



**DISABILITY
LAW CENTER
OF ALASKA**



**YOUR MENTAL
HEALTH
RIGHTS IN
ALASKA**

MEMBER OF THE
NATIONAL DISABILITY
RIGHTS NETWORK

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All laws are subject to change by legislation and by court decisions.

This information is not intended to be legal advice.

It is a Public Education resource. Readers should use the guide for information, and then ask questions about their own individual needs.

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Introduction

Anyone who has a mental illness and/or is receiving services related to their mental illness in Alaska can use this booklet. This booklet explains some of your rights in the areas of employment, housing, voluntary and involuntary commitment to a treatment center, and your rights as a prisoner in the Alaska Department of Corrections. No booklet can answer all of your questions. The Disability Law Center of Alaska strives to update its materials on a regular basis, and this handout is based upon the law at the time it was written. **It is not intended to and does not replace an attorney's advice or assistance.** The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate. **Do not take any action based only upon this handout--always check with your attorney.**

Disability Defined

Disability is defined as a physical or mental impairment that substantially limits one or more major life activities. A "major life activity" includes activities such as walking, hearing, seeing, breathing, learning, speaking, or working. Disabilities include, but are not limited to, hearing, mobility and visual impairments, alcoholism, psychiatric disabilities, environmental illnesses and chemical sensitivities, HIV/AIDS and developmental disabilities. People who currently use illegal drugs are not covered under the definition of disability.

You are protected by federal laws from discrimination if you have a disability, have a history of a disability, or you are regarded as having a disability. The laws protect not only the person with a disability, but also those who are associated with persons with disabilities. For example, it would be unlawful to deny a person housing due to his/her relationship with a person who is HIV positive.

EMPLOYMENT

Job accommodation Network & EEOC

The ADA: Your employment rights as an individual with a disability

The Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission (EEOC) and State and local civil rights enforcement agencies that work with the Commission.

What employers are covered by the ADA?

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,
- employment agencies,
- labor organizations,
- and labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by:

- all employers, including State and local government employers, with 25 or more employees after July 26, 1992, and
- all employers, including State and local government employers, with 15 or more employees after July 26, 1994.

Another part of the ADA, enforced by the U.S. Department of Justice (DOJ), prohibits discrimination in State and local government programs and activities, including discrimination by all State and local governments, regardless of the number of employees, after January 26, 1992.

Because the ADA establishes overlapping responsibilities in both EEOC and DOJ employment by State and local governments, the Federal enforcement effort is coordinated by EEOC and DOJ to avoid duplication in investigative and enforcement activities. In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, EEOC, DOJ, and the Department of Labor similarly coordinate the enforcement effort under the ADA and the Rehabilitation Act.

Am I protected by the ADA?

If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The ADA also protects you if you have a history of such a disability, or if an employer believes that you have such a disability, even if you don't.

To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring of oneself, learning or working.

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from job discrimination by the ADA. This means two things. First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, you must be able to perform the essential functions of the job with or without reasonable accommodation. Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job.

What is reasonable accommodation?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- providing or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials, or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an undue hardship – that is, that it would require significant difficulty or expense.

What are reasonable accommodations for workers with psychiatric disabilities?

Effective accommodations may only be developed with clear knowledge of you, as the worker, the requirements of your job, and familiarity with the particular work environment. However, examples of modifications to the work environment that have helped other workers with psychiatric disabilities can aid in this process.

Typically, accommodations for workers with psychiatric disabilities include changes in the supervisory process, the provision of human assistance, schedule modifications, changes in physical aspects of the workplace, restructuring of job duties, and adjustments in policies.

What if I've never told my employer that I have a disability and I later find that I need an accommodation?

You can be covered by the ADA once you disclose your disability, even if you have already been on the job a while. Workers with long-term disabilities may request accommodations at any time during their

employment. Similarly, current employees who experience an illness or accident and become disabled may request accommodations during their job tenure. Whether or not the accommodation must be provided depends whether or not it imposes an undue hardship on the employer.

However, employers are not expected to make accommodations for workers' disabilities of which they are unaware. It may be a good idea to inform your employer of the potential for a future need for accommodation based on an existing disability. For example:

- You recently began a new medication and are unsure how it will affect you.
- You have arthritis and the severity of the symptoms vary greatly over time.

How do I ask for a reasonable accommodation?

You need to tell your employer (1) that you have a disability, (2) how your disability interferes with your ability to do your job functions, and (3) what accommodations you need in order to do your job functions.

Make your first request orally and in writing. If your employer does not respond in a reasonable amount of time to your request, you should then make an additional written request.

You should ask your employer to give you a response within a specific amount of time, because you will need to take further action if your request is denied.

Sample letters requesting reasonable accommodations

Dear Employer:

I am a disabled employee. My disability is a *[describe the disability]* disability that causes substantial limitations in my ability to work in that I am unable to *[You should describe here the limitations you are experiencing in your job because of your disability.]* Example: get up early in the morning.

In order to do the essential functions of my job I need a reasonable accommodation. The accommodation I need is: *[You should list here the accommodations you need and be as specific as possible. Remember that the accommodations must enable you to do the essential functions of your job, if they do not, then it is not a reasonable accommodation.]* Example: a flexible work schedule.

Please let me know in 10 days whether you will grant my accommodation request so that I may pursue other action as necessary.

Sincerely,

Dear Employer:

[Your name] is my patient and has a mental disability that causes functional limitations. *[Your name]* has the following functional limitations: *[Your doctor should list your limitations here that apply to your ability to work.]* Example: Is unable to wake up early in the morning.

[Your name] may be accommodated for their disability in the following way: *[Your doctor should list the accommodations you need here.]* Example: By having a flexible work schedule.

Sincerely,
Your Doctor

How should an employer explain accommodations to other employees?

An employer may have concerns about how to respond to coworkers' queries regarding why a particular employee has been provided a new computer, a new chair, a change in schedule, or a reassignment. An employer has an obligation to protect the confidentiality of employees' medical information so responding to such requests may be difficult without revealing confidential information. The U.S. Equal Employment Opportunity Commission recommends that employers explain that s/he is acting for legitimate business reasons or in compliance with federal law. An employer would not violate the ADA by telling other employees that, in order to comply with federal law, s/he has made a modification for the particular employee, but that federal law prohibits the employer from further disclosure.

What employment practices are covered?

The ADA makes it unlawful to discriminate in all employment practices such as:

- recruitment
- firing
- hiring
- training
- job assignments
- promotions
- pay
- benefits
- lay off
- leave
- all other employment related activities

It is also unlawful for an employer to retaliate against you for asserting your rights under the ADA. The Act also protects you if you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

Can an employer require medical examinations or ask questions about a disability?

If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can also ask you to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job.

An employer cannot require you to take a medical examination before you are offered a job. Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. The employer cannot refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation.

Once you have been hired and started work, your employer cannot require that you take a medical examination or ask questions about your disability unless they are related to your job and necessary for the conduct of your employer's business. Your employer may conduct voluntary medical examination that are part of an employee health program, and may provide medical information required by State worker's compensation laws to the agencies that administer such laws.

The results of all medical examinations must be kept confidential and maintained in separate medical files.

Do individuals who use drugs illegally have rights under the ADA?

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use but only if all employees the job category are subject to similar testing.

What do I do if I think I am being discriminated against?

If you think you have been discriminated against in employment on the basis of disability you should contact the U.S. Equal Employment Opportunity Commission. **A charge of discrimination generally must be filed within 180 days of the alleged discrimination. You may have up to 300 days to file a charge if there is State or local law that provides you relief for discrimination on the basis of disability. However, to protect your rights, it is best to contact EEOC promptly if discrimination is suspected.**

There are laws that make it illegal for an employer to discriminate against individuals with disabilities in any employment practice. They are:

1. Title I of the Americans with Disabilities Act (ADA)
2. Alaska Statute 18.80.220 (AS)
3. Anchorage Municipal Code Title 5

If you feel you have been discriminated against because you have a disability, you may file a complaint with one of the appropriate agencies listed on pages 7 and 8 of this booklet. If you are alleging a violation of Title I of the ADA, you must file a complaint with one of these agencies. You should read pages 7 and 8 carefully because it explains each agency's specific deadlines within which you must file your complaint, and their different criteria for acceptance of the complaint.

Once you have filed a complaint alleging violation of Title I of the ADA, EEOC will issue a right to sue letter (Notice of Suit Rights). This usually happens after the investigating agency completes its investigation. You must receive a "Notice of Suit Rights" in order to file a lawsuit in court alleging a violation of the ADA.

If you file a complaint alleging a violation of the ADA, you should consult with an attorney before the right to sue letter is issued. This is because you have only 90 days after you receive the right to sue letter to file a lawsuit in court. In determining the 90 day time frame, some courts have said that the 90 days starts three days after the right to sue letter is mailed, even if the letter is actually received more than three days after mailing.

It is not necessary to file a complaint with an administrative agency before filing a lawsuit alleging a violation of AS 18.80 alone. However, any lawsuit must be brought within the statute of limitations that applies to that kind of legal action. The statute of limitations is the specified time from the date of harm within which you must file your lawsuit in court. Be sure to ask the attorney what the "statute of limitations" is to file a lawsuit. If you miss this deadline, you will lose your right to file a lawsuit.

You will need an attorney with expertise in employment law. You may find one in the yellow pages of the phone book or by calling the Alaska Bar Association's Lawyer Referral Service line 272-0352 (Anchorage) or (1-800-770-9999).

If you filed a complaint with an appropriate agency and 180 days has passed, you have the right to request a right to sue letter. You should contact the agency by phone and in writing to make your request.

The most important thing you can do to protect your rights is file a complaint with an appropriate agency within the stated timelines. If you miss the deadline to file with the agency, you will lose your opportunity to file a lawsuit in court.

1) Equal Employment Opportunity Commission (EEOC)

EEOC enforces Title I of the ADA. Before you can file a lawsuit in court alleging violations of Title I of the ADA, you must obtain a right to sue letter (Notice of Suit Rights) from EEOC. After receipt of the right to sue letter, you have only 90 days to file a lawsuit in court.

Deadline to file:	180 days from the date the discriminatory act or practice occurred or, if continuing, ended. It is best to contact EEOC as soon as possible after you think discrimination has occurred.
Criteria for accepting a complaint:	EEOC will accept complaints if the employer has 15 or more employees. EEOC will accept complaints against non-profit agencies. If you work for the State of Alaska or a local government, your complaint can be filed under Title I and Title II of the ADA. EEOC will not accept complaints if you are an employee of the U.S. government or corporations owned by the U.S. government or an Indian tribe.
Where to file a complaint:	Call 1-206-220-6883 1-800-669-4000 (voice) (206) 220-6882 or 1-800-669-6820 (TDD) 909 First Avenue, Suite 400, Seattle, WA 98104-1061
For more information:	www.eeoc.gov

2) Alaska State Commission for Human Rights (ASCHR)

ASCHR is charged with enforcing Alaska Statute 18.80.220. ASCHR has a work sharing agreement with EEOC and the Anchorage Equal Rights Commission (AERC). This agreement allows them to accept allegations of violations of Title I of the ADA, and Title 5 of the Anchorage Municipal Code (AMC). The complaint will be co-filed with the EEOC and AERC, and investigated by ASCHR. The EEOC and AERC will then review the investigation conducted by ASCHR to determine if further action is warranted. EEOC can issue a right to sue letter based upon the ASCHR investigation.

Deadline to file:	180 days from the date the discriminatory act or practice occurred or, if continuing, ended. It is best to contact ASCHR as soon as possible after you think discrimination has occurred.
Criteria for accepting a complaint:	ASCHR will accept complaints if the employer is located anywhere in the State of Alaska and has one or more employees. It cannot accept complaints if the employer is a private non-profit agency.
Where to file a complaint:	(907) 274-4692 (Voice) (800) 478-4692 (Voice) (800) 478-3177 (TDD) 800 A Street, Suite 204, Anchorage, AK 99501-3669
For more information:	gov.state.ak.us/aschr/htm

3) **Anchorage Equal Rights Commission (AERC)**

AERC is charged with enforcing AMC 5.20.040. The AERC has work sharing agreements with EEOC and ASCHR. This allows the AERC to investigate alleged violations of Title I of the ADA and the Alaska Statutes at the same time they are investigating your complaint under the Anchorage Municipal Code.

