FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: SB004-DHSS-DPA-02-14-07
Bill Version: SB 4
( ) Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Health & Social Services

Title: RELATING TO SENIOR CARE
RDU: Public Assistance
Component: SeniorCare

Sponsor: OLSON
Requester: SENATE (HES)
Component No.: 2760

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	(3,931.8)	(3,818.4)	(3,703.2)	(3,586.2)	(3,469.2)	(3,350.4)
Miscellaneous						
TOTAL OPERATING	(3,931.8)	(3,818.4)	(3,703.2)	(3,586.2)	(3,469.2)	(3,350.4)
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(1,549.0)	(1,435.6)	(1,320.4)	(1,203.4)	(1,086.4)	(967.6)
1037 GF/Mental Health						
11189 SeniorCare Fund	(2,382.8)	(2,382.8)	(2,382.8)	(2,382.8)	(2,382.8)	(2,382.8)
Other(Specify Type-do not abbreviate)						
TOTAL	(3,931.8)	(3,818.4)	(3,703.2)	(3,586.2)	(3,469.2)	(3,350.4)

Estimate of any current year (FY2007) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: X

POSITIONS

Full-time						
Part-time						
Temporary						

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

The Senior Care program helps low-income seniors over age 65 remain independent in the community by providing an income supplement of $120 per month to help meet their basic needs, such as food and housing. Nearly 7,000 seniors are currently receiving financial help from the Senior Care Program, and about 140 are receiving help in paying for the premium and deductibles of prescription drug insurance through the prescription drug benefit.

This bill provides for continuation of the Senior Care Program, and increases the monthly income supplement for low income seniors from $120 per month to $150 per month. It eliminates the prescription drug benefit (payment of premiums and deductibles) which has had very low enrollment, and keeps the program's income qualifying standards at 135% of the 2005 federal poverty guideline for Alaska (below $16,133 for an individual, and below $21,641 for a couple).

Prepared by: Ellie Fitzjarrald, Acting Director — Phone 465-5847
Division: Public Assistance — Date/Time 02/13/2007
Approved by: Karleen Jackson, Commissioner — Date 02/14/2007
Agency: Department of Health and Social Services

STATE OF ALASKA
2007 LEGISLATIVE SESSION

ANALYSIS CONTINUATION
Assumptions

* The Alaska Longevity Bonus (ALB) Program will be reopened and funded in FY08.

* This fiscal note makes the assumptions that seniors who qualify for the ALB will not qualify for SeniorCare, and that seniors who formerly received an ALB payment of at least $150 will elect to recieve the higher ALB payment instead of SeniorCare.

* 2,208 former ALB recipients received an ALB payment of $150 or more during the phase-out of the ALB program.

* During FY09-FY13, the number of seniors receiving help from the Senior Care Program will grow at a rate of 1.3%/year (based on 6-year average rate of growth in the old age component of the APA program).

FY	Caseload	1.3% Growth	Revised Caseload	Less ALB	Total	Cost Total x 150 x 12
FY08	7,043		7,043	(2,208)	4,835	$8,703.0
FY09	4,835	63	4,898		4,898	$8,816.4
FY10	4,898	64	4,962		4,962	$8,931.6
FY11	4,962	65	5,027		5,027	$9,048.6
FY12	5,027	65	5,092		5,092	$9,165.6
FY13	5,092	66	5,158		5,158	$9,284.4

Administration

There are no additional administrative costs for operating the Senior Care Program. These costs are included in the Governor's FY08 budget.

January 31, 2007

Richard:

Attached is a Hearing Request for SB 4 the Senior Benefit Program. I wanted to get this request to you today, as I know you will be hearing from people/groups who are interested in seeing the legislation move along.

Unfortunately, I have not completed gathering all of the data for the Sponsor Statement, so it is not included here. I hope to have it to you by Friday afternoon.

Also, I am unable to furnish you with the teleconference information at this time. I would like to request, though, that Anchorage and Fairbanks be included, and that you check the box for "Other Sites May Add" on the teleconference order form.

We look forward to presenting this bill to the HESS Committee, and would appreciate your consideration of an early hearing date for this important pieced of legislation.

Ginny Austerman
for Senator Donald Olson

Feb 19

Alaska State Legislature

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PO Box 531
Golovin, Alaska 99762
(907) 443-5599

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State Capitol, Suite 510
Juneau, Alaska 99801-1182
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SENATOR
DONALD C. OLSON

DISTRICT T

Alakanuk
Ambler
Anaktuvuk Pass
Atqasuk
Barrow
Brevig Mission
Brownerville
Buckland
Chevak
Deering
Diomede
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktoolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

January 31, 2007

TO: Senator Bettye Davis, Chair
Health, Education & Social Services Committee

FROM: Senator Donald Olson Senator Donald Olson by Ga

SUBJECT: Hearing Request SB 4

SB 4, "An act extending the cash assistance benefit program for seniors under the senior care program and increasing the benefit amount," has been referred to your committee.
I respectfully request a hearing for this important legislation.

I would appreciate the scheduling of a Health, Education & Social Services Committee hearing of SB 4 at your earliest convenience. ttached is sponsor statement and support documentation. If you require additional information, please contact myself or Ginny Austerman in my office.

Thank you for your attention to this request.

SB

8

Alaska State Legislature

Interim: (May - Dec.)
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Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
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Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

Senator Bettye Davis

Senate Bill 8

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

Sponsor Statement

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

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

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 February 6, 2007

SUBJECT: Sectional Summary (SB 8)

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. Establishes a right to staff choice for the provision of intimate care for patients 18 years of age or older who are receiving mental health treatment and intimate care at a hospital. Also requires certain actions of hospital staff to provide privacy and to accommodate staff choice except as otherwise described.

JMM:med
07-078.med

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSSB014-DOC-A&O-4-1
Bill Version: CSSB 14
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title: An Act raising the compulsory school attendance age; relating to the crime of contributiong to the delinquency. . .
RDU: Office of the Commissioner
Component: Administration & Operations
Sponsor: Senator Davis
Requester: Senate Special Committee on Education
Component No. 694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Passage of this legislation will not have a fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director
Phone (907) 465-3339
Division: Administrative Services
Date/Time 4/16/07 1:42 PM
Approved by: Dwayne Peeples, Deputy Commissioner
Date 4/16/2007
Agency: Department of Corrections

STATE OF ALASKA

Sarah Palin, GVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

Advisory Board on Alcoholism and Drug Abuse
Alaska Mental Health Board

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

April 16, 2007

Senator Bettye Davis, Chair
Health, Education and Social Services Committee
Alaska State Legislature

Dear Representative Davis:

Thank you for introducing SB 8, Mental Health Patient Rights: Staff Gender.

