Public Report
Ombudsman Investigation 2020-11-1469
Alaska Psychiatric Institute
Department of Health and Social Services
February 8, 2022

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Alaska State Ombudsman J. Kate Burkhart provides this public report of the investigation of complaint 2020-11-1469 pursuant to AS 24.55.200. This report has been redacted to remove patient and personnel information made confidential by law and to protect individual privacy. 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)).

Introduction

On or about November 17, 2020, an anonymous complaint about Alaska Psychiatric Institute (API) was made to the Alaska State Ombudsman, The Joint Commission (which accredits API), Commissioner Adam Crum, the Disability Law Center of Alaska, former Senator Cathy Giessel, "CMS Alaska," the Anchorage Daily News, and a blog, "Must Read Alaska." The complaint alleged that API is "not meeting the basics of patient psychiatric care" and is not providing a safe or supportive workplace for employees. There were 13 specific allegations in the complaint:

1. Treatment plans are not done.

2. Little to no treatment is being done, clinician positions have not been filled. There are only 2 clinicians to do everything which includes all aspects of treatment and evaluation. As a psychiatric hospital 7 ACC 12.215 calls for the following services which are not done:

    Psychological Testing

    Assessment, screening and counseling

    Individual psychotherapy

    Group therapy

    Family therapy

3. Incidents of patient violence have increased which is directly linked to lack of treatment, violent acts are not reported by management to the governing board.

4. During COVID there has not been any CMS visits to evaluate regulatory compliance of any aspect of treatment.

5. The hospital census has been increased without having clinical infrastructure to support treatment.

6. The adolescent unit is being set up without the needed infrastructure of correct clinical staffing or programming which will lead to patient harm.

7. There are concerns about the Forensic Program and if past and current evaluations are considered as valid and true. The forensic evaluator is both treating as well as evaluating the clients. This is considered unethical and invalidates restoration and competency efforts.

8. Staff are restricted from having any ability to voice concerns regarding management; human resources have been brought inhouse and are controlled by the commissioner's office. Hostility and staff intimidation by management is frequent.

9. Decisions that directly impact clinical processes and treatment are being decided based on finances.

10. Patients are unable to visit with families; no efforts have been made to make televisiting available.

11. Every unfilled psychiatrist or nurse practitioner position is being covered by Locum Tenens at a cost of more than $700,000.00 per year per position because the state refuses to pay competitive wages.

12. Patients are routinely housed without receiving any treatment or needing to be in API for psychiatric reasons.

13. Multiple staff are routinely doing excessive overtime without consideration for safety.

The complaint further alleged that the API CEO "micromanages and creates a hostile work environment" and API management "have repeatedly disparaged staff." The complaint continued: "It is concerning that the state continues to pay little attention to the most underserved and discriminated portion of the state especially considering more than half of the patients are Native Alaskan."

The Ombudsman prioritized the allegations related to patient treatment, hospital oversight, and staff misconduct for investigation. The Ombudsman provided notice of the investigation, as

required by AS 24.55.150, to the API Governing Body and Department of Health and Social Services (DHSS) Deputy Commissioner Clinton Lasley on November 21, 2020.[1]

Ombudsman Kate Burkhart and Assistant Ombudsmen Elizabeth Jenkins and Jacob Carbaugh, with assistance from Research Analyst Shannon Deike, investigated this complaint. The Ombudsman provided a detailed summary of the evidence relevant to the allegations on June 2, 2021, inviting API and DHSS to supplement the administrative and evidentiary record. DHSS provided additional information on July 16, 2021.

21 AAC 25.200(c) requires that "if, after investigation, the Ombudsman believes that the conduct of a specific agency employee is, more likely than not, grounds for disciplinary action against that employee," the Ombudsman shall provide her preliminary findings and the evidence for them to that employee, and request a response, at least 10 days before providing the confidential preliminary report to the agency. The Ombudsman provided an opportunity to review and comment on the evidence and preliminary findings to all API staff whose actions (based on a preponderance of the evidence) could reasonably result in discipline. All such staff provided a written response.

A preliminary report of findings and recommendations was provided to DHSS, pursuant to AS 24.55.180, on November 8, 2021. DHSS requested an extension beyond the 30 days provided in 21 AAC 25.200(d), which the Ombudsman granted. DHSS provided its response on December 29, 2021. The portion of the agency's response that could be disclosed is included in its entirety in Appendix B.

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 indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation is found *justified*.

Notes on the Report

NOTE 1: The investigation of the allegations made in this complaint relied on information, records, and other evidence that is confidential by law. AS 24.55.160(b) provides that the Ombudsman "may not disclose a confidential record obtained from an agency." Information related to specific patients has been deidentified and aggregated to preserve the confidentiality of that information

[1] Ombudsman Kate Burkhart provided notice during the meeting of the API Governing Body on November 21, 2020, followed by written notice to Deputy Commissioner Lasley and CEO Scott York on November 24, 2020.

(which is protected by state and federal law). Information related to the employment, performance, and discipline or other response to employee conduct is not provided. Most employees of the State of Alaska are protected by the State Personnel Act (AS 39.25), ensuring that their employment information is confidential. Exempt and partially exempt employees do not receive the same protections under the Personnel Act. However, the Ombudsman is mindful of the sensitivity of that information and will not disclose it absent the most egregious circumstances.

NOTE 2: Throughout the investigation, witnesses reported incidents of retaliation and intimidation by API management in response to giving information or evidence (or being perceived to have given information or evidence) to the Ombudsman. Given the pervasive and often corroborated reports of this behavior, witness statements are offered in an aggregated or deidentified manner. This is permitted by AS 24.55.160(b), which limits the Ombudsman's disclosure of identities of complainants and witnesses "except insofar as disclosure may be necessary" to the performance of the Ombudsman's duties. The Ombudsman also notes that any public employee who participates in an ombudsman investigation is protected from discharge, threats, and discrimination in the "compensation, terms, conditions, location, or privileges of employment" by AS 39.90.100(a)(2).

Allegations

The Ombudsman consolidated the complaint's several allegations related to patients' access to treatment, hospital oversight, and the work environment into the following allegations:

1. Contrary to Law:[2] API has not consistently created and/or updated treatment plans, which are required by 42 CFR 482.61, for all patients.
2. Contrary to Law: API has not provided active treatment, as defined by 42 CFR 482.60-62, consistently to all patients.[3]
3. Unreasonable:[4] Health Facilities Licensing and Certification, within the Department of Health and Social Services, failed to conduct site visits in response to complaints about API during the COVID-19 pandemic (2020).

[2] In an ombudsman investigation, "Contrary to law" means failure to comply with statutory or regulatory requirements, or misinterpretation or misapplication of a statute, regulation, or comparable requirement, or failure to follow common law doctrines, or failure to comply with valid court or administrative orders, or individual misconduct which a state employee performed for an illegal or improper purpose or performed in an illegal manner.
[3] The complaint allegation(s) about the forensic program at API are addressed within Allegation 2.
[4] In an ombudsman investigation, "Unreasonable" means the agency adopted and followed a procedure in managing a program that was inconsistent with, or failed to achieve, the purposes of the program, or the agency adopted and followed a procedure that defeated the complainant's valid application for a right or program benefit, or the agency's act was inconsistent with agency policy and thereby placed the complainant at a disadvantage relative to all others.

4. Unreasonable: API has failed to prevent, mitigate, or resolve behaviors creating a hostile and/or discriminatory work environment.

Allegations 1-2: Relevant Legal Authority

Federal Law

Hospitals participating in the Medicare program must meet requirements set out in federal law and regulation. Section 1861(f) of the Social Security Act defines a psychiatric hospital:

> (f) The term "psychiatric hospital" means an institution which —
>
> (1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;
>
> (2) satisfies the requirements of paragraphs (3) through (9) of subsection (e);
>
> (3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A; and
>
> (4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

42 CFR 482.61 provides detailed requirements of inpatient psychiatric hospitals' medical records. A detailed psychiatric evaluation must be completed "within 60 hours of admission."[5] A written "individual comprehensive treatment plan that must be based on an inventory of the patient's strengths and disabilities" (presumably based at least in part on the psychiatric evaluation) is also required.[6]

The patient's treatment plan must be in writing and tailored to the patient's diagnosis, assets and deficits, and their treatment goals (as opposed to the provider's goals). 42 CFR 482.61(c) requires every treatment plan to include:

> (i) A substantiated diagnosis;

[5] 42 CFR 482.61(b)(1).
[6] 42 CFR 482.61(c).

(ii) Short-term and long-range goals;
(iii) The specific treatment modalities utilized;
(iv) The responsibilities of each member of the treatment team; and
(v) Adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out.[7]

42 CFR 482.61(c)(2) also requires that treatment plans document the treatment received by the patient "in such a way to assure that all active therapeutic efforts are included." 42 CFR 482.61(d) provides additional requirements for how patients' treatment progress is documented:

> (d) Standard: Recording progress. Progress notes for the patient must be documented, in accordance with applicable State scope-of-practice laws and hospital policies, by the following qualified practitioners: Doctor(s) of medicine or osteopathy, or other licensed practitioner(s), who is responsible for the care of the patient; nurse(s) and social worker(s) (or social service staff) involved in the care of the patient; and, when appropriate, others significantly involved in the patient's active treatment modalities. The frequency of progress notes is determined by the condition of the patient but must be recorded at least weekly for the first 2 months and at least once a month thereafter and must contain recommendations for revisions in the treatment plan as indicated, as well as precise assessment of the patient's progress in accordance with the original or revised treatment plan.

42 CFR 482.62(b) requires that "Inpatient psychiatric services must be under the supervision of a clinical director, service chief, or equivalent who is qualified to provide the leadership required for an intensive treatment program." The clinical director supervising patients' treatment must be a psychiatrist.[8] The clinical director "must monitor and evaluate the quality and appropriateness of services and treatment provided by the medical staff."[9] Based on these regulations, the clinical director or an equivalent psychiatrist should be reviewing and approving the treatment plans and patients' therapeutic progress.

Active treatment is defined by the Centers for Medicare and Medicaid Services (CMS) as services:

- provided under an individualized treatment or diagnostic plan;

[7] 42 CFR 482.61(c)(1).
[8] *See* 42 CFR 482.62(b)(1). "The clinical director, service chief, or equivalent must meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry."
[9] 42 CFR 482.62(b)(2).

