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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 153

Revision Date: 4/14/92 Department Affected: Administration
 Title: "An Act relating to mental health." BRU: Office of Public Advocacy
 Sponsor: Pourchot Component: Office of Public Advocacy
 Requestor: Senate Finance COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: 4/14/92
 Approved by Commissioner: Nancy Bear Usera
 Agency: Department of Administration Date: _____

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR



Senator Pat Pourchet

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MEMORANDUM

TO: Senator Arliss Sturgulewski, Chair
Health, Education and Social Services Committee.

FROM: Senator Pat Pourchet.

DATE: April 7, 1992

SUBJECT: SB 153, An Act relating to mental health.

I respectfully request a hearing at the earliest possible date for SB 153, An Act relating to mental health. The purpose of the legislation is to clearly establish procedures for the protection of patient's rights in evaluation and treatment facilities.

Recently, we have been working closely with mental health advocates, the Alaska Mental Health Board, the Department of Law and the Department of Health and Social Services to make revisions to the original bill introduced last session. The most important additions have been in the area of safeguards and oversight on psychotropic medications.

You may recall that the State of Alaska has been involved in litigation over the issue of forced medication at API. The changes to this legislation incorporate the recommendations of the Involuntary Medication Task Force and should settle the legal issues raised in Branson v. State of Alaska.

My staff is preparing back up materials for committee members and the public. Please contact Dan Austin at 465-3879 if you have any questions.

SB 153, "An Act relating to mental health."

Senator Pat Pourchot

The legislation was introduced in the sixteenth session at the request of mental health services consumers and advocates. The purpose of this Act is to guarantee that patients will have appropriate representation in decisions pertaining to their treatment.

In 1987, a patient at the Alaska Psychiatric Institution brought suit against the state for not providing an opportunity to withhold informed consent to the administration of psychoactive medication. A state task force consisting of mental health professionals, advocates and attorneys met for a year and a half to respond to legal issues raised in Branson v. State of Alaska.

The draft CS presented to the Senate Health, Education and Social Services Committee is a revision of SB 153 incorporating the recommendations of the task force.

SECTIONAL SUMMARY

Sec. 1 The Department of Health and Social Services shall set standards under which each designated treatment facility will provide for the psychological, social, vocational, educational and recreational needs of the patient.

Sec. 2 Requires all evaluation and designated treatment facilities to administer treatment and medication only in a manner consistent with the statutes.

Sec. 3 A patient ordered to receive involuntary outpatient treatment may be required to undergo inpatient treatment when the provider of treatment determines that an appropriate facility will accept the patient and that the patient is mentally ill and likely to cause serious harm to themselves or others.

In that case, the following statutes relating to notice and hearing apply:

AS 47.30.795 Involuntary outpatient care for committed persons

(c) If during the commitment period the provider of outpatient care determines that the respondent can no longer be treated on an outpatient basis because the respondent is likely to cause harm to self or others or is gravely disabled, the provider shall give the respondent oral and written notice that the respondent must return to the treatment facility within 24 hours, with copies to the respondent's attorney and guardian, if any, the court, and the inpatient treatment facility. If the respondent fails to arrive at the treatment facility within 24 hours after receiving the notice, the professional person in charge may contact the appropriate peace officers who shall take the respondent into custody and transport the respondent to the facility. If it is determined by the professional person in charge to be necessary, a member of the treatment facility staff shall accompany the peace officers when they take the respondent into custody.

Sec. 47.30.745. 90-day commitment hearing rights. (a) A respondent subject to a petition for 90-day commitment has, in addition to the rights specified elsewhere in this chapter, or otherwise applicable, the rights enumerated in this section. Written notice of these rights shall be served on the respondent and the respondent's attorney and guardian, if any, and may be served on an adult designated by the respondent at the time the petition for 90-day commitment is served. An attempt shall be made by oral explanation to ensure that the respondent understands the rights enumerated in the notice. If the respondent does not understand English, the explanation shall be given in a language the respondent understands.

(b) Unless the respondent is released or is admitted voluntarily following the filing of a petition and before the hearing, the respondent is entitled to a judicial hearing within five judicial days of the filing of the petition as set out in AS 47.30.740(b) to determine if the respondent is mentally ill and as a result is likely to cause harm to self or others, or if the respondent is gravely disabled. If the respondent is admitted voluntarily following the filing of the petition, the voluntary admission constitutes a waiver of any hearing rights under AS 47.30.740 or under AS 47.30.685. If at any time during the respondent's voluntary admission under this subsection, the respondent submits to the facility a written request to leave, the professional person in charge may file with the court a petition for a 180-day commitment of the respondent under AS 47.30.770. The 180-day commitment hearing shall be scheduled for a date not later than 90 days after the respondent's voluntary admission.

