HB

214

<TARGET><BILL>HB 214</BILL><SUBJECT>HB 214</SUBJECT><COMM>HFIN28</COMM></TARGET>

Rep. Stoltze and Rep. Austerman,
Co-Chairs of House Finance Committee
and House Finance Committee members,

Testimony to 4/9 House Finance Committee Hearing in support of HB 214.

My name is Bonnie Nelson. I live in Chugiak and have lived in Alaska over 40 years. I speak on behalf of the **Anchorage** affiliate of an **international** mental health **rights** advocacy organization called MindFreedom International.

We support CSHB 214 but we request an amendment to Section 3 # 15. We oppose the 3 days needed before a person has a right to have contact with their chosen support network be it family or friends or professional advocates. We also believe this should apply to the many ex parte 3-day commitments per year.

Suggested amendment:
* **Sec. 3.** AS 47.30.840(a) is amended to read: (a) A person undergoing evaluation or treatment under AS 47.30.660 -
47.30.915
(15) who (~~has been~~) <u>is being</u> evaluated or treated in a locked evaluation facility or unit or a designated treatment facility or unit (~~for more than three days~~) has the right to a reasonable opportunity to maintain natural support systems, including family, friends, and help networks;

We think the right to 24/7 private phone access would be adequate but the right to face to face visitation would be much better to prevent further traumatization of anyone involuntarily committed and treated against their will.

I was the major end of life care giver for my parents with the help of my sons and brothers and we took turns sleeping beside them either on a cot or on the floor 24/7. They would have been terrified if Providence or Regional Hospital had not allowed us to do that. I want to commend them both for allowing it. I do not know if this is routine but they thanked us and told us how much it helped them and calmed them down and made their work easier and reduced their liability.

MFI does not take $ from government or special interest organizations as

does the National Alliance for the Mentally Ill, NAMI who gets large sums of $ from the government MH industry such as from Psychiatrists, Psychologists and Pharmaceutical Corporations. MFI is in strong opposition to the **national** NAMI policies that overly promote the benefits and use of drugs and ECT as well as policies that support **coercion/force** and deny pwd's (people wth disabilities) rights of liberty, privacy and the right to refuse health care and have a choice of who their heath care provider is or be able to get 2nd opinions or a choice of legal representation. This is commonly based on petitions for involuntary commitment and forced drugging by **family** members who we have been told by many are abusive and the cause of their emotional distress.

One example: confidentiality policies sometimes are not in the best interest of patients or beneficiaries of MH services. ... People should have the right to demand their records be made public as well as have the right to not have them be shared w/o their permission. Another example of how confidentiality policies can be a problem has to do with the public's right to know information and policy makers need to do oversight and be able to gather that data to do their due diligence in oversight of government information ... so as to make **informed** choices to reform laws and policies rather than blind guessing or trust w/o verifying HSS and medical and health professionals. I have asked legislative aides to research questions and was told that they would not likely be able to find the answers to my questions because of confidentiality policies in Department of Law.
Some of my questions were:
How many involuntary commitment court adjudications were based on a **criminal** violation?
How many involuntary commitment court adjudications were based on a danger to **self** versus a danger to **others**?
How is danger defined?
What is the criteria for **how** "dangerous" a person needs to be to self or others to be involuntary committed?

Another reform we believe would help individuals advocate for themselves since lawyers seldom do these kinds of pro bono representation partly because of Civil Rule 82 would be to have the kind of court assistance currently given by the Court System helping people file and represent themselves (pro se) in cases such as child custody and land lord tenant disputes.

CSHB 214 is a good incremental beginning, but a band aid on a cancer when the better solution would be deinstitutionalization with humane treatment and housing in unlocked facilities for most of those now incarcerated in prison like hospitals and settings.

We support the repeal of AS 47.30.825 (c) (f) and (g) and that forced drugs, electroshock and psychosurgery be amended to be ***voluntary*** or ***banned*** … but we of course would be happy for someone to sponsor that bill next year.

We firmly believe ALL people should have the right to choose their health care providers and have the right of choice of the ***kind*** of "care/treatment" they receive as well as the right to refuse all "treatments." We believe coercion/force is unconstitutional and unconscionable and is a form of torture and/or cruel and unusual punishment even for criminals. Most people that are involuntarily committed are not criminals and done nothing violent.

Thank you,
Bonnie Nelson

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: HB 214
Fiscal Note Number:
() Publish Date:

Identifier: HB214CS(JUD)-DOA-OAH-04-09-14
Title: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES
Sponsor: ** HIGGINS, TARR
Requester: House Finance

Department: Department of Administration
Appropriation: Centralized Administrative Services
Allocation: Office of Administrative Hearings
OMB Component Number: 2771

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
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 (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

In comparison to HB 214 as originally introduced, CSHB 214(JUD) reduces the number of grievances for which a hearing would be available.

Prepared By:	Christopher Kennedy, Deputy Chief Administrative Law Judge	Phone:	(907)269-8170
Division:	Office of Administrative Hearings	Date:	04/09/2014 12:00 AM
Approved By:	Curtis Thayer, Commissioner	Date:	04/09/14
Agency:	Department of Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 214 (JUD)

Analysis

Section 1 of the bill would place the section 5 (AS 47.30.847(a)(3)) grievance appeal under OAH's mandatory jurisdiction in AS 44.64.030(a), adding a new case category to OAH's caseload. The Department of Law estimates that three additional cases per year would be litigated before OAH. OAH can accommodate this increase in case load with existing capacity. OAH would receive interagency receipts reimbursement from DHSS based on the actual number of hours devoted to the appeals in a given fiscal year.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: HB 214
Fiscal Note Number:
() Publish Date:

Identifier: HB214CS(JUD)-LAW-CIV-04-08-14
Title: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES
Sponsor: ** HIGGINS, TARR
Requester: (H) FINANCE

Department: Department of Law
Appropriation: Civil Division
Allocation: Human Services
OMB Component Number: 2962

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services			1.0	1.0	1.0	1.0	1.0
Travel							
Services			0.2	0.2	0.2	0.2	0.2
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**

Fund Source (Operating Only)

1007 I/A Rcpts			1.2	1.2	1.2	1.2	1.2
Total	**0.0**	**0.0**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

The CS removes community behavioral health centers which significantly reduces the number of expected hearings that would require the Department of Law's involvement.

Prepared By: Loretta Withington, Division Operations Manager Phone: (907)465-5427
Division: Department of Law Date: 04/08/2014 05:30 PM
Approved By: Michael C. Geraghty, Attorney General Date: 04/08/14
Agency: Department of Law

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CS HB 214 (JUD)

Analysis

If enacted, House Bill 214 would minimally impact the Department of Law due to the slight increase in legal advice and administrative hearings that would be generated by this statutorily required grievance procedure. While the bill expands mental health patient grievance procedures at evaluation facilities or units or designated treatment facilities or units under AS 47.30.660 – 47.30.915, including the Alaska Psychiatric Institute (API), any designated evaluation and treatment (DET) facility, which currently means Bartlett Regional Hospital (BRH) in Juneau and Fairbanks Memorial Hospital (FMS) in Fairbanks, it currently does not impact community behavioral health settings, which reduces the scope of the bill dramatically.

