

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 8, 2023

1:31 p.m.

**MEMBERS PRESENT**

Senator Matt Claman, Chair  
Senator Jesse Kiehl, Vice Chair  
Senator James Kaufman  
Senator Cathy Giessel  
Senator Löki Tobin

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

PRESENTATION: ALASKA'S BEHAVIORAL HEALTH SYSTEM FOR CHILDREN

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

Mark Regan, Legal Director  
Disability Law Center of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Provided commentary and answered questions about Alaska's Behavioral Health System for Children Presentation.

Dr. Anne Zink, Chief Medical Officer  
Department of Health  
Palmer, Alaska

**POSITION STATEMENT:** Provided commentary and answered questions about Alaska's Behavioral Health System for Children Presentation.

HEATHER CARPENTER, Policy Advisor  
Department of Health  
Juneau, Alaska

**POSITION STATEMENT:** Provided commentary and answered questions about Alaska's Behavioral Health System for Children Presentation.

FARINA BROWN, Acting Director  
Division of Behavioral Health  
Department of Health  
Juneau, Alaska

**POSITION STATEMENT:** Provided commentary and answered questions about Alaska's Behavioral Health System for Children Presentation.

Emily Ricci, Deputy Commissioner  
Department of Health  
Juneau, Alaska

**POSITION STATEMENT:** Provided commentary and answered questions about Alaska's Behavioral Health System for Children Presentation.

CLINTON LASLEY, Deputy Commissioner  
Department of Family & Community Services  
Juneau, Alaska

**POSITION STATEMENT:** Provided commentary and answered questions about Alaska's Behavioral Health System for Children Presentation.

#### **ACTION NARRATIVE**

[1:31:36 PM](#)

**CHAIR MATT CLAMAN** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Kaufman, Tobin, Kiehl, Giessel and Chair Claman.

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**CHAIR CLAMAN** announced the consideration of a presentation about Alaska's Behavioral Health System for Children. He pointed out that the United States Department of Justice (DOJ) declined his invitation to the hearing.

**CHAIR CLAMAN** stated that he read the report with reactions of sadness, disappointment, and frustration. The report depicts the results of chronic problems left untreated. Responding to the report presents a legal question. The state must provide a solution for Alaskan children in need of better behavioral health options. He hoped the conversation would detail the legal process and focus on a solution.

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MARK REGAN, Legal Director, Disability Law Center of Alaska, offered information and a summary of findings. He stated that his office filed a complaint with the DOJ in 2020 that led to an investigation. The investigation resulted in the report that was released in December 2022. He stated that the legal issue involves the state's mental health services structure. The Title II Americans with Disabilities Act requires the state to provide mental health services to children in an integrated setting.

MR. REGAN continued that some Alaskan children receive mental health services in out-of-state institutions because they do not have access in their communities. He spoke about the North Star Behavioral Health System where many children were treated in state. The overriding preference is for children to receive mental health services near their homes. The report points to the lack of trained providers and well-equipped facilities.

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MR. REGAN expounded that his opinions did not present criticism of the Office of Children's Services (OCS). He noted that some small communities have one or two therapeutic foster homes. He spoke about placement in the foster homes versus the traditional therapeutic environments. He pointed to the report's disturbing statements about children in restrictive institutional environments. Children reportedly struggle with relocation and the subsequent lack of connection with tribal communities, friends and family members. He noted the problem of bringing children home. He acknowledged the preference to treat children in their homes or communities, however, there are situations where a therapeutic foster home is the safest location.

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MR. REGAN talked about the North Star Behavioral Health System and its limitations. He cited allegations about abuse and neglect happening in the privately-owned facility. The report addresses the lack of services in home communities. Those services are available in the Lower 48. Returning home is often difficult for children. He acknowledged the expert opinions of the other invited testifiers in the room. He expected further conversations and stated a lawsuit would be filed if discussions break down. He appreciated the opportunity to meet the obligations of the Americans with Disabilities Act.

