

## **Public Report**

### **Ombudsman Investigation**

#### **Department of Corrections, Health and Rehabilitation Services**

#### **Complaint Number 2019-07-0115**

**February 24, 2021**

Alaska State Ombudsman J. Kate Burkhart provides this public report of the investigation of complaint 2019-07-0115 pursuant to AS 24.55.200. This report has been redacted to remove information made confidential by law and to protect individual privacy rights. Ombudsman investigations are confidential according to law, although the Ombudsman is permitted to disclose information that is necessary to carry out her statutory duties and to support recommendations (AS 24.55.160(b)).

### **Complaint Summary**

In July 2019, the Ombudsman received a complaint from an inmate at Lemon Creek Correctional Center (LCCC) about the Department of Corrections (DOC). The complainant reported that DOC was not providing him with adequate and timely dental treatment for an abscessed tooth that had been causing him discomfort and severe pain for several weeks.

The complainant explained that the tooth had an unfinished root canal and was abscessed. He told the Ombudsman that the tooth nerve was “exposed and extremely painful,” and although DOC medical providers had recently prescribed him medication, two large lumps had formed under the tooth near his jawline. The complainant said DOC medical staff had told him that his dental condition was not an emergency, but that he had been placed at the “top of the list” to be seen by a dental provider the next time a dentist was at the facility. However, it had been nearly eight weeks since a dentist last visited LCCC, and it was unknown when the next dental visit would occur. The complainant feared, if the tooth was not extracted soon, the infection could potentially spread and become life threatening. When asked by the Ombudsman what he wanted from DOC, the complainant stated, “Get my tooth extracted.”

## Investigation Summary

The Ombudsman investigated the allegation that DOC unreasonably delayed in providing necessary dental treatment to the complainant. Assistant Ombudsman Charlsie Huhndorf-Arend investigated this complaint and provided notice of investigation to DOC in July 2019 in accordance with AS 24.55.140. During the course of the investigation, the ombudsman investigator reviewed documents provided by the complainant, the complainant's DOC medical records, and governing statutes, regulations, and policy. The ombudsman investigator also interviewed the complainant and DOC staff.

At the conclusion of the investigation, the Ombudsman forwarded the confidential preliminary investigative report to DOC in July 2020, pursuant to AS 24.55.180. The Ombudsman hosted a consultation with DOC leadership to discuss the Ombudsman's preliminary finding and proposed recommendations, as required by AS. 24.55.180, in September 2020. DOC Health Care Administrator Laura Brooks and DOC Chief Medical Officer Dr. Robert Lawrence attended this meeting. Both concurred with the Ombudsman's preliminary finding and fully accepted the proposed recommendations. Information and feedback provided by DOC during this consultation was considered by the Ombudsman, who developed additional recommendations in collaboration with, and accepted by, DOC. The Ombudsman forwarded the confidential final investigative report to DOC in January 2021.

The Ombudsman found the allegation justified based upon a preponderance of the evidence. Evidence reviewed during the investigation showed that DOC did not meet its obligation to provide the complainant with timely access to necessary dental health care services and failed to meet the service delivery standards established in departmental policies for the treatment of painful and emergent dental conditions. On a broader scale, this investigation indicated that there are systemic deficiencies in DOC's Dental Services Program preventing the Department from providing dental health care services across all facilities adequate to meet the level of need that exists among the prison population.

In the end, the Ombudsman concluded that the delays by DOC in providing necessary dental treatment to the complainant were not deliberate or in bad faith. Rather, these delays were the result of a shortage of DOC dentists and program resources.

Providing dental health care services in the prison environment presents numerous challenges, including the high level of need for dental care among inmates, increased demand due to prison population growth and aging, shortages in dental staff, difficulties in recruiting new dental staff and contract dentists, the rising costs of providing dental care to inmates, and budgetary constraints. Even so, DOC has a duty to provide timely access to necessary dental health care services and meet the service delivery standards established in policy. Inmates do not have the ability to seek treatment elsewhere. They are wholly reliant on DOC to meet their dental care needs. The complainant and all inmates have a right to necessary dental health care services that are timely and prevent needless suffering.

## Allegation Investigated

The Ombudsman investigated the following allegation:

**Unreasonable:**<sup>1</sup> The Department of Corrections unreasonably delayed in providing necessary dental treatment to the complainant.

## Relevant Statutory, Regulatory, Policy Authority

The Ombudsman reviewed the following Alaska laws and departmental policies and procedures that establish and define DOC's duty to provide health care services to inmates.

