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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DOE,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

Case No. 3AN-18-09814 CI

**REPLY REGARDING DLC RESPONSE TO DHSS FILING OF  
"ADDRESSING GAPS IN THE CRISIS PSYCHIATRIC RESPONSE SYSTEM"**

The Department of Health and Social Services (DHSS) appreciates the Disability Law Center's (DLC) critique of "Addressing Gaps in the Crisis Psychiatric Response System" (Plan), and is committed to continuing a conversation with the many partners identified in the Plan, the Trust, the DLC, and the Alaska Court System about how the Plan is being put into place. DHSS has met with the DLC and Public Defender Agency once already, and hopes to again. At the Alaska Court System's Mental Health Summit last week, DHSS presented information on the 1115 Medicaid Waiver and the current state of the Alaska Psychiatric Institute, and the Trust presented information about Crisis Now. DHSS hopes that similar meetings can occur in the future.

DHSS believes that the best way to move forward is to focus time and attention on implementing the Plan. When developing the Plan, DHSS met with the Trust, the Alaska State Hospital and Nursing Home Association, the Department of Corrections (DOC), and the Designated Evaluation and Treatment facilities (DETs) Fairbanks Memorial Hospital and Bartlett Regional Hospital, each separately. Concurrently, DHSS met with the Mat-Su Regional Health Center (MSRHC) regarding their new status as a DET, with the Palmer Court regarding procedures at MSRHC, and, by the time the court reads this, with MSRHC separately. These meetings, which took place at

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all stages of the drafting process, took tens of hours. Implementing the Plan will require working with these stakeholders and with a multitude of state and federal programs including, at the bare minimum, licensing; negotiation with employees; multiple facets of Medicaid including the 1115 Waiver and Disproportionate Share Funding; and procurement. The Legislature's role here is very significant: there are six bills about API that have been introduced, and ultimately, the budget. Overarching all of these issues is that patients need medically appropriate care and it is health care providers, not bureaucrats or lawyers, who are best suited to make those medical decisions.

DHSS is committed to the goal of reducing the time civil detainees spend in a jail or correctional facility to the least amount possible. DHSS has made progress. Just looking back about two months, since mid-January, every person who was at a DOC facility, had their charges dismissed Monday through Thursday, and had an ex parte order entered was admitted to API within 25 hours. Two people had their ex parte orders entered on Friday, and they were admitted on Monday. (Weekend staffing at API is different than weekday staffing due to labor contracts.) No one has been picked up from the community and taken to DOC instead of API since August 2019.

API is a hospital, and should function as a hospital. Admissions are ultimately made by medical judgment. Not only is that the standard of care, it is reflected in the Medicaid Conditions of Participation: under 42 CFR 482.12(c)(2), the Governing Body of API must ensure that "Patients are admitted to the hospital *only* on the recommendation of a licensed practitioner permitted by the State to admit patients to a hospital." (Emphasis added.) The Plan ensures that medical judgment remains primary.

Again, DHSS is committed to working with partners, including the Trust, which is the driving force behind Crisis Now, and the Legislature, which will need to support Crisis Now in implementation. DHSS believes that Crisis Now would be of great benefit to Alaska, and has been standing up crisis responding funding mechanisms through the 1115 Waiver. This will be transformative for the overall system of care, and

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it is in progress right now.

Alaska's crisis psychiatric response system contains gaps. Gaps between partners; between systems; between funding mechanisms. To close these gaps requires administrative flexibility, guided by medical knowledge. To attempt to codify that necessary flexibility and medical judgment into a rigid legal judgment will set up the crisis psychiatric response system to continue to fail.

DHSS hears and appreciates the concerns of the Disability Law Center. But at this time, given the limitations of the law, the focus must be on implementation. The issue is less what the Plan says than what it does. The court should next look at how the Plan has been implemented after a reasonable period of time. DHSS is committed to open communication with all partners in the meantime.

DATED: March 3, 2020.

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DOE,

Petitioner,

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STATE OF ALASKA,

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**CERTIFICATE OF SERVICE**

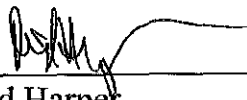
I certify that on this date, true and correct copies of the *Reply Regarding DLC Response to DHSS Filing of "Addressing Gaps in the Crisis Psychiatric Response System"*, and this *Certificate of Service* in this proceeding were served to the following parties via **hand delivery**:

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And served to the following via **U.S. Mail and fax**:

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03/03/2020  
Date

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