MR. REGAN pointed to recommendations by the United States Department of Justice Civil Rights Division on page 24 of the report.

- Ensuring that community-based services are accessible and available with sufficient intensity to prevent unnecessary institutionalization. Services the State should ensure are available and accessible include Home-Based Family Treatment, Crisis Services, Therapeutic Treatment Home Services, Community Recovery Support Services, and Intensive Case Management.
- Coordinate with community-based service providers, tribal stakeholders, and local governments in Alaska to ensure that service planning and implementation is culturally appropriate and responsive to the needs of Alaska Native children and families.
- Support implementation of community-based behavioral health services in school settings. As the Centers for Medicare and Medicaid recently stated, to help ensure that Medicaid-enrolled children can access the services they need. schools are "uniquely positioned"<sup>57</sup>
- Develop adequate system-wide protocols for identifying children at serious risk of institutional placement and connecting them to appropriate, timely community-based services as needed to avoid unnecessary institutionalization.
- Develop adequate system-wide protocols to ensure that children transitioning from institutions to the community receive appropriate, timely community-based services as needed to remain in their homes and communities to the maximum extent possible.
- Ensure adequate oversight of Administrative Service Organizations, State grantees, and Medicaid-enrolled service providers and effective coordination among those entities, hospitals, and law enforcement to avoid unnecessary institutionalization.

MR. REGAN spoke beyond the report and about institutionalized youth. These children were referred out of state because their caretakers or North Star Behavioral Health System felt poorly equipped to address their needs. He stated that Alaska

Psychiatric Institute (API) was the next step and often had full beds. Alaska requires additional services and community options. Alaska lacks the facilities and services to best care for behaviorally challenged youth.

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MR. REGAN continued to speak about the Department of Health (DOH) separation from the Department of Family and Community Services (DFCS). He voiced the expectation for the departments to address the issue collaboratively. He concluded by stating that the report was more important than his opinions.

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DR. ANNE ZINK, Chief Medical Officer, Department of Health, introduced herself and provided testimony. She expressed sadness about the issues brought forward in the report. She stressed the need for partnerships and systems that work for Alaskans. She noted the seriousness of her work with the Department of Health (DOH) and the Department of Family and Community Services (DFCS). The lawsuit highlights gaps in the current system recognized by both departments. She stressed her commitment to the health and wellbeing of every Alaskan. The children deserve supportive care, engaging families, communities and culture. She initiated a brief overview of mental health care.

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DR. ZINK continued detailing escalating cases of behavioral health problems. These issues began before the Covid-19 pandemic. An overall decrease in life expectancy was documented during the past decade, with fatalities known as "deaths of despair." She cited increases in suicide, overdose, homicide and liver disease. The National Governor's Association declared a focus on youth mental health. She noted work in the Lower 48 for youth placement; every state has similar struggles. She posed an analogy between organ transplants and children's behavioral health services. Identifying adequate reimbursement, capital investments and motivation allow for the development of new services.

DR. ZINK mentioned the Medicaid 1115 waiver, which offers the basic structure for Medicaid services. The report acknowledges that the Medicaid services provided are not adequate for mental health patients. She maintained that the federal funding structure did not accommodate these systems. She testified to greater challenges in Alaska due to greater distances between communities. The lack of broadband connectivity provides yet another challenge.

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SENATOR TOBIN spoke about cultural genocide. She asked about a plan to address the subsequent trauma perpetuated by sending children out of state for behavioral health services. She wondered about a new bill or request for additional funding.

DR. ZINK referred to her transplant analogy. She communicated that the services were compared because of challenges bringing people home following travel to access health care currently unavailable in the state.

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SENATOR TOBIN stressed that she wished to see a plan to fix the problem.

SENATOR GIESSEL added that her interest is in reimbursement and its barrier to services. She spoke to the issue of provider recruitment and university education. She wondered about innovative programs such as partial hospitalization.