**AS 33.30.011, Duties of Commissioner**, states, "The commissioner shall provide necessary medical services for prisoners in correctional facilities. . ."<sup>2</sup>

**22 AAC 05.120., Health Services**, states, "The commissioner will establish procedures for the provision of adequate medical services to all prisoners."<sup>3</sup>

**22 AAC 05.121., Prisoner Responsibility for Health Care Services**, states in part:

(a) A prisoner will be provided medically necessary health care services regardless of the prisoner's ability to pay or arrange for payment or coverage for the services. Medically necessary health care services include medical, psychological, and

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<sup>1</sup> In an ombudsman investigation, "unreasonable" means that the agency adopted and followed a procedure in managing a program that is inconsistent with, or fails to achieve, the purposes of the program; adopted and followed a procedure that defeats the complainant's valid application for a right or program benefit; or placed the complainant at a disadvantage relative to all others through actions inconsistent with agency policy.

<sup>2</sup> AS 33.30.011(1)(4)(A).

<sup>3</sup> 22 AAC 05.120(a).

psychiatric care that is necessary to enable a prisoner to participate in or benefit from rehabilitative services made available by the department.

...

(j) In this section,

...

(8) “health care services” means medical, psychological, and psychiatric care, including medical equipment, provided under AS 33 by a health care provider; “health care services” do not include sex offender or substance abuse treatment provided by the department;

...

(10) “medical care” includes any evaluation, treatment, medication, medical equipment, or consultation given by a health care provider, related to any physical, mental, dental, auditory, or optometric condition; “medical care” does not include psychological and psychiatric care given by a health care provider;<sup>4</sup>

...

**DOC Policy 807.01**, Health Care Organization and Administration, states in relevant part:

II. Services for Prisoners:

A. All prisoners shall be provided essential health care in a timely manner by qualified practitioners and/or allied health care personnel in accordance with Department policies and DOC Policy 807.02. . .<sup>5</sup>

**DOC Policy 807.02**, Access to Health Care Services, states in relevant part:

VI. Policy

A. The Department shall ensure that sentenced and unsentenced prisoners have access to medical, dental, and mental health services comparable in quality to those available to the general public.

...

C. The Department shall use the most cost-effective health care treatment to meet the prisoner’s needs for essential and special health care services. The Department shall ensure that essential health care services are available from other sources if the services are not available within the institutions.

<sup>4</sup> 22 AAC 05.121(a), (j)(8), and (j)(10).

<sup>5</sup> DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.01 (2016).

...

## VII. Procedures

...

### B. Essential Health Care Services

#### 1. Essential Health Care

A prisoner has the right to receive essential health care services. Essential health care services include dental, psychological, psychiatric, or medical services when a health care provider, with reasonable medical certainty and exercising ordinary skill and care at the time of observation, concludes that:

- a. The prisoner's symptoms indicate a serious disease or injury;
- b. Treatment could cure or substantially alleviate the disease or injury, and
- c. The potential for harm if treatment is delayed or denied could be substantial; or
- d. Services are needed to alleviate significant pain and suffering, including procedures necessary to aid in increasing the level of functioning throughout the prisoner's sentence, such as prosthetic devices; and health care needed to enable a prisoner to participate in or benefit from rehabilitative services. . . <sup>6</sup>

**DOC Policy 807.12**, Dental Scope of Services, states in relevant part:

#### POLICY:

I. It is the policy of the Department of Corrections (DOC) to provide medically necessary dental care, including dental screenings and dental examinations. Prisoners may seek evaluation by a dental provider and shall receive services under the direction of a licensed dentist.

...

III. It is the policy of the Department that to the degree that resources allow, care shall be timely and every effort shall be made to provide immediate services for emergent or painful conditions.

...

VII. The scheduling of prisoners for dental treatment shall be determined by the attending dentist in coordination with the institution's security staff. Prioritization of appointments shall be made by the attending dentist based on the Dental Classification System defined in Procedures section III below.

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<sup>6</sup> DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.02 (2009).

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#### PROCEDURES:

I. Dental services shall be made available to prisoners in jails and prisons.

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#### III. Dental Classification System for Prioritization of Dental Services:

At the initial dental review, each prisoner shall be classified into one of three (3) treatment categories. Establishing priorities for dental care is not a replacement for professional dental judgment but is intended as a guide for providing dental care.

The decision as to the category shall be made by the attending dentist and may be impacted by the length remaining on a prisoner's sentence.

##### A. Category One (1):

This category includes treatment that is emergent, requires immediate attention. This may include:

1. Acute infection;
2. Severe swelling due to dental disease;
3. Teeth obviously requiring extraction;
4. Suspected neoplasm;
5. Trauma;
6. Tooth mobility requiring extraction; and
7. Other severe dental conditions or complications from dental treatment.

##### B. Category Two (2):

This category includes treatment that is urgent, requires early treatment. This may include:

1. Decay with extensive penetration into the dentin or near the pulp of a tooth;
2. Heavy calculus causing pathology;
3. Chronic infection; and
4. Palliative or root canal therapy.

