

SB

55

<TARGET><BILL>SB 55</BILL><SUBJECT>SB
55</SUBJECT><COMM>SHSS27</COMM></TARGET>

Alaska State Legislature

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Senator Bettve Davis@legis.state.ak.us
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Senator Bettve Davis

SB 55 - "An Act relating to a mental health patient rights, notifications, and grievance procedures."

SPONSOR STATEMENT

SB 55 amends the one-paragraph mental health grievance procedure provided under AS 47.30.847. This bill governs due process and grievance procedures in all state and private mental health hospitals, clinics, and units which receive public funds. Prompted by the 8,000-10,000 admissions to mental health facilities and units in Alaska each year where there are relatively few formal grievances filed, this bill requires adequate notice, forms, advocate assistance, rapid written administrative response, right to appeal, and telephonic access to a state monitored call center to lodge a complaint immediately.

Mental health patients are among the most vulnerable in Alaska. Among the thousands of individuals civilly committed or brought into locked hospital psychiatric units for forced evaluations each year, some are in handcuffs, shackles or strapped to a gurney, involuntarily medicated without consent of family or legal representative, or court ordered to receive or continue psychiatric treatment in public, private, or non-profit psychiatric clinics. There are hundreds of patient assaults and staff injuries each year. There are also thousands of children who are voluntarily committed each year usually in private facilities. Although sometimes treated with psychotropic drugs, children are considered better protected by the state, family members, legal representatives, and attorney advocates.

Current statutes and regulations do little to protect psychiatric patients civilly committed 30 to 60 days, individuals detained for forced evaluation up to 7 days, or individuals detained in a jail or in a psychiatric emergency room or private unit while waiting for space in a psychiatric hospital. State and federal courts have consistently ruled that individuals who have not committed a crime and are locked up for psychiatric evaluation and treatment should not be treated like criminals and their rights are to remain intact to the greatest extent possible. Ironically, prisoners in Alaska's correctional system are afforded a much more comprehensive grievance procedure with due process rights and protections under the law than mental health patients.

Upon admission to a mental health facility patients often experience an immediate loss of liberty and freedom, arbitrary exercise of authority, and may be institutionally traumatized in the process. Because of the exceptional circumstances under which mental health patients are admitted and treated, due process requires special safeguards in transparent, readily available grievance procedures and more state oversight. This bill will reduce unnecessary patient trauma, assaults, unintentional injury or death, and attendant liability and litigation experienced in other states before statutory reform.

New grievance procedures under SB 5 require detailed complaint forms, three levels of administrative review requiring written answers by within 5 days by supervisory and executive staff at levels one and two, including response to urgent grievances within 24 hours. A level three final administrative appeal to the commissioner must be answered within 14 days after filing or by default is denied. A commissioner's final decision may be appealed to Superior Court within 30 days. A grievance may be filed at any time, but there is a statutory limitation of one year after being discharged from the facility or unit. All grievances filed shall become part of the patient's permanent record. Mental health facilities and units must file periodic reports of the number and type of grievances and resolutions, including litigation. The bill allows for a personal representative to act in the interest of the patient in the grievance process, as well as providing a patient advocate appointed in the mental health facility or unit.

Although it is counterintuitive that more verbal and written complaints are not reported to the state or documented each year, including an estimated 250 at the Alaska Psychiatric Institute which may treat an estimated 1200 to 1500 patients per year, many facilities in this rapidly growing area of mental health are privately held and not presently compelled to report to the state Division of Behavioral Health. Private hospitals presently may only report mental health complaints to the Joint Commission for the Accreditation of Hospital Organizations (JCAHO), not the state. Furthermore, JCAHO reportedly may only review grievance procedures in participating hospitals every 2-3 years. Also, many grievances in the past have been handled verbally without creating a patient record and in-patient stays are often very short from a couple of days up to a week or two. Passage of SB 55 will improve mental health treatment, grievance reporting, and state oversight.

27-LS0082VT
Mischel
12/8/11

CS FOR SENATE BILL NO. 55()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR DAVIS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mental health patient rights, notifications, and grievance**
2 **procedures."**

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

4 *** Section 1.** AS 47.30.840(a) is amended to read:

5 (a) A person undergoing evaluation or treatment under AS 47.30.660 -
6 47.30.915

7 (1) may not be photographed without the person's consent and that of
8 the person's guardian if a minor, except that the person may be photographed upon
9 admission to a facility for identification and for administrative purposes of the facility;
10 all photographs shall be confidential and may only be released by the facility to the
11 patient or the patient's designee unless a court orders otherwise;

12 (2) at the time of admission to an evaluation or treatment facility, shall
13 have reasonable precautions taken by the staff to inventory and safeguard the patient's
14 personal property; a copy of the inventory signed by the staff member making it shall

1 be given to the patient and made available to the patient's attorney and any other
2 person authorized by the patient to inspect the document;

3 (3) shall have access to an individual storage space for the patient's
4 private use while undergoing evaluation or treatment;

5 (4) shall be permitted to wear personal clothing, to keep and use
6 personal possessions including toilet articles if they are not considered unsafe for the
7 patient or other patients who might have access to them, and to keep and be allowed to
8 spend a reasonable sum of the patient's own money for the patient's needs and
9 comfort;

10 (5) shall be allowed to have visitors at reasonable times;

11 (6) shall have ready access to letter writing materials, including
12 stamps, and have the right to send and receive unopened mail;

13 (7) shall have reasonable access to a telephone, both to make and
14 receive confidential calls;

15 (8) has the right to be free of corporal punishment;

16 (9) has the right to reasonable opportunity for indoor and outdoor
17 exercise and recreation;

18 (10) has the right, at any time, to have a telephone conversation with or
19 be visited by an attorney;

20 (11) may not be retaliated against or subjected to any adverse change
21 of conditions or treatment solely because of assertion of rights under this section;

22 **(12) has the right to be treated with dignity and respect;**

23 **(13) has the right to confidentiality of and access to the person's**
24 **evaluation and treatment records maintained by the facility;**

25 **(14) has the right to an individualized treatment plan, and the**
26 **right to be involved in developing the treatment plan, while residing at the**
27 **facility;**

28 **(15) has the right to informed consent by the person or the**
29 **person's legal representative;**

30 **(16) has the right to freedom from seclusion and restraint;**

31 **(17) has the right to file a grievance under AS 47.30.847;**

1 (18) has the right to a designated staff member clearly identified
2 by a treatment facility to act as a patient advocate and to assist in the filing of a
3 grievance under AS 47.30.847;

4 (19) has the right to consult with a patient advocate or
5 representative of the patient's choosing.

6 * Sec. 2. AS 47.30.847 is repealed and reenacted to read:

7 Sec. 47.30.847. Patient grievance procedure. (a) A person undergoing
8 evaluation or treatment at a public or private evaluation facility or unit or designated
9 treatment facility or unit under AS 47.30.660 - 47.30.915 has the right to bring a
10 grievance concerning the patient's treatment, care, or rights.

11 (b) The department shall establish one or more impartial call centers for the
12 purpose of receiving, referring, and tracking grievances filed under this section. The
13 call center shall maintain an electronic database and hard copies of all grievances filed
14 under this section. The call center shall be made available to a grievant at no charge
15 and at all times and shall process a grievance immediately as provided in this section.
16 The call center shall assist a grievant in filing a grievance and shall provide procedural
17 information but may not advise a grievant.

18 (c) A facility or unit shall provide a formal grievance procedure, which must
19 include referral to a call center established under (b) of this section, for all patient
20 grievances on any subject brought under (a) of this section, regardless of the
21 availability of a less formal procedure for comments and suggestions. Once filed to the
22 best of the grievant's knowledge and ability, all grievances shall be processed on a
23 single form. The grievance procedure must include

24 (1) written notice on admission to the facility of the availability of the
25 formal grievance procedure and facility rules pertaining to the grievance procedure;

26 (2) a form for submission of a grievance, access to a call center, and a
27 secure box for deposit of grievance reporting forms; the contents of the box must be
28 reviewed each day patients are being treated or evaluated; the form must be readily
29 accessible to the patient and understood by the patient or easily explained by a staff
30 member in a language and method understandable to the patient; the original of a
31 completed form submitted to the facility must be kept in the patient's record; the form

1 must contain the heading "Alaska Department of Health and Social Services, Mental
2 Health Grievance Reporting Form," and include

3 (A) the name of the grievant and the grievant's contact
4 information, including the grievant's address and telephone number;

5 (B) the date and time of the completion of the grievance form;

6 (C) the name and physical location of the service provider;

7 (D) the date on which the event giving rise to the grievance
8 took place;

9 (E) the names of persons involved in the event giving rise to
10 the grievance, if known;

11 (F) a narrative description of the event giving rise to the
12 grievance;

13 (G) the specific issue to be addressed;

14 (H) the grievant's suggested resolution of the grievance;

15 (I) the investigative steps taken to formulate the facility's or
16 unit's response;

17 (J) the response and date of response by the facility or unit;

18 (K) the signature of the grievant at each level, including the
19 initial grievance;

20 (L) the signature of the reviewer and date of review for each
21 level of review; and

22 (M) options for the grievant to check following each response
23 by the facility or unit, as follows:

24 (i) I agree;

25 (ii) I do not agree;

26 (iii) submit to level two review;

27 (iv) submit to level three review;

28 (3) a written list showing contact information for available advocacy
29 agencies, including the department, facility accrediting bodies, the ombudsman, and
30 the Disability Law Center of Alaska;

31 (4) three levels of review, as follows:

1 (A) level one, an initial review and written decision by a
2 supervisory staff member to determine whether a grievant's treatment, care, or
3 rights have been adversely affected, a written record of that determination, and,
4 if the grievant's rights have been adversely affected, implementation of a
5 mutually agreed upon resolution of the grievance;

6 (B) level two, if a resolution is not agreed upon or implemented
7 under a level one review, a grievant may initiate a review within 20 calendar
8 days after the determination is made under level one; a chief executive officer
9 or the commissioner's designee for a facility shall make written findings and
10 issue a decision within five business days after initiation of a level two review;
11 if the level two review results in a finding of no adverse effect, no additional
12 review is necessary, but the decision may be appealed under (C) of this
13 paragraph by a grievant, and the written decision must include notice of the
14 availability of a level three appeal;