HEATHER CARPENTER, Policy Advisor, Department of Health, Juneau, Alaska, agreed that the issue spanned many departments and divisions. She provided history regarding the United States Department of Justice. The DOJ notified the Alaska Department of Health and Social Services (at the time) on December 17, 2020. The intent was to investigate whether the state violated Title II of the Americans with Disabilities Act. She highlighted her department's cooperation with the United States DOJ. She added that Alaska's tribal health organizations participated in the investigation.

MS. CARPENTER noted that the states undergoing similar investigations include Maine, Nevada and West Virginia. She spoke about Mississippi and the litigation posture. She highlighted youths seeking services under Medicaid. She stated that the senior and disability services division also serves children with complex intellectual and developmental disabilities as well as behavioral health services. She spoke about high-level specialty care and the difficulties recruiting providers such as psychiatrists to the state. She spoke to an investment in the University of Alaska Anchorage social work program to hire additional staff.

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MS. CARPENTER continued that community-based services required additional providers for behavioral health and personal care.

She spoke about the pros and cons of telehealth as it relates to children. She noted high-level concerns about the timing of the investigation and findings. She intends to engage in settlement discussions with the United States Department of Justice. She stressed that litigation would provide an efficient or effective way to improve the mental health system in Alaska. Her preference would be to have settlement talks with that strategy in mind.

MS. CARPENTER continued that a written response to the report must be formulated. The intention was to allow for further collaboration between the appropriate state departments and divisions.

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CHAIR CLAMAN stated that the response would lead to another committee hearing. He wanted the issue to receive the public attention it deserved.

MS. CARPENTER agreed about the importance of the topic. She informed the committee that the entire investigation happened during the Covid-19 pandemic, which compromised travel to crucial locations. The data collection was limited in its usefulness. She stated that the staff visited only two rural hubs.

MS. CARPENTER noted the report mentioned telehealth services as a key solution. She stated that telehealth behavioral health services increased tremendously through and after the pandemic. She disagreed that the infrastructure was in place to provide effective telehealth services. She highlighted various regions of Alaska that rely on audio only for telehealth services.

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MS. CARPENTER pointed out that the 1915(c) Medicaid waiver was not reviewed in the investigation. Those waivers address home and community-based services. She pointed out page 21 of the report noting the issue of complex care, which is of great importance. She proposed the idea of an Alaska specific intermediate care facility. She spoke about the state's establishment of the Alaska Mental Health Trust.

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CHAIR CLAMAN commented on the report, committee participation and testimony. He spoke about in-state intermediate care and long-term care. He stated that North Star Behavioral Health System was not an inspiring facility due to understaffing and

undermanaging. He wondered if the legislature might see a capital budget request pertaining to facility needs.

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MS. CARPENTER shared a personal story about a family member's success traveling out-of-state for treatment following care with the North Star Behavioral Health System. She commented that the federal government did not contribute start-up capital funds. The legislature funded only one institution: the Alaska Psychiatric Institute (API).

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SENATOR GIESSEL repeated that the reimbursements do not adequately cover costs. The successful non-profits rely on grants to stay open.

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MS. CARPENTER spoke about the history of budget constraints including the exclusion of inflation and or rate adjustments directed by the legislature. She mentioned a rebasing process for community behavioral health providers.

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SENATOR KIEHL referenced a report from 1998. The report discussed the closing of Harborview Developmental Center in 1997 and outlined the deficiency in community-based services. He quoted the report, "the needs of children with behavioral health disabilities in Alaska who received services in institutions are not materially different from those of other children who are thriving in community-based settings in other states."

CHAIR CLAMAN asked Senator Kiehl to restate his question.

SENATOR KIEHL requested further investigation about the important topic.

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SENATOR TOBIN echoed Senator Kiehl's sentiments. She expressed interest in learning and contributing to a solution. She spoke about many kids who are brown and should be served in their communities. She spoke to the value of culturally relevant and community-based services. Her question related to federal resources for school counsellors and how the committee can help leverage the federal assets.

