patient care issue, an administration issue. He would refer to the Department of Law for any specific questions.

CHAIR WILSON asked for clarification about the vacancies. He asked if these are going to be state employees going forth or Wellpath employees. He wanted to know more about what was being contracted.

MR. WALL replied that the contract is in two phases. The first phase includes the deliverables he showed earlier, bring them into rapid compliance, ensure patient safety, and prepare to have beds open by July 1. If Wellpath meets those, then the next phase is privatization. Between now and that period of time, state employees will remain state employees and they are still hiring. They want as many applicants as they can get. When they segue into Wellpath taking over, there will be a plan in place. He is having ongoing conversations with union heads and said he would leave it at that.

SENATOR GIESSEL asked if the state ombudsman would still have authority to do investigations if API was contracted to Wellpath.

COMMISSIONER DESIGNEE CRUM referred the question to the ombudsman.

2:28:40 PM
KATE BURKHART, Ombudsman, Office of the Ombudsman, Alaska State Legislature, Juneau, Alaska, answered that with the way commissioner and deputy commissioner described it, the ombudsman still has jurisdiction over actions at the hospital, but if the hospital moves into private management with private employees, the ombudsman would not have jurisdiction.
2:29:32 PM
SENATOR BEGICH said no one doubts the seriousness of the issue and its emergency nature. He asked whether they were already thinking of privatization when the National Association of State Mental Health Program Directors was contacted on December 18.

COMMISSIONER DESIGNEE CRUM replied that they were reaching out at that time because they did not have an active plan of correction accepted by CMS. As they were scrambling, they looked at the lack of leadership at API because there were so many vacant positions, so they asked if there were contractors who could at least consult, help with the plan of correction, what were other options, could it possibly be on the administrative services side. That was the intent of the conversation. At that point he thought that he had been on the job two weeks.

SENATOR BEGICH asked if he could provide that correspondence with the National Association of State Mental Health Program Directors to the committee.

MR. WALL answered the website has the email conversations with the association. Those are after the date of initial contact, which was by telephone. He used to be a member of the association, so he called their fellows to ask for their suggestions.

SENATOR BEGICH said he noticed the contact with Wellpath Recovery Solutions was two days later on December 20. He asked if that was before or after Mr. Wall began to correspond by email with the national association.

MR. WALL replied that was prior to email correspondence. The national association took a while to get back to him by email. He reiterated that his first contact with Wellpath was not about this issue. The email on December 20 was about health care in juvenile justice facilities.

SENATOR BEGICH said slide 2 referred to pending legal issues with extreme risk of high cost to the state. He asked if he was aware of the two parent companies of Wellpath having over 1,300 lawsuits filed against them in the last decade and hundreds more for Correct Care medical group.

COMMISSIONER DESIGNEE CRUM deferred to representatives from Wellpath.

SENATOR BEGICH asked if those representing the state of Alaska were aware of the lawsuits.

COMMISSIONER DESIGNEE CRUM said they were aware of those, but a lot of those were in prison or correctional facilities. The entire focus of Wellpath Recovery Solutions is on psychiatric hospitals and behavioral health issues. Wellpath representatives can provide clarification on that.

2:33:36 PM
JEREMY BARR, Senior Vice President, Wellpath Recovery Solution, Nashville, Tennessee, said Wellpath partners exclusively with state behavioral health agencies to provide services to patients like those served at API. As it relates to the larger question of litigation, they are a division within a larger organization that provides health care services in a variety of public health settings. Some of those are prisons and jail settings. There is

a certain amount of litigation associated with that. The vast majority of those, more than 90 percent, are dismissed out of hand. The bulk of that information vs. the total daily population across the company, which is about a quarter of a million patients, looks like a community emergency room. When they are compared to a like health care system, because they are a health care company, the incidents of litigation where a settlement is made is less than a fourth of what would be found in a community ER setting.

SENATOR BEGICH asked how long Wellpath has been in existence.

MR. BARR answered that Wellpath was the combination of Correct Care Solutions and Correctional Medical Group Companies made in October of last year. Wellpath Recovery Solutions was an entity associated with Correct Care Solution. As part of the merger, a new name was chosen that expressed their vision as a health care company.

SENATOR BEGICH said this was an $84 million contract done under emergency procurement powers. He asked Mr. Wall if he got a legal opinion and was it posted online with the other information.

MR. WALL answered yes to both questions.

SENATOR BEGICH said "temporary" is ill defined in the statute. He asked for his definition of "temporary emergency." Emergency procurement is for a temporary period because procurement law requires competitive bidding. Senator Begich wanted to know Mr. Wall's sense of "temporary" so the committee would know what "temporary" is.

MR. WALL said he had learned a great deal in this process. He used the wrong word in certain places with procurement initially and then the lawyers straightened him out. Initially he was using "emergency," and they were talking single source, so he was using single source emergency. He was using the wrong words for it. He recommended getting clarification from procurement and attorneys because they have a written explanation of it in the packet, but it would behoove them to get them a specific answer.