Deadline to file:	120 days from date of harm (the date of alleged discriminatory act or practice occurred). Although you have 120 days, it is best to contact AERC as soon as possible after you think discrimination has occurred.
Criteria for accepting a complaint:	AERC will take complaints if the employer is within the Municipality of Anchorage and has one or more employees. Unlike ASCHR, the AERC will investigate complaints against non-profit agencies. It cannot accept complaints from employees of state agencies or employers outside Anchorage.
Where to file a complaint:	(907) 343-4342 (Voice) (907) 343-4894 (TDD) 632 W. 6 th Ave., Suite 110, Anchorage, AK 99501
For more information:	www.muni.org/aerc

4) **State of Alaska Office of Equal Employment Opportunity (EEO)**

If you work for the State of Alaska, before you file a complaint with ASCHR or EEOC, you may wish to file a complaint with the Alaska Office of Equal Employment Opportunity (EEO), which is under the Office of the Governor. The office works with both the complainant and the responding state agency as a neutral third party to bring about an informal resolution of the complaint. The EEO office can only make recommendations to the state agency regarding its findings. The state agency is not required to follow those recommendations. Filing a complaint with EEO will not lead to the issuance of a right to sue letter by EEOC. If EEO cannot resolve the problem, you will still have to file a complaint with ASCHR or EEOC if you want to file a lawsuit in court.

Deadline to file:	90 days from date of harm (the date of alleged discriminatory act or practice occurred). Although you have 90 days, it is best to contact EEO as soon as possible after you think discrimination has occurred.
Criteria for accepting a complaint:	You must be an employee of the State of Alaska. The EEO does not accept discrimination complaints from employees of the Alaska Court System, the Legislature, the University of Alaska, or Alaska school districts.
Where to file a complaint:	(907) 279-0299 (Voice/TDD) 619 E. Ship Creek, Suite 301 Anchorage, AK 99501
For more information:	www.eeo.state.ak.us

HOUSING

As a person with a disability you have a right not to be discriminated against due to your disability when seeking housing to rent, lease or purchase. It is important for you to know the federal laws that provide for nondiscriminatory practices in housing, especially in public housing which is supported in full or part by federal funding.

Federal laws that protect you

There are three federal laws that provide nondiscrimination protections for people with disabilities living in or desiring to live in publicly funded housing: Section 504 of the Rehabilitation Act; the Fair Housing Act, and Title II of the Americans with Disabilities Act. The information that follows provides an overview of the nondiscrimination clauses in the three federal laws.

Section 504 of the Rehabilitation Act

“No otherwise qualified individuals with disabilities in the United States,...shall solely by reason of the disability, be excluded from the participation in, be denied the benefits of or be subjected to discrimination under any program or activities receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United Postal Service.”

Most local and state housing authorities receive federal money and therefore must follow Section 504’s rules.

Privately operated, federally subsidized housing entities are also covered by Section 504. Examples of federally funded housing programs are:

- low-income housing (such as public housing, Section 221, and 236 programs);
- housing for people who are disabled (such as 202 and Section 811); and
- programs for the homeless (such as McKinney Act programs).

Fair Housing Act

In 1988, the Fair Housing Act was amended to forbid discrimination on the basis of disability whether or not federal money is involved. The Fair Housing Act makes illegal all forms of discrimination in the sale, rental or financing of a house or apartment, or providing services related to housing to the buyer or renter based on race, sex national origin, religion, familial status or disability.

Title II of the Americans with Disabilities Act (ADA)

Title II of the ADA and the regulations under that title pertains to all activities of “public entities”- state and local governments even if they do not get federal money. All public housing authorities fall under the coverage of Title II of the Americans with Disabilities Act of 1990 as amended.

The requirements under Title II are basically the same as those under Section 504. Housing authorities must assure that their programs, when looked at as a whole, are open to individuals with all types of disabilities. Housing authorities are required to make reasonable accommodations to their policies and reasonable modifications to their dwellings, if requested.

Who is not covered

Section 504 of the Rehabilitation Act, Title II of the ADA, and the Fair Housing Act provide exceptions on coverage when a person is a direct threat (a significant risk of substantial harm) to other people, would physically damage other people’s property, or the person is not “otherwise qualified” for housing.

No one may take any of the following actions based on your disability:

- Refuse to rent housing to you;
- Refuse to negotiate for housing;
- Make housing unavailable;
- Deny a dwelling;
- Set different terms, conditions or privileges for rental of a dwelling;
- Provide different housing services or facilities;
- Falsely deny that housing is available for inspection or rental;
- Deny anyone access to or membership in a facility or service related to rental of housing.

Eligibility for Public and Assisted Housing Program

Each local, state and federal public housing program bases the amount you pay for rent on your income level. If you are a person with a disability who desires to live in public or subsidized housing, you can receive a federal preference if you tell them that you have a disability.

You are not obligated to state or discuss your disability, unless you:

- Want the federal preference;
- Desire to live in housing designed for your specific disability or;
- You are requesting a reasonable accommodation to assist you in applying for the housing unit, or a reasonable modification to the unit.

If you disclose that you have a disability you may be placed ahead of others on the waiting list.

If you desire to live in housing that is for a specific disability group such as HIV/AIDS or for people who are mobility impaired, you will be asked to prove that you have that disability. You do not have to share medical records. You can have a qualified professional state in writing that you have such a disability. A “qualified” professional could be a vocational rehabilitation counselor, a case manager of governmental or private agency that you are involved with, or another person, including your doctor, who has knowledge of your disability.

Reasonable accommodations and modifications

Reasonable accommodations are changes in policies, rules, procedures, practices or services which enable a person with a disability to have an equal opportunity to use and enjoy the housing available. Accommodations must be practical and reasonable. Some examples of a reasonable accommodation are:

- Asking the manager to provide you with a written reminder at the beginning of each month that the rent is due.
- Asking the manager to allow a probationary period of time before starting the eviction process to see if a new medication will eliminate the lease violating behaviors.

The landlord cannot simply refuse your request. The landlord may, however, ask for proof that you need a reasonable accommodation to use and enjoy the housing. She or he may also ask for your help in identifying the best, most cost effective and efficient means of providing the reasonable accommodation.

Examples of reasonable accommodations to policies, rules, procedures, practices, or services include:

- Allowing service animals despite a “no pets” rule.
- Keeping a laundry room door closed so that fumes do not reach someone with multiple chemical sensitivities.
- Providing notes to tenants in large print.
- Providing a monthly reminder call on the day before the rent is due for someone with a cognitive disability or a head injury.

- Allowing a person to keep their apartment even though it is unoccupied while they are in a rehabilitation program or hospital.
- Using alternative non-toxic pest control and cleaning agents throughout the complex.

Reasonable modifications

You have the right to have reasonable modifications made to your own housing unit and to public areas within the complex-such as the lobby, main entrance or laundry room, if they are necessary for the full use and enjoyment of your housing.

If you are living in private sector housing that is subsidized by your Section 8 certificate, voucher or federal loan program, the owner of the property may have an obligation to pay for modifications to your apartment or house. For Section 8 certificates or vouchers that follow the tenant, the private owner may not be covered under Section 504 or the Fair Housing Act, but may be covered by a more restrictive State law. You may need to seek a legal interpretation if a questionable situation arises.

If covered under the Fair Housing Act the private owner has the responsibility to provide the reasonable modification if it does not cause an administrative burden or undue financial hardship. They are required to discuss the request with you.

Examples of the kinds of modifications that might be needed include:

- Lowering the kitchen cabinet for a person using a wheelchair.
- Disconnecting the gas oven and installing an electric range for a person allergic to fumes.
- Installing grab bars in the bathroom for someone with limited mobility.
- Installing visual alarm systems for a person who is hearing impaired or deaf.
- Changing door handles from knobs to levers and lessening the pressure on a building's main door for people who have arthritis or other disabilities affecting hand and body strength.
- Providing handrails on stairs for people with low vision or who are blind.

The application process

There are certain questions that cannot be asked of you when you apply for housing. The relationship between you and your landlord is important for a comfortable and enjoyable living arrangement. Communication is key to making this relationship work. If a prospective landlord asks certain questions that can be considered discriminatory, you may address the specifics with him or file a complaint.

Here are some questions a manager SHOULD NOT ask:

- Do you have a disability?
- Tell me about your disability. How severe is it? Are you sick a lot of the time?
- May I see your medical records?
- Do you have someone who can vouch for your ability to live on your own?
- Who will take care of you?
- Why do you receive disability benefits?
- Have you ever been treated for alcoholism or substance abuse?

Landlords MAY ask several questions of you as long as ALL APPLICANTS are asked the same questions. These include:

- Are you using illegal drugs?
- Have you ever been convicted of the illegal manufacture or distribution of a controlled substance?
- Besides normal wear and tear, would your adaptive equipment result in any substantial property damage?
- Can you pay the rent we are charging for this unit? What proof can you offer of your ability to pay this rent?

Eviction

If you are being evicted because of your behavior as a result of your disability and you believe a reasonable accommodation will enable you to comply with your lease, then ask for the accommodation.

If you continually violate your lease and ask your landlord for different accommodations to enable you to follow your lease, it is likely at some point that your landlord will refuse to consider another accommodation.

You can be evicted for non-payment of rent, continuously disturbing your neighbors, creating safety or health problems, and using illegal drugs on the premises.

Eviction Notices

Alaska law requires a landlord to provide a 30-day notice to terminate tenancy.

If the tenant does not vacate by the date on the notice of termination, there are two types of eviction notices: one you get from the landlord and the other you get from the court.

In public housing you will get a notice to appear for a hearing at the public housing authority. This is your chance to explain the situation before actual court proceedings start. **Don't miss this meeting.** It is also the time you can ask for reasonable accommodation.

The hearing officer will listen to each side and make a decision to proceed with the eviction or try the reasonable accommodation. In public and public-assisted housing you may or may not be able to discuss the situation with the landlord before he or she obtains a court order for eviction.

The second type of eviction notice is from the court and is a summary of process notice called a Forcible Entry and Detainer (F.E.D.) It will state the time and date for you to appear before a judge. If you want a chance to keep your housing, you should go to court. You may also want to have an advocate or legal counsel to go with you.

When the eviction notice from the landlord first appears, it is wise to seek counsel from an attorney. There are low cost or free attorneys that can advise you on housing issues. If the problem is related to your disability, it is also helpful to talk to an advocate, independent living center staff person, or other individual who understands your disability and reasonable accommodation needs.

How to file a complaint with HUD

All claims of discrimination must be filed within certain time limits. The deadline for filing administrative complaints is often quite short. **You have 180 days to file a complaint under Section 504 and Title II of the ADA, and one year under the Fair Housing Act.**

There are a variety of agencies that enforce housing discrimination laws. The Fair Housing Act, Section 504 (if the money comes from HUD), and Title II of the ADA (if it involves housing) are enforced by the U.S. Department of Housing and Urban Development. It is important for you to take some kind of action if you want the discrimination to stop.

Favorable laws, constitutional amendments, regulation and court decisions are important, but they are not enough. You have to make the law work by continuing to talk to housing managers, filing administrative complaints, and going to court, if necessary.

If you feel you have been discriminated against, you should fill out a Housing Discrimination Complaint Form 903, write a letter to HUD regarding what occurred, or telephone the HUD Hotline. You have one year after the date of discrimination occurred to file a complaint, but you should file as soon as possible.

Have your information gathered when you call. You will need to give HUD your name and address, a brief description of what occurred that was discriminatory, the date(s) this action occurred, the address or place of business this occurred.

The HUD toll free hotline telephone number is:

1-800-669-9777 voice or 1-800-927-9275 TDD

Send a letter or completed complaint form to the Anchorage HUD field office:

Anchorage Field Office
949 E. 36th Ave., Suite 401
Anchorage, Alaska 99508
907-271-4663

or send to:

Office of Fair Housing and Equal Opportunity
US Department of Housing and Urban Development
451 Seventh Street S.W.
Room 5204
Washington, DC 20410-2000

for more information go to www.hud.gov

Where to find help

If you need help locating housing, help in determining if you are being discriminated against or, help in sorting out reasonable accommodation and modification questions, call you local Center for Independent Living. Not all areas have a Center for Independent Living and their services vary so you may need to seek help from other places.

If you do not know the name and/or telephone number of your local Center, contact:

The National Council on Independent Living

1-202-207-0334 voice

1-202-207-0340 TTY

1-877-525-3400 Toll-free

www.ncil.org

Research and Training Center on Independent Living

1-785-864-4095 voice

1-785-864-0706 TTY

www.rtcil.org

If you are having problems with a private landlord who has accepted a Section 8 certificate or voucher, you will want to call your local housing authority service worker.

In most telephone books there is a section for Community Services. Look under headings such as Services for People with Disabilities, Disability Services, Housing, and Legal Services. Many non-profit groups working with people with disabilities have volunteer and staff advocates.

Also in your telephone book, look under the federal section of the government pages for a listing for your closest U.S. Department of Housing and Urban Development.

SERVICE ANIMALS

What is a “Service Animal?”

A service animal is one individually trained to do work or perform tasks for the benefit of a person with a disability.