MS. CARPENTER mentioned similar conversations with tribal health organizations related to leveraging the 1115 Behavioral Health

Medicaid Waiver. She stressed that the department and legislature must work closely with tribal health organizations to fully implement those 1115 services. The waiver renewal is in the public comment process. She mentioned a regulation package to allow a 4.5 percent increase to 1115 Medicaid services. The waiver is not linked to automatic inflation. The tribal health partners can better address the need for culturally relevant care. She pointed to housing barriers.

CHAIR CLAMAN asked about the tribal health partners. He wondered if the department was waiting for the tribal health partners to establish a plan first. He wanted to hear the department's plan.

MS. CARPENTER replied that the consultation and collaboration of the tribal health partners was crucial to the plan. She stated that presenting a plan to the federal government without collaborating with the tribes would lead to criticism.

CHAIR CLAMAN asked for two suggestions that were presented to the tribal partners.

MS. CARPENTER responded that suggestions involve implementation of the Medicaid 1115 waiver.

CHAIR CLAMAN asked what two things the department wished to accomplish with tribal partners related to the 1115 waiver.

MS. CARPENTER stated that the 1115 Medicaid waiver launched during the pandemic. The regulations for the Behavioral Health Services were opened in May of 2020. She noted that the department supported onboarding new providers for partial hospitalization because crisis services were critical.

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FARINA BROWN, Acting Director, Division of Behavioral Health, Department of Health, Juneau, Alaska, responded that the division addressed the 1115 Medicaid waiver. She explained that the behavioral health demonstration waiver was approved and bifurcated by the federal government due to the opioid epidemic. A full waiver resulted. The substance use component was fast-tracked. Those services "went live" in 2019. The department ensures that they have authority through the Centers for Medicare & Medicaid Services (CMS) for the full array of enhanced services while operating in a fee-for-service paradigm. Relationships with behavioral health partners were essential as the partners must implement the service. She explained that the Medicaid budget does not include resources for workforce or

capital. A rate was established under the 1115 waiver for services. The initial goal was to increase rates and the 1115 waiver provided the vehicle for the increases. In March 2020, the Covid-19 pandemic coincided with the planned launch of the behavioral health component of the waiver.

MS. BROWN continued that the state is limited by the Medicaid budget, which requires collaboration with behavioral health providers. Change is created by ensuring that the services span across various components of community participation. The department sought to move forward with renewed efforts.

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SENATOR TOBIN asked if the department supports existing assets for communities with the 1115 Medicaid behavioral health waiver. She asked how many communities had existing services.

MS. BROWN replied that she would respond to the committee with those data.

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SENATOR GIESSEL asked what the department needs from the legislature.

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EMILY RICCI, Deputy Commissioner, Department of Health, Juneau, Alaska, referred to the 1115 Medicaid waiver. The waiver resulted from conversations recognizing that the system was established incorrectly. The 1115 waiver exemplifies the largest tool of change presented by the Medicaid program. The system challenges existed for decades. She expected multiple solutions with stakeholders including tribal health partners, the behavioral health community and the legislature. She posited that the health care system in 2023 was vastly different from the system in December of 2019. She stated that the tribal health partners helped the department ascertain realistic and culturally appropriate solutions. The issue is systemic and complex with multiple solutions available. Solutions and investment needs require collaboration to prevent repeating past mistakes.

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CHAIR CLAMAN asked a question about Medicaid funding and capital expenses. He wondered about capital expenditure needs. He hoped to see a request from the governor for capital funding.

SENATOR GIESSEL pointed out that vacant facilities in some communities might be useful for clinics or partial hospitalization programs.

SENATOR TOBIN noted that facilities in Nome existed that could provide resources for Alaska's use.

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MS. RICCI responded with information about the department's work related to complex care. She spoke to the fundamental change in health care systems following the pandemic. Workforce continues to pose the greatest challenge beyond issues like location and facilities.

