

HB

220

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB220CS(HES)-DHSS-DBH-04-11-05
 () Publish Date: _____
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): _____

Title: MENTAL HEALTH PATIENTS RIGHTS AND CHOICE OF THE SEX OF STAFF PROVIDING CARE RDU Behavioral Health
 Component: Alaska Psychiatric Institute

Sponsor: GARA

Requester: HOUSE (FIN) Component No. 311

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation is intended to put into law the right of a patient who receives mental health treatment to request the gender of the staff person providing the patient's intimate care. In those cases when this request is not possible, a licensed staff person may provide the care. If that is not possible, the intimate care will be provided with documentation in the patient's record that the care was provided, but the patient's request was not possible. This reasonable and accomodating language provides the facility the flexibility needed and eliminates the previous requirement that licensed staff perform the care. Based on this revision, the Division expects no fiscal impact.

Prepared by: Bill Hogan, Director Phone: 907-465-3166
 Division: Behavioral Health Date/Time: _____
 Approved by: Joni S. Gilbertson, Commissioner Date: 04/11/2005
 Agency: Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: GSHB 220(HES)
 (H) Publish Date: 4/4/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: MENTAL HEALTH PATIENTS RIGHTS AND CHOICE OF THE SEX OF STAFF PROVIDING CARE RDU Behavioral Health
 Component: Behavioral Hlth Medicaid Svcs
 Sponsor: GARA
 Requester: HOUSE (HES) Component No. 2660

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (0)						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 220 is intended to put into law the right of a patient who receives mental health treatment to request the gender of a licensed staff person who will provide the patient's intimate care. In those cases where the patient is incapacitated, the intimate care is to be provided by a staff member who is the same sex as the patient except as provided in (c)(2) of the proposed bill.

The Department projects that this bill will have zero fiscal impact on this component.

Prepared by: Janet Clarke, Assistant Commissioner
 Division: Finance and Management Services
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-1630
 Date/Time: 03/30/2005
 Date: 03/30/2005

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

SPONSOR STATEMENT

CSHB 220 (HES) – Mental Health Patient Privacy

HB 220 protects the personal privacy and safety of mental health patients. This legislation was prompted by the concerns of a former female mental health patient. Her specific concerns were the abuse of vulnerable patients and mental health patients' right to privacy.

This bill would allow a hospitalized adult mental health patient in Alaska to choose the gender of the person who provides them "intimate care" (bathing, toileting, changing, and dressing). If no person of the same gender is available, the care would be provided by a licensed staff member. If the institution is unable to comply with a patient's request or provide a licensed staff member, they will simply be required to document that in the patient's record. The bill also provides an exemption if compliance with a patient's request would adversely affect the patient's treatment plan.

Every Alaska citizen is entitled to dignity, respect and protection. I urge your support of this legislation.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

SECTIONAL ANALYSIS CSHB 220 (HES) – Mental Health Patient Privacy

- Section 1**
- ◆ Allows a hospitalized adult mental health patient in a hospital with more than 10 mental health providers on staff to request the gender of the person who provides them intimate care.
 - ◆ A notice must be posted of the right to choose the gender of a provider.
 - ◆ If no provider of the gender specified is available, the care must be provided by licensed staff and this must be documented in the patient record.
 - ◆ If no licensed staff is available, this must also be recorded in the patient's record.
 - ◆ A hospital is exempt if complying with the patient request would adversely affect the patient's treatment.
 - ◆ Definitions.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

MEMORANDUM

April 4, 2005

Explanation of Changes from Original Bill in CSHB 220 (HES)

Page 1, lines 5-10

Removed requirement for staff member to be "licensed."

Changed to a mental health patient over the age of 18.

Changed to a hospital that has more than 10 staff members to treat mental health patients on duty at the time of the patient request.

Page 1

Deleted requirement that if a patient is incapacitated, they be provided same-gender care. (old subsection (b))

Page 1, line 13

Deleted wording that required notices of policy to be placed in all patient rooms.

Page 2, line 3

Added that if the hospital cannot comply with the gender choice of a patient, the care should be provided by a *licensed* staff member.

Page 2, lines 5-8

Added exception for a hospital that cannot comply with a request and does not have a licensed staff member on duty.

Page 2, line 13-14

Added exemption if compliance would adversely affect patient treatment.

Page 2, lines 16-17

Added dressing and changing to definition of "intimate care."

