ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
November 17, 2023
10:31 a.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: HB 172 PSYCHIATRIC PATIENT RIGHTS REPORT TO LEGISLATURE

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CLINTON LASLEY, Deputy Commissioner
Department of Family and Community Services (DFCS)
Juneau, Alaska
POSITION STATEMENT: Co-presented the presentation on House Bill 172 Psychiatric Patient Rights Report to Legislature.

THEA AGNEW BEMBEM, Consultant
Agnew Beck Consulting, LLC
Anchorage, Alaska
POSITION STATEMENT: Co-presented the presentation on House Bill 172 Psychiatric Patient Rights Report to Legislature.

EMILY RICCI, Deputy Commissioner
Alaska Department of Health (DOH)
Juneau, Alaska

POSITION STATEMENT: Co-presented the presentation on House Bill 172 Psychiatric Patient Rights Report to Legislature.

STEVE WILLIAMS, CEO
Alaska Mental Health Trust Authority
Anchorage, Alaska
POSITION STATEMENT: Co-presented the presentation on House Bill 172 Psychiatric Patient Rights Report to Legislature.

ACTION NARRATIVE

10:31:18 AM
CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 10:31 a.m. Present at the call to order were Senators Giessel, Kaufman, Tobin, Kiehl, and Chair Claman.

PRESENTATION:
HB 172 PSYCHIATRIC PATIENT RIGHTS REPORT TO LEGISLATURE

10:31:18 AM
CHAIR CLAMAN announced the consideration of a presentation on HB 172 Psychiatric Patient Rights in Alaska, offered by the Department of Family and Community Services (DFCS), the Alaska Mental Health Trust Authority, Agnew-Beck Consulting LLC, and the Alaska Department of Health (DOH).

10:32:53 AM
CLINTON LASLEY, Deputy Commissioner, Department of Family and Community Services (DFCS), Juneau, Alaska, stated that the need for behavioral health services is outpacing available services. There is a need for a more robust behavioral care system and an expansion of existing resources to build on the continuum of care in order to ease stresses on first responders, public safety officers, and hospitals. These steps would prevent individuals from being held at higher, more restrictive levels of care. The State of Alaska, the Alaska Mental Health Trust Authority, community partners, and others have been exploring behavioral health care system development. House Bill 172 was passed in 2022, and has since created an opportunity to transform the way individuals are assisted amidst acute mental health crises. The system outlined in House Bill 172, referred to as the "No Wrong Door" approach, has proved successful in other states. The bill allows law enforcement and mobile crisis teams to deliver voluntarily and involuntarily care to individuals in a least restrictive setting.

10:34:29 AM
MR. LASLEY said that House Bill 172 added an intermediate subacute level of care to divert individuals in behavioral health crises from institutional settings, allows examination under a notice of emergency detention and evaluation, and permits a civil commitment at a subacute mental health facility when appropriate. Concerns regarding preexisting challenges with patient rights and protections were voiced by constituents and mental health advocates. As a result, House Bill 172 set a requirement that a joint report be delivered to the legislature by October 2023.

10:35:43 AM
STEVE WILLIAMS, CEO, Alaska Mental Health Trust Authority, Anchorage, Alaska, referred to slide 3 and said that House Bill 172 played a critical role in laying the foundation for the "No Wrong Door" model of providing services to those experiencing a behavioral health crisis. There is an opportunity to transform the current system by using lower levels of care, ensuring timely transportation, and relieving hospital emergency rooms, staff, law enforcement, and jails from the default crisis response. Providers seeking to establish a 23-hour crisis stabilization center or a 7-day crisis residential center could accept voluntary and involuntary admissions under House Bill 172. He said that stakeholders took a holistic approach to strengthening patient rights and described the process. The contract for the report was awarded to Agnew Beck Consulting, LLC. He encouraged members to read the report.

Mr. Williams advanced to slide 3 and spoke to the following:

[Original punctuation provided.]

> (1) include an assessment of the current state, federal, and accrediting body requirements;
>
> (2) identify and recommend any additional changes to state statutes, regulations, or other requirements;
>
> (3) assess and recommend any needed changes to current processes for data collection and reporting and
>
> (4) identify methods for collecting and making available to the legislature and the general public statistics.

