

*A brief overview of the unique history and evolution of Alaska's public program of services in behavioral health*

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Alaska had a unique distinction among the territorial possessions of the United States for most of its pre-statehood history. It was prohibited as a matter of federal law from legislating and administering a program on behalf of its mentally ill and mentally disabled. That governmental responsibility was by law vested in the national government. In 1903 the federal government entered into a contract for the care and custody of Alaska's mentally ill and mentally disabled with Morningside Hospital, a private institution located in Portland, Oregon. For the next 53 years this was to be the extent of the public program of services for these disadvantaged people.

Compounding this was the archaic approach to these disabilities that remained unchanged throughout this period and treated them as a crime. The United States Attorney would bring an action in federal court, alleging that there was "an insane person at large." That person frequently would be detained in jail pending a judicial hearing or trial. If found to be "insane" the individual would be remanded to the custody of the US Marshal pending transfer to Morningside hospital; if found "not insane," the person would simply be released back into the community, where no public program of services existed. Children in need of hospitalization services were treated in a like manner.

In 1956, as the advent of statehood grew closer, Congress passed the Alaska Mental Health Enabling Act. This act transferred the fiscal and administrative authority for mental health programs from the federal government to the territorial government. Congress described the purpose of the Act as vesting in the Territory of Alaska "...authority comparable in scope to that of the states and other Territories of the United States in the field of mental health ...". To aid the territory in discharging the financial responsibilities attending its assumption of the newly authorized mental health program, Congress granted the territory, through selection by the Territory, up to one million acres of federal land to be administered as a public trust. The proceeds and income from these trust lands were to "...first be applied to meet the necessary expenses of the mental health program of Alaska.". A diverse portfolio of lands had been acquired over the ten year period provided by the act for these selections. Lands had been selected for their future use and development potential in mineral, oil and gas, timber, and lands within the anticipated growth corridors of major communities.

With statehood in 1959, the responsibility for the management of this trust was accepted by the state. The state provided a very limited trust management program for the assets of the trust. Of particular significance was the state maintained no separate accounting of trust lands. As a result of this, by 1978 only about thirty-five percent of the original selected trust lands remained unencumbered in state ownership. In 1978 the state placed this trust management practice into law by passing a redesignation statute that redesignated all the original trust lands to general grant lands of the state. The state promised to pay for these lands through annual appropriations. The purpose of these annual appropriations was to offset the cost of the states mental health program. No money was ever appropriated.

In 1982 a lawsuit was filed by a father who had been denied mental health services for his son due to the unavailability of funding. This lawsuit alleged, among other things, that the 1978 redesignation statute was a breach of the states trust responsibility. The trial court agreed. In 1985 the Alaska Supreme Court upheld this decision. Relying on long established trust principals the court held that Congress had intended to create a real trust, and there could not be a trust without a trust corpus. The state as trustee had unilaterally abolished the trust corpus through the redesignation statute, which it had no authority to do. Therefore, the 1978 redesignation legislation was invalid and the state was directed to reconstitute the trust (Weiss v . State, 706 P.2d 1985).

The course of events that would bring a final settlement resolution to this lawsuit would take another nine years. Several attempts at legislative solutions had failed in the court over plaintiff's objections. After two special sessions of the Alaska Legislature during the summer of 1994 a final negotiated agreement between the plaintiff's and the state was achieved. Based on this agreement, now in statute, the court approved a settlement and dismissed the litigation on December 13, 1994.

The settlement legislation reconstituted the mental health trust with one million acres of land, a \$200 million permanent trust fund, and a seven member Trust Authority to protect and enhance these assets. The legislation also adopted some 60 pages of statutory amendments to the states mental health programs. It further gave the Trust Authority, in conjunction with the Department of Health and Human Services, the responsibility for the development of a comprehensive integrated mental health program for the state, and the authority to produce a separate annual appropriation bill for the governor and legislature to fund this each year.

On May 2, 1997 the Alaska Supreme Court unanimously upheld this settlement.