Changes in CSHB 220 (HES)

Page 2

Page 2, lines 20-23

Added "nurse practitioners" under AS 08.68 and removed "natropaths" from the definition of a "licensed staff member."

Page 2, line 24

Changed definition of "mental health treatment" to a person who was admitted "primarily for" these types of treatment.

Page 2, line 28-29

Added definition of "staff member."

APR 5 2005

ALASKA MENTAL HEALTH BOARD

FRANK H. MURKOWSKI, GOVERNOR
STATE OF ALASKA

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Juneau, Alaska 99801
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Fax: (907) 465-3079
www.amhb.org

April 4, 2005

Representative Les Gara
Alaska House of Representatives
State Capitol, Room 418
Juneau, Alaska 99501


Dear Representative Gara:

The Alaska Mental Health Board (AMHB) would like to clarify its position on HB 220. It became apparent, following the House Health Education and Social Services Committee hearing on March 31, 2005, that several committee members interpreted my testimony before the committee to indicate that the AMHB opposed HB 220.

The AMHB does not, in fact, oppose HB 220, which aims to create patient gender choice rights in statute. The Board's preferred course of action, which it initiated several weeks ago, to put in place appropriate gender choice policies in hospitals providing mental health is to work with the Division of Behavioral Health and the Alaska Psychiatric Institute to make the necessary changes in the policies and procedures of the institutions in question. The AMHB has not taken an official position on the bill. That should not be interpreted as opposition to the bill.

I appreciate the opportunity to clear up any confusion concerning the AMHB's position, both on the issue and HB 220. Thank you.

Sincerely,



Richard Rainery
Executive Director

Cc: Representative Peggy Wilson

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DOCUMENT(S)
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NAMI Anchorage

*Anchorage's Voice on
Mental Illness*

There is hope.

Trish McDonald
Executive Director

Yvonne Akai Evans
President

Eileen Davey
Vice President

Roger Branson
Secretary

Alina Blasiak
Treasurer

Geno Daly
Member at Large

Pat Kouris
Member at Large

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Yvonne Akai Evans
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501 (c) non-profit
corporation in
Alaska since 1984

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

27 February 2005

Dear Faith and Dorrance:

We here at the National Alliance for the Mentally Ill, Anchorage Affiliate (NAMI-Anch) have received and support your request for psychiatric patients to have the ability, through existing law and the most basic of privacy rights, to request gender specific intimate care. We further feel that these rights need to be clearly enunciated and that an addition to AS 47.30.840 reflecting such is in order.

We concur with and support the position Disability Law Center has taken in their letter to you dated December 22, 2004 and support their further involvement in resolving this matter of extreme importance.

It is telling to us that we rarely hear of this issue in private facilities where patients and their families have the freedom and ability to select other service providers. We understand that public institutions operate on limited resources, however this most basic of human rights, the right to personal dignity, is one that cannot carry a price tag but must be provided for in public as well as private facilities.

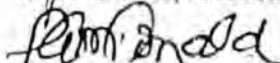
It is further troubling for us to realize that the staff making the majority of these decisions involving this most intimate of care are those who are the least trained. These staff members may well view their employment in the psychiatric care field as being transitory in nature and feel they have nothing or little to lose should a complaint regarding them be found to have merit. Our highest concern is that these individuals wield excessive physical and emotional power over these vulnerable persons and can too easily abuse the discretion given them to include suppressing complaints against them.

It is important to note that as State laws are currently being interpreted these basic rights to control who views and perhaps even touches our naked bodies may well be, and likely are being, violated without rising to the level of being a sexual assault or breaking any other laws. However, in this context, sexual assaults may well be, and quite possibly are being, committed with the vulnerable victim having little to no recourse, hope or even prayer of justice.

We urge our lawmakers to pass legislation which will protect individuals receiving this care.

Sincerely,


Yvonne Akai Evans, President


Trish McDonald, Executive Director

Cc Ron Adler
David Fleurant



NAMI Alaska

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www.nami-alaska.org
info@nami-alaska.org

February 28, 2005

Faith Myers
Dorrance Collins
330 E. 14th Avenue. Apt. E
Anchorage Alaska 99501

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins,

NAMI Alaska supports your efforts to amend AS47.30.840 to include a section requiring the right of psychiatric patients to choose the gender of staff providing intimate care.

