

HB

174

Adopted

AMENDMENT #1

OFFERED IN THE HOUSE
TO: HB 174

1 Page 4, following line 26:

2 Insert a new bill section to read:

3 **** Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DATA FROM PRIOR YEARS. (a) As a condition of receiving state money for state
6 fiscal year 2002 under AS 47.30.520 - 47.30.620, 47.30.660 - 47.30.915, or AS 47.31, the
7 entity eligible for the state money shall agree to furnish the Department of Health and Social
8 Services with confidential and other information about recipients of services paid for, in
9 whole or part, with state money during state fiscal years 2000 and 2001 under AS 47.30.520 -
10 47.30.620, 47.30.660 - 47.30.915, or AS 47.31. The entities governed by this subsection shall
11 comply with regulations of the department regarding the submission of the information
12 required under this subsection.

13 (b) The department may review, obtain, and copy the information submitted under (a)
14 of this section. The department may also obtain information of the type described in (a) of
15 this section from the patient who received the services described in (a) of this section and
16 review or copy that information.

17 (c) Records and information obtained by the department under this section are
18 medical records, shall be handled confidentially, and are exempt from public inspection and
19 copying under AS 40.25.110 - 40.25.120. The records and information may be copied and
20 disclosed under regulations established by the department only under the same circumstances
21 as provided for confidential records under AS 47.30.845, as amended by sec. 4 of this Act.

22 (d) The department may review the information obtained under this section to
23 evaluate compliance with the applicable statutes and grant contracts. However, the
24 department may not use the information furnished under this section to impose civil or

1 administrative penalties for failure to comply with applicable statutes and contracts. The
2 department may use the information to establish a database on which to base future
3 management practices and to impose restrictions and conditions on use of state money in
4 fiscal year 2002 and later.

5 (e) In this section, "department" means the Department of Health and Social
6 Services."

7

8 Renumber the following bill section accordingly.

Alaska State Legislature

REPRESENTATIVE
HUGH "BUD" FATE

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 452-4448
Fax: (907) 456-3346



While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4976
Fax: (907) 465-3883
House District 33

House Of Representatives

APR 18 2001

Memo

TO: Representative Rokeberg, Chair
House Judiciary Committee

FROM: Representative Hugh Fate, Vice-Chair
Legislative Budget and Audit Committee

RE: Bill Hearing Request, HB 174

Date: April 18, 2001

Hugh Fate

The Legislative Budget and Audit Committee respectfully requests a hearing on House Bill 174 "A Act relating to mental health information and records; and providing for an effective date."

This bill was introduced by request of the Legislative Budget and Audit Committee on behalf of the Department of Health and Social Services. The bill addresses recommendation #4 of the Audit Report: "Department of Health and Social Services, Divisions of Medical Assistance and Mental Health and Developmental Disabilities, Community Mental Health Center Program Follow-Up" dated December 1, 2000 (excerpt attached). An analysis of the bill's provisions is also attached. A zero fiscal note will be forthcoming from the Department. *is attached.*

Your favorable consideration of this request will be appreciated.

CC: Pat Davidson, Legislative Auditor

Elmer Lindstrom, Special Assistant
Department of Health and Social Services

Alaska State Legislature

REPRESENTATIVE
HUGH "BUD" FATE

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119 N. Cushman, Suite 101
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(907) 452-4448
Fax: (907) 456-3346



House Of Representatives

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House District 33

SPONSOR STATEMENT HB 174

Reporting of Confidential Client Data

The Division of Mental Health and Developmental Disabilities has had difficulty in its efforts to gather confidential information about clients. Some providers are resistant to reporting data, and to notifying the division of emergent situations when clients are missing, seriously injured or deceased. Some providers claim that they fear potential litigation if they supply confidential information, that reporting would violate client rights to privacy and professional ethics. Some providers are experiencing technical difficulties or may have back-burnered the submission of data. While most providers are cooperative, in-order for the state to insure the health, safety and well being of consumers, it is necessary to strengthen and clarify laws to specify the Departments legal positions on these matters.

The gathering of this data is essential to the division's ability to monitor, make management decisions, meet service needs of Alaskans with mental illness, and to comply with legislative expectations for providing accurate performance measure information. The requirement that providers notify the division of missing, seriously injured, and deceased consumers involves emergent situations, and is consistent with the intent of HIPPA and HCFA.

This bill:

- Gives the Department of Health and Social Services the statutory authority to require that mental health centers that receive state funds report certain confidential client data to the Division of Mental Health and Developmental Disabilities (DMHDD), and comply with regulations regarding such data submission.
- Protects licensed mental health clinicians who report required confidential client data.
- Clarifies that confidential client data are considered to be "confidential medical records" and are not open to the public for inspection or copying.