- reasonably expected to improve the patient's condition or for the purpose of diagnosis; and
- supervised and evaluated by a physician.[10]

The role of the supervising psychiatrist is essential to determining whether the hospital services meet the requirements for active treatment:

> [T]he physician must serve as a source of information and guidance for all members of the therapeutic team who work directly with the patient in various roles. It is the responsibility of the physician to periodically evaluate the therapeutic program and determine the extent to which treatment goals are being realized and whether changes in direction or emphasis are needed. Such evaluation should be made on the basis of periodic consultations and conferences with therapists, reviews of the patient's medical record, and regularly scheduled patient interviews, at least once per week.[11]

42 CFR 482.62(e) requires inpatient psychiatric hospitals to "provide or have available psychological services to meet the needs of the patients."[12] 42 CFR 482.62(f) requires inpatient psychiatric hospitals to provide social services "in accordance with accepted standards of practice" (for social work) "and established policies and procedures." The regulation explicitly describes social services as including (but not limited to) "discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate, information with sources outside the hospital."[13]

42 CFR 482.62(g) requires inpatient psychiatric hospitals to provide a "therapeutic activities program" that is "appropriate to the needs and interests of patients" and "directed toward restoring and maintaining optimal levels of physical and psychosocial functioning."[14] 42 CFR 482.62(g)(2) requires inpatient psychiatric hospitals to maintain adequate licensed clinicians, consultants, and support staff "to provide comprehensive therapeutic activities consistent with each patient's active treatment program."

[10] "Billing and Coding: Psychiatric Inpatient Hospitalization," (article ID A56865) Centers for Medicare and Medicaid Services (Oct. 1, 2020). *See also* Medicare Benefit Policy Manual, Chapter 2 - Inpatient Psychiatric Hospital Services, Section 30.2.2 - Active Treatment, Centers for Medicare and Medicaid Services (Dec. 14, 2018) at 10.
[11] Medicare Benefit Policy Manual, Chapter 2 - Inpatient Psychiatric Hospital Services, Section 30.2.3 - Services Supervised and Evaluated by a Physician, *id.* at 12.
[12] 42 CFR 482.62(e).
[13] 42 CFR 482.62(f)(2).
[14] 42 CFR 482.62(g).

Alaska Law

AS 47.30.825(b) provides patients committed to psychiatric treatment facilities (and their agents) with an absolute right to participate in their treatment:

> The patient and the following persons, at the request of the patient, are entitled to participate in formulating the patient's individualized treatment plan and to participate in the evaluation process as much as possible, at minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in the treatment program, and being informed as to the patient's present medical and psychological condition and prognosis: (1) the patient's counsel, (2) the patient's guardian, (3) a mental health professional previously engaged in the patient's care outside of the evaluation facility or designated treatment facility, (4) a representative of the patient's choice, (5) a person designated as the patient's agent or surrogate with regard to mental health treatment decisions under AS 13.52, and (6) the adult designated under AS 47.30.725.

Alaska regulation requires that patients receive information, in a language they understand, about their diagnoses and treatment options. 7 AAC 12.890(a) provides that a health care facility must afford patients the right:

> (10) to be informed in a language that the patient, client, or resident understands, before or at the time of admission and during the stay, of services that are available in the facility and their cost. . .;
>
> (11) to be informed, in a language that the patient, client, or resident understands, of the patient's, client's, or resident's medical condition by the practitioner responsible for treatment;
>
> (12) to refuse to participate in experimental research, psychosurgery, lobotomy, electroconvulsive therapy, or aversive conditioning;
>
> (13) to participate in the development of a plan of care, or discharge plan, and to receive instructions for self-care and treatment that include explanation of adverse symptoms and necessary precautions, as appropriate; . . .[15]

These rights under Alaska law are grounded on the requirement that patients receive treatment pursuant to individualized treatment plans (required by federal law).

[15] 7 AAC 12.890(a)(10)-(13).

API Policies & Procedures

API Policies and Procedures (P&P) require that patients receive treatment and have a meaningful opportunity to participate in that treatment. API P&P PC-050-05.05 Treatment Planning governs when and how patients' treatment plans are created, reviewed, and updated. The policy was updated in September 2019, October 2019, and again on December 15, 2020. The requirement to provide treatment – and to provide an opportunity to participate in treatment – is also found in API's ethics policy (API P&P PRE-010.02.01).

The version of API P&P PC-050-05.05 in effect in 2020 required "API staff" to develop an Initial Treatment Plan within 24 hours of a patient's admission.[16] The policy clarifies that "the RN" must complete the Initial Treatment Plan.[17] API policy required that the Master Treatment Plan must be completed within 72 hours of admission "excluding holidays and weekends," which extended the timeline for completion to up to 5 days for patients admitted on the weekend.[18] (The policy was updated December 15, 2020, to require a Master Treatment Plan within 72 hours, with no exclusions for holidays or weekends.[19])

API policy in effect in 2020 required that the treatment team include the patient's licensed individual practitioner (LIP, the provider responsible for the patient's care), and the registered nurse, social worker, clinical services staff, and psychiatric nursing assistant (PNA) assigned to the patient's unit.[20] The patient was to be included in the treatment planning, along with family, guardians, and outside providers if indicated (and permitted by the patient and/or legal guardian).[21]

"The patient will always be involved in the treatment planning process."[22] Treatment planning participants must sign and date the Master Treatment Plan (providers absent from the treatment team meeting may sign and date the plan later).[23]

API Policy required weekly review of the Master Treatment Plan for the first 4 weeks of the patient's admission, then monthly or whenever:

- the treatment team believed it is necessary;

[16] API P&P PC-050-05.05 (effective Oct. 28, 2019) at 1.
[17] *Id.* at 2.
[18] *Id.* at 3.
[19] *See* API P&P PC-050-05.05 (effective Dec. 15, 2020) at 1.
[20] *See* API P&P PC-050-05.05 (effective Oct. 28, 2019) at 1.
[21] *Id.* at 2.
[22] *Id.* at 3. *See also* API P&P PRE-010-02.01 (effective Oct. 20, 2020) at 5.
[23] API P&P PC-050-05.05 (effective Oct. 28, 2019) at 4.

- there was a significant change in the patient's "condition or diagnosis;" or
- the patient was subject to seclusion or restraint.[24]

The patient's social worker had primary responsibility for ensuring that treatment plans were reviewed timely, and for documenting the review and any changes to the Master Treatment Plan.[25] This remains the case under the current API policy.[26]

The treatment team can recommend an Individualized Behavioral Plan (IBP) for patients who have shown "unsafe behaviors that do not respond to other intervention on the Treatment Plan."[27] The "Clinical Services Psychologist or Mental Health Clinician" is responsible for developing the Individualized Behavioral Plan.[28] API policy requires that the Individualized Behavioral Plan "be reflected" in the Master Treatment Plan.[29] Previously, the Individualized Behavioral Plan was required to be reviewed "at least weekly during the Treatment Team meeting."[30] This indicates that API was supposed to be reviewing treatment plans weekly for patients whose behaviors and/or lack of response to API's treatment services were such that they need an Individualized Behavioral Plan. The policy effective in 2020 did not require weekly review of the treatment and behavioral plans: "While it is in effect, the IBP will be reviewed during the Treatment Team meeting."[31] That policy also provided that the mental health clinician assigned to the patient would "revise the [Individual Behavioral Plan] as often as necessary," without requiring a treatment team meeting or input from treatment team members.[32]

API P&P PC-01-02.01.02 Specialized Assessments provides guidance for the assessment of patients' occupational, recreational, psychological, forensic, and substance abuse treatment needs.

[24] *Id. See also* API P&P PC-050-05.05 (effective Dec. 15, 2020) at 4.
[25] *See* API P&P PC-050-05.05 (effective Oct. 28, 2019) at 4. It should be noted that the Social Work Department, and the social work staff, have no supervisory authority over medical, nursing, or clinical services staff.
[26] *See* API P&P PC-050-05.05 (effective Dec. 15, 2020) at 4.
[27] API P&P PC-050-05.05 (effective Oct. 28, 2019) at 5. These criteria are narrower than in previous versions of the API treatment planning policy, which provided that an Individual Behavioral Plan was indicated when "a patient has shown minimal to no progress during the course of treatment or in prior admissions to API, or if the patient demonstrates behavioral dyscontrol that negatively impacts the safe operation of the unit." API P&P PC-050-05.05 (effective Aug. 30, 2017) at 6.
[28] API P&P PC-050-05.05 (effective Oct. 28, 2019) at 5.
[29] *Id.* An earlier version of this policy required that the Individual Behavioral Plan be included in the Master Treatment Plan "through clear goals, objectives, and interventions." API P&P PC-050-05.05 (effective Aug. 30, 2017) at 6.
[30] API P&P PC-050-05.05 (effective Aug. 30, 2017) at 7.
[31] API P&P PC-050-05.05 (effective Oct. 28, 2019) at 5.
[32] *Id.* at 5.

All of the assessments are required to be conducted by professionals licensed and credentialed in the specific field, except the substance abuse assessment.[33]

API adopted Medical Staff Bylaws in 2014[34] and again in 2019.[35] These Bylaws provide for the roles and responsibilities of medical practitioners in the administration and governance of hospital operations. The requirements of medical staff outlined in the Bylaws reinforce the clinical standards set in API policy.

