

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 23, 2022

1:34 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Violent Crimes Compensation Board

Greg Bringhurst - Fairbanks, Alaska

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 172

"An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 172

SHORT TITLE: MENTAL HEALTH FACILITIES & MEDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

04/12/21 (H) READ THE FIRST TIME - REFERRALS

04/12/21	(H)	JUD, HSS, FIN
05/14/21	(H)	JUD AT 1:00 PM GRUENBERG 120
05/14/21	(H)	Heard & Held
05/14/21	(H)	MINUTE(JUD)
05/15/21	(H)	JUD AT 1:00 PM GRUENBERG 120
05/15/21	(H)	-- MEETING CANCELED --
02/14/22	(H)	JUD AT 1:00 PM GRUENBERG 120
02/14/22	(H)	-- MEETING CANCELED --
02/16/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/16/22	(H)	Heard & Held
02/16/22	(H)	MINUTE(JUD)
02/21/22	(H)	JUD AT 1:00 PM GRUENBERG 120
02/21/22	(H)	Heard & Held
02/21/22	(H)	MINUTE(JUD)
02/23/22	(H)	JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

GREGORY BRINGHURST, Appointee
Violent Crimes Compensation Board
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Violent Crimes Compensation Board.

HEATHER CARPENTER, Senior Policy Advisor
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 172, Version W.

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

POSITION STATEMENT: Answered questions during the hearing on HB 172, Version W.

GENNIFER MOREAU-JOHNSON, Director
Division of Behavioral Health
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 172, Version W.

ACTION NARRATIVE

[1:34:59 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:34 p.m. Representatives Drummond, Snyder, Kreiss-Tomkins (via teleconference), and Claman were present at the call to order. Representatives Kurka and Vance arrived as the meeting was in progress.

CONFIRMATION HEARING(S): Violent Crimes Compensation Board

[1:36:44 PM](#)

CHAIR CLAMAN announced that the first order of business would be the confirmation hearing on the governor's appointee to the Violent Crimes Compensation Board.

[1:37:06 PM](#)

CHAIR CLAMAN opened public testimony.

[1:37:58 PM](#)

GREGORY BRINGHURST, Appointee, Violent Crimes Compensation Board, testified as an appointee to the Violent Crimes Compensation Board. He shared with the committee that he had been appointed as the public member of the board in May 2019. He noted that Alaska has many victims of violent crimes. He stated that, following the murder of his mother, he had been a recipient of violent crimes compensation at age 14. He stated that this assistance had enabled him to go to college. He shared that he is currently the regional director in the Fairbanks area for U.S. Senator Dan Sullivan, working as a rural advisor. He stated that he had previously worked in Washington, D.C. as a rural advisor to U.S. Senator Lisa Murkowski. He expressed the opinion that his role as a public policy advisor and his history as a survivor of violent crime would be beneficial to the board. He noted that there is a small number of staff on the board, yet the board is effective in processing claims and payments in a timely fashion.

[1:42:16 PM](#)

MR. BRINGHURST, in response to a question from Representative Eastman, answered that there are three members on the board: a public member, an attorney member, and a health care professional member. In response to a follow up question, he stated that there are a variety of individuals who serve on the board and, while he could not speak on behalf of other members

regarding whether they had been victims or survivors, he lauded the professional qualifications which each individual brings to the board.

REPRESENTATIVE EASTMAN asked Mr. Bringhurst to share recommendations for any improvements the legislature could impart to the issues before the board.

MR. BRINGHURST offered to follow up directly with Representative Eastman's office to offer the requested information.

[1:44:36 PM](#)

CHAIR CLAMAN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[1:45:08 PM](#)

REPRESENTATIVE DRUMMOND expressed her sympathy to Mr. Bringhurst regarding his experience of violence and lauded his achievements since.

REPRESENTATIVE VANCE echoed the sentiments and expressed gratitude for Mr. Bringhurst's service.

REPRESENTATIVE EASTMAN expressed his interest in learning more during the confirmation hearings.

CHAIR CLAMAN expressed his gratitude to Mr. Bringhurst for his service.

[1:47:14 PM](#)

REPRESENTATIVE SNYDER announced that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointee and recommends that the following name be forwarded to a joint session of the House and Senate for consideration: Gregory Bringhurst, Appointee, Violent Crimes Compensation Board. She stated that each member's signature on the committee's report in no way reflects the intent by any member to vote for or against the individual during any further sessions for the purposes of confirmation.

