SB 66

Psychiatric Patient Survey

We are trying to improve the complaint procedure for psychiatric patients in Alaska.

We want to reduce unnecessary trauma to psychiatric patients.

Please help by filling out this survey and sent it to the address on the bottom of the page before December 1st, '08.

Age: Check one Male: Female:

1. Have you ever felt you were abused or traumatized during psychiatric treatment in a psychiatric facility or unit in Alaska—either physically, mentally or emotionally?
   Describe How?

2. Have you ever tried filing a complaint or filing a grievance with a psychiatric facility or unit in Alaska?
   Were you treated fairly and were you satisfied with the results? Explain.
   (Use next page if necessary.)

Send to: Mental Health Advocates—Faith Myers/Dorrance Collins, 3240 Penland Pkwy, Sp. 35, Anchorage, AK. 99508

Psychiatric Patient Survey

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Excerpts from: Trauma within the Psychiatric Setting: A Preliminary Empirical Report

Karen J. Cusack, Ph.D.; B. Christopher Frueh, Ph.D.; Thom Hiers, Ph.D; Samantha Suffoletta-Maierle, Ph.D; and Sandy Bennett, BSW, LMSW

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Conclusions: One of the goals of the study was to determine rates of traumatic events, as defined by the DSM-IV criteria for PTSD, occurring in the psychiatric setting (sanctuary trauma). Forty-seven percent of subjects reported experiencing a DSM-IV-defined traumatic event while in the hospital...

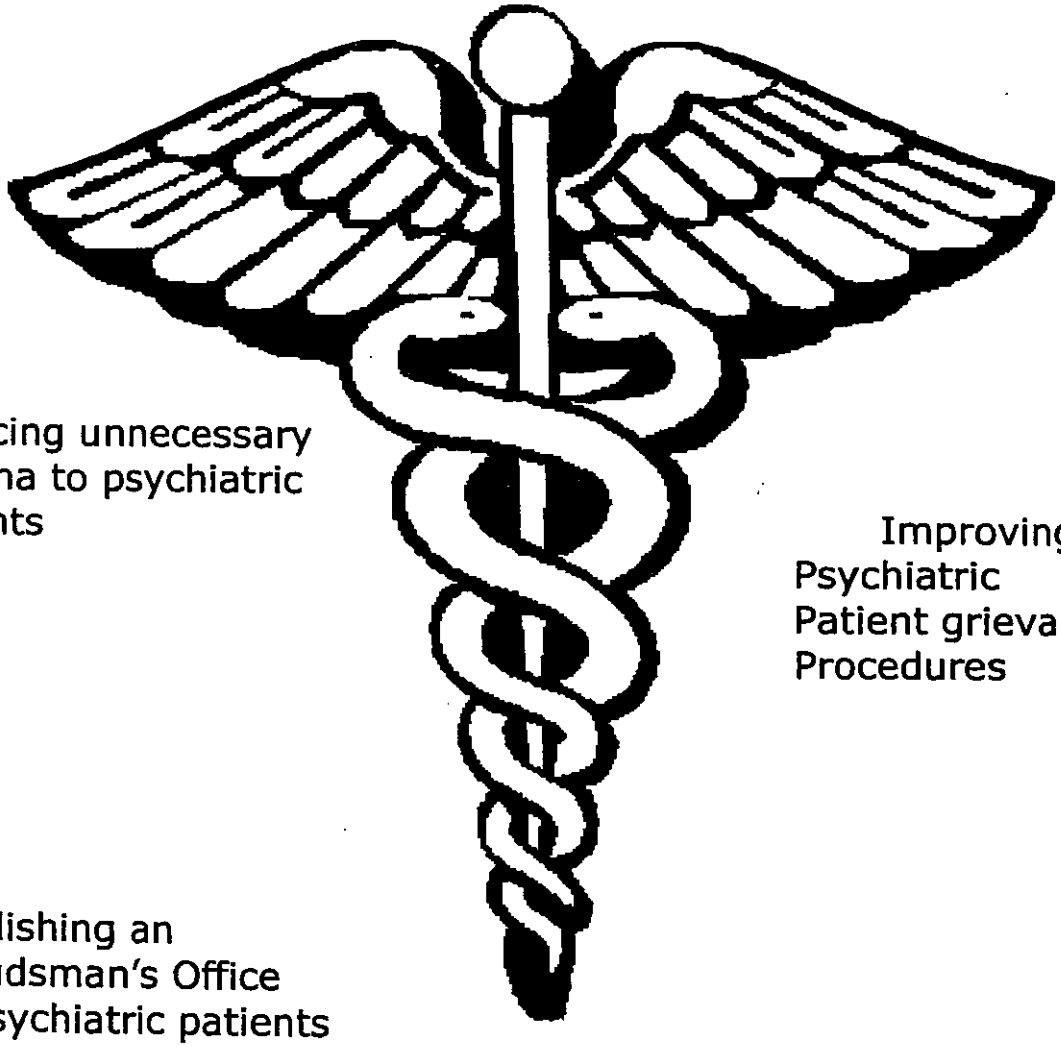
Events that were not traumatic, but were nevertheless thought to be harmful or capable of producing or exacerbating symptoms from previous traumas were also assessed. The events reported most frequently by subjects included being placed in seclusion (58%), being around other patients who were very sick and/ or frightening (56%), being handcuffed and placed in a police car (53%), and witnessing other patients being taken down (47%). Thirty-three percent of the subjects had been put in restraints (of any kind).

Subjects consistently reported experiencing fear, helplessness, or horror in response to these events...Only 24% of subjects had ever been asked about these types of events by (public-sector) mental health staff...

For more information: Charleston/Dorchester Community Mental Health Center, 701 East Bay St., MSC/1110, Charleston, SC 29403

THE ALASKA ADVOCATE

Improving psychiatric patient rights in Alaska
2009-2010

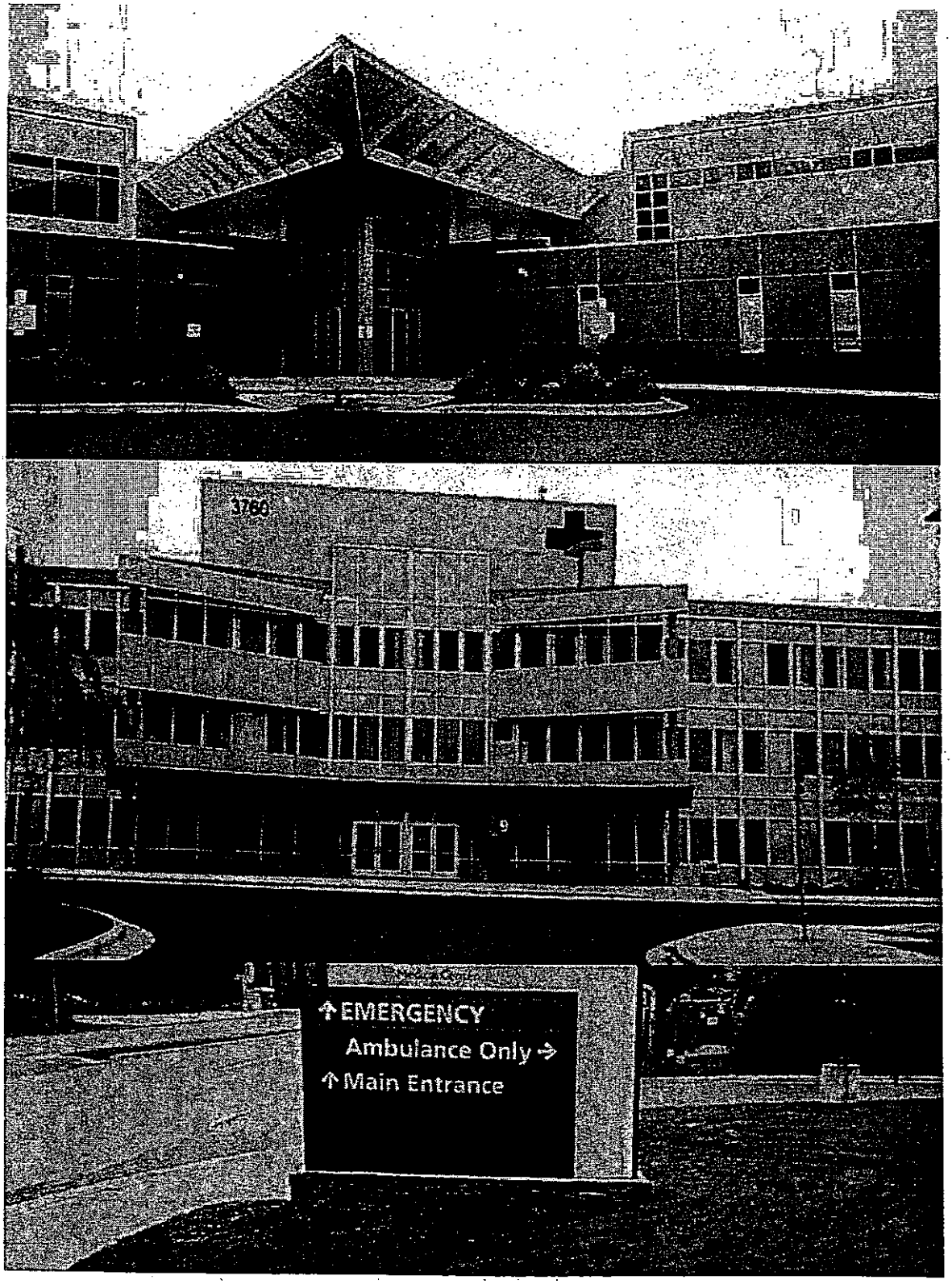


Reducing unnecessary
Trauma to psychiatric
Patients

Improving
Psychiatric
Patient grievance
Procedures

Establishing an
Ombudsman's Office
For Psychiatric patients

Produced as information for the Alaska Legislature


3780
↑EMERGENCY
Ambulance Only →
↑Main Entrance

THE FIRST RULE OF MEDICINE

"DO NO HARM"

For some reason the first rule of medicine is not always followed by Alaska's psychiatric facilities, including evaluation units.

In a recent Alaska Supreme Court decision, the Justices stated there is a clear unavoidable tension between psychiatric facilities seeking convenience/ economics and patient rights, which can manifest itself into patient abuse.

The Justices saw it as a given that without oversight / good regulations that patients would be denied their rights and be more likely to experience abuse.

In general, Alaska as a young state has not produced rules that adequately protect psychiatric patients (those civilly committed and those in emergency rooms for forced psychiatric evaluations.)

Published by Mental Health Advocates, Faith Myers / Dorrance Collins, 3240 Penland Pkwy, Sp. 35, Anchorage, AK. 99508 Phone—(907) 929-0532
Unless otherwise stated, all articles are written by the Publisher.

ADVOCACY GOALS

1. Reducing unnecessary trauma to psychiatric patients

Studies show that trauma to psychiatric patients during treatment, civil commitment, transportation can cause or exacerbate a mental illness i.e.--PTSD, which is one of the most costly mental illnesses in America.

2. Improving Alaska psychiatric patient grievance procedures

Alaska has some of the worst psychiatric grievance procedure statute and regulations in America. Alaska needs to revise their grievance procedure statute and regulations.

3. Establishing a state Ombudsman's Office for psychiatric patients

Psychiatric patients need a state office to call concerning the grievance procedure and all patients in treatment must be given their phone number.

4. Encourage proper use of psychotropic drugs for patients

Psychotropic medication allows many patients to conduct reasonable normal lives, but over-prescribing has become an American epidemic and it needs to be curtailed.

Why must the Alaska Legislature be involved in revising psychiatric patient grievance procedure statute AS47.30.847

The current psychiatric grievance procedure statute AS47.30.847 is too vague. And according to a recent letter from the Dept. of Health and Social Services, the current grievance procedure statute, which is expressly meant to protect psychiatric patients, does not apply to some of the new hospital psychiatric units that do forced evaluations, etc.

There is little more fundamentally important to the psychiatric patient than a grievance procedure. A good grievance procedure not only protects and empowers psychiatric patients, it also forces a psychiatric facility to improve.

Psychiatric patients are unique in that they can be picked up by the police for forced evaluations and they can be placed in locked facilities, which makes protecting their rights more imperative.

The current grievance procedure statute and Behavioral Health 4 pages of Grantee grievance procedure requirements have loopholes which have been utilized by psychiatric facilities. The statute says "patients can file a grievance," but it doesn't say <u>when</u> patients can file a grievance. That is a huge loophole. Nowhere in the statute or in Behavioral Health requirements does it say a grievance/ complaint must be answered in writing. Federal regulations only state that hospitals must answer a grievance in writing. <u>The list goes on.</u> The loopholes must be closed.