Summary of Legislation

Section 1. Adds a new paragraph that requires adjudicative administrative hearings for mental health patient grievance appeals through the Office of Administrative Hearing.

Section 2. Amends existing statutes for address the confidentially of records under the grievance system established in the bill.

Section 3. Amends existing statute to clearly provide that the state cannot delegate its responsibilities under the given steps established under this bill.

Section 4. Amends existing statute to include the grievance system in the patients bill of rights.

Section 5. Gives DHSS the authority to establish a standardized statewide grievance procedure to include standardized forms and time liens and requires each facility to provide a copy of the notice to every patient or patient representative, and clearly indicate that this only applies to facilities that provide inpatient treatment under the civil commitment statutes (AS 47.30.660-.915)

Section 6. Amends existing statute to require the creation of forms and distributions of the forms related to the grievance system.

Section 7. Adds a section to the uncodified section of the statutes to address transition issues related to section 3 of the bill.

Assumptions
It is anticipated by DHSS with the changes in the CS that 304 grievances will be filed per year, and less than 1%, or approximately 3 to 5 hearings per year will involve the Department of Law. Estimated billings for legal services provided by the Department of Law for preparation and representation at hearing would be $1,170 per year ($156/hour x 3 grievances x 2.5 hours per hearing). This cost is itemized in the DHSS fiscal note, and is reflected in the Law fiscal note as interagency receipts.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: HB 214
Fiscal Note Number:
() Publish Date:

Identifier: HB214CS(JUD)-DHSS-BHA-04-08-14
Title: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES
Sponsor: ** HIGGINS, TARR
Requester: House Finance Committee

Department: Department of Health and Social Services
Appropriation: Behavioral Health
Allocation: Behavioral Health Administration
OMB Component Number: 2665

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services	113.8		113.8	113.8	113.8	113.8	113.8
Travel	0.9		0.9	0.9	0.9	0.9	0.9
Services	16.6		16.6	16.6	16.6	16.6	16.6
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**131.3**	**0.0**	**131.3**	**131.3**	**131.3**	**131.3**	**131.3**

Fund Source (Operating Only)

1037 GF/MH	131.3		131.3	131.3	131.3	131.3	131.3
Total	**131.3**	**0.0**	**131.3**	**131.3**	**131.3**	**131.3**	**131.3**

Positions

Full-time	1.0		1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 03/01/15

Why this fiscal note differs from previous version:

The CS or version "R" eliminates "facilities that only provide outpatient services" from coverage by this legislation. This action significantly reduced the projected cost to the Department, and fiscal assumptions and cost estimates have been determined.

Prepared By: Barbara Henjum Phone: (907)269-3410
Division: Behavioral Health Date: 04/08/2014 03:00 PM
Approved By: Sarah Woods, Deputy Director, Finance & Management Services Date: 04/08/14
Agency: Health & Social Services

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB214(JUD)

Analysis

This bill would directly impact DHSS by expanding mental health patient grievance procedures at evaluation facilities or units or designated treatment facilities or units under AS 47.30.660 - 47.30.915, which currently means the Alaska Psychiatric Institute (API), Bartlett Regional Hospital (BRH) in Juneau, Fairbanks Memorial Hospital (FMS) in Fairbanks, Peace Health Ketchikan Medical Center, and Yukon-Kuskokwim Health Corp. in Bethel.

Summary of Legislation:

Section 1: adds a new paragraph that requires adjudicative administrative hearings for mental health patient grievance appeals through the Office of Administrative Hearing (OAH).

Section 2: requires OAH to maintain confidentiality of records pertaining to a grievance.

Section 3: amends 47.30.660, *Powers and duties of the department*, (b)(13) by limiting the duties and powers the department may delegate. Specifically, the department may not delegate duties involving investigation and oversight of a mental health facility that the department is required to perform in order to comply with federal and state law and with the mental health grievance procedure under 47.30.847, *Patients' grievance procedures*.

Section 4: amends 47.30.840, *Right to privacy and personal possessions, other rights*, (a) by adding 5 new subparagraphs (12-16) that:
establish a patient's right to file a grievance,
require evaluation and treatment facilities to have designated patient representatives on staff to act as advocates and assist in filing grievances,
establish a patient's right to select a person to serve as an advocate and assist in filing grievances,
establish a patient's right to maintain natural support systems if locked in an evaluation facility more than 3 days, and
establish the confidentiality of a patient's records unless the patient signs a release.

Section 5: repeals and reenacts 47.30.847, *Patients' grievance procedures*.
(a) requires DHSS to establish a standardized statewide grievance procedure to include standardized forms and notices; an appeal procedure including OAH appeals; telephone call center operated by DHSS for
filing and reviewing a grievance; regular compliance monitoring; timely records review; maintenance of confidentiality; establishes 3 levels of grievances.
(b) and (c) detail new requirements for evaluation and treatment facilities and give the grievant the right to request the Commissioner to review facility responses within 30 days of receipt.
(d) allows grievances and appeals to be filed up to one year after patient discharge.
(e) requires the DHSS to review all grievances and responses and to intervene when necessary.
(f) requires facilities to file annual reports with the DHSS on grievance activity.
(g) requires DHSS to provide the Governor, legislature and the public with an annual report on grievance activity.
(h) clarifies that nothing in this section applies to facilities that provide only outpatient services.
(i) provides definitions of grievant, grievance, and unit.

Section 6: requires DHSS to provide facilities with a standardized notice regarding patient rights, grievance procedures and available assistance; and requires each facility to provide a copy of the notice to every patient or patient representative.

Section 7: amends uncodified law of State of Alaska to require the Department to implement as soon as feasible the changes made to 47.30.660(b)(13) as amended by Sec. 3.

FISCAL NOTE ANALYSIS

STATE OF ALASKA **BILL NO.** CSHB214(JUD)
2014 LEGISLATIVE SESSION

Analysis Continued

Assumptions:
It will take approximately 8 months following passage to implement the program revisions.
Program staff within the Division of Behavioral Health would be responsible for reviewing every grievance document received and monitoring compliance with the established grievance procedures.
It is anticipated that 304 grievances will be filed per year. This is based on

- 252 grievances at the Alaska Psychiatric Institute based on the number of grievances reports in FY2013 (15% of admissions)
- 52 grievances from the two Designated Evaluation and Treatment hospitals based on 347 admissions in FY2013 and using the same rate for those hospitals as API (15%).

Less than 1% of the grievances are expected to reach the appeal level with the Office of Administrative Hearings.
Less than .5% of the grievances are expected to require Department intervention at a facility to protect rights under AS 47.30.840.

Costs:
Personal Services: $113,832
- 1.0 FTE Mental Health Clinician III (R21/B) – Based in Anchorage, this position will be required to develop the program and regulations, review and respond to grievances, intervene when necessary, prepare annual reports and provide training to hospitals.