10:41:51 AM

THEA AGNEW BEMBEM, Consultant, Agnew Beck Consulting LLC, Anchorage, Alaska, referred to slide 4 and acknowledged report contributions from Dr. Cody Chipp of Elevation Consulting, Jeff Jessee of Paladin Alaska, and True North Recovery, a peer-led behavioral health organization based in Mat-Su, Alaska, which also provides services in Fairbanks, Alaska. Four subcommittees were identified for the advisory team, as required in statute, to develop the report, including a legal subcommittee, a data subcommittee, a provider subcommittee, and a lived experience subcommittee. A project management team represented the two departments: the Alaska Mental Health Trust Authority and Agnew Beck Consulting, LLC.

MS. BEMBEM moved to slide 5 and highlighted the following activities that the advisory team participated in:

- 12 Subject Matter Interviews
- 5 Advisory Team Meetings
- 11 Law Enforcement Interviews
- 14 Lived Experience Contacts
- 12 Facility Visits
- 20 Subcommittee Meetings

MS. BEMBEM moved to slide 7 and provided a breakdown of facilities serving psychiatric patients in Alaska. Most of the facilities are not psychiatric hospitals but provide care through general acute care hospitals and critical access hospitals. There is one formal Designated Evaluation and Stabilization (DES) hospital in Ketchikan, which provides voluntary and involuntary care. The Designated Evaluation and Treatment (DET) hospitals are located in Fairbanks, Mat-Su, and Juneau, Alaska, and can provide involuntary treatment for up to 30 days. In addition to Anchorage Psychiatric Hospital (API), North Star, and Providence, hospitals in Anchorage can service children as well as adults.

10:46:41 AM
MS. BEMBEM moved to slide 8 and said that the components of the main report were directly identified in statute and were addressed by the project. She said there are systemic barriers that limit access to care, including lengthy delays and extended periods of detention. Many health care environments have failed to meet patient needs. Patients, providers, and law enforcement have maintained different experiences, varying by location. The assessment found that there's a lack of alignment regarding what is "done on the ground" and state statute. She implied

difficulty in tracking court forms that are filed under statute as a result of unpolished law enforcement training. There are a constrained number of inpatient beds in psychiatric care settings, resulting in substantial wait times for patient evaluation and a conflated acuity of need for involuntary commitments due to limited access to higher levels of care. Some access to care has been made possible, but the need remains unmet.

MS. BEMBEM said that without intermediary levels of care, psychiatric patients have no middle ground prior to involuntary detention at the Alaska Psychiatric Institute (API). A review of credential and accreditation requirements in facility interviews demonstrated that the structures and rules that are in place are largely being followed, but patients have limited access to legal counsel and an understanding of the grievance process. Lived experience interviews found that patients in crises are not always aware of the availability of these services, which differs from what facility staff perceive. Despite conflicting views, patient advocacy is unavailable in most facilities and patients are held responsible for navigating the grievance process.

10:55:43 AM
MS. BEMBEM expressed a concern about nuances with data collecting and reporting given variability in patient experiences. For example, it can be difficult to obtain individual patient data from a hospital setting. She suggested that the starting point is to know what data has been gathered, coordinate with others, analyze the data, and move forward from there.

MS. BEMBEM pointed out that there is a data collection issue during the period between a law enforcement officer bringing an individual experiencing a psychiatric crisis into emergency detention and reaching an ex parte determination. It was mentioned that law enforcement officers delivering individuals in a psychiatric crisis to emergency detention are required to fill out court form MC-105. This form serves as notice that an individual is under emergency detention. However, there is uncertainty among agencies regarding what to do with this form if an individual's evaluation reveals unmet criteria for detention. This systemic issue contributes to the inaccuracy of knowing the number of people held in emergency detention.

10:59:59 AM

MS. BEMBEM moved to slide 11 and briefly discussed the supplemental material content of the appendices:

[Original punctuation provided.]