In the state of Georgia, the legislature got involved and created an office to produce fair grievance procedure rules for psychiatric patients, after an investigation showed that Georgia's equivalent of DHSS was unable or unwilling to produce and administer fair grievance procedure rules for psychiatric patients. Georgia state officials said that DHSS as a provider writing fair rules was like " a fox watching the henhouse."

In the state of Maine, new psychiatric patient grievance procedure rules were produced after the citizens sued the state and their equivalent of DHSS. The citizens prevailed and the state was forced to adopt new and better grievance procedure rules for psychiatric patients.

Remember, Alaska's DHSS is a provider of psychiatric services.

We are asking the legislature of Alaska to take the initiative and produce a grievance procedure statute that will protect <u>all</u> psychiatric patients.

(Refer to back pages for more information on this subject)

Why the Alaska Legislature must create an independent office to investigate complaints from psychiatric patients or an interested party on behalf of patients

The Dept. of Health and Social Services is presently and for years has been required by statute AS47.30.660 to "investigate a psychiatric patient's complaints or the complaints of an interested party on behalf of a patient." Yet DHSS does not post, nor do they require to be posted, their phone number in psychiatric facilities. Federal regulations (hospitals, including the new hybrids) state that if a state office is required to investigate complaints, like DHSS, (which they are), their phone number is required to be posted / given to all patients. But it is not routinely done in Alaska.

DHSS is required to investigate psychiatric patient complaints and DHSS cannot delegate its responsibility to a non-state entity—i.e. a Board of Directors, non-profit agencies, certification organization, etc., but DHSS is presently doing just that.

In the state of Georgia, their equivalent of DHSS was not properly investigating patient complaints or establishing fair rules for psychiatric patient grievance procedures. The Georgia legislature stepped in and created an independent office "charged with promoting the safety, well-being, and rights of consumers."

In a state of Alaska Ombudsman's report (2008) it came to light that the Dept. of Behavioral Health to their knowledge have not even investigated 1 psychiatric complaint in 5 years and that includes some very serious complaints filed by psychiatric patients.

Remember, Alaska's DHSS is a provider of mental health services and should not be investigating itself or even writing rules to govern themselves.

The Long-Term Care Ombudsman's Office, which is Federally mandated, was under the umbrella of DHSS. But that was viewed as a conflict of interest as DHSS is a provider of senior care. The Long-Term Care Ombudsman's Office was moved under the care of the Alaska Mental Health Trust Authority.

The Dept. of Health and Social Services have shown they will not give out their phone number to all psychiatric patients, they will not in a timely way investigate patient complaints, and they will not write fair grievance procedure rules.

We are asking the Alaska Legislature to create an independent office that will assist any psychiatric patient asking for help through the grievance process and investigate psychiatric patient's complaints especially concerning sexual abuse, physical abuse, etc.

Reducing Unnecessary Trauma to a Psychiatric Patient in Emergency Rooms / Evaluations and Psychiatric Facilities In Alaska

A severe mental illness like schizophrenia can happen to everyday people, who may be going about their business of raising children, or going to school; high I.Q, low, mental illness can be an equal opportunity disease.

How a state treats a patient / person may determine the prospects for the person returning to a normal life and as a state, we are certainly not going to help recovery by unnecessarily traumatizing the patient.

The mental illness, schizophrenia or a severe psychotic break can leave a person wandering the streets with a form of dementia. Such a person can be detained, handcuffed, placed in the back of a marked police car and transported to a hospital for a forced evaluation. For the patient it is terrifying, humiliating, embarrassing and intimidating. It is a traumatizing experience that sticks in a person's memory for a long time. The person is not first asked to volunteer to go to the hospital for a psychiatric evaluation; even if cooperative, the person is not given a choice whether they will be handcuffed or ride in a marked police car. (Private transport companies do not always handcuff psychiatric patients when transporting, nor do ambulances.)

Forced Evaluation

A citizen picked up for forced psychiatric evaluation might be put in a E.R. waiting room with an examination table and a chair in a hospital like Providence for up to twelve hours; a person might be picked up at 6 o'clock at night and released back on the street at 1 o'clock in the morning (the hospitals are only required to return the person to the point of pick-up), or the person might be transferred to a psychiatric hospital.

The next thing a patient / person knows, they are in a world that to a great extent is indifferent to their eventual recovery and returning to something of a normal life. Stabilization is the key or buzz-word in some big psychiatric institutions as opposed to psychiatric treatment and recovery. (There must be higher goals and standards for all psychiatric institutions or psychiatric units in Alaska that keep psychiatric patients over three days than just stabilization.)

Corporate greed: making things easy for hospitals as a way to make more money is all too common. In the lower 48, some psychiatric E.R.'s have patients lined up in the corridors strapped down to gurneys as a way of convenience. You can hear patients calling out for a drink of water, asking to please let them up to go to the bathroom; their pleas go mostly unheeded by hospital staff walking past.

(This is not really where Alaska should be going)

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Excerpts from:

On Being Invisible In the Mental Health System

Ann F. Jennings, Ph.D.
Trauma-Informed Systems Consultant

This chapter brings into question one of the basic assumptions operating in the public mental health field today: that mental illness is biological or genetic in origin and is therefore treatable primarily by symptom control or management...

Anna was a client of the mental health system for 19 years, until age 32. For nearly 12 of those years, she was institutionalized in psychiatric hospitals. When in the community, she rotated in and out of acute psychiatric wards, psychiatric emergency rooms, crisis residential programs, and locked mental facilities...

Anna was hospitalized a total of 4,124 Billing days...Not included ...is the cost of social services, police, ambulance and legal / court services, conservator and patient advocacy services, residential treatment, psychiatric and therapist sessions, crisis services, day programs, and intensive case management...

Four days after Anna's 32nd birthday, after another haunted sleepless night, she hung herself, by her T-shirt, in the early morning bleakness of her room in a California State mental hospital. She was found by a team of three night staff who were on their way in to give her another shot of medication...

A result of ...paradigmatic "blindness," conventionally accepted psychiatric practices and institutional environments repeatedly retraumatized Anna, re-enacting and exacerbating the pain and sequelae of her childhood experience...The effect of the institutional retraumatization was to continually leave Anna "in a condition that fulfilled the prophecy of her pathology."

Institutional Retraumatization

Continue next page

Institutional Retraumatization

Early childhood Trauma Experience	Common Mental Health Institutional Practices
Anna's child psychiatrist did not inquire into or see signs of sexual trauma. Anna misdiagnosed.	Adult psychiatry does not inquire into, see signs of sexual trauma. Anna misdiagnosed.
Abuser stripped Anna, pulled T-shirt over her head.	Stripped of clothing when secluded or restrained, often by or in presence of male attendants.
Stripped by abuser to "with nothing on below."	To inject with medication, patient's pants pulled down, exposing buttocks and thighs, often by male attendants.
"Tied up," held down, arms and hands bound.	"Take down," "restraint." Arms and legs shackled to bed.
Abuser "blindfolded me with my little T-shirt."	Cloth would be thrown over Anna's face if she spit or screamed while strapped down in restraints.
Abuser "opened my legs." position.	Forced four-point restraints in spread-eagle
Abuser was "examining and putting things in me."	Medication injected into her body against her will.
Boundaries violated. Exposed. No privacy.	No privacy from patients or staff. No boundaries.
Taken by abuser to places hidden from others.	Forced, often by male attendants, into seclusion room.
Isolated in her experience: "Why just me?"	Separated from community in locked facilities.
Anna was defenseless against perpetrator abuse. Her attempts to tell went unheard. There was no safe place for her, even in her own home or room.	Mental patients defenseless against staff abuse. Reports disbelieved. No safeguards effectively protect patients. Personnel policies prevent dismissal of abusive staff.
Appropriate anger at sexual abuse seen as something wrong with Anna. Abuse continued, unseen.	Appropriate anger at abusive institutional practices judged pathological. Met with continuation of practices.

For more information go to: www.TheAnnaInstitute.org

"Recovery or growth begins with being able to effectively complain." (Whether it be) "psychiatric patients—children—husband or wife—etc"

A 2008 survey at state-run Alaska Psychiatric Institute showed 21% of the patients were afraid to complain or file a grievance; 19% did not answer the question with the possibility they were afraid to answer.

The patient's voice must be encouraged and allowed to come forward to facilitate true recovery.

Consumer Survey:

Male states—"They were treating me for my bi-polar and depression, but they were not giving me any treatment that could help--Grievance procedure doesn't work."
(Name withheld by request)

Male states—"My psychiatrist cut me off medication instead of tapering me off. I told him it was harmful. I tried to file a grievance and get my doctor changed. It didn't work."
(Name withheld by request)

Female states—"I was brought to Providence Psychiatric E.R. One of the male staff hit me in the eye with his elbow which knocked me out and he gave me a black eye. I asked to file a complaint. The hospital staff refused to give me a written copy of the grievance procedure. They would only give it verbally and my mental illness made it difficult to follow verbal instructions.

There was no satisfactory outcome to my grievance. Providence's attorney advised me that Providence does not have to follow the grievance procedure statute."
(Name withheld by request)

*Publishers Note: DHSS confirmed that Providence's Psychiatric units do not have to follow Psychiatric Patient Grievance Procedure Statute—AS47.30.847.

Male states—"It's never been really clear to me how the grievance procedure works. It has never been clear who I was supposed to complain to and who was supposed to help me. When I did file a complaint, no one ever answered."
(Name withheld by request)

Consumer Survey continued:

Don Roberts states—"Basically, as of now, the grievance procedures are pretty useless. Anytime a person's grievance can be dismissed as symptoms of their illness there is a problem. People are deemed less than persons with rights. And doctors, psychiatric facilities seem to think that they can set aside those rights. It's an unjust system."

Female states—" I was transported from API to the court house for a hearing. I was accompanied by two males, one an API staff member. I requested to have at least one female accompany me but they sent two males. I went into the bathroom at the courthouse. The API male orderly walked into the women's bathroom to get me to hurry up. The other women there were shocked and upset. I was humiliated. Complaining to the staff didn't help."
(Name withheld by request)

Male states—"I've actually had API give me the wrong medication. It made me sick, nauseous. I couldn't sleep, I came out for water. The staff told me to go to bed or they would give me more medication. I tried to complain to staff but found out it didn't do any good. They just look at you as though you don't know what you are doing."
(Name withheld by request)

*Publishers Note—In 2008, API was often above the national average for medication mistakes.

Female states—"Police surrounded me and told me they were going to take me to Providence Psychiatric for an evaluation. They handcuffed me and put me in a marked police car.

There has to be a better way for transporting a cooperative individual for a psychiatric evaluation than handcuffing them and taking them in a marked police car!"
(Name withheld by request)

A volunteer patient advocate at one of the community centers who works with those with a dual diagnosis (alcohol/mental illness) states—"There doesn't appear to be enough Crisis Intervention Team (CIT) police officers properly trained to deal with psychiatric patients. Not all of our clients know to ask the police to provide a trained CIT officer."
(Name withheld by request)

Female states—"Anchorage Police Department physically and mentally does not have any training on dealing with psychiatric behaviors."
(Name withheld by request)

Which Psychiatric Patients should be allowed to File a Grievance

For over 20 years in Alaska there has been a debate: "which psychiatric patient should be allowed to file a grievance." "And when" can a psychiatric patient file a grievance. The Alaska Legislature needs to weigh in and make clear what patient rights are on this issue.

The Dept. of Health and Social Services (DHSS), Behavioral Health (BH), most psychiatric facilities and even some employees of state-run psychiatric patient rights organizations believe that : "psychiatric facilities need to be able to choose who can file a grievance." They also believe facilities need to be able to choose when a patient can file a grievance as a way to eliminate frivolous grievances. Many psychiatric patients are required to go through an informal complaint process before being allowed to file a grievance.

Granted, there are some frivolous complaints filed. The problem in places like state-run Alaska Psychiatric Institute (API); middle of '05 to middle of '06, over 200 complaints were filed by patients, yet not one was allowed to become a grievance, not one patient received a written response (Federal requirement). API has changed somewhat, but they can always change back when they want to. (In '08 less than 15 patients received a written response.)

Regardless of what API does, it still leaves 50 or so grantee psychiatric facilities that may or may not be doing the right thing. The loopholes in the current state grievance procedure rules need to be closed.

Advocates and former patients believe that patients or a person representing a patient should be able to file a grievance with a psychiatric facility at the time of their choosing and there should be a paper trail for complaints. The state of Maine has come up with a very simple procedure and form to deal with any frivolous grievances.

The one thing that is certain, the state legislature and patient advocates cannot allow psychiatric facilities and providers, and remember, DHSS is a provider, to choose who can and can't file a grievance and when.

The psychiatric facilities have demonstrated in the past, that if given a choice, they will often not let anybody file a grievance.

Reference Information:

AS47.30.840 passed in 1981 and gave 7 basic rights to psychiatric patients. In 1984, major revisions were made and 4 more rights were added.