All physicians (including psychiatrists), psychologists, and advanced practitioners (nurses and physician assistants) at API are covered by these Bylaws.[36] The Bylaws require that medical staff "provide appropriate, timely, and continuous care of patients."[37] Medical staff are required to complete a medical history and physical examination of a patient within 24 hours of admission, unless one was completed within the past 14 days.[38] A psychiatric evaluation must also be completed by a psychiatrist or doctoral-level psychologist within 24 hours of every admission.[39]

The Bylaws provide a detailed structure for the management of medical staff performance through informal and formal intervention.[40] This process is conducted in such a way as to ensure due process to the medical staff member.[41]

Allegations 1-2: Evidence Review and Summary

On November 25, 2020, ombudsman staff met with API management. During this meeting, Scott York, the hospital CEO, reported that "treatment plans are happening" within 72 hours of admissions, weekly for the next 30 days, and at least monthly after that (or after a precipitating event). Since 2017, API has had an internal benchmark of creating a Master Treatment Plan within 72 hours of admission.[42]

[33] *See* API P&P PC-01-02.01.02 III. (effective date Aug. 30, 2017). API policy does not require that the substance abuse assessment be administered by an addiction medicine specialist or a certified addiction counselor; "the Social Worker or another professional staff member with training" may administer the assessment. *Id.*
[34] *See* "Alaska Psychiatric Institute Medical Staff Bylaws," effective July 1, 2014.
[35] *See* "Alaska Psychiatric Institute Medical Staff Bylaws," adopted January 2019.
[36] *See id.* at 4.
[37] *Id.* at 4.
[38] *See id.* at 5.
[39] *See id.* No matter how recent, a prior admission psychiatric evaluation may not be substituted.
[40] *See id.* at 16-27.
[41] *See id.*
[42] *See* API P&P PC-050.05.05 (effective Aug. 30, 2017) at 3; *see also* API P&P PC-050-05.05 (effective Oct. 28, 2019) at 3; *see also* API P&P PC-050-05.05 (effective Dec. 15, 2020) at 1.

The CEO pointed to surveys by Health Facilities Licensing and Certification (HFLC) that did not find deficiencies in treatment plans.[43] In an email dated November 30, 2020, from the CEO to all API staff, he asserted that 20% of Master Treatment Plans were completed within 72 hours and 100% of Master Treatment Plans were updated monthly.

Subsequently, ombudsman staff interviewed clinical managers and providers who reported that not all patients received timely treatment plans or updates. Review of patient records by ombudsman investigators and audits conducted by API staff show that the assertions made by the CEO about treatment plan compliance were not accurate.

API Medical Records Audit

The Medical Records Administrator conducted regular audits of patient records and identified deficits in treatment plans, which he routinely communicated to API leadership. Evidence of his alerting API leadership about treatment planning deficits was found in API Leadership Team minutes. On September 9, 2020, the Medical Records Administrator reported to the Leadership Team that, of forty-four (44) patients discharged in the past month, seventeen (17) had no Master Treatment Plan and one (1) had no treatment plan at all. The Medical Records Administrator's ongoing audit of medical records was noted again at the October 21, 2020, Leadership Team meeting.

Just two months prior to the anonymous complaint being made, the CEO and other API managers knew that the hospital failed to provide adequate treatment plans for 41% of API patients. This was not communicated to the Governing Body prior to or when confronted with the allegation of deficient treatment planning.

Ombudsman Review of Patient Records

In partnership with API, ombudsman staff developed a random sample of patients admitted at any time in 2020, so that ombudsman investigators could review the medical records to determine whether treatment planning was occurring as described by the CEO on November 25, 2020. Of 562 unique patients admitted in 2020, 477 had a length of stay of 3 or more days (triggering the requirement for a Master Treatment Plan). The ombudsman research analyst generated a stratified random sample based on age, race, and gender to achieve a 95% confidence interval. The initial sample was 204 patient records.

[43] According to the reports provided by HFLC, the surveys were not focused on issues related to treatment planning.

The Ombudsman met with the API CEO, Director of Nursing, and Medical Records Administrator on February 12, 2021, to confirm the on-site record review, identify COVID-19 mitigation protocols, and ensure that ombudsman staff would have access to the electronic health record (EHR) when they arrived on February 16, 2021. Ombudsman staff arrived as scheduled on February 16, 2021. However, the CEO had not yet completed the necessary paperwork to allow access to the EHR.

In lieu of being able to begin review of the sampled patient electronic health records, ombudsman investigators reviewed the paper medical files for all the patients on the Susitna Unit. Some of these patients appeared in the random sample. On February 17, 2021, ombudsman staff began review of patient records via the EHR. MEDITECH, the EHR used by API, does not have a treatment plan function, so treatment plans are uploaded as PDF files, which must be opened and reviewed separately.

The review of patient records included 27 elements identified from federal regulations governing treatment plans and active treatment.[44] By the end of the week, ombudsman staff expected to have reviewed only half of the original sample of 204 patient records. This was due in part to the delayed access to API's EHR and in part to the time it took to find and review treatment plans and progress notes in the patient records.

On February 19, 2021, the Ombudsman met with the CEO, and separately with the Director of Nursing and Quality Assurance Director, to discuss whether this smaller sample of 80-100 patient records – which would reduce the confidence interval from 95% to 90% – would be acceptable to API. The CEO, Director of Nursing, and Quality Assurance Director agreed that the results of the review of the smaller sample of at least 80 patient records was sufficient to show overall compliance with treatment planning.

The final sample of patient records reviewed included 86 admissions for 74 unique patients. Eight (8) patients in the sample had two or more admissions during 2020. Of the patients sampled:

- 62% were male and 36% were female;
- 39% were Alaska Native or Native American;
- 38% were White/Caucasian;
- 23% were of other races (BPOC);
- 67% were adults aged 21-50;
- 12% were adults aged 51-60;

[44] *See* Appendix A.

- 12% were adults older than 60; and
- 9% were adults 19-20.

Review of the patients' records revealed that 75% had some documentation of treatment or evaluation by a psychiatrist. However, 16 out of 86 (19%) had no physician notes in the file. Three (3) patient records had progress notes only from the Chief Medical Officer. The Chief Medical Officer is a family medicine specialist, but not a psychiatrist (42 CFR 482.62(b) requires that inpatient psychiatric patients' treatment is supervised by a psychiatrist). The majority (69%) of the records reviewed had evidence of diagnostic services (usually limited to lab work).

Of the records reviewed, 90% had an initial treatment plan upon admission. Eight (8) patients (9%) had no initial treatment plan (one of these was created upon admission but not signed by the treating physician until two days later). Ombudsman investigators noted that most, if not all, of the initial treatment plans provided the same "cookie cutter" services to the patients — psychiatric nursing and medication — regardless of the reason for admission.

On November 25, 2020, the CEO reported that API's benchmark of treatment plans created within 72 hours of admission was being met. However, of the patient records reviewed, less than half (41%) of the patients had a Master Treatment Plan within 72 hours. It is important to note that this is not a regulatory standard. API has set this 72-hour benchmark in order to improve patient care.

Ombudsman staff reviewed the patient records to see if Master Treatment Plans were created within 12 days of admission (the regulatory standard). Of the sample, 59% had a stay of 12 days or longer. Of these, 90% had a Master Treatment Plan within that time. Of patients whose length of stay or progress necessitated a treatment plan update, 69% had evidence of a timely update in the record.

Ombudsman staff reviewed the contents of the Master Treatment Plans to determine whether they met the requirements of 42 CFR 482.61(c) and were tailored to the patient (i.e. individualized). The majority (68%) of treatment plans reviewed were not individualized. Examples of deficits in the Master Treatment Plans include not identifying specific therapeutic services (referring only to "groups"), not explaining how the services in the plan were related to the patient's diagnosis or treatment goals, and not clearly explaining the patient's therapeutic progress.

Ombudsman staff reviewed the Master Treatment Plan goals to determine whether they were patient-centered: 65% documented patient participation (or the patient declining to participate) and half showed the patient's signature (or refusal to sign). Only 56% of the treatment plans had goals that were clearly tailored to the patient. Only 49% of treatment plans clearly documented progress

toward treatment goals. However, because API staff routinely write updates on the face of the treatment plan, instead of creating a new updated version, it was not always readily apparent how the patient was progressing.

The Ombudsman reviewed the Medical Records Administrator's quarterly audit spreadsheet for 2020. In the first quarter, ten (10) records were reviewed. The audit found "deficient items requiring follow up" in 7 out of 10 cases. In the second quarter, ten (10) records were reviewed. The audit found "deficient items requiring follow up" in 4 out of 10 cases. In the third quarter, ten (10) records were reviewed. The audit found "deficient items requiring follow up" in 7 out of 10 cases. In the fourth quarter, ten (10) records were reviewed. The audit found "deficient items requiring follow up" in 4 out of 10 cases.

Following the suggestion of Deputy Commissioner Lasley, on May 11, 2021, ombudsman staff interviewed senior medical staff providing psychiatry, psychiatric nursing, and psychology services to patients. These medical providers described treatment plans as a "formality," rather than a reflection of the "vision for the care" of patients. They recognized that treatment plans are a required part of the medical documentation required for inpatient psychiatric hospitals.

The treatment plan could be the "roadmap" for the patient's care, but it is not usually. Instead, the medical providers explained, treatment team members (psychiatrist, physician, nurses, psychologist, rehabilitative treatment providers, social worker, etc.) communicate "face-to-face" to develop, implement, and adapt the patient's treatment. The progress notes from psychiatrists, clinical staff, and nurses provide a much more current and detailed account of patient care and progress. This is what the providers rely on to ensure that they are meeting patients' needs.

The description of treatment planning by senior medical staff aligns with the evidence collected from the review of patient records. Ombudsman investigators were able to confirm the delivery of psychosocial services, nursing services, and PNA-led groups through the provider notes – even when the treatment plan did not outline those services.

The medical providers described the formal treatment team meetings (for the purposes of making/updating the plan) as an *ad hoc* process, which makes it difficult for the treatment providers to participate. This observation was also made to ombudsman staff by other nursing and social work staff. Difficulty finding meeting dates and times when all of a patient's treatment providers are available creates a barrier to ensuring that the plan clearly reflects the care being offered to the patient.

While API providers may communicate regularly to ensure that they are aligned in providing care to a patient, the treatment team meeting and plan are the only documented opportunities for a patient to provide input – which is acknowledged and recorded in the patient record – about their treatment goals, modalities, and progress. Senior medical staff acknowledged that treatment plans are expected to be patient-centered and written in plain language so that patients can understand them. They also noted that patients with severe symptoms, like psychosis, may not be able to fully participate in the treatment planning. There is often tension between patients' goals and providers' objectives, particularly when a patient disagrees with a diagnosis or does not believe they need or can benefit from API's treatment services.

Allegation 1: Analysis

The anonymous complaint alleged that "treatment plans are not done." The Ombudsman investigated this as "Contrary to Law: API has not consistently created and/or updated treatment plans, which are required by 42 CFR 482.61, for all patients." The Ombudsman has previously found significant deficits in API's treatment planning in the investigation of a systemic complaint in 2018-2019 (J2018-0134).[45] The lack of adequate treatment planning is a long-standing problem at API.