The Alaska Mental Health Board (AMHB) strongly supports the notion that patients in psychiatric hospitals should have the right to choose the gender of the person providing them intimate care. This type of choice will allow the individual to retain their dignity during a time of extreme distress and vulnerability, and will afford a modicum of choice and control in a fundamentally uncontrollable situation.

This bill has been criticized as "unnecessary" because hospitals should be allowed to handle this issue administratively through internal policies and procedures. The AMHB was instrumental in convincing API to promulgate such a policy, and applauds their efforts. But the Board believes a single, isolated policy is not sufficient to safeguard the rights of all individuals who find themselves in an acute psychiatric facility. Placing this provision into statute will ensure that patients in API and the State of Alaska's Designated Evaluation and Treatment beds, as well as those in private psychiatric facilities, will be afforded this basic right.

The AMHB is also sensitive to the argument that the bill's provisions will create a financial burden on psychiatric hospitals by forcing them to staff so as to have both genders available for patient care at all times. But the language found in the CS clearly provides a method for dealing with this issue – if the patient cannot be served by someone of the gender they choose, the hospital must simply document that a request was made and that it was not able to be honored. As such, this bill will not impact the "bottom line" for hospitals.

Finally, the bill offers a balance between the rights of the patient for privacy and choice and the physician's duty to provide sound and responsible care. If the treating psychiatrist determines that the choice made by the patient is not in the best interest of the patient's treatment, he or she may override a patient's choice.

The AMHB believes that putting gender choice into statute is the correct and responsible way to ensure that all psychiatric patients retain their basic dignity while being treated for acute or ongoing psychiatric disabilities. The Board urges all members of the Senate Health and Social Services Committee to support the bill.

Sincerely,

Andrea Schmook

Andrea Schmook, Chair,
Alaska Mental Health Board

ALASKA COUNSELING INC.

March 1, 2005

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

Re; Psychiatric Staff Gender Rights

Dear Ms Myers and Mr. Collins,

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

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

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

Sincerely,

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

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

August 12, 2005

Faith Myers
Dorrance Collins
801 Airport Hts. #35
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins,

I wholeheartedly support your efforts to amend AS47.30.840 to include a section acknowledging the right of psychiatric patients to choose the gender of staff providing intimate care. How sad that you and others have to fight for something that simple human respect and common sense would dictate should be done.

Recent empirical studies provide evidence that many common practices in psychiatric settings - such as those at issue here, cause patients chronic stress and put them at risk for iatrogenic psychiatric morbidity such as PTSD and Depression. They also very likely increase avoidance of helpful treatments. [1] Yet, it is often difficult to influence change in professional practice, or in established procedures. The medical dictum to "do no harm" frequently does not guide decision making.

Legislators often have good common sense. It should be clear to them for example that no one in their circle of family or friends would accept routinely being bathed, touched intimately, toileted etc. by someone of the opposite sex that they did not know.

But with patients in a psychiatric setting, the issue is much more serious. First, many psychiatric patients (51% - 98%) have histories of sexual and/or physical abuse. [2,3,4] This makes them especially vulnerable to "re-traumatization" by procedures such as being stripped, bathed, touched, and toileted by a staff of the same gender as their childhood perpetrator. Such a practice replicates and "triggers" feelings from the original abuse experiences and engenders feelings of fear, helplessness, distress, humiliation and loss of trust in staff. [2] When individuals are continually re-traumatized in this way, they are subject to chronic stress [5] which in turn worsens serious mental illness and results in symptom relapses and repeated re-hospitalization [6,7,8,9].

Thank you for your efforts on behalf of persons with mental health issues. In this instance of unconscionable resistance to changing practices experienced as harmful by patients, the right to choose a preferred or same-sex provider must be legislatively mandated, and enforced.

Sincerely,

Ann Jennings

Ann F. Jennings, Ph.D.
Trauma-Informed Systems Consultant
The Anna Foundation
21 Ocean Street
Rockland, ME 04841

References:

1. Mueser, K.T., Rosenberg, S.D. (2003) Treating the trauma of first episode psychosis: A PTSD perspective. *Journal of Mental Health.* 12, 2, 103-108

2. Cusack, K.J., Frueh, B.C., Hiers, T., Suffoletta-Maierle, S., and Bennett, S. (2003). Trauma within the psychiatric setting: A preliminary empirical report. *Administration and Policy in Mental Health*, 30, 453-460.

3. Mueser, K., Goodman, L.A., Trumbetta, S.L., Rosenberg, S.D., Osher, F.C., Vidaver, R., Auciello, P., & Foy, E.W. (1998). Trauma and posttraumatic stress disorder in severe mental illness. *Journal of Consulting and Clinical Psychology, 66,* 493-499.

4. Switzer, G.E., Dew, M.A., Thompson, K., Goycoolea, J.M., Derricott, T., & Mullins, S.D. (1999). Posttraumatic stress disorder and service utilization among urban mental health center clients. *Journal of Traumatic Stress, 12,* 25-39.

5. Mueser, K.T., Rosenberg, S.D., Goodman, L A., Trumbetta, S.L. (2002). Trauma, PTSD, and the course of severe mental illness: an interactive model. *Schizophrenia Research 53,* 123-143

6. Bebbington, P., Kuipers, L. (1992) .Life events and social factors. In: Kavanagh, D.J. (Ed.). *Schizophrenia: An Overview and Practical Handbook.* Chapman and Hall, London. 126-144

7. Butzlaff, R.L., Hooley, J.M. (1998). Expressed emotion and psychiatric relapse. *Archives of General Psychiatry 55,* 547-552

8. Goodwin, F.K., Jamison, K.R. (1990) Manic-depressive Illness. Oxford University Press, New York.

ANCHORAGE
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Suite 100
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(907) 565-1002
FAX (907) 565-1000
1-800-478-1234

December 22, 2004

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

Dear Faith and Dorrance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant
Executive Director

cc Ron Adler

NAMI Anchorage

Anchorage's Voice on Mental Illness

There is hope.