AS47.30.847, Psychiatric Patient Grievance Procedure Statute passed in 1992, sixteen years ago. To date there have been no major revisions.

The present statute 47.30.847 is vague, with loopholes which allows psychiatric facilities to deny patients due process, an appeal process, and even deny patients their right to file a grievance.

AS47.30.847 was expressly written to protect psychiatric patients. Because of changing times, method of treatment, now the statute only applies to a few facilities. This is verified by a recent letter from DHSS.

The state of Maine through a lawsuit forced their state to develop uniformity in the psychiatric grievance procedure regulations. The state of Georgia recently passed a statute that will bring about uniformity in their psychiatric patient grievance procedures / regulations.

Maine and Georgia found out that a state cannot give a vague set of guidelines or regulations to 50 or 60 psychiatric facilities and expect fair treatment of patients.

Alaska must design a grievance procedure statute that will cover all psychiatric patients/facilities and with enough detail to guarantee the protection and rights of all psychiatric patients.

AS47.30.847 states psychiatric patients can file a grievance but it does not say when. It does not say who the impartial body is. The patient must receive a written answer-etc. For more information, refer to back pages / committee report

Psychiatric patients' grievance procedure Statute AS47.30.847

Sec.47.30.847. Patients' grievance procedures. (a) A patient has the right to bring grievances about the patient's treatment, care, or rights to an impartial body within an evaluation facility or designated treatment facility.

(b) An evaluation facility and a designated treatment facility shall have a formal grievance procedure for patient grievances brought under (a) of this section. The facility shall inform each patient of the existence and contents of the grievance procedure.

(c) An evaluation facility and a designated treatment facility shall have a designated staff member who is trained in mental health consumer advocacy who will serve as an advocate, upon a patient's request, to assist the patient in bringing grievances or pursuing other redress for complaints concerning care, treatment, and rights. (10 ch109 SLA 1992)

Should Alaska treat Psychiatric Patients (Those civilly committed—Forced evaluations) the same as Criminals

In the early 80's, the Alaska legislature passed an amendment to a law that included "psychiatric patients have a right to be free of corporal punishment."

It really wasn't that long ago in American history that corporal punishment was seen as a legitimate tool for behavioral modification.

A second very questionable way psychiatric facilities / psychiatrists employ behavioral modification: the in-patient facilities remove a great deal of patient rights that are granted by statute. They then require the patient to earn their rights back and for any minor infraction of hospital rules a patient's rights may be removed again.

Across America, state courts, state supreme courts, Federal courts, have ruled in a unanimous way, that psychiatric patients that have not committed a crime cannot be treated as criminals and a "psychiatric patients rights are to remain intact to the greatest extent possible."

Removal of psychiatric patient's rights as part of a treatment plan is often arbitrary in nature, depending on the mood of the staff person. The legislature should make it clear that patient rights cannot be removed for minor infractions of hospital rules.

In a recent Alaska Supreme Court decision concerning a civilly committed psychiatric patient, the Justices were critical of the Dept. of Health and Social Services, stating DHSS's court briefs almost exclusively referred to people who had committed a crime and were in jail. The Justices reminded DHSS that there is a fundamental difference between people/ psychiatric patients who have not committed a crime and someone who has.

Ultimately, it's going to take more than a few Judges or losing a case and $200,000 to change DHSS's mindset. It will take a directive from the legislature.

Voluntary and civilly committed psychiatric patients who have not committed a crime have a right not to be placed in jail or a forensic unit (unless an emergency exists, and then must be kept separate from criminals.) Conversely, the same rule should apply. But the legislature has not made it clear.

Presently state-run psychiatric facility API uses non-forensic units as a halfway house for murderers, hard-core criminals, etc.

Mixing voluntary patients and criminals is done by the state/DHSS for convenience and to save money. The legislature should weigh in.

Follow the Money, Follow the money

Treating psychiatric patients in a psychiatric facility or unit is a billion dollar business.

Non-profit organizations that specialize in protecting psychiatric patients represent a multi-million dollar business. The job can provide a good paycheck, put the children through college, etc.

HELPING PSYCHIATRIC PATIENTS IS BIG BUSINESS. Some organizations do a lot of good. But psychiatric facilities do not necessarily see a down side to increasing the number of patients or recidivism.

And most patient rights organizations do not see an up side to empowering psychiatric patients to advocate for themselves.

There is a strong, in-bred motivation by service organizations to keep psychiatric patients helpless and to keep them coming back.

The Alaska state Legislature should take into account that psychiatric facilities—drug companies—patient rights organizations are, to a great extent, going to act in their own best interest and their actions may not always be in the best interest of the patient.

It is up to the Alaska Legislature (with the encouragement of advocates) to advance new rules that will empower psychiatric patients—giving patients an increased ability to protect themselves.

A good grievance procedure statute is one example. It has 5 ingredients:

1. It forces psychiatric facilities to respond.
2. Easy to understand.
3. Timely
4. Has a paper trail.
5. Gives patients the right to file a grievance at the time of their choosing.

A good grievance procedure, along with other advancements in patient rights, is needed by psychiatric patients.

(Reprinted from Ketchikan Daily News)

Validating Legitimate Patient Complaints as an Aid to Recovery

(Revising the Psychiatric Patient Grievance Procedure Statute AS47.30.847 Con.)

Recommendations to revise grievance procedure policy (Completed 2007)—A committee worked for one year to revise state-run Alaska Psychiatric Institute's grievance procedure.

The committee was made up of Alaska Mental Health Board members (including the chair), hospital employees, API Board members, Disability Law Center, public members, former patients. Following are their recommendations:

1. If the patient requests to file a grievance, neither the grievance nor the process can be denied because of the availability of a complaint procedure.

2. Patients have a right to a written answer to their grievance / complaint.

3. Each program area shall have complete written copies of the grievance procedure/policy and associated rules and they shall be made available to the patient. Each patient shall be offered a written copy of these rules. (Including Behavioral Health's 4 pages of grantee grievance procedure requirements.)

4. All committee members agree that there should be an urgent formal grievance procedure and urgent grievances should be resolved within 24 hours.

5. It should be made clear that patients can file a grievance on any subject and receive the same due process on any subject.

6. The committee wanted the hospital to adopt a form that could contain the complaint, the hospital's answer and the appeal process all on one form.

7. Timeline for facility resolving a patient grievance. A grievance should be resolved within 5 days not counting weekends or holidays. Facilities can ask for a 5 day extension. The facility is required to inform the patient in writing of the extension and not to exceed three 5 day extensions, not counting the 5 day investigative period initially and to include the reason for the extension. The extension should be for "good cause" such as a staff member needing to be interviewed is on vacation, etc. and the written notification to the patient should include the reason for the extension.

(Continued on next page)

8. Once filed, all formal grievances must be completed to resolution. A reasonable attempt by mail must be made to contact patients who may have left the hospital prior to resolution, informing the patient in writing of the decision.

9. AS47.30.847 states "the facility shall have a designated staff member who is trained in mental health consumer advocacy who will serve as an advocate, upon a patient's request, to assist the patient in bringing grievances or pursuing other redress for complaints concerning care, treatment, and rights." The committee recommended that the designated staff person be clearly identified in writing (policy) as the "patient advocate."
(A later committee felt the advocate training could be adequately done by the advocate reviewing an on-line program)

Note: The state of Maine had similar problems with facilities not letting patients file a grievance and they added to their regulations: "Under no circumstances shall the remedies requested in a grievance be denied nor the processing of a grievance be refused because of the availability of a less formal procedure."

The committee spent a year producing recommendations to improve the API psychiatric patient grievance procedure policy. And those recommendations are relevant to the revision of the grievance procedure statute, AS47.30.847.

"Recovery begins with being able to effectively complain."

Support Letters:

Disability Law Center in a letter dated January 9, 2007, addressed to the Alaska Mental Health Board and committee members, endorses the recommended changes to the grievance procedure. Shortly thereafter, the AMHB endorsed the recommended changes to the grievance procedure. And the API Advisory Board endorsed the additions to the grievance procedure.

Also: In a letter, Psychiatric Rights and NAMI—Anchorage called for the improvement of the psychiatric patient grievance procedure statute—AS47.30.847.

Gov. Sarah Palin; **November 5, '08**
Mr. Mike Nizich, Chief of Staff;
Alaska Senate;
Alaska House of Representatives;

We are asking that you help bring Alaska psychiatric patient statute / regulations into the 21st Century. The goal is to reduce unnecessary trauma, improve patient rights and to reduce unnecessary recidivism.

Alaska has some of the worst psychiatric patient rights and government oversight in the nation.

The Department of Health and Social Services (DHSS) is required by law to investigate a psychiatric patient's complaint and cannot delegate its responsibility to a non-state agency.

1. Behavioral Health has not to their knowledge investigated a psychiatric patient's complaint in the last 5 years. (Ombudsman's report '08)

2. DHSS does not routinely give out their phone number to psychiatric patients.

3. DHSS does not keep statistics of the number and type of complaints filed by patients in psychiatric facilities or complaints filed with DHSS.

4. Psychiatric patient grievance procedure statute AS47.30.847 needs to be revised with a goal of fairness and state-wide uniformity.

The enclosed state Ombudsman's report is critical of DHSS.

In closing, as advocates we have looked at numerous other states. No DHSS or their equivalent has made any significant advancement in patient rights or oversight without pressure from a Governor's Office, the courts by way of a lawsuit or the legislature stepping in and writing new rules / statutes.

The examples would be—the state of Maine—lengthy lawsuit—state of Georgia—legislature recently rewrote the statutes after it was shown their equivalent of DHSS was not investigating complaints and was not writing fair grievance procedure rules for psychiatric patients. The state of Washington—the Governor/office stepped in on a couple of issues.

In closing, we are asking for the help of your office in remedying the deficiencies of the DHSS in Alaska in the 4 issues we have set out.

Thank you,

Cc: Open Letter

Mental Health Advocates
Faith Myers / Dorrance Collins
(907) 929-0532

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
and ALASKA MENTAL HEALTH BOARD

SARAH PALIN, GOVERNOR

P.O. BOX 110608
431 N. Franklin Street, Suite 200
JUNEAU, ALASKA 99811-0608
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February 12, 2009

Senator Bettye Davis
Alaska State Capitol, Room 30
Juneau, Alaska 99801

Re: SB 66 – Mental Health Patient Grievance Procedure

Dear Senator Davis,

On behalf of the Alaska Mental Health Board, please except our appreciation for your support for Alaskans with mental illness. We appreciate that you are open to hearing about the needs of mental health consumers and are committed to providing them with greater security and dignity.

For the past year or so, our staff and board members have been involved in an extensive discussion around the patient grievance process. Thus, we are familiar with the current procedures in place and the discussions related to the idea of a statutory grievance procedure. Our staff has reviewed SB 66 regarding the establishment of a statutory grievance procedure for mental health patients, and would like to identify some serious concerns we have with the proposed procedure.

We are concerned that the proposed procedure will have a negative effect of patient-centered care, given its complexity and bureaucratization of the grievance process. We are also concerned that it will deter mental health consumers and their providers from reporting crimes against patients to law enforcement. The proposed procedure would add a layer to existing grievance procedure requirements, rather than replace them. We worry that this will increase the complexity for mental health consumers as well as providers, and further reduce the incentives for hospitals to expand their capacity for designated evaluation and treatment/stabilization (DET or DES) services. We also have concern that singling out mental health consumers, rather than looking to a more comprehensive procedure that includes all patients' needs, increases the stigma of mental illness. There are costs associated with this proposed grievance procedure that potentially outweigh the benefits. Finally, the proposed language gives rise to a host of construction concerns, which we worry will lead to litigation and further compromise care available to mental health consumers.

Interference with Patient-Centered Care

We applaud the acceptance of patient-centered care as the model, not just for our psychiatric institution but also for our community mental health centers and hospital services. It has been an arduous process for advocates to shift the thinking to focus on mental health consumer's participation in the treatment process, and to show the value of peer-to-peer services in the continuum of care. As written, SB 66 brings a level of government into the process that we feel compromises that patient-centered focus. We also worry that the potentially adversarial process suggested will damage the relationships between mental health consumers and their treatment teams. Given the scarcity of resources in our communities (some of which have a single provider), we do not want to risk the loss of care by overly polarizing the grievance process.

The definition of "grievance" is far too broad. It includes a "complaint, **concern or suggestion.**" The benefit of patient-centered care is that mental health consumers are able to participate in the development – and evolution – of their treatment plans. If every time a consumer wants to suggest a change to his or her treatment plan they must engage in this grievance procedure, the flexibility and responsiveness of the treatment plan are lost.

The issue of the burden of proof being placed on the provider is also concerning. To ask the provider to prove that the complained of act or behavior did not happen in reality creates a situation in which a grievance cannot be resolved in a manner acceptable to both the mental health consumer and the treatment provider. This will erode the partnership between the two, impairing the treatment process by creating an adversarial relationship.