- Requires that mental health providers notify DHSS of emergency situations involving mental health clients—most other states have these requirements.
- Provides access to confidential information regarding consumers utilizing the Mental Health Treatment Assistance Program and requires confidential handling of that information.
- Protects consumers rights to privacy by insuring that confidential information is used and handled appropriately
- Promotes the health and safety of Alaska's mental health consumers.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 174
 (H) Publish Date: 4/18/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Mental Health Information & Records BRU: Institutions & Administration
 Component: Mental Health/DD Admin
 Sponsor: RLS by Request of Leg Budget & Audit
 Requester: H(HES) Component Number: 310

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 2 of this bill requires Community Mental Health Centers receiving State mental health grant funds to report confidential information to the Division about State-funded consumers' demographics, service and cost of service, and to notify the Division in the case of a missing, injured or deceased State-funded consumer. These data reporting requirements are being included in the FY02 Request for Mental Health Grant Proposals.

This statutory change bears no direct cost implication for the Division.

Prepared by: Sarah Brinkley, Administrative Manager Phone 465-3167
 Division: DMHDD Date/Time 3/17/01 3:13 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/17/01 3:13 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

March 31, 2001

Honorable Hugh Fate
Vice-Chairman
Legislative Budget and Audit Committee
Alaska State Capitol; Rm. 416
Juneau, AK 99801-1182

SUBJECT: Background on mental health records lawsuit

Dear Representative Fate,

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, has been involved in a lawsuit brought against the state by the Fairbanks Community Mental Health Center (FCMHC). The suit was filed because of concerns over the division's authority to require the submission of certain confidential client information, and the center's belief that submission of confidential information could result in liability suits brought against the center and clinicians by mental health treatment consumers. While only one suit was filed, other mental health centers expressed similar legal concerns.

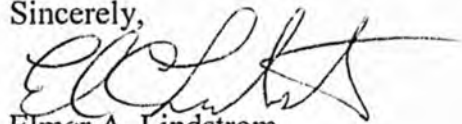
FCMHC has recently agreed to drop their lawsuit because House Bill 174, introduced at the request of the Legislative Budget and Audit Committee, addresses virtually all of their legal concerns. However, if this legislation does not pass this session, the suit will be reopened. Without passage of HB 174, there will continue to be questions about the state's authority to require data from FCMHC and all other community mental health centers that receive state funding.

As you know, the recent legislative audit follow-up on the Division of Mental Health and Developmental Disabilities was critical of the division's effectiveness at collecting "comprehensive client information". The passage of HB 174 is viewed as a significant step toward ridding the division of a longstanding barrier to effective data collection.

Honorable Hugh Fate
Page 2

The bill has the support the Department of Health and Social Services and of Pat Davidson, the Legislative Auditor.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Lindstrom".

Elmer A. Lindstrom
Special Assistant to the Commissioner

CC: Pat Davidson, Legislative Auditor

Walter Majoros, Director
Division of Mental Health and Developmental Disabilities

Reporting of Confidential Client Data

The Division of Mental Health and Developmental Disabilities has had difficulty in its efforts to gather confidential information about clients. Some providers are resistant to reporting data, and to notifying the division of emergent situations when clients are missing, seriously injured or deceased. Some providers claim that they fear potential litigation if they supply confidential information, that reporting would violate client rights to privacy and professional ethics. Some providers are experiencing technical difficulties or may have back-burnered the submission of data. While most providers are cooperative, in-order for the state to insure the health, safety and well being of consumers, it is necessary to strengthen and clarify laws to specify the Departments legal positions on these matters.

The gathering of this data is essential to the division's ability to monitor, make management decisions, meet service needs of Alaskans with mental illness, and to comply with legislative expectations for providing accurate performance measure information. The requirement that providers notify the division of missing, seriously injured, and deceased consumers involves emergent situations, and is consistent with the intent of HIPPA and HCFA.

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- Promotes the health and safety of Alaska's mental health consumers.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
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Auditor's Report

P.O. Box 113300, Juneau, Alaska 99811-3300

Division of Legislative Audit

06-7599-01

Audit Control Number



December 1, 2000

DEPARTMENT OF HEALTH AND SOCIAL SERVICES,
DIVISIONS OF MEDICAL ASSISTANCE
AND MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES, COMMUNITY MENTAL HEALTH
CENTER PROGRAM FOLLOW-UP

Audit Report



Prior Recommendation No. 4

DMHDD should obtain client service data to enable effective management of the State's community mental health programs.