(c) The respondent is entitled to a jury trial upon request filed with the court if the request is made at least two judicial days before the hearing. If the respondent requests a jury trial, the hearing may be continued for no more than 10 calendar days. The jury shall consist of six persons.

(d) If a jury trial is not requested, the court may still continue the hearing at the respondent's request for no more than 10 calendar days.

(e) The respondent has a right to retain an independent licensed physician or other mental health professional to examine the respondent and to testify on the respondent's behalf. Upon request by an indigent respondent, the court shall appoint an independent licensed physician or other mental health professional to examine the respondent and testify on the respondent's behalf. The court shall consider an indigent respondent's request for a specific physician or mental health professional. A motion for the appointment may be filed in court at any reasonable time before the hearing and shall be acted upon promptly. Reasonable fees and expenses for expert examiners shall be determined by the rules of court.

(f) The proceeding shall in all respects be in accord with constitutional guarantees of due process and, except as otherwise specifically provided in AS 47.30.700 — 47.30.915, the rules of evidence and procedure in civil proceedings.

(g) Until the court issues a final decision, the respondent shall continue to be treated at the treatment facility unless the petition for 90-day commitment is withdrawn. If a decision has not been made within 20 days of filing of the petition, not including extensions of time due to jury trial or other requests by the respondent, the respondent shall be released. (§ 1 ch 84 SLA 1981; am § 14 ch 142 SLA 1984)

Sec. 4 Expands, at the request of the patient, those persons who may participate in formulating the patient's individualized treatment plan. In addition to the patient's counsel, guardian or designated adult, representatives may now include a mental health professional previously engaged in the patient's care outside of the evaluation or treatment facility and another representative of the patient's choice.

This section also stipulates that the mental health care professionals may not withhold any of the evaluation or treatment information from the patient or others if the the patient has signed a waiver of confidentiality.

Sec. 5 Amends one sentence in AS 47.30.825(d) to read: "When practicable, the patient shall be consulted as to the patient's preference among forms of adequate, medically advisable restraints including medication, and that preference shall be honored (CONSIDERED)."

Sec. 6 AS 47.30.825(c) is reenacted to provide that a patient capable of giving informed consent has the right to give or withhold that consent to medication and treatment when it is not a crisis or impending crisis situation as described in AS 47.30.838(a)(1):

Sec. 47.30.838. PSYCHOTROPIC MEDICATION IN EMERGENCIES. (a) Except as provided in (c) of this section, an evaluation facility or designated treatment facility may administer psychotropic medication to a patient without the patient's informed consent, regardless of whether the patient is capable of giving informed consent, only if

(1) there is a crisis situation, or an impending crisis situation, that requires immediate use of the medication to preserve the life of, or prevent significant physical harm to, the patient or another person, as determined by a licensed physician or a registered nurse; the behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's response to the behavior or condition must be documented in the patient's medical record; the documentation must include an explanation of alternative responses to the crisis that were considered or attempted by the staff and why those responses were not sufficient; and

Sec. 7 Adds four (AS 47.30.836-.839) new sections pertaining to PSYCHOTROPIC MEDICATIONS IN NON-EMERGENCIES, INFORMED CONSENT, PSYCHOTROPIC MEDICATIONS IN EMERGENCIES and COURT-ORDERED ADMINISTRATION OF MEDICATION.

AS 47.30.836 PSYCHOTROPIC MEDICATION IN NON-EMERGENCIES: Facilities may not administer psychotropic medication in a situation that does not involve a crisis without the patient's informed consent unless the court

determines that the patient lacks the capacity to give informed consent and the court approves use of the medication.

AS 47.30.837 INFORMED CONSENT: Defines informed consent for the purposes of the section and describes the facility's responsibility to provide necessary information for the patient's decision. "Competent," "voluntary," and "informed" are defined in detail.

AS 47.30.838 PSYCHOTROPIC MEDICATION IN EMERGENCIES: Describes "crisis" situation, who determines, and requires documentation and consideration of alternatives. Limits "crisis" period to 24 hours, requires that conditions, medication, dose and method of administration be specified. May extend to 3 "crisis" periods for a total of 72 hours. Requires post-"crisis" consultation and discussion with patient. Without court approval, psychotropic medications may not be administered without the patient's informed consent for more than 3 "crisis" periods.