##### C. Category Three (3):

This category includes treatment that is routine, treatment as available. This may include:

1. Incipient decay;
2. Third molar extractions secondary to chronic pain;

3. Oral prophylaxis and the prisoner is adherent to home care and oral-hygiene recommendations; and
4. Removable Appliances/Dentures.<sup>7</sup>

**DOC Policy 807.12** defines “Dental Emergencies” as “An urgent dental problem such as: oral-facial trauma; severe infection; swelling; and/or hemorrhaging;” it defines “Medically Necessary Services” as “Dental work required to provide for the maintenance of nutrition, treatment of a condition causing dental pain and/or the resolution of infection.”<sup>8</sup>

## Analysis and Finding

*Allegation: Unreasonable: The Department of Corrections unreasonably delayed in providing necessary dental treatment to the complainant.*

The Ombudsman evaluates complaints objectively and bases her findings upon the preponderance of evidence. This means the evidence must show that it is more likely than not that the agency made a mistake before we can make a critical finding or recommendation to the agency. If the preponderance of the evidence shows that the administrative act (or failure to act) took place and the complainant’s criticism of it is valid, the allegation is found *justified*.

AS 33.30.011(a)(4) and regulations promulgated pursuant to AS 33.30.011 require that DOC provide inmates with “necessary” health care services, including dental health care services. DOC policies outline the Department’s responsibilities in providing health care services to inmates and establish standards for the delivery of these services. DOC policy states the Department is responsible for ensuring “quality, accessible, and timely health care services for prisoners” and shall provide “essential health care in a timely manner”<sup>9</sup> that is comparable in quality to health care services that are available to the general public.<sup>10</sup>

DOC Policy further requires that “the Department shall ensure that essential health care services are available from other sources if the services are not available within the institutions.”<sup>11</sup> DOC

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<sup>7</sup> DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.12 (2018).

<sup>8</sup> *Id.*

<sup>9</sup> DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.01 (2016).

<sup>10</sup> DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.02 (2009).

<sup>11</sup> *Id.*

recognizes a prisoner has the right to receive essential health care services, including dental health care services, when a health care provider concludes that:

- a. The prisoner’s symptoms indicate a serious disease or injury;
- b. Treatment could cure or substantially alleviate the disease or injury, and
- c. The potential for harm if treatment is delayed or denied could be substantial; or
- d. Services are needed to alleviate significant pain and suffering, ...<sup>12</sup>

DOC Policy 807.12 requires “that to the degree that resources allow, care shall be timely and every effort shall be made to provide immediate services for emergent or painful conditions.”<sup>13</sup> “Dental Emergencies” are defined as an “urgent dental problem such as: oral-facial trauma; severe infection; swelling; and/or hemorrhaging.”<sup>14</sup> “Medically Necessary Services” are defined as “dental work required to provide the maintenance of nutrition, treatment of a condition causing pain and/or the resolution of infection.”<sup>15</sup>

DOC provides dental health care services to inmates on a priority basis according to the observed level of need and severity. Dental treatment needs are classified into three levels: Category 1 for emergency treatment; Category 2 for urgent treatment; and Category 3 for routine treatment.<sup>16</sup> DOC uses this triage structure as a guide in providing dental treatment, with deference given to the treating dentist’s professional judgment and decision making.<sup>17</sup>

Category 1 dental treatment for conditions and/or symptoms requiring emergency and immediate care includes:

- Acute infection;
- Severe swelling due to dental disease;
- Teeth obviously requiring extraction;
- Suspected neoplasm;
- Trauma;
- Tooth mobility requiring extraction; and
- Other severe dental conditions or complications from dental treatment.<sup>18</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.12.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> *Id.*

Category 2 dental treatment for conditions and/or symptoms requiring urgent care and early intervention includes:

- Decay with extensive penetration into the dentin or near the pulp of a tooth;
- Heavy calculus causing pathology;
- Chronic infection; and
- Palliative or root canal therapy.<sup>19</sup>

Category 3 is routine dental treatment provided as resources allow, including incipient decay, wisdom teeth extractions secondary to pain, dental exams and cleanings, and dentures.<sup>20</sup>

The American Dental Association (ADA) defines an “abscess” as an “acute or chronic localized inflammation, probably with a collection of pus, associated with tissue destruction and, frequently, swelling; usually secondary to infection.”<sup>21</sup> The ADA describes an “abscessed tooth” as follows:

An abscessed tooth is an infection caused by tooth decay, periodontal disease, or a cracked tooth. These problems can let bacteria enter the pulp (the soft tissue of a tooth that contains nerves, blood vessels and connective tissue) and can lead to pulp death. When pus builds up at the root tip in the jawbone, it forms a pus-pocket called an abscess. If the abscess is not treated, it can lead to a serious infection in the jawbone, teeth, and surrounding tissues.<sup>22</sup>