CHAIR WILSON asked him to provide that to the committee.

SENATOR BEGICH said he was looking at a statement made by the commissioner, which the deputy commissioner repeated, "if they

are successful in the first phase, through June 30, 2019, Wellpath will assume full responsibility of API after July 1, 2019." He said he was bringing that specific phrasing up because it sounds like they move from some temporary procurement responsibility to an actual, long-term action that has gone through no competitive process, has had no process that the procurement code requires so that other entities could consider managing this or to see whether they could do it within the state service. He asked how they can get to the point five months from now, as part of the contract, in which they would take full responsibility of API without a competitive process.

COMMISSIONER DESIGNEE CRUM said that when the department reached out, there was an immediate emergency and Wellpath was the only company who could get boots on the ground. If the company can meet the key deliverables in four months when the state has failed over the last two decades, then this is the company the department wants managing this group.

SENATOR BEGICH responded that this may be the company they want, but this is not what the law says. He said this is really important for both the commissioner and deputy commissioner to understand. If they bring API to a point where there is no longer an emergency, there is a procurement code that is statutory and regulatory that binds them. He asked whether the department will be opening this up to competitive bid or at least do the work required by statute for background review for findings of fact that are considerable. If they look at the statute, they will see that a considerable burden is placed upon the department for these kinds of actions. While they may like their performance, unless they craft a contract that is specific to that performance, there is a state requirement that this goes to competitive bid. He said he applauds the department for dealing with the emergency situation, although he questions a company that may have existed only since October, but at the same time, he was questioning whether they were abiding by the law of the state.

2:41:51 PM
MR. WALL responded that the department has a great deal of respect for the law and particularly the procurement statutes. However, there is more than just that statute that they are discussing. He said he would like to follow up with a legal, written explanation of what the choice was when the decision was made.

CHAIR WILSON asked him to get that to the committee.

SENATOR BEGICH said he understood the choice that was made. He is talking about an action on July 1, 2019, that under the procurement code, needs to be a competitive process with findings of fact. He said that is what he was putting on the record.

CHAIR WILSON clarified that the department was still waiting for the final letter from CMS. They are not out of woods with the current emergency situation until they know the findings in the CMS letter.

MR. WALL answered correct.

CHAIR WILSON said a privatization study was done by the PC Group in February 2017. In the committee overview, the API recommendation was 18.1 nurses on the floor at all times and they recommended about 21.2 nurses under their staffing recommendations and scenarios. He asked whether Wellpath was providing recommended staffing for nurses or was there still a deficit of nurses to run the facility.

MR. WALL replied that they still have a deficit of nurses. Wellpath's immediate focus is to bring them into compliance with CMS, to ensure the safety of patients, and to prepare for the future, at which time Wellpath will address the staffing issue. They are still recruiting and Wellpath will be recruiting as they move forward. The instant workforce for putting the nurses on the ward is something they will grow over the next couple of months.

CHAIR WILSON asked if that meant that they are not looking for locum tenens doctors or agency nurses to fill that need, that they were doing overtime with the current nurses. He was concerned about the staffing level of the nurses.

MR. WALL answered that he was deeply concerned about staffing levels. They have had locum agreements for some time for positions that they don't have any applicants at all for, like forensic psychologist, like a psychiatrist. They have had psychiatrist positions vacant for years. They tend to fill those when they can with midlevel practitioners, advanced nurse practitioners with psychiatric specialty, but they don't fit the exact PCN in the classification structure. They are trying everything they can to get new staff on the ground, including locums.

CHAIR WILSON said the privatization study talked about the benefits and drawbacks of comprehensive outsourcing. He mentioned concerns about a reduction of staffing levels to save money as part of privatization. They have had a number of emails about safety, a lot of it regarding staffing levels of the nurses. API is a huge part of their behavioral health continuum in Alaska. Another concern with privatization was having those key partnerships with local community hospitals and local providers. He asked if they could provide a statement to the committee addressing those issues.

MR. WALL said they would provide a statement on those issues. He wanted to point out that would be updating the feasibility study to the level that they can with the time they have.

CHAIR WILSON said he appreciated the transparency from having the different communications on the website. He asked if the copy of the contract was on the website.

MR. WALL answered yes.

COMMISSIONER DESIGNEE CRUM said that API is a focal point for the entire system. He related that in meetings with the Alaska Native Health Board and the Alaska Mental Health Trust Board, board members have told him that the state must fix API as soon as possible so it is possible to move the focus to the rest of the system of care. There has been a vacuum of attention and API is a bottleneck for the rest of the system. It places an undue burden on emergency departments and their local partners. A number of key partners supported the department in this decision. This will provide an opportunity to address the entire continuum of care for behavioral health. He said he did not want this rapid pace, but immediate jeopardy required that he to step in.

2:49:09 PM
There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee at 2:49 p.m.