Minimization of Serious Offenses

As proposed, AS 47.30.847(b)(7) provides an "urgent level of review" for grievances involving sexual or physical abuse, denial of "lifesaving" medical care, or denial of "basic care of human rights." Were these acts to be committed against a mental health consumer by a mental health provider, they would be criminal acts. As such, they should not be minimized or reduced to "grievances." They should be considered crimes and reported to law enforcement immediately for investigation and prosecution if appropriate.

Unfortunately, crimes against persons with disabilities often go unaddressed. Either the victim is blamed or they are undervalued to the point where crimes committed against them no longer matter. To codify this attitude in statute seems to be a step back after so many years of advocacy.

We also wonder if the very broad definition of a "grievance" doesn't minimize serious complaints about patient care. Is the intent that suggestions about menus, décor, etc. are to be considered grievances?

The Impact of Duplication

Currently, mental health providers are already required to have formal grievance procedures by state, federal and accrediting authorities. The Division of Behavioral Health has a policy with which all recipients of community behavioral health grants must comply. Alaska statute and regulations require that the grievance procedure and patient rights be posted at the facility (AS 47.30.855 and 7AAC 71.220). Providers of Medicaid-reimbursed services must comply with the grievance procedure requirements established by CMS. Hospitals and community behavioral health centers accredited by JCAHO must also comply with grievance procedure standards. This is three layers of grievance procedures already imposed upon mental health providers.

To add an additional layer, that is not coordinated with existing procedures, means a more complex grievance process for mental health consumers and a greater burden to providers. We worry that hospitals providing mental services, especially DES/DET services, will see this as another obstacle and will choose not to maintain or expand their capacity to serve people in psychiatric emergencies. We already have a fragile DES/DET system, having lost our beds in Sitka last year. Further reductions will make it even harder for mental health consumers to receive quality care when they most need it.

Exclusivity and Stigma

We agree that all patients have a right to receive quality health care, and to complain or grieve about unacceptable care. We worry that by providing a grievance procedure limited to mental health consumers, we validate the myths and stigma about mental illness by implying that mental health patients are somehow different or more vulnerable that other people with disabilities. We would recommend that a health care grievance procedure that applies to all patients regardless of disability or need as a more inclusive and equitable approach. The Disability Law Center is willing, as are we, to help in creating such a process, should you be interested in pursuing that course of action.

Cost vs. Benefit

Over the past year, we have worked with the Disability Law Center, patient advocates, the Department of Health and Social Services and the public to determine whether mental health consumers are being denied the ability to pursue grievances. We have heard no public comment from mental health consumers or family members who have been denied the right to a grievance. The Disability Law Center reports no applicants calling for assistance in asserting their grievance rights. Other social services agencies and advocacy groups report the same.

The Division of Behavioral Health (DBH) does require grantees to have a grievance procedure (the policy is attached). The policy includes departmental review if the mental health consumer cannot achieve a satisfactory resolution with the treatment provider. Between 2005 and 2007, only **five** grievants sought departmental review. Thus, there is no overwhelming evidence that mental health consumers are being denied their rights to grieve.

As proposed, providers must have a designated staff member to advocate for patients. This is currently required by the DBH policy for its grantees, so it's unclear as to whether that suffices or whether a specific FTE advocate is required by SB 66. The procedure also requires departmental review of all grievances. With the definition of grievance being so broad, this will result in requiring additional departmental staff. The result is a financial burden on providers and the state that outweighs the need.

As discussed above, we have serious concerns that this sort of procedure will damage the relationships so necessary for good patient care. If the intent is to include peer support services under this law, the damage to those relationships is even more concerning. This is an unacceptable cost for such a limited benefit.

Language

There are specific terms and provisions in the bill as drafted which lead to questions of intent and construction of the law should it be enacted.

As discussed above, the definition of "grievance" is far too broad. On its face, this would include "concerns and suggestions" unrelated to patient care. Is this the intent?

What is "a public or private evaluation facility or unit?" Is the intent that only those mental health providers identified by AS 47.30.660-47.30.915 be included, or is the intent to also include community mental health centers and/or peer support services? There is not a statutory definition of a treatment or evaluation "unit," so it's not clear what is included.

There is a great deal of specificity as to the grievance form, which could lead us to construe the statute to prohibit the making of a grievance in person, by telephone, by email, or through a family member or designated representative/advocate. This actually narrows the procedure from what currently exists for behavioral health grantees.

The proposed AS 47.30.847(b)(4)(C) permits an administrative appeal if the executive director of the provider cannot resolve the grievance in a way acceptable to the person making the grievance. Since all of our providers except API are private non-profits, there is no governmental action to be the subject of an administrative appeal. There would need to be some review by the Department of Health and Social Services or Division of Behavioral Health to be appealed administratively.

There are also two legal questions. What is meant by "due process?" Is this a procedural concept requiring notice and hearing or is it a substantive due process concept? Also, the assignment of the burden of proof on the provider in atypical — usually the complainant must establish the grounds for the complaint. As drafted, SB 66 limits the provider to proving "compliance or remedial action" — which presupposes that the facts alleged in the grievance are true (thereby denying the provider its due process).

Please do not interpret this extensive list of concerns as being "anti-patient" or as our taking a position to limit the rights of mental health consumers. The Alaska Mental Health Board strongly supports the rights of mental health consumers and their families and we would like to see an easier, more accessible grievance system for all patients. We simply do not feel that SB 66 as drafted achieves that result. We look forward to partnering with you on this issue, to better serve all our constituents.

Sincerely,

J. Kate Burkhart
Executive Director

State of Alaska
Department of Health and Social Services
Behavioral Health

Policy & Procedure

Topic: State Behavioral Health Requirements for Grantee Grievance Procedures

Policy: All Behavioral Health (BH) grantee treatment organizations are required to develop grievance procedures by which all clients, without regard to services used or funding source, including those clients denied services, may seek redress of grievances. The procedures, written in plain language, should be developed with meaningful consumer participation utilizing the general guidelines established by State Behavioral Health. A copy of the procedures must be filed with BH and should also be posted at the grantee organization's facility(s).[1]

Intent: The Department of Health and Social Services (DHSS) by law is required to adopt regulations to assure patient rights[2], to establish standards for treatment facilities and to keep related records[3], and to investigate complaints made by a patient[4]. This policy outlines the DHSS BH guidelines for grantee grievance procedures, explains BH's role in response to grievances, and lists relevant policy clarifications and all related references of the Alaska Statutes and the Alaska Administrative Code.

Grievance Procedure Guidelines: Grantee consumer grievance procedures must, at a minimum, meet the following criteria:

1. Provision(s) that ensure the right of consumers to file a grievance without intimidation
2. Provision(s) that ensure there is NO retaliation perpetrated against consumers who have filed a grievance
3. Provision(s) that outline a process by which consumers may easily file a grievance, to include:

[1] 7 AAC 13.135 Grievance procedures; 7 AAC 71.220 Grievance procedures
[2] AS 47.30.590 Comprehensive services
[3] AS 47.37.030 Powers of Department; AS 47.37.140 Public and Private Treatment Facilities
[4] AS 47.30.660 (b) (12) Powers and duties of department

APPROVED: 6-18-2007

a. A simple form written in plain language that also provides for an optional waiver of confidentiality which consumers may complete and submit,
b. Procedure(s) that allow consumers to submit a grievance orally
c. Procedure(s) that allow consumers to submit a grievance over the phone or via email

4. Explanation of agency's grievance procedure / policy provided to ALL consumers upon entry to services, to include the following:
   a. Copy of agency procedure / policy
   b. A form for consumers to sign, which shall be maintained in the consumer's clinical record, that declares their receipt and understanding of the agency procedure / policy
5. Provision(s) for consumers to designate a representative or advocate to assist them with all steps of the grievance process
6. Procedure(s) for the agency, upon consumers request, to assist the consumer with filing a grievance, which should include either:
   a. Identifying specific agency staff to provide assistance
   b. Written referral to other consumer advocacy resources such as the Disability Law Center and NAMI-Alaska
7. Step-wise procedures, limited to the following, for resolving ALL grievances:
   a. **Resource and means for commonly resolving consumer disputes to minimize the need to invoke the grievance process**
   b. Communication with consumer upon receipt of grievance that the agency has begun the process to resolve the grievance
   c. Direct resolution through dialogue with the agency staff member involved or with the staff member's supervisor, or with both as consumer requests
   d. Resolution through the agency Executive Director
   e. Resolution through the agency Governing or Advisory Board
   f. Referral of grievances unresolved at the agency's highest level to DHSS Behavioral Health for technical assistance
8. Established time frames to include the following that ensure prompt hearing of grievances:
   a. Initiation of resolution (according to the procedures noted in # 7 above) within 5 days of receiving a grievance
   b. If agency is unable to adequately initiate resolution within 5 days, a written notification shall be sent to the consumer by the end of 5 days from receipt of grievance explaining why and identifying when the grievance process will initiate
   c. Satisfactory resolution to grievances within 30 days of receipt of grievance
   d. Referral to BH, within 5 business days, for technical assistance with grievances that remain unresolved after 30 days.
9. Provision(s) for immediately elevating to the Governing or Advisory Board level any grievances that involve abuse, neglect or unnecessary seclusion or restraint.
10. Procedure(s) that provide for the creation, maintenance and storage of files for each individual grievance which shall contain all related documents, records, actions and communications.

11. Provision(s) that address maintenance of consumer confidentiality throughout the grievance process

BH Role & Responsibility:

DHSS BH shall initially represent the Department of Health and Social Services for any grievance referred for technical assistance involving BH grantee treatment organizations. BH shall take the following steps to assist with these grievances:

1. **Exercise the primary responsibility of DHSS BH to orient consumers, or other individuals calling on behalf of consumers, to the grievance process and procedures available thru the involved grantee organization**
2. For questions regarding grievances which have been heard according to the involved grantee organization's grievance procedures, BH may:
   a. Review any written response from the involved grantee organization regarding their findings and resolution to the grievance.
   b. Investigate whether the involved grantee organization complied with the following, as indicated, in regards to processing the consumer grievance:
      i. Alaska Statute / Behavioral Health Regulations
      ii. Medicaid Regulations
      iii. Special Conditions of Grant Award
   c. Determine if resolution of the grievance is reasonable based on resources available to the grantee organization
   d. Share BH findings with both the consumer and the involved grantee organization
3. In the course of providing technical assistance for any consumer grievance BH may:
   a. Communicate with any involved party to seek clarification of information, or to obtain access to supporting documents
   b. Consult with other Department or division resource
   c. Refer case to other Department or division resource for continued technical assistance or action
   d. Take any other action deemed prudent or necessary to assist consumer and / or grantee organization

Policy Clarifications:

1) The Department of Health and Social Services is authorized to review, obtain, and copy confidential and other records and information about clients, including services requested or furnished, to evaluate a grantee organization's compliance with statutes (AS 47.30.520 – 47.30.620)[5]

2) For substance abuse treatment facilities and programs, DHSS has adopted by reference the standards contained in the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) *Standards for*

[5] AS 47.30.590 (b) Patient rights and the confidential nature of records and information

Behavioral Health Care, 2004 – 2005.[6] The Department also provides for exemption from the provisions regarding substance abuse facilities or programs established by the State of Alaska Administrative Code for those private and public treatment facilities currently certified by JCAHO or the Commission on Accreditation of Rehabilitation Facilities (CARF).[7] Therefore:

a. All substance abuse grantee organizations are also obligated to comply with JCAHO standards regarding client Ethics, Rights, and Responsibilities (RI.2.120 – RI.2.130)[8] OR
b. If certified by CARF are obligated to also comply with the CARF standards for rights of persons served (Section 1. Business Practices: Criterion D. Rights of Persons Served)[9]

References:

Alaska Statutes (Authority)

Title 47. Welfare, Social Services and Institutions
- Chapter 30. Mental Health
  - Section 520 - 620. Community Mental Health Services Act
- Chapter 37, Uniform Alcoholism and Intoxication Treatment Act
  - Section 30, Powers of Department
  - Section 140, Public and Private Treatment Facilities

Alaska Administrative Code

Title 7. Health and Social Services
- Chapter 13, Assistance for Community Health Facilities
  - Section 135. Grievance procedures
- Chapter 29, Uniform Substance Abuse Treatment
  - Section 10. Application of standards
  - Section 30. Adoption of standards by reference
- Chapter 71, Community Mental Health Services
  - Section 220. Grievance procedures

[6] 7 AAC 29.030 Adoption of standards by reference
[7] 7 AAC 29.010 Application of standards
[8] Comprehensive Accreditation Manual for Behavioral Health Care, 2004 – 2005
[9] 2007 Behavioral Health Standards Manual, CARF International

Senator Bettye Davis, **February 14, 2009**
Chair---HESS Committee,

We would like to comment on the contents of the letter you received from J. Kate Burkhart, Executive Director of the Alaska Mental Health Board (Feb 12, '09—5 page letter) concerning SB 66.