What does a service animal look like?

A service animal can be any breed or size. It might wear specialized equipment such as a backpack, harness, special collar or leash, but this is not a legal requirement.

What do service animals do?

Service animals perform a wide variety of tasks for people with a wide variety of disabilities. Here are some examples:

- Guiding a person who is blind
- Alerting a person who is deaf or hard of hearing to noises such as alarms, doorbells, a baby crying, etc.
- Assisting wheelchair users by retrieving dropped items, opening doors, pulling a wheelchair, or carrying supplies.
- Sensing and warning about a person's oncoming seizure.
- Providing support or balance for someone with an unsteady gait.

How can I tell if an animal is a service animal or just a pet?

Housing providers **may ask** an applicant or tenant to provide documentation from a qualified professional that the individual has a disability and requires a service animal as an accommodation

Housing providers **may not ask** an applicant or tenant to provide:

- Any details about the applicant's/tenant's disability
- Medical records
- Proof of training (such as a training certificate)

Frequently asked questions

1. **We have a strict no pets policy. A long-term tenant suddenly claims to have a disability that requires her to have a cat as a “companion animal.” What is a companion animal and do I have to allow it?**

Companion animals, also referred to as assistive or therapeutic animals, can assist individuals with disabilities

in their daily living and, as with service animals, help disabled persons overcome the limitations of their disabilities and the barriers in their environment. They are typically for individuals with mental disabilities and can assist the person with depression, anxiety or provide emotional support.

Under Federal, State, and local Fair Housing laws, individuals with disabilities may ask their housing provider to make reasonable accommodations in the “no pets” policy to allow for their use of a companion/assistive animal. The housing provider may ask the disabled applicant/tenant to provide verification of the need for the animal from a qualified professional. Once that need is verified, the housing provider must generally allow the accommodation.

2. My tenant isn’t blind, yet he wants to get what he refers to as a “service dog.” I don’t believe he even has a disability. I want some medical documentation of what his disability is and certifying that he needs this service dog. What can I ask his doctor?

Service dogs can benefit people who have disabilities associated with many different conditions. It is permissible under the law to ask the tenant to provide confirmation that he does indeed have a disability and to verify his need for the service dog. You may **not** ask the nature of the tenant’s disability.

3. Do service animals have to have specific training and certification? How do I know that the animal has been properly trained? Can I require my tenant to provide proof of training?

Service animals are normally individually trained to assist the disabled person with individual needs relative to that person’s disability. While some animals receive certification papers, others do not. It is legitimate for a person with a disability to train his/her own service animal. There is currently no national standard with which to evaluate the training or performance of any type of service animal, including guide dogs. You may **not** require the disabled tenant to provide proof of the service animal’s training.

4. I’m concerned that my disabled tenant’s service dog is going to damage the apartment and disturb other tenants. Is it okay to ask for a pet deposit?

A service animal is not a pet and you cannot lawfully require any additional deposits. The tenant is responsible for the actions of his/her animal and can be held accountable for any damage to your property. Additionally, the tenant must comply with any of your established policies such as cleanliness and maintenance of the unit as well as leash requirements and noise guidelines.

5. How does the Fair Housing Act protect individuals with disabilities with regard to service animals?

Service animals are a healthcare option that many individuals choose to help them overcome the limitations imposed by disabilities. The Fair Housing Act protects individuals who have disabilities as defined by the Act. In order to be protected by the Fair Housing Act with regard to service animals, three tests must be met: the person must have a disability; the animal must serve a function directly related to the person’s disability; the request to have the service animal must be reasonable. The provisions that protect the rights of individuals with disabilities to be accompanied by service animals are just one way that the Fair Housing Act protects people with disabilities.

With regard to service animals, the Fair Housing Act does not protect individuals who do not have disabilities, or situations in which individuals train animals for use by people other than themselves.

Reasonable accommodation

The Fair Housing Act requires that owners and landlords provide reasonable accommodation when necessary to permit an individual with a disability equal opportunity to use and enjoy a dwelling. It is the responsibility of the person with the disability to request any necessary reasonable accommodations necessary for tenancy.

An example of reasonable accommodation is modifying no-pet policies and practices to support the right of a person with a disability to have a service animal in a publicly or privately owned dwelling. Refusal to permit an exception to a no-pets rule may constitute a discriminatory practice when an individual with a disability is unable to use and enjoy a dwelling, including entertaining guests with disabilities who require the use of service animals.

Service animal categorized

The Fair Housing Act does not define “service animal” per se, and does not make a distinction among certified service animals, non-certified animals, animals that provide psychological support, and service animals in training that live with the people with disabilities for whom they will work. The Act does not have restrictions about who may train the animal. However, the Act recognizes that service animals are necessary for the individuals with disabilities who have them, and as such does not categorize service animals as “pets.” Service animals, then, cannot be subjected to “pet rules” that may be applied by housing providers to companion (non service) animals. Housing providers cannot, for example, impose upon service animals the size or weight restrictions of a pet rule, exclusions from areas where people are generally welcome, or access restrictions to only a particular door or elevator. Further, special tags, equipment, “certification” or special identification of service animals cannot be required. Judith Keeler, Director, U.S. Dept. of HUD, Northwest Alaska Area Fair, Housing Enforcement Center, states that it is HUD’s position that no deposit may be charged for the service animal.

The Act does not specifically limit the number of service animals an individual with a disability may have. Requests for multiple service animals may be reviewed on a case-by-case basis. It is possible that housing providers may impose limitations if it can be demonstrated that an individual’s request for reasonable accommodation exceeds what is necessary for that person to have full use and enjoyment of the premises.

Individuals with disabilities may request other reasonable accommodations regarding their service animals. For example, a person with a mobility impairment may find it difficult to walk a service dog. He and the landlord might work together to identify a mutually agreeable, and accessible, area of the property on which the dog can relieve itself.

Rights of housing providers

Individuals with disabilities are solely responsible for the conduct of their service animals, and housing providers may have recourse available if the tenant fails to satisfy this obligation. For example, a housing provider may require payment for damages (such as chewed carpeting), or insist that a service animal be prevented from repeated barking that disturbs neighbors. However, a housing provider may first be obligated to attempt resolution of the problem before eviction proceedings are initiated. Complaints about a service animal must be substantiated and not based on speculation.

Service animals that are a direct threat to others (biting, etc.) or otherwise violate animal control laws can be reported to the agency that enforces animal control laws. Often the agency is the animal control department, or the local police. Some local and state laws exempt service animals from some animal control laws.

Sample Letter from a Service Provider

[date]

Name of Professional (therapist, physician, psychiatrist, rehab counselor)

Address

Dear [Housing Authority/Landlord]:

[Full name of tenant] is my patient, and has been under my care since [date]. I am intimately familiar with his/her history and with the functional limitations imposed by his/her disability. He/She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to mental illness, [first name] has certain limitations regarding [social interaction/coping with stress/anxiety, etc.]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [first name] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [first name]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [full name] have an emotional support animal. Should have additional questions, please do not hesitate to contact me.

Sincerely,

Name of Professional

for more information on service animals go to www.deltasociety.org

Delta Society

875 124th Ave NE, Suite 101

Bellvue, WA 98005

(425) 226-7357

YOUR PERSONAL RIGHTS WHILE IN A MENTAL HEALTH FACILITY

All people have certain basic legal rights, including people who have mental illness and people who are in mental health facilities. In some cases, these rights can be restricted by a judge or by your doctor. If you are placed in a mental health facility, this material has information you need to know about your rights while in a mental health facility

A summary of your rights must be given to you and to your parent or guardian. Your rights may not be denied except to protect your health and safety and/or the health and safety of others.

You have the right:

- To respect and privacy with regard to your personal needs and treatment;
- To work within the facility only if your labor is performed voluntarily;
- To meet and communicate with people of your own choosing;
- To private and confidential conversations;
- To see visitors every day;
- To place and receive confidential telephone calls;
- To have ready access to letter-writing materials, including stamps, and to send and receive unopened correspondence (except checks controlled by a trustee);
- To keep and spend money for expenses and small purchases;
- To have access to individual storage space for your private use;
- To keep and use personal possessions;
- To wear your own clothes;
- To have your records kept confidential;
- To request and receive access to your own medical and service records;
- To exercise your rights and to submit complaints concerning policies and services;
- To vote, make contracts and wills, own property, marry, have a driver's license, and to manage your own affairs (in the case of an adult) unless a court of law has specifically declared that you are incompetent to exercise any of these rights;
- To contact the Disability Law Center of Alaska for information and assistance.

Rights Concerning Care and Treatment

Specifically, you have the right:

- To medical, psychosocial, and rehabilitative care, treatment, and planning;
- To receive treatment and services in a setting that is supportive of your personal liberty;
- To the prompt development of an individualized treatment plan, with thorough reviews of treatment occurring at least every three months;
- To participate in the development of all treatment plans. The plans must provide for the least restrictive treatment procedures that may reasonably be expected to benefit you;
- To receive treatment only if you or your legal representative give informed consent in writing;
- To refuse proposed treatment or to withdraw consent, in writing, at any time;
- To a safe, humane treatment environment which provides you with reasonable protection from harm;
- To receive adequate nutrition, clothing, and health care;
- To be free from physical restraint unless prescribed by a physician, and to be free from such restraint when administered in place of an appropriate treatment plan or for the convenience of the staff;

- To be free from mental and physical abuse;
 - To consent to being transferred from one facility to another;
 - To the prompt and periodic discussion of your rights and your clinical progress;
 - To referral and assistance in planning for post-discharge needs and services.
-

RIGHTS OF PEOPLE RECEIVING VOLUNTARY INPATIENT MENTAL HEALTH SERVICES

If you are in a mental health facility because you wanted treatment and signed an agreement to be hospitalized for treatment, you have these special rights:

- The right to ask your treatment team to decide if you need to stay at the facility or if you are ready to leave.
- The right to leave the facility within 48 hours, excepting weekends and holidays, after you sign a written request to leave, unless the hospital files an involuntary commitment application.

Nobody can ask a judge to order you to stay at a facility while you are a voluntary patient, except for two reasons:

- First, the doctor can ask for court-ordered mental health services if he or she thinks you need to be committed. A judge may decide that you need to be committed because you will hurt yourself or others, if you are not committed. The judge may also decide that you need to be committed if your doctor believes that you will suffer distress and become unable to take care of yourself if you are not committed.
- Second, the doctor can ask for court-ordered mental health services if you refuse necessary treatment, or if you are not able to agree to treatment and your doctor thinks that you need treatment. The judge may commit you if you are likely to hurt yourself or others if you are not committed. The judge may also commit you if your doctor testifies that he or she believes that you will suffer distress and become unable to take care of yourself if you are not committed.

When the hospital decides you are ready to be discharged, you can decide if you want the staff to tell your family the date of your discharge. If you do, the staff will contact your family. If you do not agree that the staff can tell your family that you are being discharged, they cannot do so.

If you believe one of your rights has been violated, you should contact your treatment team, the facility's patient's rights officer/representative, the facility's Medical Director, your attorney, any advocacy organization, including the Disability Law Center, the State Ombudsman, the Commissioner of the Department of Health and Social Services, or the court which may have been involved in your hospitalization.

RIGHTS OF PEOPLE RECEIVING INVOLUNTARY INPATIENT MENTAL HEALTH SERVICES

Rights that cannot be restricted

You have some rights that no one, not even a judge or a doctor, can take away from you:

- The right to treatment in the least restrictive appropriate setting. This means you have the right to treatment in a place that restricts your day-to-day life only as much as is necessary to protect you and others around you. It also means that your treatment should interfere as little as possible with your thinking, with taking care of personal needs, or with your ability to work.
- The right to a humane treatment environment that is clean and safe where you won't be harmed.
- The right to proper mental health and medical treatment.
- The right to an independent evaluation by another doctor of your choice, as long as you pay the cost.
- The right to enough privacy for your personal needs, as long as this does not place you or other people in danger.
- The right to be told about your rights within one day (24 hours) of your admission to the facility. You must be told about these rights both orally and in writing, in the language you understand best. If you are hearing or vision impaired, these rights must be communicated to you in the way you understand best. If you are a minor, or if you have a guardian, information about these rights must also be given to your parent or guardian.
- The right to a written individual treatment plan based on your own needs that describes your diagnosis, specific problems and specific needs. It must also contain a description of the short-term and long-term treatment goals, and a projected timetable for their attainment. Individual staff responsibility must be stated, and criteria needed for release to a less restrictive environment must also be stated. The plan must be reviewed on a regular basis to make sure it is the best way to help you.
- The right to participate in the development of your treatment plan, if you want to participate. If you are under 16 years old, or if you have a guardian, your parent or guardian can also participate in developing your treatment plan.
- The right to information about the medications your doctor has prescribed, including the name of the medication, the dosage and schedule, the type of medication, the benefits expected from that type of medication, and the side effects and risks of the medication.
- The right to refuse to be a part of a research program. You do not have to agree to try new, experimental drugs or treatment.
- The right to be informed, in writing, at admissions and discharges of Disability Law Center's address and telephone number.
- The right to send and receive uncensored mail.
- The right to find a lawyer to represent you, and the right to talk with and to write to your lawyer.
- The right to have your family notified of your discharge, if you want them to know.