15 (C) level three, a grievant may appeal the final written decision
16 made under level two to the commissioner within 30 calendar days after
17 receipt of the findings of the level two review; the commissioner shall make a
18 final written decision on or before the 14th calendar day after the appeal is
19 filed; if the commissioner fails to enter a timely decision, the appeal shall be
20 considered denied; the commissioner may deny an appeal for substantial
21 failure to follow the procedures set out in this section; a denial or decision by
22 the commissioner may be appealed to the superior court within 30 calendar
23 days;

24 (5) maintenance of a complete and confidential record, available on
25 request by the grievant or the grievant's designated representative, of all documents,
26 including the grievance and appeals and responses to the grievance and appeals;

27 (6) delivery, within 24 hours, of a copy of the initial grievance and of
28 all documents maintained under (5) of this subsection to the call center established
29 under (b) of this section, which shall promptly provide all necessary information to

30 (A) the grievant or the grievant's representative;

31 (B) the department; the department shall maintain

1 confidentiality over the grievant's health and personal information;

2 (C) the person responsible for the next level of review; and

3 (D) the person in charge of the facility or unit; and

4 (7) in addition to the three levels of review and procedures available
5 under criminal and other laws provided under (4) of this subsection, an urgent level of
6 review and expedited decision, available at all times to a current patient of a facility or
7 unit, to be conducted immediately by the chief executive officer at the facility and
8 referred to a call center and reviewed by the department not later than 24 hours after
9 receipt of a grievance that alleges

10 (A) sexual abuse;

11 (B) physical abuse; or

12 (C) denial of

13 (i) lifesaving treatment or procedures;

14 (ii) lifesaving medications; or

15 (iii) basic care or human rights, as defined by the

16 commissioner.

17 (d) Except as provided in (c)(7) of this section, unless an extension of time of
18 not more than five business days is agreed upon by a patient or the patient's
19 representative, an evaluation facility or unit or a designated treatment facility or unit
20 shall mail or hand deliver a written response to a call center within five business days
21 after receipt of a grievance or request for additional review. The response must include
22 the reasons for the decision and a description of the appeal process. The grievant may
23 request review at the next level if a written response is not timely.

24 (e) An evaluation facility or unit and a designated treatment facility or unit
25 shall have a designated staff member who is trained in mental health consumer
26 advocacy who shall, on a patient's request, serve as an advocate to assist the patient in
27 bringing grievances or pursuing other redress for complaints concerning care,
28 treatment, and rights.

29 (f) A grievant may not file a grievance later than one year after the incident
30 giving rise to the grievance. The facility or unit shall make a good faith effort to mail a
31 response to a grievant who has been discharged from the facility.

1 (g) The burden of proof required for all grievance reviews shall be on the
2 facility or unit against which a grievance is filed to prove, by substantial evidence,
3 compliance or remedial action with applicable laws and procedures.

4 (h) The department shall review all grievances and responses to grievances for
5 compliance with this section.

6 (i) A facility or unit shall prepare and file a quarterly report with the
7 department that describes the

8 (1) number of grievances submitted;

9 (2) general issue raised in each grievance; and

10 (3) resolution, including litigation, of all grievances submitted.

11 (j) The department shall compile the information provided under (i) of this
12 section and provide a quarterly report to be posted for public review that describes the
13 number and types of grievances filed against each facility in the previous quarter.

14 (k) Nothing in this section shall be interpreted to prohibit informal dispute
15 resolution or mediation by the written agreement of the grievant, the facility or unit,
16 and the department at any time during the grievance process but before a lawsuit
17 concerning the subject of the grievance is filed by a grievant.

18 (l) A facility may not discourage or delay a patient's access to an advocate or
19 representative of the patient's choosing.

20 (m) In this section,

21 (1) "facility" has the meaning given to "designated treatment facility"
22 or "evaluation facility" in AS 47.30.915; and means a unit of a hospital in which
23 patients receive mental health evaluation or treatment and for which public funds are
24 provided;

25 (2) "grievance" means a complaint made by a grievant concerning a
26 patient's treatment, care, or rights at a facility;

27 (3) "grievant" means a patient of a public or private mental health
28 treatment or evaluation facility or unit or the patient's representative;

29 (4) "unit" means a discrete portion of a facility dedicated to the
30 treatment or evaluation of mental health patients.

31 * **Sec. 3.** AS 47.30.855 is amended by adding new subsections to read:

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(b) The department shall provide to a facility for posting and distribution a standardized notice that is designed to be easily understood and that separately describes patient rights, available assistance, and the grievance procedure provided under AS 47.30.847.

(c) A person in charge of a facility shall ensure that each patient or patient's representative receives a written copy of the standardized notice provided by the department under (b) of this section and of the formal grievance procedure described in AS 47.30.847(c).

(d) In this section, "facility" has the meaning given in AS 47.30.847.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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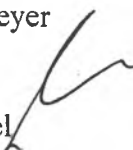
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 11, 2012

SUBJECT: Sectional Summary for CSSB 55()
(Work Order No. 27-LS0082\T)

TO: Senator Bettye Davis
Attn: Tom Obermeyer

FROM: Jean M. Mischel
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds eight rights to the list of rights of a person undergoing mental health evaluation or treatment in the state under specified provisions of state law, including involuntary commitments. The additional rights include the right to be treated with dignity and respect and the right to file a grievance under the procedures established by sec. 2 of the bill.

Section 2. Establishes a grievance procedure, including varying levels of review and appeal, for a person undergoing evaluation or treatment at a public or private evaluation facility or unit or at a designated treatment facility or unit. Defines "grievance" to mean a complaint concerning a patient's treatment, care, or rights at a mental health evaluation or treatment facility or unit in the state.

Section 3. Requires the Department of Health and Social Services to provide to mental health evaluation and treatment facilities and units in the state a standardized notice of patient rights, assistance, and grievance procedures. Also requires the person in charge of the facility or unit to provide a written copy of the notice to each patient or their representative.

JMM:ljw
12-120.ljw

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

cost # codes

Bill Version

SB055

Fiscal Note Number

Publish Date

Identifier (file name) SB055-DOA-OAH-12-1-11

Dept. Affected Administration

Title Mental health patient rights and grievance

Appropriation Centralized Administrative Services

Allocation Office of Administrative Hearings

Sponsor Senator Davis

Requester Senate Health and Social Services

OMB Component Number 2771

Expenditures/Revenues

(Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1007	GF/MH (UGF)							
1008	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated SUPPLEMENTAL (FY12) operating costs _____ 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version

Prepared by Terry L. Thurbon, Chief Administrative Law Judge
Division Office of Administrative Hearings

Phone 465-1886

Date/Time 12/01/2011 3:59 p.m.

Approved by John Cramer, Deputy Commissioner
Department of Administration

Date 12/1/2011

FISCAL NOTE

STATE OF ALASKA
2 LEGISLATIVE SESSION

BILL NO. SB055

Analysis

This bill would provide mental health patients with a grievance process concerning patient treatment, care or rights. The process would include a right to an administrative appeal heard on behalf of the Commissioner of Health and Social Services by the Office of Administrative Hearings (OAH). OAH does not anticipate that addition of this licensure category would increase the office's caseload beyond OAH's capacity to provide the hearing-related services with existing authorized personnel. The cost to OAH of performing the services would be recovered from the Department of Health and Social Services through interagency receipts, based on the time commitment required for the necessary proceedings.

**Senator Bettye Davis
Chair—Hess Committee**

February 7, 2012

Re: Senate Hess Committee—Sen. Bill 55 needs to pass

Approximately 1000 complaints are filed verbally or in writing by psychiatric patients each year in Alaska. The current state rules do very little to protect these patients.

Over the last 50 years state and Federal courts have consistently ruled that any individuals who have not committed a crime and are locked up for psychiatric treatment cannot be treated like a criminal and their rights are to remain intact to the greatest extent possible.

As a state we are failing miserably. We give psychiatric patients a right by law to file a complaint but we don't give the right to due process or the right to file an appeal within the psychiatric facilities or to a state agency or an agency authorized by the state; Alaska may be the only state that does not protect psychiatric patients in that respect.

Most psychiatric patients need the protection a state can give, specifically psychiatric patients civilly committed 30 or 60 days, individuals detained for forced evaluation up to 7 days, individuals detained in a jail or in a Psychiatric Emergency Room while waiting for space in a psychiatric hospital.

As a state we don't keep readily available statistics of the number of complaints filed by psychiatric patients. We don't give patients a state office they can file an appeal to with due process, etc. On the other hand, individuals in prison are given all of those rights.

As a state we should be embarrassed for not protecting psychiatric patients in the grievance appeal process as numerous courts have suggested—Maine, Georgia, etc. We can fix that by giving Sen. Bill a hearing and passing the bill.

Cc: Senate HESS Committee
Co-Sponsor Sen. Bill Wielechowski
Co-Sponsor Sen. Johnny Ellis
David Fleurant
Open Letter

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

*Faith Myers
Dorrance Collins*

Reference Information

Senate Bill 55

Approximately 250 complaints are filed by patients at state-run Alaska Psychiatric Institute each year according to public records. That is from a patient population of approximately 1,200 per year.

The other hospitals that do forced evaluations and civil commitments do not make their numbers of psychiatric patient complaints available to the general public and those statistics are not kept separately by the state.

Providence Hospital and its satellites treat approximately 3000 psychiatric patients per year. A large number are forced evaluations—they may arrive in handcuffs, they are detained, etc.

North Star treats approximately 4,000 patients per year, some of them in locked facilities.

Fairbanks and Juneau hospitals do forced evaluations and civil commitments—combined, approximately 800 per year.

Numerous other hospitals do forced evaluations—Ketchikan and Kodiak, Also, patients are detained in jails, Psych ER's waiting for transfer, etc.

Psychiatric patients are court ordered to continue psychiatric treatment in private clinics through Mental Health Diversionary Court, etc.