Currently, the lack of client service data renders DMHDD unable to determine if community mental health funding is appropriate. No reliable data currently exists which accurately reflects the total number of clients annually receiving publicly funded community mental health services. While the Medicaid payment system does collect the number of clients served through Medicaid, major deficiencies exist in DMHDD's data collection concerning clients served by state grant funds.

DMHDD has collected selective mental health client data from providers for many years using a management information system (MIS). However, the type of information collected is not adequate to measure the number of clients served by the state grant system. Inherent system inadequacies such as no mandatory provider participation requirements, no data verification process, and a varying definition between providers of who qualifies as a "client" makes the reliability of the data suspect. Some providers we

⁷ The cost study consisted of actual personal services and overhead expenditure data from each of 6 providers. The providers sampled were selected in an effort to produce a representative cross section of providers with regard to size, region, and funding amounts.

interviewed expressed frustration that while they spend the time to submit data reports to DMHDD, they receive little for their efforts.

Furthermore, current data collection methods do not allow unduplication between the number of clients served as reported by DMHDD's MIS and the number of clients served as reported by the Medicaid MIS. Without this ability, DHSS cannot identify the total population of mental health clients served nor detect if Medicaid payments are being made for clients also funded through state grants.

While the number of clients served does not reflect the amount of service delivered, we believe that a significant element of grant funding decisions should be based on the historical number of clients served in an area. Currently, it appears DMHDD bases its grant funding allocations primarily on how much a provider was granted in prior years.

Current Status of Prior Recommendation

Since the previous report, DMHDD has installed a new data system, ARORA. This system is capable of capturing the individual client data, but DMHDD has found it difficult to actually collect and use the data for grant management decisions. Problems surrounding the collection of data from providers have included technical difficulties, providers' inability to submit data in a timely fashion, and a lawsuit ostensibly filed to protect the confidentiality of client data.

DMHDD has been ineffective in its efforts to collect comprehensive client information. The information services section is in frequent contact with providers regarding data submissions or lack thereof. Non-compliant providers also receive periodic reminders of their reporting obligations from the division director, but the division has been reluctant to become more assertive with these providers. While financial sanctions for providers that will not submit the required data would likely be the most effective method to gain compliance, the division is concerned with the effect these sanctions might have on consumers.

Legislative Audit's Current Position

The division's inability to collect comprehensive client data continues to limit its ability to use the management information system for grant funding decisions, ensure that services are not dual billed, or offer providers feedback about services and the associated costs. While we recognize that other sources of information, as discussed in the Reports Conclusions section, provide a context in which to review client data, that information is not an adequate substitute for comprehensive client data.

Many of the data problems are the result of provider noncompliance with specific grant requirements. To remedy this noncompliance, DMHDD may be forced to institute financial sanctions by withholding grant funds from grantees determined to be out of compliance with data submission requirements.

DMHDD is currently restructuring its data processing section, exploring possibilities to facilitate data submission, and discussing potential sanctions for providers that do not comply with data submission requirements. Though we view these efforts as steps in the

right direction, the actual implementation status of the recommendation remains limited. In addition to current efforts to obtain client data, we encourage DHSS to consider its long-term data needs and assess whether a system that collects only mental health data is cost effective when many clients receive services from multiple divisions.

APR 19 2001

ALASKA MENTAL HEALTH BOARD

TONY KNOWLES, GOVERNOR
STATE OF ALASKA

431 N. Franklin, Suite 200
Juneau, Alaska 99801
Office: (907) 465-3071
Fax: (907) 465-3079

April 19, 2001

Honorable Hugh Fate
Alaska House of Representatives
State Capitol, Room 416
Juneau, Alaska 99801-1182

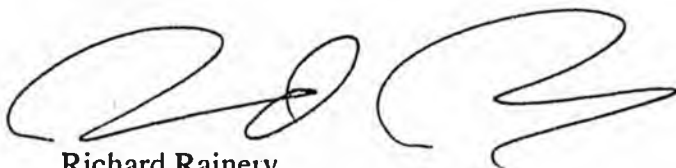
Dear Representative Fate:

The Alaska Mental Health Board (AMHB) is the state agency charged by statute with planning for Alaska's public mental health system and with advocating for Alaskans with mental illnesses. By law, at least half of the AMHB's appointed members must be Alaskans with mental illnesses or family members of these Alaskans. The central goal of the AMHB is to design and advocate for a consumer-oriented system of services.