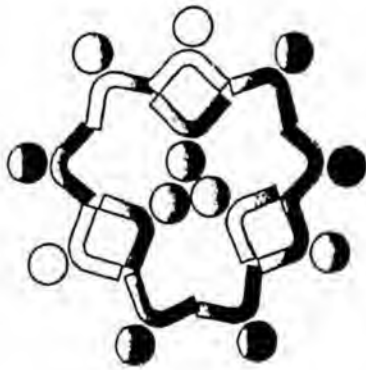
Many persons with mental health issues already have significant problems with trust and issues pertaining to their bodies. To give them the opportunity to select a same sex care provider may keep from re-traumatizing someone who has been physically violated or inappropriately touched in the past.

The right to chose a same-sex care provider while in a vulnerable mental state should be a state mandated right to provide the best possible care for psychiatric patients in Alaska.

Sincerely,

Beth LaCrosse
by Tracy Barbee

Beth LaCrosse, President



Alaska Mental Health Consumer Web

1248 Gambell St.
Anchorage, ALASKA 99501

Phone: 907.222.2980
Fax: 907.222.2981

March 2, 2005

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

Dear Faith and Dorrance:

We at Alaska Mental Health Consumer Web would like to express our full support for your efforts to ensure the right of Alaskans undergoing mental health evaluation and treatment to choose the gender of their caregivers. Specifically, we wholeheartedly endorse the amendment of AS47.30.840 to include the right of Psychiatric patients to choose the gender of those that provide their care. It is our collective belief that this is not only a core human right, but also a matter of basic human dignity. For many years Alaskans have received care without regard to the gender of the provider. This practice has potentially violated the rights of thousands of Alaskan citizens and may have breached the boundaries of people who may have issues of sexuality and trust.

We again applaud your efforts and if I can be of further assistance please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Carl Ipock".

Carl Ipock
Executive Director
Alaska Mental Health Consumer Web

March 1, 2005

Faith Myers,
Dorrance Collins
330 E. 14th Ave., Apt E
Anchorage, Alaska 99501

Re; Psychiatric Staff Gender Rights

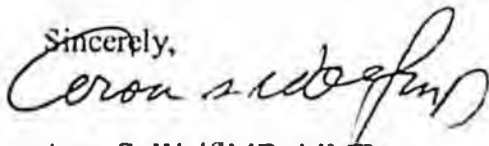
Dear Ms Myers and Mr. Collins,

I would very much support your efforts to amend AS47.30.840 to include a section acknowledging the right of Psychiatric patients to choose the gender of staff providing intimate care.

This is a very important issue as my Psychiatric inpatients already have significant issues with both sexuality and trust.

I believe that as a Physician this would be a significant step forward in providing the best and most therapeutic care for psychiatric patients throughout the State of Alaska. Please contact me if I can be of further assistance.

Sincerely,



Aron S. Wolf MD, MMD
Distinguished Life Fellow American Psychiatry Association

Alaska Counseling, Inc.
Parkway Professional Building II
4120 Laurel St., Suite 102, Anchorage, Alaska 99508
907.569.8600

PsychRights

LAW PROJECT FOR
PSYCHIATRIC RIGHTS, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax
<http://psychrights.org>

January 3, 2005

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins:

The Law Project for Psychiatric Rights (PsychRights) unreservedly supports your efforts for legislative acknowledgment of the right for psychiatric patients to choose the gender of staff providing intimate care. We are outraged such a choice is not provided now. It is well known that many psychiatric patients (male as well as female) have been sexually assaulted or otherwise physically abused and that the failure to be sensitive to this issue is re-traumatizing and counter-therapeutic. Since the Alaska Psychiatric Institute is unwilling to recognize this and change its policy, a legislative directive is certainly in order.

PsychRights also concurs in the Disability Law Center's conclusion that Alaska patients already have such rights under the Alaska Constitution at least. If the 2005 Alaska Legislature fails to correct this outrage, I would encourage the Disability Law Center to pursue this through the courts.

Yours truly,



James B. (Jim) Gottstein, Esq.

cc: Ron Adler
David Fleurant



December 22, 2004

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

Dear Faith and Dorrance:

I am in receipt of your letter wherein you request support from the Disability Law Center, Alaska's Protection and Advocacy agency for individuals with disabilities, in your efforts to secure "more rights" for patients at the Alaska Psychiatric Institute ["API"]. Specifically, you are advocating for a change in AS 47.30.840 that would, in effect, provide Alaskans undergoing mental health evaluation or treatment the right to choose the gender of the person providing them hands-on intimate care, such as toileting, bathing, diapering and dressing. You have asked the Disability Law Center to both confirm the legality of the requested statutory change and to voice support for your effort.

