APPENDIX K

"Greene Group Report"
April 6, 1989

(Note: Appendix A of the "Greene Group Repoprt" is available as Appendix J of this AMHB Executive Committee Report)

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INTRODUCTION

On April 27, 1988, Superior Court Judge Mary E. Greene issued a decision in Weiss, the mental health trust lands case. This decision was a continuation in the litigation over the mental health trust lands. In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the State had breached its duty as trustee in its treatment of the mental health trust lands. The Supreme Court held that a State statute, which redesignated the mental health trust lands as general grant trust lands, was invalid and that the trust must be reconstituted. The case was therefore remanded to the superior court for reconstitution of the trust. Subsequent to the remand various advocacy groups intervened as plaintiffs. These intervenors requested the court's determination as to whether or not the class of persons they represented were beneficiaries of the mental health trust. The superior court identified that the issue before it was the definition of who is entitled to benefit from the trust. Ultimately the court decided the issue as follows:

> When considering all of the information available in light of the historical facts, it is the conclusion of the court that Congress intended that the Territory establish a comprehensive mental health program which would provide services to a group consisting of at least those individuals suffering from a psychiatric illness who may require hospitalization and the mentally defective and retarded. 6/ Further, it is the conclusion of the court that Congress intended that the mental health lands public trust benefit the recipients of the services of the comprehensive mental health program, which group must include, at a minimum, the mentally ill who may

> require hospitalization, and the mentally defective and retarded. The court concludes that it is within the discretion of the State to include other groups as recipients of services by the mental health program but it is not within the discretion of the State to exclude either of those two groups.
>
> 6/ The court does not exclude from this operative definition either chronic alcoholics suffering from psychoses or senile people who as a result of their senility suffer major mental illness. 1/

As a result of Judge Greene's decision (Greene decision) the Alaska Mental Health Board (AMHB) asked that representatives of the plaintiff and the plaintiff intervenors in Weiss join with the AMHB's executive committee, representatives of the Department of Health and Social Services, and other representatives of boards or organizations interested in services to the beneficiary groups identified in the Greene decision, to examine the interpretation and implications of the Greene decision. 2/ The goal of this examination was to develop guidelines for the AMHB activities that would ensure appropriate inclusion of persons to be served through the mental health trust benefit. 3/ The first meeting of what was

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1/ The full text of the superior court's decision is included as Appendix A.

2/ A copy of the June 16, 1988 Motion of AMHB regarding interpretations and implications of the Greene Decision is attached as Appendix B.

3/ A copy of the July 18, 1988 AMHB letter to attorneys of plaintiff and plaintiff intervenors is attached as Appendix C.

to become known as the "Greene Group" took place on September 16, 1988. 4/

4/ A list of Greene Group participants is attached as Appendix D. The group met six times from September 16, 1988 through March 14, 1989. The first five meetings were for one day each. The sixth session was for two days. All submission or materials presented by various interested groups and the public as well as audiotapes of all six meetings are available at the Executive Office of the Alaska Mental Health Board in Juneau.

A copy of the September 14, 1988 AMHB letter sent to invitees is attached as Appendix E. Commissioner Munson sent a letter dated September 15, 1988 attached as Appendix F requesting the Greene Group address certain questions.

THE GREENE GROUP PROCESS

The work of the Greene Group was accomplished through consensus building. The Greene Group members participated vigorously in discussions and the representatives of each group worked diligently to inform other members of their views and to reach consensus on the issues addressed. Although standard parliamentary rules were followed in aiding the flow of discussion, not every decision was reached through a vote. It should be noted, however, that much of the final wording of the diagnostic definitions, functional limitations definitions, and scope of services decisions, was specifically placed before the group in the form of motions and voted on by the group. 5/

The following four topics were addressed by the group and statements formulated:

1. diagnostic definitions and functional limitation definitions for the four beneficiary groups named in the Greene decision;

2. scope of services for the four beneficiary groups named in the Greene decision;

3. composition of the Alaska Mental Health Board; and

5/ The attorney members of the group did not participate in the voting procedure but did participate in the discussions.

4. the addition of beneficiaries to the Alaska Mental Health Trust.

The board also asked that their final report delineate some of the "sticking points" which were discussed repeatedly by the group members. Details of these thornier issues will be included at appropriate places throughout this report to demonstrate the concerns addressed and the compromises reached. None of the parties to the Weiss case are bound by the decisions made in the Greene Group. Their participation, however, was a good faith effort to work with the other beneficiary groups, the AMHB, and the Department of Health and Social Services in an effort to resolve differences and to move forward with the development and implementation of the State's comprehensive mental health program.