Electroconvulsive therapy

You have the right to refuse electroconvulsive therapy (ECT). However, if you are 16 years-old or older, and a judge has decided that you are incompetent, then your guardian can consent to ECT but only if you would have agreed to the treatment if you were not incompetent. If you are under 16 years-of-age, ECT may not be used under any circumstances.

Habeas Corpus

You have the right of habeas corpus. In certain cases, you can ask a judge to decide if it is legal to keep you in a mental health facility or jail against your will. If the judge decides that you should not be kept against your will, you must be immediately discharged from the facility. This might happen if, for instance, the judge thinks you are not likely to hurt yourself or others.

Rights that can be restricted only by a judge:

Rights of people with mental illness

You have the rights listed below, unless a judge has held a hearing and made a written order restricting your rights. The court proceedings that can limit your rights are guardianship, child custody, and mental health commitment proceedings.

- The right to register and vote in elections.
- The right to buy and sell property and to sign contracts.
- The right to sue and be sued.
- The right to have a driver's license and other kinds of permits, privileges, and benefits under the law.
- The right to have your treatment records kept confidential, unless you sign a release or file a lawsuit, or the court orders release of your records.
- All rights concerning your family, such as the right to marry and have children. Unless a judge has taken custody of your children away from you, you can still make decisions for your children.
- The right to give consent or refuse to give consent to treatment with medication. If you refuse to consent to medication and you are in a state hospital, the law says that you cannot be forced to take medication unless the hospital gets a court order, or you are having a medication-related emergency. A medication-related emergency is a situation in which it is immediately necessary to administer medication to a patient to prevent immediate and serious harm to you or someone else because of your actions or threats. The doctor must petition the court to order the medication, and the medication can only be ordered after a hearing. You have the right to be present at the hearing and be represented by an attorney at the hearing, at no cost to you. If the judge orders the medication, you can be required to take it.

If you have made an Advance Directive and included information about medications and preferences in non-emergencies, the judge and doctor must follow your instructions in the Advance Directive.

Rights that can be restricted only by a doctor or treatment team

Additional rights of clients in inpatient mental health facilities

Your doctor or treatment team can restrict some of your rights while you are receiving involuntary mental health services in a mental health facility:

- Only your doctor can order that physical restraints be used on you. If restraints are ordered, they must be taken off as soon as possible. Anytime physical restraints are used on you, it must be noted in your treatment record by your doctor.

Unless your doctor says in your records that you can't, you have these rights:

- The right to wear your own clothes and use your personal belongings.

- The right to have visitors in the facility, to talk by telephone, or write to people outside the facility. Your letters must not be opened, read, or changed by anyone in the facility unless you want them to be. The doctor can sometimes limit your right to have visitors and to write and talk with other people if the reasons for limiting these rights are put in your treatment record. Even if the doctor does set limits, you always have the right to talk with and to write with confidentiality to a lawyer who has agreed to represent you.
- The right to socialize with others, including the opposite sex; but your doctor may order these activities to be supervised.
- The right to physical activity and grounds privileges.
- The right, when you are discharged, to a plan for your continued treatment (if you need continued treatment) that covers both your mental health and physical needs. You have the right to refuse the services in this plan, unless a judge says you do not have this right.

YOUR LEGAL RIGHTS UNDER EMERGENCY COMMITMENT

When and why you may be committed under emergency detention

You may be picked up and detained in two ways: either a judge can order a police officer to take you to a mental health facility, or a police officer can detain you and take you to an appropriate mental health facility without a judge's order or warrant. The decision to detain you on an emergency basis must be based on either personal observation or another person's observation of your recent behavior that makes them believe that you are mentally ill and that you pose a substantial and imminent threat to either your safety or someone else's safety. Examples of this kind of behavior include attempting suicide, striking another person, or a recent pattern of severe emotional distress.

Where you must be taken

After the police have picked you up, they must take you immediately to the nearest appropriate mental health facility.

You may be placed in the nearest appropriate mental health facility unless there is none available. If there is none available, then you may be placed in an alternative approved facility.

Only in an extreme emergency can you be put in a jail, or any other non-medical facility. If you are put there, you must be kept separate from people who have been charged or convicted of a crime.

After you have been taken to a facility

You have the following rights after you have been taken to a facility for emergency commitment:

- You must be examined by a doctor as soon as possible and, in any event, within 24 hours after you were picked up, regardless of the facility in which you are placed.
- You can only be admitted to the facility if the doctor who examines you determines that you are mentally ill **and** you pose a substantial **and** imminent threat to yourself or others **and** emergency detention is the least restrictive way to restrain you from harm.

Upon admission to the mental health facility

Within 24 hours after you have been admitted to the mental health facility, you must be told, orally and in writing, in the language you understand best, or if you are hearing or visually impaired, in the way you communicate best, the following rights:

- You must be told where you are and why you have been detained.
- You must be given the right to commit voluntarily.
- You must be told that this emergency detention could turn into a longer commitment if an involuntary commitment proceeding is begun.
- You must be allowed to find an attorney of your choice and to talk with your attorney.
- You must be told that anything you say or how you act while you are at the facility may be used by the judge in further proceedings, such as involuntary commitment, to decide if you need to stay in the facility, and how long you need to stay.
- You must be allowed to leave the facility immediately unless the examining doctor finds that you are mentally ill and that you pose a substantial and imminent danger to yourself or others and that you cannot be treated in a less restrictive manner.
- You must be told that you will not be allowed to leave the facility if the examining doctor decides that you are mentally ill and that you pose a substantial and imminent danger to yourself or others and that you cannot be treated in a less restrictive manner.
- Whenever you are released from emergency commitment, the facility must arrange, at no charge to you, to take you back to where you were picked up, or to your home, or to another suitable place.

If you are a minor or if you have a guardian, information about these rights must be also given to your parent or guardian.

RESTRAINT AND SECLUSION GUIDELINES:

Voluntary Behavior Interventions

During your stay in a mental health facility, there may be times when you need assistance controlling your behavior. There are two (2) forms of behavioral interventions that can be used when you begin to feel out-of-control or when your behavior is disruptive.

Time Out:

Staff cannot force you to begin or end time out. You can end your time out whenever you want to. Time out is used only when you feel as if you need a place that is quiet and away from other people in order to either calm down or prevent you from getting angry or upset. You must ask staff if you can go to a safe place and stay there until you feel ready to interact with others again. If staff tries to block your exit from the time out room or threaten you with restraint or seclusion or other consequences if you leave the time out room then this is no longer considered time out. Instead, it would be considered seclusion and the staff must follow the rules regarding seclusion. If your doctor believes that you should not be alone for long periods of time, some restrictions can be placed on where you can go for time out.

Clinical Time Out:

When you feel out of control or your behavior is disruptive, staff can ask you to go to a safe place for clinical time out. The difference from quiet time is that the staff ask you to do it. No one can keep you from leaving the clinical time out area if you want to. If anyone blocks your exit from the clinical time out area, then you are being secluded. You do not have to agree to go into clinical time out, and you cannot be physically guided or pushed into it. If you are, then you are being secluded or restrained. Clinical time out may not be used as a punishment, for the convenience of staff, or as a substitute for treatment. For example, staff cannot ask you to take a clinical time out because there is not enough staff on the unit, or because you choose not to go to classes, or because you choose not to take your medications. Staff can request that you stay in clinical time out for up to 30 minutes. After 30 minutes, the staff has to discuss your behavior with you to determine if you need to continue clinical time out. Remember, you do not have to stay the full 30 minutes, you can leave at any time.

If your behavior is dangerous to yourself or someone else, quiet time and clinical time out may not work, but should be tried before more restrictive interventions are used.

Involuntary behavioral interventions

Seclusion:

Seclusion is a place where there are no dangerous objects with which you can hurt yourself. It also has to be a place where you can be watched, and you cannot leave the area until you are no longer dangerous to yourself or others. Your doctor will determine what changes you need to make in your behavior in order to be released, and he or she must tell you exactly what behaviors you must show in order to be released.

Once you are placed in seclusion, a staff member is required to check on you at least every 15 minutes. If you are given emergency medications and placed in seclusion, you must be watched continuously to receive help if problems occur from the medications. This continuous observation can be done with a video camera.

Restraint:

When you are restrained, it means that all or part of your body movement is restricted. In order to restrict the movement of your body, various devices can be used. Examples are: leather restraints on your wrists and ankles can be used to tie you to a chair or bed, a vest that can be used to tie you to a chair or bed, a body net that can be wrapped around you, a geri-chair or chair that has a tray fastened to it, and other devices that are designed to keep you from moving. All of the devices that can be used on you must be safe, and should be made in a way to cut down on physical discomfort.

If you are placed in restraint, a staff member of your same sex must watch you at all times to make sure you are okay and to keep you safe from others. If you have a good reason to want a staff member of the opposite sex to watch you, then you must tell your doctor.

There are some people who may get worse when treated with seclusion or restraint. Many people who have been physically and/or sexually abused fear being locked up or tied down because of bad memories. If you believe that you have good reason not to have seclusion and/or restraint used as a treatment for you, you must tell your doctor. You need to tell your doctor about the experience or issue that makes you believe you should not be treated with seclusion and restraint. You should tell your doctor before a need for seclusion or restraint arises. There may be times when your doctor believes that you must be secluded or restrained, even though you think it will make you worse. When this happens, the doctor has to justify why he or she thinks seclusion or restraint is the **only** way to keep you and others safe and must write the reason in your medical record.

Chemical restraint:

It is prohibited in the State of Alaska to use chemicals to restrain you. This means that medications that are given to sedate you rapidly can only be given in the case of an emergency and under the circumstances described in this handout. These medications are usually given by injection and are referred to as emergency medications. If you are secluded or restrained, there should no longer be an emergency, and staff should not use a chemical restraint. If there is ever a situation where the only way to keep you from hurting yourself is to put you in restraint and give you medication, then you have to be watched continually until you are released. In order to do this, the staff may place a video camera near you to monitor your condition. Chemical restraint cannot be given for nonviolent behaviors.

Chemical sprays:

Chemical sprays that are intended for temporary restraint, such as tear gas and pepper spray, cannot be used under any circumstances while you are in the mental health facility; it is illegal.

General rights for seclusion, restraint, and medication restraint:

Restraint, seclusion, and medication restraint can only be used in an emergency situation or in certain circumstances for medical and dental procedures. An emergency is when there is a possibility of immediate death or serious bodily harm to yourself and/or the possibility of serious physical or emotional harm to others.

Seclusion, restraint, and medication restraint are types of interventions that should only be used as a last resort, and they are only supposed to last long enough to help you regain control of yourself. The staff that works with you is required to use other ways to calm you down if possible before they use seclusion or restraint. Once staff begins to restrain or seclude you, they must use the least amount of physical force that is reasonable and necessary for that situation. In order for you to be placed in seclusion or restraint, a doctor--or a registered nurse, if a doctor is not immediately available--has to initiate the process. Only a doctor can order medication restraint.

Restraint, seclusion, and medication restraint cannot be used as coercion, punishment, retaliation, for convenience of staff or other individuals, or as a substitute for effective treatment or habilitation.

If you are restrained, secluded, or restrained by medication more than two (2) times in any 30-day period, you and your treatment team must have a meeting to review alternative strategies for dealing with behaviors necessitating the use of restraint, seclusion, or medication restraint. If the number of incidents of restraint or seclusion is not reduced, you and your treatment team will consult with the medical director or designee to explore alternative treatment strategies.

While you are in restraint, seclusion, or medication restraint, you have all of the same rights that you have at any other time during your hospitalization. Your right to have your personal property can be restricted by your doctor when you are placed in seclusion or restraint. All personal items that can be used to harm yourself or someone else can be taken away, including your clothing. You should have safe clothing issued to you if yours is taken away. Your property must be put up for safekeeping and returned to you once you are out of seclusion or restraint.

While you are in restraint, seclusion, or medication restraint, you have the right to be treated with dignity and respect. You also have the right to go to the bathroom at least once every two hours, have something to drink once every hour, take a bath at least once a day, eat all regularly scheduled meals and snacks, and the

environment must be comfortable and well ventilated. If you are put in restraint, you have the right to be able to move your limbs or exercise for five minutes out of every hour. The staff member who is watching you during seclusion and restraint is required to check for adequate respiration and circulation, especially if you are in restraint.