Estimated number of complaints—1,000. Subject matter, anything from sexual assault, denial of rights to going outdoors, medication errors, mistreatment, physical assault, denied medical treatment, conflicts with staff, inability to file a complaint or an appeal in a fair way, etc.

Psychiatric patients are complaining about the grievance appeal process.

Faith Myers / Dorrance Collins
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Letter to the Editor or Comment Piece

1/28/2012

In January it was reported that the State Senate held a "Crime Summit." The Committee goal: identify issues and offer solutions.

Conspicuously absent from the Senate Committee's review was a serious, in-depth assessment of individuals with a severe mental illness who commit crimes or have crimes committed against them and how the state can make improvements.

Ninety percent of females with a mental illness who live on the street (shelters, tents, etc.) will or have at some point become a victim of sexual assault which will in itself damage the individual and will also hinder or prevent recovery from the underlying mental illness.

Men and women with a severe mental illness commit crimes or become victims in higher numbers than the average public. The costs of transportation and one day in a Psych ER can be upwards of a thousand dollars.

Approximately 10,000 individuals in Alaska because of a mental illness will come in contact with law enforcement or a locked psychiatric facility in the next 12 months. Many will be forcibly transported to Psych ER's in handcuffs for forced evaluations, civil commitment or diversionary mental health court.

When a state improves psychiatric patient rights it translates to better care and better recovery. In our opinion, Alaska as a young state has some of the worst patient rights and government oversight of psychiatric patient rights and care in the nation.

Psychiatric patient rights in Alaska need to be improved. If we had the opportunity that is the message we would convey to the state Senate "Crime Summit" Committee.

*Faith Myers
Dorrance Collins*

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1/20/2012

Give / Send to:

Sen. Bettye Davis,
Attn: Tom Obermeyer,

Please give Sen. Bill 55
a hearing in the HESS Committee
this year.

Detained psychiatric patients
have a right to file a grievance, but
as of now do not have a right to file
an appeal by law, state regulations or
JCAHO rules. (Alaska may be the only
state that does not give that right to
detained psychiatric patients.)

Detained psychiatric patients must
be given a state right to file an appeal
with due process within a psychiatric
facility or unit and to the state.

Thank you,

Faith Myers
Dorrance Collins

Senator Hollis French,

January 13, 2012

We read your letter 1/13/2012 in the Anchorage Daily News. The questions you raise have a large scope—We would like to add a small piece to the puzzle. Writing new laws is important, but just as important “society must change how it deals with individuals who need help.”

One Society needs to change how money, support and spare time is given to any individual with a drug or alcohol problem, i.e.—payee, oversight, work or school program, etc.

Two A large number of individuals in prison have a severe mental illness. The assessment is they cannot receive proper treatment that promotes recovery in a prison setting. Detained individuals should be given at least a small amount of time in a forensic unit in a psychiatric hospital so they have a better chance for recovery. Forty years ago, state-run Alaska Psychiatric Institute (API) had a 10 bed forensic unit. API still has a 10 bed forensic unit in 2012.

Three Thousands of individuals who have not broken any laws are transported to locked psychiatric units each year for forced evaluation or commitment, many in handcuffs. Too often, individuals who may not have broken any laws are treated like criminals, both when they are transported to a psychiatric unit, or when they are in a psychiatric unit. When society treats an honest person like a criminal, sometimes they become a criminal.

Four Too often individuals with psychiatric disorders who may not have broken any laws are held in jails and hospital ER's while waiting for space at state-run API. Disability Law Center filed a law suit against DHSS concerning that issue.

Five Almost without exception, when society improves the quality of psychiatric patient rights, the quality of patient care improves and the opportunity for recovery. Sen. Bill 55 when passed will improve the psychiatric patient grievance procedures and needs to be supported and passed by the Senators.

We would be willing to testify telephonically to your committee on these issues.

Mental Health Advocates,
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*Faith Myers
Dorrance Collins*

Cc: Open Letter

Testimony to the HESS Committee

January 1, 2012

Chairperson, Committee members,

My name is Faith Myers. I volunteer as a psychiatric patient advocate. I support the passage of Senate Bill 55.

Psychiatric patients are complaining about the current grievance procedure laws. In 2009 I performed a survey of 30 former psychiatric patients. In 2011, Disability Law Center produced a 9-page report which showed 3 patients at state-run Alaska Psychiatric Institute (API) were unsatisfied with the grievance procedure process. Also, I have personally reviewed the grievance procedures from numerous hospitals with psychiatric units from Fairbanks, to Juneau, to Kodiak. The reviewed grievance procedures are inadequate to protect an individual detained in a psychiatric unit.

In 2003, I spent 4 months in Alaska Psychiatric Institute (API) which is run by the Department of Health and Social Services (DHSS). I was never allowed to file a grievance. A grievance must be answered in writing. I never could receive a written response to my complaints or file an appeal.

In 2006 as an advocate I received records from API which showed no patient in the middle of 2005/2006 was allowed to file a grievance and receive a written response. (And possibly for years.)

The current psychiatric patient grievance procedure law (AS47.30.847) is poorly written and does not properly protect detained psychiatric patients that file a complaint. Also, the current law does not cover all detained psychiatric patients according to DHSS.

Currently the only due process rules for a detained patient's complaint come from the Joint Commission for the Accreditation of Hospital Organizations (JCAHO) and hospital policy. JCAHO gives psychiatric hospitals and units 14 days to resolve a patient's complaint and there is no appeal process mandated. Most psychiatric patients are detained less than 14 days. There is nothing in state law and very little in state regulations concerning due process for a patient's complaint or appeals.

If Sen. Bill 55 does not pass, then psychiatric institutions can go back to business as usual. When psychiatric institutions have a right to say when psychiatric patients can file a grievance and set due process rights, eventually institutions will say that no patient has a right to file a grievance.

In closing, I am asking you to pass Sen. Bill 55 which will improve in law a psychiatric patient's right to file a grievance.

Faith Myers
(907) 929-0532

Cc: Open Letter

Faith Myers

January 1, 2012

Chairperson, Committee members,

My name is Dorrance Collins. I volunteer as a psychiatric patient advocate. I support the passage of Sen. Bill 55.

I would like to establish who will be protected by Sen. Bill 55.—thousands of individuals civilly committed or brought into locked hospital psychiatric units for forced evaluations each year, sometimes in handcuffs, shackles or strapped to a gurney and individuals court-ordered to receive or continue psychiatric treatment in private or non-profit psychiatric clinics.

Over the last 20 years, the state of Alaska has authorized private hospitals and units to detain psychiatric patients, but the state has never established a sufficient grievance procedure law or regulation for detained patients in those private hospitals.

As of now, Alaska may be the only state that does not give by law or state regulations appeal process rights and due process rights to detained psychiatric patients when they file a complaint. And that needs to change.

Several state agencies are required by law to investigate psychiatric patient complaints. Psychiatric patients are not given their number and there is now no requirement to do so.

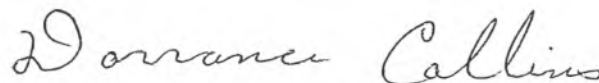
Psychiatric patients are one of the most vulnerable groups in our society and need a grievance procedure law that will provide protection. Patients need to be given appeal process rights, due process rights and an appeal process to the state.

In closing, I am asking that you pass Sen. Bill 55.

Thank you,

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

929-0532



Cc: Open Letter

**Tom Obermeyer,
Sen. Bettye Davis's Office,**

December 15, 2011

Re: Concerning current draft of Sen. Bill 55

Our concern is to close the loopholes in the proposed bill—loopholes that are all too often used to deny patients a reasonable opportunity to file a grievance.

We have underlined our suggested additions:

Page 2, line 31—it should be stated “patients have a right to file a grievance at any time.”

Page 2, line 32—Add have the right to due process with regard to grievances.

Page 3, line 4—“Patient has a right any day to consult with a patient advocate or representative of a patient’s choosing during reasonable hours.”

Page 3, line 9—“has a right anytime to bring a grievance.”

Page 3, line 25—“formal grievance procedure and appeal process.”

Add to page 6, line 6—“review, such grievances must be reviewed by the chief administrative officer, the Director or designee, who shall either arrange to hear the grievance within one working day or immediately refer the grievance to Level 1 for response.”

Dorrance Collins / Faith Myers
929-0532

Dorrance Collins
Faith Myers

Cc: Open Letter

**David Fleurant,
Exe. Dir.—Disability Law Center,**

September 28, 2011

It was not that long ago when not a single patient at state-run Alaska Psychiatric Institute could file a formal grievance or appeal and receive a written response. A written response to a patient's grievance in a timely manner is a Federal / JCAHO requirement, but the requirement is not in state law.

Approximately 250 detained (locked-up) patients voice a complaint about treatment or care each year at API. In 2005 we found out patients could not file a grievance or appeal at API in a fair way. We pushed API management to improve their one page patient grievance procedure and they did in 2007.

Several months later we asked API's patient advocate how the new 6 page patient grievance procedure was working. We were told API management in practice had not changed in any significant way how patient complaints or appeals were handled.

A recent 9 page report by your organization, at least by inductive reasoning, also shows API has not improved how patient grievances and appeals are resolved.

Numerous psychiatric facilities and units in Alaska detain psychiatric patients. (Approximately 10) After reviewing their grievance procedures and appeal process it is easy to conclude they are not doing any better than API at letting psychiatric patients file a grievance or appeal in a fair way.

Psychiatric institutions and units tend to operate in self-interest so much so it can present a clear danger to patients. The Alaska Supreme Court reminded all of us of that fact in '06. But as a state, we are still giving the job of writing the psychiatric patient appeal process to the institutions, time frame for completion, etc.

AS47.30.847, psychiatric patient grievance procedure law needs to be revised: a patient appeal process needs to be added, time frame for completion of grievance and appeals, reasonable oversight, all necessary to protect psychiatric patients and currently not in state law.

We are asking Disability Law Center to help improve the grievance procedure law and also to provide a report outlining why the law needs to be improved. Please contact us.