Trish McDonald
Executive Director

Yvonne Alni Evans
President

Eileen Davey
Vice President

Roger Branson
Secretary

Alina Blasiak
Treasurer

Geno Daly
Member at Large

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Member at Large

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Yvonne Alni Evans
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501 3 (c) non-profit
corporation in
Alaska since 1984

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

27 February 2005

Dear Faith and Dorrance:

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

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

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

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

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

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

Sincerely,

Yvonne Evans, President

Trish McDonald, Executive Director

Cc Ron Adler
David Fleurant

Alaska Mental Health Consumer Web

1248 Gambell St.
Anchorage, ALASKA 99501

Phone: 907.222.2000
Fax: 907.222.2001

March 2, 2005

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

Dear Faith and Dorrance:

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

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

Sincerely,

Carl Ipock
Executive Director
Alaska Mental Health Consumer Web

PsychRights

LAW PROJECT FOR
PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax
http://psychrights.org

January 3, 2005

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

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins:

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

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

Yours truly,

James B. (Jim) Gottstein, Esq.

cc: Ron Adler
David Fleurant

Testimony supporting Senate Bill 8 by Dorrance Collins—February 11, 2007

Madam Chair, Committee members,

My name is Dorrance Collins. I support the passing of Senate Bill 8 as written.

Post traumatic stress disorder is one of the most prevalent and costly mental illnesses in America. Not giving gender choice of staff for intimate care in inpatient settings is traumatic to many psychiatric patients and can add to the illness.

In other states some psychiatric facilities take providing gender choice of staff for intimate care seriously. These facilities have policies that require the facility to schedule a portion of their work force by gender. As an example, if there are 5 male staff on one unit and 5 female staff on another unit, policy would require the head nurse, when scheduling, to see to it that there are sufficient men and women staff on each shift to provide gender choice.

Also, in the larger hospitals with multiple units—if the required gender is not available for intimate care, facility policy would require staff to go to the next unit to try and find the requested gender. Units are often just separated by a door.

These are all policies that we have been informed that the Alaska psychiatric hospitals and facilities will not adopt, even when it is pointed out that adopting such policies does not cost money and it reduces trauma.

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

The justices saw it as a given that psychiatric hospitals and units were going to take shortcuts and would without regulation deny psychiatric patients their rights. It is laws passed by the legislature and action taken by the courts that will force psychiatric hospitals to do the right thing.

Almost without exception those patients entering an acute care psychiatric facility have dementia and trauma in their background. And to a lesser extent those patients entering evaluation facilities. Many have been victimized, some from childhood through adulthood. The percentage that has been sexually abused and physically abused is much higher than the rate in general society. When psychiatric patients are not given gender choice, they feel they are being re-victimized all over again.

As a civilized society, we can't leave psychiatric patient's protection up to guesswork. We need to pass statutes.

Passing Senate Bill 8 will give back to psychiatric patients' a small amount of dignity and control they lost when entering a psychiatric facility.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing gender choice of staff for intimate care. Adding more loopholes for psychiatric facilities to utilize will make the Bill useless.

In closing, I am asking you to pass Senate Bill 8 as written.

Thank you,

Dorrance Collins
(907) 929-0532

Dorrance Collins

Sen. Bettye Davis
Chair — HESS Committee

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Thank you,

Dorrance Collins
(907) 929-0532

Dorrance Collins

Testimony supporting Senate Bill 8 by Faith Myers **February 8, 2007**

Mr. Chair, Committee members,

My name is Faith Myers. I support the passing of Senate Bill 8 as written.

I have an avocation in Mental Health Advocacy. In the past I have been in acute care psychiatric facilities in Alaska, Washington and Nevada. Also, as an advocate, I have contacted psychiatric hospital administrators in Maine, Maryland, Nevada, Alaska and Washington looking for best practices.

There is such a thing as unnecessary traumatization of psychiatric patients in a psychiatric facility, especially in facilities in states that look for shortcuts. It is the rules and statutes of the state that reduce the amount of trauma and recidivism.

We fully understand the idea of a psychiatric emergency when gender choice may not be able to be provided—What we want to reduce is the unnecessary traumatization of a psychiatric patient who is reasonably cooperative.

The percentage of women in acute care psychiatric facilities who have a history of sexual abuse and/or physical abuse in their past is somewhere between 51% and 98% respectively. The figure for men is a little bit less. To a person with mental illness, it is certain he/she feels re-victimized when he / she is given intimate care against their will by the gender of the person who sexually abused him or her in the past.

There are 3 or 4 hospitals that do civil commitments, and there are numerous other ones that do 3 day evaluations that stretch out into 7 days. This issue cannot be dealt with by working to change each hospital's policy. Change needs to be done by state statute.

I would like to briefly explain the support letters in favor of a bill for gender choice of staff for intimate care. The following letters of support should have been provided to you.

1. Ann F. Jennings, PhD., Trauma-Informed Systems Consultant has background knowledge of trauma in acute-care psychiatric institutions. She also has a personal connection. Her daughter was in and out of psychiatric institutions from the age of 13 to 32 when her daughter committed suicide in a psychiatric institution.

2. Aron S. Wolf, MD, MMD. Dr. Wolf has over 30 years of experience in treating psychiatric patients from children to adults.

3. NAMI, Anchorage —Their Board members have personally been in psychiatric institutions and had family members in psychiatric institutions.

4. Alaska Mental Health Consumer Web-- Their Board members also have a wide range of experience with psychiatric facilities.

5. The Alaska Mental Health Board, whose Board members are appointed by the Governor—again, their Board members have a wide range of experience in advocating for better treatment in psychiatric facilities.

6. Disability Law Center submitted a 4 page legal opinion, stating that gender choice of staff is a right that should be given to a civilly committed psychiatric patient.

7. Psychiatric Rights—an organization dedicated to furthering the rights of psychiatric patients—Psychiatric Rights also concurs with Disability Law's legal opinion that gender choice is a right of civilly committed psychiatric patients.

All told there are probably 50 or more Board members that voted that a gender choice of staff for intimate care bill should be passed, many of them experts in the field.

