



Alaska Mental Health Trust Authority

Fiduciary Training

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Objectives

- Define fiduciary and fiduciary duty
- Briefly discuss unique nature of the Alaska Mental Health Trust & Trust Authority
- Identify trust beneficiaries
- Identify specific fiduciary duties
- Discuss how fiduciary duties are carried out

What is a fiduciary?

- **Fiduciary** (noun) means:

One who transacts business, and handles money and property, not for self-interest, but for the benefit of another, “implying and necessitating great confidence and trust, and a high degree of good faith”

What is fiduciary duty?

A **fiduciary duty** is when one party must act for another. The fiduciary is entrusted with the care of property or funds.

Fiduciary Duty for AMHTA Trustees

- Sources
 - Enabling Act
 - State statutes
 - *Weiss* settlement
 - Common Law

 - Uniform Prudent Investor Act likely applies to AMHTA

Alaska Mental Health Enabling Act

- In 1956, Congress passed the Alaska Mental Health Enabling Act.
- Section 202(e) of the Enabling Act provided in part:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, **shall be administered** by the Territory of Alaska **as a public trust** and such proceeds and income **shall first be applied to meet the necessary expenses of the mental health program of Alaska.**

Weiss litigation and HB 201

- In 1978, the Alaska legislature passed a law redesignating the land received under the Enabling Act as general grant land managed by DNR.
- This led to the *Weiss* class action lawsuit, filed in 1982. Beneficiaries argued that the State had failed to uphold its fiduciary responsibilities to mental health beneficiaries. It ultimately concluded with the *Weiss* settlement and in 1994, the related statutory law enacted through passage of HB 201.

AMHTA's Purpose

The statutory purpose of the Alaska Mental Health Trust Authority is

- (1) to ensure an integrated comprehensive mental health program, and**
- (2) to administer the office of the long term care ombudsman.**

The *Weiss* settlement echoes the same requirement that AMHTA ensure an integrated comprehensive mental health program for the state.

AMHTA as a public trust

- The Alaska Mental Health Trust is a **public trust** created under federal law.
- As a public trust created under federal law, private trust law principles apply.

Application of private trust law principles; duty to beneficiaries.

- For private trusts, the trustee duty is to administer the trust **solely in the interest of the beneficiaries.**
- The **full value of the trust**, including lands held, **must be utilized to provide the most substantial support to the beneficiaries**, and that only beneficiaries profit from the Trust.

Alaska Mental Health Trust

Beneficiaries

AMHT beneficiaries are people who:

- (1) are mentally ill;
 - (2) have an intellectual disability, a developmental disability, or both;
 - (3) are chronic alcoholics suffering from psychoses;
 - (4) as a result of senility, suffer major mental illness; and
 - (5) need mental health services, as the legislature may determine.
- The integrated comprehensive mental health program must give priority in service to beneficiaries at risk of hospitalization or who experience such major impairment that they require continuing or intensive services.
 - Duty of Impartiality

Alaska Mental Health Trust Authority as Trustee

As Trustee, AMHTA has a **duty to the public and the trust beneficiaries** to:

- (1) administer the trust consistent with AS 37.14.009 in the interest of the beneficiaries;
- (2) keep and render clear and accurate accounts with respect to the administration of the trust;
- (3) make public and available complete and accurate information as to the nature and amount of the trust property;
- (4) exercise a high degree of care in administering the trust;
- (5) take reasonable steps to take and keep control of the trust property;

Alaska Mental Health Trust Authority as Trustee (continued)

- (6) use care and skill to preserve the trust property;
- (7) take reasonable steps to realize on claims that are held in trust;
- (8) defend against actions that may result in a loss to the trust estate, unless under all the circumstances, considering the other duties owed to the trust, it is reasonable not to make the defense;
- (9) separately account for trust property;
- (10) ensure that trust property is designated as property of the trust;
- (11) use care and skill to make the trust property productive; however, nothing in this paragraph shall prevent the state from using trust property directly or indirectly, by contractual stipulation or otherwise, as a component of the state's mental health trust program; and
- (12) deal impartially with the different trust beneficiaries as provided in AS 47.30.056.

Key Statutory Duties

- Per AS 47.30.011, the Authority is required to administer the trust established under the Alaska Mental Health Enabling Act of 1956.
- Per AS 37.14.009, the Authority has a **fiduciary obligation** to ensure that the assets of the trust are managed consistent with the requirements of the Alaska Mental Health Enabling Act.

Key Statutory Duties

- **Administer the mental health trust settlement income account.**
 - If the Authority determines that there is a surplus of money in the account above the amount sufficient to meet current and projected cash expenditure needs of the Authority, **the surplus shall be invested by the Authority as provided in AS 37.10.071 for the making of investments by the fiduciary of a state fund.** Income earned on investments made under this subsection may be retained by the authority and expended under AS 37.14.041.

Key Statutory Duties

- **preserve and protect the trust corpus;**
- **review and consider the recommendations submitted by**
 - (a) the Advisory Board on Alcoholism and Drug Abuse re services from chronic alcoholics suffering from psychoses;
 - (b) the Alaska Mental Health Board re services for the mentally ill;
 - (c) the Alaska Commission on Aging re the needs of older Alaskans who suffer as a result of senility or major mental illness; and,
 - (d) the Governor's Council on Disabilities and Special Education re individuals who have an intellectual and/or developmental disability;
- **adopt bylaws governing its meetings, selection of officers, proceedings, and other aspects of board procedure;**

Trust fund management

AMHTA has a **fiduciary obligation** to ensure that the assets of the trust (cash and land) are managed consistent with the requirements of the Enabling Act.