Symptoms of an abscess can include pain, swelling, redness in the gums, bad taste in the mouth, and fever.<sup>23</sup>

The evidence showed that the complainant first requested dental treatment on July 3, 2019. Over the next four weeks, he submitted multiple requests to DOC Medical for dental treatment and reported he was experiencing “extreme” tooth pain, facial pain and swelling, pus sacks in his mouth, headaches, and difficulty in eating, swallowing, and sleeping. The complainant’s description of his symptoms was corroborated by the medical provider who examined him on July

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> AMERICAN DENTAL ASSOCIATION, *Glossary of Dental Clinical and Administrative Terms* (2019), <https://www.ada.org/en/publications/cdt/glossary-of-dental-clinical-and-administrative-ter#a> (last visited October 17, 2019).

<sup>22</sup> AMERICAN DENTAL ASSOCIATION, *MouthHealthy’s A-Z* (2019), <https://www.mouthhealthy.org/en/az-topics/a/abscess> (last visited October 1, 2019).

<sup>23</sup> *See id.*

10, 2019. That medical provider noted that the complainant was in acute distress, with an abnormally high heart rate and notably high blood pressure.

In a Request for Information Form dated July 14, 2019, the complainant requested emergency dental treatment due to the severity of his discomfort and pain. DOC delayed four days before responding to his emergency request for dental care. The complainant was seen on July 18, 2019, by a nurse who took his vital signs, noting that they were normal and that he was on the dental waiting list. The medical records for the July 18, 2019, examination do not include evidence that the nurse inspected or examined the complainant's mouth. Six days later, on July 24, 2019, another medical provider documented that the complainant presented with soft tissue swelling in the face and at the base of the tooth, two pustules in his mouth, and "no palpable abscess to drain."

Medical staff repeatedly responded to his multiple requests for dental care by stating that he was on the waiting list to be seen by a dentist. During this time, the complainant was never seen by a DOC dentist, although DOC dentists visited LCCC on two occasions – on July 26 and August 21-23 – to provide on-site services to patients. Instead, DOC referred the complainant to an outside dentist. The complainant finally had his tooth extracted by the outside dentist on August 30, 2019, two months after the onset of his dental condition.

#### *Availability of Emergency Dental Services at Juneau Bartlett Hospital for LCCC Inmates*

During the course of this investigation, Health Care Administrator Brooks advised the ombudsman investigator that DOC medical providers and nurses were well-versed in dental issues, and if the medical staff at LCCC deemed that a patient needed emergency dental care, they could send the patient to the local hospital emergency room for treatment. However, the complainant told the ombudsman investigator that LCCC medical staff had repeatedly told him that the local hospital, Bartlett Regional Hospital, did not treat dental emergencies in their emergency room.

The ombudsman investigator called Bartlett Regional Hospital on September 13, 2019, and spoke with the Emergency Services (ES) Director and Compliance Director about whether the hospital emergency department provides emergency dental services. The ES Director said that, while Bartlett Regional Hospital will see any patient who walks in its doors, the hospital does not provide dental services. When a patient presents with a dental complaint, the hospital provides limited services to control pain and treat infection by administering pain medication and antibiotics. A

hospital emergency room medical provider may, on occasion, administer an oral nerve block by injection for pain management if needed, but the hospital does not do extractions, root canals, fillings, dental x-rays, or other dental procedures. The ES Director explained that the hospital refers patients to a dentist in the community who provides emergency dental services.<sup>24</sup>

### *Availability of Comparable Dental Services in the Community*

DOC policy states the Department must ensure that prisoners have access to medical, dental, and mental health care services that are comparable in quality to those available to the general public.<sup>25</sup> When health care services are not available within the institutions, DOC must arrange for essential health care services from other sources.<sup>26</sup> To determine the level of comparable dental services available in the community, the ombudsman investigator contacted dental health care providers in both Juneau and Anchorage.

The ombudsman investigator contacted the Southeast Regional Health Consortium (SEARHC) Dental Clinic on October 28, 2019, to establish a baseline of care available in the Juneau community for individuals complaining of an abscessed tooth needing extraction and symptoms similar to what the complainant had experienced. The ombudsman investigator spoke with a Dental Scheduler about service delivery timeframes at SEARHC. Specially, the ombudsman investigator asked if a patient called SEARHC and explained they had an unfinished root canal, pustules in their mouth, were currently receiving antibiotics to treat an oral infection, and believed they needed an extraction, would SEARHC schedule a dental appointment for the patient, and approximately how soon would it be before the patient could be seen by a dental provider under these circumstances. The Dental Scheduler said that SEARHC has a walk-in clinic and that a patient who presented with these complaints and symptoms would be seen right away by a dental provider. The Dental Scheduler noted that, in the event a dentist was not immediately available, SEARHC would work the patient into the schedule to see a dentist with an extraction occurring as soon as that day.