Travel: $865
1 trip per year to hospitals outside the Anchorage bowl for compliance monitoring and interventions:
- Airfare: $500 x 1 trip = $500
- Car rental: $35/day x 2 days x 1 trip = $70
- Hotel: $175/night x 1 night x 1 trip = $175
- Per Diem: $60/day x 2 days x 1 trip = $120

Services: $16,615

- Allocated share of facility and communication costs: $10,000 ($10,000 per person in Anchorage)
- RSA with Dept of Law for preparation and representation at hearing: $1,170 per year ($156/hour x 3 grievances x 2.5 hours per hearing)
- RSA with DOA Office of Administrative Hearing: $5,445 per year ($165/hour x 33 total hours).

It is anticipated that some of the hearings will be more complicated than others. The 33 hour estimate is based on an average: 3 x 2 hour hearing, 1 hour prep, 8 hour decision/post decision = 33 hours

April 13th
To the House Finance Committee
Testimony in support of HB 214

We are asking that House Bill 214 pass the Finance Committee and go to the House floor.

The Finance Committee should understand to the best of their knowledge what psychiatric patients face and some of the statistics when voting on HB214.

Forty-seven percent of the patients locked in a psychiatric institution or unit will experience trauma that may cause or exacerbate Post Traumatic Stress Disorder (PTSD). (One of the most costly illnesses in America.) Patients consistently reported experiencing fear, helplessness and horror in response to these events.[1]

Psychiatric patients are often blamed for becoming a victim. In that environment, psychiatric institutions often re-traumatize the patient.[2]

Patients were given the right to be free from corporal punishment in 1984. Psychiatric patients may be the only group that needed to be given that right. The state of Alaska has not fully established what constitutes corporal punishment.[3]

Psychiatric patients can be and are mixed with forensic patients.[4]

Hospital corporations do not necessarily see a down side to recidivism or even trauma to patients. Nor do hospitals see any upside to giving psychiatric patients a better grievance procedure law.

We are asking the House Finance Committee to pass HB214. Thank you.
Mental Health Advocate, Dorrance Collins, (907) 929-0532

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[1] "Trauma within the Psychiatric Setting: A Preliminary Empirical Report" by Karen J. Cusack and others. Karen J. Cusack, PhD. Is a Project Director in the South Carolina Department of Mental Health.
[2] "On being Invisible in the Mental Health System"—10 page Report by Ann F. Jennings, PhD.
[3] AS47.30.840
[4] According to Karleen K. Jackson, PhD., Commissioner-DHSS of Alaska, Oct 9, 2007.

What Providers of Psychiatric Services are not Telling The Legislature or the General Public

In the 1980's, psychiatric patients were given enhanced rights in law, for the less than noble reason—to keep the state from being sued.

State laws written with that attitude did not address what was in the best interest of the patients, recidivism, or unnecessary trauma and basic rights.

The grievance law AS47.30.847 is just good enough for the state to keep from being sued, but AS47.30.847 should be improved to actually protect psychiatric patients, not just the state or the private psychiatric institutions and units.

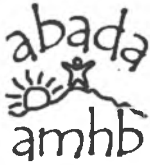
Private hospitals have stated they want only one set of rules and policies for all their patients, but that is not going to work. Psychiatric patients need special protection and always will.

Behavioral Health Grievance Procedure Requirements for Grantees—30 days to resolve a complaint—not good enough. The Joint Commission—14 days to resolve a patient complaint—not good enough for a psychiatric patient in crisis.

Support and pass HB 214.

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

Advisory Board on Alcoholism
and Drug Abuse



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

April 11, 2014

House Finance Committee
Alaska State Capitol, Room 519
Juneau, Alaska 99801

Re: Opposition of HB 214 Mental Health Patient Grievances

Members of the House Finance Committee,

The Alaska Mental Health Board believes that all health care consumers should have access to a fair and accessible mechanism for resolving grievances related to their health care, and that people who are more vulnerable due to their health condition or disability should have additional protections. However, HB 214 does not achieve that goal for mental health consumers. More importantly, HB 214 diverts resources that could be appropriated to help maintain our mental health treatment system's capacity to create additional government oversight of an already heavily regulated industry.

Over the past five years, the Board has heard from hundreds of constituents about the gaps and needs of the behavioral health system. The vast majority of our constituents have commented about the need for expanded mental health treatment capacity throughout the state. In this era of declining revenue and funding available for public health care services, the Board cannot support a bill that would spend money on greater government oversight rather than direct services for people experiencing mental health disorders.

HB 214 creates a new governmental call center for grievances. It also creates two additional layers of governmental review of mental health consumers' grievances by requiring the Department of Health and Social Services to review all grievances and responses to grievances **and** an administrative appeal process. Providers of involuntary psychiatric treatment are already subject to federal and state laws and regulations related to grievance procedures and patient protections. They are also subject to the standards of The Joint Commission, the accreditor of hospitals nationwide. The additional layers of governmental review provided in HB 214 do not provide protections beyond those already provided by these existing sources of oversight.

The extension of the jurisdiction of the Office of Administrative Hearings is redundant and actually diverts mental health consumers from more effective and appropriate avenues for relief. The current judicial process available to patients with causes of action against health care providers is the appropriate venue for resolution. The judicial process can provide for immediate injunctive relief as well as for damages and other restitution. The Office of Administrative Hearings, which hears disputes between citizens and executive agencies, cannot provide the same sort of relief to grievants.

HB 214 exposes providers of involuntary psychiatric treatment to additional risk of litigation, thereby contributing to the ever-increasing costs of health care. HB 214 provides a right to mental health patients to maintain access "natural support systems," without expressly defining these systems. This vagueness could create grievances related to a patient's right to access friends in online gaming communities, pets, or other sorts of nontraditional supports. The Board encourages specificity in language purporting to extend a legal right to a class of citizens. HB 214 also requires that a mental health provider respond to a grievance within 5 days – even though a grievance can be filed up to one year after the person is discharged from treatment. This will require providers to establish protocols and allocate staff resources to be able to investigate and respond to grievances, reducing resources available for treatment services.

The Alaska Mental Health Board is committed to protecting our constituents, especially those who are most vulnerable. We hope that the dialogue about how to effectively serve and protect Alaskans experiencing mental health disorders continues.

Sincerely,

J. Kate Burkhart
Executive Director

April 9th

To the House Finance Committee, Sponsor and Co-Sponsors We Support HB 214

We are asking that HB214 be given a hearing and we want it to pass to the House floor.

The Finance Committee should understand to the best of their knowledge what patients face and some of the statistics when voting on HB 214.

Karen J Cusack, PhD and others produced an 8 page report, "*Trauma within the Psychiatric Setting.*" Some of the conclusions: 47% of the patients locked in a psychiatric institution will experience trauma that may cause or exacerbate Post Traumatic Stress Disorder (PTSD). (One of the most costly illnesses in America) Subjects consistently reported experiencing fear, helplessness and horror in response to these events.