Senate Bill 8 only requires psychiatric institutions to make a good faith effort at giving gender choice of staff.

In closing, I am asking you to pass Senate Bill 8.

Thank you,

Faith Myers
(907) 929-0532

Faith Myers

Letters

Dear Editor,

We would like to make readers aware of Senate Bill 8, which when passed would require inpatient psychiatric facilities to make a good faith effort at providing patients receiving intimate care their choice of gender of staff performing that care. We believe if the bill does pass it would eventually carry over into senior care facilities.

The Alaska facilities we have surveyed do not schedule for gender. For example, if there are five men working on one shift at a facility and five women working on the other shift, all of the facilities we have surveyed do not have policies that require the nurse making up the work schedule to make an attempt to see to it there is proper gender on each shift to provide gender choice of staff for intimate care.

We fully understand not hiring for gender, but in Alaska they refuse to schedule the work force for gender.

Also, in larger facilities where there is more than one unit, there is no policy that requires staff to go to the next unit to get the requested gender to give someone a bath.

These are things that they do in other states and it doesn't cost money, but Alaska facilities we surveyed refused to do it.

Providing gender choice of staff for intimate care reduces traumatization and passing Senate Bill 8 will force psychiatric institutions to write good gender choice policies.

Faith Myers and Dorrance Collins
Anchorage

We would like to hear from you

Send letters to the editor to Senior Voice, 325 E. Third Ave., Suite 300, Anchorage AK 99501. Maximum length is 250 words. Senior Voice reserves the right to edit for content and length.

Space may be made available for longer opinion piece essays up to 500 words. Please contact the managing editor at seniorvoice@gci.net to discuss this.

Copy deadline is the 15th of the month prior to publication.

PsychRights•
Law Project for
Psychiatric Rights, Inc.

Alaska Legislature
Alaska State Capitol
Juneau, Alaska 99801

January 30, 2006

Re: Psychiatric Rights Legislation

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

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

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

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

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

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

Yours truly,

James B. (Jim) Gottstein, Esq.

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

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

DISABILITY LAW CENTER OF ALASKA

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

January 30, 2006

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

Dear Faith and Dorrance:

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

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

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

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant
Executive Director

Support For New Grievance Procedures

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

(907) 272-0227
(phone and fax)

February 17, 2007

Alaska State Legislature
Juneau, Alaska

RECEIVED
FEB 20 2007

Re: Request for Amendment to AS 47.30.847
Psychiatric Grievance Procedures

Honorable Senators and Representatives:

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

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

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

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

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

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

Thank you for this opportunity to comment.

NAMI Anchorage

Pat Kouris / by Harbour

Pat Kouris

President, NAMI Anchorage Board of Directors

attachment: AS 47.30.847

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

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: SB008-DHSS-DBH-02-13-07
Bill Version: SB 8
( ) Publish Date:
Revision Date/Time (Note if correction):
Dept. Affected: Health & Social Services

Title: RIGHT OF PATIENTS TO CHOOSE GENDER OF HOSPITAL STAFF IN PSYCHIATRIC HOSPITALS
RDU: Behavioral Health
Component: Alaska Psychiatric Institute
Sponsor: DAVIS
Requester: SENATE (HES)
Component No.: 311

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

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

Estimate of any current year (FY2007) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

(Continued on page 2)

Prepared by: Stacy Toner, Acting Director — Phone 465-2817
Division: Behavioral Health — Date/Time 01/18/2007
Approved by: Karleen Jackson, Commissioner — Date 02/13/2007
Agency: Department of Health and Social Services

STATE OF ALASKA
2007 LEGISLATIVE SESSION

ANALYSIS CONTINUATION
(Continued from page 1)

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

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/16/07

FURTHER: Judiciary
Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Health, Education and Social Services Committee considered

SENATE BILL NO. 8

SB 8 MENTAL HEALTH PATIENT RIGHTS: STAFF GENDER

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

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

[ ] **APPROPRIATION - no fiscal note**

	Ellis	✓			
	Thomas	✓			
	Duncan				
	Carona			✓	
CHAIR: Betty Davis	B. Davis	✓			

RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

PART A

RULES OF GENERAL APPLICABILITY

MAINE DEPARTMENT OF BEHAVIORAL AND DEVELOPMENTAL SERVICES
DIVISION OF MENTAL HEALTH
AUGUSTA, MAINE

BASIS STATEMENT

These rules were initially promulgated on October 1, 1984, pursuant to 34-B M.R.S.A. § 3003, that directed the Division of Mental Health to promulgate rules pursuant to the Maine Administrative Procedure Act for the enhancement and protection of the rights of clients receiving services from the Department of Behavioral and Developmental Services, state and non-state mental health institutions or units, or from any program or facility administered or licensed by the Department. These rules were subsequently amended on October 1, 1986, October 1, 1989 and January 1, 1995.

On August 2, 1990, the Kennebec County Superior Court approved the terms of a Consent Decree in the case of Paul Bates, et al. v. Sue Davenport, et al., Docket No. CV-89-88. The Consent Decree incorporated the contents of a Settlement Agreement, the terms of which require the defendants to draft revisions to the "Rights of Recipients of Mental Health Services" as needed to incorporate the provisions governing grievances and complaints and to make these rules consistent with the terms of the Settlement Agreement.

INTRODUCTION

The 110th Maine Legislature enacted into law, 34 M.R.S.A. section 2004, now 34-B M.R.S.A. section 3003, entitled "An Act Authorizing and Directing the Bureau of Mental Health to Enhance and Protect the Rights of Recipients of Mental Health Services," that directed the Bureau to promulgate rules, under the Administrative Procedures Act, in a number of areas of patient/client rights.

The intent of the Legislature was to provide a process whereby the Division of Mental Health, as the lead administrative agency for institutional and community mental health services, would develop comprehensive rules in this complex area, taking into account clinical, social and administrative factors while promoting and safeguarding the rights of people receiving mental health services.

These rules apply to all agencies licensed by the Department of Behavioral and Developmental Services and all public or private inpatient psychiatric institutes and units, including the state operated mental health institutes.

These rules were developed by a task force made up of consumers, providers, regulators, professionals, family members, advocates and others, with the input of citizens throughout the State.

These rules were initially promulgated on October 1, 1984, were amended October 1, 1986, October 1, 1989 and January 1, 1995.