HB 172-MENTAL HEALTH FACILITIES & MEDS

[1:47:45 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 172, "An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date." [Before the committee, adopted as a working document on 2/16/22, was the proposed committee substitute (CS) for HB 172, Version 32-GH1730\W, Foote, 2/16/22 ("Version W).]

CHAIR CLAMAN stated that Legislative Legal and Research Services has permission to make technical or conforming changes to the bill.

[CHAIR CLAMAN passed the gavel to Vice Chair Snyder.]

[1:49:00 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1 to HB 172, Version W, labeled, 32-GH1730\W.8 Foote 2/22/22, which read as follows:

Page 4, lines 23 - 24:

Delete "or crisis residential center;
psychotropic medication; rights; notification"

Page 6, line 3:

Delete "and"

Page 6, line 4:

Delete "or"
Insert "and"

Page 6, line 15, following the first occurrence of "for":

Insert "seven□day"

Page 6, line 16, following "for":

Insert "seven□day"

Page 7, line 8, following "for":

Insert "seven□day"

Page 7, line 9, following "for":

Insert "seven□day"

REPRESENTATIVE EASTMAN objected.

REPRESENTATIVE CLAMAN explained that Amendment 1 would correct a drafting error on page 4, lines 23-24, regarding a crisis residential center, psychotropic medication rights, and notification. He stated that AS 47.37.07 only relates to a hold at a crisis stabilization center; therefore, the amendment would delete the language in the subsequent sections of the bill. He then referred to page 6, lines 3-4 and explained that a drafting error had occurred pertaining to the way that notification is given. The proposed amendment would clarify that the court "shall" notify the respondent, the respondent's attorney, the respondent's guardian, if any, the petitioner's attorney, if any, and the attorney general. He noted that for the proposed changes, the amendment would include a seven-day limit associated with a stay at a crisis residential center, and it would create consistency with language in the bill pertaining to 30-day limited treatment.

REPRESENTATIVE EASTMAN withdrew his objection.

[1:51:42 PM](#)

The committee took a brief at-ease at 1:51 p.m.

[1:51:49 PM](#)

CO-CHAIR SNYDER announced there being no further objection, Amendment 1 was adopted.

[1:51:57 PM](#)

CHAIR CLAMAN moved to adopt Amendment 2 to HB 172, Version W, as amended, labeled 32-GH1730\W.2 Foote 2/22/22, which read as follows:

Page 3, line 6:
Delete "AS 47.30.915"
Insert "AS 47.32.900"

Page 3, line 9:
Delete "AS 47.30.915"
Insert "AS 47.32.900"

Page 11, lines 20 - 23:
Delete all material and insert:

"(21) "crisis residential center" has the meaning given in AS 47.32.900;

(22) "crisis stabilization center" has the meaning given in AS 47.32.900;"

Page 12, lines 27 - 30:

Delete all material and insert:

"(A) "crisis residential center" means a subacute mental health facility that has a maximum stay of seven days;

(B) "crisis stabilization center" means a subacute mental health facility that has a maximum stay of 23 hours and 59 minutes."

REPRESENTATIVE EASTMAN objected.

CHAIR CLAMAN explained that Amendment 2 is the result of recommendations made by the Department of Health and Social Services (DHSS) in reference to AS 47.30.915. The amendment would define crisis stabilization centers and crisis residential centers as being within the definition of a subacute treatment center, as it appears in AS 47.32.900.

REPRESENTATIVE EASTMAN withdrew his objection. There being no further objection, Amendment 2 was adopted.

[VICE CHAIR SNYDER passed the gavel back to Chair Claman.]

[1:53:38 PM](#)

REPRESENTATIVE KURKA moved to adopt Amendment 3 to HB 172, Version W, as amended, labeled 32-GH1730\W.16 Dunmire/Foote 2/22/22, which read as follows:

Page 1, line 2, following "**facilities**";:

Insert "**relating to the duties of the Department of Health and Social Services**;"

Page 3, following line 24:

Insert a new bill section to read:

"* **Sec. 11.** AS 47.30.350(a) is amended to read:

(a) The department shall

(1) develop and submit to the Surgeon General of the United States Public Health Service a comprehensive program for the constructing and equipping of hospitals and other facilities for the

examination, observation, care, and treatment of the mentally ill;

(2) develop and submit to the Surgeon General plans and specifications for the constructing and equipping of the hospitals and other facilities;

(3) construct and equip the hospitals and other facilities in accordance with the program, plans, and specifications approved by the Surgeon General; construction and equipping under this paragraph is governed by AS 36.30 (State Procurement Code);

(4) cooperate, coordinate, and contract, wherever indicated and desirable, with other state boards, departments and agencies, and agencies of the United States in the construction program, and hire necessary personnel and enter into contracts with private individuals and companies, to the end that the hospitals and other facilities are constructed in the most economical and expeditious manner; contracting and construction under this section are governed by AS 36.30 (State Procurement Code);

(5) twice each calendar year, conduct an on-site inspection at each designated treatment facility in the state."