Providence Hospital testified to the HSS Committee that only 10 patients wanted to file a grievance last year. Alaska Psychiatric Institute claims only 15 patients wanted to file a grievance last year.

Estimated number of patients per year that enter Providence and API against their will and are locked in there—approximately 3000; 47% of which will experience trauma that may cause or exacerbate PTSD—that would be about 1,500 individuals. And the two hospitals claim only 25 individuals wanted to file a grievance: Unbelievable low figures. Patients receive no protection in an informal complaint process which is often the only option patients in Alaska are given.

Continued next page

Hospital corporations do not necessarily see a down side to recidivism or even trauma to patients. Nor do hospitals see any upside to giving patients a better grievance procedure.

In other states where the legislature gave psychiatric patients a better grievance procedure law, there were real benefits to the state and to the patients.

We are asking the House Finance Committee to give HB214 a hearing and pass the bill.

Thank you,

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

Rep. Stoltze and Rep. Austerman,
Co-Chairs of House Finance Committee
and House Finance Committee members,

Testimony to 4/9 House Finance Committee Hearing in support of HB 214.

My name is Daryl Nelson. I am the president and organizer of MindFreedom Alaska and Alaskans for Disability Rights. I have multiple disabilities including cerebral palsy due to brain injury, hearing impairment, vision impairments and rheumatoid arthritis. I graduated with a Bachelors of Arts in Liberal Studies, with my special emphasis in political advocacy, from Alaska Pacific University in 1998. My internship was at Alaska Legal Services. I worked for Alaska Public Interest Research Group and Access Alaska. I have managed several political campaigns for both candidates and issues.

MindFreedom Alaska and Alaskans for Disability Rights support HB 214.

However, I would like, for the record, to affirm that IMO improving grievance procedures is only an incremental baby step, a band aid on a cancer, a drop in the bucket because we also need reforms that increase rights other than grievance rights for people with disabilities and people misdiagnosed with "mental illness diagnoses/labels" to have more CHOICE and RIGHT to REFUSE health care/treatment..

HB 214 is also only about improving rights for people diagnosed with "mental illness" and we believe it needs to be amended to also improve the rights also for people that only have physical and/or intellectual disabilities and never been diagnosed with a mental illness or been in a psychiatric facility because of their also being forced into health and housing they do not want, against their will.

Why? Because people that have physical and/or intellectual disabilities, even though never diagnosed or treated based on a "mental illness," **are at a much greater risk of being *wrongfully* diagnosed with a "mental illness" than those labeled "normal" and therefore are at a much greater risk of losing their constitutional civil and human rights to liberty, life and privacy than hose w/o physical or intellectual disabilities.**

If the physical and/or intellectual disabilities happened during childhood ... or before or after birth, (therefore by many statutes labeled with a Developmental Disability, DD), the stigma and discrimination are much much worse than a disability acquired after age 22 and therefore the DD label is profiling, stigmatizing and demeaning.

Therefore someone like myself, even though I am very intelligent and have a BA from APU I am at an even much greater risk of having Adult Protective Services label me being a danger to myself and gravely disabled and therefore incompetent/incapacitated to make my own choices/decisions in MY own best interest even if I want to live dangerously and be a danger to myself. Even though my disabilities are government certifiable as "physical" disabilities, I am at a

greater risk of being forced into a nursing home or assisted living home against my will than people w/o physical disabilities.

I have advocated for many others. I have lost more than I have won. Pwds (people with disabilities) lose their freedom even when their families are totally in support of their right to refuse health care treatment.

I believe universal health care is a basic human right! However, I also do not believe that the right to health care is possible unless individuals also have the right to *refuse* health care treatment that is too frequently mandated by government through discriminatory civil courts and too many people are determined a "danger to them selves," "incompetent" and/or "gravely disabled" in a civil (separate) mental court or probate system, and they are not given the same kind of due process rights people get in the criminal court system.

My parents began giving me dangerous mind altering anti-seizure drugs when I was a 10 month old baby, drugs that I now believe hurt me far more than my physical disabilities and actually caused me to have the seizures, and NOW my doctors have told me they also believe that those drugs probably caused my seizures because for me they were TOXIC. Why did they do that? Because my parents were young and trusted the doctors. They were told that because of EEG tests and brain scan xrays that I might have a seizure .. and DIE. They were scared. Keep in mind that I did not have my first seizure until I was 5 years old after taking anti-seizure drugs for 4 years. ... The anti-seizure drugs caused me to be groggy and unable to concentrate. On the drugs, I was failing Special Ed classes and off the drugs I made the honor roll in Regular Ed classes. I went back and forth taking/not taking the drugs but stopped them completely in 2005 and have not had a single grand mal seizure since.

About 4 years ago I learned from Jim Gottstein and others that the drugs I was taking to supposedly prevent seizures were the same neuroleptic/psychotropic drugs given to people with "Mental Illness labels" such as "schizophrenia," "bipolar" and "mood disorders." I believe, as do the several disability organizations I lead and collaborate with, that the neuroleptic/psychotropic drugs given to people with "Mental Illness labels" such as "schizophrenia," "bipolar" and "mood disorders" actually CAUSE OR INCREASE their psychiatric symptoms and frequently cause them to hurt themselves and others, i.e. be a danger to themselves and others. We believe many suicides as well as many of the mass killings were actually caused by the very drugs that were supposed to help them.

The Americans with Disabilities Act sometimes hurts the rights of people with disabilities because unlike the civil rights acts for minority groups, people with disabilities are legally defined as being in a "protected" class/group._ Therefore, many federal and state laws/doctrines give government the same kind of authority it has to "protect" children to deny privacy and liberty rights of adults with

disabilities; the legal name for this IMO discriminatory, condescending, paternalistic doctrine is "parens patriae."

If I want to be a danger to myself, I should have the same right as people w/o physical or mental disabilities regarding **CHOICE** and **RIGHT TO REFUSE Health care/treatment.**

We support and recommend CS HB 214 … as a good beginning for other needed reforms laws/policies to give people with disabilities (pwds) more freedoms and more rights of **CHOICE** and **RIGHT TO REFUSE Health care/treatment. Adults are NOT Children.**

The parens patriae doctrine too often hurts adults with mental and physical disabilities. Government frequently causes more hurt/harm than help/good when courts give more power to social/health professionals as expert witnesses than given to individuals to choose for themselves and for their own best interest.

Please pass HB 214.