- In carrying out this duty, AMHTA must contract with APFC and DNR.
- The “mental health trust fund” is an AMHTA fund and consists of the cash principal of the trust.
 - Managed by the APFC
 - APFC has a number of obligations to AMHTA including:
 - Investment responsibilities
 - Financial reporting
 - Periodic advice to AMHTA when contemplating changes to long-range investment policies are contemplated, and opportunity to comment.

Trust land management

- DNR is required by statute to manage the land assets in conformity with the principles of the Enabling Act.
- Every year, DNR must provide the Authority with a report including
 - (i) a description of all land management activities undertaken during the prior year;
 - (ii) an accounting of all income and proceeds generated from trust land;
 - (iii) an explanation of the manner in which the income and proceeds were allocated between the mental health trust fund and the mental health trust settlement income account
- **The AMHTA board is required to adopt regulations that provide for allocation between principal and income of money received from the management of mental health land, which allocation must be in the long-term best interest of the trust and its beneficiaries.**

As fiduciary of the trust's settlement income account

- The Authority is charged with administration of the Trust's settlement income account.
- If the Authority determines that there is a surplus in the account, the surplus shall be invested by the Authority as provided in AS 37.10.071 for the making of investments by the fiduciary of a state fund.
- Income earned on investments may be retained by the authority and expended under AS 37.14.041 (uses of trust settlement income account).

Prudent Investor Rule

- AS 37.10.071(c): “the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality.”

Prudent Investor Standard of Care

- A trustee shall invest and manage trust assets as a prudent investor would **by considering the purposes, terms, distribution requirements, and other circumstances of the trust.** In satisfying this standard, **the trustee shall exercise reasonable care, skill, and caution.**

AS 37.10.071 Investment Powers and Duties

As fiduciary of a state fund, when making investments, the Board **shall**:

- (1) act as official custodian;
- (2) receive all items of cash and investments;
- (3) collect and deposit the principal of and income from owned or acquired investments;
- (4) invest and reinvest the assets in accordance with this section;
- (5) receive and spend appropriations to cover the cost of the exercise of duties under this section;
- (6) exercise the powers of an owner with respect to the assets;
- (7) perform all acts, not prohibited by this section, whether or not expressly authorized, that the fiduciary considers necessary or proper in administering the assets;
- (8) maintain accounting records in accordance with GAAP;
- (9) engage an independent CPA to conduct an annual audit of the financial condition and investment transactions;
- (10) enter into and enforce contracts or agreements considered necessary, convenient, or desirable for the investment purposes of this section; and
- (11) when choosing to acquire or dispose of investments, secure competitive national or international market rates or prices, or the equivalence of those rates or prices in the judgment of the fiduciary.

Discretionary Powers

As a fiduciary of a state fund, the Board as fiduciary, or its designee, **may**:

(1) delegate investment, custodial, or depository authority on a discretionary or nondiscretionary basis to officers or employees of the state or to independent firms, banks, financial institutions, or trust companies by designation through appointments, contracts, or letters of authority;

(2) acquire or dispose of investments;

(3) concentrate or diversify investments as the fiduciary considers appropriate;

(4) protect the market value or the rate of return of the investments;

(5) lend assets, under an agreement and for a fee, against deposited collateral of equivalent market value;

(6) borrow assets on a short-term basis;

(7) hold investments in bearer or registered form in the name of the state, a fund, or authorized nominees;

(8) utilize consultants, advisors, custodians, investment services, and legal counsel for assistance in investment matters on either a continuing or a limited-term basis and with or without compensation;

(9) declare records to be confidential and exempt from AS 40.25.110 and 40.25.120 if the records contain information that discloses the particulars of the business or the affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

Summary/Takeaways

- Purpose to ensure comprehensive integrated mental health program (public trust)
- Fiduciary duty to protect corpus of mental health trust fund
- Duty to invest surplus of settlement income account
- Fiduciary duty to beneficiaries
- No ideal prudent behavior for all situations and times
- Can rely on expert advisors or delegate

How can a Part-Time Board carry out these obligations?

- Only with substantial assistance
- AMHTA’s comprehensive “toolkit”:
 - staff,
 - authority to engage managers, consultants, and other professionals,
 - Setting prudent standards through regulations, policies, and procedures,
 - Monitoring budget, monitoring performance of delegates,
 - Governance practices.

How To Use the Toolkit?

- Process – have it, follow it, refine it
 - Structure/governance
 - Policies & Procedures
 - Compliance
 - Reporting
 - Monitoring
 - Obtain and use resources

Delegated Duties

- Generally, fiduciaries are not liable for breach of duty if the delegation is prudent or assigned by law to another person.
- A fiduciary may still be liable for breach of a delegated duty if the fiduciary:
 - Participates in or conceals a breach
 - Enables a breach
 - Knows about a breach and does not attempt to remedy

Indemnification by State; limits

- AS 37.10.071(e): “The state shall defend and indemnify the fiduciary or an officer or employee of the state against liability under (d) of this section **to the extent that the alleged act or omission was performed in good faith and was prudent** under the applicable standard of prudence.”

Conclusion

- Trustees have enormous responsibility
- Use the right tool for the right job
- When in doubt, ask
- Questions?