Questions regarding the applicability or interpretation of these rules should be directed to the Director, Division of Licensing, Department of Behavioral and Developmental Services, State House Station 40, Augusta, Maine 04333, Area Code (207) 287-4200 or 287-3000 (TTY).

RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

TABLE OF CONTENTS

PART C

RIGHTS IN OUTPATIENT SETTINGS

PART A. RULES OF GENERAL APPLICABILITY

I. STATEMENT OF INTENT

The purpose of these rules is to articulate the rights of recipients of mental health services so that these rights may be enhanced and protected. Mental health service recipients should suffer no loss of basic human or civil rights. Because of the exceptional circumstances under which such patients are treated, however, the exercise of some rights may require special safeguards. These rules, therefore, are intended to keep recipients' rights paramount, to assure that individual rights will be both recognized and protected during the course of service delivery, and to ensure treatment consistent with ethical and professional standards. Procedural mechanisms that exist to ensure enforcement of these rules include the licensing authority of the Department of Behavioral and Developmental Services pursuant to 34-B M.R.S.A. § 1203-A, the grievance and complaint procedures set forth in these rules, and the Department's contracting authority.

Part A, Rules of General Applicability that apply to all recipients, regardless of the treatment setting, should be read in conjunction with either Part B (for inpatient or residential settings) or Part C (for outpatient settings).

II. DEFINITIONS

A. Advocacy Program means the Office of Advocacy of the Department and the rights protection and advocacy agencies or other governmental agencies authorized by law to investigate grievances and protect rights.

B. Complaint means an allegation by a person or agency charged with investigating violations of client rights or with delivering or monitoring mental health services of violation of basic rights of a recipient, including those enumerated in these rules and the Settlement Agreement in Bates, et al. v. Davenport, et al. or any other applicable law or regulation.

C. Conjoint Family Treatment Services means services jointly provided to more than one member of a family, in which all members in question are recipients.

D. Department means Department of Behavioral and Developmental Services.

E. Division means the Division of Mental Health.

F. Grievance means an allegation by a recipient of violation of basic rights, including those enumerated in these rules and the Settlement Agreement in Bates v. Duby or any other applicable law or regulation.

G. Individualized Support Plan (henceforth referred to as "ISP") means an approach to support planning that focuses on the development of a life plan that expresses, in the recipient's own words, his or her wants, needs and goals, as well as an action plan for meeting these goals.

H. Mental Health Facility, Agency, or Program means any facility that provides in-patient psychiatric services and any agency or facility providing in-patient, residential or outpatient mental health services that is licensed by, funded by or has a contract with either the Department of Behavioral and Developmental Services or the Department of Human Services,

Deleted: 1

I. Mental Health Institute means state-operated inpatient facilities.

J. Non-State Mental Health Institution means a public institution, a private institution or a mental health center, that is administered by an entity other than the State and that is equipped to provide in-patient care and treatment for people with mental illness.

K. Person with long-term mental illness means a person who suffers from certain mental or emotional disorders that erode or limit the capacities of daily life. For purposes of this definition, mental and emotional disorders include organic brain syndrome, schizophrenia, recurrent depressive and manic depressive disorders, paranoid and other psychoses, plus other disorders that may become chronic. For purposes of this definition, capacities of daily life include personal hygiene and self care, self direction, interpersonal relationships, social transactions, learning, recreation and economic self-sufficiency. While persons with long-term mental illness may be at risk of institutionalization, there is no requirement that these persons are or have been residents of institutions providing mental health services.

L. Program Area means any discrete part of a facility or agency, including any building, residential program, ward, unit or program site.

M. Recipient means any person over age 18 receiving mental health treatment from any mental health facility, agency or program.

N. Representative means any person who has been designated in writing by a recipient, or by his or her guardian to act to aid the recipient in upholding his or her rights under these rules. Such person shall not be a patient of an inpatient facility nor a staff person currently serving the recipient.

O. Rights Protection and Advocacy Agency means the protection and advocacy program established by 42 U.S.C. §§ 10801 et seq. and described in 5 M.R.S.A. §§ 19501 et seq.

P. Treatment means any activity meant to prevent, ameliorate, prevent deterioration of, or cure a recipient's mental health problem or mental illness and includes behavioral, psychological, medical, social, psychosocial and rehabilitative methods that meet usual and customary standards in the field of mental health treatment.

Q. Treatment Team means those persons, including the recipient, who plan, carry out and review treatment.

III. BASIC RIGHTS

A. Recipients have the same human, civil and legal rights accorded all citizens, including the right to live in a community of their choice without constraints upon their independence, except those constraints to which all citizens are subject. Recipients have the right to a humane psychological and physical environment within the facility or program. Recipients have the right to be treated with courtesy and dignity. Recipients are at all times entitled to respect for their individuality and to recognition that their personalities, abilities, needs, and aspirations are not determinable on the basis of a psychiatric diagnosis. Recipients have the right to have their privacy assured and protected to the greatest extent possible in light of their treatment needs. Recipients shall not be incapacitated nor denied any right, benefit, privilege, franchise, license, authority or capacity of whatever nature that they would otherwise have, simply due to their status as recipients of mental health services.

B. There shall be no limitation on the freedom of religious belief.

C. Discrimination in the provision of services due to race, creed, sex, age, national origin, political belief, or handicapping condition shall be prohibited.

D. All basic rights shall remain intact unless specifically limited through legal proceedings, as in the case of guardianship or in an emergency or when necessary to protect the rights or safety of the recipient or others, only as outlined in specific sections of these rules.

E. Services delivered to recipients shall be based on their identified individual needs and shall be delivered according to flexible models that accommodate changes in recipients' needs and the variations in the intensity of their needs. To the extent possible, recipients will not be required to move from one setting to another in order to receive the services appropriate to their changed needs.

F. Recipients have the right to refuse all or some of the services offered, subject to the exceptions noted below. A person's refusal of a particular mode or course of treatment shall not per se be grounds for refusing a recipient's access to other services that the recipient accepts. Only the following services may be imposed against a recipient's wishes:

1. Involuntary hospitalization pursuant to 34-B M.R.S.A. §§ 3863 et seq.;

2. Forensic services pursuant to 15 M.R.S.A. § 101-B in a residential or hospital setting;

3. Services permitted under applicable law in the case of a person under guardianship, upon the guardian's informed consent and within the limits of the guardian's authority;

4. Emergency treatment in a residential or hospital setting during a psychiatric emergency, pursuant to procedures set out in these rules; or

5. Treatment in a residential or hospital setting pursuant to the administrative hearing provisions of these rules for individuals who lack capacity to consent to services.