Thank you,
Daryl Nelson

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version:	CSHB 214(HSS)
Fiscal Note Number:	2
(H) Publish Date:	3/18/14

Identifier: HB214-DOA-OAH-02-14-14
Title: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES
Sponsor: ** HIGGINS, TARR
Requester: House Health & Social Services

Department: Department of Administration
Appropriation: Centralized Administrative Services
Allocation: Office of Administrative Hearings
OMB Component Number: 2771

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services			49.3	49.3	49.3	49.3	49.3
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**49.3**	**49.3**	**49.3**	**49.3**	**49.3**
Fund Source (Operating Only)							
1007 I/A Rcpts			49.3	49.3	49.3	49.3	49.3
Total	**0.0**	**0.0**	**49.3**	**49.3**	**49.3**	**49.3**	**49.3**
Positions							
Full-time							
Part-time			1.0	1.0	1.0	1.0	1.0
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Terry L. Thurbon, Chief Administrative Law Judge	Phone:	(907)465-1886
Division:	Office of Administrative Hearings	Date:	02/14/2014 12:27 PM
Approved By:	Curtis Thayer, Commissioner	Date:	02/14/14
Agency:	Department of Administration		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 214(HSS)

Analysis

If enacted, section 1 of the bill would place the section 3 (AS 47.30.847(a)(3)) grievance appeal under OAH's mandatory jurisdiction in AS 44.64.030(a), adding a new case category to OAH's caseload. Addition of the estimated caseload from the new category could drive the need to add a part time administrative law judge position.

Assumptions:

Assume 2% appeal rate, so 46 total cases, but half of those settle with minimal case management/ADR by OAH. Of the 23 that go all the way to hearing and decision, assume about 45% are simple one-issue cases with one witness and a relatively straightforward answer, similar to our typical public benefits eligibility appeals; another 45% involve two or three witnesses and moderate complexity, similar to our typical public benefits level of care appeal; and 10% involve legal or factual complexity (such as sexual abuse cases), perhaps with attorney representation on both sides.

23 x 1 hour for case mgmt/settlement = 23
10 x 1 hour hearing, 1 hr prep, 5 hr decision/post decision = 70
10 x 2 hour hearing, 1 hr prep, 8 hr decision/post decision = 110
3 x 8 hour hearing, 4 hr prep, 20 hr decision/post decision = 96

299 hrs x $165 per hour rate = $49,335 (estimated cost to DHSS for reimbursement).

Fiscal Impact:

OAH would receive interagency receipts reimbursement from DHSS based on the actual number of hours devoted to the appeals in a given fiscal year. Thus, the estimated $49,335 impact to OAH would be covered through interagency receipts billing.

If OAH's capacity to absorb additional case work is insufficient at the time the appeals hit (FY16), it would be necessary to increase capacity by adding an administrative law judge. OAH does not currently have a vacant position to fill. If the bill were to be enacted, in FY16 OAH would need authorization to expend and collect for another administrative law judge position, 25 percent of which would be attributable to this bill, as well as the addition of a range 24, PX administrative law judge position.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 214(HSS)
Fiscal Note Number: 3
(H) Publish Date: 3/18/14

Identifier: HB214-LAW-CIV-02-21-14
Title: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES
Sponsor: ** HIGGINS, TARR
Requester: (H) HSS

Department: Department of Law
Appropriation: Civil Division
Allocation: Human Services
OMB Component Number: 2962

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services			7.7	7.7	7.7	7.7	7.7
Travel							
Services			1.1	1.1	1.1	1.1	1.1
Commodities			0.2	0.2	0.2	0.2	0.2
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**9.0**	**9.0**	**9.0**	**9.0**	**9.0**

Fund Source (Operating Only)

1007 I/A Rcpts			9.0	9.0	9.0	9.0	9.0
Total	**0.0**	**0.0**	**9.0**	**9.0**	**9.0**	**9.0**	**9.0**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By: Loretta Withington, Division Operations Manager
Phone: (907)465-5427
Division: Department of Law
Date: 02/21/2014 12:00 AM
Approved By: Michael C. Geraghty, Attorney General
Date: 02/22/14
Agency: Department of Law

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 214(HSS)

Analysis

If enacted, House Bill 214 would directly impact the Department of Law due to the increase in legal advice and administrative hearings that would be generated by this statutorily required grievance procedure. This bill expands mental health patient grievance procedures at evaluation facilities or units or designated treatment facilities or units under AS 47.30.660 – 47.30.915, including the Alaska Psychiatric Institute (API), any designated evaluation and treatment (DET) facility, which currently means Bartlett Regional Hospital (BRH) in Juneau and Fairbanks Memorial Hospital (FMS) in Fairbanks and any of over sixty private, not-for-profit behavioral health centers in the state.

Summary of Legislation

Section 1. Adds a new paragraph that requires adjudicative administrative hearings for mental health patient grievance appeals through the Office of Administrative Hearing.

Section 2. Requires each evaluation facility to employ a designated representative to act as a patient advocate to assist in filing a grievance.

Section 3. Gives DHSS the authority to establish a standardized statewide grievance procedure to include standardized forms; 24/7 crisis line operated by DHSS for filing and reviewing a grievance; a requirement that facilities deliver to DHSS an electronic copy of all grievances received within 24-hours; a requirement that every grievance filed with DHSS be reviewed within 24 hours; a requirement that the facility provide a written response to the patient and an electronic copy to DHSS within 5 days of the receipt of the grievance; a provision for a response within 24-hours for urgent level reviews; a requirement that each facility have a designated staff member who is specially trained in mental health consumer advocacy to become patient advocate for the grievant and assist the grievant throughout the grievance and/or appeal process(es); an allowance for the grievant to file a grievance or an appeal for up to one year after being discharged; a requirement that each facility report on grievance activity to DHSS quarterly; and a requirement that DHSS report on grievance activity to the Governor and Legislature biennially.

Section 4. Requires DHSS to provide facilities with a standardized notice regarding patient rights, grievance procedures and available assistance; and requires each facility to provide a copy of the notice to every patient or patient representative.

Assumptions
It is anticipated by DHSS that 3,705 grievances will be filed per year, and less than 1%, or approximately 23 hearings per year will involve the Department of Law. Estimated billings for legal services provided by the Department of Law for preparation and representation at hearing would be $8,970 per year ($156/hour x 23 grievances x 2.5 hours per hearing). This cost is itemized in the DHSS fiscal note, and is reflected in the Law fiscal note as interagency receipts.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE PETE HIGGINS

SPONSOR STATEMENT

HB 214 "An Act relating to a mental health patient rights, notifications, and grievance procedures"

HB 214 amends the 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 to 10,000 admissions to mental health facilities and units in Alaska each year, this bill requires:

1. Adequate notice
2. Standardized forms
3. Advocate assistance
4. Rapid written administrative response
5. Right to appeal
6. Telephonic access to a state monitored call center to lodge a complaint immediately.

Mental health patients are among the most vulnerable in Alaska. There are a number of patient assaults and staff injuries each year. There are also thousands of children who are committed each year.

Current statutes and regulations do little to protect psychiatric patients. 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.

HB 214 provides for three critical rights; the right to file a grievance, the right to have an advocate, and the right to a timely response to a grievance.

Passage of HB 214 will improve mental health treatment, grievance reporting, and state oversight.
28-LS0392\A

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REPRESENTATIVE PETE HIGGINS

April 8, 2014

CS HB 214( )\R Sectional Analysis

Section 1. Adds a mental health grievance appeals to the jurisdiction of the Office of Administrative Hearings.

Section2. Requires the Office of Administrative Hearings to maintain confidentiality of records in grievance appeals.