Cc: Sen. Bettye Davis
James Gottstein, Esq.
Jeff Jesse, Trust Authority
William Streur, DHSS
Gov. Sean Parnell
Open Letter

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

faith.myers@gci.net

*Faith Myers
Dorrance Collins*



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 rights², to establish standards for treatment facilities and to keep related records³, and to investigate complaints made by a patient⁴. 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

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- 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

February 14, 2011

The Honorable Bette Davis
State Capitol Building
Juneau, AK 99801

Dear Senator Davis,

I appreciated your meeting with me to discuss issues related to North Star Behavioral Health. You hear thousands of different issues during the course of the year related to the needs of many constituents. I thank you for your time and consideration of issues related to the mental health needs of our community.

One such issue related to Senate Bill 66. As in our conversation, I support the need to protect client rights. Currently, we have many such avenues, both internal and external, to ensure such rights are protected. Our facility has patient advocates who accept complaints and grievances that can be resolved on the units and/or taken to senior leaders for resolution. Our medical staff and senior leadership review all grievances each month for systemic issues and individual staff trends that need to be addressed. External agency phone numbers are posted for patients and families to make complaints to numerous organizations if they desire (The Joint Commission, the Department of Health, the Office of Children's Services, the Center for Medicaid and Medicare Services, the Disability Law Center and others). Additionally, we are surveyed by many of these organizations at least annually. Clearly, patient and families have numerous avenues to address issues as they arise.

I have several concerns about adding to this level of oversight:

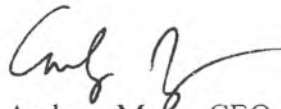
- 1.) The impetus of this bill was not related to children and adolescents. Children and adolescents have numerous adults (i.e., parents, step-parents, grandparents, custodians, and agencies) who ensure proper care and thus have advocates who make many primary decisions on their behalf.
- 2.) This population, by its nature, often exhibits poor judgment and boundaries (some of the reasons for admission). Adolescents in particular, would use such a system to distract from care and tie up staff time with unfounded complaints. This related to another concern: What makes a valid complaint to be addressed by such a group? Children and adolescents complain about such things as healthy food, phone privileges (the right to talk with peers with whom they have numerous

unhealthy boundaries) and whom we restrict visitation (previously agreed upon with guardians). This population in particular would not appear appropriate for such regulation. The amount of staff time alone would be prohibitive, both to our facility and on the part of the state.

- 3.) As a private psychiatric facility, we are not holding committed patients such as in the state facility. Our patients can be discharged by the guardian at any time and thereby represent no ability for involuntary commitment or confinement. Thus any grievance that would be seen by the patient or family as infringing on patient rights could be addressed simply by refusing care or treatment (in addition to external and internal reporting mentioned above).
- 4.) The Federal Health Care Quality Improvement Act allows certain information to be protected in order to protect privacy, promote honest disclosure and encourage facilities to address systemic issues that lead to improved outcomes. There are several issues with this. One, grievances that involve multiple patients would not be allowed to be discussed. For example: If the grievance involves one patient being treated differently than another or another patient committing an unwanted act. This prevents the facility from defending itself. Also, grievances associated with unfounded complaints could lead to potential frivolous lawsuits.

I would appreciate your consideration of these issues, either by considering removal of your support or by limiting the scope of the bill to patient populations and/or organizations in which you feel need such a system to protect clients. The bill could be limited to those patients above 18.

Sincerely,



Dr. Andrew Mayo, CEO
North Star Behavioral Health

August 24, 2011

Senator Davis
State Capitol Room 30
Juneau AK, 99801

Re: SB 55 Draft Version 27-LS0082\D

Dear Senator Davis:

In response to your request to offer feedback on SB 55 Draft Version 27-LS0082\D, I offer the following comments. Some of these comments are a repetition of my initial concerns sent on August 3, 2009 to your attention.

As in our conversation, I support the need to protect client rights. Currently, we have many such avenues, both internal and external, to ensure such rights are protected. Our facility has patient advocates who accept complaints and grievances that can be resolved on the units and/or taken to senior leaders, for resolution. Our medical staff and senior leadership review all grievances each month for systemic issues and individual staff trends that need to be addressed. External agency phone numbers are posted for patients and families to make complaints to numerous organizations if they desire (The Joint Commission, the Department of Health, the Office of Children's Services, the Center for Medicaid and Medicare Services, the Department of Licensure, the Disability Law Center and others). Additionally, we are surveyed by some of these organizations annually and the others routinely or upon patient complaint. Clearly, patient and families have numerous avenues to address issues as they arise. I believe this bill will add to the cost of healthcare without adding an improved benefit. At times healthcare facilities have to respond to several of these agencies concerning one complaint, often with differing opinions. This will add another such group in which agencies must allocate resources.

As a private psychiatric facility, we are not holding committed patients such as in the state facility. Our patients can be discharged by the guardian at any time and thus represent no ability for involuntary commitment (patients for which commitment would be initiated are transferred to the state facility). The vast majority grievances that would be seen by the patient or family as infringing on patient rights could be addressed simply by refusing care or treatment (in addition to external and internal reporting mentioned above).

The impetus of this bill was not related to children and adolescents. Children and adolescents have numerous adults (i.e., parents, step parents, grandparents, custodians, and agencies) who ensure proper care and thus have advocates who make many primary decisions on their behalf. Further, these parents and guardians have access to the child through visits, family therapy and phone calls. Such guardians have time and access to file complaints with any of the agencies mentioned above. This population, by its nature, often exhibits poor judgment and boundaries (some of the reasons for admission). Adolescents in particular, would use such a system to distract from care, avoid dealing with issues that precipitated admission and tie up staff time with unfounded complaints. It would be unrealistic to believe that this population would not overwhelm the agency with grievances. Youth often make complaints about food (due to dietary requirements that limit unhealthy foods), inability to visit/phone with peers (often peers who may be unhealthy due to age differences, drug using partners, dealers, etc...), not wanting to attend therapy (to avoid dealing with painful issues or to avoid responsibility) which detract from effective treatment. Allowing three tiers of grievance levels, unless the youth believe it fair, in reality should be described as dealing with each grievance three times as well as with multiple agencies in some cases. This population in particular would not appear appropriate for such regulation. The amount of staff time alone would be prohibitive, both to our facility and on the part of the state.

The Federal Health Care Quality Improvement Act allows certain information to be protected in order to protect privacy, promote honest disclosure and encourage facilities to address systemic issues that lead to improved outcomes. There are several issues with this. One, grievances that involve multiple patients would not be allowed to be discussed with identifiers or necessarily outcome of the issue with that patient.. For example: If the grievance involves one patient being treated differently than another or another patient committing an unwanted act. This prevents the facility from defending itself. Also, grievances associated with unfounded complaints could lead to potential frivolous law suits. Item 7 (g) notes that the burden of proof shall be on the facility. Often grievances result in false accusations that cannot be disproven as it is difficult to prove something did not occur.

I would appreciate your consideration of these issues, either by considering removal of your support or by limiting the scope of the bill to patient populations and/or organizations in which you feel need such a system to protect clients. The bill could be limited to those patients above 18.

Sincerely,



Dr. Andrew Mayo, CEO
North Star Behavioral Health

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
*ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
and ALASKA MENTAL HEALTH BOARD*

SEAN PARNELL, GOVERNOR

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JUNEAU, ALASKA 99811-0608
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November 4, 2011

Thomas Obermeyer, Legislative Aide
Office of Senator Bettye Davis
716 West 4th Avenue, Suite 400
Anchorage, Alaska 99501

BY FIRST CLASS MAIL, EMAIL

Re: Mental Health Patient Grievance Procedure Bill, Work Draft 10/10/11

Dear Mr. Obermeyer,

Thank you for requesting written comment on the current draft of a bill Senator Davis is considering regarding psychiatric patient grievances. The members of the Alaska Mental Health Board are committed to ensuring that mental health consumers have access to a fair and equitable patient grievance process. **We are grateful for your commitment to protecting mental health consumers' security and dignity.**

We agree that patients who have lost the right to make health care decisions themselves and who are forced to accept mental health treatment under Title 47 require additional protections to ensure their dignity and safety. We do not support the imposition of a single grievance procedure on both hospital based involuntary psychiatric treatment and community based voluntary mental health services. The treatment environments are unique, as are the levels of patients' personal authority. This draft of the bill continues to impose the same statutory grievance procedure on community mental health providers as on involuntary hospital services.

As we have commented on all the previous drafts, we again recommend that the bill be amended to state: "**Sec 47.30.847. Patient grievance procedure.** (a) A person undergoing evaluation or treatment at a designated treatment facility has the right at any time to. . ." (page 2 line 31) or that the application to patients receiving services pursuant to AS 47.30.700 – A.S. 47.30.795 be explicit in the language of the bill.

The definition of "facility" (page 7 line 22) is better, but we still advise that, to be very clear about the scope and applicability of the bill, it be clarified to state "'designated treatment facility' is defined as a hospital, clinic, institution, center or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons under AS 47.30.670 - 47.30.915 but does not include correctional institutions."

I. Grievances Defined

Thank you for defining a "grievance" (page 7 line 24) as a "complaint" and removing the language including "concerns" and "suggestions." This definition limits grievances to complaints made via a "form."

As with previous versions, this draft bill goes into great detail about what must be in the form. This leads to the construction that the statute prohibits a patient from making a grievance in person, by telephone, by email, or through a family member or designated representative/advocate. As we commented on earlier drafts, this actually narrows the procedure from what currently exists. This section contains so many specific requirements, it seems to contradict the earlier requirement that a grievance be processed on “a single form” (page 3 line 24). We recommend that this discrepancy be corrected so the law, if enacted, can be applied appropriately by treatment providers.

II. Crimes Against the Disabled

We renew our concern that, as proposed, AS 47.30.847(c)(8) (page 6 lines 6-17) minimizes serious crimes committed against our constituents. This section provides an “urgent level of review” for grievances involving sexual or physical abuse, denial of “lifesaving” medical care, or denial of “basic care or human rights.” Were these acts to be committed against a patient by anyone (including a mental health treatment 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. 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 is unacceptable.