App A: Resource Inventory

App B: Stakeholder Vision and Access to Treatment, Stabilization, and Discharge

MS. BEMBEM added that Appendix B speaks to appropriate and timely behavioral care access. This section provides insight into what the experience is like for an Alaskan resident during a crisis, including the process for seeking, receiving, and discharging from care. When the advisory team process was started, a question was raised about what the criteria includes. Stakeholders articulated a vision that goes beyond the scope of what is contained in statute.

App C: Psychiatric Advanced Directives

MS. BEMBEM added that the interviews conducted provide insight on what other states do.

App D: Previously Proposed Legislation

MS. BEMBEM said that this legislation concerns the grievance process and has come before the legislature a handful of times.

App E: Comparison of Grievance Processes in Other States

App F: Recommendations: Full list

MS. BEMBEM noted that over 90 recommendations organized by topic can be found in this section.

App G: Public Comment and Response

11:02:41 AM
MS. BEMBEM moved to slide 12 and said that the graphic depicts stakeholders' vision for a comprehensive behavioral health continuum of care.

MS. BEMBEM moved to slide 13 and shared a summary of departmental recommendations:

[Original punctuation provided.]

Legislative fixes
- Amend AS 47.30.709
- Law enforcement officers training
- Define “impartial body” as it is used in Sec. 47.30.847: Patients' grievance procedures.
- Enact a psychiatric patient care Ombudsman’s office in statute.
- Review and update of the civil commitment and related statutes.

Recommendations for Departments
- Court forms
- Guidance and standardized training that defines entity roles and patient rights in specific settings.
- Review what additional data and tracking can be completed and how it will be shared.

Supplemental recommendations:
- 90 recommendations recorded, including those outside of scope or without consensus

MS. BEMBEM urged departments to review statute and court forms to ensure consistency, define entity roles, and review the process for data tracking. Per lived experience interviews, advocacy team members report that patients in crises are not always informed or aware of opportunities available for legal counsel and grievances. She concluded that amping up efforts to track court form MC-105, appropriately training officers, and clearly defining roles would ensure consistent reporting of emergency detentions.

11:05:45 AM
EMILY RICCI, Deputy Commissioner, Alaska Department of Health (DOH), Juneau, Alaska, thanked patients and advocates for sharing their lived experiences, noting that it requires a tremendous amount of courage. She said that measuring systemic success is evidenced by patient experiences and referenced the report that highlights ways in which the system can be improved. There are over 90 recommendations in the report consisting of several branches of government and multiple perspectives. She mentioned the complexity of the patient's experience as well as challenges presented in the development of patient's rights.

There is an opportunity for all to contribute to ensure patient rights are clearly understood, including everyone from emergency responders to direct care staff. She expressed appreciation to the various stakeholders who worked on the report. DOH remains committed to coordinating with other agencies and the legislature on psychiatric patient rights.

11:08:43 AM
CHAIR CLAMAN noted that before House Bill 172, Senate Bill 120, sponsored by Senator Giessel, was passed to uphold crisis stabilization centers during the COVID-19 pandemic.

11:09:21 AM
SENATOR KAUFMAN noted that there are many complexities and prerequisites to achieving the desired outcomes of House Bill 172. He asked whether a comprehensive improvement plan had been established through change sequencing and other management processes.

11:10:30 AM
MS. RICCI responded that there are many different branches involved. Now that the data has been collected, the next step entails a discussion on implementation.

11:11:09 AM
SENATOR KAUFMAN suggested a master schedule to help manage multiple tasks and complex components to allow a smooth transition forward and work in sequencing.

11:11:48 AM
SENATOR TOBIN referenced the 'impartial body' bullet on slide 9 and asked if there were any significant conclusions in the report concerning the legislature's role in supporting the state grievance process.

11:12:47 AM
CHAIR CLAMAN rephrased the question by asking whether the work established a definition for 'impartial body.'

11:13:11 AM
MS. BEMBEM replied no. However, the appointment of an ombudsman for individuals receiving psychiatric care was a point on which the advisory teams reached consensus. She acknowledged that many of the 90 recommendations provided in the report are low-hanging fruit that the state could readily address. She stated that although there was no clear consensus on a statewide grievance

process, similarities exist in accreditation requirements thereby offering some consistency.

