

DISABILITIES LAW PROGRAM FY 2018 P&A FOR INDIVIDUAL RIGHTS (PAIR) PRIORITIES

INTRODUCTION

The Disabilities Law Program (“DLP”) of the Community Legal Aid Society, Inc. (“CLASI”) provides services to individuals consistent with the following authorizing legislation:

- 1) Protection & Advocacy for Individual Rights (PAIR);
- 2) Protection & Advocacy for Individuals with Mental Illness (PAIMI);
- 3) Protection & Advocacy for Individuals with Developmental Disabilities (PADD);
- 4) Protection & Advocacy for Assistive Technology (PAAT);
- 5) Protection & Advocacy for Beneficiaries of Social Security (PABSS);
- 6) Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI); and
- 7) Protection & Advocacy for Voting Access (PAVA)

This document defines the priorities for FY 2018 (October 1, 2017 - September 30, 2018) of the first component, PAIR.

INTERAGENCY COORDINATION

The focus of the PAIR program is to provide services to individuals with disabilities ineligible under traditional advocacy projects, i.e., PAIMI, PADD, and client assistance programs (CAPs). See 29 U.S.C. §794(e). However, federal law envisions that the PAIR will coordinate advocacy with such organizations as well as the Long-term Care Ombudsman.

In deference to this mandate, the PAIR program closely coordinates with the DLP’s PAIMI and PADD components as follows:

- 1) PAIMI, PADD, and PAIR program priorities are designed to be complementary;
- 2) intraoffice referrals among programs are routinely made to ensure that applicants are screened for eligibility by the appropriate DLP subdivision;
- 3) reference materials and training resources are routinely shared; and
- 4) the DLP Supervising Attorney coordinates advocacy across the three programs to minimize duplication of effort.

Likewise, the CAP director serves on the DLP’s PAIR advisory council and the DLP supplements CAP advocacy in the vocational rehabilitation context as follows:

- 1) DLP staff member serves as the Chair of the Dept. of Labor’s Division of Vocational Rehabilitation [“DVR”] advisory council;
- 2) DLP staff serve on the DVR Client Services Policy Committee, Membership Committee; Government Relations Committee; State Plan Committee, and Annual Report Committee;

- 3) DLP Director and CAP Director serve together on the State Council for Persons with Disabilities;
- 4) DLP Project Director and CAP Director serve together on the State Council for Persons with Disabilities Policy & Law Committee which acts on the DLP's monthly analyses of legislative, regulatory, and policy initiatives;
- 5) DLP staff responds to CAP requests for technical information on matters within the DLP's particular expertise;
- 6) DLP staff screens CAP referrals on matters outside the CAP's mandate; and
- 7) DLP staff offers independent or collaborative training on the vocational rehabilitation system on request.

Finally, the DLP supports and supplements Ombudsman advocacy as follows:

- 1) DLP responds to Ombudsman requests for technical assistance;
- 2) DLP staff offers independent and collaborative training on abuse, neglect, and rights of constituents.
- 3) DLP staff and the Ombudsman serve together on the State Nursing Home Residents Quality Assurance Commission.
- 4) DLP Project Director and Ombudsman representative serve together on State Council for Persons with Disabilities Policy & Law Committee.

SCOPE OF ADVOCACY

The scope of PAIR program advocacy includes a broad array of activities, including information and referral, counseling and technical assistance, community education, negotiation, litigation, and legislative and regulatory analysis. Given relatively modest funding, the PAIR program is guided by these priorities in determining the type and scope of services provided to eligible constituents.

SPECIFIC PRIORITIES AND OBJECTIVES

I. ACCESSIBILITY

GOAL: The PAIR program will promote and facilitate access to governmental programs and public accommodations.

OBJECTIVES:

- 0100 A. Provide direct advocacy services if an individual has been prevented from effectively accessing important governmental programs based on systemic policy or barrier(s) contrary to federal or state law.
- 0102 B. Provide direct advocacy services to individuals prevented from effectively accessing important public accommodations because of barriers or discrimination proscribed by federal or state law.

OUTCOME INDICATORS:

- A. As a result of DLP intervention, 50 persons will secure equal or improved access to governmental services or public accommodations.
- B. As a result of DLP intervention, 10 laws, regulations, policies or other barriers to government services or public accommodations will be eliminated or modified.