J. Kate Burkhart does a good job of stating the position of providers and DHSS.

"Alaska needs to improve the psychiatric patient grievance procedure statute / regulations." Not one of J. Kate Burkhart's proposals will do that. In fact, her proposals will actually make it possible to remove some of the patient rights that an API committee worked one year to gain.

From a psychiatric patient's view:

From a psychiatric patient's point of view: it takes less than 5 minutes of reading the current 3 grievance procedure guidelines to know they are inadequate and unfair to psychiatric patients and it takes less than 5 minutes of talking to mental health consumers at places like the Alaska Mental Health Computer Web (which we did) to know consumers are not satisfied with the current grievance process.

SB 66 is a good bill, it is necessary and we are asking that it receives a hearing. When signed into law, SB 66 will give needed protection to Alaska psychiatric patients that is already enjoyed by patients in some other states.

We want to clarify some of the information that J. Kate Burkhart provided in her letter.

Reasons not to combine the grievance procedures:

Psychiatric patients, individuals with a developmental disability, individuals with drug and alcohol addictions, individuals with traumatic brain injury cannot all be included in the same grievance procedure. (with the exception of dual diagnosis)

Psychiatric patients are unique in that they can be civilly committed (locked up), committed for forced evaluation, forced medicated, etc. Psychiatric patients need their own grievance procedure because of the uniqueness of their position.—Those with other disabilities are generally not locked up unless they exhibit symptoms of a mental illness or commit a crime.

The state of Maine came to the same conclusion that they could not combine individuals with a mental illness and individuals with developmental disabilities in the same grievance procedure. (with the exception of dual diagnosis)

Good foundation for SB 66:

Many of the provisions in SB 66 came out of a Bi-Partisan Alaska Psychiatric Institute grievance procedure committee and from other states. The committee recommendations (2007) were endorsed by the Alaska Mental Health Board, Disability Law Center and the API Board.

In many instances, J. Kate Burkhart is speaking against rules that were approved by the AMHB, Disability Law Center and the API Board and also rules in general practice at API today meant to protect psychiatric patients.

As an example:

As an example, in the 2007 committee recommendations, the API committee stated that patients should have a right to file a grievance on any issue and at the time of their choosing.—Just because an issue rises to a level that it should be reported to the police, does not mean that patients should not still retain the right to file a grievance in addition to the reporting to the police—that was a committee decision.—there were too many cases in the past at API where serious issues were never allowed to become a grievance and were also not reported to the police. That is one of the reasons why all psychiatric patients need an absolute right to file a grievance at the time of their choosing.

There are numerous acceptable ways to deal with a frivolous grievance. But the state cannot allow psychiatric facilities / units or DHSS to choose which patient can file a grievance and when.

Keeping statistics as a way to improve care:

In an '08 Ombudsman's report it came to light that DHSS / Behavioral Health has not investigated a psychiatric patient's complaint in 5 years—although they may have accepted a few complaints, they did not investigate them. And they do not routinely give out their phone number to patients...

Also, an '08 Ombudsman's report was critical of DHSS / Behavioral Health for not keeping statistics on the number and type of complaints filed by psychiatric patients in psychiatric facilities and units...SB 66 will require that statistics be kept.

Too many grievance procedure guidelines, too many loopholes:

There are 3 separate grievance procedure guidelines for psychiatric patients in Alaska and no single grievance procedure guideline covers all psychiatric facilities or units. In Maine and Georgia, before they changed their grievance procedures, psychiatric patients were abused and/or died and they were using a JCAHO grievance procedure just like in some Alaskan facilities / units. One of the necessary goals of SB 66 is to consolidate and have one improved grievance procedure statute for all psychiatric patients.

Bring SB 66 into a hearing:

We are asking that SB 66 be given a hearing and passed. (Any minor shortcomings in the bill can be fixed in committee) In the end, it will be the legislature that will have to make the final decision.

DHSS and practically every hospital opposed SB 8 last year—even the Unions opposed it. They were predicting patient treatment as we knew it would end.

When we called the hospitals recently, they stated they were complying with SB 8—no problems.

The same thing will happen with SB 66—Institutions / DHSS will predict the end of the world—but when it passes they will comply and Alaska will be better for it.

Thank you,

Faith Myers / Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK. 99508

(907) 929-0532

Faith Myers
Dorrance Collins

Cc: Ms. J. Kate Burkhart,
AMHB
Mr. Dave Fleurants,
Disability Law Center
James Gottstein, Esq.
Psych/ Rights
Ms. Francine Harbour,
NAMI, Anchorage
Ms. Kathy Fitzgerald,
Partners-in-Policymaking
Mr. Jeff Jesse,
Trust Authority
Open Letter

SARAH PALIN, GOVERNOR

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DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

February 24, 2009

Beth Leibowitz
Assistant Ombudsman
PO Box 113000
Juneau, AK 99811-3000

RE: Ombudsman Complaint J2008-0233

Dear Ms. Leibowitz:

This is to confirm the teleconference held on January 15, 2009 regarding the above referenced complaint and your suggestions to the department as set forth in your letter dated November 4, 2008. Participants in the discussion from the Department of Health and Social Services included Patrick Hefley, Deputy Commissioner; Division of Behavioral Health staff Melissa Stone, Director; Stacy Toner, Deputy Director; and Brenda Knapp, Treatment and Recovery Program Administrator. You suggested that the department develop and maintain a logging system for complaints received by DBH and that we clarify which records the Licensing and Certification Section (Division of Public Health) may be appropriately released.

Division of Behavioral Health staff advised you that we thoroughly considered the desirability and practicality of establishing a logging system and reached the conclusion that we do not receive enough complaints to justify the development and maintenance of a tracking system. Nearly all complaints and grievances are handled successfully at the service provider level, as they should be. Since the providers are independent corporations, municipal entities or tribal organizations, they hold responsibility for resolving complaints and grievances that come to them. As a condition of a grant award, each grantee is required to have formal grievance policies and procedures in place.

Your second suggestion was that we determine our authority to release records maintained by the Facilities Licensing and Certification Section, specifically complaint or grievance information. This will not be an issue for us since we do not plan to establish a complaint tracking system.

We appreciate your thorough investigation of the above complaint, and the observations and suggestions you subsequently shared with us. It is always helpful to get feedback on how the department's operations are perceived so that we can make necessary changes and be more responsive to the needs and concerns of consumers, their families and the general public.

Sincerely,

Patrick B. Hefley
Deputy Commissioner

cc: Melissa Stone, Director, Division of Behavioral Health
Stacy Toner, Deputy Director, Division of Behavioral Health
Brenda Knapp, Treatment & Recovery Program Administrator, Division of Behavioral Health

Don Burrell

From: NAMI Anchorage [namianchorage@nami.org]
Sent: Monday, February 16, 2009 4:37 PM
To: Sen. Bettye Davis
Subject: SB 66

Dear Senator Davis:

NAMI Anchorage is the local affiliate of the National Alliance on Mental Illness. We provide support, education and advocacy to people who experience severe mental illness.

NAMI Anchorage supports SB 66 in its general principles. More particularly, we support uniformity of procedures for all psychiatric hospitals. Uniformity, properly crafted, can provide a guard against arbitrary action or enforcement.

Additionally, we support the adoption of a grievance system specifically for patients with mental illness. The position has been taken by others that making such a distinction somehow diminishes people with mental illness. The distinction is necessary not because these patients have mental illness, but because patients with mental illness can be locked up and forcibly medicated. People with developmental disabilities, substance abuse disorder or traumatic brain injury do not face such losses of liberty unless they have a dual diagnosis or they have committed a crime. It is the possible consequence of this loss of liberty that requires a grievance procedure tailored for people in psychiatric institutions, not the fact that the grievants have mental illness.

Finally, there is a long, sad history of grievances by psychiatric patients not being taken seriously, or being considered a symptom of mental illness. Even if institutions and caregivers today are more progressive in general, there still exists the possibility of this disregard of grievances in particular instances. So again, a strong grievance procedure tailored for those in psychiatric institutions is called for.

NAMI Anchorage will leave it to others more familiar with the proposed legislation to offer suggestions on tightening up some language that appears on the surface vague or too broad. We support a uniform grievance procedure for psychiatric patients in the outline set out in SB 66.

Thank you for your continued advocacy for persons with mental illness.

Francine Harbour
President, NAMI Anchorage
(907) 272-0227

PsychRights®

Law Project for
Psychiatric Rights, Inc.

February 16, 2009

Senator Bettye Davis
State Capitol, Room 30
Juneau, Alaska 99801-1182

Re: SB 66

Dear Senator Davis:

This is to reaffirm[1] the Law Project for Psychiatric Rights' (PsychRights) support for the current iteration of your proposed legislation to beef up psychiatric patients' rights surrounding grievances, SB 66. Our experience is it is common for patients' grievances to be summarily disregarded by psychiatric facilities as symptoms of mental illness.[2] In this way, psychiatric facilities evade accountability. It is well known that even serious events such as rape, especially by staff, when reported by patients, are summarily ignored as "delusions," when in fact, these types of events occur with disturbingly regularity. Psychiatric facilities should be required to treat all grievances with respect as required by SB66. I urge passage of SB 66.

Yours truly,

James B. (Jim) Gottstein, Esq.
President/CBO

cc: Faith Myers/Dorrance Collins

[1] See, attached copy of letter dated March 31, 2008.
[2] Just last month, for example, I was called by a former API patient who told me his grievance was simply ignored by API.

406 G Street, Suite 206, Anchorage, Alaska 99501 ~ (907) 274-7686 Phone ~ (907) 274-8493 Fax
http://psychrights.org

Testimony to the Senate Hess Committee-- **February 2, 2009**

Madam Chair, Senate Committee members,

I support the passage of Sen. Bill 66, which will improve the present psychiatric patient grievance procedure statute AS47.30.847.

As a state, we must protect and guarantee a psychiatric patient's right to file a grievance at the time of their choosing. And above all, a grievance must be fair. The current grievance procedure statute is not fair.

In the state of Maine, the citizens had to sue the state to force the improvement of the psychiatric patient grievance procedure.

In the state of Georgia, within the last couple of years, their legislature stepped in to redo the psychiatric patient grievance procedure statute, after it was shown that Georgia's equivalent of DHSS was not in any legitimate way investigating psychiatric patient complaints. And their DHSS was not keeping statistics of complaints filed by psychiatric patients in facilities. They didn't have a clue.

In the matter of health care, there are a lot of similarities between Alaska, Maine and Georgia. The difference is—they have fixed their grievance procedure statutes and we need to fix ours.

There are now 3 separate grievance procedure guidelines for psychiatric patients in Alaska.

One, grievance procedure statute AS47.30.847 presently only applies to some facilities. It doesn't require that patients receive a written answer to their grievance; there is no due process; there is no appeal process; there is no urgent grievance procedure. Even in-mates in Alaska prisons have an urgent grievance procedure. The present grievance procedure statute has loopholes which allow psychiatric facilities to deny patients a right to file a grievance in a timely manner.

Two, thousands of psychiatric patients must use a Joint Commission for Accreditation of Hospital Organizations (JCAHO) grievance procedure. And that includes some patients civilly committed and those in hospitals for a forced evaluation. --There is no appeal process mandated by JCAHO. There is no urgent grievance procedure. There is no impartial body. Hospitals have 14 days to offer a resolution—the average stay is under 14 days for psychiatric patients.

Three, Behavioral Health's psychiatric patients' grievance procedure requirements for Grantees (4 pages) covers about 50 locations.

Under Behavioral Health guidelines, psychiatric facilities have 5 days to contact a patient after the patient files a grievance. At that point the facility can ask for an open-ended extension. After 35 days, a facility is supposed to forward an unresolved grievance to Behavioral Health for technical assistance. Or the facility can offer a resolution which may deny the patient's request—then the facility does not have to forward the grievance, even if the patient is not satisfied with the resolution.

As of now, the Behavioral Health facilities do not have to offer a written resolution and basically, the facilities have 35 days in which to offer a resolution to a patient.

Sen. Bill 66 will consolidate and improve the present psychiatric grievance procedure guidelines into one statute.

I am asking that you pass Sen. Bill 66 with your support out of the Hess committee.

Thank you,

Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK. 99508

(907) 929-0532

Dorrance Collins

Testimony to Senate Hess Committee **February 2, 09**

Madam Chair, Senate Committee members,

I support the passage of Senate Bill 66.

There is a long applaudable history of improving psychiatric patient rights and care. But we must recognize that we should continue.