Renumber the following bill sections accordingly.

Page 13, lines 3 - 4:

Delete "sec. 23"

Insert "sec. 24"

Page 13, line 5:

Delete "sec. 23"

Insert "sec. 24"

Page 13, line 14:

Delete "Section 27"

Insert "Section 28"

CHAIR CLAMAN objected.

REPRESENTATIVE KURKA explained that Amendment 3 would address concerns which had arisen regarding due process, and the existence of the potential for abuse by allowing for twice-annual inspections of each treatment facility to be conducted by DHSS.

[1:54:38 PM](#)

HEATHER CARPENTER, Senior Policy Advisor, Department of Health and Social Services, offered that the department respectfully is in opposition to the proposed amendment, as it would duplicate work already being done by the health care facility licensing team. She stated that, if immediate jeopardy exists in a case, the team will respond to the facility to determine the veracity of any claim and the potential for harm. She pointed out there would be a fiscal need to accommodate additional positions held by professional nurses with the required expertise.

REPRESENTATIVE KURKA asked whether each facility associated with the proposed legislation is already subject to inspection by the department.

MS. CARPENTER answered that the proposed amendment pertains to designated treatment facilities, of which there are four in the state: the Alaska Psychiatric Institute (API), Fairbanks Memorial Hospital, Mat-Su Regional Medical Center, and Bartlett Regional Hospital. She stated that DHSS conducts regular inspections of these facilities. In response to a follow-up question, she stated that current inspections are based on existing requirements for compliance with the Center for Medicare and Medicaid Services and the Joint Commission, and this would be in addition to the state law which requires periodic inspections. She expressed uncertainty concerning how the proposed additional inspections would align with the current required inspections, as twice-per-year inspections would differ from the current inspection schedule. In response to a follow-up question, concerning the current frequency of state inspections, she answered that API is subject to the most frequent surveys based on its accreditation as "deemed" or "not deemed." She offered that the healthcare facility licensing team is equipped to receive anonymous tips, resulting in impromptu inspections. She continued that "deemed" and "not deemed" facilities are inspected every two years. She offered to follow up with examples of scheduled inspections among the accreditation body and the facility licensing team.

[1:59:55 PM](#)

REPRESENTATIVE KURKA withdrew Amendment 3.

[2:00:14 PM](#)

REPRESENTATIVE KURKA moved to adopt Amendment 4 to HB 172, Version W, as amended, labeled, 32-GH1730\W.7 Dunmire 2/22/22, which read as follows:

Page 1, line 3, following "**facilities**";:

Insert "**relating to patient grievance procedures**";

Page 11, following line 2:

Insert a new bill section to read:

"* **Sec. 19.** AS 47.30.847(b) is amended to read:

(b) An evaluation facility and a designated treatment facility shall have a uniform formal grievance and appeal procedure for patient grievances brought under (a) of this section. The facility shall inform each patient of the existence and contents of the grievance procedure and shall submit a copy of the grievance procedure to the department. The department shall keep a copy of the grievance procedure on file."

Renumber the following bill sections accordingly.

Page 13, lines 3 - 4:

Delete "sec. 23"

Insert "sec. 24"

Page 13, line 5:

Delete "sec. 23"

Insert "sec. 24"

Page 13, line 14:

Delete "Section 27"

Insert "Section 28"

CHAIR CLAMAN objected.

REPRESENTATIVE KURKA explained that Amendment 4 would address concerns regarding the lack of additional safeguards. He stated that the amendment would provide for a consistent grievance procedure, with each facility reporting directly to DHSS.

MS. CARPENTER offered that the department considers grievances to be very serious. She suggested that changes to grievance procedures should be made with consideration of stakeholders, as the grievance procedures should be well thought out. She expressed the concern that the amendment could cause administrative burden and disruption to providers. She added

that the existence of grievance procedures is a federal requirement for accreditation. She stated that the proposed legislation relates to different types of facilities, and a uniform grievance procedure could cause conflict with or duplicate those required by specific accreditation bodies. She advised that the accreditation requirements are stringent.

