



Alaska Mental Health Trust Authority

GOOD GOVERNANCE

EUGENE F. HICKEY

SENIOR ASSISTANT ATTORNEY GENERAL

STATE OF ALASKA, DEPARTMENT OF LAW

AUGUST 28, 2024

Objectives

- ▶ General Overview of Good Governance Practices for a Board
- ▶ Identify Trustees Statutory Duties
- ▶ Overview of Interplay between various laws applicable to the Board of Trustees and the Trust
- ▶ Identify specific issues Questions

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.

Key Statutory Duties

- ▶ Per AS § 44.25.200, 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.

WHAT IS GOOD GOVERNANCE?

- ▶ Good governance can be defined in many ways. Most definitions would include some form of the following elements:
- ▶ A participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law process.

PARTICIPATION

- Diverse Board Members
 - Active not silent participants
 - Include and value the views of people with various skills, talents, abilities, experiences and perspectives.
 - Facilitation of Meetings that bring out views of all Board members

Consensus Oriented

- The Board Room is an appropriate forum for hosting robust discussions and debates
- Some of the most heated debates may result in the best decisions, as representatives from many different walks of life come together with varying perspectives.
- Consensus-oriented decision-making utilize the board's diverse group's different needs and perspectives to deliver a broad consensus that will serve the best interests of communities and companies.

Accountability

- Board is accountable to groups and individuals affected by their decisions, including their stakeholders, employees and the general public.

transparency

- Use records and processes that are transparent and available to stakeholders and employees.
- Financial records should not be inflated or exaggerated. You should present reporting to stakeholders in ways that enable them to understand and interpret the findings.

Responsiveness

- Good governance includes prioritizing swift and honest communication with stakeholders and employees.

Rule of Law

- The rule of law means boards should be fair and impartial in their collaborations and decision-making.
 - Certain circumstances may require boards to seek counsel, guidance or expertise from external, third-party experts.
 - Good corporate governance requires boards to act ethically, honestly and with the utmost integrity, whether making decisions themselves or working with third parties.

Strategic Vision

- One of the primary responsibilities of board directors is strategic planning, which includes the organization's mission, vision and values statements.
 - Strategic planning leads boards to understand where the corporation is going and how it will get there.
 - Good corporate governance requires a robust planning process, incorporating action plans, budgets, operating plans, analysis, reporting and much more.
 - The strategic plan holds board members accountable for their decisions and for monitoring their goals. Strategic planning also includes risk management and protecting the company's reputation, and as such, is an opportunity for organizations to put into practice many of the good governance principles they espouse.

Governance vs. Management

- Governance is not management of the day-to-day business of the Trust.
 - Focus should be on mission, strategy & goals, i.e. policy development.
 - Sees that the organization operates within legal and ethical guidelines.
 - Alaska Open Meetings Act
 - Alaska Executive Branch Ethics Act
 - Personnel Policy, AMPS, Resource Management, etc.

Policy

- Board declares and sets policy for the Organization.
 - Staff implements policies set by the Board.

Role of the Board

- **Recruit, supervise, retain, evaluate and compensate the CEO**
- **Provide direction for the organization**
- **Establish a policy based governance system**
- **Govern the organization and the relationship with the CEO**
- **Fiduciary duty to protect the organization's assets and member's investment**
- **Monitor and control function – done through auditing, monitoring, and approving budget and spending**
 - All these roles are seen in the statutory provisions that follow.

Governance Decisions

- Adoption of By-laws
- Adoption of charters that enhance requirements in By-Laws
- Election of Board Officers
 - Done annually
 - Can be at open meeting or in private
 - Open Meetings Act excludes organization of Board from laws requirements. AS 44.62.310(a) - This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.
- Adoption of Policies that govern how the organization is run, i.e., Personnel, Travel, AMPS, etc.

AS 44.25.230 - Officers and Staff

- ▶ (a) The board shall annually elect a presiding officer and other officers it considers necessary from among its membership.
- ▶ (b) The board shall employ a chief executive officer who shall be selected by the board. The chief executive officer shall be compensated at no less than range 26 of the pay plan for state employees under [AS 39.27.011\(a\)](#). The chief executive officer may
 - ▶ (1) hire additional employees;
 - ▶ (2) appoint hearing officers to perform the responsibilities set out in [AS 44.25.240\(b\)\(4\)](#); and
 - ▶ (3) contract for the services of consultants and others.
- ▶ (c) The chief executive officer is directly responsible to the board.
- ▶ (d) The chief executive officer and employees hired under this section are in the exempt service under [AS 39.25.110](#).