In the early 80's the legislature outlawed using corporal punishment on psychiatric patients. It was also written into the rules that psychiatric facilities can no longer experiment on patients. In the 70's and 80's, AS47.30.840 finally granted 11 basic rights to psychiatric patients. About the same time, new rules were put into place that required the psychiatric facilities to include the patient when developing a treatment plan. Prior to that passage, states and facilities would just tell the patient what the treatment was going to be.

In 2008, Sen. Bill 8 was signed into law. It provided that psychiatric patients with trauma in their background would be included in the conversation of which gender staff would provide them their intimate care.

There has never been a shortage of individuals who will testify against patient rights improvements: Even policies that increase quality of care and increase the opportunity for recovery and reduce unnecessary trauma.

In closing, we must revise the grievance procedure statute AS47.30.847 and make it accessible to all patients. We must also see to it that the due process is fair.

Passing a good grievance procedure statute will not only protect psychiatric patients, without costing any more money, it will also require psychiatric facilities to improve.

I am asking for support in the passing of Sen. Bill 66.

Faith Myers
3240 Penland Pkwy, Sp. 35
Anchorage, AK. 99508

(907) 929-0532

Faith Myers

Letters in support of revising/improving psychiatric patient's grievance procedures/statute and in support of a state office/individual to investigate psychiatric patient complaints as per AS47.30.660.

NAMI Anchorage
144 W. 5th Avenue
Anchorage, AK 99501

(907) 272-0227
(phone and fax)

February 17, 2007

Alaska State Legislature
Juneau, Alaska

Re: Request for Amendment to AS 47.30.847
Psychiatric Grievance Procedures

Honorable Senators and Representatives:

NAMI Anchorage provides support, education and advocacy to persons experiencing a mental illness and their families. This letter is about the grievance rights of patients in mental health facilities. Those rights are set out in broad terms in AS 4.30.847. See copy attached.

We have received reports that patients have been unduly burdened by hospital procedures in their efforts to bring grievances. For example, the facility may repeatedly require the patient to confer with members of the very same treatment team that have aggrieved the patient as a pre-condition to filing a formal grievance. It can be traumatizing to a patient to be required to seek redress from the same caregivers with whom the patient has a dispute.

It has also been reported to NAMI that patients are not always being provided a written statement of the grievance procedure upon admission to the facility. The ability of the patient or patient's representative to advocate for themselves requires knowledge of the "what" and "how" of the grievance procedure *prior* to treatment. NAMI believes that self-advocacy is one of the building blocks for real and lasting recovery.

These examples demonstrate that the due process rights of patients can be easily limited or circumvented because the language of AS 47.30.847 is too broad. The statute does not say precisely what the mental health facilities must do, giving them considerable latitude in interpreting the law and developing the grievance procedures as they wish. The statute needs to be amended to state the following specific requirements:

- the written grievance procedure will be provided to the patient at the time of admission.
- the patient's written complaint will be accepted and delivered to the "impartial body" required in subsection (a) without requirement of further consultation with or approval by the treatment team or other precondition.
- the patient will be allowed the assistance of a self-designated representative and will not be limited to a representative as defined by the facility.
- the complaint will be addressed and resolved within specific time frames to be set out in the amended statute.

Additional specific provisions may be required as investigation continues. NAMI Anchorage is prepared to assist in this important revision process as requested. In the meantime, we ask the legislators and the administrators of mental health facilities to bear in mind the trauma that hospitalization by itself causes a patient, on top of the underlying problem resulting in the hospitalization. In such a situation, the balancing of administrative inconvenience with the health and welfare of the patient should weigh in favor of the patient.

Thank you for this opportunity to comment.

NAMI Anchorage

Pat Kouris / by Harbour

Pat Kouris

President, NAMI Anchorage Board of Directors

attachment: AS 47.30.847

cc: Representative Sharon Cissna
James B. Gottstein, Esq.
Faith Myers and Dorrance Collins
David Fleurant, Disability Law Center

PsychRights®
Law Project for
Psychiatric Rights, Inc.

Alaska Legislature
Alaska State Capitol
Juneau, Alaska 99801

January 30, 2006

Re: Psychiatric Rights Legislation

This is to support the proposals by Faith Myers and Dorrance Collins to amend Alaska law to enhance certain rights given to people diagnosed with serious mental illness and held at inpatient facilities.

For example, the wording "patients must be given reasonable opportunity" gives some facilities license to deny patients the rights the statute is intended to ensure. Some facilities turn these rights on their head and make them "privileges." To address this, it is recommended that something like the following be added to AS 47.30.840:

> At no time shall the rights set forth in this chapter be treated as privileges that the recipient must earn by meeting certain standards of behavior.

Of course these rights are meaningless if there is no effective enforcement process. It is therefore suggested that AS 47.30.847 be amended to specify a time limit in which grievances/complaints must be answered and that patients 18 and older have a right to appoint a representative of their choice to help them file and pursue grievances/complaints.[1] Such representatives should have the right to "reasonable access to all living and program areas and to staff involved in the treatment of the patient in order to assist the patient in the protection of his or her rights."

In addition the state Ombudsman or some other state oversight authority should have the right to go into any facility holding people because being diagnosed with mental illness. The Ombudsman's Office is presently excluded from all but state hospitals and would have to he granted a different authority to enter other facilities.

I have known Faith Myers and Dorrance Collins for a number of years and they are absolutely spot on with their suggestions. Alaska citizens deserve the type of consideration Faith and Dorrance are asking for and I urge you to act favorably upon their suggestions.

Yours truly,

James B. (Jim) Gottstein, Esq.

[1] For patients under 18, their guardian would retain that right.

406 G Street, Suite 206, Anchorage, Alaska 99501 ~ (907) 274-7686 Phone ~ (907) 274-9493 Fax

DISABILITY LAW CENTER OF ALASKA

ANCHORAGE
3330 Arctic Boulevard
Suite 103
Anchorage, AK 99503
(907) 565-1002
FAX (907) 565-1000
1-800-478-1234

January 30, 2006

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

Dear Faith and Dorrance:

You have requested a letter of support from the Disability Law Center of Alaska for your effort to revise the grievance rights of psychiatric patients in Alaska. In essence, your proposed revisions seek to ensure that psychiatric patients are afforded basic due process rights when filing a grievance.

The Disability Law Center of Alaska supports your efforts to ensure that psychiatric patients in Alaska are afforded basic due process rights. Your recommendations, including permitting psychiatric patients the right to obtain the assistance of a self-designated representative and establishing specific time frames for certain actions, are very appropriate means of assuring that rights can both be exercised and are protected.

Please let me know if there is anything we can do to assist you in this effort.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant
Executive Director

DISABILITY LAW CENTER OF ALASKA

ANCHORAGE
3330 Arctic Boulevard
Suite 103
Anchorage, AK 99503
(907) 565-1002
FAX (907) 565-1000
1-800-478-1234
www.dlcak.org

January 29, 2007

Andrea Schmook, Chair
Alaska Mental Health Board
431 N. Franklin Street, Suite 200
Juneau, Alaska 99801-1121

Re: Recommended Changes to API Grievance Policies and Unit Manuals

Dear Ms. Schmook:

On behalf of our agency, I am writing in support of the recommended changes to API's Grievance/Complaint policies, procedures, and practices, as well as recommended changes to API's unit manuals, that will be offered to you and the other AMHB members during this week's meeting.

We have actively participated in the development of these recommendations, as part of the API Governing Body's sub-committee, formed to address these issues. We firmly believe these changes will benefit those who receive care and treatment at API, and assist the hospital in its efforts to develop and maintain a more person-centered, recovery model of treatment. So too, these changes support and lend themselves to one of our agency's fundamental beliefs and mission – to protect and promote individual rights, dignity and ability to self-advocate.

We hope you and the other board members will add your support and any additional recommendations you may have, as these recommendations make their way to API's Governing Body for final review and consideration.

Sincerely,

THE DISABILITY LAW CENTER OF ALASKA

David C. Fleurant
Executive Director

Cc: API Grievance Committee Members

3745 Community Park Loop, Suite 200
Anchorage, AK 99508
Main line: (907) 269-7960
FAX: (907) 269-7966

The Trust

The Alaska Mental Health Trust Authority

To Whom It May Concern:

Subject: Support of legislation and regulations to ensure prompt and appropriate handling of grievances that are held in inpatient facilities in Alaska.

At a full Board of Trustees meeting on September 7, 2007 the Board of Trustees of the Alaska Mental Health Trust Authority approved the following Statement of Support as follows:

The Board of Trustees of the Alaska Mental Health Trust Authority are in support of the Department of Health and Social Services and the Alaska State Legislature working with Alaska mental health advocacy groups and individuals to ensure the passage of legislation and the implementation of regulations that improves the prompt and appropriate handling of grievances/complaints from people diagnosed with serious mental illness that are held in inpatient facilities in Alaska. "Prompt and appropriate handling" at minimum, is defined by the attributes listed below.

1. *Written grievance procedures will be provided to the patient at time of admission.*
2. *A patient's written complaint will be provided to an "impartial body" without further preconditions.*
3. *The patient will be allowed an array of assistance and not be limited to utilizing representatives solely defined by the facility.*
4. *Complaints shall be addressed and resolved within specific time frames to be set out in the amended statute.*

Sincerely,

Jeff Jessee
Chief Executive Officer

STATE OF ALASKA

Sarah Palin, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

Advisory Board on Alcoholism and Drug Abuse
Alaska Mental Health Board

P.O. BOX 110608
JUNEAU, AK 99811-0608
PHONE: (907) 465-8920
FAX: 465-4410

February 1, 2007

At the January 2007 Juneau meeting of the Advisory Board on Alcoholism and Drug Abuse and the Alaska Mental Health Board a motion was made to support the revision of AS 47.30.847 and passed unanimously.

Kathryn Craft, Interim Executive Director
ABADA & AMHB

August 11th, '08

News Release

The state of Georgia recently established an Ombudsman's Office that will exclusively handle complaints by psychiatric patients. (The psychiatric patient Ombudsman's Office is modeled after the long-term-care Ombudsman's Office.)

The new Ombudsman's Office was created after a series of articles by the Atlanta Journal Constitution newspaper in which it was shown that the grievance procedure system for psychiatric patients in Georgia was ineffective and unfair. The series of articles showed that oversight by the Dept. of Human Resources (equivalent to our DHSS) was not protecting patients. DHR oversight was like the fox protecting the henhouse, according to a state official.

The new Georgia psychiatric patient Ombudsman's Office reports directly to the Governor's office.

Alaska's psychiatric patient grievance procedure system, both Behavioral Health grantee grievance procedure requirements and the state statute, is unfair to psychiatric patients.

Alaska's DHSS doesn't keep statistics of the number and type of grievances filed by psychiatric patients / clients. DHSS does not maintain an office to investigate psychiatric patient complaints, even though they are required to do so by statute. DHSS does not give their phone number to all psychiatric patients and inform patients that DHSS is required to investigate complaints. DHSS cannot delegate its responsibility to investigate psychiatric patient complaints to a non-state facility or agency.

For more information contact :

Mental Health Advocates
Faith Myers / Dorrance Collins
3240 Penland Pkwy, Sp.35
Anchorage, AK. 99508

(907) 929-0532

Faith Myers
Dorrance Collins

Cc: Open Letter

Anchorage Daily News

AP Wire Service

DHSS ---- Governor Sarah Palin

Psychiatric patients are one of the most vulnerable groups in our society. Many persons that are in acute care facilities for forced evaluations have dementia.

There must be a state office that can respond to a psychiatric patient's complaint without needing 2 to 4 weeks and writing to the Medicaid / Medicare Office in Seattle.

State of Maine, State of Georgia, etc., have established offices that can immediately respond to a psychiatric patient's complaint.

Faith Myers

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH
CERTIFICATION AND LICENSING

Sarah Palin, Governor

619 E. Ship Creek Avenue Suite 232
Anchorage, AK 99501-1667
Telephone: (907) 334-2483
Fax: (907) 561-3011

January 2, 2007

Dorrance Collins
3240 Penland Pkwy, Space 35
Anchorage, AK 99508

Dear Mr. Collins:

This letter is in response to the complaint our office received from you on 11/29/06 regarding your dissatisfaction with the current grievance procedure at Alaska Psychiatric Institute. In addition, you stated that several hospitals in the state of Alaska refused to release their grievance policy to you.

In order for our office to perform an on-site investigation at a facility such as Alaska Psychiatric Institute we must first get approval from the Centers for Medicare and Medicaid Services (CMS) Regional Office in Seattle. Therefore, the documentation you provided to our office in regard to your concerns was forwarded to that office. Upon review by CMS, it was determined that there were no regulatory compliance issues identified.

In addition, you indicated in your letter that you feel the grievance procedure statute AS 47.30.847 should be changed. Unfortunately, our office is not able to assist you with this change. You may pursue that change through the State of Alaska Legislature. Alaska Psychiatric Institute administrative staff should be able to provide you with the name and contact information for their Legislative Representative or you may contact the State Legislative Department directly at (907) 465-4648.