RATIONALE: This priority encompasses enforcement of both Titles II and III of the ADA, as well as Delaware's equal accommodations law, Title 6 Del.C. Ch. 45. Both public sector and private sector compliance with the ADA will be promoted. This priority also extends to promotion of effective constituent access to "safety-net" public benefit programs.

In the public sector, the DLP contemplates legal assistance to protect the rights of Medicaid beneficiaries, particularly those enrolled in the DSHP and DSHP Plus managed care systems. Access to basic health care is a high priority among PAIR constituents and Delaware's Medicaid MCOs have historically denied, in whole or part, valid claims for services. The DLP anticipates the provision of legal assistance to DSHP and DSHP Plus participants whose eligibility for services has been improperly denied. The DLP expects to support continued implementation of a Medicaid Buy-in program [a/k/a Medicaid for Workers with Disabilities ("MWD") program]. The DLP will collaborate with the SCPD to educate policymakers on the merits of expanding access of adult Medicaid beneficiaries to acute and preventative dental services. The DLP will facilitate full implementation of recently enacted supported decision-making legislation codified at 16 Del.C. Ch. 94 (effective 9/15/16) and legislation authorizing a State tax credit for businesses hiring individuals with disabilities codified at 30 Del.C. Ch. 20B (effective 1/1/17). The DLP will support continued implementation of the Money Follows the Person program. Apart from health care, the DLP routinely receives requests for assistance with "safety-net" income-maintenance programs (e.g. preservation of SSI/SSDI in State child support reimbursement context; preservation of SSI/SSDI benefits through overpayment waivers or incremental repayment agreements). The DLP expects to deter constrictive enforcement of the Delaware Equal Accommodation law through both litigation and collaboration with the SCPD on remedial legislation. The DLP will continue efforts to deter utility terminations affecting individuals reliant on utilities (e.g. electricity; gas) for health-related conditions (e.g. oxygen-dependent), including provision of input to the Public Service Commission on proposed regulations defining a customer's "good faith" effort to pay utility charges. Finally, a DLP representative will address accessibility of public buildings through participation in the Architectural Review Board and assist with implementation of polling site accessibility legislation codified at 15 Del.C. §4512(b).

In the private sector, the DLP anticipates addressing complaints regarding both policy and physical barriers to community integration.

Selected long-term care concerns will be addressed in both public and private sector

contexts.

II. TRANSPORTATION

GOAL: The PAIR program will promote a consumer-friendly transportation system and reduction of barriers to constituent travel.

OBJECTIVES:

- 0200 A. Collaborate with advocacy organizations and councils [e.g. Elderly & Disabled Transportation Advisory Council (EDTAC); State Council for Persons with Disabilities (SCPD); Victim Rights Task Force (VRTF)] to promote improvement in Delaware paratransit system through both systemic and individual constituent advocacy and the availability of emergency accessible transportation to shelters and temporary housing.
- 0201 B. Collaborate with the SCPD to promote:
1. consumer-oriented motor vehicle license, operation and parking laws, ordinances, regulations, and policies;
 2. enhanced access to State subsidized vehicle modifications; and
 3. safety-related transportation laws, regulations, and policies to prevent or reduce injuries to “at risk” individuals with disabilities.
- 0202 C. Provide direct advocacy services to individuals prevented from effectively accessing public and private vehicular transportation systems or otherwise experiencing significant barriers to travel contrary to Federal or State law.

OUTCOME INDICATORS:

- A. As a result of DLP intervention, 5 persons will secure equal or improved access to transportation.
- B. As a result of DLP intervention, 3 laws, regulations, or policies will be changed or barriers to transportation eliminated or reduced.