A review of statutory and judicial authority reveals a strong foundation of support for your legislative goal. In fact, securing the change in statute would not be bestowing 'more rights' onto patients, but would be a codification of an existing constitutional right that is not being acknowledged and protected. Based on this research, as well as common sense and decency, the Disability Law Center fully supports your effort.

It is clear that the State anticipates that some individuals admitted to API will require assistance with intimate care activities. The brief job description for a psychiatric nursing assistant that appears on the State's website describes the duties as follows:

Assist patients in occupational, recreational, and industrial therapy and school programs. Assist patients with daily routine activities *such as oral hygiene, preparing for meals, toileting, or preparing for bed.* Help with feeding of patients unable to feed themselves.

(Emphasis supplied). Acknowledging the need by some patients for this intimate assistance during a hospitalization, must these individuals submit themselves to care by a staff member of API's choosing, or do they have the right to choose the gender of the person viewing and touching their bodies? Do patients at API have a right to privacy?

Article I, Section 22 of the Constitution of Alaska provides that: "The right of the people to privacy is recognized and shall not be infringed." The specific enumeration of this right in Alaska's Constitution has been interpreted to

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PROTECTION &
ADVOCACY
SYSTEMS

mean that Alaska's right to privacy is broader than that afforded by the United States Constitution. *Messerli v. State*, 626 P.2d 81 (Alaska 1980).

Federal courts have clearly enunciated that encompassed within the right to privacy is the right to shield one's unclothed body from view. As the Ninth Circuit Court of Appeals held over forty years ago, "We cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity. *Story v. York*, 324 F.2d 450, 455 (9th Cir. 1963).

Many of the cases discussing this aspect of the right to privacy arose in the context of employment discrimination complaints against correctional facilities. These facilities were sued for restricting the gender of certain guard positions, in part, to protect the privacy rights of prisoners. The courts have held that this right is not destroyed simply because one is institutionalized. *Turner v. Safley*, 482 U.S. 78, 84. (1987) ("Prison walls do not form a barrier separating prison inmates from the protections of the Constitution."); *Robino v. Iranon*, 145 F.3d 1109, 1111 (9th Cir. 1998) ("[A] person's interest in not being viewed unclothed by members of the opposite sex survives incarceration.")

Most people, however, have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating. When not reasonably necessary, that sort of degradation is not to be visited upon those confined in our prisons.

Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir. 1981).

There are a few cases that address the employment of gender specific individuals in psychiatric hospitals. Courts have recognized that, unlike prison guards, hospital staff can infringe significantly on a patient's privacy rights. "Treatment assistants at a state psychiatric hospital intrude on patients' privacy by performing duties involving intimate personal care such as 'assisting patients with toileting, disrobing, showering and cleaning their genitals,' as well as stripping patients before placing them into restraints and conducting bed checks of patients who sleep naked or whose nightwear comes off during sleep. *Olsen v. Marriott International, Inc.*, 75 F. Supp.2d 1052, 1062 (Ariz. 1999) quoting *Jennings v. New York State Office of Mental Health*, 786 F. Supp. 376, 382 (S.D.N.Y. 1992).

Obviously most people would find it a greater intrusion of their dignity and privacy to have their naked bodies viewed (or any number of personal services performed) by a member of the opposite sex. Although there will be a certain relinquishment of privacy by necessity when anyone is admitted to a hospital or mental health facility, this is not to say that a patient has forfeited all rights to privacy.

Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees, 635 F.Supp. 1010, 1013-14 (E.D. Mich. 1986) (footnote omitted).

The court in *Jennings* distinguished the privacy rights of patients from that of prisoners.

The patients at OMH are not convicted criminals but instead are there as a result of civil commitments. Thus, their right to privacy may not be abrogated by virtue of their confinement in a state-run facility unlike a prison inmate who has forfeited some rights in repayment to society. The patients at OMH are just that, patients. They are vulnerable and mentally ill. Basic decency demands that their privacy be respected to whatever degree feasible.

