

SB

8

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/07

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committtee considered

SENATE BILL NO. 8

SB 8 MENTAL HEALTH PATIENT RIGHTS:STAFF GENDER

"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

and recommends:

- be replaced with SCS or CS SB 8 (Fin)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

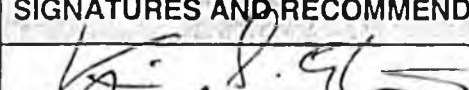

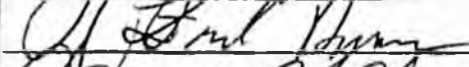
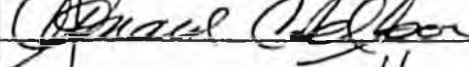


NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
COR	12/2/07			✓	
HSS	2/19/07			✓	

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Elmer	✓			
	Thomas	✓			
	Dyson	✓			
	OLSON			✓	
CO-CHAIR: 	HOFFMAN			✓	
CO-CHAIR: 	SPINDLER			✓	

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS SB 8 (JUD)
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU Behavioral Health
 Component Alaska Psychiatric Institute

ID(File name) SB008CS(JUD)-DHSS-API-12-19-2007
 Title RIGHT OF PATIENTS TO CHOOSE GENDER OF HOSPITAL STAFF IN PSYCHIATRIC HOSPITALS

Sponsor DAVIS
 Requester SENATE (FIN) Component Nc 311

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information				
	Required						
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
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	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (0)							

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill requires hospitals providing psychiatric services to proffer gender choice to patients requiring intimate care, and to document in the patient record, after "reasonable and good faith efforts to comply" a) failure to meet the patient's request for gender choice, but provision of intimate care by a licensed professional or b) failure to meet the patient's request for gender choice, but provision of intimate care by a non-licensed professional. Further, the bill would require posting of the notice of the patient's right of gender choice in intimate care situations.

The bill is congruent with the department's desire to accommodate the gender choice of patients, and to protect vulnerable populations from medically unnecessary invasions of privacy. Although there may be an increase in staff workload due to an increase in documentation, the effect is believed to be negligible and no fiscal impact is expected.

Prepared by: Melissa Witzler Stone, Director
 Division Behavioral Health
 Approved by: Karleen Jackson, Commissioner
 Agency Department of Health and Social Services

Phone 269-3410
 Date/Time 11/27/2007
 Date 12/19/2007

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB008CS(JUD)-DOC-OC-02-05-08
() Publish Date: _____

Identifier (file name): SB008CS(JUD)-DOC-OC-02-05-08 Dept. Affected: Corrections
Title "An act relating to a mental health patient's right to choose RDU Administration and Operations
the gender of hospital staff providing intimate care ..." Component Office of the Commissioner
Sponsor Senator's Davis, Ellis, Elton
Requester Senate Judiciary Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	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)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Dwayne Peoples, Deputy Commissioner
Department of Corrections

Phone (907) 465-3339
Date/Time 12/20/07 1:55 PM
Date 12/20/2007

*Adopted & called
2/21/08*

25-LS0101\E
Mischel
2/4/08

CS FOR SENATE BILL NO. 8()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATORS DAVIS, Ellis, Elton

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a mental health patient's right to choose the gender of hospital staff
2 providing intimate care to the mental health patient and to the duties of hospital staff in
3 caring for patients receiving mental health treatment."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 18.20 is amended by adding a new section to read:

6 **Sec. 18.20.095. Mental health patient's right to select staff; duties of**
7 **hospital staff. (a) Except as provided in (d) of this section, a patient 18 years of age or**
8 **older who is receiving mental health treatment and being provided intimate care at a**
9 **hospital shall have a right to have care provided by a staff member who is the gender**
10 **that the patient requests.**

11 (b) A supervisor or manager employed by a hospital shall

12 (1) post a notice of the right provided under (a) of this section in a
13 conspicuous place; and

14 (2) if, after reasonable and good faith efforts to comply, the hospital is

1 unable to comply with the requirement under (a) of this section,

2 (A) document in the patient record that intimate care was
3 provided by a licensed staff member of the gender opposite to the gender
4 requested by the patient under (a) of this section; or

5 (B) if a licensed staff member is not on duty at the time of the
6 patient's request under (a) of this section, document in the patient record that
7 the care was provided by an unlicensed staff member of the gender opposite to
8 that requested under (a) of this section.