Who can order restraint, seclusion, or medication restraint?

Only a doctor can order restraint, seclusion, or medication restraint if a doctor is immediately available. If a doctor is not immediately available, a clinically privileged registered nurse may initiate restraint or seclusion, but not medication restraint. Before a doctor or clinically privileged registered nurse can order restraint, seclusion, or medication restraint, they must view you and your behaviors to determine if the restriction is necessary. A doctor, if not immediately available when restraint or seclusion is first started, must approve the restraint or seclusion in person or by phone within an hour after you have been placed in restraint or seclusion. After that they must evaluate you face-to-face once every 12 hours.

How long can you be restrained or secluded?

The maximum length of time that you can be restrained or secluded is based on your age. If you are an adult, the time cannot exceed four (4) hours. If you are between the ages of nine and 17 years, the time cannot exceed two (2) hours.

However, if, after this initial period of time, the doctor or registered nurse does not believe that you are ready to be let out of restraint or seclusion, they can continue the restraint or seclusion up to 12 hours. If you are in restraint or seclusion for 12 hours, and it is decided that you are not ready to be let out, a doctor must evaluate you face-to-face. The doctor then has to write a new order in your record and sign it with date and time of the new order clearly stated.

When can you be released from restraint or seclusion?

If you are no longer an imminent danger to yourself or others for 15 minutes, you must be evaluated by the clinically privileged nurse or doctor for release on a 30-minute trial period, even if the maximum length of time prescribed in the order has not expired. If you fall asleep while you are restrained, then you must be released from as many restraints as possible. If you fall asleep in seclusion, the door must be unlocked and opened.

Restraint during medical or dental procedures

Seclusion or restraint can also be used for medical or dental care as needed, this includes the use of quarantine when you have a contagious disease. If you need medical care or dental care, and in order to provide that care for you the doctor has to keep you, or a part of your body, from moving, then the doctor can use restraint, but only if using restraint or seclusion is part of the facility's written medical or nursing procedures, and the procedures are recorded in your record. You have the right to be free from any form of restraint that are not medically necessary. Restraint and seclusion cannot be used during a medical or dental treatment as a means of coercion, discipline, convenience, or retaliation by staff.

Protective and supportive devices

General rights:

Protective and supportive devices cannot be used as coercion, punishment, retaliation, for convenience of staff or other individuals, as a substitute for effective treatment or habilitation, or in an emergency. They must be part of your treatment plan, and must be reviewed at each treatment plan review. Remember, you are supposed to be included in the meeting where your treatment plan is reviewed.

Protective devices:

Protective devices may be used to keep you from hurting yourself when other, less restrictive interventions will not work. Protective devices include any device that you cannot remove. Examples of protective devices are helmets for people with seizures, use of bed rails to prevent people from falling out of bed, and seat belts to prevent people from falling out of wheelchairs.

The use of protective devices requires a doctor's order. If you continue to be placed in a protective device after one (1) week, then you and your treatment team must review the continued need for the device. At that meeting you must be informed of what is being done to help you no longer need the protective device.

Supportive devices:

Supportive devices may be used to help you have better support, like for sitting up or standing up, or to help you develop and maintain normal body functioning. An example of a supportive device is a posey vest for an individual who is not able to support themselves when they are sitting up in a chair.

The use of supportive devices requires a doctor's order. Before a supportive device can be used, you and your treatment team must talk over the need for the device. During this meeting there has to be an occupational or physical therapist present, or a registered nurse who is familiar with you and your needs. Your treatment team must document in your treatment plan the purpose for the device, why it needs to be used, and what the team will try to do in the future so the device won't be needed.

YOUR LEGAL RIGHT TO REFUSE MEDICATION

When you can refuse medication

You can refuse medication if you are in a hospital for psychiatric care (either a state facility or private psychiatric hospital) under an emergency commitment, a voluntary commitment, or under an order of protective custody.

When you can be required to take medication

You can be required to take medication under the following circumstances:

- There is an emergency because your recent behavior shows you are likely to hurt yourself or others; or
- You are under 16 years-of-age and your guardian or parent consents for you; or
- You are involuntarily committed under a 90-day commitment order and a judge decides you are likely to hurt yourself or others, cannot make this decision for yourself, and that the medication is in your best interest and that no less intrusive alternative treatments are available.

Before You Decide To Take Medication

You must be told certain information about the medication before you are given the medication. You must be told this information both orally and in writing, in the language you understand best, or if you are visually or mentally impaired, in the way you communicate best. If you have a guardian or you are under 16-years-old, then your guardian or parent must also be given this information. You must be told:

- What specific condition is being treated with the medication;
- How the medication will help you;
- What might happen to your mental health if you refuse the medication;
- Any significant side effects and risks you may have if you take the medication;
- Any alternatives to taking the medication and why the doctor thinks they will not work as well for you;
- How long and how often you will be taking the medication; and
- If you decide to take the medication, you can change your mind at any time.

If someone other than the prescribing doctor gives you the above information, the prescribing doctor must meet with you personally within two (2) days (excluding weekends and holidays) to answer your questions.

You also have the right to have an independent examination or evaluation by another doctor of your choice at your own cost. If you ask for an independent examination or evaluation, it must be arranged for you by the hospital.

Staff must note in your records whether you agree to take the medication or not, or whether it is given to you under emergency conditions or under a judge's order.

If you agree to take medication

If you consent to take medication, your consent must be voluntary and without feeling pressured to agree. If you have a guardian, your guardian can consent to the medication.

If you decide to refuse medication

You cannot be forced to take medication unless it is an emergency. In a non-emergency situation, if you refuse medication, your doctor must file an application with the court for an order authorizing the administration of medication. A hearing will be held.

- You must be allowed to attend with an attorney--one will be appointed by the court, if necessary. You have the right to a court-appointed attorney; if you wish to hire your own lawyer, you may do so.
- The judge will listen to what you and your doctor have to say, and determine if you lack the capacity to make a decision about whether to take the medication, and if treatment with the medication is in your best interest, and no less intrusive alternative treatments are available.

The judge has to consider:

1. your expressed preferences regarding treatment with psychoactive medication;
2. your religious beliefs;
3. the risks and benefits, from the perspective of the patient, of taking psychoactive medication;
4. the consequences to you if the psychoactive medication is not administered;
5. your prognosis if you are treated with psychoactive medication; and
6. alternatives to treatment with psychoactive medication.

After the judge makes a decision, you can appeal the decision.

If you are required to take medication

If a judge has decided that you must take medication, you have to take it until your 90-day commitment order has ended. Your doctor can increase or lower the dosage of your medication, and can give you another medication in the same class without additional approval from the court. But the class (or classes) of medication you have been ordered to take cannot be changed without a court order. The class (or classes) of medications approved by the court will be attached to the order.

ADVANCE DIRECTIVES

AS 13.52.010 effective January 2005

An advance directive enables you to give instructions about your own health care in the event you are unable to communicate your wishes. It is signed and validated before you become mentally or physically incapacitated. The advance directive is a legal document that enables you to provide instructions as to whether to donate organs upon your death, whether to prolong or discontinue artificial means of life support, and what kinds of care, medication and other, is to be provided.

An advance directive allows you to appoint someone to make health care decisions for you in the event you are unable to communicate your wishes because of mental or physical incapacity. You can also give specific instructions for your agent to make sure your wishes are followed. There are special provisions in the law regarding individuals with mental illness.

THE LEGISLATURE INTENDED FOR ALL INDIVIDUALS TO BE TREATED EQUALLY REGARDING END-OF-LIFE DECISIONS. THE DIFFERENCES ARE IN WHETHER THE TREATMENT IS FOR MENTAL ILLNESS OR NON-MENTAL ILLNESS, NOT IN WHETHER YOU HAVE A MENTAL ILLNESS.

A health care provider who acts with diligence to ensure the validity of your Advance Health Care Directive, and who acts in good faith and in accordance with generally accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for complying with your Directive. *A health care provider or institution that violates the law regarding Advance Directives may be liable to you or your estate.* For this reason, it is highly likely that the medical profession will honor your wishes.

The Health Care Decisions Act gives an example of an Advance Health Care Directive and divides the Directive into five parts:

Part I: Durable Power of Attorney for Health Care Decisions

Part II: Instructions for Health Care

Part III: Anatomical Gift at Death

Part IV: Mental Health Treatment

Part I: Primary Physician

You can use the sample provided for in the statute, you can modify it, use parts of it and eliminate others, or you can write your own. However, if you make an advance directive, but do not appoint an agent under Part I, the law provides that a surrogate will be appointed to make decisions that you have not addressed in the directive.

The law is flexible as to the form of the advance directive. Any form will be valid provided the directive complies with Alaska law.¹ There are also requirements for establishing a valid advance directive. Information on validating, changing or revoking an advance directive will be addressed at the end of this section.

¹ For example, if you ask for help in dying under certain circumstances, your request will not be honored because Alaska does not allow euthanasia (assisted suicide).

Advance Health Care Directive

The following explains each of the five parts of the sample advance health care directive:

Part I. Durable Power of Attorney for Health Care Decisions²

What is it?

- A legal document you use to name another person as your agent to make health care decisions for you if you lose the capacity to make them yourself.³
- “Power of Attorney” does not mean that an agent must be an attorney.

Who can be an agent?

- Any person except the owner, operator, or employee of the health care institution at which you are receiving care. (However, an owner, operator or employee of the health care institution at which you are receiving care can be your agent if that person is related by blood, marriage or adoption.)
- Although almost anyone can be an agent, your agent should be an adult friend or family member who knows you very well and whom you trust without reservation. This person may have the power over your life and death should you become incapacitated.

When does it go into effect?

- Unless you specify otherwise, the authority of your agent becomes effective only upon a determination that you lack capacity, and the authority ceases to be effective upon a determination that you have recovered your capacity.
- In all situations not involving mental illness, your primary physician determines whether you have lost or recovered capacity to make your own health care decisions. The same rule applies to individuals with mental illness if the cause of your inability to make your decisions is not mental illness.
- In the case of mental illness, when
 - a court makes a determination that you no longer have capacity to make decisions, or
 - in an emergency, your primary physician or other health care provider can make the determination.
- You can indicate on the form if you want your agent’s authority to be effective immediately.

² It is important to recognize the difference between a general Power of Attorney (POA) and a Durable Power of Attorney (DPOA). A general Power of Attorney is not a health care designation. A general POA grants another power over your property. A general POA can be used for many different things. You must be **EXTREMELY CAUTIOUS** in choosing one, and in deciding what authority to give to the POA. Unscrupulous individuals have been known to take advantage of persons with disabilities, stealing government benefits, cash, and other assets. They can buy and sell property, rent, mortgage, etc. Once a person has the POA designation, it is very easy for an unscrupulous agent to make major decisions about many aspects of your life.

³ You can name someone to make decisions while you have capacity but you can revoke this designation at anytime while you still have capacity.

What authority does my agent have?

Your agent has only the authority you give him or her - no more, no less. You cannot give your agent authority that you do not have.

However, unless you specifically limit your agent's authority, your agent will have the right to

- Consent or refuse to consent to any care, treatment, service or procedure affecting a mental or physical condition, including the use of psychotropic medications;
- Select or discharge providers and institutions;
- Approve or disapprove of diagnostic tests, surgical procedures and medications;
- Approve or deny providing, withholding, or withdrawal of artificial nutrition and hydration, and all other forms of health care; and
- Make an anatomical gift after death.

Your agent does not need court approval to take any of these actions.

Your agent's authority supercedes that of a guardian.

Is there anything my agent cannot do?

There are some actions your agent cannot authorize unless you specifically grant such authority, or it is necessary to preserve your life or to prevent serious impairment of your health. These actions include:

- Abortion
- Sterilization
- Psychosurgery
- Removal of bodily organs.

NOTE: You can give the agent authority in these areas if you specifically say so. If this is not addressed, the agent does not have the authority.

Does the agent have any obligation?

- Yes. As soon as the agent accepts the nomination, s/he must make health care decisions for you in accordance with your instructions.
- If there are no instructions, and your wishes are unknown, your agent must make decisions in accordance with your "best interests". Your agent must consider your religious and other personal values in determining your best interests.

You can limit your agent's authority by using Parts II, III and IV, or another document that spells out your instructions, conditions, and limitations.

Part II. Instructions for Health Care.

If you want to give your agent the full authority described above you do not need to add Parts II, III and IV of the sample advance directive contained in the statute. The Disability Law Center recommends that you review the document before you make that decision.

Part II enables you to control the following:

- End of Life Decisions
 - Ending your life;
 - Prolonging your life;
 - Artificial nutrition and hydration;
 - Relief from pain;
 - Other specific wishes;
 - Conditions or limitations.