Jennings v. New York State Office of Mental Health, 786 F. Supp. At 384. The federal district court in Michigan held that not only should the psychiatric hospital respect the privacy rights of their patients, but should assist in protecting those rights.

It is obvious that the law recognizes the privacy rights of these patients or residents and that the defendants had the right to protect these rights, possibly even more so in the case of mental health patients who are far more reliant on the protection of the defendants than patients in hospitals. Moreover the failure to recognize their privacy rights is contrary to the concept of normalization which recognizes that mentally handicapped persons have a right to lives as close as possible to that which is typical for the general population.

Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees, 635 F.Supp. at 1013. See also *Jennings v. New York State Office of Mental Health*, 786 F. Supp. at 383 ("[T]he fact that a person does not assert his or her constitutional right does not mean that state run facilities are still not obligated to respect these same rights.") "It would be a strange doctrine . . . that would decree that the sanctity of the right of privacy in the performance of the excretory functions, fully respected in a public restroom, is forfeited by the fact of falling ill and becoming hospitalized." *Local 567*, 635 F.Supp. at 1014.

Sensitivity towards the privacy rights of patients would also seem to further the treatment goals for many individuals. A large number of women and men have been sexually abused and live with the devastating aftermath of such experiences. Many with histories of maltreatment are extremely sensitive to issues of privacy and violation of their privacy. Early on in their lives their sense of body integrity was invaded by the behaviors of their perpetrators. Being exposed to the invasion of privacy while dressing, showering, or using the toilet can cause flashbacks in some individuals of prior abuse experiences. In others it can cause embarrassment and a sense of shame, even if they have no history of prior maltreatment. The need for a safe place where one is not exposed to the dominate

and submission process is imperative. The only way to make that possible is for people to have choices. Without choice there is a potential for the reenactment of trauma.

It is therefore possible that being viewed naked by staff of the opposite gender can cause significant harm to patients. A serious risk of harm violates the Eighth Amendment of the U.S. Constitution, even if no harm has yet occurred. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Helling v. McKinney*, 509 U.S. 25 (1993).

For the reasons set forth above, the Disability Law Center of Alaska enthusiastically supports your efforts to protect the privacy rights of patients at API through the legislative process. Please do not hesitate to contact me if there is anything this agency can do to assist you with your advocacy.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

A handwritten signature in black ink, appearing to read "David C. Fleurant", with a long, sweeping horizontal line extending to the right.

David C. Fleurant
Executive Director

cc Ron Adler

Dear Rep. Peggy Wilson, HESS committee chair

We are asking that HouseBill 220 be scheduled a H.E.S.S. committee hearing.---The Bill pertains to psychiatric patients in Alaska.

The leading psychiatric patients' rights organizations have supported advancing patients' rights through a bill (HB 220) and have written letters stating their support. Many of the organizations have 5 or more Board members who voted, and represent several hundred constituents.

Disability Law Center (a 4 page letter) decision to write support letter voted on in committee.

National Alliance for the Mentally Ill, Anchorage, a very powerful 1 page letter--decision to write support letter voted on by Board.

N.A.M.I. Alaska--a one page letter--decision to write support letter voted on by Board.

Alaska Mental Health Consumer Web (a one page letter) decision to write support letter voted on by Board.

Aron Wolf, M.D. MMD., a one page letter

Psych-Rights--a one page letter

With the state's leading psychiatric rights organizations asking that this issue be advanced---It would only be right that HouseBill 220 be scheduled to go into the H.E.S.S. committee hearing so it can be discussed and passed.

Many of the people writing the 7 submitted support letters, including myself, have either had the experience of being in an Alaskan psychiatric institution or have had family members in psychiatric institutions, and are speaking from the heart and experience that things need to be changed.

And we ask again that HB220 be scheduled for hearing in the H.E.S.S. committee to be discussed and passed.

Thank you,

Faith Myers
Derrance Collins

Faith Myers
Derrance Collins
330 E. 14th, Apt E.
Anchorage, Ak. 99501
(907) 929-0532

Rep. Les Gara

From: Jim Gottstein [jim@psychrights.org]
Sent: Tuesday, March 22, 2005 10:37 AM
To: Rep. Peggy Wilson
Cc: Rep. Les Gara; jim@psychrights.org
Subject: HB 220

Dear Representative Wilson,

This e-mail is to urge you to schedule a hearing on HB 220, which allows psychiatric patients a choice of gender for staff providing intimate care. Many psychiatric patients, including men, are the victims of sexual abuse and having intimate care provided by members of the same sex who committed the abuse can be very re-traumatizing. HB 220 addresses this basic right and I hope your committee will hear the bill and act favorably upon it.