REPRESENTATIVE KURKA suggested that the proposed amendment would not be prescriptive and asked whether an adequate process exists.

MS. CARPENTER answered that inspection processes by accreditation bodies and the state do exist, as well as requirements that facilities maintain a grievance process. She stated that the department's concern is that the proposed amendment would prescribe a uniform grievance process for all facilities.

[2:04:16 PM](#)

ALBERT WALL, Deputy Commissioner, Office of the Commissioner, Department of Health and Social Services, answered that all detention, evaluation, and treatment centers (DETs) in Alaska are hospitals and accredited nationally. He explained that national regulations stipulate each have a grievance policy, and further stipulate quality assurance checks in response to questions or problems which may arise at a hospital. He stated that it would be difficult to specify a specific number of visits to a hospital because it depends on the survey team's inspections, which are the results of complaints. He noted that the state is one of several inspection bodies. Others include the Centers for Medicare and Medicaid Services, the Division of Healthcare Services, the Joint Commission, and the Occupational Safety and Health Administration (OSHA). He stated that each share overlapping checks on quality and safety. He expressed the concern that because grievance policies are established by accreditation bodies, they are subject to periodic changes. He stated that statutory mandate of uniform grievance policies would result in the need for changes to statute, should changes to the accreditation criteria change. He added that API is an accredited agency, and a survey may result in a plan of correction which, if left uncorrected, would jeopardize its accreditation.

[2:08:24 PM](#)

REPRESENTATIVE KURKA expressed the understanding that the concern is about the word "uniform." He asked whether there are multiple grievance forms.

MS. CARPENTER answered that "uniform" grievance procedures are tantamount to micromanaging providers to a level which does not exist for other healthcare facilities. She explained that regional and cultural differences exist among various communities.

CHAIR CLAMAN noted that adding the word "uniform" would be consequential.

MR. WALL offered that the Joint Commission requirements for grievance policies are that uniform and individual policies may exceed the standard. He offered to provide copies to the committee.

REPRESENTATIVE KURKA asked Chair Claman to further explain his previous comment which related that uniform requirements could be consequential.

CHAIR CLAMAN offered that the Commission on Uniform Laws proposes hundreds of Acts, such as the Uniform Notary Act. He suggested that using the word "uniform" in statute results in identical conformity among grievance procedures for different facilities.

[2:13:40 PM](#)

REPRESENTATIVE EASTMAN expressed concern that grievance procedures within one facility could vary, based on the services or the nature of the complaint. He questioned whether the department would support the concept of each facility having a policy consistent throughout that facility.

MS. CARPENTER stated that it is assumed that grievance policies are uniform within a particular facility and would not vary from patient to patient.

REPRESENTATIVE EASTMAN suggested that the drafter be contacted to assuage any concerns with the word "uniform." He referred to lines 10-11 of the amendment and asked whether the department requests a copy of grievance procedures from each facility.

MS. CARPENTER explained that grievance procedures for evaluation facilities are reviewed by an accreditation body, but a copy may not necessarily be kept on file.

[2:17:27 PM](#)

GENNIFER MOREAU-JOHNSON, Director, Division of Behavioral Health, Department of Health and Social Services, offered to provide a detailed answer in writing. She stressed the administrative burden on facilities in responding to accreditation requirements.

REPRESENTATIVE VANCE referred to line 8, regarding the appeal procedure. She requested an explanation of this process.

MS. CARPENTER stated that all grievance policies require the existence of an appeal process.

REPRESENTATIVE VANCE asked to confirm that there exist four evaluation facilities and asked whether the intention was to create more, should HB 172 pass.

MS. CARPENTER confirmed that this is correct.

REPRESENTATIVE VANCE asked whether her recollection was correct that a law had been passed which would require hospitals to make basic service fee schedules available to the public.

CHAIR CLAMAN answered that the law passed required a limited listing of fees.

REPRESENTATIVE VANCE stated that the intent of that law was to assure the public that fee schedules would be consistently available and suggested that the proposed amendment would provide a similar assurance. She expressed her opinion that a consistent grievance and appeal process is needed to build public trust. She suggested that there has been a breakdown of [public] trust with the API and federal standards may not be the "gold standard." She argued that Alaska should provide for a standard which exceeds national standards. She questioned which word could be used to convey the consistency being sought. She expressed concern that the department may be focused on reducing the administrative burden on facilities rather than on the patients.