Trustee Statutory Duties

§ 37.14.007. Authority as trustee

- ▶ (a) The Alaska Mental Health Trust Authority, established by [AS 44.25.200](#), is the trustee of the trust established under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709.
- ▶ (b) In exercising the powers, duties, and responsibilities as trustee, the authority is under 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;

AS 37.14.007 – Cont.

- ▶ (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 44.25.290.

AS 44.25.250 – Board Duties

- ▶ The board shall
- ▶ (1) preserve and protect the trust corpus under AS 37.14.009;
- ▶ (2) coordinate with other state agencies involved with programs affecting persons in need of mental health services;
- ▶ (3) review and consider the recommendations submitted under AS 44.29.140(a)(2) – Advisory Board on Alcoholism & Drug Abuse; AS 44.29.660(13)- Governor’s Council on Disabilities & Special Education; AS 44.29.790(a)(8) – Alaska Commission on Aging; and As 44.29.850(6) – Alaska Mental Health Board;
- ▶ (4) adopt bylaws governing its meetings, selection of officers, proceedings, and other aspects of board procedure;
- ▶ (5) make an annual written report of its activities to the governor and the public and notify the legislature that the report is available; and
- ▶ (6) fulfill its obligations under AS 44.25.270 – Budget Recommendations.

AS 44.25.270 Budget Recommendations

- ▶ (a) The board shall annually, not later than September 15, submit to the governor and the Legislative Budget and Audit Committee a budget for the next fiscal year and a proposed plan of implementation based on the integrated comprehensive mental health program plan prepared under AS 47.30.660(a)(1). The budget must include the authority's determination of the amount
- ▶ (1) recommended for expenditure from the general fund during the next fiscal year to meet the operating and capital expenses of the integrated comprehensive mental health program;
- ▶ (2) in the mental health trust settlement income account, if any, that is not reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program that may be transferred into the general fund; and
- ▶ (3) of the expenditures the authority intends to make under AS 37.14.041 and 37.14.045, including the specific purposes and amounts of any grants or contracts as part of the state's integrated comprehensive mental health program.

AS 44.25.270 – Cont.

- ▶ (b) When the authority submits its proposed budget under (a) of this section, the authority shall also provide a report to the Legislative Budget and Audit Committee, the governor, the Office of Management and Budget, the commissioner of health, and all entities providing services with money in the mental health trust settlement income account, and shall make the report available to the public. The report must describe at least the following:
 - ▶ (1) the assets, earnings, and expenditures of the trust as of the end of the preceding fiscal year;
 - ▶ (2) comparisons of the trust's assets, earnings, and expenditures with the prior five fiscal years;
 - ▶ (3) projections of the trust's assets, earnings, and expenditures for the next five fiscal years;
 - ▶ (4) the authority's budget recommendations submitted under (a) of this section, and its reasons for making those recommendations;
 - ▶ (5) the authority's guidelines for the establishment of services; the provision of services shall be based on the principle that services paid for from the trust are provided to recipients as close to the recipient's home and family as practical with due consideration of demographics, mental health service requirements, use of mental health services, economic feasibility, and capital expenditures required for provision of minimum levels of service;
 - ▶ (6) forecasts of the number of persons needing services;
 - ▶ (7) projections of the resources required to provide the necessary services and facilities; and
 - ▶ (8) reviews of the status of the integrated comprehensive mental health program, including evaluation of program goals, objectives, targets and timelines, and overall effectiveness.

AS 44.25.260 – Advisors to the Board

- ▶ The Commissioners of Health, Natural Resources, and Revenue, or their respective designees, are advisors to the board.
 - Difference between Advisors to the Board and Statutory Advisory Boards

Statutory Advisory Boards

- ▶ Advisory Board on Alcoholism & Drug Abuse – AS 44.29.140(a)(2)
 - (2) provide to the Alaska Mental Health Trust Authority for its review and consideration recommendations concerning the integrated comprehensive mental health program for the people who are described in AS 44.25.290(b)(3), and concerning the use of money in the mental health trust settlement income account in a manner consistent with regulations adopted under AS 44.25.240.

Statutory Advisory Boards – Cont.

- ▶ AS 44.29.660(13)- Governor’s Council on Disabilities & Special Education
 - (13) provide to the Alaska Mental Health Trust Authority for its review and consideration recommendations concerning the integrated comprehensive mental health program for the people of the state who are described in AS 44.25.290(b)(2) and the use of the money in the mental health trust settlement income account in a manner consistent with regulations adopted under AS 44.25.240.
 - (2) have an intellectual disability, a developmental disability, or both

Statutory Advisory Boards – Cont.