DEFINITIONS OF THE BENEFICIARY GROUPS NAMED IN THE GREENE DECISION

DIAGNOSTIC DEFINITIONS

1. Mentally ill who may require hospitalization

A mentally ill person is defined to mean a person who as a result of an organic mental disorder, a schizophrenic, paranoid or other psychotic disorder, an affective disorder, an anxiety related disorder, a somatoform disorder or a personality disorder, may require hospitalization, or a person under 18 years of age who exhibits a severe emotional disturbance and may require hospitalization, or whose severe emotional disturbance is indicative of a substantial risk of developing any of the above psychiatric disorders.

In this context "who may require hospitalization" means:

1. is at risk of immediate hospitalization, or

2. is in need of continuing services due to a disturbance of a severe or persistent nature, or

3. poses a hazard to the health or safety of the person or others.

2. Mentally defective and retarded

A person with a disability attributable to: mental retardation, cerebral palsy, epilepsy, autism or severe organic brain impairment, or a person under the age of five years who exhibits significant developmental delay and is at risk of developing any of the above conditions.

3. Chronic alcoholic suffering from psychoses

A chronic alcoholic with psychosis means a person who is an alcoholic with a history of prolonged or excessive drinking or episodes of drinking out of control, and who presents one or more the following neurological or psychiatric disorders: alcohol hallucinosis, alcohol withdrawal delirium (delirium tremens), alcohol amnestic disorder (Korsakoff's psychosis) or other alcohol-induced organic mental disorder, dementia associated with alcoholism, idiosyncratic alcoholic intoxication, alcoholic depressive disorder or alcohol-induced behavioral changes with symptoms similar to those listed above, and Wernicke's encephalopathy or a similar neurological impairment.

4. Senile people who as a result of their senility suffer major mental illness

A senile person who because of senility suffers a major mental illness means a person, 50 years of age or older, who because of the organic disease of senility exhibits dementia or other major mental illness.

FUNCTIONAL LIMITATIONS DEFINITIONS

The above diagnostic definitions are further modified by the requirement that the person's condition must result in a significant impairment in the person's ability to carry out one or more of the functions set out in the following life task categories, without assistance, support or other intervention. 6/

Life Task Categories

1. Self care
   - Medical
   - Hygiene
   - Nutrition
   - Life management
   - Grooming
   - Cooking
   - Shopping
   - Cleaning
   - Mobility
   - Community resources

6/ Due to time limitations the Greene Group did not make a definitive decision regarding what degree of functional limitation would be necessary for a person to be included in a beneficiary group named in the Greene decision.

2. Self Direction (including language and learning)

Self management including decision making and judgment

Cognition

Orientation

Communication

Self Concept

3. Social and Economic Functioning

Interpersonal relationships

Socialization

Employment and self support

Role functioning

In arriving at these diagnostic and functional limitations definitions, the group discussed at length how the beneficiaries could be treated equitably particularly if a beneficiary group's definition included limiting language such as "may require hospitalization" or "from psychoses" while another beneficiary group's definition did not contain such limiting language. The members of the group attempted to fashion the definitions so as to take into account the circumstance of the 1950's when the trust was created and project the definitions into current program circumstances with a view to the future as well. The members of the group also attempted to include the mental health needs of children into their deliberations. Children with mental health needs do not generally bear the same diagnostic labels as mentally ill adults. The group's definitions do take

into account, however, the importance of providing for children who predictably may bear a traditional psychiatric diagnosis in the future...particularly if the child does not receive mental health services.

SCOPE OF SERVICES

The group discussed various models for defining the scope or array of services to be provided to the beneficiary groups named in the Greene decision. Four of these models are reproduced on page 14 of this report. They represent contemporary lists of appropriate services. Although the Greene Group did not reach consensus as to which of these models should be used to the exclusion of the others, or what constitutes "mental health services," the group did agree that an array of services will be needed to provide appropriate treatment to an individual.

By unanimous vote the group that the proceeds of the Mental Health Lands Trust must first provide the Trust beneficiaries as named in the Greene decision with a program of services necessary to address their self care, self direction, and social and economic functional limitations. (These functional limitations were listed on page 9-10 of this report.)

The group members' discussion included a review of practices historically as well as desired future practices. Some of the difficulty encountered in the discussion of the scope of services is the extent to which payment of the direct physical medical care should be included in "the necessary expenses" of the mental health program to be paid through the mental health trust. For example, an alcoholic with multiple physical problems, a mentally ill person with self inflicted physical injuries, or a baby with multiple birth defects may require extensive direct

physical medical care. How much of these expenses should be included in the mental health program costs or in the "necessary expenses" under the mental health trust?