[2:24:21 PM](#)

CHAIR CLAMAN drew a distinction between a healthcare facility offering fee schedules and grievance procedures related to acute psychiatric care where individuals may have difficulty functioning. He stated that the process of involuntary holds and appointed counsel exists to ensure patients are made aware of their rights in a complex legal circumstance. He allowed that every grievance procedure could benefit from improvement; however, he questioned whether the [current] procedures are so lacking patients are unable to advocate for their rights. He suggested that, if the latter were true, the matter would be beyond the scope of HB 172.

MS. CARPENTER lauded Chair Claman's observation, adding that the department takes seriously the balance between individual rights, grievances, and the burdens for facilities to remain compliant. She stated that the API is the only state-run facility, and DHSS relies on community partners to ensure that [public mental] health care needs are met. She cautioned that addressing grievance procedures in legislation would require thoughtful engagement among stakeholders rather than via the amendment process. She stated that grievance procedures for involuntary commitment are protected in existing statute by requiring that patients be informed of their rights. She stated that a patient's understanding of rights may not occur until after the patient leaves the facility following treatment. She suggested that the Alaska State Ombudsman retains oversight, as this is an important stakeholder in the discussion surrounding grievance procedures.

[2:29:55 PM](#)

REPRESENTATIVE SNYDER pointed out that the issues with API have been serious. She questioned whether the issues could be attributed to its grievance procedures. She further allowed that the intent of the amendment is sincere and encouraged cautious consideration of how things are working and stakeholder engagement. She stated that the proposed legislation appears to maintain a focus on ensuring that adequate facilities exist to meet urgent public mental health care needs.

REPRESENTATIVE KURKA stated that expanding the number of facilities should include appropriate safeguards. He stated that the intent of the amendment would require each facility to have its own uniform grievance procedure rather than one prescribed by the department.

MS. CARPENTER offered that the department respectfully disagrees with the definition of "uniform" as described in the amendment, as it would require uniformity between all facilities, but would not apply to uniformity for procedures for all patients in any one facility.

REPRESENTATIVE KURKA requested confirmation that the department's interpretation of the proposed amendment is that all facilities would have a uniform grievance procedure rather than uniformity for procedures for all patients in any one facility.

MS. CARPENTER confirmed this as correct and added this would result in the creation of a highly litigious area of law, requiring oversight by other agencies.

[2:35:27 PM](#)

REPRESENTATIVE EASTMAN moved Conceptual Amendment 1 to Amendment 4, such that the word "uniform" be replaced with "internally uniform." There being no objection, Conceptual Amendment 1 to Amendment 4 was adopted.

MS. CARPENTER allowed that the conceptual amendment improved the underlying amendment. To avoid rash changes resulting in unintended consequences, she expressed that the department would prefer a cautious and in-depth review with all stakeholders.

MR. WALL offered the previously requested information on the federal standards and cited the Code of Federal Regulations (CFR), Section 482.13, pertaining to patients' rights. He stated that the CFR is a set of regulations and, should the state establish requirements above and beyond regulations, then any changes to the federal regulation would result in the need to pass legislation to update the associated laws. He explained that most on-site surveys are conducted by a federal team or a Joint Commission team. The team would measure the facility against the standard, which could result in a "gold standard award" for the facility if it meets or exceeds the federal grievance procedure requirements. He added that federal teams would not measure a facility against a state standard; therefore, the state would be required to assemble its own team to conduct the surveys to ensure compliance with state standards. He concluded that this would result in additional costs.

CHAIR CLAMAN maintained his objection to Amendment 4, as conceptually amended.

REPRESENTATIVE EASTMAN expressed opposition to the view that the proposed amendment would result in an undue burden on facilities and the department.

REPRESENTATIVE KURKA stated his belief that the proposed requirements were basic in nature and disagreed with the suggestion that they would result in an undue burden.

[2:42:44 PM](#)

A roll call vote was taken. Representatives Eastman, Kurka, and Vance voted in favor of Amendment 4, as conceptually amended, to HB 172, as amended. Representatives Drummond, Snyder, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 4 failed by a vote of 3-4.

[2:43:27 PM](#)

The committee took a brief at-ease.

[2:44:23 PM](#)

CHAIR CLAMAN announced that HB 172 was held over.

[2:44:48 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:44 p.m.