G. Recipients have the right to exercise their rights pursuant to these rules without reprisal, including reprisal in the form of denial of or termination of services.

H. Recipients with long term mental illnesses have the following additional rights, to the extent that state and community resources are available:

1. The right to a service system that employs culturally normative and valued methods and settings;

2. The right to coordination of the disparate components of the community service system;

3. The right to individualized developmental programming that recognizes that each recipient with long-term mental illness is capable of growth or slowing of deterioration;

4. The right to a comprehensive array of services to meet the recipient's needs; and

5. The right to the maintenance of natural support systems, such as family and friends of recipients with long-term mental illnesses, individual, formal and informal networks of mutual and self-help.

IV. LEAST RESTRICTIVE APPROPRIATE SETTING

A. Recipients have the right to be treated in the least restrictive appropriate setting to meet their needs.

B. Any restrictions or limitations in an inpatient setting shall be determined and imposed pursuant to the Right to Individualized Treatment and the Right to Informed Consent to Treatment.

C. No recipient shall be held in treatment against his or her will by policy, procedure or practice, except by order of court or by emergency hospitalization procedures.

D. Agencies or facilities proposing persons for commitment shall first fully consider less restrictive appropriate settings and treatment modalities pursuant to 34-B M.R.S.A. § 3864(5).

E. Involuntary hospitalization provisions shall not be utilized only as a means to accomplish admission, to obtain transportation, or for administrative reasons.

V. NOTIFICATION OF RIGHTS

A. Recipients have the right to be notified of all rights accorded them as recipients of services, by Maine statute, these rules, the Bates v. Duby Settlement Agreement, if applicable, and associated policies.

B. At the time of admission or intake, or as soon afterwards as is reasonably feasible, each recipient shall be informed, to the extent possible, of his or her rights under these rules in terms that he or she understands.

1. Such information shall be given by an employee of the facility or program in a manner designed to be comprehensible to the individual recipient.

2. In cases where the recipient does not understand English or is deaf, the notification of rights shall be conducted by an interpreter.

3. If the recipient's condition at admission or intake precludes understanding of his or her rights, additional attempts to provide information about rights shall occur and be documented.

4. Documentation of the results of the discussion about rights shall be noted in the recipient's permanent treatment record.

5. Recipients shall be advised of their right to name a designated representative or representatives to assist them to receive notices of meetings and to participate at meetings. Recipients shall additionally be given information regarding available advocacy and peer advocacy programs.

6. Recipients shall be further advised of their rights pursuant to these rules and the Settlement Agreement in Bates v Davenport, as applicable.

C. At the time of admission or intake, each recipient shall be given a summary of these recipient rights written in plain language. In instances in which the recipient is deaf, the summary of these recipient rights will be communicated in American Sign Language.

1. Copies of the summary shall be given to:

a. The recipient's guardian, if any; or

b. In the case of any recipient without a guardian, up to three individuals, if designated by the recipient.

2. Those persons, including the recipient, given copies of summaries shall be noted in the medical record.

3. Copies of the summaries shall be conspicuously posted in all agencies, facilities, and program areas.

4. The summaries shall contain instructions for viewing these rules, the Settlement Agreement in Bates v. Davenport, and associated policies developed to implement these two documents.

5. The summaries shall be made available in foreign languages or American Sign Language, if necessary.

D. At the time of the notification required above, recipients shall be notified that they, their guardians acting on their behalf, or their designated representatives may bring grievances claiming that the practices, procedures or policies of the Department, a non-State mental health institution, or any agency licensed by, funded by or under contract with the Department to provide mental health services, violate the terms of these rules, the terms of the Bates v. Duby Settlement Agreement, or any other applicable law or regulation. They shall additionally be notified of the process whereby grievances may be filed and of their right to be assisted throughout the grievance procedure by a representative of their choice. In the written notice required by section V(C) above, recipients shall additionally be notified of the advocacy services available through the Department's Office of Advocacy, the rights protection and advocacy agency, peer advocates, and the Ombudsman Program established pursuant to 22 M.R.S.A. § 5112(2).

E. Each program area shall have complete copies of these recipient rights rules, the Settlement Agreement in Bates v. Duby, and associated agency policies. Each recipient shall be offered a copy of these rules. Additional copies of these documents shall be available from the Department of Behavioral and Developmental Services, Station 40, State Office Building, Augusta, Maine 04333.

F. The Office of Advocacy shall have copies of all statutes referenced in these rules. These statutes shall be available for review during regular working hours at the Office of Advocacy, Station 60, State Office Building, Augusta, Maine 04333.

VI. ASSISTANCE IN THE PROTECTION OF RIGHTS

A. Recipients have the right to assistance in the protection of their rights.

B. Recipient Representative. Each agency, facility or program shall inform all recipients of their right to name a representative, including a peer representative, to aid them in the protection of their rights. Aid may include one or more of the following activities: assistance in the formulation and processing of a grievance; participation in the informal or formal development and revision of an ISP, individualized service or treatment plan or hospital treatment and discharge plan; or any other type of representative assistance activity referenced in these rules. The provision of aid by a designated representative shall be governed by this section and by other relevant sections of these rules.

1. Designation in writing. If the recipient or his or her guardian desires a representative for the recipient, the person desiring a representative for the recipient shall designate, in writing, a person to aid the recipient in upholding his or her rights.

2. Time for designation. The recipient or his or her guardian may designate a representative at any time.

3. Change in representative. Provision shall be made for change of representative should the recipient so desire, or if the recipient is placed under guardianship, should the guardian so desire.

4. Representative's physical access. The representative shall have reasonable access to all living and program areas and to staff involved in the treatment of the recipient in order to assist the recipient in the protection of his or her rights.

5. Confidentiality. The representative may obtain access to confidential information as defined under 34-B M.R.S.A. § 1207 concerning the recipient by obtaining the appropriate party's written informed consent to disclosure under Section IX of these rules.

6. Communication. A recipient shall have access, at any reasonable time, to a telephone to contact his or her representative.