Yours truly,

James B. (Jim) Gottstein, Esq.

Law Project for Psychiatric Rights
406 G Street, Suite 206
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Phone: (907) 274-7686 Fax: (907) 274-9493
jim@psychrights.org
<http://psychrights.org/>

Psych Rights

Law Project for
Psychiatric Rights

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of unwarranted forced psychiatric drugging. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging procedures against their will. Extensive information about this is available on our web site, <http://psychrights.org/>. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.

BANGOR MENTAL HEALTH INSTITUTE

DATE: January, 2002

POLICY NO: 1-15

PAGE: 1 of 1

SUBJECT: Same Gender Care

It is the intent of Bangor Mental Health Institute to provide the same gender caregiver whenever requested by the patient while providing intimate care. We believe that by providing the same gender staff we are protecting patients' rights to privacy while treating them with dignity and respect. Refer to Nursing Procedure S-77A, Staffing Levels, for guidance in implementing this policy.

Mary Louise McEwen

Superintendent

Replaces policy dated March, 1999

BDS Bangor Mental Health Institute

Mary Louise McEwen, BSN, MBA
SUPERINTENDENT

Tel. (207) 941-4035

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Bangor, Maine 04402-0926

E-mail marylouise.mcewen@maine.gov

*On page 1, 2 and 3
the policys clearly
state what actions
will be taken to fulfill
the patient's request
for gender choice
and notification
when it is not.
E.M.*

BANGOR MENTAL HEALTH INSTITUTE

**NURSING
DEPARTMENT**

DATE: April 2004

PROCEDURE: S-77A

PAGE: 1 of 2

SUBJECT: Staffing Levels

PERFORMED BY:

Director of Staffing Office and Nurse Supervisor

POINTS TO BE EMPHASIZED:

1. It is the Director of Staffing Office and/or Nurse Supervisor's responsibility to ensure that there are sufficient members of qualified nursing staff on each unit to provide care in a safe, efficient manner, while providing the same gender staff in the provision of intimate care if requested.
2. The approved staffing plan should not be altered because of difficulty in obtaining coverage. The number of patients in an area and the acuity of their needs including privacy must be the criteria assessed.
3. As the staffing schedules are revised and adjusted the CNM or assigned RN will have to adjust the patient assignment (modules) to ensure all patient care is properly delegated. Nurse staffing plans for each unit define the number and mix of nursing personnel. This basic staffing plan will contain a mix of LPNs and MHWs.

#Beds	Unit	7-3	3-11	11-7
17	DU	4 (plus 2 RN's)	4 (plus 2 RN's)	2 (plus 1 RN)
17	D-1	4 (plus 2 RN's)	4 (plus 2 RN's)	2 (plus 1 RN)
20	K-2	5 (plus 1 RN)	5 (plus 1 RN)	2 (plus 1 RN)
20	K-1	5 (plus 1 RN)	5 (plus 1 RN)	3 (plus 1 RN)

4. In assessing nurse staffing plans, Nursing Administration and the Director of Staffing Office give approval to the utilization of RNs, LPNs, and nursing assistants in the delivery of efficient and effective patient care.

PROCEDURE:

1. When providing intimate care to patients i.e. baths, changes, toileting, placement of strong gown, at least one member of the same gender must be present if requested by the patient to provide the "hands" on part of the care. If the same gender MHW is not available, the Staffing Office and/or the Nurse Supervisor should make an effort to provide the same gender MHW from another unit for the sole purpose of providing intimate care. If the Staffing Office and/or Nurse Supervisor is not successful in obtaining the same gender MHW, a licensed staff person will provide this care. It is expected that the Staffing Office and/or Nurse Supervisor shall be notified if this practice is not followed for patients who request same gender care.