III. The Impact of Duplication

Providers of Medicaid-reimbursed services must comply with the grievance procedure requirements established by CMS. Hospitals accredited by the Joint Commission must also comply with grievance procedure standards. It is important that legislation address gaps without adding complexity. We recommend that the bill be reviewed in the context of these other requirements, and amended to provide uniformity across the grievance procedure requirements. The cross walk previously prepared for you and your staff is again attached for your reference.

IV. Call Center

The Alaska Mental Health Board does not support the creation of a “call center.” This is an added level of complexity for patients and cost to the system. Trained patient advocates as called for by AS 47.30.847(d) provide this support and assistance to patients.

V. Hearing and Decision

AS 47.30.847(c)(5)(B) (page 5 line 11 *et seq.*) refers to review of a grievance by the “commissioner’s designee” (line 14). The Commissioner of Health and Social Services cannot designate a hearing officer within a private hospital or other designated treatment facility – and since all of the providers of involuntary psychiatric treatment are private non-profit organizations except for API, this does not make sense.

We also again point out that administrative review of grievances against non-state entities, such as the private non-profit hospitals providing psychiatric treatment to Title 47 patients, is not possible. The administrative appeal process is limited to review of administrative actions – actions taken by

governmental agencies. Thus, the third level of review (page 5 lines 20-26) is irrelevant to all but API patients.

Having had no additional information about whether a third level of review by an administrative hearing officer results in additional burden on the attorneys appointed to represent individuals in Title 47 commitment hearings, we renew our concerns/questions on this section:

1. Are patients who are receiving care involuntarily (and therefore have been found unable to make important decisions for themselves) able to represent themselves at these hearings?
2. Must counsel be appointed to ensure that the individual has meaningful access to the administrative appeal process?

Since the bill requires the Department of Health and Social Services to intervene in all grievances that reach this level of review (page 7 line 6), there will be an assistant attorney general appearing on the agency's behalf. There will be either an administrator or attorney appearing on the hospital's behalf. So it would only seem fair that the patient have counsel.

1. If that counsel is required, who pays for it?
2. How is counsel appointed?
3. Can an administrative hearing officer even appoint counsel?

On the issue of the required intervention in level three grievance reviews by the Department of Health and Social Services, it is patently unfair to require (or even permit) such intervention in those instances involving grievances against API. That would create an imbalanced proceeding where two parties -- represented by attorneys -- stand against a (potentially *pro se*) patient.

As with previous versions, this draft of AS 47.30.847(g) shifts the burden of proof to the treatment provider. This contradicts the usual course of these sorts of proceedings. This draft still denies the treatment providers due process, by limiting them to proving "compliance or remedial action" (page 7 lines 3-4) — presupposing that the facts alleged in all grievances are true.

We remind you of our caution that the financial ramifications of having patient grievances (at least as so broadly defined in the current draft) heard by the office of administrative hearings will require a DHSS fiscal note of not inconsequential size, and potentially a fiscal note for Public Defender and/or Office of Public Advocacy services. That should in no way prevent attempts to improve the grievance process for psychiatric patients, but should be something for which the sponsor is prepared.

VI. Timelines

We appreciate the effort to alter the grievance process in AS 47.30.847(c)(5)(A) to create a timeline to better fit the context of a treatment model that is designed to stabilize the patient and either transition him home or to a more appropriate acute care setting within a very short timeframe. However, the five (5) day deadline set by AS 47.30.847(d) for a response to a grievance conflicts with the former sections requirement of "immediate" review (page 5 line 6). This conflict should be resolved to ensure that patient grievances are resolved prior to discharge.

VII. Errata

The draft bill still refers to a "Alaska Department of Health and Social Services, Division of Mental Health, Grievance Reporting Form." As we have commented in the past, there is no such division. Page 4, lines 3-4 should be amended to state "Alaska Department of Health and Social Services, Division of Behavioral Health, Grievance Reporting Form."

AS 47.30.847 does not define a mental health "facility," so the reference in the draft AS 47.30.855(d) to this section as a source of clarification of what a facility is under this statute is not helpful. I think a more appropriate reference is AS 47.30.915(4).

VIII. Conclusion

We thank you again for the opportunity to continue to work with you and Senator Davis on this issue. This draft bill has been improved greatly, thanks to your hard work, and we look forward to continuing dialogue on the aspects we have identified herein.

Sincerely,



J. Kate Burkhart
Executive Director

Enclosure: Procedural Crosswalk

cc: members, Alaska Mental Health Board (by email)
Melissa Stone, Director Division of Behavioral Health (by email)
Kimberli Poppe-Smart, Deputy Commissioner DHSS (by email)
Wilda Laughlin, Special Assistant to the Commissioner of DHSS (by email)

A Cross-Walk of Patient Grievance Procedure Requirements in Alaska
 prepared by the Alaska Mental Health Board, February 2009

	API (policy)	JCAHO	CMS (CFR)
Notice of patient rights	<p>Provided at admission/intake P& P PRE030-03 Policy ¶ II</p> <p>Written copies posted and available in each program area P& P PRE 030-03 Policy ¶ II. A.</p> <p>Notice communicated in manner best understood by patient P&P PRE 030-03 Policy ¶ II.B.</p> <p>Notice provided at new patient orientation, community meetings, individual meetings P&P 030-03 Procedure ¶ I.C.</p>	<p>Provided upon admission RI 2.10, EP 1-4</p>	<p>Hospital must inform of rights before providing care (when possible) 42 CFR §482.13(a)</p> <p>Rights must be communicated in a language/manner patient can understand <i>Interpretative Guidelines</i> §482.13(a)(1)</p>
Procedure required	<p>Yes (subject to federal/state law and accrediting requirements)</p>	<p>Yes RI 2.120, EP 1-5</p>	<p>Hospital must establish a process for prompt resolution of patients grievances 42 CFR §482.13 (a)(2)</p>
Grievance defined			<p>Written or oral complaint (when not resolved at the time complaint is made by staff person present) re: "patient's care, abuse or neglect, issues related to the hospital's compliance with the CMS Hospital CoP, or a Medicare beneficiary billing</p>

	API (policy)	JCAHO	CMS (CFR)
<p>Other complaints, concerns, suggestions</p>	<p>Complaints of abuse, harassment, unlawful conduct by employees reported to authorities for investigation P&P 030-03 Procedure ¶ II. B.</p>	<p>Complaints of abuse should be referred to proper authority for investigation RI 2.150, EP 2</p>	<p>complaint” <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p> <p>All written complaints re: care, abuse/neglect, compliance or Medicare billing are formal grievances <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p> <p>“change in bedding, housekeeping of a room, and serving preferred food and beverages may be made relatively quickly and would not usually be considered a ‘grievance’” <i>Interpretive Guidelines</i> 42 CFR 482.13(a)(2)</p> <p>Complaints not related to patient care or within definition above are not grievances <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p>
<p>Patient Advocate Required</p>	<p>Yes, assists with grievances & other complaints P&P 030-03 ¶ III. Notice given of outside advocates (DLC, etc.) P&P 030-03 ¶ II.</p>		

	API (policy)	JCAHO	CMS (CFR)
Resolution defined			<p>Patient is satisfied with remedial action <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p> <p>If hospital has taken appropriate & reasonable action and patient remains unsatisfied, hospital may close grievance but must maintain documentation of efforts to resolve and compliance with CMS requirements <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p>
Records/ data re: grievances	<p>Tracking, trending, and continuous performance improvement by Patient Rights and Ethics Team P& P PRE030-03 Procedure ¶ VI. D.</p>	<p>Data is collected, analyzed, displayed and compared, internally and externally, using statistical techniques. PI 2.10, EP1-5 Data collection and monitoring areas include patient satisfaction and quality control. PI 1.10, EP1-8, 10, 12-18, 29</p>	<p>Must be maintained, incorporated in Quality Assessment and Performance Improvement Program <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p>

Grievance Procedure Requirements

	API (policy)	JCAHO	CMS (CFR)
Notice of Procedure	<p>Provided at admission/intake P& P PRE030-03 Policy ¶ II</p> <p>Written copies posted and available in each program area P& P PRE 030-03 Policy ¶ II. A.</p> <p>Notice communicated in manner best understood by patient P&P PRE 030-03 Policy ¶ II.B.</p> <p>Notice provided at new patient orientation, community meetings, individual meetings P&P 030-03 Procedure ¶ I.C.</p>	<p>Provided upon admission RI 2.10, EP 1-4</p>	<p>Hospital must inform of rights before providing care (when possible) 42 CFR §482.13(a)</p>
Notice of Advocate or Contact for Grievances	<p>Provided at admission/intake P& P PRE030-03 Policy ¶ II</p>		<p>Notice required 42 CFR §482.13(a)(2)</p>
Form of Grievance	<p>Grievance form (assistance available from advocate) P&P PRE 030-03 Policy ¶ IV.</p>		<p>Written or oral 42 CFR §482.13 (a)(2)(i)</p>
Timeframe	<p>Level 1: 5 days Level II: 5 days Urgent: review day of receipt, resolved in 3 days P&P PRE 030-03 Procedure ¶IV.</p>		<p>Required 42 CFR §482.13(a)(2)(ii)</p>

	API (policy)	JCAHO	CMS (CFR)
<p>Resolution Process</p>	<p>Level 1: discussion between advocate and patient; proposed resolution to patient in writing by 5th day P&P PRE 030-03 Procedure ¶ III.</p> <p>Level 2: CEO investigates grievance or delegates to member of Sr. Management; written response within 5 days P&P PRE 030-03 Procedure ¶ V.</p>		<p>Grievances re: neglect/abuse reviewed immediately <i>Interpretative Guidelines</i> §482.13(a)(2)(iii)</p> <p>For others, “7 days for the provision of a response would be considered appropriate.” Response can be that grievance investigation or remedial action is ongoing. <i>Interpretative Guidelines</i> §482.13(a)(2)(iii)</p> <p>“The expectation is that the facility will have a process to comply with a relatively minor request in a more timely manner” (i.e. less than 7 days) <i>Interpretative Guidelines</i> §482.13(a)(2)</p> <p>Governing body or committee must review and resolve grievances <i>Interpretative Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p> <p>If delegated to grievance committee, must be more than 1 person <i>Interpretative Guidelines</i> §482.13(a)(2) (8/18/05 revision</p>