- ▶ AS 44.29.790(a)(8) – Alaska Commission on Aging
 - (8) provide to the Alaska Mental Health Trust Authority, for its review and consideration, recommendations concerning the integrated comprehensive mental health program for persons who are described in (d) of this section and the use of the money in the mental health trust settlement income account in a manner consistent with regulations adopted under AS 44.25.240.
 - (d) When the commission formulates a comprehensive statewide plan under (a) of this section, it shall include within the plan specific reference to the concerns and needs of older Alaskans who have a disorder described in AS 44.25.290(b)(4).

Statutory Advisory Boards – Cont.

- ▶ As 44.29.850(6) – Alaska Mental Health Board
 - (6) provide to the Alaska Mental Health Trust Authority for its review and consideration recommendations concerning the integrated comprehensive mental health program for persons described in AS 44.25.290(b)(1) and the use of money in the mental health trust settlement income account in a manner consistent with regulations adopted under AS 44.25.240.
 - (b) Expenditures under (a)(1) of this section must provide for a reasonable level of necessary services to persons who
 - (1) are mentally ill;

AS 37.14.009-Trust Management

- ▶ (a) The Alaska Mental Health Trust Authority
 - ▶ (1) 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, P.L. 84-830, 70 Stat. 709 (1956);
 - ▶ (2) shall contract with the Department of Natural Resources to manage the land assets of the trust; the contract must provide for the recording of at least one conveyance to the authority by quitclaim deed of mental health trust land in each recording district in the state in which mental health trust land is located; a conveyance to the authority is exempt from the platting and surveying requirements of [AS 38.04.045\(b\)](#) and municipal ordinances adopted under AS 29.40; when the Department of Natural Resources manages land assets of the trust under a contract entered into under this paragraph, the department shall
 - ▶ (A) manage in conformity with [AS 38.05.801](#);
 - ▶ (B) consult with the authority before adopting regulations under [AS 38.05.801\(c\)](#);
 - ▶ (C) provide notice to, and consult with, the authority regarding all proposed actions subject to public notice under [AS 38.05.945](#) before giving that public notice;

AS 37.14.009 – Cont.

- ▶ (D) annually provide the authority with a report including
 - ▶ (i) a description of all land management activities undertaken under this section during the prior year;
 - ▶ (ii) an accounting of all income and proceeds generated from mental health 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; and
- ▶ (E) obtain the approval of the authority before exchanging mental health trust land under AS 38.05.801(b)(2); and
- ▶ (3) shall contract with Alaska Permanent Fund Corporation for management of the mental health trust fund.
- ▶ (b) Repealed by 1st Sp. Sess. 1994, ch. 5, § 39, eff. June 24, 1994.

AS 37.14.031 – Trust Fund

- ▶ (a) The mental health trust fund is established as a separate fund of the Alaska Mental Health Trust Authority.
- ▶ (b) The fund consists of the cash assets of the principal of the trust, and includes
 - ▶ (1) money appropriated to the fund;
 - ▶ (2) the proceeds of sale or other disposals of mental health trust land, and the fees, charges, income earned, royalty proceeds, and other money received from the management of mental health trust land attributable to principal; and
 - ▶ (3) gifts, bequests, and contributions from other sources.
- ▶ (c) The net income of the fund shall be determined by the Alaska Permanent Fund Corporation in the same manner the corporation determines the net income of the Alaska permanent fund under AS 37.13.140.
- ▶ (d) The authority shall adopt regulations providing for the determination of amounts attributable to principal under (b)(2) of this section. The regulations must provide for the allocation between principal and income of money received from the management of mental health trust land, and the manner of allocation must be in the long-term best interest of the trust and its beneficiaries.

AS 37.14.035 – Trust Fund Utilization

- ▶ (a) The cash principal of the mental health trust fund shall be retained perpetually in the fund for investment by the Alaska Permanent Fund Corporation, as specified in AS 37.13.300.
- ▶ (b) The net income of the fund shall be transferred by the corporation to the mental health trust settlement income account at the end of each fiscal year.
- ▶ (c) The net income of the fund may only be utilized by the Alaska Mental Health Trust Authority for the purposes listed in AS 37.14.041.

AS 37.14.036 – Trust Settlement Income Account

- ▶ (a) The mental health trust settlement income account is established as a separate account of the Alaska Mental Health Trust Authority. The mental health trust settlement income account consists of
 - ▶ (1) fees, charges, income earned on assets, and other money received by the trust that is not attributable to the principal of the trust under AS 37.14.031(d); and
 - ▶ (2) money deposited in the account in accordance with appropriations or allocations made by law.
- ▶ (b) The authority may establish subaccounts within the mental health trust settlement income account.
- ▶ (c) Repealed by 1st Sp. Sess. 1994, ch. 5, §39, eff. June 24, 1994.