7. Involvement in ISP and Service or Treatment and Discharge Planning.

a. The recipient representative shall be given 10 days written notice of ISP meetings unless the recipient directs that the representative not be invited. The recipient's involvement may include, without limitation, participation in service or treatment planning meetings, or discharge planning meetings. When the meeting is being convened to address an emergency, notice reasonable for the circumstances shall be given.

b. The representative shall be notified when the recipient is determined to lack clinical capacity pursuant to Section V, Part B (Inpatient and Residential Settings) or Section IV, Part C (Outpatient Settings) of these rules.

c. The representative shall receive, upon the recipient's authorization, a copy of prescribed medication, dosage levels, schedules and side-effects and a copy of the aftercare plan upon the discharge of the recipient.

C. Advocacy Programs. Each recipient shall be informed of advocacy programs available in the state. Recipients have the right to request assistance from the advocacy programs at any time. Advocacy services are available through:

1. The Office of Advocacy of the Department, which is mandated by State law to investigate the claims and grievances of recipients of mental health services provided by the Department or facilities or agencies administered, funded or licensed by the Department and to monitor the compliance of any facility or agency administered by the Department with all laws, rules, and policies relating to the rights and dignity of service recipients.

2. Other agencies including the rights protection and advocacy agency, and the Ombudsman program established pursuant to 22 M.R.S.A. § 5112(2).

D. Recipients may, at their request, be represented by a private advocate. In such cases the recipient shall bear the cost, if any, of such representation.

E. A report of complaints and grievances appealed to the Superintendent of AMHI and BMHI, the Director of the Division of Mental Health, and the Commissioner shall be compiled semi-annually and submitted to the Office of Advocacy, the Chief Administrative Officer of the agency or facility, the Office of the Master established pursuant to the terms of the Settlement Agreement in Bates v. Davenport, and plaintiffs' counsel in that action.

VII. RIGHT TO DUE PROCESS WITH REGARD TO GRIEVANCES

A. Recipients have the right to due process with regard to grievances.

B. Notwithstanding any other civil or criminal recourse that the person bringing the grievance may have, the facility, agency, and/or Department shall afford every reasonable opportunity for informal resolution of concerns or formal resolution of grievances.

C. Recipients or other persons may bring grievances regarding possible violations of basic rights, including any rights enumerated in these rules and the Settlement Agreement in Bates v. Duby or any other applicable law or regulation, any questionable or inappropriate treatment or method of treatment; or any policy or procedure or action, or lack thereof, of the mental health agency or facility.

D. Persons who may bring grievances include, but are not limited to:

1. The recipient;
2. The recipient's guardian;
3. The recipient's attorney, designated representative or representative of the Office of Advocacy or the rights protection or advocacy agency;
4. Other persons specifically aggrieved.

E. A grievant shall in no way be subject to disciplinary action, reprisal, including reprisal in the form of denial or termination of services, or loss of privileges or service as a result of filing a grievance.

F. Notice

1. Notices summarizing a recipient's right to due process in regard to grievances, including the process by which grievances may be filed, as well as copies of forms to be used for that purpose, shall be available within each program area.

2. An employee of the mental health facility, agency or program shall inform each recipient of this right and the right to be assisted throughout the grievance procedure by a representative of his or her choice, in a manner designed to be comprehensible to the individual recipient. In instances in which the recipient does not understand English or is deaf, this information shall be delivered by an interpreter.

G. Formal Grievances

1. A grievance may be undertaken by a recipient, or a guardian acting on his or her behalf, making a formal written claim that provisions of these rules, the Settlement Agreement in Bates v. Davenport or any other applicable law or regulation have been violated by any facility, agency or program.

Grievances regarding the actions of specific employees shall be handled in accordance with personnel rules and contract provisions. No disciplinary action may be taken nor facts found with regard to any alleged employee misconduct except in accordance with applicable personnel rules and labor contract provisions.

2. Formal grievances may be appealed through three sequential levels:

a. The supervisor of the program or unit or the agency employee designated to hear grievances as applicable;

b. For grievances arising in inpatient facilities, the Administrator of the facility; for grievances arising in the community, the Director of the Division of Mental Health; and

c. The Commissioner of the Department.

3. Additional levels of grievance resolution may be added by agency or facility policy, but in no case shall such additional levels add to the overall time allotted for grievance resolution.

4. At each level of the formal grievance procedure the recipient or other grievant shall have rights to the following:

a. Assistance by a representative of the recipient's own choice;

b. Representation by the Office of Advocacy or the rights protection and advocacy agency of the Maine mental health system;

c. Review of any information obtained in the processing of the grievance, except that which would violate the confidentiality of another person;

d. Presentation of evidence or witnesses pertinent to the grievance;

e. Receipt of complete findings and recommendation except those that would violate the confidentiality of another person.

5. An electronic or written record shall be made of all proceedings associated with formal grievances. An electronic recording shall be made of any hearing held pursuant to this section.

6. In all grievances the burden of proof shall be on the agency, facility or program to show compliance, or remedial action to comply with the policies and procedures established to assure the rights of recipients under these rules.

7. Findings shall include:

a. A finding of facts, consistent with the terms of the Maine Administrative Procedure Act;

b. A determination regarding the facility, agency, program or employee adherence, or failure to adhere, to specific policies or procedures designed to assure the rights of recipients under these rules; and,

c. Any specific remedial steps necessary to assure compliance with such policies and procedures.

8. Upon appeal, all pertinent information gathered regarding a formal grievance shall be forwarded, by the person to whom the grievance was addressed, to the next responsible official.