Section 3. Amends AS47.30.660 defining and limiting the Powers and Duties the Department can delegate.

Section 4. Adds 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 file a grievance, the right to have a designated representative of their choosing to act as a patient advocate and to assist in filing a grievance, the right to natural support systems, including family, friends, and help networks after being in an locked evaluation facility over three days; and the right to maintain confidentiality of their records unless they chose to release those records.

Section 5. Establishes a grievance procedure, including a call center, departmental review and appeal. Establishes three categories of grievances, and their respective reporting requirements. Defines “grievance”, “grievant”, and “unit”.

Section 6. Requires the Department of Health and Social Services to provide a standardized notice of patients’ rights, assistance, and grievance procedures to mental health evaluation and treatments facilities in the state. Also requires the person in charge of the facility to provide a written copy of the notice to each patient or their representative.

Section 7. Requires the Department to provide for a transition period under AS47.30.660.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE PETE HIGGINS

April 8, 2014

Explanation of changes for CS HB 214 28-LS0869\R

Section 1: Unchanged

Section 2: Unchanged

Section 3: Page 1 AS 47.30.660(b)(13) Amended to read, **"the authority to operate and maintain treatment facilities under (4) of this subsection and to provide for the placement of patients under (5) of this subsection, as necessary to operate a statewide system for the evaluation and treatment of mental health disorders; however, the department may not, under this paragraph, delegate duties involving investigations and oversight of a mental health facility that the department is required to perform in order to comply with federal and state law and with the mental health grievance procedure under AS 47.30.847.** Deletes, **"Any of the duties and powers imposed upon it by AS.47.30.660 – 47.30.915.**

Section 4: Page 3 renumbered from Section 3 to Section 4 otherwise no change

Section 5: Page 5 renumbered from Section 4 to Section 5. AS 47.30.847(i) added the definition of a "unit" to mean a portion of a health care facility dedicated to the evaluation or treatment on mental health patients under AS 47.30.660 – AS 30.915.

Section 6: Page 7 renumbered from Section 5 to Section 6 otherwise no change.

Section 7: Page 7 amends the uncodified law adding a new section: "**MENTAL HEALTH DELEGATION; TRANSITION. The Department of Health and Social Services shall, as soon as feasible, implement the changes made to AS 47.30.660(b)(13), as amended by Sec. 3 of this Act, including amending or terminating agreements made under delegations under that paragraph as it read before the effective date of this Act."**

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

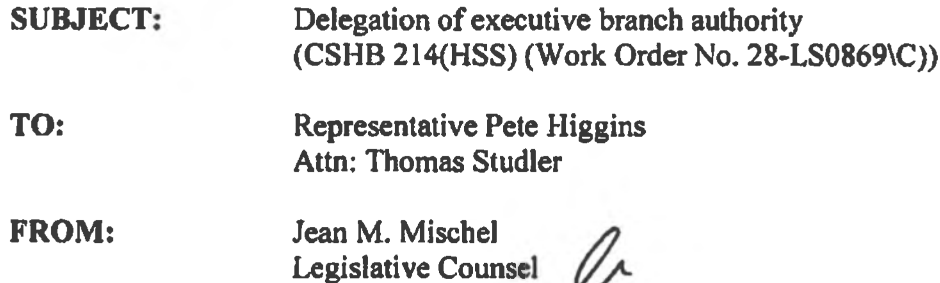
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 12, 2014

SUBJECT: Delegation of executive branch authority
(CSHB 214(HSS) (Work Order No. 28-LS0869\C))

TO: Representative Pete Higgins
Attn: Thomas Studler

FROM: Jean M. Mischel
Legislative Counsel



You have asked whether AS 47.30.660(b)(13), repealed in the above referenced bill, constitutes an excessive delegation of authority. That section provides that the Department of Health and Social Services shall:

> (13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.660 - 47.30.915;

This provision requires a delegation to the various entities described, on mutual agreement, of the general powers and duties of the department under AS 47.30.660, and more specific authority pertaining to, for example, voluntary commitments for mental illness under AS 47.30.670, involuntary commitments for mental illness under AS 47.30.700, mental health patient rights under AS 47.30.825, grievance procedures under AS 47.30.847, and diligent inquiry after departure of a patient from a mental health facility or death in a facility under AS 47.30.900. The delegation provides no specific standard under which a nongovernmental organization would exercise departmental authority, other than the express duties applicable to the department. A delegation may result in the authority of a mental health treatment facility to essentially regulate itself, for departmental purposes, in the care and treatment of mental health patients. Aside from the policy implications of such a broad delegation, the delegation may be unlawful due to its breadth. The Alaska Supreme Court has stated:

> The constitutionality of a delegation is determined on the basis of the scope of the power delegated and the specificity of the standards to govern its exercise. "When the scope increases to immense proportions . . . . the standards must be correspondingly more precise." The essential inquiry is whether the specified guidance 'sufficiently marks the field within which

> the administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will.'

State v. Fairbanks North Star Borough, 736 P.2d 1140, 1143 (Alaska 1987) (internal quotes and citations omitted).

While the delegation in AS 47.30.660(b)(13) has not been challenged to my knowledge, the provision may be interpreted as an unconstitutional excessive delegation of executive branch functions to nongovernmental and regulated entities.

If you have questions, please do not hesitate to contact me.

JMM:lem
14-132.lem

Enclosure

Abuse and Neglect Investigation: Alaska Psychiatric Institute (API)

API Violates Patients' Rights in Handling Patients' Grievances

Issued April 5, 2011
Revised and reissued July 13, 2011[1]

The Disability Law Center of Alaska
Community Integration Unit - Abuse/Neglect Investigation

3330 Arctic Blvd., Suite 103
Anchorage, Alaska 99503
(907) 565-1002

[1] DLC sent a copy of the initially issued report to API for review and comment. API disagreed with DLC's findings. After reviewing API's comments and concerns, DLC revised the report to make its findings more clear, but DLC's conclusions did not change. DLC has also added specific recommendations to the revised report that it hopes API will follow to ensure that patients' grievances are properly investigated.

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I. General Information & Terms

The Disability Law Center of Alaska (DLC) is a private, independent, not-for-profit agency, and is Alaska's federally mandated Protection and Advocacy (P&A) system. Under its federal mandates, one of which is under the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act),[2] DLC has the duty and authority to investigate allegations of abuse and/or neglect involving individuals who experience a disability if the incident is reported to DLC, or if DLC determines there is probable cause that an incident of abuse and/or neglect occurred. The PAIMI Act gives DLC the authority to access facilities, records, patients, staff and administration in order to complete its investigation.

Alaska Psychiatric Institute (API) is licensed as a specialized hospital, located in Anchorage, Alaska. API is licensed for 80-beds, is the State's only state-operated psychiatric hospital, and provides evaluation and treatment to individuals experiencing or suspected of experiencing a mental illness, regardless of their home-community within the state. The hospital is certified to receive Medicare and Medicaid funding, and is also accredited under the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). API is a Designated Evaluation and Treatment (DET) facility as identified by the State's Department of Health and Social Services.[3]

Abuse under PAIMI regulations "...means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue." 42 C.F.R. § 51.2.