Part III. Anatomical Gift at Death.

If you wish to allow your agent to make decisions regarding an anatomical gift at death, you do not need to complete this part. Your agent has this authority. However, if you desire, you can complete this part, and limit your agent's authority to make an anatomical gift at death. Completing this part allows you to specify which, if any organs, to donate and for what purposes.

Part IV. Mental Health Treatment.

If you wish to allow your agent to make decisions regarding mental health treatment, you do not need to complete this part. **Unless** you specifically limit your agent's authority, your agent will have the right to consent or refuse to consent to any care, treatment, service or procedure affecting a mental or physical condition, including the use of psychotropic medications.

This document becomes effective only if you are not competent and cannot make treatment decisions. You are considered competent unless you are deemed incompetent by:

- A court; or
- Two physicians, one of whom is a psychiatrist; or
- A physician and a mental health clinician.

The Mental Health Treatment section addresses the following:

- Psychotropic medications. You can consent to some and not others, and specify conditions and limitations.
- Electroconvulsive treatment (ECT). You can consent or refuse, and specify conditions and limitations. Although Alaska does not currently use ECT, this would provide instruction in case the state again begins to use this treatment. Also, if you are in another state that recognizes the Alaska advance directive, this would provide the information necessary to carry out your instructions.

- Admission to and retention in a facility. You can consent to or refuse one facility or another, and specify conditions and limitations, such as length of time.
- You can also express other wishes and instructions to meet your needs and desires. If you want to expressly forbid certain people from having input into decisions about your care, you can do that.

Part V. Primary Physician.

This section enables you to request a specific physician. If that physician is willing, able and available, the request will be honored.

What happens if I do not name an agent to act as my Durable Power of Attorney?

Except in the case of mental health treatment, if your primary physician determines that you lack capacity and you do not have an agent or a guardian, a surrogate may act for you.

In the case of mental health treatment, a surrogate may make a decision regarding mental health treatment if there is no agent or guardian available and

- Mental health treatment is needed on an emergency basis **and**
- The patient has been determined to lack capacity by
 - two physicians, one of whom is a psychiatrist, or
 - a physician and a professional mental health clinician.

If a close relative or friend does not step forward as surrogate, the law assigns a priority to family members as follows, in descending order of priority:

- Spouse, unless legally separated;
- Adult child;
- Parent;
- An adult sibling.

A health care decision made by a surrogate is effective without court approval.

You may disqualify any other person from acting as your surrogate while you have capacity. **You can do this by executing a valid advance directive.**

A surrogate **may not** be an owner, operator, or employee of the health care facility where you are a patient unless related to you by blood, marriage or adoption.

How do I execute a valid advance directive?

An advance directive must be

- In writing,
- Signed by you,
- And witnessed in one of the two following manners:
 - signed by at least two individuals who are personally known by you. Both must have either watched you sign the document, or personally witnessed your acknowledgment that you signed it, **OR**
 - acknowledged before a notary public at a place in this state.

NOTE: The agent cannot also be a witness.

How can I change or revoke an advance directive?

Except in the case of mental illness, you may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider; you may revoke all or part of an advance directive in any manner that communicates the intent to revoke.

In the case of mental illness, you may revoke all or part of an advance directive if you do not lack capacity and are competent. The agent retains authority as long as the advance health care directive remains valid. For purposes of revocation, a determination that you lack capacity can only be made by:

- By a court in a guardianship proceeding; or
- By two physicians, one of whom is a psychiatrist; or
- By a physician and a professional mental health clinician; or
- By a court under Title 47 holding that you are gravely disabled.

In the case of divorce, annulment, separation, or dissolution of marriage the authority of a spouse who was named as agent is automatically revoked unless otherwise specified in the decree or the advance directive.

Who has to follow the Advance Directive?

- Any supervising health care provider who is aware of the existence of, or any changes to, an advance directive must promptly record it in your health care record.
- Health care providers, institutions, and facilities must comply with you instructions.

What if my instructions are against a provider's policies?

If a provider will not comply with your instructions because of conscience or the policies of the facility, the provider must advise you or your agent or surrogate immediately, provide continuing care, and assist with transfer arrangements to a facility that can comply with your wishes.

Are there any other circumstances where a provider does not have to do as I request?

Yes. A provider does not have to comply with your wishes if

- The request is for ineffective health care, or
- It is against generally accepted health care standards.

Is there anyway to stop the effect of an Advance Health Care Directive?

Yes. You, your agent, guardian, surrogate, or health care provider can petition the superior court to enjoin or direct a health care decision or order other relief. This might occur if someone wants to challenge your competency at the time of making the Directive.

RECOMMENDATIONS:

1. Your Directive will be easier to enforce if you can prove you were competent when you prepared and signed it. To prove you were competent:
 - Visit your mental health provider on the same day you prepare the Directive.
 - Have your provider make a note in your record that you are capable of making and communicating your health treatment decisions, including mental health treatment.
 - Obtain a copy of that record and keep it with your Directive.
 - When you give your Directive to your doctor, agent, and anyone else, make sure a copy of that medical record is attached.
2. Utilize the notary form of validation. You may also want to have it properly witnessed before having it notarized. If you do this, it will be easier to enforce in court in the event someone challenges your competency when you made it.
3. When preparing the form, ask for help in making it complete and clear. Your designated agent, family, friends, and other peer advocates may help you prepare the form. Your case worker or other mental health treatment provider may also have valuable input about how to make your wishes clear to other providers. Have someone else read it, and ask if they find it clear and understandable.
4. Make your preferences as specific as possible, and, if necessary, also include types of treatment not already on the form.

Examples:

- When listing drugs, list dosages and manufacturers.
- When listing preferred providers, include addresses and phone numbers.
- When listing preferred institutions, include addresses and phone numbers.
- List types of therapy you feel are most effective for you, including diet, exercise, cognitive behavior therapy, psychotherapy, group therapy, etc. State how often and by what provider, or what kind of provider (e.g., doctor, nurse, social worker, case manager, etc.).
- Distinguish between different treatments for different circumstances if that is important.

5. When you choose your agent, choose someone who:
 - Knows you well and for a long time;
 - Respects your values and preferences;
 - Can be contacted easily when needed;
 - Can communicate effectively with providers, and
 - Can explain your preferences and why they are important to you.
6. Give copies of your Directive to your primary physician and mental health providers, including doctors, therapists, caseworkers, agent, family members and friends.
7. Keep a card in your wallet stating that you have an Advance Health Care Directive. List the name and phone numbers of the doctors and others who have copies of these documents.
8. Keep a list of the names of all the people who have a copy of your Advance Health Care Directive. If you decide to revoke or change these documents you will know who should get copies of the revocation or changes made.

We have included a sample Advance Health Care Directive and a suggested format for the card you should keep with you indicating that you have an Advance Health Care Directive. Remember, you do not have to use this form, you can use parts of it and not others, or you can use all of it.

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care to the extent allowed by law. You also have the right to name someone else to make health care decisions for you to the extent allowed by law. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form complies with the requirements of AS 13.52.

Part 1 of this form is a durable power of attorney for health care. A "durable power of attorney for health care" means the designation of an agent to make health care decisions for you. Part 1 lets you name another individual as an agent to make health care decisions for you if you do not have the capacity to make your own decisions or if you want someone else to make those decisions for you now even though you still have the capacity to make those decisions. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you that you could legally make for yourself. This form has a place for you to limit the authority of your agent. You do not have to limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right, to the extent allowed by law, to

- (a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition, including the administration or discontinuation of psychotropic medication;
- (b) select or discharge health care providers and institutions;
- (c) approve or disapprove proposed diagnostic tests, surgical procedures, and programs of medication; and
- (d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care; and
- (e) make an anatomical gift following your death.

Part 2 of this form lets you give specific instructions for any aspect of your health care to the extent allowed by law, except you may not authorize mercy killing, assisted suicide, or euthanasia. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to make an anatomical gift following your death.

Part 4 of this form lets you make decisions in advance about certain types of mental health treatment.

Part 5 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as your agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time, except that you may not revoke this declaration when you are determined not to be

competent by a court, by two physicians, at least one of whom shall be a psychiatrist, or by both a physician and a professional mental health clinician. In this advance health care directive, "competent" means that you have the capacity

- (1) to assimilate relevant facts and to appreciate and understand your situation with regard to those facts; and
- (2) to participate in treatment decisions by means of a rational thought process.

PART 1: DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

(1) DESIGNATION OF AGENT. I designate the following individual as my agent to make health care decisions for me: _____
(name of individual you choose as agent)

(address, city, state, zip code)

(home phone, work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

(name of individual you choose as first alternate agent)

(address, city, state, zip code)

(home phone, work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent: _____
(name of individual you choose as second alternate agent)

(address, city, state, zip code)

(home phone, work phone)

(2) AGENT'S AUTHORITY. My agent is authorized and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

Under this authority, "best interest" means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

- (A) the effect of the treatment on your physical, emotional, and cognitive functions;
- (B) the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;
- (C) the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;
- (D) the effect of the treatment on your life expectancy;
- (E) your prognosis for recovery, with and without the treatment;
- (F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and
- (G) your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3) **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE.** Except in the case of mental illness, my agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box , my agent's authority to make health care decisions for me takes effect immediately.

(4) **AGENT'S OBLIGATION.** My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) **NOMINATION OF GUARDIAN.** If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2: INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of "do not resuscitate" orders by physicians and other health care providers. You may obtain a copy of the protocol from the Alaska Department of Health and Social Services. A "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to you.

(6) **END-OF-LIFE DECISIONS.** Except to the extent prohibited by law, I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

(Check A or B but not both.)

- (A) Choice To Prolong Life: I want my life to be prolonged as long as possible within the limits of generally accepted health care standards; OR

(B) Choice Not To Prolong Life: I want comfort care only and I do not want my life to be prolonged with medical treatment if, in the judgment of my physician, I have (check all choices that represent your wishes)

(i) a condition of permanent unconsciousness: a condition that, to a high degree of medical certainty, will last permanently without improvement; in which, to a high degree of medical certainty, thought, sensation, purposeful action, social interaction, and awareness of myself and the environment are absent; and for which, to a high degree of medical certainty, initiating or continuing life-sustaining procedures for me, in light of my medical outcome, will provide only minimal medical benefit for me; or

(ii) a terminal condition: an incurable or irreversible illness or injury that without the administration of life-sustaining procedures will result in my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit;

Additional instructions: _____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

I wish to receive artificial nutrition and hydration indefinitely;

I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

Other instructions: _____

(D) Relief from Pain.

I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort; or

I give these instructions: _____

(E) Should I become unconscious and I am pregnant, I direct that _____

(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that _____

Conditions or limitations: _____

(Add additional sheets if needed.)

PART 3: ANATOMICAL GIFT AT DEATH (OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

- (A) I give any needed organs, tissues, or other body parts, OR
 (B) I give the following organs, tissues, or other body parts only: _____

(C) My gift is for the following purposes (mark any of the following you want):

- (i) transplant;
 (ii) therapy;
 (iii) research;
 (iv) education.

(D) I refuse to make an anatomical gift.

PART 4: MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

I consent to the administration of the following medications: _____

 I do not consent to the administration of the following medications: _____

Conditions or limitations: _____

(10) ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

I consent to the administration of electroconvulsive treatment.

I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: _____

(11) ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

I consent to being admitted to a mental health facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations: _____

OTHER WISHES OR INSTRUCTIONS _____

Conditions or limitations: _____

PART 5: PRIMARY PHYSICIAN (OPTIONAL)

(12) I designate the following physician as my primary physician:

(name of physician)

(address, city, state, zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address, city, state, zip code)

(phone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

(Date)

(Sign your name)

(Print your name)

(address, city, state, zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death under your will or codicil; or

(B) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1:

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not

- (1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;
- (2) an employee of the health care provider providing health care to the principal;
- (3) an employee of the health care institution or health care facility where the principal is receiving health care;
- (4) the person appointed as agent by this document;
- (5) related to the principal by blood, marriage, or adoption; or
- (6) entitled to a portion of the principal's estate upon the principal's death under a will or codicil.

ACCEPTANCE OF APPOINTMENT AS AGENT

I accept this appointment and agree to serve as agent to make treatment decisions for health care and mental health care for the principal. I understand that I have a duty to act in a manner consistent with the desires of the principal as expressed in this appointment. I understand that if the principal has not indicated his/her wishes regarding a particular treatment, I must act in the principal's best interest, considering his/her religious and other personal values. I understand that this document gives me authority to make decisions about treatment only while the principal is incapable as determined by the document, unless the principal has directed otherwise. I understand that the principal may revoke this declaration in whole or in part at any time and in any manner when the principal is not incapable.