The Health Facility Licensing and Certification Office receives and responds to reports on certain levels of mental health and injury grievances, establishing a direct connection with Centers for Medicare and Medicaid. However, many individuals believe that this does not adequately address the issue of transparency in reporting.

MS. BEMBEM mentioned that beyond the existing measures, there is no consensus on what a consistent process should entail. She expressed her belief that people would support the appointment of an ombudsman. She opined that there was no consensus concerning an 'impartial body,' except that many people on the advisory teams believe that the head of a facility is not necessarily impartial.

11:16:05 AM
SENATOR TOBIN asked about culturally responsive care and whether feedback has been provided by stakeholders on this issue.

11:16:32 AM
MS. BEMBEM replied that interview participants highlighted that the location and distance to psychiatric facilities is the most important factor to achieving culturally relevant care. Sharing food, language, and receiving care from those who share similar characteristics plays a significant role in effective therapeutic healing and wellbeing. She opined that the experience of being handcuffed by law enforcement and taken to a foreign setting is traumatic. The supplemental report entails a stakeholder vision that encourages care in voluntary settings, regional crisis centers, and empowering the community in crises to mitigate the need for involuntary detention.

11:18:21 AM
SENATOR KIEHL inquired about the insights that additional data would provide beyond what is contained in the stakeholder vision on slide 12. He expressed his belief that additional data would not impact the top ten items already identified. He asked if beginning work now would be more effective than waiting to gather more data.

11:20:09 AM
MS. BEMBEM relayed that both approaches are crucial. While Alaska has accumulated a substantial amount of data, it has not been processed to specific conclusions. She recommended

reviewing the data currently available and highlighted the difficulty in pinpointing wait times for inpatient psychiatric beds as an example. A multi-pronged approach involving several entities is required to comprehend and apply the data. She concluded that coordinating the data to tell a story would highlight needed improvements.

11:22:33 AM
SENATOR GIESSEL acknowledged the coherence of the report and stated that she comes from the framework of community care. The advocacy group's focus is on an institution versus partial hospitalization, which is less expensive and potentially creates better outcomes. She acknowledged Alaska's schools as a critical access point for youth and asked about the depth of this focus. She wondered whether a review of legal and statute changes is mandated and inquired about the age of consent.

11:23:54 AM
MS. BEMBEM replied that the report does not delve into the age of consent issue. Children in psychiatric crises, including in a school setting, often end up in emergency departments and remain there longer than adults. Medicaid recipients also have limited inpatient access. She reiterated Senator Giessel's point conveying that this project focuses more on the institutional component and recommended expanding on the community piece to circumvent institutional-level care.

11:25:43 AM
SEN. GIESSEL stated that access to care requires reimbursement for providers and is a huge problem.

11:25:57 AM
CHAIR CLAMAN acknowledged the work of the report and emphasized Appendix B on slide 11, then asked about youth mental health treatment, out-of-state transfers, and the lack of in-state resources. He inquired about the start date for adolescent unit health operations at the Alaska Psychiatric Institute (API).

11:27:15 AM
MR. LASLEY said that the adolescent unit at API has operated in some capacity for the past two years and at full capacity since May 2022.

11:28:02 AM
CHAIR CLAMAN said that although the committee had heard about the Justice Department investigation, it did not know API had resumed service for children. He acknowledged the substantial

number of recommendations in the report and noted that the inpatient process is less of a concern for the Justice Department than before and after care. He emphasized identifying what the state can accomplish in the next two years and said that this issue has risen to the top of the legislative agenda.

11:29:36 AM
MR. WILLIAMS said regarding project management, those involved must maintain accuracy to avoid systemic impacts on individuals and their experience with services. As components of the Crisis Now model are implemented, accurate information must be gathered. Obtaining critical information is important to achieving early health care access and preventing future need, which then provides the opportunity to address the service structures necessary to assist patients with higher levels of need. This reduces the impact on law enforcement, hospital emergency rooms, and jails. Currently, care protocol is treat, stabilize, and release.

He concluded that it's important for prompt intervention to ensure health care access is available early on, a direct impact on the structure of higher-level care.

11:34:29 AM
There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 11:34 a.m.