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<sup>24</sup> The ES Director noted that she was aware of only one dentist in Juneau who was currently providing emergency dental services.

<sup>25</sup> See DEPARTMENT OF CORRECTIONS, POLICIES AND PROCEDURES §807.02 (2009).

<sup>26</sup> *Id.*

The ombudsman investigator also contacted the Anchorage Neighborhood Health Center (ANHC) Dental Clinic on October 28, 2019, to establish a baseline of care available in the Anchorage community for individuals complaining of an abscessed tooth needing extraction and symptoms similar to what the complainant had experienced. The ombudsman investigator spoke with a Dental Scheduler about service delivery timeframes at ANHC. Again, the ombudsman investigator specifically asked if a patient called ANHC and explained they had an unfinished root canal, pustules in their mouth, were currently receiving antibiotics to treat an oral infection, and believed they needed an extraction, would ANHC schedule a dental appointment for the patient, and approximately how soon would it be before the patient could be seen by a dental provider under these circumstances. The Dental Scheduler said that a patient who presented with these complaints and symptoms would be seen that same day by a dental provider for treatment. However, if an extraction was indeed necessary, the first available appointment at that time for that procedure would be approximately three days out, unless the dental clinic had cancellations in the interim and a dentist was able to perform the extraction sooner.

While ANHC does not have a walk-in clinic, they do keep time slots open on their daily schedule for emergency cases. So, an ANHC dentist would likely be able to see the patient that same day, but they may not be able to do the extraction for another three days.

For members of the general public, emergency and urgent dental care needs can usually be readily met within a few days. The eight-week waiting period experienced by the complainant does not comport with the delivery of services available to members of the general public in Juneau and Anchorage.

#### *DOC Dental Services Program Staffing*

DOC operates 13 prisons statewide, organized into three service regions. On October 26, 2020, DOC had a total prison population count across all facilities of 4,324.<sup>27</sup> The inmate to dentist ratio on this date was 4,324:6.

DOC Health Administrator Brooks described the Dental Services Program to the ombudsman investigator. Each facility has a fully functioning dental clinic to provide dental services on

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<sup>27</sup> DOC ACOMS Counts by Institution Report (October 26, 2020).

location. However, the DOC Dental Services Program is staffed by only two DOC-employed dentists who are full-time equivalent (FTE) employees. They provide dental services within Regions I and II. One dentist is based in the Anchorage area and provides full-time coverage at the Anchorage Correctional Complex, Wildwood Correctional Complex, and Spring Creek Correctional Center, and part-time coverage at the Hiland Mountain Correctional Center. The other dentist is based in the Matanuska-Susitna Valley area and provides full-time coverage at the Goose Creek Correctional Center and part-time coverage at the Hiland Mountain Correctional Center.

There are also two DOC-employed FTE dental hygienists who are partnered and work with each dentist. DOC also has two contract dental assistants who are partnered and work with each dentist. DOC does not directly employ any dental assistants.

The two FTE dentists, two FTE dental hygienist, and two contract dental assistant positions are all fully funded positions in the DOC budget. DOC groups these professionals into “dental teams” that each consist of a dentist, a dental hygienist, and a dental assistant.

All of the other DOC facilities, in Regions II and III, rely on four (4) contract dentists. Under the terms of their contracts, each contract dentist is responsible for providing their own dental assistant. The costs of the contracts for these dentists are also all fully funded in the DOC budget. Of note, when a facility that contracts with a dentist experiences a position vacancy (i.e. the contract is not filled), DOC relies on its Anchorage-based dental team to travel to that facility on a regular basis and provide coverage in the absence of a contract dentist.

As of October 2020, all of the DOC contract dentist positions were filled with the exception of LCCC, which has been vacant since June 2019. The Anchorage-based dental team provides coverage at LCCC and typically travels to the facility on a monthly basis to provide dental services.

### *DOC Dental Wait Times*

At the request of the ombudsman investigator, Health Care Administrator Brooks provided the estimated waiting times for dental health care services across all facilities for the three treatment categories as of October, 2019 (Table 1). She clarified that nearly the only dental service provided under Category 3 is dentures because of the “perpetually full waitlists” for Category 1 and Category 2 patients.

**Table 1: Waiting times for dental health care services across facilities based on treatment category**

Level of Care	Estimated Waiting Times
Category 1 (Emergency Care)	Immediate to 2 Weeks
Category 2 (Urgent Care)	2 Weeks to 6 Months
Category 3 (Routine Care)	Years

Source: Laura Brooks, Health Care Administrator (October 7, 2019).