The Ombudsman previously recommended that API "fully implement individualized treatment plans, developed by a multidisciplinary team in partnership with the patient, and . . . ensure that treatment plans are modified appropriately based on patient progress or lack of progress and the observations of all staff engaged in the patient's care."[46] This recommendation was based on evidence that API patients were "given 'cookie cutter' treatment plans developed by one member of a treatment team with little input from the patient or the staff who engage most directly with the patient."[47] The Ombudsman also recommended that "API should define the multidisciplinary treatment team to specifically include the patient's primary care provider, psychiatrist, licensed psychologist, recreational or other rehabilitative therapist, licensed independent practitioner, social work discharge planner, and teacher (if an adolescent)," and that "Hospital Education should also have a representative at treatment team meetings, so that any training or continuing education resources needed can be identified and delivered."[48] The Ombudsman recommended that "API

[45] *See* Public Final Report, Ombudsman Investigation – Alaska Psychiatric Institute, DHSS, J2018-0134 (Mar. 18, 2019) available online at https://ombud.alaska.gov/case-summaries/.
[46] *Id.* at 89.
[47] *Id.*
[48] *Id.*

should require face-to-face meetings of the full multidisciplinary treatment team, with the patient, each week and whenever a significant change occurs in the patient's symptoms or behavior."[49]

DHSS accepted these recommendations in 2019 and committed to implement them:

> Staff who participate in treatment planning meetings will receive training in individualized treatment planning, which will include discussion of the need for multidisciplinary input into the treatment plan, the inclusion of the patient's perspective in the plan, and modifications based on the patient's progress or lack of progress. This training will occur in March 2019. After completion of training, a sample of 20% of treatment plans will be reviewed monthly to determine if they include the patient's perspective, observations from staff who work with the patient, and indications regarding progress. If treatment plans are not meeting expectations in these areas, retraining will occur.
>
> Staff will be encouraged to increase the number of disciplines who meet with the patient during regularly scheduled treatment team meetings and when there is a change in the patient's condition.
>
> A PNA [psychiatric nursing assistant] familiar with the patient will attend each treatment team meeting. This will be confirmed through review of treatment team documentation and ongoing updates to that documentation.[50]

The evidence reviewed in this investigation, described above, shows that API has not effectively addressed the lack of adequate treatment planning documented in 2018. The preponderance of the evidence shows that API still does not consistently provide patients with timely, complete, or person-centered treatment plans to guide their care, document their progress, and most importantly, provide a way for them to participate in their treatment.

The Ombudsman finds Allegation 1 ***justified*** based on the preponderance of the evidence. The evidence shows that API is still not meeting federal regulatory requirements for the creation and update of treatment plans for patients.

Allegation 2: Analysis

The anonymous complaint alleged that "little to no treatment is being done" and "patients are routinely housed without receiving any treatment or needing to be in API for psychiatric reasons." The Ombudsman investigated this allegation as "Contrary to Law: API has not provided active treatment, as defined by 42 CFR 482.60-62, consistently to all patients." The Ombudsman found

[49] *Id.* at 90.
[50] Letter from Albert Wall, DHSS Deputy Commissioner, to Kate Burkhart, Ombudsman, Mar. 15, 2019.

that API did not deliver the active treatment services needed to address the intensive needs of the most acutely mentally ill patients in the previous investigation (J2018-0134).[51]

The Ombudsman previously recommended that "API should expand active treatment delivered to patients until a significant portion of the day, including weekends, involves evidence-based psychiatric and behavioral health care."[52] DHSS accepted this recommendation and committed to presenting a proposal for "a revised, more vigorous treatment module program" by May 1, 2019.[53] DHSS pointed to the active treatment model being introduced by Wellpath that included "six hours of active therapy a day per patient."[54]

On July 5, 2019, then-CEO Dr. Matt Dammeyer reported that:

> Program schedules with increased active treatment based on best practice and evidence-based principles have been implemented on all units. The new schedule includes groups both on and off the units. As hospital CEO, I sign off on the funding for small incentives for patients to acknowledge their engagement and hard work in these clinical activities, where they earn 11 incentive points. This was implemented in April, 2019, and includes a formal, printed schedule of activities. The "incentive cart" now makes regular rounds to the units, and has been restocked monthly.
>
> This expanded treatment module has not been presented directly to the Commissioner. However, it has been presented in writing to the Governing Body via a CEO Report.[55]

The incentive program described by former CEO Dr. Dammeyer had been discontinued by the time of this investigation in 2020.

The Ombudsman evaluated the evidence related to this allegation in the context of federal requirements for inpatient psychiatric hospitals participating in the Medicare program. Active treatment is defined by the CMS as services:

- provided under an individualized treatment or diagnostic plan;
- reasonably expected to improve the patient's condition or for the purpose of diagnosis; and

[51] *See* CONFIDENTIAL Final Report, Ombudsman Investigation – Alaska Psychiatric Institute, DHSS, J2018-0134 (Mar. 18, 2019).
[52] *Id.* at 88.
[53] Letter from Albert Wall, DHSS Deputy Commissioner, to Kate Burkhart, Ombudsman, Mar. 15, 2019.
[54] *Id.*
[55] Letter to the Kate Burkhart, Ombudsman from Dr. Matt Dammeyer, CEO (July 5, 2019).

- supervised and evaluated by a physician.[56]

The evidence showed significant and persistent deficiencies – including the lack of patient-centered and individualized goals and therapies – in treatment plans. This compromises the hospital's ability to provide active treatment services that meet CMS standards, because treatment services, if provided, are not "provided under an individualized treatment or diagnostic plan."

The role of the supervising psychiatrist is essential to determining whether the hospital services meet the requirements for active treatment:

> [T]he physician must serve as a source of information and guidance for all members of the therapeutic team who work directly with the patient in various roles. It is the responsibility of the physician to periodically evaluate the therapeutic program and determine the extent to which treatment goals are being realized and whether changes in direction or emphasis are needed. Such evaluation should be made on the basis of periodic consultations and conferences with therapists, reviews of the patient's medical record, and regularly scheduled patient interviews, at least once per week.[57]

Of the patient records reviewed by ombudsman investigators, treatment plans were more likely to have been reviewed and signed by a psychiatrist, and documentation of psychiatrist supervision was more frequent, while Wellpath was managing API (prior to July 2020).[58] This observation appears to be supported by the Medical Records Manager's audit of MEDITECH records in 2020.

As noted above, almost all of the initial treatment plans reviewed during the investigation relied exclusively on psychiatric nursing and medication. Skilled nursing, or care that would generally be provided in a hospital or nursing home, is not sufficient to meet the definition of "active treatment."[59] Care provided under the supervision of a physician alone does not constitute active treatment, unless there is "a specific program of therapy designed to effect improvement."[60]

Therapeutic services that can constitute active treatment include "psychotherapy, drug therapy, and electroconvulsive therapy, but also such therapeutic activities as occupational therapy,

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[56] "Billing and Coding: Psychiatric Inpatient Hospitalization," (article ID A56865) Centers for Medicare and Medicaid Services (Oct. 1, 2020). *See also* Medicare Benefit Policy Manual, Chapter 2 - Inpatient Psychiatric Hospital Services, Section 30.2.2 - Active Treatment, Centers for Medicare and Medicaid Services (Dec. 14, 2018) at 10.
[57] Medicare Benefit Policy Manual, Chapter 2 - Inpatient Psychiatric Hospital Services, Section 30.2.3 - Services Supervised and Evaluated by a Physician, at 12.
[58] *See* State of Alaska Agency Professional Services Contract 0619-131.
[59] *See* Medicare Benefit Policy Manual, Chapter 2 - Inpatient Psychiatric Hospital Services, Section 30.2.2.1 – Principles for Evaluating a Period of Active Treatment, Centers for Medicare and Medicaid Services (Dec. 14, 2018) at 10.
[60] *Id.* at 11.

recreational therapy, and milieu therapy, provided the therapeutic activities are expected to result in improvement in the patient's condition."[61] Administration of psychiatric medications is not *per se* active treatment.[62]

The therapies identified by CMS as meeting the criteria of active treatment are delivered by licensed medical and mental health professionals. CMS specifically states that activities that are "primarily diversional in nature" — social or recreational activities — are not considered active treatment.[63] The Ombudsman recognizes that these sorts of activities are essential to the overall well-being of patients. They provide valuable opportunities for API staff to develop rapport and relationships with patients, which in turn supports positive treatment outcomes. However, these activities are not a substitute for active treatment.

On November 30, 2020, the CEO asserted that "at least 17 groups per week" were offered by rehabilitative and social services staff on the Taku Unit.[64] This is misleading. Groups offered on the Taku Unit are not mental health treatment to restore the person's functioning. They are educational groups focused on equipping the patient with sufficient information and understanding to participate in their criminal proceedings. Examples of the groups offered on the Taku Unit, identified through the review of patient records, include watching episodes of television court dramas, like "Law & Order," and movies such as "My Cousin Vinnie," with discussion of the roles and events portrayed and how that could occur in patients' criminal cases.[65]

The evidence in the Taku Unit patients' records showed no actual mental health treatment being delivered by the forensic psychologist. Interviews with legal professionals in other jurisdictions who represent criminal defendants subject to a forensic evaluation confirmed that the "restoration" process does not typically include psychiatric treatment to remediate the symptoms of the person's mental illness. Instead, the focus is educating and equipping the person to participate in their criminal proceedings. Based on this evidence, the Ombudsman discontinued her investigation[66] of the allegation that "there are concerns about the Forensic Program and if past and current evaluations are considered as valid" because "the forensic evaluator is both treating as well as

[61] Medicare Benefit Policy Manual, Chapter 2 - Inpatient Psychiatric Hospital Services, Section 30.2.3 - Services Supervised and Evaluated by a Physician, at 12.
[62] *Id.*
[63] *Id.*
[64] Email from Scott York, CEO, to all API staff, Nov. 30, 2020.
[65] It is our understanding that programming changes have been made on the Taku Unit in the past few months, and so what was documented in the patient records we reviewed for 2020 may not reflect current forensic programming.
[66] The Ombudsman may discontinue an investigation if she "determines that there is insufficient evidence to support the allegations in the complaint, and that further investigation is unlikely to yield additional relevant evidence." 21 AAC 25.130(b)(2).

evaluating the clients" – because mental health treatment was not being provided to patients on the Taku Unit.[67]

On November 30, 2020, the CEO asserted that "the average number of treatment groups for Civil units is between 3 and 4 hours per day."[68] Based on the review of patient records from 2020, the number and frequency of groups led by PNAs may have reached 3-4 hours per day, but there was no evidence of psychosocial treatment led by licensed clinicians occurring with the frequency reported by the CEO.