9 (c) Staff members employed by a hospital shall, in regard to patients receiving
10 mental health treatment,

11 (1) provide privacy for each patient, especially for patients who are the
12 opposite gender and especially when patient care involves intimate bodily functions,
13 unavoidable intimate touching, or nudity;

14 (2) except when necessitated by a medical emergency that is
15 documented in the patient's record, avoid entering patient care areas for a person of the
16 opposite gender and areas specified for persons of the opposite gender; and

17 (3) only conduct routine safety checks and rounds of bedrooms,
18 bathrooms, and shower areas of a patient who is the same gender as the staff member.

19 (d) A hospital is exempt from the requirements of (a) of this section if the
20 treating psychiatrist for the patient at the hospital determines that compliance would
21 adversely affect patient treatment and the psychiatrist documents the determination in
22 the patient's record.

23 (e) In this section,

24 (1) "intimate care" means hygienic care, including bathing, dressing,
25 changing, and toileting that involves a patient's perineal area and, for a female patient,
26 the patient's breasts; "intimate care" does not include activities done in preparation for
27 medical procedures;

28 (2) "licensed staff member" means a person who is employed by the
29 hospital to provide direct patient care and who is licensed or certified in the state as a
30 physician or physician assistant under AS 08.64, direct-entry midwife under AS 08.65,
31 nurse or nurse aide under AS 08.68, or physical therapist or occupational therapist

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under AS 08.84;

(3) "mental health treatment" means admission to a hospital primarily for electroconvulsive treatment or treatment with psychotropic medication, or admission to and retention in a health care institution for other mental health treatment;

(4) "staff member" means a person employed by a hospital to provide direct patient care.



James
Shill/Admin/CORP/UHS
02/04/2008 10:42 AM

To raygillespie@ak.net
cc
bcc

Subject Gender Choice legislation

Ray,

Here are some statistics and estimates on the gender choice legislation. Without pulling each medical record, the exact number of hospital adolescents this legislation could effect is very difficult to determine, as this legislation only affects North Star patients ages 16-17.

- Total number of hospital admission per year during 2007 = 924 (exact number, not an estimate). Some of these total admissions were the same child, i.e. re-admissions.
- North Star only takes children ages 4-17, no adults
- North Star is a voluntary facility, not court-ordered
- An *estimate* of adolescents with sexual issues during 2007 was 80-90
- An *estimate* of the total number adolescent patients who were 16-17 years of age admitted during 2007 was 170 - 180

To remind you of why we oppose to this legislation:

- 16 and 17 year old patients are adolescents, not adults: Medical decisions for the minors involve the parents or guardians, often the State of Alaska OCS. Therefore, there are additional protections against abuse for adolescents that don't exist for adults who are patients in a mental health hospital.
- Adolescent girls and boys will use this opportunity to sexually act out in front of the opposite sex: A significant number of adolescent girls and boys admitted for mental health treatment are sexually acting out
- This bill will unnecessarily subject staff to patients sexually acting out: Assigning staff of the same gender to provide intimate care often discourages sexually acting out by adolescent boys and girls. Subjecting staff to such behavior is not therapeutic for the boy or girl, and is abusive to staff.
- This bill impacts North Star operations when the issue doesn't involve North Star: The "problem" this bill reportedly addresses abuse that involved an adult in a government controlled mental health facility (API) where same gender staff was not present. The State of Alaska has the ability to implement internal controls to prevent this type of abusive situation in state run facilities without involving other mental health providers. Unlike this state run facility, North Star does not treat adults and does not allow staff of different gender to be alone with patients who are not clothed
- Reasonable controls are already exercised by North Star: When a patient is provided intimate care, a staff member of the same gender must be present
- This bill would increase staffing cost: This bill places a requirement on mental health hospitals to make reasonable efforts to provide both men and women medical staff. North Star does not have nurses and Mental Health Specialists of both gender available for all shifts on both adolescent boys and girls units. Accomplishing this goal, if additional male nurses could be recruited, would

Increase staffing costs and make employment decisions based on gender.