Printed name of agent designee

Signature of agent designee

Date

Address

City

State

Zip

Telephone number

and/or

E-mail address

ATTENTION EMERGENCY PERSONNEL

I have executed a Health Care Directive as provided for in AS 13.52.010. I provided for the following sections:

- Durable Power of Attorney
- Instructions for Health Care
- Anatomical Gift at Death
- Mental Health Treatment
- Primary Physician

Please contact the following persons for more information:

Doctor: _____

Phone: _____

Agent or other: _____

Phone: _____

Signature Date

ATTENTION EMERGENCY PERSONNEL

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- Durable Power of Attorney
- Instructions for Health Care
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Please contact the following persons for more information:

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Please contact the following persons for more information:

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- Instructions for Health Care
- Anatomical Gift at Death
- Mental Health Treatment
- Primary Physician

Please contact the following persons for more information:

Doctor: _____

Phone: _____

Agent or other: _____

Phone: _____

Signature Date

HOW TO MAKE A COMPLAINT ABOUT INPATIENT MENTAL HEALTH SERVICES

If you are receiving inpatient services and you think that your rights have been violated, there are several steps you can take to have your complaint investigated. If your native language is not English or if you are deaf, you have the right to request an interpreter throughout the complaint process. If you are not being provided with one, please contact Disability Law Center for further assistance.

Organizations and Procedures

There are a number of organizations and procedures inside and outside of the facility set up to protect your rights. They include:

- your treatment team;
- the facility's Patient's Rights and Officer/Representative;
- Adult Protective Services
- Disability Law Center of Alaska

The above-listed resources are described below with an explanation of the role each takes in resolving complaints. In cases other than abuse or neglect, we encourage you to make your complaint first to the facility. If you feel that you are not receiving a proper response to your complaint, you should contact Disability Law Center of Alaska.

Whenever you make a complaint, you should try to put your complaint in writing. Even if you made your complaint by telephone, it is a good idea to follow-up with a written complaint. Information that you put in your complaint should include:

- your name;
- where you are currently living;
- how to contact you, with address and telephone number;
- a clear statement of the concerns that you have;
- the specific date on which the incident you wish to complain about occurred and where it occurred;
- steps which you have taken to try to solve the problem;
- results of your efforts at trying to solve your problem;
- what you would like the person or agency to do to help you solve your problem;
- if you also made a complaint by telephone, the date you called and the name of the person you talked with.

A. Treatment Team

Your treatment team includes the psychiatrist, psychologist, caseworker, nurse, a representative from the direct care staff (aide), and other representatives as necessary. Your treatment team is responsible for developing, with your participation, your individual treatment plan. Your treatment team also must review your treatment plan periodically. You can talk to your treatment team about your complaint during review of your treatment plan, or at any other time that you feel the need to. If your treatment team is not able to help you, you should ask to talk to the unit director. If you do not feel that you received a proper response, you should contact the facility's Patient's Rights Officer.

B. Patient's Rights Officer/Representative

The Patient's Rights Officer is the staff member at each facility who is responsible for protecting the legal and human rights of clients receiving services from the facility. The duties of the Patient's Rights Officer may include:

- investigating all complaints made by you and providing the results of the investigation to you;
- providing a process for resolving complaints (for example, arranging a special staffing to discuss your complaint with the treatment team);
- problem-solving and providing individual advocacy services (for example, working with your social worker to make sure that she is applying for SSI benefits if you are eligible for such benefits); and
- representing you at facility committee meetings when necessary.

You may make a complaint with the Patient's Rights Officer, or someone may file it on your behalf. You may make it verbally or in writing, but we suggest you follow-up any verbal complaint with a written one. After a complaint is received, the Patient's Rights Officer will arrange a meeting to talk with you about your problem and will explain what they can do for you. The Patient's Rights Officer will discuss with you how the investigation will work.

After this meeting, the Patient's Rights Officer will begin an investigation of your complaint. If the complaint is a valid one, the Patient's Rights Officer may discuss it with the unit staff and work out a plan to correct the problem. You will be informed by the Patient's Rights Officer of any action taken to correct the problem. At some facilities, a formal grievance procedure may be in place, allowing an appeal of the Patient's Rights Officer's resolution.

C. Adult Protective Services

Adult Protective Services helps to prevent or stop harm from occurring to vulnerable adults. Alaska law requires that protective services not interfere with the elderly or disabled adults who are capable of caring for themselves. Vulnerable adults have a physical or mental impairment or condition that prevents them from protecting themselves or from seeking help from someone else. Alaska law defines vulnerable adults to include adults 18 years of age or older, not just the elderly.

The harm they suffer may result from abandonment, abuse, exploitation, neglect or self-neglect.

ABANDONMENT is the desertion of a vulnerable adult by a caregiver.

ABUSE is the intentional or reckless non-accidental, non-therapeutic infliction of pain, injury, or mental distress, or sexual assault.

EXPLOITATION is the unjust or improper use of another person or their resources for one's own benefit.

NEGLECT is the intentional failure of caregiver to provide essential services.

SELF-NEGLECT is the act or omission by a vulnerable adult that results, or could result, in the deprivation of essential services necessary to maintain minimal mental, emotional, or physical health and safety.

Examples of Adult Protective Services:

- Information and Referral
- Investigation of Reports

- Protective Placement
- Guardianship or Conservatorship Counseling
- Linking Clients to Community Resources
- Training and designation of local community resources to provide services

Adult Protective Services
 3601 C Street, Suite 310
 Anchorage, Alaska 99503
 (907) 269-3666
 (800) 478-9996 toll free in Alaska
www.hss.state.ak.us/dsds/aps.htm

D. Disability Law Center of Alaska

The Disability Law Center of Alaska is a private, non-profit organization mandated by the federal government to advocate for and protect the rights of individuals with mental illness and other disabilities. The Disability Law Center has the authority to investigate complaints of abuse, neglect, and discrimination against a person with mental illness, provided the problem is related to mental illness or other disability. We serve individuals and pursue systemic issues that may have an impact on the mental health community.

The Disability Law Center operates independently of any state agency that provides care or treatment. We have legal access to any facility in the State which provides care or treatment. The authority to investigate incidents of abuse and neglect extends to private residences and facilities as well as public facilities.

The Disability Law Center has an intake procedure to take your call or letter to see if we can help you. If possible, we will assist you immediately. All calls are discussed at length at a weekly intake meeting. If more action is needed, the issue is assigned to an advocate/attorney team.

The Disability Law Center, because of limited resources, has a policy not to duplicate services offered by other agencies or organizations. If your problem is one that falls outside of our area of expertise and authority, we will refer you to the proper party. We have a “no closed door” policy. This means that we do not want you left frustrated because of erroneous referrals. If you do not get the help you need, call us back. We will work with you until we find the proper party to help you.

You can contact Disability Law Center of Alaska between the hours of 8:00 a.m. - 4:30 p.m., Monday through Friday, by calling the regional office nearest you.

Anchorage Office:

3330 Arctic Blvd., Suite 103
 Anchorage, Alaska 99503
 (907) 565-1002
akpa@dlcak.org email
www.dlcak.org

Bethel Office:

PO Box 2303
 Bethel, Alaska 99559
 (907) 543-3357
 (888) 557-3357

Juneau Office:

230 South Franklin, Suite 206
 Juneau, Alaska 99801
 (907) 586-1627

Fairbanks Office:

1949 Gillam Way Suite H
 Fairbanks, Alaska 99701
 (907) 456-1070

Toll free in Alaska: 1 (800) 478-1234

Other Helpful Organizations

A. NAMI Alaska

NAMI Alaska is a 501(c)(3) nonprofit grassroots organization. Membership consists of people who experience a mental illness, families and friends of people with mental illness, and caring professionals throughout Alaska. Since 1985, NAMI has been working together to improve the lives of people with mental illness. Their mission is fourfold: As a *support* organization, they work to provide support and technical assistance to local Affiliates. They provide assistance to Affiliates with networking, information, and logistics so that they can provide direct support to Alaskan's in need in their own community. As an *advocacy* organization, they provide a statewide voice on mental health in Alaska through our grassroots membership. They also provide training to consumers and family members on becoming advocates. As an *education* organization, they provide training on mental health topics, serve as a statewide clearinghouse on mental health information, and coordinate a statewide public awareness and anti-discrimination campaign. As a *research* organization, they encourage and promote public and private research on issues of importance to people facing mental illness and their families

NAMI Alaska
144 W. 15th Avenue
Anchorage, Alaska 99501
907-277-1300
1-(800)-478-4462 Toll-free
www.nami-alaska.org

B. Alaska Mental Health Association

The Mental Health Association in Alaska (MHAA) is a Division of the National Mental Health Association and is dedicated to the promotion of good mental health, the prevention of mental illness and ongoing improvement in the care and treatment of the mentally ill through advocacy, education, referral, research, legislative input and the monitoring of existing programs.

MHAA received its Certificate of Incorporation as a public non-profit organization in September of 1964, although as an advocacy organization it had been in existence since 1953. Governed by a voluntary Board of Directors comprised of lay people, professionals and mental health consumers, MHAA is managed by a full time President/CEO and staffed with a Program Manager, Fundraising Manager and numerous volunteers.

Mental Health Association in Alaska
4045 Lake Otis Parkway, Suite 209
Anchorage, Alaska 99508

907-563-0880

www.alaska.net/~mhaa

C. Alaska Legal Services

Alaska Legal Services Corporation (ALSC) is a private, nonprofit law firm that provides free civil legal assistance to low-income Alaskans.

ALSC provides legal advice and representation to:

-Help resolve serious legal problems of low-income Alaskans

-Promote family, social and economic stability by upholding the rule of law

-Reduce the legal consequences of poverty

For more than 36 years, ALSC has responded to the civil legal needs of low-income Alaskans who would otherwise go without legal assistance. Our efforts improve the quality of life for our children, our families, the elderly and disadvantaged, and our community.

They typically handle cases involving:

- Family Law
 - Divorce
 - Custody/visitation
 - Child Support
 - Paternity
 - Adoptions
 - Guardianships
 - Conservatorships
 - Domestic Violence
- Housing
- Consumer Issues (Example: purchasing contracts, bank loans, etc.)
- Government Benefits
- Health Issues
- Wills and Probates
- Native Allotments
- Subsistence Issues
- Indian/Tribal Laws

Please note: ALSC does not handle criminal cases, accident claims, personal injury or wrongful death cases, or representation of prisoners.

Contact ALSC @ www.alsc-law.org or

Anchorage Law Office

1016 W. 6th Ave., Suite 200

Anchorage, Alaska 99501

(907) 272-9431

Toll-Free Outside Anchorage (888)-478-2572

Fairbanks Law Office

1648 Cushman, Suite 300

Fairbanks, Alaska 99701-6202

(907) 452-5181

Toll-Free Outside Fairbanks (800) 478-5401

Bethel Law Office

P.O. Box 248

Bethel, Alaska 99559-0248

(907) 543-2237

Toll-Free Outside Bethel (800) 478-2230

Juneau Law Office

419 6th Street, Suite 322

Juneau, Alaska 99801-1096

(907) 586-6425

Toll-Free Outside Juneau (800) 789-6426

Dillingham Law Office

P.O. Box 176

Dillingham, Alaska 99576-0176

(907) 842-1452

Toll-Free Outside Dillingham (888) 391-1475

Ketchikan Law Office

306 Main Street #218

Ketchikan, Alaska 99901-6483

(907) 225-6420

Nome Law Office

P.O. Box 1429

Nome, Alaska 99762-1429

(907) 443-2230

Toll-Free Outside Nome: (888) 495-6663

Kotzebue Law Office

P.O. Box 526

Kotzebue, Alaska 99752-0526

(907) 442-3500

Toll-Free Outside Kotzebue: (877) 622-9797

PRISONER'S RIGHTS

ALASKA DEPARTMENT OF CORRECTIONS PRISONER HEALTH PLAN

I. INTRODUCTION

The Alaska Department of Corrections is committed to providing medically necessary health care to all inmates in its custody, whether they are housed in a state facility or a privatized facility. The following health plan describes the scope of services available to inmates, including limitations and exclusions.

This plan is not a guarantee of any specific services for an individual inmate as health services are provided when “medically necessary.” The need for medical care is determined by a health care provider or in special circumstances by the Medical Director of the Department or other designated health personnel. Cost is not the determinate of whether or not a particular care is provided; rather, it must be demonstrated that it is necessary for the maintenance of basic health or the prevention of deterioration of health status. Health care coverage as described in this manual begins when an individual enters a facility and formally comes into the custody of the Alaska Department of Corrections (AK-DOC). Coverage and AK-DOC responsibility ends when the offender is paroled, discharged from the system, or transferred to the jurisdiction of another federal, state, or public authority. Pre-existing medical conditions (those that occur prior to incarceration) are generally not covered unless they cause deterioration in health status, including permanent loss of function or unmanageable pain.