The estimated waiting time for Category 1 patients is immediate to 2 weeks. The complainant, who met the criteria for Category 1 level of care during most of the month of July 2019, waited three weeks before receiving any dental health care services. The services he did receive were limited to an exam by a dental hygienist. It was another five weeks before he was seen by the community dentist and received the necessary treatment – the extraction of his tooth.

Health Care Administrator Brooks also provided information regarding the delivery of dental health care services statewide by region. She provided the facility capacity, the average number of clinic sessions per month per prison, and the number of inmates waiting for treatment at each facility during the month of September 2019 (Tables 2-4).

According to Health Care Administrator Brooks, when a dentist is on-site, the average number of patients expected to be seen by the dentist during a dental clinic session varies between 5 to 15 patients per day. The limited dental sessions provided each month, the length of waitlists for services, and the estimated waiting times for each of the three treatment categories are indicators that a significant number of DOC inmates go without dental health care services for prolonged periods.

**Table 2: Dental health care services delivery within Region I facilities**

Region I						
Facility	Anchorage East	Anchorage West	Hiland Mountain	Spring Creek	Wildwood	Wildwood Pre-Trial
Capacity	556	586	490	632	360	463
Dental Clinic on Site	✓	✓	✓	✓	✓	
Clinic Frequency Per Month	4 Days	3 Days	4 Days	4 Days	2 Days	
Service Provider	DOC Dentist	DOC Dentist	DOC Anchorage Dental Travel Team	DOC Anchorage Dental Travel Team	DOC Anchorage Dental Travel Team	
Total Patients on Waitlist September 2019	35	24	34	13	26	
Category 1 (Emergency) on Waitlist September 2019	3	1	1	1	2	
Category 2 (Urgent) on Waitlist September 2019	4	6	2	2	4	
% of Inmate Population on Waitlist	6.3	4.1	6.9	2.1	3.1	

Source: Laura Brooks, Health Care Administrator (October 7, 2019).

**Table 3: Dental health care services delivery within Region II facilities**

Region II			
Facility	Goose Creek	Mat-Su Pre-Trial	Fairbanks
Capacity	1536	109	446
Dental Clinic on Site	✓		✓
Clinic Frequency Per Month	3-4 Days		3-4 Days
Service Provider	DOC Dentist	DOC Dentist at GCCC or Mat-Su Regional Medical Center	Contract Dentist
Total Patients on Waitlist September 2019	335		36
Category 1 (Emergency) on Waitlist September 2019	2		3
Category 2 (Urgent) on Waitlist September 2019	136		1
% of Inmate Population on Waitlist	21.8		8

Source: Laura Brooks, Health Care Administrator (October 7, 2019).

**Table 4: Dental health care services delivery within Region III facilities**

Region III				
Facility	Yukon Kuskokwim	Anvil Mountain	Lemon Creek	Ketchikan
Capacity	200	147	308	132
Dental Clinic on Site		✓	✓	
Clinic Frequency Per Month		2 Days	2-4 Days	
Service Provider	Yukon-Kuskokwim Health Corporation	Contract Dentist	Contract Dentist	Local Dentists
Total Patients on Waitlist September 2019		10	32	
Category 1 (Emergency) on Waitlist September 2019		0	2	
Category 2 (Urgent) on Waitlist September 2019		10	9	
% of Inmate Population on Waitlist		6.8	10.4	

Source: Laura Brooks, Health Care Administrator (October 7, 2019).

The complainant was incarcerated at LCCC, a Region III facility, where there is an on-site dental clinic but no contract dentist to provide dental health care services.

Overall, this data indicates that DOC is not meeting its obligation to provide timely access to necessary dental health care services and is not meeting the service delivery standards established in policy for the treatment of painful and emergent dental conditions. In the complainant’s case, the eight-week delay before providing the necessary dental treatment was unreasonable and inconsistent with the Department’s health care services program goals and responsibilities.

DOC did not meet its obligation to provide the complainant with timely access to necessary dental health care services and failed to meet the service delivery standards established in departmental policies for the treatment of painful and emergent dental conditions. While the Ombudsman recognizes that DOC has limited dental providers on staff, making it difficult to meet the demand for dental care in its facilities, there were local community dental health care providers available in Juneau and in Anchorage (where DOC routinely transports inmates for health care services). Therefore, the Ombudsman found the allegation *justified* based on a preponderance of the evidence.

***Agency Response to Finding***

DOC accepted the Ombudsman’s finding.