BANGOR MENTAL HEALTH INSTITUTE

NURSING
DEPARTMENT

DATE: April 2004

PROCEDURE: S-77A

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SUBJECT: Staffing Levels

2. Staffing may be adjusted upwards for one quarter of an hour up to a whole shift when:
 - a. Acuity rises
 1. Severely agitated patients
 2. Patients on special observation i.e., 1:1, 15 minute checks, medical observations, etc.
 - ~~—~~ * - b. Same gender privacy needs are required.
 - c. Special programming approved by Nursing Administration is occurring.
 - d. Staff participate in patient conferences and in-house educational offerings.
3. Staffing may be adjusted downward for one quarter of an hour up to a whole shift under the following conditions:
 - a. Acuity drops, which may result from:
 1. Drops in census
 2. Wellness of patients
 - b. Decrease in programming demands on weekends and holidays or after patients go to bed (staffing will at no time go below 2 per ward).
4. If the Nurse Supervisor or Director of Staffing Office is considering decreasing staff based on acuity, she/he must:
 - a. Assess the acuity on the unit in question by:
 1. Making rounds
 2. Reading reports
 3. Making patient assessments as needed
 4. Conferring with the Unit CNM, RN and /or Nursing Administration.
 5. Consulting with the PSD and CNM if considering a decrease in the number of RN's on D-U or D-1 from 2 RN's to 1 RN.
 - b. Determining the number of patients on unit (acute vs. non-acute) or when leave patients are expected to return.
 - c. Assess the impact on the building at large in the event of Code 88 calls, Dr. Stats, acute admissions, etc.
5. Nursing Administration will review this staffing plan in detail with staff input on an annual basis and as warranted by changing patient care needs, census, and standards.


Director of Patient Care Services

Original date: July 1990

API patients soon to get more rights

■ **TENACIOUS:** One former patient fights for practices that will promote healing.

By **LISA DEMER**
Anchorage Daily News

New policies and procedures born of the complaints of a former patient are gaining ground at Alaska's state mental hospital.

The changes at Alaska Psychiatric Institute stem from a push to expand patient rights and to end practices that the patient, Faith Myers, argued jeopardize healing.

ardize healing.

Myers, 52, has been hospitalized five times at API. She has schizophrenia.

After her most recent stay there last fall, Myers, along with her partner, Dorance Collins, began raising concerns about male staffers working in women's living quarters, the inability of patients to pick treatment staffers of their own gender, and the hospital's complicated system for earning privileges, among other issues.

In all, they brought 19 specific complaints to the API governing board, the Alaska Mental Health Board, legisla-

tors, hospital inspectors and others.

The governing board provides oversight but normally does not investigate individual complaints. It created a grievance committee in April to handle Myers' concerns. The committee found that many were valid and recommended changes. On Thursday, the board accepted the committee's work and set deadlines for new policies and procedures.

"It's more than I ever thought I would get, but I still would like to see more," Myers said. She served on the committee along with Collins, current

and former API staff members, governing board members and an attorney with the Disability Law Center.

Myers' efforts will help the hospital improve, said Ron Adler, API chief executive officer. Staffers try to create a healing environment but the current, aging building can make that difficult, Adler said. A new hospital is being built on API's grounds and will be ready for patients by spring.

The governing board debated the grievance in a closed session because of confidential patient and staff information that was discussed, said Aileen

Smith, governing board chairwoman and a former API patient.

The board agreed that:

- API will create a written policy to prohibit staff members from routinely entering the living areas of opposite-gender patients. That has become the practice already, said Jane Barnes, API nursing director. Before, male staffers would go into women's bedrooms and bathrooms to, say, check on patients or perform housekeeping, and that traumatized and embarrassed women, Myers said.

See Page B-7, API

API: Former patient fights for and gets changes

Continued from B-1

ers said.

- The hospital should make every effort to allow patients to pick between a male or female doctor, therapist or off-grounds escort. Myers had wanted patients to be given an absolute right to pick the gender of a staff member providing intimate care. She said she will seek legislation to accomplish that.

- API will rethink its system in which patients earn privileges, with a new system to be in place by 2004. Currently patients can gain privileges such as going to arts and crafts class or ordering out for food if they cooperate in treatment and function well. Different API units operate under different systems, and patients struggle to understand them. Adler said later that some hospitals abandon such systems altogether and work with each patient individually.

- Treatment documents must be legible and understandable. Patients had been labeled as uncooperative if they wouldn't sign a treatment plan because they couldn't read it or it contained jargon. Hospital medical director Duane Hopson was asked to issue a directive on legibility.

- All patients must be allowed a chance to go outdoors or, if the weather doesn't allow it, to the hospital gym. In the past, some patients were restricted to their living units because of safety or treatment issues. The medical team at API agreed with Myers that that wasn't a good practice and has begun to allow them to get exercise and fresh air, Adler said.