- When an adolescent boy or girl requests someone of the opposite gender provide intimate care, North Star would be forced to have two staff present. North Star feels it is inappropriate for staff to be alone with different gender patients when they are undressed. This could double the number of staff required for these activities.
- This bill could result in higher liability risks: There is higher liability risks associated with providing intimate care by staff of a different gender

James Shill
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North Star Behavioral Health
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Senator Bellve Davis bellve.davis@legis.state.ak.us
<http://www.akdemocrats.org>

Senator Bettye Davis

Senate Bill 8

“An Act relating to a mental health patient’s right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment.”

Sponsor Statement

SB 8 provides that a mental health patient 18 years of age or older who is receiving mental health treatment and being provided intimate care at a hospital shall have the right to have care provided by a staff member who is the gender that the patient requests. Many of these patients have been traumatized by sexual and/or physical abuse in the past and they are very sensitive to being touched or assisted by hospital staff who provide intimate care, because the experience may trigger from original abuse feelings of fear, helplessness, distress, humiliation, and loss of trust in staff. The supervisor or manager employed by a hospital shall post notice of this right in a conspicuous place, so patients know they may exercise this right when they are concerned about the gender of staff responsible for their personal intimate care.

While it is understandable that a hospital may not always be able to comply with the requirement of choice of gender in all situations and requests due to staffing schedules and shortages on particular shifts or duty units, the bill requires that the facility document the non-compliance in the patient record that the intimate care was provided by a licensed or unlicensed staff member of a gender opposite that requested by the patient. This information might otherwise be ignored or lost. The information is also useful not only for confirming the good faith effort on the part of the institution to comply with the wishes of the patient, but for medical purposes as well in evaluating the effect on patient outcome, because individuals re-traumatized in this way are subject to chronic stress which can worsen serious mental illness and result in symptomatic relapses and repeated re-hospitalizations. Lastly, this bill will preserve information for inquiry into grievance procedures at mental health facilities under Title 47, which have been described as unduly burdensome by some patients, and easily circumvented or limited because the language is too broad.

RECEIVED

JAN 25 2008

Dear Senator Bert Stedman,
Co-Chair, Senate Finance Committee,

January 22, '08

From the point of view of psychiatric patients and mental health patient advocates, it is important that Senate Bill 8 be passed.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing patient choice of gender of staff for intimate care services. There is no cost to what Senate Bill 8 is requesting.

There are approximately 80 or 90 psychiatric treatment locations in Alaska—the majority are listed as corporations or institutions. The institutions and corporations that provide intimate care services do not want any changes to the status quo. Corporations and institutions want to continue to provide staff of the gender of the institution's and corporation's choosing—not the patient's. That fact is not going to change until the institutions and corporations are asked to change by statute.

In a recent Alaska Supreme Court decision—the justices stated there is a clear, unavoidable tension between institutions, corporations seeking convenience, economics and patient rights. The justices saw it as a given that institutions and corporations were going to take shortcuts without laws / oversight.

Almost every psychiatric patient organization supports, in principle, the idea of giving patients the right to ask for their choice of gender of staff for intimate care services. It is seen as a way of reducing trauma in psychiatric institutions and reducing recidivism.

Please give Senate Bill 8 a speedy hearing or pass it out of the Senate Finance committee. Thank you for your help.

Mental Health Advocates,
Faith Myers / Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK. 99508
(907) 929-0532

Cc: Sen. Bettye Davis

Faith Myers
Dorrance Collins

Wednesday, February 6, 2008

9:00

SB 8 – Mental Health Patient Rights: Staff Gender

Proposed CS work draft, 25_LS0101 \ E

Davis/Tom Obermeyer

New DHSS note

New DOC fiscal note

Teleconference:

Pat Higgins, Northstar Behavioral Health

SB 101 – Guardianship and Conservators

Previously Published FN's # 3 and #4

Sen. Ellis/Dana Owen

Deborah Behr, Chief Assistant Attorney General, Legislation and
Regulation Section, Civil Division, Department of Law

Josh Fink, Public Advocate, Office of Public Advocacy, Department
of Administration

Questions

Jennifer Strickler, Department of Commerce, Community and
Economic Development