

**CS FOR SENATE BILL NO. 55(HSS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 3/23/12

Referred: Finance

Sponsor(s): SENATORS DAVIS, Wielechowski, Ellis

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (G) the specific issue to be addressed;

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

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

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

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

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

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

26 (i) I agree;

27 (ii) I do not agree;

28 (iii) submit to level two review;

29 (iv) submit to level three review;

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

1 the Disability Law Center of Alaska;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (m) In this section,

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

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

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

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

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

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

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

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

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

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

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

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