	API (policy)	JCAHO	CMS (CFR)
<p>Written Decision Required</p>	<p>Urgent grievances are reviewed by patient advocate the day of receipt and immediately referred to CEO/Medical Director or designee P&P PRE030-03 Procedure ¶ IV.</p> <p>Patients not satisfied with resolution can file a grievance with DLC, JCAHO, or Court P&P PRE 030-03 Procedure ¶ VI.</p> <p>Yes (all levels) P&P 030-03 ¶ V. P&P PRE 030-03 Procedure ¶III-V.</p>		<p>and clarification)</p> <p>For formal grievance, with name of contact person, steps taken to investigate, resolution, and date 42 CFR §482.13 (a)(2)(iii) Response must include adequate information to address each item required by 42 CFR §482.13 (a)(2)(iii) <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification)</p> <p>In language patient understands <i>Interpretative Guidelines</i> §482.13(a)(2)(iii)</p> <p>If grievance is made by email, response can be provided by</p>

	API (policy)	JCAHO	CMS (CFR)
Oversight	Patient Rights and Ethics Team P & P PRE030-03 Procedure ¶ VI. D.	Governing body oversees quality and patient safety LD 1.20, EP6	email <i>Interpretive Guidelines</i> §482.13(a)(2) (8/18/05 revision and clarification) Not for informal complaints (see above) <i>Interpretive Guidelines</i> §482.13(a)(2) Hospital governing body (or grievance committee) 42 CFR §482.13(a)(2)

Give / Send to: Tom Obermeyer,

Follow-up to our conversation.
(Sen. Bill 55)

Attached are 2 pages of criticism
of North Stars patient grievance
procedure.

Regretably their grievance
procedure does not properly protect
psychiatric patients.

Thank you,

Dorrance Collins/
Faith Myers
929-0532

+ Alln: Tom Obermeyer
North Star—Behavioral Health System

Treats approximately 4,000 or more psychiatric patients per year—Operates locked psychiatric facilities.

Criticism:
Grievance procedure not sufficient to protect a vulnerable population.

Patients, family are asked to go through an informal complaint process, but there is no time frame of how long that will take.

It is not clear that patients or family members can file a grievance at the time of their choosing.

There is only one level to the grievance procedure—there is no appeal process for patients to use.

There is no clear way for patients to appeal an adverse resolution to a grievance past the walls of the institution (to the state, etc.)

Con.

**There is no impartial body to hear a patient's grievance.
(An impartial body with the authority to reverse or
influence the resolution of a patient's grievance.)**

**Hospital can request open-ended extensions of time before
resolving a patient's grievance.**

Dorrance Collins/
Faith Myers
929-0532

2 of 2

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148



Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator Bettye Davis

Senate Bill 55 – Mental Health Grievance Procedure

Explanation of Changes in CSSB 55() Version “R”

(Compares Committee Substitute “R” vs T with blue/red line changes)

-
- 1. Page 1, lines 2-3: Title was changed to reflect amendment of Alaska Court Rules limiting attorney fees in certain cases.**
 - 2. Page 3, line 1: Allows filing a grievance at any time during operating hours.**
 - 3. Page 3, line 7: Allows consulting a patient advocate on “any day during reasonable hours.”**
 - 4. Page 6, line 6: Clarifies that there are “parallel” procedures available under administrative decisions and criminal and other laws.**
 - 5. Page 6, line 8: The urgent level of review requires an expedited “administrative” decision.**
 - 6. Page 6, lines 11-12: Limits an urgent grievance to “an immediate threat to the health or welfare of a grievant,” removing specific language previously limited to sexual abuse, physical abuse, denial of lifesaving treatment, procedures, or medications; and basic care or human rights.**
 - 7. Page 7, lines 4-6: Removes the burden of proof previously shifted to mental health facilities or units which had to prove by substantial evidence compliance or remedial action with applicable laws and procedures.**
 - 8. Page 7, lines 23-25: Creates a presumption that if a grievance is appealed to a court under this section, the imposition of attorney’s fees on a grievant would inflict a substantial hardship.**
 - 9. Page 8, lines 16-21: Section 4 limits the court’s discretion in awarding attorney’s fees in certain cases by amending court rules, and rules of civil and appellate procedure**
 - 10. Page 8, lines 22-26: Section 5 requires a 2/3 vote of each house to change the court and procedural rules in Section 4.**

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

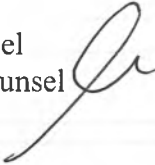
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 20, 2012

SUBJECT: Sectional Summary CSSB 55() (Work Order No. 27-LS0082R)

TO: Senator Bettye Davis
Chair of the Senate Health and Social Services Committee
Attn: Tom Obermeyer

FROM: Jean M. Mischel
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds eight rights to the list of rights of a person undergoing mental health evaluation or treatment in the state under specified provisions of state law, including involuntary commitments. The additional rights include the right to be treated with dignity and respect and the right to file a grievance under the procedures established by sec. 2 of the bill.

Section 2. Establishes a grievance procedure, including varying levels of review and appeal, for a person undergoing evaluation or treatment at a public or private evaluation facility or unit or at a designated treatment facility or unit. Defines "grievance" to mean a complaint concerning a patient's treatment, care, or rights at a mental health evaluation or treatment facility or unit in the state. Includes a presumption that imposition of attorney's fees on a grievant for an appeal under this section would inflict an undue hardship.

Section 3. Requires the Department of Health and Social Services to provide to mental health evaluation and treatment facilities and units in the state a standardized notice of patient rights, assistance, and grievance procedures. Also requires the person in charge of the facility or unit to provide a written copy of the notice to each patient or their representative.

Section 4. Provides that the presumption added in sec. 2 of this version has an indirect effect on Rule 82, Alaska Rules of Civil Procedure.

Section 5. Provides a conditional effect of the presumption added in sec. 2 regarding attorney's fees takes effect only if sec. 4 receives a two-thirds majority vote.

JMM:ljw
12-219.ljw

CS FOR SENATE BILL NO. 55()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): ~~SENATOR~~SENATORS DAVIS, Wielechowski, Ellis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mental health patient rights, notifications, and grievance**
2 **procedures; and amending Rule 82, Alaska Rules of Civil Procedure and Rule 508,**
3 **Alaska Rules of Appellate Procedure."**

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

5 * **Section 1.** AS 47.30.840(a) is amended to read:

6 (a) A person undergoing evaluation or treatment under AS 47.30.660 -
7 47.30.915

8 (1) may not be photographed without the person's consent and that of
9 the person's guardian if a minor, except that the person may be photographed upon
10 admission to a facility for identification and for administrative purposes of the facility;
11 all photographs shall be confidential and may only be released by the facility to the
12 patient or the patient's designee unless a court orders otherwise;

13 (2) at the time of admission to an evaluation or treatment facility, shall
14 have reasonable precautions taken by the staff to inventory and safeguard the patient's

1 personal property; a copy of the inventory signed by the staff member making it shall
2 be given to the patient and made available to the patient's attorney and any other
3 person authorized by the patient to inspect the document;

4 (3) shall have access to an individual storage space for the patient's
5 private use while undergoing evaluation or treatment;

6 (4) shall be permitted to wear personal clothing, to keep and use
7 personal possessions including toilet articles if they are not considered unsafe for the
8 patient or other patients who might have access to them, and to keep and be allowed to
9 spend a reasonable sum of the patient's own money for the patient's needs and
10 comfort;

11 (5) shall be allowed to have visitors at reasonable times;

12 (6) shall have ready access to letter writing materials, including
13 stamps, and have the right to send and receive unopened mail;

14 (7) shall have reasonable access to a telephone, both to make and
15 receive confidential calls;

16 (8) has the right to be free of corporal punishment;

17 (9) has the right to reasonable opportunity for indoor and outdoor
18 exercise and recreation;

19 (10) has the right, at any time, to have a telephone conversation with or
20 be visited by an attorney;

21 (11) may not be retaliated against or subjected to any adverse change
22 of conditions or treatment solely because of assertion of rights under this section;

23 **(12) has the right to be treated with dignity and respect;**

24 **(13) has the right to confidentiality of and access to the person's**
25 **evaluation and treatment records maintained by the facility;**

26 **(14) has the right to an individualized treatment plan, and the**
27 **right to be involved in developing the treatment plan, while residing at the**
28 **facility;**

29 **(15) has the right to informed consent by the person or the**
30 **person's legal representative;**

31 **(16) has the right to freedom from seclusion and restraint;**

1 (17) has the right to file a grievance any time during operating
2 hours under AS 47.30.847;

3 (18) has the right to a designated staff member clearly identified
4 by a treatment facility to act as a patient advocate and to assist in the filing of a
5 grievance under AS 47.30.847;

6 (19) has the right to consult with a patient advocate or
7 representative of the patient's choosing, on any day during reasonable hours.

8 * **Sec. 2.** AS 47.30.847 is repealed and reenacted to read:

9 **Sec. 47.30.847. Patient grievance procedure.** (a) A person undergoing
10 evaluation or treatment at a public or private evaluation facility or unit or designated
11 treatment facility or unit under AS 47.30.660 - 47.30.915 has the right to bring a
12 grievance concerning the patient's treatment, care, or rights.

13 (b) The department shall establish one or more impartial call centers for the
14 purpose of receiving, referring, and tracking grievances filed under this section. The
15 call center shall maintain an electronic database and hard copies of all grievances filed
16 under this section. The call center shall be made available to a grievant at no charge
17 and at all times and shall process a grievance immediately as provided in this section.
18 The call center shall assist a grievant in filing a grievance and shall provide procedural
19 information but may not advise a grievant.