9. Steps of Formal Grievances:

a. Level One

i. Formal grievances shall be filed first with the supervisor of the service delivery unit in which the grievance arises.

ii. Copies of the grievances shall be forwarded by the supervisor to the administrative head of the mental health facility or agency and, upon the request of the grievant, to the Office of Advocacy. In the case of state operated facilities, all formal grievances shall be immediately forwarded to the Office of Advocacy.

iii. A formal written response shall be made within five days, excluding weekends and holidays.

iv. If the agency staff needs a longer period to investigate the circumstances of the grievance, a five day extension may be made and the grievant so notified.

v. If the grievant is unsatisfied with the findings at the first level, he or she may appeal the decision to the Chief Administrative Officer of the mental health facility or, for grievances arising in the community, the Director of the Division of Mental Health.

vi. Such an appeal must be made within ten days, excluding weekends and holidays.

vii. Copies of such an appeal shall be forwarded to the Office of Advocacy by the Chief Administrative Officer of the facility or the Director of the Division of Mental Health.

b. Level Two

i. The Chief Administrative Officer or the Director of the Division of Mental Health, as applicable, or designee shall respond to a Level Two grievance within five days, excluding weekends and holidays, of day of receipt of the appeal.

ii. If the Chief Administrative Officer or designee needs a longer period to investigate the circumstances of the grievance, a five day extension may be made with the permission of the parties to such a grievance.

iii. The Chief Administrative Officer or the Director of the Division of Mental Health, as applicable, or designee may, at his or her discretion, hold a hearing before an impartial hearing officer, who shall be an individual free of bias, personal or financial interest, with all parties involved.

iv. If the grievant is dissatisfied with the finding at Level Two, he or she may appeal the decision to Level Three to the Commissioner, Department of Behavioral and Developmental Services, Station 40, Augusta, Maine

04333. Appeals must be made within ten days, excluding weekends and holidays.

c. Level Three

i. The Commissioner or designee shall make a formal written reply within five days, excluding weekends and holidays.

ii. If no hearing was held at Level Two a hearing shall be held at Level Three.

iii. A five day continuance may occur if a hearing is to be held or if the parties to such a grievance concur.

iv. The Commissioner's or designee's finding shall constitute the final action by the Department regarding a grievance.

10. The decision at each level of the grievance procedure shall be final and binding unless the grievant appeals within the indicated time frames.

H. The Commissioner's decision shall constitute final agency action, and the grievant may appeal the decision to Superior Court pursuant to the Maine Administrative Procedure Act, 5 MRSA s 11001 et seq.

I. Under no circumstances shall the remedies requested in a grievance be denied nor shall the processing of a grievance be refused because of the availability of the complaint procedure.

J. Exceptions

1. Grievances regarding abuse, mistreatment, or exploitation.

a. Any allegation of abuse, mistreatment, or exploitation shall be immediately reported to the Office of Advocacy and to the Chief Administrative Officer of the mental health facility or agency. Any disciplinary actions or findings of fact in these instances shall be consistent with personnel rules and labor agreements.

b. Investigation of any such allegation shall be conducted pursuant to statutory and regulatory standards including those relating to the Child and Family Services and Child Protection Act (22 M.R.S.A. Chapter 1071 s 4001 et seq.) and the Adult Protective Act (22 M.R.S.A. Chapter 958-A) and facility policy approved by the Department.

2. Urgent Grievances.

a. Any grievance that the grievant considers urgent shall be forwarded by staff within one working day to the Chief Administrative Officer of the facility or for grievances arising in the community, to the Director of the Division of Mental Health, or designee, at Level Two, and the Office of Advocacy so notified.

Such grievances must be reviewed by the Chief Administrative Officer, the Director or designee, who shall either arrange to hear the grievance within three working days or immediately refer the grievance to Level 1 for response.

b. All grievances concerning the development, substantive terms, or implementation of ISP's or hospital treatment and discharge plans shall be considered urgent grievances.

3. Grievances Without Apparent Merit

a. A grievance may be found to be without apparent merit, upon Level Two review, upon the concurrence of the Chief Administrative Office or the Director of the Division of Mental Health, as applicable, and, when the grievance relates to a state mental health institute, the representative of the Office of Advocacy.

b. Any decision that a grievance is without merit and the justification for that decision shall be forwarded to the grievant in writing, and shall include notice of other avenues of redress.

c. Grievances without apparent merit may not be appealed administratively beyond Level Two. This dismissal constitutes final agency action for purposes of judicial review.

VIII. COMPLAINTS

A. A written complaint may be filed by any person or agency that is charged with investigating violations of client rights or with delivering or monitoring mental health services. The complaint procedure may be used when:

1. The person or agency knows or has reason to believe that the practices, procedures (including the development, substantive terms or implementation of ISP's or hospital treatment and discharge plans) or policies of the Department or of any agency licensed, funded or contracted by the Department to provide services elsewhere described in these rules, violate these rules, the terms of the Settlement Agreement in Bates v. Davenport or any other applicable law or regulation; and

2. The information was obtained during the general course of the person's or agency's performance of their responsibilities.

B. Complaints that include allegations of employee misconduct shall be processed, but no disciplinary action may be taken nor facts found with regard to the alleged misconduct except in accordance with applicable personnel rules and labor contract provisions.

C. Complaints arising in an in-patient setting shall be addressed to the chief administrative officer of the in-patient facility, who shall forthwith refer them to the supervisor of the service delivery unit in which the complaint arose.

D. Complaints arising in the community shall be addressed to the agency employee designated to receive complaints.

E. A formal written response shall be made .. 'hin five days of receipt by the persons listed in (C) and (D) above, excluding weekends and holidays. Upon appeal, all pertinent information gathered regarding a complaint shall be forwarded by the person to whom the complaint was addressed to the next responsible official.

F. Decisions about complaints described in (C) above shall be appealable within five working days to the Chief Administrative Officer of the facility, who shall respond within five working days. If the person assigned to investigate a complaint needs a longer period to investigate the circumstances of the complaint, a five-day extension may be made and the complainant so notified.

G. Decisions about complaints described in (D) above shall be appealable within five working days to the Director of the Division of Mental Health, who shall respond within five working days.

H. Decisions resulting from appeals described in (F) and (G) above shall be appealable within five working days to the Commissioner, who shall respond within five working days. If the person assigned to investigate a complaint needs a longer period to investigate the circumstances of the complaint, a five-day extension may be made and the complainant so notified.

I. Investigations shall be conducted at each level of the complaint and shall include, as needed, interviews, site visits, or other data collection activities. At the conclusion of each investigation, a written summary of the results of the investigation and a statement of the remedial action to be taken, if any, shall be provided to the complainant, subject to the limitations of 5 M.R.S.A. § 7070(2)(E).

IX. CONFIDENTIALITY AND ACCESS TO RECORDS

A. Recipients have the right to confidentiality and to access to their record.

B. All information regarding mental health care and treatment shall be confidential except as otherwise provided below.