API clinical and medical staff reported confidentially to the Ombudsman that the CEO's assertion was not accurate. A psychiatrist reported to members of the Governing Body, in February 2021, a persistent lack of treatment, and that only four treatment groups per week were being offered at that time. Of the patient records reviewed by ombudsman investigators, 61% of the treatment plans lacked any reference to psychosocial treatment services – services provided by licensed providers, such as mental health clinicians, psychologists, occupational therapists, etc. These treatment plans often included reference to "groups," without specifying whether it was group therapy or recreation or how it related to the patient's diagnosis.

Ombudsman staff reviewed progress notes in the EHR to see if psychosocial services were delivered even though they were not indicated in the treatment plan. PNA staff routinely documented in the EHR offering a group activity and whether the patient participated. Of the patient records reviewed by ombudsman investigators, 63% included documentation of activity therapies (recreation, art, etc.) and 70% included documentation of patient education groups.

The efforts of PNAs to engage patients in activities on the units are critical to positive treatment outcomes. However, the group activities documented were a) not provided by a licensed provider and b) were not tailored to the patient's diagnosis, symptoms, behaviors, or treatment goals. This does not meet the regulatory standard for active treatment.

The CEO pointed to "ASAM Assessment and other Functional assessment for specialized placement" as evidence of active treatment.[69] There was no evidence of any substance use disorder treatment assessment in any of the medical records reviewed by ombudsman investigators. It is important to note that the American Society of Addiction Medicine (ASAM) Criteria is a tool used by substance use disorder treatment providers for identifying appropriate levels of care for a

[67] Complaint at 2.
[68] Email from Scott York, CEO, to all API staff, Nov. 30, 2020.
[69] Email from Scott York, CEO, to all API staff, Nov. 30, 2020.

client[70] – something not offered by API. The ASAM Criteria is not a functional assessment; it is a set of guidelines for placement in appropriate levels of care (treatment).[71]

Ombudsman investigators also noted that, despite the overrepresentation of Alaska Native peoples among API patients (which was accounted for in the sample), no culturally informed mental health services or traditional healing services were documented as being offered or provided to patients in 2020.[72]

Based on preponderance of the evidence, the Ombudsman finds Allegation 2 ***justified.*** The evidence shows that API is still not consistently providing active treatment to patients as required by federal regulation.

Allegation 3: Evidence and Analysis

The anonymous complaint letter alleged that "During COVID there has not been any CMS visits to evaluate regulatory compliance of any aspect of treatment."[73] The Ombudsman investigated this allegation as "Unreasonable: Health Facilities Licensing and Certification, within the Department of Health and Social Services, failed to conduct site visits in response to complaints about API during the COVID-19 pandemic (2020)."

Surveys are conducted by HFLC, a division of DHSS, on behalf of CMS. Through the Department of Law, HFLC provided reports of three (3) surveys conducted at API in 2020. Based on a review of the HFLC reports of these surveys, the Ombudsman finds the allegation ***unsupported*** by the evidence.

Allegation 4: Relevant Legal Authority

Federal Law

Section 703 of the Civil Rights Act of 1964 prevents discrimination on the basis of sex by an employer:

[70] *See* "About the ASAM Criteria," American Society of Addiction Medicine, at https://www.asam.org/asam-criteria/about (last visited May 6, 2021).
[71] *Id.*
[72] One patient record documented a patient participating in a Native Ways of Knowing group on July 30, 2019, during Wellpath's management of the hospital. None of the records reviewed showed culturally relevant treatment programs delivered in 2020.
[73] Complaint at 1.

> (a) Employer practices
>
> It shall be an unlawful employment practice for an employer -
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[74]

The U.S. Equal Employment Opportunity Commission defines a "hostile work environment" as follows:

> Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.[75]

State Law

The State Personnel Act protects the private speech of state employees. AS 39.26.010(a)(5) prohibits a state agency, official, or employee from taking action to "restrict or attempt to restrict after-working-hour statements, pronouncements or other activities, not otherwise prohibited by law or personnel rule, of any employee of the state, if the employee does not purport to speak or act in an official capacity." However, AS 39.26.010(b) allows department heads to "adopt internal management regulations for their respective departments, specifying exceptions to (a)(5) of this section."

[74] 42 USC 2000e-2(a).
[75] "Harassment," U.S. Equal Employment Opportunity Commission, at https://www.eeoc.gov/harassment (last visited May 6, 2021).

The State Personnel Act does not apply to exempt employees,[76] and only some provisions apply to partially exempt employees.[77] The CEO (along with other C-suite staff and medical staff) is exempt.

AS 39.28.060(b) requires a state agency to "notify the division of personnel of a complaint alleging employment discrimination."[78]

API Policies and Procedures

API P&P LD-03-01.01 "Prevention of Bullying and Harassment at Work" establishes a requirement that employees not engage in harmful conduct toward colleagues:

> All employees at API have a responsibility to maintain good working relationships and not use words or deeds that may harm the wellbeing of others. In addition to the obligations placed upon both employers and employees by the Occupational Safety and Health Administration (OSHA), everyone has the right to be treated with consideration, fairness, dignity, and respect. This contributes to a workplace environment where individuals feel safe and can work effectively, competently, and confidently.[79]

API policy defines "harassment" as "any conduct which: a. is unwanted by the recipient, b. is considered objectionable, c. causes humiliation, offense, distress, or other detrimental or deleterious affect [sic]."[80] Harassment under the policy can be a singular event or a pattern of behavior.[81] It includes but is not limited to physical contact, verbal harassment, or non-verbal harassment.[82]

API policy distinguishes "bullying" from harassment:

[76] *See* AS 39.25.110.
[77] *See* AS 39.25.120.
[78] The Deputy Director of the Division of Personnel explained that the notice described in statute should be given to the EEO Manager at the Department of Administration. *See* Interview of Nancy Sutch, Deputy Director, Division of Personnel, by Jacob Carbaugh, Assistant Ombudsman, on April 16, 2021.
[79] API Policy and Procedure LD-03-01.01, Prevention of Bullying and Harassment at Work (Sept. 1, 2017) at Policy Section I.
[80] API Policy and Procedure LD-03-01.01 III.A.3.
[81] *See* API Policy and Procedure LD-03-01.01 III.A.4.
[82] *See id.*

> Bullying is unlikely to be a single or isolated instance. It is usually, but not exclusively, repeated and persistent behavior which is offensive, abusive, intimidating, malicious or insulting.[83]

Bullying includes but is not limited to "intimidating, physically abusive, or threatening" conduct; "conduct that denigrates, ridicules, or humiliates" one person or group of people; humiliating a person or group of people in front of colleagues; "picking on one person when a shared problem exists;" "shouting at an individual to get things done;" "undermining" a person's ability to perform their job or setting unrealistic or excessive workloads; and encouraging others to engage in bullying behavior.[84]

API Policy requires all staff to behave in a way that supports and strengthens a "culture of safety." API P&P HR-040-06 Standards of Conduct provides:

> Behavior that undermines a Culture of Safety is prohibited: Behaviors that tend to cause distress among other staff undermine a culture of safety. These behaviors demonstrate a lack of respect, affect overall morale within the work environment, and may lead to high staff turnover or ineffective or substandard care. This includes personal conduct, whether verbal or physical, which is offensive or belittling or hostile. Some examples include: malicious gossip, verbal outbursts, bullying, threats, refusal to perform assigned tasks, lack of cooperation, condescending language, voice intonation or physical expressions, and criticizing other caregivers in front of patients. This also includes behaviors perceived as retaliation or reprisal.[85]

Allegation 4: Evidence and Analysis

The anonymous complaint letter alleged that:

> Staff are restricted from having any ability to voice concerns regarding management; human resources have been brought inhouse and are controlled by the commissioner's office. Hostility and staff intimidation by management is frequent.[86]

The Ombudsman investigated this allegation as "Unreasonable: API has failed to prevent, mitigate, or resolve behaviors creating a hostile and/or discriminatory work environment."

[83] API Policy and Procedure LD-03-01.01 III.A.5.
[84] *Id.*
[85] API P&P HR-040-06 (effective June 20, 2018) at 2-3.
[86] Complaint Letter.

The API CEO, with assistance from the API Human Resources Consultant, responded to this allegation in an email sent to all API staff on November 30, 2020:

> In addition, a concern was raised regarding the culture of leadership and others [sic] ability to engage in productive conversations about issues in the hospital and the Human Resources available to staff. Human Resources does not report to the commissioner's office but is under the direct supervision of API's CFO and CEO. Human Resources has been recently delegated authority from the commissioner for some administrative processes, such as recruitment and performance evaluations. Human Resources and API managers support the right of employees to raise concerns. The Human Resources Consultant III has been on-site nights and weekends to meet with employees with concerns and conduct investigations. API management is committed to our Standards of Conduct that mandates all employees and managers treat others with respect. There have been no allegations of hostility or harassment against management. Violations of the Standards of Conduct by staff are addressed through coaching and progressive disciplinary actions.[87]

The API CEO's statement denying any complaints against hospital managers is inaccurate. The evidence revealed that, before November 30, 2020, the API CEO, Human Resources Consultant, and/or Deputy Commissioner Lasley had direct knowledge of two (2) complaints of gender discrimination, one (1) complaint of racial discrimination, and four (4) complaints of bullying by members of hospital management (all of which had been substantiated).

In the course of the investigation, the Ombudsman received complaints of discrimination, harassment, and/or bullying from multiple members of API staff. While reviewing evidence related to human resources and management of the hospital, the Ombudsman identified more than a dozen complaints of discrimination, harassment, and/or bullying made by API staff directly to the API Human Resources Consultant, or of which he was made aware by managers in the hospital.