Complaint under PAIMI regulations "...includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by [DLC], including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness." 42 C.F.R. § 51.2.

Neglect under PAIMI regulations "...means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff." 42 C.F.R. § 51.2.

[2] Under the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. § 10801 *et seq.*, DLC is mandated to protect and advocate for the rights of people with mental illness.
[3] *See* A.S. § 47.30.915.

II. Factual Findings

On or about January 5, 2011, DLC received a complaint alleging a patient who experiences mental illness was injured as a result of an inappropriate physical restraint by API staff. DLC received another complaint alleging inappropriate physical restraint from a different patient, on or about February 3, 2011. Based on its receipt of those complaints, DLC initiated investigations to determine if the allegations could be substantiated, and if so, to determine if abuse or neglect occurred. DLC learned that both patients, prior to their discharge, filed a formal complaint with API about the incident.

As part of its investigation, DLC requested and received a copy of the hospital's internal investigation into these incidents. Among the documents received was a copy of a letter sent to the patients from API, notifying them of the conclusion of its investigation. After reviewing the information provided by API in connection with its investigations, DLC reviewed API's policies and procedures for the handling of patient grievances as well as the applicable federal regulations for how patient grievances are to be handled.

According to the first patient's records, he filed a complaint about the alleged incident on or about December 5, 2010; it was marked "Urgent." An extension was given the hospital's investigator to complete his investigation until January 1, 2011. The extension was granted by a hospital physician on December 16, 2010, without notifying the patient. The letter to the patient from the hospital informing him of the conclusion of the complaint investigation was dated January 3, 2011.

The second patient's records indicated he filed a complaint about the alleged incident on or around January 18, 2011. DLC did not receive a copy of the original complaint; however an e-mail from the hospital's Consumer and Family Specialist to hospital administration, dated January 19, 2011, asks if the patient's complaint should result in an Unusual Occurrence Report (UOR).[4] It appears the response was in the affirmative, as DLC received a copy of the resulting UOR, which was dated January 19, 2011. A letter was sent by the hospital to the patient informing him of the conclusion of the investigation into his complaint, and was dated February 16, 2011. DLC does not know if an extension was requested or granted, however the investigative report stated it took 20 days to complete the investigation.

The hospital's policies and procedures for the handling of patient grievances (P&P No. PRE 030-03, effective 10/31/07) states that:

---

[4] An "unusual occurrence report" (UOR), is a report that documents an "unusual occurrence." An "unusual occurrence" is "...Any occurrence which involves a potential liability, or represents any disruption to the hospital and its normal operations, including any incident which occurs while on API property and occurs to the person or personal property of hospital on-duty staff, students or student interns, visitors, volunteers, or patients, and involves any loss, damage, bodily injury, or occupational injury or illness. It also involves any incident which occurs off API grounds and involves hospital on-duty staff, admitted patients, or volunteers." (API P& P No. LD-020-06, Unusual Occurrences/Incidents, effective 10/16/07)

III. Level I, First Response

F. The Level I reviewer will meet with the patient to discuss the concern and look for resolution. By the fifth (5th) business day after the original date of the patient's filing, the Level I reviewer will write the proposed resolution on the form and discuss it with the patient.

a. If, in the course of the review, it becomes apparent that more time is needed to gather information, a five (5) business day extension can be requested in writing, informing the patient that more time is needed. No more than three (3), five (5) business day extensions may be made.

G. The patient will review the form with the Level I reviewer and mark the response: Agree; Do Not Agree; or Do Not Agree, Submit to Level II.

H. The Level I reviewer will give the patient a copy of the Level I response with the reviewer's and the patient's signature.

I. Complaints and grievances not resolved at Level I and submitted to Level II will be referred directly to the CEO. The CEO may conduct the review or designate an impartial party to conduct the review.

Under a Level II review, the hospital's policies and procedures state:

V. Level II, CEO Review

C. Within five (5) business days, the Level II written response indicating the name of the reviewer, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process and the date of completion and offered solution will be presented to the patient.

D. The patient may choose Agree or Do Not Agree and signs the form with the staff who reviews the response with the patient.

Based on DLC's review of the documents provided by the hospital in connection with these complaint investigations, it does not appear that any of the elements of the hospital's Patient Grievance Procedures noted above were followed. It appears that instead API followed the policy below in lieu of completing the patient grievance process:

II. Grievances alleging abuse or employee misconduct.

C. Any allegation of employee misconduct which may be illegal or unethical will be immediately reported according to API P&Ps, a UOR filed according to policy, and a Risk Management investigation initiated. The patient will be informed of the process as fully as possible without compromising the investigation, and protected and supported throughout. (Refer to API P&P HR-040-06 Standards of Conduct.)

At the conclusion of a patient grievance investigation API must send notice to the patient of the investigation outcome. The patient grievance policies and procedures state:

V. Level II, CEO Review

C. Within five (5) business days, the Level II written response indicating the name of the reviewer, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process and the date of completion and offered solution will be presented to the patient.

D. The patient may choose Agree or Do Not Agree and signs the form with the staff who reviews the response with the patient.

In addition to the hospital's own policies and procedures with regard to notice to the patient following completion of the complaint investigation, Federal regulations at 42 C.F.R. § 482.13(a)(2)(iii) requires:

> (iii) In its resolution of the grievance, the hospital must provide the patient with written notice of its decision that contains the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion.

In addition to the above, the hospital's policies and procedures for patient grievances also provides for ways the patient may appeal civil issues and/or redress other concerns related to the investigation:

VI. Additional Provisions

A. Once all levels of administrative redress have been exhausted, the grievant may appeal civil issues to the Alaska Court System under current rules of civil procedure; file a grievance with the Disability Law Center of Alaska; or file a complaint with the Joint Commission on Accreditation of Healthcare Organizations (The Joint Commission).

Based on the information available, it appears that both patients' complaints went straight to a Risk Management investigation track. By API putting these complaints in the Risk Management

investigation track, it appears that API no longer followed the patient grievance policies and procedures that speak to timelines and extensions.

The first patient's grievance was handled as follows:

Patient Grievance Track	Patient Grievance Policy Provisions Not Followed
Grievance made on December 5, 2010	
Investigator Granted an extension on December 16, 2010 to complete investigation by January 1, 2011	Patient was not asked to approve the extension per the patient grievance policy.
Patient notified of grievance outcome on January 3, 2011	Patient only notified that his complaint was not substantiated and not notified of other problems concerning his care and treatment were found; however, because those findings are noted solely in a protected document (i.e., Quality Assurance/Peer Review), DLC was also unable to notify the patient what was found by the hospital.[5] Missing from the notification were: the name of the reviewer; the steps taken on behalf of the patient to investigate the grievance; the date of completion; and the offered solution (with an opportunity for the patient to either agree or disagree and sign).
Level II CEO Appeal	Not offered to patient
Notice of appeal to Alaska Court System or the ability to file complaints with outside agencies	Not included in notice to the patient

The second patient's grievance was handled as follows:

Patient Grievance Track	Patient Grievance Policy Provisions Not Followed
Grievance made on January 18, 2011	
Investigation to be completed by January 25, 2011	Investigation exceeded 5 business days and there is no record of an extension requested or granted by the patient
Patient notified of grievance outcome on February 16, 2011	Missing from the notification were: the name of the reviewer; the steps taken on behalf of the patient to investigate the grievance; the date of completion; and the offered solution (with an opportunity for the patient to either agree or disagree and sign).
Level II CEO Appeal	Not offered to patient

[5] *See* 42 U.S.C. § 10806(a); also A.S. § 18.23.030.