Compact inmates (AK-DOC inmates housed long-term in facilities outside of Alaska by individual contract with other states) and those held in non-state facilities but who are still under the jurisdiction of the AK-DOC are covered by the Health Plan described here.

The Standards of care set forth by the Department, which are reflective of national and community standards, define the level of care available. Under no circumstances will individual inmates be permitted to pay for elective medical, dental or cosmetic procedures.

Questions regarding the content or interpretation of the content of this document should be directed to the Inmate Health Services Section of the Alaska Department of Corrections, Central Office, Anchorage.

II. SENTENCED AND UNSENTENCED STATUS

The same *quality* of care will be provided to sentenced and unsentenced inmates. As will be explained later in this manual, however, a number of factors are related to the level of health care delivered. Among these is the “estimated date of release.” This is important in a number of specific situations where the DOC makes a decision not to provide a specific service. The reason may be due to an inability to follow-up to completion on a particular intervention or treatment or the non-urgent nature of the request. Examples include non-essential dental, orthopedic, small hernia repairs and certain therapies that require an extensive evaluation prior to starting treatment such as Hepatitis C infection. In instances where delay of several months has no significant effect on functioning or long-term health and discharge is imminent or an inmate is unsentenced, care may not be approved. Regardless of status, however, it must be emphasized that **all essential and medically necessary care will be approved** and delivered in a timely manner. In certain instances on a case-by-case basis an

unsentenced inmate may be allowed access to community-based, selective medical services not provided by the DOC at the inmate's own expense.

III. MEDICAL CARE PRIORITY LEVELS

Medical care and treatment are prioritized into levels. The level of health care service provided by AK-DOC will be consistent with the standards for such services in the community. This means that appropriately credentialed personnel in a professional setting will conduct health care procedures in a clinically appropriate manner. The following guidelines will be used to determine whether treatment will or will not be provided by AK-DOC to ensure that sufficient health care resources are available to fulfill the department's policy of preserving and maintaining each inmate's health status during incarceration.

A. LEVELS OF THERAPEUTIC CARE

Level 1: Medically Mandatory

Medically mandatory care is routinely authorized and provided to all inmates by AKDOC. Any licensed health service staff may give authorization. Medically mandatory care is frequently urgent or emergency care and as such is best initiated by medical services staff at the time of intervention. Less urgent care in this category will receive expedited review and approval as medical necessity dictates.

Definition: Care that is essential to life and health, without which rapid deterioration may be an expected outcome and in which medical surgical intervention makes a significant difference.

Examples include, but are not limited to:

- Acute problems, potentially fatal, where treatment prevents death and allows full recovery, such as appendectomy for appendicitis or repair of deep open wound in neck.
- Acute problems, potentially fatal, where treatment prevents death, but does not necessarily allow for full recovery, such as burn treatment and treatment of severe head injuries.
- Maternity Care, such as onset of labor and delivery, as well as treatment for obstetrical emergencies.

Authorization:

Any AK-DOC practitioner may authorize care and treatment. In an emergency situation, nursing staff may authorize care and treatment.

Level 2: Presently Medically Necessary

Presently medically necessary treatment may be provided to AK-DOC inmates subject to periodic utilization review by the Medical Director. Care may be authorized by any AK-DOC Health Services prescribing practitioner.

Definition: Care without which the inmate's well-being could not be maintained without significant risk of either further serious deterioration of the condition or without significant pain or discomfort.

Examples include, but are not limited to:

- Chronic, usually fatal conditions where treatment improves life span and quality of life, such as

medical management of insulin dependent diabetes mellitus, surgical treatment for treatable cancer of the uterus, and medical management of disease processes equivalent to asthma and hypertension.

- Immunizations.
- Comfort care such as pain management and hospice-type care for the end stages of diseases such as cancer and AIDS.
- Proven effective preventative care for adults, such as preventative dental care, mammograms, and pap smears.
- Acute but non-fatal conditions where treatment causes a return to previous state of health, such as fillings for dental cavities and medical treatment of various infectious disorders.
- Acute non-fatal conditions where treatment allows the best approximation of return to previous health, such as reduction of dislocated elbow and repair of corneal laceration. Such treatments must have demonstrated “medical efficacy reflecting a high degree of likelihood of a successful outcome.

Authorization

Any AK-DOC Health Services practitioner may request care and treatment. The decisions of practitioners are subject to review and approval by the Medical Director or designee.

Level 3: Medically Acceptable *but not* Medically Necessary

Provision of this level of service will be decided on a case-by-case basis.

Definition: Care for non-fatal conditions where treatment *may* improve quality of life for the patient.

Examples include, but are not limited to:

- Routine hernia repair
- Treatment of non-cancerous skin lesions
- Corneal transplant for cataract
- Hip replacement

Authorization:

Off-site procedures and therapies for chronic diseases from Level 3 when deemed appropriate for treatment by the institutional Health Practitioner will be referred to the Medical Director for clinical review and approval.

Level 4: Limited Medical Value

Treatment of limited medical value will not be provided to inmates by AK-DOC.

Definition: Care that is valuable to certain individuals, but significantly unlikely to be cost-effective or to produce substantial long-term gain. This includes treatment of minor conditions where treatment merely speeds recovery, gives little improvement in quality of life, offers minimal reduction of symptoms, or is exclusively for the convenience of the individual.

Examples include, but are not limited to:

- Tattoo removal
- Elective circumcision

- Minor nasal reconstruction (e.g. correction of a deviated septum).

Authorization:

Care and treatment will not be authorized by AK-DOC.

B. Exceptions

There will be occasions when the level of care of a certain disorder will be unclear or when it is not appropriate to apply the levels of care to an individual patient. There may be occasion when it may not seem appropriate to provide care for a Level 2 diagnosis, or it may seem appropriate to provide care for a Level 4 case. Any individual case or proposed therapy can be reviewed for appropriateness, second opinion, approval or denial of coverage, etc., by submitting a request to the Medical Director for clinical review.

IV. INMATE HEALTH CARE RIGHTS & RESPONSIBILITIES

All inmates incarcerated by the Alaska Department of Corrections have certain rights and responsibilities. Inmates who understand these can contribute to the effectiveness of treatment and to the quality of patient care. The following is a list of Inmate Health Care Rights and Responsibilities that reflect the Department’s concern and commitment to the inmate as a patient and a human being.

Inmate Health Care Rights

- The inmate has the **right** to be able to access easy-to-understand information about the Inmate Health Plan.
- The inmate has the **right** to access considerate care that respects the individual’s dignity, values, and beliefs regardless of race, creed, sex, or national origin.
- The inmate has the **right** to have his medical condition explained in understandable terms concerning diagnosis, treatment, prognosis, and plans for follow-up care.
- The inmate has the **right** to know the name and professional status of all individuals providing patient services.
- The inmate has the **right** to have an advance directive, such as a living will, and participate in ethical issues such as withholding resuscitation and forgoing or withdrawing life-sustaining treatment.
- The inmate has the **right** to informed participation in decisions regarding care based on information about the diagnosis, treatment and prognosis if known including the **right** to refuse treatment under ordinary circumstances.
- The inmate has the **right** to know the proposed treatment plan. This includes general information; for example, a plan to hospitalize and repair a hernia. The specific details such as the hospital, date and time of the procedure will not be disclosed to the inmate.
- The inmate has the **right** to have information released to community medical professionals on discharge from the AK-DOC.
- The inmate has the **right** to information on how to file a complaint or grievance.

Inmate Health Care Responsibilities

- The inmate has the **responsibility** to provide, to the best of his/her knowledge, accurate and complete information about present complaints, past illnesses, hospitalizations, medications and other matters relating to his/her health.
- The inmate has the **responsibility** to bring to the attention of medical staff specific concerns and or

medically-related problems.

- The inmate, to the maximum extent possible, has the **responsibility** to act with consideration and respect.
- The inmate, to the maximum extent possible, has the **responsibility** to report unexpected changes in the inmate's condition to the responsible health professional.
- The inmate, to the maximum extent possible, is **responsible** for making it known whether he/she clearly understands a recommended course of action and what is expected of him/her. Furthermore, the inmate is responsible for asking questions about any information that the inmate does not understand.
- The inmate, to the maximum extent possible, is **responsible** for following the treatment plan recommended by the health care provider responsible for the inmate's care. This includes following the instructions of Nurses and allied health personnel.
- The inmate, to the maximum extent possible, is **responsible** for keeping appointments and, when the inmate is unable to do so for any reason, notifying medical.
- The inmate, to the maximum extent possible, is **responsible** for what happens if the inmate refuses treatment or does not follow the providers' instructions and must accept the consequences of not following the recommended treatment plan.
- The inmate, to the maximum extent possible, is **responsible** for following the AKDOC rules and regulations affecting patient care and conduct.

V. CO-PAYMENT FOR MEDICAL & DENTAL SERVICES

All medically necessary care, as determined by a licensed health care provider, is available to all inmates in the custody of the Alaska Department of Corrections (AKDOC). The Medical, Mental Health and Oral Health Care Standards of Care as set forth by Inmate Health Services define the level of services and care available. For each new medical, dental or mental health encounter a charge of \$4.00 will be billed to the inmate. Follow-up appointments for the same problem will not be charged.

No charge will be assessed for testings for pregnancy, HIV, AIDS, tuberculosis, sexually transmitted diseases, or other communicable diseases. Also, no charge will be assessed for injuries sustained from work performed for the Department or from an assault or violation of facility rules or state law by another prisoner. No charge will be assessed for services initiated by health care providers or for services for communicable diseases or pregnancy.

Inmates will be billed \$4.00 for any number of initial prescriptions ordered at the same time. Prescriptions will be valid for up to 90 days. \$4.00 will also be billed for any number of changes to or renewals of prescriptions ordered at the same time. The use of medical equipment available in a facility, such as crutches or Neoprene braces, will result in a charge of \$4.00 per use. The use of medical equipment not available in the facility will result in a charge of \$20.00. Health care services provided for injuries incurred in sports activities will result in a charge of \$4.00 if the activity was recommended against by a health care provider. An inmate's inability to pay will not be used to restrict his access to health care services or necessary procedures or prescriptions. An inmate who is unable to pay will be billed and his account will be accessed when funds become available. The Department may seek to have medical expenses provided or paid for by third-party coverage. An inmate may challenge a charge by submitting a written appeal to the health care officer in the facility within three working days of receiving notice of the charge.

Per AK-DOC policy, individual inmates are not permitted to pay for "elective" medical, dental or cosmetic procedures. "Elective" procedures are those that are not considered necessary for the maintenance of basic medical and oral health.

This policy is based upon several premises:

- All medically necessary medical and dental care shall be provided to all inmates.
- Only necessary care is recognized as a “basic right” in the system.
- Allowing the purchase of additional care would create a “two-tier” system for health care, which would conflict with Department policy.
- The AK-DOC minimizes off-site care to minimize the security risk presented by inmates in its custody.
- The AK-DOC has neither the mechanism nor the administrative support to oversee a billing and payment system involving non-medically necessary care and procedures.

VI. MENTAL HEALTH & PSYCHIATRIC SERVICES

Mental health and psychiatric services will be available at any time during incarceration. Department medical staff or health care practitioners may make referrals. Upon admission to the correctional system, each inmate will receive an initial mental health screening to determine the presence of any mental health condition. Placement at a facility may depend on the inmate’s need for further evaluation or treatment, the severity of the illness, and the level of care required.

Mental health care may include group or individual counseling, psychiatric consultation, prescribing of psychotropic medications, individualized behavioral therapy, and case management and support services (i.e., jobs housing and discharge planning). These services may be provided in general population or within the Department’s acute and sub-acute mental health units.

VII. SPECIAL NEEDS

Special needs services are available for inmates with disabilities, severe chronic health problems, and for elderly inmates. These services may include oxygen therapy, wheelchairs, walkers and other devices.



1-800-478-1234

ANCHORAGE OFFICE:

3330 Arctic Blvd., Suite 103; Anchorage, Alaska 99503
(907) 565-1002 phone • (907) 565-1000 fax

FAIRBANKS OFFICE:

1949 Gillam Way, Suite H; Fairbanks, Alaska 99701
(907) 456-1070 phone • (907) 456-1080 fax

JUNEAU OFFICE:

230 South Franklin, #206; Juneau, Alaska 99801
(907) 586-1627 phone • (907) 586-1066 fax

BETHEL OFFICE:

PO Box 2303; Bethel, Alaska 99559
(907) 543-3357 phone • (907) 543-3359 fax

ALL NUMBERS ARE BOTH VOICE & TDD
www.dlcak.org • e-mail: akpa@dlcak.org