## Recommendations and Agency Response

### *Agency's Overall Response to Recommendations*

DOC fully accepted the initial recommendations proposed by the Ombudsman, Recommendations 1-3. In addition, based on the information and feedback provided by DOC during the preliminary report consultation meeting, the Ombudsman developed additional recommendations (4-6) in collaboration with DOC (these were also accepted by DOC). All the recommendations are intended to strengthen DOC's Dental Services Program and improve its delivery of dental health care services.

***Recommendation 1:*** DOC should conduct an audit of its Dental Services Program to identify system deficiencies and gaps in resources that are preventing the timely delivery of necessary dental care, and request the funding necessary to procure this service.

***Recommendation 2:*** DOC should create an action plan to reduce the number of inmates currently waitlisted for dental health care services and decrease wait times for treatment.

The evidence showed that DOC did not provide the complainant with timely access to necessary dental health care services and did not meet the service delivery standards established in DOC policy for the treatment of painful and emergent dental conditions. On a broader scale, this investigation revealed that systemic deficiencies in DOC's Dental Services Program are preventing the Department from providing dental health care services across all facilities adequate to meet the level of need that exists among the prison population. Therefore, the Ombudsman recommended that DOC conduct an audit of its Dental Services Program to identify system deficiencies.

In addition, the Ombudsman recommended that DOC create an action plan to reduce the number of inmates currently waitlisted for dental health care services and decrease waiting times for treatment. In doing so, DOC should consider partnering with local tribal and other dental health care providers to reduce the backlog of patients awaiting treatment and decrease overall wait times for dental services.

### *Agency Response to Recommendations 1 and 2*

DOC accepted Recommendations 1 and 2 and agreed that an audit of its Dental Service Program was necessary to effectively assess and evaluate the provision of dental services within DOC, and determine the scope of system deficiencies and gaps. The audit findings and recommendations would then guide DOC in implementing program improvements to remedy the identified system deficiencies and gaps, and assist the Department in achieving its overall program objective of providing inmates with adequate, consistent, and timely access to quality dental health care services.

***Recommendation 3:*** DOC should revise Policy 807.12, Dental Scope of Services, to include time standards for providing dental health care services to patients for each of the three treatment categories (emergency, urgent, and routine) that align with professional standards in the community.

An important part of providing adequate access to health care services is ensuring that services are timely. At present, there are no timelines in DOC policy for providing dental health care services in each of the three treatment categories: Category 1 – Emergency; Category 2 – Urgent; and Category 3 – Routine. To ensure that patients receive timely access to treatment, and in an effort to increase accountability within the Department for providing dental services, DOC should establish specific service delivery time standards in policy for providing dental services to patients, or scheduling patients to receive dental care from external/community dental health care providers, for each of its treatment categories that align with professional and community treatment standards.

### *Agency Response to Recommendation 3*

DOC accepted Recommendation 3 and agreed to revise policy to include specific timeframes for providing dental health care services to inmates for each of the three treatment categories.

**Recommendation 4:** DOC should employ or contract with a sufficient number of qualified dental professionals for each facility to ensure emergency, urgent, and routine dental services are rendered in a timely manner and consistent with community dental health care practice and standards, and request the funding necessary to establish these new positions.

**Recommendation 5:** DOC should develop and implement a designated “travel team” of qualified dental professionals to provide adequate relief coverage as needed across all facilities statewide, and request the funding necessary to establish these new positions.

**Recommendation 6:** DOC should request funding to establish new positions within the Department for the Dental Assistant job classification.

#### ***Agency Response to Recommendations 4, 5, and 6***

Recommendations 4-6 were developed collaboratively with DOC during and after the Ombudsman’s consultation with the agency about her preliminary finding and recommendations. During the preliminary report consultation meeting, DOC leadership shared the many challenges that the Department faces in managing its health care program and providing dental, medical, and mental health care to inmates. In particular, a perennial obstacle faced by the Department is its struggle to recruit and retain a stable workforce of qualified health care professionals, whether it be direct hire employees or private contractors, who are willing to work in the correctional setting.

DOC explained there are many factors that contribute to this problem: an overall national shortage of health care providers; provider concerns about potential litigation due to the generally held view that prisoners are a more litigious group; the high costs of malpractice insurance; DOC’s difficulty in competing with private practice positions that typically offer greater compensation and employment flexibility; the remote geographical locations of many of DOC’s facilities; the comparatively high level of health care needs and demand for service among prisoners; provider concerns related to DOC workplace resources and funding such as access to modern equipment, availability of products and supplies, and the quality of work space in which to practice; and provider concerns about the DOC workplace atmosphere and conditions, such as security and personal safety.

During the consultation meeting, DOC leadership acknowledged that its Dental Services Program's current capacity is insufficient to meet the demand for dental health care. DOC recognizes that the Department needs to expand its current program and hire additional dental staff in order to meet the level of dental care need that exists among the prison population, provide timely access to services, and successfully reduce the backlog of patients waiting for treatment.