Thank you for notifying us of your concerns. If you have any further questions you may contact me or Kathy Thomas at 334-2483.

Sincerely,
CERTIFICATION AND LICENSING

Bernadean Anselm
Program Manager

AS47.30.847—Psychiatric Patient Grievance Procedure was expressly written to protect psychiatric patients.

The Department of Health and Social Services (DHSS) has stated that the statute 47.30.847 does not apply to the new hybrid medical hospitals that contain psychiatric units.

Providence Hospital treats approximately 4000 psychiatric patients a year, including forced psychiatric evaluations. And there are numerous other hospitals around the state that treat patients/ do forced psychiatric evaluations which can last 3 to 7 days because of holidays, weekends, etc. during which the patient is in a locked facility. The present statute AS47.30.847 does not apply to many of those hospitals.

These hospitals use Joint Commission for Accreditation of Hospital Organizations (JCAHO) grievance procedure / oversight. Alaska may be the only or one of the few states that civilly commits, does forced evaluations on citizens and the state of Alaska does not write special rules to protect those patients.

Faith Myers

Reference:

"Recovery or growth begins with being able to effectively complain."

(Whether it be) "psychiatric patients—children—husband or wife—etc"

A 2008 survey of Alaska Psychiatric Institute's patients shows 21% of the patients were afraid to complain or file a grievance. Nineteen percent didn't answer the question with the possibility they were afraid to answer.

The patient's voice must be encouraged and allowed to come forward to facilitate true recovery.

Faith Myers / Dorrance Collins
(907) 929-0532

March 30 '09

PLEASE GIVE / SEND

TO: Tom Obermeyer

Attached is the testimony we will give Wednesday, April 1, 09 on SB 66.

We timed how long it will take – 5 minutes – Would you talk to Sen. Bettye Davis and try to get us that much time.

Faith Myers
Dorrance Collins

FROM: MENTAL HEALTH ADVOCATES, Faith Myers / Dorrance Collins, 3240 Penland Pkwy, Sp. 35, Anchorage, AK. 99508

(907) 929-0532

Testimony to the Senate HESS Committee, April 1, '09

Madam Chair, Senate HESS Committee members,

My name is Dorrance Collins. I support the passage of SB 66.

In the state of Maine, citizens sued their equivalent of the Department of Health and Social Services (DHSS) to force improvements in the state's psychiatric patient grievance procedures.

In the state of Georgia, the legislature in '08 stepped in and revised the grievance procedure statute after it was shown that Georgia's equivalent of DHSS was not properly investigating psychiatric patient's complaints, not writing fair rules for the grievance procedures and also not keeping statistics of the number of complaints filed by psychiatric patients.

I have in front of me a 3 page report from Alaska Psychiatric Institute (API) which is managed by DHSS. It is dated 2006. It shows 256 complaints were filed by patients in a 12 month period. Not one was considered a grievance. Not one patient had their grievance heard in front of an impartial body. Not one person received a written response, which is a Federal requirement.

The loopholes and inadequacies in the current grievance procedure statute AS47.30.847 allowed API, which is managed by DHSS, to treat all patient complaints in an informal manner; allowing API to by-pass regulations.

Just some of the patient complaints—
--54 were concerning respect and dignity,
--3 sexual abuse allegations,
--11 complaints against doctors
--17 complaints about medication
--18 complaints concerning safety,
--4 complaints concerning medical treatment, etc.

Now, under pressure, API has made some improvements. But that still leaves approximately 50 other psychiatric patient treatment locations and as of now there is nothing to stop API from going back to their old habits.

Some state officials are going to say that hospitals with psychiatric units are governed by Joint Commission for the Accreditation of Hospital Organizations (JCAHO) rules and thus there is no need to expand the psychiatric patient grievance procedure statute to cover places like Providence; which handles approximately 4000 psychiatric patients a year; some of those patients are there for forced evaluation. And then there are Fairbanks Memorial and Bartlett Juneau Hospitals, which can do civil commitments. And also there are 50 or so grantee facilities where some psychiatric patients are court ordered or court required to receive treatment.

I have in front of me a letter from Joint Commission for the Accreditation of Hospital Organizations (JCAHO) Quality Control. I'll read one sentence.

"Please be aware our current Public Information Policy precludes us from providing you (the patient) with the specific results of any complaint investigation."

A patient can file a complaint with JCAHO but cannot find out the results and that is not good enough—patients need to know the results of their grievance and appeals and that can only be done with a state appeal process.

I have testified in front of JCAHO. I've also spoken with Medicaid and Medicare Regional office in the state of Washington. Those organizations set some minimum standards for grievance procedures but they fully expect every state to develop their own comprehensive grievance procedure statute and Alaska has not done it to this day.

I also have in front of me—two five page reports from the state Ombudsman's Office. They are critical of DHSS for not keeping statistics of the number of complaints filed by psychiatric patients. In a return letter, DHSS stated to the Ombudsman's Office that they do not want to keep statistics. SB 66 will require DHSS to do so.

In the same Ombudsman's reports, it also came to light that DHSS has not investigated a psychiatric patient complaint in a number of years even though they are required to do so by AS47.30.660. DHSS cannot or should not delegate its responsibility of investigating a patient's complaint to non-state entities, but that is exactly what DHSS is doing at this time.

In closing, there is a nation-wide trend of revising and up-dating psychiatric patient's grievance procedure statutes, making them uniform to cover all psychiatric patients.

I am asking that you pass SB 66. Thank you,

Dorrance Collins
3240 Penland Pkwy, Sp. 35
Anchorage, AK. 99508

(907) 929-0532

Dorrance Collins

Cc: Open Letter

Testimony to Senate HESS Committee **April 1, '09**

Madam Chair, Senate Committee members,

My name is Faith Myers. I support the passage of SB 66 as written and amended.

The current psychiatric patient grievance procedure statute, AS47.30.847, is inadequately framed and does not protect psychiatric patients and their rights. It needs to be revised.

As a former psychiatric patient, I have been in acute-care psychiatric facilities, evaluation units and I have also received treatment as an out-patient. As an advocate, I've talked to former psychiatric patients and when producing our newsletter, which we mailed to the legislature this year, we conducted a survey of former patients. That survey is in the newsletter. The survey shows there is dissatisfaction with current psychiatric patient grievance procedures.

Ten different categories of clients receiving services from the Department of Health and Social Services (DHSS) , who are not satisfied, can file an appeal with the Department or an Administrative law judge.

Individuals in 10 prisons or jails can file an appeal with the Department of Corrections (DOC).

As of now, all psychiatric patients do not have a clear path to filing an appeal with the state or DHSS.

Alaska may be the only state not letting psychiatric patients file an appeal to a higher level, past the facility they are receiving services from. Alaska must give psychiatric patients the right to file an appeal either with DHSS or an Administrative law judge. Either one would be acceptable.

The loopholes in the current statute AS47.30.847 allow psychiatric facilities to deny patients their right to file a grievance at the time of their choosing.

Here is what is important to a person like myself, who has a mental illness, who is in a psychiatric institution or in a psychiatric E.R. or as an outpatient consumer.

--To be able to receive a written copy of the grievance procedure and associated rules.

--To get a written answer or resolution to a complaint or formal grievance.

--To be able to file a grievance when I choose, instead of having to go through the facility's informal complaint resolution process first.

(Con.)

–To receive an answer to my grievance or complaint in a timely manner, before the complaint becomes moot because I am discharged.

–To be able to appeal to a higher level of authority, hopefully impartial, when I am dissatisfied with the facility's resolution of a grievance even to appeal to DHSS.

--To have a method of urgent grievance reporting that will be looked at by more than one person within 24 hours when I have an emergency grievance.

These are rights that I or any other psychiatric patient or mental health consumer need and would benefit from and these are all rights given by SB 66 to protect the psychiatric patient.

In closing, I am asking you to support the passing of SB66.
Thank you,

Faith Myers
3240 Penland Pkwy, Sp. 35
Anchorage, AK. 99508

(907) 929-0532

Faith Myers

Cc: Open Letter

March 27, '09

PLEASE GIVE / SEND

TO:

Attached is 3 pages outlining how an individual can appeal to DHSS (10 different categories).

In fact, it should be just as simple for psychiatric patients to file for a fair hearing concerning their grievances.

Faith Myers
Dorrance Collins

FROM: MENTAL HEALTH ADVOCATES, Faith Myers / Dorrance Collins, 3240 Penland Pkwy, Sp. 35, Anchorage, AK. 99508

(907) 929-0532

State of Alaska
Department of health and Social Services
Division of Public Assistance

FAIR HEARING REQUEST

This form may be filled out by a client, his or her authorized representative, or by any Division of Public Assistance employee. **COMPLETION OF THIS FORM IS NOT REQUIRED IN ORDER TO OBTAIN A FAIR HEARING.** The Division will grant a hearing to anyone who asks for one either in writing, by phone, or in person.

Please Print

Client Name: _____

Mailing Address: _____

Telephone Number: _____ **Case Number if Known:** _____

Check the program(s) you want a fair hearing on:

- [ ] Food Stamps
- [ ] Alaska Temporary Assistance Program
- [ ] Old Age Assistance
- [ ] Aid to the Blind
- [ ] Aid to the Disabled
- [ ] Interim Assistance
- [ ] General Relief Medical
- [ ] General Relief Assistance
- [ ] Medicaid
- [ ] Energy Assistance

Briefly state why you want a hearing: _____

_____

_____

_____

Please check one box to indicate whether you want your benefits continued without change:

[ ] **Continue my benefits without making the change proposed on the notice until the hearing decision is made or my food stamp certification period ends. I understand that if the hearing officer finds that the state's action was correct, I will have to pay back any extra benefits I receive while waiting for the hearing decision.**

[ ] **Go ahead and take the action proposed on the notice. I will accept the amount stated in the notice, knowing that if the hearing officer finds that the state's action was wrong, I will be paid for any benefits wrongly denied me.**

_____ _____
Signature of Client or Representative **DPA Employee Signature**

_____ _____
Date **Date**

GEN 85 (06-3641) REV. 9/97

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE

ALL ABOUT FAIR HEARINGS

WHAT IS A FAIR HEARING?

A fair hearing provides the opportunity for you to have your case reviewed by a higher authority whenever you disagree with action taken that reduces, suspends, denies or ends your benefits. A fair hearing can be requested for any Division program.

WHO CAN REQUEST A FAIR HEARING?

You, any household member, your authorized representative, or a responsible person acting on your behalf may request a fair hearing. In many cases the Division must give you at least 10 days advance written notice for an action to reduce, to suspend, to deny, or to end your benefits. In many cases the agency does not give 10 days advance written notice because only "adequate" notice is required, not "timely" notice. This notice must include the reasons for the proposed actions and explain your right to a fair hearing and the situations under which benefits may be continued when a fair hearing is requested.

HOW MUCH TIME DO YOU HAVE TO MAKE A REQUEST FOR A FAIR HEARING?

You may request a Food Stamp fair hearing up to 90 day from the effective date of the proposed action. For all other programs, you may request a fair hearing up to 30 days from the date of the notice of action.

HOW DO YOU REQUEST A FAIR HEARING?

You, any household member, your authorized representative, or a responsible person acting on your behalf may make a request for a fair hearing in person, on the telephone, or in writing. Written requests may be hand-delivered or mailed to any Division of Public Assistance office.

WHEN CAN THE DIVISION REFUSE TO HOLD A FAIR HEARING OR DISMISS A SCHEDULED FAIR HEARING?

The division can refuse to hold a fair hearing or to dismiss a scheduled fair hearing when:

1) The request is received after the time allowed for requesting a fair hearing has expired; or

2) The request is withdrawn in writing by you or your representative; or

3) You or your representative fail, without a good reason, to appear at the fair hearing; or

4) The sole issue of the request is one of federal or state law which requires and automatic benefit reduction for classes of recipients; or

5) The issue you are presenting is not one over which the agency has jurisdiction.

WHAT HAPPENS AFTER THE DIVISION RECEIVES YOUR REQUEST FOR A FAIR HEARING?

After the request of a fair hearing is received, the Division office will send you a written notice of the place and time of the fair hearing and the name and phone number to notify if you or your representative cannot attend the fair hearing. This notice will be sent to you at least 10 days before the fair hearing so that you have time to prepare.

CAN YOU POSTPONE THE SCHEDULED FAIR HEARING?

You have the right to request and receive one postponement of the scheduled fair hearing, not to exceed 30 days.

WHAT DOES THE FAIR HEARING OFFICER DO?

The Fair Hearing officer is responsible for conducting the fair hearing and notifying you of the decision in writing. The written letter of the decision must include the decision, the reason for that decision, and the laws or regulations supporting the decision. In addition, the letter includes a statement about your rights and how to appeal the decision.

HOW LONG MUST YOU WAIT FOR A DECISION ON YOUR FAIR HEARING?