AS 47.30.839 COURT-ORDERED ADMINISTRATION OF MEDICATION: Allows a facility to obtain court approval for the administration of psychotropic medication under specific circumstances and in a specified manner. The court must appoint a court visitor to help determine if the patient is capable of informed consent. Describes documentation the visitor must include in the report to the court. Requires hearing within 72 hours. The court determines the competency of the patient to give informed consent. If the court rules that the patient is incapable of informed consent, the court shall approve the proposed medication. This applies to the initial commitment period and is reconsidered if the facility files a petition to extend or continue commitment. If the patient becomes competent and gives informed consent, it shall be documented in writing in the patient's file.

Sec. 8 AS 47.30.840(a)(9) is amended to read: "A person undergoing evaluation or treatment under AS 47.30.660-47.30.915 has the right to reasonable opportunity for indoor and outdoor exercise and recreation;

Sec. 9 New section AS 47.30.847 PATIENT'S GRIEVANCE PROCEDURES: Establishes a patient's grievance procedure and requires each facility to designate a staff member trained in mental health consumer advocacy to serve as the patient's advocate, upon patient's request, in bringing grievances and pursuing redress.

Sec. 10 Adds a final sentence to AS 47.30.850 EXPUNGEMENT OF RECORDS: Upon the filing of the motion and full release, the court shall order the court records expunged.

Sec. 11 Repeals AS 47.30.825(e): "A patient has the right to be free from unnecessary or excessive medication. Psychotropic medication may be administered only on the order of a licensed physician when the physician determines that this medication is in the best interest of the patient or will prevent serious harm to others." Previous sections supercede.

SB 153

Fiscal

Brent McGee - OPA - ^{-O- will fax}
John Salemi - Public Defender } teleconf.

Chris Christenson - Coerts - here

Richard Piques - Dept. Law - ON ITS WAY

H+SS - Margaret Lowe - here

Faint handwritten notes, possibly including "T. ...", "5/23/12", and "11:11".

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR POURCHOT

TO: CSSB 153()

Page 1, after line 2:

Insert a new bill section to read:

"* Section 1. AS 44.21.410(a) is amended by adding a new paragraph to read:

(8) provide visitors in proceedings under AS 47.30.839."

Page 1, line 3:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 7, after line 31:

Insert a new subsection to read:

"(j) In this section, "visitor" means a visitor provided by the office of public advocacy under AS 44.21.410(a)(8)."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR POURCHOT

TO: CSSB 153()

Page 7, line 7, after "all":

Insert "evidence presented at the hearing, including"

Page 7, line 8, after "litem,":

Insert "the petitioner,"

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 14, 1992

REPLY TO:

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FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

465-3603

Honorable Pat Pourchot
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 153

Dear Senator Pourchot:

Dan Austin called this morning to request a fiscal note from the Department of Law regarding SB 153. As fiscal information was needed in a very short period of time, I am responding to his request in this letter format rather than with a fiscal note. If a formal fiscal note is required, please let me know and our Division of Administrative Services will prepare one.

SB 153 establishes the requirement that there be a judicial determination regarding the use of psychotropic medication over a patient's refusal to take the medication. These judicial hearings will require additional attorney time not currently required. It is our understanding that Alaska Psychiatric Institute (API) estimates that there will be about 20 "refusals" per year. I am not certain if the hospital believes that all of these refusals will result in judicial hearings, but even if they don't there will be attorney consultation time regarding the matter. The estimate from API does not include the hearings or consultations which will be required for the designated treatment beds at Fairbanks Memorial Hospital or Mt. Edgecumbe Hospital, or the proposed designated treatment beds at Bartlett Memorial Hospital. We would estimate that an additional 10 hearings or consultations would be needed each year to accommodate these facilities. Of course there will also be the general requirement that the attorney general's office provide training to treatment staff regarding issues such as treatment refusal procedures.