Complaints of Discrimination, Bullying, or other Hostile Behavior

The Ombudsman cannot disclose records that are confidential by law (AS 24.55.260(b)). Evidence from specific complaints of discrimination, bullying, or other hostile workplace behavior – or the investigation of such complaints – is confidential under the Personnel Act.

The API Human Resources Consultant initially denied receiving any complaints of gender-based discrimination. However, the Ombudsman discovered evidence of multiple complaints made to the Human Resources Consultant in 2020 that were never investigated. The evidence revealed

[87] Email from Scott York, CEO, to all API Staff (Nov. 30, 2020).

complaints of workplace bullying that were never investigated. The evidence also revealed human resources investigations that produced evidence that substantiated the allegations of discriminatory, bullying, or hostile workplace behavior – but management took no meaningful action to address the conduct.

The preponderance of the evidence supported allegations that the CEO's actions failed to meet either the letter or the spirit of API policies related to bullying, ethics, conduct, and the culture of safety. The toxicity of the work environment at API is not a new problem. It was noted at length in the Ombudsman's previous investigation, as well as by Anchorage attorney Bill Evans, who conducted a workplace investigation at the request of DHSS in 2018.[88] More recently, the contractor conducting the feasibility study for the possible privatization of API reported:

> There have been a series of key staff transitions across all areas of hospital leadership, with multiple recruitments and poor retention of key positions, including the CEO, Chief Medical Officer, Chief of Psychiatry, staff psychiatrists, psychology leadership, nursing leadership (including both the Director of Nursing and Unit Nurse Managers), quality assurance, and social work; which inevitably leads to the kinds of problems facing API in recent years. This turnover is typically either due to low pay rates or a challenging, if not toxic, workplace environment. Since staff know their salary when they accept employment, workplace environment and culture may contribute more to turnover and vacancies in state hospitals than low salaries.[89]

During the course of this investigation, the incumbents in the following leadership positions have resigned or retired: Chief of Psychiatry, Chief Forensic Psychologist, Director of Rehabilitation, Quality Assurance and Performance Improvement Director, Risk Manager, and Building Maintenance Superintendent.

The Ombudsman finds Allegation 4 ***justified*** by a preponderance of the evidence.

Staff Response to Preliminary Report

The Ombudsman provided a copy of the preliminary report to all API employees whose actions (or inactions) documented in the investigation would, more likely than not, be grounds for disciplinary action. All of those employees provided a response in writing, which was incorporated in the Ombudsman's preliminary report to DHSS.

[88] *See* "Non-Confidential Public Report of Alaska Psychiatric Institute Investigation," William Evans, Esq. (Sept. 7, 2018).
[89] "API Privatization Feasibility Study," WICHE (Mar. 2020) at 70.

DHSS Response to Findings

DHSS accepted the Ombudsman's findings related to Allegations 1 and 2:

> In general, the evidence offered in the preliminary report is accurate and is taken seriously. DHSS appreciates that the Ombudsman ultimately concluded that API does, in fact, engage in relatively effective treatment planning. DHSS, however, agrees API has not done what it should be doing to organize the treatment process and to document it appropriately with individualized and measurable goals. Over the past several months, API has been working on improving this process and remedying this issue.[90]

The Ombudsman did not find "that API does, in fact, engage in relatively effective treatment planning." The preponderance of the evidence showed significant and persistent deficiencies in API treatment plans.

The evidence showed that, while most patients received an initial treatment plan within 24 hours of admission, these plans were not tailored to individual patient needs and relied almost exclusively on the same interventions: skilled nursing and medication. The majority of Master Treatment Plans we reviewed lacked evidence of physician supervision and/or lacked specific treatments or therapeutic services. Over one third of treatment plans lacked evidence of patient participation (or evidence of an invitation to participate), and 44% of treatment plans lacked patient-centered treatment goals.

Almost one third of master treatment plans lacked evidence of timely updates. Documentation of treatment planning and updates to master treatment plans was difficult to decipher, or lacking. This is due partly to the fact that API's electronic health record has no treatment plan function, and to staff's practice of writing updates on the face of the master treatment plan rather than creating a clean and coherent updated treatment plan.

The Ombudsman found that, as was the case in 2018-2019, API still does not consistently provide patients with complete or timely treatment plans to guide their treatment, and does not consistently use the treatment planning process to provide patients with a meaningful opportunity to participate in their treatment.

DHSS did not comment on or object to the Ombudsman's other findings, except to state that

[90] "Final Public DHSS Response to Ombudsman Complaint 2020-11-1469," Clinton Lasley, Deputy Commissioner (Dec. 29, 2021) at 1.

"DHSS appreciates that the Ombudsman found item 3 to be unsupported."[91]

Recommendations

Recommendation 1: API should implement the Ombudsman's recommendations that it committed to implement in 2019.

The Ombudsman made a suite of evidence-based recommendations after the investigation of complaint J2018-0134 in 2019. These recommendations were developed in close consultation with medical, nursing, and administrative professionals working at that time at API. The current investigation clearly shows that API did not effectively implement (or has regressed in the implementation of) the recommendations they committed to follow.

The Ombudsman reiterates the recommendations made in 2019, specifically those related to treatment planning and active treatment:[92]

- Recommendation 1: DHSS, if it continues to accept court-ordered patients whose primary diagnosis is anything other than suicidality or a serious mental illness (i.e. a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities), should place those patients in an intermediate care facility for intellectual/developmental disabilities (ICF/IDD) or dementia care, and not API.

- Recommendation 7: API should continue to recruit and retain high quality health care professionals, ensuring that the staffing at the hospital is sufficient to provide effective inpatient psychiatric care even when the hospital is at full capacity (80).

The FY21 Management Plan for API included 335 full-time employees and 11 part-time employees.[93] For reference, the FY19 Management Plan for API – in effect when the Ombudsman recommended increasing hospital staffing to meet clinical and safety needs – included 268 full-time employees and 9 part-time employees.[94] Despite this substantial increase in positions

[91] *Id.*
[92] A full explanation of the recommendations and the basis for each is provided in the Public Final Report, Ombudsman Investigation – Alaska Psychiatric Institute, DHSS, J2018-0134 (Mar. 18, 2019) available online at https://ombud.alaska.gov/case-summaries/.
[93] *See* "2021 Legislature - Operating Budget Transaction Change Detail – Conf. Committee Structure, Department of Health and Social Services," Legislative Finance Division (Oct. 26, 2021) at 6.
[94] *See* "2021 Legislature - Operating Budget Transaction Change Detail – Conf. Committee Structure, Department of Health and Social Services," Legislative Finance Division (Sept. 9, 2019) at 5.

budgeted for API by the Alaska Legislature, "understaffing at API" continued to be "described as a significant issue" in 2020.[95] The increase in budgeted positions has not resulted in an improvement in API's treatment planning or the adequacy of active treatment.

- Recommendation 7.2: API should prioritize recruiting and maintaining the health care workforce needed to provide treatment to all patients committed to API.

- Recommendation 8: API should expand active treatment delivered to patients until a significant portion of the day, including weekends, involves evidence-based psychiatric and behavioral health care.

Despite DHSS's commitment to implementing this recommendation in 2019, "active treatment was nowhere to be seen" when the Western Interstate Commission on Higher Education (WICHE) was conducting the privatization study:

> In the current state, meaningful appropriate treatment planning cannot be accomplished, in large part because there is an inadequate number of clinicians, inadequate training, and daily crises. Thus, the provision of recovery-oriented, trauma-informed, discharge-focused care and treatment is not possible. During our recent tour of API, similar to previous tours, we noted only one patient receiving treatment on a treatment mall, and little-to-no interaction between staff and patients on the units (including with patients on 1-to-1 supervision).[96]

The COVID pandemic prevented ombudsman investigators from conducting on-site observations of the units and the milieu at API. However, the patient record review showed that the lack of active treatment documented by WICHE continued through at least February 2021.

- Recommendation 9: API should fully implement individualized treatment plans, developed by a multidisciplinary team in partnership with the patient, and should ensure that treatment plans are modified appropriately based on patient progress or lack of progress and the observations of all staff engaged in the patient's care.

- Recommendation 9.1: API should require face-to-face meetings of the full multidisciplinary treatment team, with the patient, each week and whenever a significant change occurs in the patient's symptoms or behavior.

[95] "API Privatization Feasibility Study," WICHE (Mar. 2020) at 19.
[96] *Id.* at 73.

DHSS Response to Recommendation 1

"DHSS agrees with the substance of the recommendation but disagrees with the focus on admission [of patients experiencing dementia, intellectual/developmental disabilities, and other non-psychiatric conditions] to a proper facility."[97] DHSS explained that they have little discretion over the patients admitted to API, since patients come to the hospital through the Court System and the Title 47 involuntary commitment process.[98]

DHSS provided an overview of the efforts API is making to expand community-based services for this patient population.[99] The Ombudsman notes that DHSS made similar commitments in 2019 to improve services for patients experiencing dementia and intellectual/developmental disabilities:

> API will convene with the DHSS leadership to discuss the development of community-based less restrictive placement options for individuals with IDD/ dementia and related disorders, who currently do not experience an acute psychiatric crisis and do not carry a psychiatric diagnosis. API will request this collaboration to begin no later than June, 2019 and is a part of the implementation of the 1115 Waiver currently accepted by the Centers for Medicaid and Medicare Services (CMS) and in the planning stages. The importance of placing the aforementioned patients in the clinical setting, which promotes the therapeutic benefits of addressing the specific needs of these individuals, will constitute the focal point of the initiative. API will expeditiously review the Ombudsman recommended community-based treatment setting options with DHSS, and will seek the most clinically appropriate means to provide needed care to patients currently at API, while ensuring they are not at risk to self or others, and will arrange respective transfers of these patients.[100]

Deputy Commissioner Lasley noted the new Complex Behavior Neighborhood at the Anchorage Pioneer Home, in the agency's response.[101] This is a soon-to-open nine (9) bed unit for people over the age of 60 with a primary diagnosis of dementia and complex/challenging behaviors.[102] API plans to transition six to seven (6-7) patients to the Complex Behavior Neighborhood in

[97] "Final Public DHSS Response to Ombudsman Complaint 2020-11-1469," Clinton Lasley, Deputy Commissioner (Dec. 29, 2021) at 2.
[98] *See id.*
[99] *See id.*
[100] "Response to Confidential Preliminary Ombudsman Report, J20180134," Deputy Commissioner Albert Wall (Mar. 15, 2019) at 1-2.
[101] *See* "Final Public DHSS Response to Ombudsman Complaint 2020-11-1469," Clinton Lasley, Deputy Commissioner (Dec. 29, 2021) at 2.
[102] *See* Interview of Rich Seville, Anchorage Pioneer Home, by Assistant Ombudsman Jacob Carbaugh, Dec. 21, 2021.