- Myers also had wanted hospital staff members to wear uniforms or at least vests so that patients could easily distinguish hospital employees from other patients, especially when someone is giving orders. Adler said the hospital will adopt a more professional dress code but uniforms look too institutional.

"I can promise you we are not going to go down that road," he said later.

Myers' concerns about privacy were especially important, said Edie Zukauskas, the Disability Law Center attorney who served on the committee at the request of the hospital and Myers.

Psychiatric patients are particularly vulnerable and often are not aware of their rights, she said. "We have been favorably

improved with APT's response to this grievance," she said.

At API, two-thirds of the psychiatric nursing aides, who provide most of the direct care, are men, as are three-quarters of the psychiatrists and psychologists. But most of the nurses and social workers are women. As of Friday morning, API had 60 patients — 36 men and 24 women.

Myers said many women patients have suffered from sexual abuse and may feel threatened anew in the hospital by male staffers.

One former API patient, Roalyn "Ross" Wetherhorn, told the governing board in April that she was sexually abused — fondled and propositioned — by a male staff member in 2000. She didn't report the abuse initially, she said in a telephone interview. The hospital addressed the problem recently, after she posted information on a mental health consumers online information network, Wetherhorn said. Adler seemed genuinely concerned, she said.

Since he came on board in March 2003, every complaint of sexual misconduct at API has been investigated and usu-

ally referred to police, Adler said. There are few such complaints each year and about as many are between patients as between staffers and patients, he said.

In the new hospital, patients will have private bedrooms and bathrooms. Their rooms also will be monitored so that if someone steps in unwanted, a nurse will know immediately, he said.

Myers said she was disappointed the hospital did not commit to putting more changes into written policy.

In the meantime, a suit filed on her behalf against the hospital is awaiting a state Supreme Court ruling on an appeal.

The suit aims to prohibit the hospital from forcing patients to take medication unless it can prove it is in their best interest. Myers has argued that it should be her choice and that she is now on an antipsychotic drug that helps her. A state Superior Court judge in a preliminary ruling sided with the hospital, and Myers has appealed.

■ Daily News reporter Lisa Demer can be reached at ldemer@adn.com and 757-4390.

Anchorage Daily News
July 26, 2004

Mental health patients could specify staff's sex

By LISA DEMER
Anchorage Daily News

Patients receiving mental health treatment in a hospital would have the right to pick the sex of staff members providing their intimate care, under a bill filed in the Alaska Legislature on Wednesday.

The measure is being pushed by Faith Myers, a former patient at Alaska Psychi-

atric Institute who has been raising concerns about patient rights and privacy there.

Some patients at API have suffered sexual abuse. They may feel especially vulnerable to and wary of opposite-sex caregivers, Myers said. One former patient said last year

See Page B-5, TREATMENT.

TREATMENT: *Same sex*

Continued from B-1

that she had been fondled by a male staffer in 2000.

Last year, API's governing board agreed to new policies and procedures to address some of Myers' concerns. If a patient requests it, at least one staff member of the same sex must be present if the patient needs help bathing, going to the bathroom or dressing, under a new procedure that Myers provided a copy of.

House Bill 220 goes further. It would grant mental patients in hospitals the right to request that hands-on care be given only by licensed staff members of the sex they specify. If a patient were incapacitated, care would be provided by someone of the same sex as the patient. If the hospital couldn't provide an appropriate staff member, that would be documented in the patient's file, under the bill.

"It's a matter of personal privacy and personal integrity,"

said state Rep. Les Gara, D-Anchorage and the prime sponsor. Six representatives have signed on as co-sponsors.

State Department of Health and Social Services officials haven't had a chance to review the bill but will do so soon, special assistant Sherry Hill said.

Myers and her partner, Dorrance Collins, said they support the bill but want to change it so that API wouldn't be able to get around the requirement for lack of licensed staff.

The Disability Law Center of Alaska, the mental health advocacy organization NAMI, the Anchorage-based Law Project for Psychiatric Rights, the Alaska Mental Health Consumer Web and psychiatrist Aron Wolf all have written letters supporting legislation.

"We are outraged such a choice is not provided now," attorney Jim Gottstein of the PsychRights law project wrote in January.

Anchorage Daily News
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