Issues surrounding collection of data related to public mental health services and the protection of the confidentiality of that data have occupied the AMHB for a number of years. HB 174 requires the reporting of confidential client data to the state. The bill addresses confidentiality issues that have prompted hesitation by service providers to report client records by according the same level of confidentiality required for medical records to mental health records and protecting providers who report this data to the state. Consumer rights are protected by requirements that the state manage and use mental health records appropriately. The AMHB is on record supporting responsible collection of client data, most recently in Resolution 01-01 (enclosed). The AMHB must have accurate, complete data in order to perform its statutory duties of system planning and evaluation.

I appreciate this opportunity to apprise you of the AMHB's support for HB 174. Please let me know if you have any questions or wish any further information.

Sincerely,



Richard Rainery
Acting Executive Director

cc: Anne Henry, DMHDD

Alaska Mental Health Board

Resolution in Support of the Division of Mental Health and Developmental Disabilities

Collection of Provider Data

Resolution 01-01

Whereas, the Department of Health and Social Services (DHSS) agreed to community mental health providers' request to use their internal data gathering programs to collect data to be linked to the ARORA management information system; and

Whereas, consumer and consumer advocates, providers, the Alaska Mental Health Board (AMHB), the Alaska Mental Health Trust Authority (AMHTA), the DHSS and the Legislature agree consumer data must be collected; and

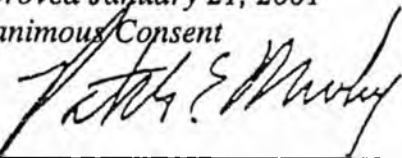
Whereas, the Division of Mental Health and Developmental Disabilities (DMHDD), despite several attempts at accommodating various providers over several years, has been unable to collect usable consumer data from a number of community mental health providers; and

Whereas, the AMHB and DMHDD have been facilitating a multi-year performance measures project, bringing together providers and consumers, reaching agreement on those measures which will provide the best data to improve services and increase system accountability, many of which are part of the ARORA data system;

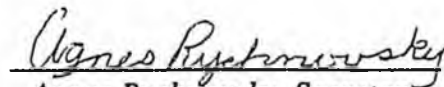
Now therefore be it resolved that the Alaska Mental Health Board supports the development by DMHDD, in conjunction with the stakeholder community, of a provider data collection plan to be included as a grant condition beginning July 1, 2001.

Approved January 21, 2001

Unanimous Consent



Pat Murphy, Chair


Agnes Rychnovsky, Secretary

NAMI of Fairbanks, Alaska, Inc.

*P.O. Box 72543, Fairbanks, AK 99707
(907) 456-4704*

April 18, 2001

RE: SB 135
HB 174

On behalf of NAMI of Fairbanks, Alaska, Inc., I am writing in support of the above mentioned bills. After reading HB 174, it seems to meet the needs of the state to be able to acquire information to better measure the performance of providers. This would also ensure the health and safety of mental health consumers, and still protect their rights to confidentiality.

NAMI of Fairbanks, Alaska, Inc. is a local non-profit organization whose mission is education, advocacy and support for people with mental illness and their families. As well as keeping abreast of legislative issues affecting our members, we offer general support meetings for consumers, families and friends, and a second support meeting for mental health consumers who are working on recovery skills. Another goal of our organization is to work with provider agencies for the best care for our members, and to educate the public to work towards removing the stigma associated with these illnesses.

Sincerely,

Jacquelyn Pananen
President
NAMI of Fairbanks, Alaska, Inc.

Subject: SB 135, HB 174

Date: Fri, 20 Apr 2001 10:07:07 -0800

From: "Jeri Lanier" <fcsajeri@mosquitonet.com>

Organization: Family Centered Services of Alaska

To: "Hugh Fate" <Representative_Hugh_Fate@legis.state.ak.us>

RECEIVED
APR 20 2001

Dear Representative Fate,

I just wanted to write you a short note and ask that you support HB 174 and accompanying bill SB 135. These are the Mental Health Confidentiality bills. A lot of hard work has gone into the writing of these bills, and last I heard from other consumers as well as NAMI Fairbanks, they satisfy all the concerns with the confidentiality pieces. I do know that we have to meet federal requirements with tracking information, and there will never be a 100% fool proof method to do this, but I do participate in the Federal Block Grant stuff for the last 2 years and we are in danger of losing funding if we do not get something up and running. Many of us worked hard to address all the issues that we could, and we are satisfied that these bills will meet our needs.

If you have any questions please feel free to contact me.

Sincerely

Jeri B. Lanier

Natural Support Specialist/Parent Advocate

Family Centered Services of Alaska, Inc.

620 5th Avenue, Fairbanks, AK 99701-4512

Phone: 907-474-0890 ext. 124 Fax: 907-451-8945

E-mail: fcsajeri@mosquitonet.com

Member of Alaska Mental Health Board

Chair, Children's Sub-Committee

jerilanian@mosquitonet.com