Notice of appeal to Alaska Court System or the ability to file complaints with outside agencies	Not included in the notice to the patient

As the above tables note, several aspects of the patient grievance process and API's policies and procedures were not followed in processing these patients' grievances.

III. Conclusions and Recommendations

While DLC understands the value of internal investigations and found the hospital's investigations and reports to be thorough, it cannot rely solely on its internal review process to the detriment of the patient grievance process. Federal regulations for hospitals require a patient grievance process be in place. While API has such a process, DLC is concerned with how API is conducting patient grievance investigations (e.g., allegation of abuse against a staff member). Although these complaints were filed with the hospital as a patient grievances, API is processing these grievances in a manner that does not follow all the elements of how patient complaints are required to be handled according to the hospital's own policies and procedures or federal regulations and generally excludes the patient from the process to resolve his or her grievance.

Moreover, with regard to the notices sent to patients at the conclusion of an investigation, DLC has some concerns about the way that particular policy and procedure is written concerning patients ability to seek additional redress. Specifically, as the policy is written, it implies that a patient's ability or right to redress by filing a complaint with DLC and/or JCAHO[6] may happen only after all levels of administrative redress have been exhausted. This is simply not the case; the patient may file a complaint with either entity at any time. In addition, such notice should also include the patient's right to file a complaint with the State's Survey and Certification agency. Finally, since there are timelines that apply to filing an appeal within the Alaska Court System upon exhausting all administrative avenues within API, API must explicitly notify patients of their ability to file a court appeal and the time in which they have to do so.[7]

Whether or not the hospital elects to have patient complaints of this nature placed on dual tracks (e.g., both under Risk Management and Patient Grievance) or develops some other system, the fact that a Risk Management investigation takes place does not relieve the hospital from meeting both its own as well as the federal requirements for the handling of patient complaints. Thus, DLC concludes that the facts substantiate the complaint of neglect as to the handling of both patients' grievances.

In order to better serve patients, meet the federal regulatory criteria and comply with its own policies and procedures DLC makes the following recommendations:

1. Carefully document when patient grievances are referred to Risk Management and ensure that all steps in the patient grievance process, including applicable timelines, extensions and patient notification, are followed in conformance with the patient grievance policies and procedures;

[6] The Joint Commission (JCAHO) is an independent, not-for-profit organization, JCAHO accredits and certifies more than 19,000 health care organizations and programs in the United States. API is accredited by JCAHO.
[7] Alaska Rules of Appellate Procedure Rule 602(a)(2).

2. Fully inform patients of the outcome of patient grievances as indicated by the policies and procedures. Simply stating that the allegation is unsubstantiated is both unsatisfying for the patient and conveys very little information to the patient about his or her concern. If the patient grievance policy and procedure is followed the patient will at least know the steps taken by API to investigate the grievance regardless of the outcome;
3. Accurately convey in the patient notification letter the patient's other options to file a complaint with outside agencies such as DLC, State Certification and Licensing or JACHO and that the option to file a complaint with any of these agencies can be done at anytime;
4. Explicitly include in patient notification letters when the notification is a final agency decision and subject to appeal to the Alaska Superior Court, including the applicable timeline the patient has to make such an appeal; and
5. Ensure that the written explanation provided to patients about how to submit written or verbal grievances is clear and easily understandable to patients. DLC found the policies and procedures governing patient grievances convoluted and not particularly easy to follow. Information available to patients should be in simple language that clearly explains what patients should expect after filing a grievance.

April Eighth —House Finance Committee
Please do not pass HB 214 before making improvements

Most individuals would be stunned to learn the loop holes that psychiatric institutions and clinics and even DHSS have used for 20 years to deny psychiatric patients their right to file a grievance or an appeal. The goal is not only to re-write AS47.30.847 but to see to it that the new law contains as few loop holes as possible.

We are asking that the following be added to HB 214—Y.

One. Make the language clear—the "patients can file a grievance at the time of their choosing regardless of the availability of an informal complaint process" Page 5, line 28-30.

Two. Add—"Following the initial evaluation psychiatric patient rights (#4, #5, #7 and #9) can only be temporarily removed if the professional in charge determines that granting the patient those rights will pose a threat to the safety or well-being of the patient or others."—*Otherwise low level staff will make the decisions as to what the patients can or cannot do.*

Three. The "facility employees designated as a patient advocate must be required to have training in mental health consumer advocacy." *HB 214 now states that any employee can be the patient advocate, with or without mental health consumer advocacy training or any training.—must take into account advocates go on 4 day weekends, and 3 week vacations.*

Four. "The facility Patient Advocates should be available to the patients 24 hours a day/ 7 days a week." *Otherwise the facilities will decide when an advocate is available to patients—could be one or two days a week.*

Five. There should be "an urgent grievance procedure for psychiatric patients." *Patients are locked in psychiatric facilities for less than 14 days—Patients could be denied their rights or mistreated the whole 14 days.*

Six. Add clarity to the telephone call center on page 5—Make it clear who is going to inform the patient of their right to call and the telephone number to call to file a grievance.

Seven. Add clarity to when a patient's grievance starts—when it is dropped in the box? Or called in? What is the start time for the due process.

Eight. Page 6, line 1….."A patient can only withdraw their grievance with a written statement or by patient's signature," *otherwise the psychiatric facilities will withdraw grievances without patients' permission.*

Nine. "DHSS and psychiatric facilities and units should be required to keep statistics of any type of patient complaints that are logged in with staff in facilities, either verbally or in writing. Not just formal grievances."

Ten. DHSS will be required in HB214 to investigate psychiatric patient complaints. In 2008, DHSS was required to investigate patient complaints— According to a 2008 State Ombudsman's report, DHSS had not investigated a patient complaint in 5 years, mainly because they never gave out their phone number. Strengthen HB 214 by "requiring DHSS not only to investigate psychiatric patient complaints but also be required to give out their phone number to all psychiatric patients in psychiatric facilities and units."

Eleven. Like in AS47.30.847, give psychiatric patients " a right to bring their grievance to an impartial body." *Otherwise a patient's grievance will be decided by the staff member the patient is complaining about.*

As stated, providers of psychiatric services, including DHSS, will look for loop holes in HB 214. Please make our requested additions.

Faith Myers Dorrance Collins

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