AS 37.14.039 – Trust Settlement Income Account Admin.

- ▶ (a) The mental health trust settlement income account shall be administered by the Alaska Mental Health Trust Authority.
- ▶ (b) 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.

AS 37.14.041 – Use of Trust Settlement Income

- ▶ (a) Money in the mental health trust settlement income account may only be used for the following purposes:
 - ▶ (1) the awarding of grants and contracts in fulfillment of the authority's purpose to ensure an integrated comprehensive mental health program for the state;
 - ▶ (2) obtaining private and federal grants for a purpose described in (1) of this subsection;
 - ▶ (3) soliciting gifts, bequests, and contributions for a purpose described in (1) of this subsection;

AS 37.14.041 – Cont.

- ▶ (4) reimbursement to
- ▶ (A) the Alaska Permanent Fund Corporation for the costs of managing the principal of the mental health trust fund; and
- ▶ (B) the Department of Natural Resources for the cost of managing mental health trust land;
- ▶ (5) offsetting the effect of inflation on the value of the principal of the mental health trust fund; and
- ▶ (6) subject to AS 37.07 (Executive Budget Act), meeting the necessary administrative expenses of the authority that are required for it to properly discharge its responsibilities.
- ▶ (b) If money in the mental health trust settlement income account is not needed to meet the necessary expenses of the state's integrated comprehensive mental health program, the authority shall transfer the money to the unrestricted general fund for expenditure through legislative appropriation for other public purposes.

AS 44.25.290 – Use of Trust Settlement Income

- ▶ (a) The money in the mental health trust settlement income account established in AS 37.14.036 shall be used as provided in AS 37.14.041, including to
 - ▶ (1) provide an integrated comprehensive mental health program as required by this section;
 - ▶ (2) meet the authority's annual administrative expenses; and
 - ▶ (3) offset the effect of inflation on the mental health trust fund.

AS 44.25.290 – Cont.

- ▶ (b) Expenditures under (a)(1) of this section must provide for a reasonable level of necessary services to persons 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.

AS 44.25.290 – Cont.

- ▶ (c) The integrated comprehensive mental health program for which expenditures are made under this section
- ▶ (1) must give priority in service delivery to persons who, as a result of a mental disorder or of a disorder identified in (b) of this section,
 - ▶ (A) may require or are at risk of hospitalization; or
 - ▶ (B) experience such major impairment of self-care, self-direction, or social and economic functioning that they require continuing or intensive services;
- ▶ (2) may, at the discretion of the board, include services to persons who are not included under (b) or (c)(1) of this section.

AS 37.14.045 – Limitations on Grants and Contracts

- ▶ a) The authority may award grants and contracts that are paid for from money in the mental health trust settlement income account only in furtherance of its purpose to ensure an integrated comprehensive mental health program.
- ▶ (b) In awarding grants and contracts that are paid for from money in the mental health trust settlement income account, the authority shall consider proposals only from applicants submitting a detailed proposal in the form prescribed by the authority.
- ▶ (c) The authority may not award a grant or contract that is to be paid for from money in the mental health trust settlement income account unless the authority makes written findings explaining that
 - ▶ (1) the grant or contract awarded will further the authority's purpose to ensure an integrated comprehensive mental health program;
 - ▶ (2) the applicant has submitted an adequate plan for project implementation, including both financial feasibility and project effectiveness;
 - ▶ (3) the applicant has demonstrated that sufficient expertise is available to accomplish the objectives of the proposed program or project; and
 - ▶ (4) the applicant has identified operating, maintenance, and other costs associated with the project, including those ancillary to the project, and future obligations associated with the project.

AS 37.14.045 – Cont.

- ▶ (d) The authority may establish other requirements for the award of grants and contracts under this section to ensure an integrated comprehensive mental health program.
- ▶ (e) The authority shall award grants and contracts that are paid for from money in the mental health trust settlement income account in amounts that
 - ▶ (1) are appropriate to the conditions of the applicant and the proposed program or project; and
 - ▶ (2) will make the most effective use of the funds in the mental health trust settlement income account that are available for expenditure.

Conclusion

- ▶ Trustees have enormous responsibility
- ▶ Sound Governance practices will provide for a smooth road to achieving the Trust's mission
- ▶ Questions?