20 (c) A facility or unit shall provide a formal grievance procedure, which must
21 include referral to a call center established under (b) of this section, for all patient
22 grievances on any subject brought under (a) of this section, regardless of the
23 availability of a less formal procedure for comments and suggestions. Once filed to the
24 best of the grievant's knowledge and ability, all grievances shall be processed on a
25 single form. The grievance procedure must include

26 (1) written notice on admission to the facility of the availability of the
27 formal grievance procedure and facility rules pertaining to the grievance procedure;

28 (2) a form for submission of a grievance, access to a call center, and a
29 secure box for deposit of grievance reporting forms; the contents of the box must be
30 reviewed each day patients are being treated or evaluated; the form must be readily
31 accessible to the patient and understood by the patient or easily explained by a staff

1 member in a language and method understandable to the patient; the original of a
2 completed form submitted to the facility must be kept in the patient's record; the form
3 must contain the heading "Alaska Department of Health and Social Services, Mental
4 Health Grievance Reporting Form," and include

5 (A) the name of the grievant and the grievant's contact
6 information, including the grievant's address and telephone number;

7 (B) the date and time of the completion of the grievance form;

8 (C) the name and physical location of the service provider;

9 (D) the date on which the event giving rise to the grievance
10 took place;

11 (E) the names of persons involved in the event giving rise to
12 the grievance, if known;

13 (F) a narrative description of the event giving rise to the
14 grievance;

15 (G) the specific issue to be addressed;

16 (H) the grievant's suggested resolution of the grievance;

17 (I) the investigative steps taken to formulate the facility's or
18 unit's response;

19 (J) the response and date of response by the facility or unit;

20 (K) the signature of the grievant at each level, including the
21 initial grievance;

22 (L) the signature of the reviewer and date of review for each
23 level of review; and

24 (M) options for the grievant to check following each response
25 by the facility or unit, as follows:

26 (i) I agree;

27 (ii) I do not agree;

28 (iii) submit to level two review;

29 (iv) submit to level three review;

30 (3) a written list showing contact information for available advocacy
31 agencies, including the department, facility accrediting bodies, the ombudsman, and

1 the Disability Law Center of Alaska;

2 (4) three levels of review, as follows:

3 (A) level one, an initial review and written decision by a
4 supervisory staff member to determine whether a grievant's treatment, care, or
5 rights have been adversely affected, a written record of that determination, and,
6 if the grievant's rights have been adversely affected, implementation of a
7 mutually agreed upon resolution of the grievance;

8 (B) level two, if a resolution is not agreed upon or implemented
9 under a level one review, a grievant may initiate a review within 20 calendar
10 days after the determination is made under level one; a chief executive officer
11 or the commissioner's designee for a facility shall make written findings and
12 issue a decision within five business days after initiation of a level two review;
13 if the level two review results in a finding of no adverse effect, no additional
14 review is necessary, but the decision may be appealed under (C) of this
15 paragraph by a grievant, and the written decision must include notice of the
16 availability of a level three appeal;

17 (C) level three, a grievant may appeal the final written decision
18 made under level two to the commissioner within 30 calendar days after
19 receipt of the findings of the level two review; the commissioner shall make a
20 final written decision on or before the 14th calendar day after the appeal is
21 filed; if the commissioner fails to enter a timely decision, the appeal shall be
22 considered denied; the commissioner may deny an appeal for substantial
23 failure to follow the procedures set out in this section; a denial or decision by
24 the commissioner may be appealed to the superior court within 30 calendar
25 days;

26 (5) maintenance of a complete and confidential record, available on
27 request by the grievant or the grievant's designated representative, of all documents,
28 including the grievance and appeals and responses to the grievance and appeals;

29 (6) delivery, within 24 hours, of a copy of the initial grievance and of
30 all documents maintained under (5) of this subsection to the call center established
31 under (b) of this section, which shall promptly provide all necessary information to

1 (A) the grievant or the grievant's representative;
2 (B) the department; the department shall maintain
3 confidentiality over the grievant's health and personal information;
4 (C) the person responsible for the next level of review; and
5 (D) the person in charge of the facility or unit; and
6 (7) in addition to the three levels of review and parallel procedures
7 available under criminal and other laws provided under (4) of this subsection, an
8 urgent level of review and expedited administrative decision, available at all times to a
9 current patient of a facility or unit, to be conducted immediately by the chief executive
10 officer at the facility and referred to a call center and reviewed by the department not
11 later than 24 hours after receipt of a grievance that alleges an immediate threat to the
12 health or welfare of a grievant.

13 ~~(A) sexual abuse;~~

14 ~~(B) physical abuse; or~~

15 ~~(C) denial of~~

16 ~~(i) lifesaving treatment or procedures;~~

17 ~~(ii) lifesaving medications; or~~

18 ~~(iii) basic care or human rights, as defined by the~~

19 ~~commissioner.~~

20 (d) Except as provided in (c)(7) of this section, unless an extension of time of
21 not more than five business days is agreed upon by a patient or the patient's
22 representative, an evaluation facility or unit or a designated treatment facility or unit
23 shall mail or hand deliver a written response to a call center within five business days
24 after receipt of a grievance or request for additional review. The response must include
25 the reasons for the decision and a description of the appeal process. The grievant may
26 request review at the next level if a written response is not timely.

27 (e) An evaluation facility or unit and a designated treatment facility or unit
28 shall have a designated staff member who is trained in mental health consumer
29 advocacy who shall, on a patient's request, serve as an advocate to assist the patient in
30 bringing grievances or pursuing other redress for complaints concerning care,
31 treatment, and rights.

1 (f) A grievant may not file a grievance later than one year after the incident
2 giving rise to the grievance. The facility or unit shall make a good faith effort to mail a
3 response to a grievant who has been discharged from the facility.

4 ~~(g) The burden of proof required for all grievance reviews shall be on the~~
5 ~~facility or unit against which a grievance is filed to prove, by substantial evidence,~~
6 ~~compliance or remedial action with applicable laws and procedures.~~

7 (h) The department shall review all grievances and responses to grievances
8 for compliance with this section.

9 (h) A facility or unit shall prepare and file a quarterly report with the
10 department that describes the

11 (1) number of grievances submitted;

12 (2) general issue raised in each grievance; and

13 (3) resolution, including litigation, of all grievances submitted.

14 (i) The department shall compile the information provided under (h) of this
15 section and provide a quarterly report to be posted for public review that describes the
16 number and types of grievances filed against each facility in the previous quarter.

17 (j) Nothing in this section shall be interpreted to prohibit informal dispute
18 resolution or mediation by the written agreement of the grievant, the facility or unit,
19 and the department at any time during the grievance process but before a lawsuit
20 concerning the subject of the grievance is filed by a grievant.

21 (k) A facility may not discourage or delay a patient's access to an advocate or
22 representative of the patient's choosing.

23 (l) If a grievance decision made under this section is appealed to a court, the
24 court shall presume that the imposition of attorney's fees on a grievant would inflict a
25 substantial and undue hardship on the grievant under AS 09.60.010(e).

26 (m) In this section,

27 (1) "facility" has the meaning given to "designated treatment facility"
28 or "evaluation facility" in AS 47.30.915; and means a unit of a hospital in which
29 patients receive mental health evaluation or treatment and for which public funds are
30 provided;

31 (2) "grievance" means a complaint made by a grievant concerning a

1 patient's treatment, care, or rights at a facility;

2 (3) "grievant" means a patient of a public or private mental health
3 treatment or evaluation facility or unit or the patient's representative;

4 (4) "unit" means a discrete portion of a facility dedicated to the
5 treatment or evaluation of mental health patients.

6 * **Sec. 3.** AS 47.30.855 is amended by adding new subsections to read:

7 (b) The department shall provide to a facility for posting and distribution a
8 standardized notice that is designed to be easily understood and that separately
9 describes patient rights, available assistance, and the grievance procedure provided
10 under AS 47.30.847.

11 (c) A person in charge of a facility shall ensure that each patient or patient's
12 representative receives a written copy of the standardized notice provided by the
13 department under (b) of this section and of the formal grievance procedure described
14 in AS 47.30.847(c).

15 (d) In this section, "facility" has the meaning given in AS 47.30.847.

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

18 INDIRECT COURT RULE AMENDMENT. AS 47.30.847(l), added by sec. 2 of this
19 Act, has the effect of changing Rule 82, Alaska Rules of Civil Procedure, and Rule 508,
20 Alaska Rules of Appellate Procedure, by limiting the court's discretion in awarding attorney's
21 fees in certain cases.

22 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 CONDITIONAL EFFECT. AS 47.30.847(l), added by sec. 2 of this Act, takes effect
25 only if sec. 4 of this Act receives the two-thirds majority vote of each house required by art.
26 IV, sec. 15, Constitution of the State of Alaska.

CS FOR SENATE BILL NO. 55(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATORS DAVIS, Wielechowski, Ellis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mental health patient rights, notifications, and grievance**
2 **procedures; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508,**
3 **Alaska Rules of Appellate Procedure."**

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

5 *** Section 1.** AS 47.30.840(a) is amended to read:

6 (a) A person undergoing evaluation or treatment under AS 47.30.660 -
7 47.30.915

8 (1) may not be photographed without the person's consent and that of
9 the person's guardian if a minor, except that the person may be photographed upon
10 admission to a facility for identification and for administrative purposes of the facility;
11 all photographs shall be confidential and may only be released by the facility to the
12 patient or the patient's designee unless a court orders otherwise;

13 (2) at the time of admission to an evaluation or treatment facility, shall
14 have reasonable precautions taken by the staff to inventory and safeguard the patient's

1 personal property; a copy of the inventory signed by the staff member making it shall
 2 be given to the patient and made available to the patient's attorney and any other
 3 person authorized by the patient to inspect the document;

4 (3) shall have access to an individual storage space for the patient's
 5 private use while undergoing evaluation or treatment;

6 (4) shall be permitted to wear personal clothing, to keep and use
 7 personal possessions including toilet articles if they are not considered unsafe for the
 8 patient or other patients who might have access to them, and to keep and be allowed to
 9 spend a reasonable sum of the patient's own money for the patient's needs and
 10 comfort;

11 (5) shall be allowed to have visitors at reasonable times;

12 (6) shall have ready access to letter writing materials, including
 13 stamps, and have the right to send and receive unopened mail;

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 15 receive confidential calls;

16 (8) has the right to be free of corporal punishment;

17 (9) has the right to reasonable opportunity for indoor and outdoor
 18 exercise and recreation;

19 (10) has the right, at any time, to have a telephone conversation with or
 20 be visited by an attorney;

21 (11) may not be retaliated against or subjected to any adverse change
 22 of conditions or treatment solely because of assertion of rights under this section;

23 **(12) has the right to be treated with dignity and respect;**

24 **(13) has the right to confidentiality of and access to the person's**
 25 **evaluation and treatment records maintained by the facility;**

26 **(14) has the right to an individualized treatment plan, and the**
 27 **right to be involved in developing the treatment plan, while residing at the**
 28 **facility;**

29 **(15) has the right to informed consent by the person or the**
 30 **person's legal representative;**

31 **(16) has the right to freedom from seclusion and restraint;**

1 (17) has the right to file a grievance any time during operating
2 hours under AS 47.30.847;

3 (18) has the right to a designated staff member clearly identified
4 by a treatment facility to act as a patient advocate and to assist in the filing of a
5 grievance under AS 47.30.847;

6 (19) has the right to consult with a patient advocate or
7 representative of the patient's choosing on any day during reasonable hours.