January 2022.[103] The planned staffing for this unit is three certified nursing assistants (CNA) and one registered nurse working day and evening shifts, with two CNAs and one nurse working overnight.[104] This is a lower staff to patient ratio than on the units at API, and would not allow for one-to-one support or supervision of residents.

Regarding the previous Recommendation 2, to improve recruitment and retention of qualified providers and staff, DHSS responded:

> Neither DHSS nor API has ignored this recommendation; however, DHSS and API, like every other health care provider nationwide, continues to have challenges recruiting and retaining qualified staff. API continues to explore avenues to improve recruitment and retention strategies.[105]

DHSS provided a summary of efforts that API is making to improve treatment planning.[106] "The Director of Clinical Services is working with treatment teams and schedules to increase consistency" and "API's Education division has initiated treatment plan writing classes that help the process of creating meaningful treatment plans."[107] These efforts are in large part a restatement of the commitments made in response to the Ombudsman's 2019 investigation and recommendations (commitments that were either not implemented or discontinued after implementation):

> Staff who participate in treatment planning meetings will receive training in individualized treatment planning, which will include discussion of the need for multidisciplinary input into the treatment plan, the inclusion of the patient's perspective in the plan, and modifications based on the patient's progress or lack of progress. This training will occur in March 2019. After completion of training, a sample of 20% of treatment plans will be reviewed monthly to determine if they include the patient's perspective, observations from staff who work with the patient, and indications regarding progress. If treatment plans are not meeting expectations in these areas, retraining will occur.[108]

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[103] *See* Interview of Scott York, API CEO, and Clinton Lasley, Deputy Commissioner, by Assistant Ombudsman Jacob Carbaugh, Dec. 21, 2021.
[104] *See* Interview of Heidi Hamilton, Anchorage Pioneer Home, by Assistant Ombudsman Jacob Carbaugh, Dec. 21, 2021.
[105] "Final Public DHSS Response to Ombudsman Complaint 2020-11-1469," Clinton Lasley, Deputy Commissioner (Dec. 29, 2021) at 2.
[106] *See id.* at 3.
[107] *See id.*
[108] "Response to Confidential Preliminary Ombudsman Report, J20180134," Deputy Commissioner Albert Wall (Mar. 15, 2019) at 7.

DHSS pointed to API's quarterly internal audits of medical records and nightly audits of treatment plans by nursing staff. However, as described herein, while these internal controls have previously identified deficits that were brought to management's attention, API did not effectively address the deficiencies.

DHSS explained that training occurs for nurses to ensure understanding of documentation for the treatment plans. However, that training has not provided the tools needed for nurses involved in treatment planning and treatment team meetings to provide information that meets regulatory requirements. DHSS also committed to API "implementing 2022 Quality Improvement (QI) projects will be based on internal audit data to improve treatment plans."[109]

DHSS committed to "increase inclusion of active physical and medical issues" and "fall risk and interventions" in master treatment plans – but offered no action or strategy to ensure that treatment plans documented physician supervision, patient engagement, specific treatment modalities, or patient centered goals (the deficits identified by this investigation). DHSS also advised that it has hired a contractor to "conduct mock surveys of the facility to determine compliance with current regulatory standards. These mock surveys provide feedback to improve all aspects of operations including treatment and treatment planning."[110] DHSS did not explain how the mock surveys would be different from or complement the internal audits already being conducted by API staff.

DHSS provided a summary of efforts that API is making to improve access to active treatment.[111] The Ombudsman notes that DHSS did not provide any information as to the type or frequency of treatment groups being provided, or which API expects to provide. The Ombudsman is concerned that API intends to rely on PNAs to expand treatment capacity. As discussed at length above, "active treatment" must be provided by licensed mental health providers, so psychoeducation groups led by PNAs will not rectify this deficiency.

The Ombudsman is also concerned that DHSS's response shows that the Department does not intend to allocate resources to ensuring culturally relevant treatment. Rather than training API providers, or prioritizing hiring of providers with knowledge and experience, to deliver culturally relevant treatment, API intends to invite volunteers to provide this critical service:

> The hospital is re-engaging the services provided by volunteers to address the lack of culturally informed services that were offered before the pandemic. Volunteer elders offer services here, including Native ways of knowing groups and related

[109] "Final Public DHSS Response to Ombudsman Complaint 2020-11-1469," Clinton Lasley, Deputy Commissioner (Dec. 29, 2021).
[110] *Id.*
[111] *See id.* at 4.

> culturally informed groups and activities. DHSS will continue to monitor the ability to re-engage volunteers and explore alternative options to expand these services.[112]

While volunteers can provide valuable community connection and support to patients, the delegation of essential treatment services to volunteers is not an adequate remedy to this complaint.

Recommendation 2: DHSS and API should correct the inaccurate and misleading information provided to API Staff and the Governing Body in response to the anonymous complaint letter.

As discussed herein, the evidence shows that the DHSS Commissioner's Office and API Management were aware, in November 2020, of complaints of bullying and discrimination by senior and middle managers at the hospital. Several of these had been investigated and involved leaders from DHSS and API. However, API management stated unequivocally that "there have been no allegations of hostility or harassment against management" on November 30, 2020.[113] This eroded trust and respect between staff and management at the hospital.

API management also provided inaccurate and misleading information about treatment planning and the provision of active treatment to patients, despite having specific knowledge that API was not meeting hospital or federal requirements for either. The evidence showed that the deficiencies in treatment planning were reported to the API Leadership Team regularly in 2020. Despite this, the CEO stated to all API staff that the hospital was in 100% compliance with treatment plan reviews and monthly Master Treatment Plan updates.[114]

The CEO also stated, in response to the allegation of inadequate treatment services, that "the average number of treatment groups for Civil units is between 3 and 4 hours per day."[115] This is misleading, as most groups offered to patients during this time were by PNAs. While certainly valuable to patients, these groups did not meet the requirements to be considered "active treatment."

Leaders from DHSS and API management should publicly, during an all-staff meeting and the next Governing Body meeting, acknowledge that the information provided in response to the anonymous complaint letter was incorrect and/or misleading and provide complete and accurate information (and continue to do so). Taking ownership for the inaccurate information provided (denying the complaint allegation entirely) is especially important given that DHSS and API

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[112] *See id.*
[113] Email from Scott York, CEO, to all API Staff (Nov. 30, 2020). *See also* Email from Patrick Higgins, Human Resources Consultant, to Tina Cochran, CFO (Nov. 24, 2020).
[114] Email from Scott York, CEO, to all API staff, Nov. 30, 2020.
[115] *Id.*

leadership have known that the hospital workplace has been plagued by lack of trust, respect, and confidence in management for years, as documented in the Ombudsman's previous investigation (2018-2019), the investigation by attorney Bill Evans (2018), and the WICHE privatization study (2020).

DHSS Response to Recommendation 2

DHSS declined to implement this recommendation:

> Respectfully, DHSS declines to adopt this recommendation, for three reasons. First, over a year has passed since the Governing Body was provided information in response to the anonymous complaint letter. At this point, the Governing Body is aware of API's status with regulatory authorities. The relationship between API staff and API management is better served by moving forward, rather than returning to events that happened over a year ago. Second, DHSS disagrees with the Ombudsman's use of the word "misleading." The word "misleading" connotates intentional deception. Third, DHSS believes that the issue presented is one of accurate and complete record-keeping. Fixing the systemic issue is the best way to move forward and to ensure that the Governing Body can properly fulfill its role. To that end, API has instituted practices, described above, that should correct the issues.[116]

Personnel Performance Improvement Recommendations 3-4

The Ombudsman made two recommendations related to the evaluation, remediation, and improvement of employee performance as it relates to Allegation 4. DHSS declined one of the recommendations, offering an alternative (which the Ombudsman did not accept as adequate resolution of the complaint). DHSS, in partnership with the Department of Administration, implemented the other recommendation with initially positive outcomes.

Conclusion

Alaska Psychiatric Institute serves a critical role in providing services to vulnerable people committed for psychiatric hospitalization in Alaska. The Ombudsman recognizes that the agency and its staff have the monumental task of providing care and services to the most acutely mentally

[116] *Supra* n. 394 at 4.

ill. However, the complaints presented in this investigation are not novel. The Ombudsman investigated nearly identical complaints just two years before in J2018-0134.

Recognizing the importance of the role API serves as Alaska's sole psychiatric hospital, the Ombudsman offers recommendations designed to promote active treatment of patients committed to API as required by federal law, as well as to facilitate much needed culture change among the leadership of API.

Appendix A: Data Elements Used in Ombudsman Review of API Patient Record Sample

Item Number	Variables Collected
1	Pending Further Review
2	MR #
3	Patient Name
4	DOB
5	Gender
6	Ethnicity
7	Admit Date
8	Discharge Date
9	LOS
10	Physician Supervision (Y/N)
11	Physician Name
12	Physician Documentation (Y/N)
13	Physician Review (Last Review Date)
14	Medical Records Present or Noted (Y/N)
15	Medication List Up-to-date
16	Licensed Independent Practitioner (LIP) Name
17	Initial Assessment Date
18	Most Recent Assessment or Final Assessment Date
19	Individualized Treatment Plan (Y/N)
20	Initial Treatment Plan at Admission (Y/N)
21	Treatment Plan w/in 12 days (Y/N)
22	Treatment Plan update w/in 30 days (Y/N)
23	Treatment Plan Dates
24	Measurable Goals/Objectives Documented (Y/N)
25	Patient participated in treatment planning (Y/N)
26	Patient signed treatment plan(s) (Y/N)
27	Treatment Goals Attainment Captured (Y/N)
28	Therapy Modalities (Individual / Group / Family)
29	Occupational Therapies
30	Psychiatric Nursing
31	Social Work Services
32	SW Discharge Planner
33	Activity Therapies Documented
34	Educational Programs Documented
35	Diagnostic Services Documented
36	Reviewer Comments

Appendix B: DHSS Public Response to Preliminary Report

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Health and Social Services

OFFICE OF THE COMMISSIONER

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December 29, 2021

J. Kate Burkhart
Alaska State Ombudsman
P.O. Box 113000
Juneau, AK 99811

Dear Ms. Burkhart,

The Department of Health and Social Services (DHSS) appreciates the opportunity to respond to the confidential preliminary report (Ombudsman complaint 2020-11-1469), received November 8, 2021, outlining the findings related to a November 2020 anonymous complaint against the Alaska Psychiatric Institute (API).