We estimate that an average of one attorney day would be spent on each judicial hearing. The estimate is predicated on the assumption that not all 30 of the refusals will end in a court hearing and that some of the refusals will result in seriously

Honorable Pat Pourchot
Alaska State Senate
Re: SB 153

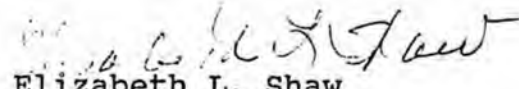
April 14, 1992
Page 2

contested hearings. The addition of 30 additional attorney days throughout the Department of Law cannot be quantified in a particular monetary sum. However, we do note that the Department of Law would be called on to represent the Department of Health and Social Services in the hearings and to consult and train regarding these issues on an ongoing basis. We caution that the addition of new duties at a time when budgets and staff are being drastically reduced should be avoided. It is doubtful that the Department of Law, which faces the loss of several civil division attorneys in the House Finance budget plan, will be able to respond to this new request for services without it adversely affecting other statutory requirements for representation.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Elizabeth L. Shaw
Assistant Attorney General

ELS/bap

cc: Dick Pegues
Paul Fuhs
Deborah E. Behr

TUESDAY, April 14, 1992

Drugged patient wins jury ruling

API to pay \$225,000 in 1987 case

By SHEILA TOOMZY
Daily News reporter

A mentally ill woman, injured against her will with a potent psychiatric drug that left her permanently disfigured, has won a \$225,000 jury verdict against the Alaska Psychiatric Institute.

The verdict, returned Friday in Anchorage Superior Court, comes as the legislature considers new rules governing forced medication of involuntarily committed patients, particularly the use of powerful anti-psychotic drugs, which can have serious side-effects.

In general, Alaska doctors

have a legal right to force-medicate patients who have been involuntarily committed.

Barbara Novelli, a 44-year-old Anchorage woman, suffers from bipolar disease, which is characterized by alternating cycles of depression and extreme mania. She has been treated for years with lithium carbonate, a mood "leveler" routinely used in such cases.

Lithium is not an antipsychotic drug and does not generally produce extreme side-effects.

But periodically, Novelli

Please see Page B-3, API

API: Woman wins lawsuit against state hospital

Continued from Page B-1

would stop taking her lithium and deteriorate into an acute psychotic state, according to court records. The 1987 incident that the jury examined occurred during her sixth admission to API. At the time, API staff knew that the drug they gave her, an antipsychotic called Navane, caused her to have muscle spasms, including facial twitching and involuntary limb and trunk movements.

At issue was whether API ever tried to persuade Novelli to voluntarily resume her lithium doses or, instead, caused permanent injury by forcibly injecting her with a drug that she had good reason to refuse.

API Director Dr. Norwood Knight-Richardson said Monday that he was not surprised by the verdict. "A lot of the issues around this (forced medica-

tion) are very, very difficult to understand," Knight-Richardson said.

The choice facing his staff, he said, was to leave Novelli in a deteriorating psychotic state, which, according to the court record included writhing on the floor and inappropriate sexual touching of other patients, or to bring her out of the psychosis and risk what they believed would be temporary side effects.

API staff claimed Novelli was offered lithium first and refused it, but there was no note to that effect in any hospital record. Knight-Richardson agreed.

Laurel Peterson, Novelli's attorney, said no such effort was made.

The hospital did not ask Novelli's family or friends to help persuade her to resume taking her lithium, he said, and they ignored specific warnings from her private psychiatrist not to use

an anti-psychotic. API staff rushed to use an anti-psychotic, Peterson said, because it's the easiest way "to control a patient going through a psychotic episode." Such drugs "knock you on your butt... make you mute and catatonic," he said.

Five years after being force-medicated, Novelli's twitching symptoms remain, and she needs six pain-killers a day, he said.

Jurors awarded her \$25,000 for medical expenses and \$200,000 for suffering and disfigurement. Novelli's illness makes her largely unemployable, so jurors did not compensate her for lost wages.

The state is currently the defendant in another lawsuit over forced medication, a class action brought by Advocacy Services of Alaska on behalf of all such patients. Jeff Jesse, an attorney for the agency, said the suit is

on hold while a task force tries to deal with the issue through legislation. A hearing is scheduled today at 8:30 a.m.

Proposed reforms would require that the magistrate who normally holds commitment hearings at API decide if forcing a patient to take a drug is in the patient's best interest. The real purpose of the reforms is to force API to spend more time trying to get patients "to buy into their treatment," Jesse said. "We don't want to burden the system with unnecessary hoop jumping."

The judge will almost always uphold the institution, he predicted, but doctors who know they might have to explain their decision to an impartial outsider will make more considered judgments. "They act too quickly. If there aren't rules making them more accountable for what happens."