The Division must hold the fair hearing, notify you of the decision, allow you 15 days to appeal the decision to the Division Director and notify you of the appeal decision:

1) Within 60 days from the date the Division receives a Food Stamp Program fair hearing request; or

2) Within 90 days from the date the Division receives a fair hearing request for any other public assistance programs.

If the hearing is decided in your favor, the Division has another 10 days to make a required change in your benefits.

The deadlines for the hearing decision will be extended for the same number of days as the fair hearing was postponed, or otherwise delayed at your request.

WHAT ARE YOUR RIGHTS BEFORE AND DURING THE FAIR HEARING?

You have the right to all the following before and during the fair hearing:

1) Review your case file.

2) Obtain a copy of all documents and records that will be used at the fair hearing. This includes appropriate program manual sections relied on by Division employees to take the action with which you disagree. This applies only to case materials which are related to your timely request for a fair hearing.

3) Present the case yourself or be represented by an attorney, paralegal, friend, relative or any other person who may be helpful in presenting your case.

4) Bring witnesses and submit evidence to establish pertinent facts and circumstances.

5) Establish facts and arguments having to do with the issue without undue interference.

6) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.

WHAT IS A PRE-HEARING CONFERENCE?

The pre-hearing conference is a voluntary meeting between you or your representative and a representative of the Division to discuss your concerns about the action taken on your case. Sometimes this discussion will help you understand the reasons for the action or reveal any agency mistakes and may make the fair hearing unnecessary. The pre-hearing conference cannot replace or cancel the scheduled fair hearing. However, if your concerns are resolved at the conference, you may decide to withdraw the request for a fair hearing.

IS THERE ANY PLACE WHICH PROVIDES FREE REPRESENTATION AT THE FAIR HEARING?

You may be eligible for free legal representation from Alaska Legal Services Corporation which has offices throughout the state. Such representation is not required, but may be to your advantage. Your caseworker can give you the phone number and address of you local Alaska Legal Services office, or you may refer to your telephone book for the phone number and address.

HOW FORMAL IS THE FAIR HEARING?

The fair hearing is NOT a trial. It will be conducted in an informal manner and will be attended by the Fair Hearing Officer, a representative for the Division, and by you or a member of your household and/or your representative. You do not have to be familiar with the rules of order. Every effort will be made to arrive at the facts in a way which makes you feel comfortable. The fair hearing will be scheduled in a place which is easily accessible to you and your representative. The fair hearing may be conducted by telephone.

DISABILITY LAW CENTER OF ALASKA

ANCHORAGE
3330 Arctic Boulevard
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Anchorage, AK 99503
(907) 565-1002
FAX (907) 565-1000
1-800-478-1234
www.dlcak.org

April 1, 2009

Dear Senate Health and Social Service Committee Member:

I am writing you today regarding Senate Bill 66 – the mental health patient grievance procedure bill that is scheduled to be heard in the Health and Social Services committee this afternoon.

Broadly speaking, we support the concept of a better defined and more uniform grievance process. I think it safe to say that Alaska lacks any procedurally coherent process at this time. In checking with other states that have a more defined process, the genesis for their laws arose after some tragic event. I do not believe that we should wait for a tragic event to improve our grievance process. That said, SB 66 as currently written is not the vehicle for achieving the goal of a uniform grievance process.

There are several areas of concern regarding SB 66. These concerns can be organized into two general categories: concerns regarding definitions and concerns regarding the grievance procedure itself. In addition, there are several areas in which SB 66, as written, is overly confusing and unclear.

Definitions:
First, in section (b)(8), there is concern with the definition of an urgent grievance which as written allows for an urgent level of review to be provided when a grievance alleges sexual abuse, physical abuse or a denial of lifesaving treatment or procedures, lifesaving medications or basic care or human rights, as defined by the commissioner. This urgent level of review is to be provided within 24 hours after receipt.

Sexual and physical abuse are assaults and should be addressed through appropriate authorities (for example law enforcement or Adult Protective Services) and not the grievance process. If a sexual assault occurred, the grievance reporting the assault could go unprocessed for up to 24 hours. This amount of time could result in the loss of physical evidence, witnesses and other information that is critical for law enforcement or other appropriate agencies. That is not to say that an individual who experiences an assault should not be entitled to file a grievance, however, an urgent grievance is not the most appropriate avenue for relief. In addition, SB 66 does not indicate whether once a grievance is received complaining of sexual or physical abuse, does this trigger mandatory reporting under AS 47.24.010? If so, does the agency who receives the report take responsibility for the grievance or is the facility required to continue to process it despite the involvement of a potentially more appropriate agency?

There is also some concern with the very broad categories that are included in the urgent grievance process. For example, "basic care or human rights as defined by the commissioner" is so broad, that it could encompass most if not all of the

grievances that an individual may file. It is questionable whether these categories of issues necessarily require an urgent grievance response, or are more appropriately addressed by another agency or process. Furthermore, leaving "basic care" and "human rights" undefined and at the discretion of the commissioner is questionable. These terms have much for far-reaching impact than just the grievance procedure at issue here.

In addition it would appear that a grievance is too broadly defined, including not only rights violations, but 'suggestions' and 'concerns'. We feel that such a broad use of the grievance process would dilute the efficacy of the system, and be unduly burdensome to the facility if they are required to process, at several levels, all 'suggestions' and 'concerns' they receive from patients. Perhaps a less exhaustive process could be developed to deal with this type of complaint that would not require the expenditure of resources that could be better used to process grievances involving violations of rights.

In section (j)(1) the definition of facility includes a "clinic in which mental health patients receive . . . treatment . . ." This is far broader than the scope of the rest of the bill which applies to "a public or private evaluation facility or unit or designated treatment facility or unit under AS 41.30.660 – 47.30.915." This inconsistency will cause confusion among both patients who will not know what facilities the grievance procedure applies to, and to facilities and providers who will be unsure what grievance procedure is required.

Grievance Procedure:

SB 66 as written does not outline the appeal rights for an urgent grievance. The CEO or commissioner makes a decision within 24 hours, but there is no indication whether that decision is a first level or second level review or what step in the process comes next. If it goes next to the Office of Hearings and Appeals, (OHA), OHA has 30 days to issue a recommended decision which is not very timely for an urgent appeal. If an urgent grievance goes through the three step process, in the final step, the recommended decision goes back to the commissioner who may be the individual that issued the decision in the first place. Or is the commissioner's decision on an urgent grievance the final administrative action for purposes of superior court jurisdiction?

There concern that the Office of Hearings and Appeals (OHA), who would be responsible for making findings and recommendations to the commissioner in the third level of the process has no jurisdiction over private facilities, raising concern that a level three appeal may not be available to residents of all facilities. In addition there is no guidance in the bill as to what records and information must be provided to OHA and the hearing officer when they make their findings.

In section (d), facilities would be required to designate an advocate to assist patients with grievances "or pursuing other redress for complaints concerning care, treatment and rights." This provision could be read to require the advocate required to assist the patient in filing complaints with other appropriate agencies or assist them in obtaining private counsel to pursue a lawsuit. The responsibilities assigned to this advocate seem a bit open-ended and goes beyond the intent of the grievance statute.

There are also several provisions in SB 66 which are confusing and unclear. For example:

(b)(5)(B) – "if the level-two review results in a finding of no adverse effect, no additional review is necessary . . ." Does this mean that a facility is not required to provide further review when they make a determine of no adverse effect? What does a determination of no adverse effect mean? "the written response must include a list of options . . ." What options are there beyond proceeding to a level three review? Are there additional options a patient might pursue beyond the scope of the grievance procedure?

(f) – burden of proof is on facility to prove compliance with "applicable laws and procedures." What if the grievance is about a "suggestion" or "concern" and the facility is in compliance with all applicable laws and procedures – what burden of proof is required if a facility declines to adopt a suggestion when the facility is in full compliance?

(g) – the department shall "intervene in all level three appeals." The department is making the decision on a level three appeal, so how can it intervene? When is the department required to intervene in lower level decisions? What type of intervention is appropriate or required?

We appreciate the Committee's attention to this issue, however, given the number of concerns Disability Law Center has it cannot support SB 66 as written. A member of DLC staff will be made available to testify by telephone at the hearing this afternoon. If you have any questions or concerns regarding DLC's position or the issues raised in this letter please contact me.

Sincerely,

Holly Johannknecht

Holly Johannknecht
Staff Attorney

To Senate H&SS Committee
From Donald Roberts (Kodiak, AK)
RE: SB66 Mental Health Grievance Procedures

① I support SB66 and urge its passage.

② Concerns
   ⓐ treating grievances as clinical procedures.
      - insurance companies are billed or when grievant is billed
      - records follow the grievant when records are transferred - patient is then ~~treated~~ perceived as troublesome.
   ⓑ ~~selection~~ designation of representative
      representative should be a person of the grievants choosing ~~or~~ - should not be limited to persons who are acceptable or approved by staff at treatment facility

264 Lilly Dr / Apt C2
Kodiak, AK

Sen. Bettye Davis,
And HESS Committee members,

April 2, '09

Re: Sen. Bill 66

Disability Law Center (DLC) gave us a copy of their letter concerning SB 66 (dated April 1, '09). In their letter they state, "I do not believe that we should wait for a tragic event to improve our grievance procedure." (AS47.30.847)

DLC also offered some criticism of SB66.

Basically SB 66 is good/ fair. If there is a technical problem with SB 66—Who should fix it? "We believe it should be the Senate and the House in committee."

DHSS should not be the author of SB 66. They are Providers. Also non-profits receiving grant money to investigate patient complaints or just receiving grant money from DHSS (some) may have a financial interest in killing SB 66 or rewriting it.

Thank you,

Cc: Open Letter

Faith Myers
Dorrance Collins

FROM: MENTAL HEALTH ADVOCATES, Faith Myers / Dorrance Collins, 3240 Penland Pkwy, Sp. 35, Anchorage, AK. 99508

(907) 929-0532

April 1, 2009

The Honorable Bettye Davis
Alaska State Senator
Alaska Senate
Juneau, Alaska

Dear Senator Davis:

First of all, I would like to personally thank you for the work that you do on behalf of people with mental illness and for the work you have done on SB 66 and CS for Senate Bill No. 66.

I waited on the telephone today to testify to the Senate HSS Committee on these two bills. In case I don't have an opportunity to call-in again, I wanted to write this letter to you regarding the testimony I wanted to present today.

I am the Alaska Mental Health Board representative on the API Advisory Council and I have been a patient in API. Additionally, I had a contract with API in 2003 and 2004 to establish the Office of Consumer and Family Affairs. One of the tasks of this office was to take complaints from patients in API. It was during this time that I reviewed grievance policies and procedures from other state hospitals around the country and wrote a draft grievance policy and procedure for review at API. The policy went through many reviews and rewrites, as well as review by the API Advisory Board. The API Advisory Board established a committee to make recommendations to the hospital management on the developing policy. Mental health consumers were included on the committee who were not on the Advisory Board at the time.

The Alaska Mental Health Board is very committed to support protection of patients' rights. However, API serves people who are civilly committed, or under an ex parte, and patients who are involuntarily medicated. This requires that there are extra safeguards in place for the patient population in API. It requires a higher standard than it does in community agency settings and other hospitals where people go voluntarily.

When I worked in Illinois as the Director for the Office of Consumer and Family Affairs for the State of Illinois Department of Health and Social Services, Division of Mental Health, we had 11 state hospitals and 210 community agencies. Each state hospital's grievance procedure was very different from the other hospitals, depending on whether it was rural or in the city of Chicago, or depending on the culture of the hospital and even the ethnicity of the patients being served so grievance policies and procedures needed to be different but with some similarities. The grievance policies and procedures were different too in the community agencies, and this also depended on even the size of the agency—some were small, some were large.

Currently, SB66 and CS for Senate Bill 66 requirements don't allow for flexibility so that providers can have easy to understand and accessible policies and procedures for their specific clients such as, large native populations where the policy needs to be culturally sensitive. I support the need for the Alaska Mental Health Board to work with the bills as they are written to allow for more flexibility rather than everyone meeting the high standards that are set for specific reasons that only apply to API. Not only

does API's Quality Improvement program track data from the grievances, but also data collected about the outcomes of the MHSIP surveys and data gathered on the reduction of the use of restraints and seclusion. Other hospitals and community agencies aren't required to track this data as it only applies to state hospitals so the requirements for everyone other than API need to be less rigid, more flexible and accessible, with easy to follow procedures for their clients.

While I support the intent to protect patients' rights through grievance policies and procedures, I ask that you consider allowing the Alaska Mental Health Board staff time to review and amend the bills that are being considered at this time. Once again, I want to thank you for all the work that you do on behalf of Alaska citizens with mental illness.

Sincerely,

Andrea Schmook
Member of the Alaska Mental Health Board