The report focused on four primary allegations:

1. API has not consistently created and/or updated treatment plans.
2. API has not provided active treatment.
3. Health Facilities Licensing and Certification, within the Department of Health and Social Services, failed to conduct site visits in response to complaints about API during the COVID-19 pandemic (2020).
4. API has failed to prevent, mitigate, or resolve behaviors creating a hostile and/or discriminatory work environment.

DHSS appreciates that the Ombudsman found item 3 to be unsupported. The Ombudsman's report makes recommendations based on the evidence reviewed for items 1, 2 and 4; therefore, DHSS provides the following response to those three allegations.

Recommendation #1: API should implement the Ombudsman's recommendations that it committed to implement in 2019.

Response:

Within recommendation #1 there are two items for consideration that are not covered in the anonymous complaint allegations but rather from the 2019 Ombudsman's recommendations. Before turning to the complaint, DHSS will address these two items.

The first recommendation is essentially that DHSS should place non-suicidal or individuals suffering from serious mental illness in an intermediate care facility for intellectual/developmental disabilities (ICF/IDD) or dementia care,

not API. DHSS agrees with the substance of the recommendation but disagrees with the focus on *admission* to a proper facility.

With only a few rare exceptions, API does not choose which patients to admit. API's admission process is unlike any other psychiatric facility in Alaska. Civil patients are admitted under the Title 47 process. DHSS does not initiate this process and does not control its outcome. The definition of "mental illness" in Alaska's statutes is very broad and encompasses diagnoses that would not traditionally be understood as the kind of diagnoses that would be treated at a psychiatric hospital. Hospitals, private parties, and, at times, the Department of Corrections initiates the process by filing a petition – a petition that DHSS does not see unless the court grants the petition. At times, the petition process is used to provide immediate safety when petitioners and the court see no other option, even if API is not the best or most therapeutic option.

Once a patient is admitted, API actively works to provide appropriate discharge to a placement that will meet a patient's level of care needs. As you are aware, however, access to safe, structured, and less restrictive facilities is very limited, and there is currently no intermediate care facility for intellectual/ developmental disabilities (ICF/IDD) in Alaska. Despite these challenges, DHSS has been actively working to find solutions for these patients:

- DHSS has weekly scheduled complex care placement meetings to discuss current patients at API, their placement needs, and their progress.
- In addition to focusing on current patients, DHSS is beginning system-wide improvements for providing appropriate care for individuals with specialized needs, including:
    - Posting Requests for Information (RFI) soliciting information to gauge interest from qualified parties capable and interested in providing 24/7 emergency, transitional, short-term, and/or long-term care. Specifically, the RFIs focus on care to individuals with complex needs, including co-occurring developmental disabilities, mental disorders, behavioral disorders, and/or complex medical conditions. One RFI requests information related to providing care for youth and the other for providing care for adults.
    - A complex behavior neighborhood is opening at the Anchorage Pioneer Home and is expected to accept its first residents in early 2022. This 9-bed care setting will provide appropriate care to Alaskans 60 and older experiencing complex behavioral issues related to Alzheimer's disease and related dementia. Even before this unit opens, DHSS had worked closely with API and has placed five elders at the Pioneer Home that had been at API for an extended period of time.

Returning to the recommendations from the 2019 Ombudsman report, the second recommendation, essentially, is that API should continue recruiting and retaining high-quality health care professionals sufficient to provide inpatient care. Neither DHSS nor API has ignored this recommendation; however, DHSS and API, like every other health care provider nationwide, continues to have challenges recruiting and retaining qualified staff. API continues to explore avenues to improve recruitment and retention strategies. Below are some of the items employed to enhance recruitment and retention over this past year:

- Improved recruitment and onboarding process to be timelier and more efficient including quickly posting vacancies and increasing the number of trainings offered to new employees.
- Utilized broader recruitment and advertising strategies for vacancies such as running recruitment ads in national magazines.
- Requested a job class study to create a new job classification specifically for Psychologists with an advanced degree. This new job class provides a more appropriate salary schedule for this position based on the qualifications and specialty needed.
- Currently the Occupational Therapist job class is under a salary study in the hopes that API can offer a more competitive salary for these positions.

- Reclassed Social Worker Mental Health Clinician III position to flex positions I/II/III to allow for the hiring of individuals who may need additional experience and training which can be offered by API.
- Initial development of an employee appreciation and morale program.
- Offering a $10,000 sign-on bonus for Registered Nurse positions and evaluating the efficacy of retention programs including monetary incentives.
- Pursuing the implementation of SHARP III to provide loan repayment incentive programs.
- Identify a third-party contractor to regularly evaluate staff safety concerns and implement staff training programs based on those evaluations.

Having addressed the 2019 Ombudsman's report recommendations, DHSS now offers its response to Complaint #1 and #2.

Complaint #1 &2: API has not consistently updated Treatment Plans and should expand active treatment, and API has not provided active treatment.

Response:

In general, the evidence offered in the preliminary report is accurate and is taken seriously. DHSS appreciates that the Ombudsman ultimately concluded that API does, in fact, engage in relatively effective treatment planning. DHSS, however, agrees API has not done what it should be doing to organize the treatment process and to document it appropriately with individualized and measurable goals. Over the past several months, API has been working on improving this process and remedying this issue. The following items are current initiatives to meet these needs.

Treatment Plans

- Active efforts are under way to improve the recruitment of critical staff for API *(see list under previous recommendation response)*.
- The Director of Clinical Services is working with treatment teams and schedules to increase consistency.
- API's Education division has initiated treatment plan writing classes that help the process of creating meaningful treatment plans.
- API conducts quarterly internal audits of medical records and nursing staff conducts nightly audits of treatment plans. Training does occur for nurses to ensure understanding of documentation for the treatment plans. The audits are directly linked to regulatory standards and include:
    - psychiatric evaluation completed within 24 hours of admission (The Joint Commission accreditation requirement)
    - admission order completes (The Joint Commission accreditation requirement)
    - medical problems identified in the master treatment plan (Centers for Medicare and Medicaid Services requirement)
- Implementing 2022 Quality Improvement (QI) projects will be based on internal audit data to improve treatment plans.
    - Increase inclusion of active physical and medical issues in Master Treatment Plans (MTP).
    - Increase inclusion of fall risk and interventions in the MTP.
- Barrens and Associates has been contracted to conduct mock surveys of the facility to determine compliance with current regulatory standards. These mock surveys provide feedback to improve all aspects of operations including treatment and treatment planning.

Treatment

- API is improving understanding within the hospital of what constitutes "active treatment" and how to differentiate empirically supported treatment from treatment at large.
- Recently hired positions in the Social Work (SW), Occupational Therapy (OT), and Psychology (PSY) departments with a focus on group training/skills.
- The hospital is making necessary adjustments to group schedules and addressing treatment team processes including, but not limited to:
    - SW department has moved some positions to weekends to increase weekend group coverage.
    - Suicide assessment and treatment protocol policy was revised in May 2021 and in September 2021 to comply better with The Joint Commission's National Patient Safety Goal (NPSG 15.01.01) and accurately reflect hospital practice. PSY and SW have fully implemented the updated protocol.
- API leadership has created a manual that describes group protocols to assist staff in providing demonstrably empirically supported treatment.
- Increased groups offered by SW that focus on treatment issues.
- Exploring utilizing Psychiatric Nurse Assistants (PNA) and others in Psychoeducation groups as we do on the Taku unit (Forensic Unit).
- The hospital is re-engaging the services provided by volunteers to address the lack of culturally informed services that were offered before the pandemic. Volunteer elders offer services here, including Native ways of knowing groups and related culturally informed groups and activities. DHSS will continue to monitor the ability to re-engage volunteers and explore alternative options to expand these services.

Recommendation 2, DHSS, and API should correct the inaccurate and misleading information provided to API Staff and the Governing Body in response to the anonymous complaint letter.

Response:

Respectfully, DHSS declines to adopt this recommendation, for three reasons. First, over a year has passed since the Governing Body was provided information in response to the anonymous complaint letter. At this point, the Governing Body is aware of API's status with regulatory authorities. The relationship between API staff and API management is better served by moving forward, rather than returning to events that happened over a year ago. Second, DHSS disagrees with the Ombudsman's use of the word "misleading." The word "misleading" connotates intentional deception. Third, DHSS believes that the issue presented is one of accurate and complete record-keeping. Fixing the systemic issue is the best way to move forward and to ensure that the Governing Body can properly fulfill its role. To that end, API has instituted practices, described above, that should correct the issues.

Recommendation 3: [redacted]

Recommendation 3.1: [redacted]

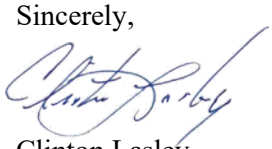
Recommendation 4: [redacted]

Response:

These recommendations involve personnel matters, which DHSS is legally required to keep confidential. DHSS'

understanding is that the Ombudsman's report will be public and subject to the Public Records Act. The public should be aware that DHSS takes these recommendations seriously, as it does with all Ombudsman recommendations. DHSS also takes seriously reports of improper discrimination by API employees. DHSS seeks to provide the evaluations and support needed to employees to help them succeed, to provide a safe and equitable workplace, and to make sure that the public is being well-served by State employees. DHSS will provide a supplemental and confidential response to the Ombudsman on these matters, which DHSS expects will not be part of any publicly released report.

Sincerely,



Clinton Lasley
Deputy Commissioner
Family, Community & Integrated Services