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CHAIR CLAMAN asked about workforce shortages. He wondered if the department required additional legislative appropriations to increase salaries.

MS. RICCI clarified that the workforce shortages involve health care providers.

CHAIR CLAMAN reasoned that the non-state provider provides the services and Medicaid rates must increase for reimbursement purposes.

MS. RICCI agreed that reimbursement was part of the issue, but the primary issue is a shortage of workforce. She spoke to challenges recruiting workers to rural Alaska. She spoke to the cultural challenges workers might encounter in some of the vacant positions.

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DR. ZINK talked about rates and workforce. She explained that the solution might be presented in a couple of buckets. The rates and structure including the payment of the workforce. Education is another key component. She highlighted the identification of systems requiring coordination with each other. The system must address current and future issues to allow for flexibility. She mentioned complex care coordination to identify needs and solutions. Ideas from collaboration included better information technology (IT), healthcare savings, and coordination between both departments.

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DR. ZINK continued that the system created must be nimble. She pointed to the Complex Care Coordination Working Group with its

three pillars. The first pillar addresses individual cases. The second pillar creates a feedback loop to allow for identification of gaps or needs. The third pillar includes work with external stakeholders. All three pillars influence each other.

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SENATOR KIEHL responded that Dr. Zink's points sounded familiar. He recalled the key strategies to the Bring the Kids Home initiative from 2005-2014. He asked the testifiers to help the legislature "help better" this time. He stated concern that the proposed solutions remain the same following many years of similar conversations.

DR. ZINK replied that the Bring the Kids Home process continues with a difference in scope. The complex care coordination work is designed for patients in Alaska requiring services from one or more division that are not currently met. The effort involves the Bring the Kids Home model by addressing the program's barriers and boundaries.

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CLINTON LASLEY, Deputy Commissioner, Department of Family & Community Services, Juneau, Alaska highlighted the department's services. He noted that the separation of the Department of Health and the Department of Family and Community Services addressed many of the issues detailed in the hearing. The focus on complex care was prioritized by both departments. His department of family community services has four divisions serving youth or children. Some of the children require services for complex medical or behavioral health needs. The department has approximately 2900 youth in out-of-home placement with 22 youth in out-of-state placement.

CHAIR CLAMAN asked about Ms. Carpenter's reference to 69 patients, while Mr. Lasley referenced 22 out-of-state youth.

MR. LASLEY responded that Alaska had 69 youth in out-of-state treatment via the Medicaid program. He continued that the 22 individuals were under the care of the Office of Children's Services and three youth were under the care of the Division of Juvenile Justice. A total of 25 youth are serviced under the Department of Family and Community Services.

CHAIR CLAMAN provided clarification that the 25 youths were contained within the 69 mentioned earlier.

MR. LASLEY concurred and noted that some youths receive care through Medicaid and others via the Office of Children's Services. He spoke about API's ten youth beds. He recalled a time when API was in a similar crisis, which presented challenges like those North Star Behavioral Health System faced. He spoke about safety considerations related to sending a child out of state for treatment.

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MR. LASLEY spoke further about efforts for individuals with complex needs. The treatment needs of the individual were scrutinized. Efforts are made to keep children close to home while obtaining culturally appropriate services. Placement options are not always available in smaller communities. The department recently hired a complex care coordinator. He pointed to a request for an additional three positions proposed in the Governor's FY 24 budget to build out the complex care team. He mentioned the expansion of the Alaska Tribal Child Welfare Compact with an additional \$3.4 million for a primary focus on prevention. The governor added \$10 million in base funding to the Office of Children's Services last year.

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SENATOR GIESSEL expressed appreciation for the department's efforts. She appreciated the departments and the health care professionals for serving the children in need.

SENATOR KIEHL echoed Senator Giessel's comments. He hoped that the Alaska Mental Health Trust would be involved in future hearings.

CHAIR CLAMAN stressed the importance of the topic.

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There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 3:05 PM