In expanding its Dental Services Program and structuring any new positions, DOC leadership explained that it would be especially beneficial to establish a designated "travel team" of qualified dental professionals to provide adequate relief coverage across all facilities statewide. At present, DOC relies on its Anchorage-based dentist and dental team to travel and provide relief coverage to facilities experiencing shortages in DOC-employed and contract dental staff. As in any workplace, DOC dental staff have regularly scheduled days off, take vacation and sick leave, and attend continuing education throughout the year.

DOC has experienced vacancies and delays in filling its DOC-employed and contract dental staff positions at times. DOC has been unable to successfully recruit and fill the LCCC contract dentist position since June 2019, despite its efforts. Temporarily reassigning and using the Anchorage-based dental travel team to cover these gaps in staffing and provide care at other facilities takes away critical staffing from their normal facility posts where current staffing levels are already insufficient to keep up with demand. Creating designated dental positions to form a "travel team" would ease this strain and help DOC ensure it is providing adequate, consistent, and timely access to quality dental health care services across all facilities.

Despite its many challenges, DOC leadership reported implementing several recent improvements to its Dental Services Program and progress in its ability to recruit and retain qualified dental professionals. DOC requested the Department of Administration (DOA) conduct classification studies and salary examinations for its Dentist and Dental Hygienist job classes. DOA completed these job class studies in 2019, resulting in substantial pay increases that brought these salary schedules into alignment with competitive market ranges.

DOC also asked DOA to consider re-establishing the Dental Assistant job classification. At the time it made this request, DOC had been using contract dental assistant services because there were no positions for this job class within the State classified service. DOC made this request

because using contract dental assistant services is more expensive than establishing and using a job class in the classified service. DOC sought to add two new dental assistant positions within the Department. DOA completed this job class review also in 2019 and reinstated the Dental Assistant job classification.

Although DOA had recently reinstated the Dental Assistant job classification, DOC did not have established positions or funding for dental assistant positions. DOC still needed to seek authorization to create new positions and obtain budgetary approval before it could hire any dental assistants. However, following the consultation meeting in September 2020, DOC reported that it received authorization from the Office of Management and Budget for two new dental assistant positions in November 2020, and DOC had begun the recruitment process for those positions.

In addition to these achievements, DOC recently upgraded its dental equipment and modernized its facility dental clinics statewide. According to DOC leadership, most of the facilities' dental clinic equipment was outdated and more than 40 years old. DOC leadership pointed out that these improvements will not only help to improve its delivery of dental health care services, but will also assist the Department in its efforts to recruit qualified dental professionals who may otherwise be reluctant to consider employment if workplace conditions and standards at DOC fall short of the facilities in which they ordinarily work.

In another effort to improve its ability to recruit and retain qualified health care professionals, DOC was recently approved as a participating site in the Supporting Health Care Access (through Loan) Repayment (SHARP) Program. The federal SHARP Program offers repayment of qualifying education loans, and in some cases direct incentive payments, to eligible health care providers working in a federally designated Health Professional Shortage Area in exchange for a service commitment to the employer. DOC leadership told the Ombudsman that they successfully offered SHARP loan repayment as a retention incentive to keep a full-time dentist on staff.

DOC understands that more improvements are needed. The main obstacles to providing adequate health care services are insufficient staffing and lack of resources. In order to implement the recommendations made in this report, additional funding will be required. DOC will need to seek authorization to create additional staff positions within its Dental Services Program and request the funding necessary to fill those positions.

As DOC Chief Medical Officer Dr. Lawrence aptly pointed out during the consultation with the Ombudsman, the majority of DOC inmates will return to the community. An increased burden is placed on public health resources if they are not provided necessary health care services while incarcerated. Providing inmates with adequate, consistent, and timely access to essential and quality dental health care services while they are incarcerated is good public policy that benefits not only inmates, but the community as well.

## Conclusion

The Ombudsman recognizes that providing dental (and all other) health care services in the correctional system presents numerous challenges, including the high level of need among inmates, increased demand due to prison population growth and aging, shortages in health care staff, difficulties in recruiting and retaining health care professionals, the rising costs of providing health care to inmates, and the State of Alaska's budgetary constraints. The delay in providing the complainant with the dental care that he urgently needed was not something that DOC did deliberately or in bad faith. Nevertheless, DOC has a duty to provide timely access to necessary dental care and to meet the service delivery standards established in policy.

The Ombudsman appreciates DOC leadership's candor, cooperation, and contribution during this investigation and their commitment to resolving the problems identified in this report. Health Care Administrator Laura Brooks and Dr. Robert Lawrence provided valuable feedback during this process and worked collaboratively with the Ombudsman to identify solutions and strategies to promote positive change.