8 * **Sec. 2.** AS 47.30.847 is repealed and reenacted to read:

9 **Sec. 47.30.847. Patient grievance procedure.** (a) A person undergoing
10 evaluation or treatment at a public or private evaluation facility or unit or designated
11 treatment facility or unit under AS 47.30.660 - 47.30.915 has the right to bring a
12 grievance concerning the patient's treatment, care, or rights.

13 (b) The department shall establish one or more impartial call centers for the
14 purpose of receiving, referring, and tracking grievances filed under this section. The
15 call center shall maintain an electronic database and hard copies of all grievances filed
16 under this section. The call center shall be made available to a grievant at no charge
17 and at all times and shall process a grievance immediately as provided in this section.
18 The call center shall assist a grievant in filing a grievance and shall provide procedural
19 information but may not advise a grievant.

20 (c) A facility or unit shall provide a formal grievance procedure, which must
21 include referral to a call center established under (b) of this section, for all patient
22 grievances on any subject brought under (a) of this section, regardless of the
23 availability of a less formal procedure for comments and suggestions. Once filed to the
24 best of the grievant's knowledge and ability, all grievances shall be processed on a
25 single form. The grievance procedure must include

26 (1) written notice on admission to the facility of the availability of the
27 formal grievance procedure and facility rules pertaining to the grievance procedure;

28 (2) a form for submission of a grievance, access to a call center, and a
29 secure box for deposit of grievance reporting forms; the contents of the box must be
30 reviewed each day patients are being treated or evaluated; the form must be readily
31 accessible to the patient and understood by the patient or easily explained by a staff

1 member in a language and method understandable to the patient; the original of a
 2 completed form submitted to the facility must be kept in the patient's record; the form
 3 must contain the heading "Alaska Department of Health and Social Services, Mental
 4 Health Grievance Reporting Form," and include

5 (A) the name of the grievant and the grievant's contact
 6 information, including the grievant's address and telephone number;

7 (B) the date and time of the completion of the grievance form;

8 (C) the name and physical location of the service provider;

9 (D) the date on which the event giving rise to the grievance
 10 took place;

11 (E) the names of persons involved in the event giving rise to
 12 the grievance, if known;

13 (F) a narrative description of the event giving rise to the
 14 grievance;

15 (G) the specific issue to be addressed;

16 (H) the grievant's suggested resolution of the grievance;

17 (I) the investigative steps taken to formulate the facility's or
 18 unit's response;

19 (J) the response and date of response by the facility or unit;

20 (K) the signature of the grievant at each level, including the
 21 initial grievance;

22 (L) the signature of the reviewer and date of review for each
 23 level of review; and

24 (M) options for the grievant to check following each response
 25 by the facility or unit, as follows:

26 (i) I agree;

27 (ii) I do not agree;

28 (iii) submit to level two review;

29 (iv) submit to level three review;

30 (3) a written list showing contact information for available advocacy
 31 agencies, including the department, facility accrediting bodies, the ombudsman, and

1 the Disability Law Center of Alaska;

2 (4) three levels of review, as follows:

3 (A) level one, an initial review and written decision by a
4 supervisory staff member to determine whether a grievant's treatment, care, or
5 rights have been adversely affected, a written record of that determination, and,
6 if the grievant's rights have been adversely affected, implementation of a
7 mutually agreed upon resolution of the grievance;

8 (B) level two, if a resolution is not agreed upon or implemented
9 under a level one review, a grievant may initiate a review within 20 calendar
10 days after the determination is made under level one; a chief executive officer
11 or the commissioner's designee for a facility shall make written findings and
12 issue a decision within five business days after initiation of a level two review;
13 if the level two review results in a finding of no adverse effect, no additional
14 review is necessary, but the decision may be appealed under (C) of this
15 paragraph by a grievant, and the written decision must include notice of the
16 availability of a level three appeal;

17 (C) level three, a grievant may appeal the final written decision
18 made under level two to the commissioner within 30 calendar days after
19 receipt of the findings of the level two review; the commissioner shall make a
20 final written decision on or before the 14th calendar day after the appeal is
21 filed; if the commissioner fails to enter a timely decision, the appeal shall be
22 considered denied; the commissioner may deny an appeal for substantial
23 failure to follow the procedures set out in this section; a denial or decision by
24 the commissioner may be appealed to the superior court within 30 calendar
25 days;

26 (5) maintenance of a complete and confidential record, available on
27 request by the grievant or the grievant's designated representative, of all documents,
28 including the grievance and appeals and responses to the grievance and appeals;

29 (6) delivery, within 24 hours, of a copy of the initial grievance and of
30 all documents maintained under (5) of this subsection to the call center established
31 under (b) of this section, which shall promptly provide all necessary information to

1 (A) the grievant or the grievant's representative;

2 (B) the department; the department shall maintain
3 confidentiality over the grievant's health and personal information;

4 (C) the person responsible for the next level of review; and

5 (D) the person in charge of the facility or unit; and

6 (7) in addition to the three levels of review and parallel procedures
7 available under criminal and other laws provided under (4) of this subsection, an
8 urgent level of review and expedited administrative decision, available at all times to a
9 current patient of a facility or unit, to be conducted immediately by the chief executive
10 officer at the facility and referred to a call center and reviewed by the department not
11 later than 24 hours after receipt of a grievance that alleges an immediate threat to the
12 health or welfare of a grievant.

13 (d) Except as provided in (c)(7) of this section, unless an extension of time of
14 not more than five business days is agreed upon by a patient or the patient's
15 representative, an evaluation facility or unit or a designated treatment facility or unit
16 shall mail or hand deliver a written response to a call center within five business days
17 after receipt of a grievance or request for additional review. The response must include
18 the reasons for the decision and a description of the appeal process. The grievant may
19 request review at the next level if a written response is not timely.

20 (e) An evaluation facility or unit and a designated treatment facility or unit
21 shall have a designated staff member who is trained in mental health consumer
22 advocacy who shall, on a patient's request, serve as an advocate to assist the patient in
23 bringing grievances or pursuing other redress for complaints concerning care,
24 treatment, and rights.

25 (f) A grievant may not file a grievance later than one year after the incident
26 giving rise to the grievance. The facility or unit shall make a good faith effort to mail a
27 response to a grievant who has been discharged from the facility.

28 (g) The department shall review all grievances and responses to grievances for
29 compliance with this section.

30 (h) A facility or unit shall prepare and file a quarterly report with the
31 department that describes the

- 1 (1) number of grievances submitted;
- 2 (2) general issue raised in each grievance; and
- 3 (3) resolution, including litigation, of all grievances submitted.

4 (i) The department shall compile the information provided under (h) of this
5 section and provide a quarterly report to be posted for public review that describes the
6 number and types of grievances filed against each facility in the previous quarter.

7 (j) Nothing in this section shall be interpreted to prohibit informal dispute
8 resolution or mediation by the written agreement of the grievant, the facility or unit,
9 and the department at any time during the grievance process but before a lawsuit
10 concerning the subject of the grievance is filed by a grievant.

11 (k) A facility may not discourage or delay a patient's access to an advocate or
12 representative of the patient's choosing.

13 (l) If a grievance decision made under this section is appealed to a court, the
14 court shall presume that the imposition of attorney fees on a grievant would inflict a
15 substantial and undue hardship on the grievant under AS 09.60.010(e).

16 (m) In this section,

17 (1) "facility" has the meaning given to "designated treatment facility"
18 or "evaluation facility" in AS 47.30.915; and means a unit of a hospital in which
19 patients receive mental health evaluation or treatment and for which public funds are
20 provided;

21 (2) "grievance" means a complaint made by a grievant concerning a
22 patient's treatment, care, or rights at a facility;

23 (3) "grievant" means a patient of a public or private mental health
24 treatment or evaluation facility or unit or the patient's representative;

25 (4) "unit" means a discrete portion of a facility dedicated to the
26 treatment or evaluation of mental health patients.

27 * **Sec. 3.** AS 47.30.855 is amended by adding new subsections to read:

28 (b) The department shall provide to a facility for posting and distribution a
29 standardized notice that is designed to be easily understood and that separately
30 describes patient rights, available assistance, and the grievance procedure provided
31 under AS 47.30.847.

1 (c) A person in charge of a facility shall ensure that each patient or patient's
2 representative receives a written copy of the standardized notice provided by the
3 department under (b) of this section and of the formal grievance procedure described
4 in AS 47.30.847(c).

5 (d) In this section, "facility" has the meaning given in AS 47.30.847.

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

8 **INDIRECT COURT RULE AMENDMENT.** AS 47.30.847(*l*), added by sec. 2 of this
9 Act, has the effect of changing Rule 82, Alaska Rules of Civil Procedure, and Rule 508,
10 Alaska Rules of Appellate Procedure, by limiting the court's discretion in awarding attorney
11 fees in certain cases.

12 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **CONDITIONAL EFFECT.** AS 47.30.847(*l*), added by sec. 2 of this Act, takes effect
15 only if sec. 4 of this Act receives the two-thirds majority vote of each house required by art.
16 IV, sec. 15, Constitution of the State of Alaska.