SCOPE OF SERVICES MODELS

Model 1

Prevention	Outpatient Treatment	Inpatient Treatment
Prevention Primary Secondary Tertiary Early Intervention Crisis Intervention Screening/Evaluation Diagnosis Outpatient Treatment Case Management Daily Structure and Support Day Treatment Vocational Residential/ Inpatient Care Follow-up/ After Care		

Model 3

Identified Problem

Method of Problem Solving	Physical and Mental Health	Education Services	Vocational Services	Social Services
Prevention: Education Community Development				
Intervention: Crisis Emergency Screening Evaluation Diagnosis				
Treatment/ Support: Outpatient Empowering After care Case Management Day Care Respite Care Inpatient Residential Vocational				

Model 2

Health Services

Prevention
Medical/Dental

Support Services

Maintenance
Homemaker
Day Care
Transportation
Monetary Support
Environmental Adaptations

Residential Services

In home to out of home

Educational Services

Birth to death

Vocational Services

Enabling Services

Legal, i.e., guardianship
Case Management

Model 4

Prevention

Education
Community Development
Skill Building

Intervention

Crisis Intervention
Early Intervention
Emergency Intervention
Screening
Evaluation
Diagnosis

Treatment

Nonresidential

Outpatient
Empowerment
Aftercare
Case Management

Residential

Day Care
Respite
Inpatient

Support

Transportation

BENEFICIARIES

Although the Greene Group came to no consensus regarding the addition of trust beneficiaries to those beneficiaries already identified in the Greene decision, a number of opinions were discussed. One point of view was that there has been no addition of beneficiaries as the trust has not been reconstituted. Other members of the Greene Group were of the opinion that the state has in past added additional trust beneficiaries through the legislative budget process or other governmental action. There was also a view expressed that the state could not add beneficiaries, if the addition diluted benefits to the beneficiaries identified in the Greene decision.

COMPOSITION OF THE BOARD

A final task for the Greene Group was the discussion of the how the Greene decision may affect the composition and responsibilities of the Alaska Mental Health Board. The Greene Group discussed several options regarding the composition of the AMHB as well as the relation of the AMHB to other state boards charged with responsibilities for programs to assist in the care and treatment of persons who abuse alcohol, the developmentally disabled, and older Alaskans.

The following examples of changes were discussed:

1. Establish a separate board with the statutory responsibility to make funding recommendations for all of the beneficiaries. This board would not be involved in program decisions. Program decisions would be left with the various boards now in existence. (The Alaska Mental Health Board, the Governor's Council for the Handicapped and Gifted, the Governor's Advisory Board on Alcoholism and Drug Abuse, and the Older Alaskans Commission.)

2. Establish a trustee board. The trustees would have the ongoing responsibility for the reevaluation of the mental health lands and to approve any transfers or sale of the lands as well as investment of any trust assets.

3. Establish a trustee board responsible for developing a funding formula which would become an entitlement program. The trustees would also have the ongoing responsibility for the reevaluation of the mental health lands and to approve any transfers or sale of the lands as well as investment of any trust assets.

4. Establish a "superboard" which would be responsible for the coordination of the funding recommendations of all the other boards responsible for individual programs.

5. Amend current statutes regarding the various boards (the Alaska Mental Health Board, the Governor's Council for the Handicapped and Gifted, the Governor's Advisory Board on Alcoholism and Drug Abuse, and the Older Alaskans Commission) to give each of the boards authority to represent its beneficiary group and to give each board equal footing to advocate before the "trustee board." The changes would include responsibility to report directly to the Governor and the legislature.

The Greene Group was told about the AMHB's recent resolution regarding the creation of an independent trustee. The AMHB Resolution 89-5 provides:

> An independent trustee should be designated for the mental health trust for the purpose of protecting the trust and to insure that proceeds and income of the trust shall first be applied to meet the necessary expenses of the mental health program of Alaska.

The Greene Group favored the establishment of an independent trustee and ultimately the group voted on a motion that stated that an 'independent trustee' is defined to mean a board constituted separate and apart from any existing board. The motion passed, 10 yeas, 4 nays. The four members of the current mental health board present at the Greene Group meeting voted against this motion and asked that this fact specifically be included in this report.

CONCLUSION

Although the Greene Group was not able to develop definitive statements regarding all the complex issues before it, the group members did work diligently in an attempt to provide guidance to the AMHB and other interested decisionmakers.