RATIONALE: This priority is intended to facilitate travel both within the State and to regional transportation centers. Advocacy contexts would include improving the public transportation system (including DelDOT paratransit capacity, policies, and practices); promoting the availability of accessible parking; promoting availability of accessible

private provider and taxi service; and enhancing pedestrian travel through barrier removal (e.g. curb cuts) and sidewalk maintenance initiatives (e.g. pending H.B. No. 83). The DLP will collaborate with the SCPD to educate policymakers on the merits of reintroduced DLP co-authored accessible parking legislation and revision of a county parking ordinance which conflicts with the ADA. The DLP envisions enforcement of accessible parking standards through affirmative resort to administrative or judicial remedies. The DLP anticipates monitoring implementation of recently enacted legislation codified at 2 Del.C. Ch. 19 (effective 8/10/16) which requires transportation network companies to implement non-discrimination policies, including accommodation of service animals and ban on surcharges for serving travelers with disabilities. The DLP envisions collaborating with the State and DelDOT ADA Coordinators to promote conformity with the ADA in DelDOT programs. The DLP will continue to serve on a DelDOT advisory and appeals council (EDTAC) to promote constituent rights. Since many long-term injuries are transportation-related, the DLP also envisions supporting traffic safety related initiatives. Transportation affects access to employment, medical services, shopping, and recreation.

III. HOUSING; INDEPENDENT LIVING

GOAL: The PAIR program will promote freedom from disability-based discrimination in housing and the reduction of barriers to independent living.

OBJECTIVES:

- 0300 A. In collaboration with CLASI's fair housing program, provide advocacy services to constituents aggrieved by significant violations of fair housing laws.
- 0301 B. Collaborate with the SCPD to promote the availability of independent living supports (e.g. attendant services; home health services; private duty nursing services; home modifications; caregiver services, and public financial incentives).

OUTCOME INDICATORS:

- A. As a result of DLP intervention, 10 persons with disabilities will secure equal access to or maintain housing or independent living supports.
- B. As a result of DLP intervention, 10 laws, regulations, or policies will be changed or other barriers to housing eliminated or reduced.

RATIONALE: This priority addresses both enforcement of fair housing laws and promotion of the availability of community-based housing options. For example, the DLP envisions addressing both individual housing discrimination complaints and, in conjunction with the SCPD, systemic barriers to independent living. For example, the DLP anticipates collaboration with the SCPD to facilitate implementation of recently

enacted legislation (S.B. No. 179) barring discrimination in housing based on source of income effective 8/3/16. The DLP, in collaboration with CLASI's fair housing program, typically protects client rights to reasonable accommodations by landlords and freedom from discrimination in the housing application context. Clients in institutions (e.g. DHCI) also benefit from advocacy support to facilitate discharge to community-based settings. The DLP envisions continued support of DHSS efforts to offer community-based options to residents of long-term care facilities. Lack of access to community-based housing results in homelessness, resort to substandard living arrangements, and over-institutionalization. The DLP anticipates educating policymakers concerning a pending Delaware Bill of Rights for Homeless Individuals (S.B. No. 49). The DLP contemplates advocacy to deter adoption of restrictive zoning laws and practices by local governments. The DLP envisions continued participation in the SCPD's Housing Committee. In concert with the SCPD, the DLP anticipates continuing advocacy to preserve procedural safeguards for residents of long-term care facilities facing involuntary discharge. In conjunction with the SCPD and Delaware Guardianship Commission, the DLP will assess options to reduce a prevalent bias towards institutional placement of wards and promote the availability of alternatives to guardianship. The DLP anticipates supporting implementation of the recently amended ABLE Act (codified at 16 Del.C. Ch. 96A). The DLP anticipates continued advocacy to ensure that State-funded home modifications include warranty or other consumer protections. The DLP envisions preparation of analyses of pending legislation expanding the role of the Division of Long-term Care Residents Protection (H.B. Nos. 208 and 225). Finally, the DLP plans to continue participation in Delaware Nursing Home Residents Quality Assurance Commission meetings which address both nursing home regulation and civil rights of residents.

IV. AUTONOMY

GOAL: The PAIR program will promote constituent autonomy and self-assurance through training, information dissemination, and assistance with supported decision-making agreements and substitute or advance consent documents.

OBJECTIVES:

- 0400 A. Offer individual technical assistance and information and referral services on substantive disability law (e.g. employment, housing, public benefits) and enforcement options.
- 0401 B. Offer group training on substantive disability law, enforcement options, and self-advocacy.
- 0402 C. If not readily available through other agencies, assist with preparation of a limited number of routine advance directives, powers of attorney, supported decision-making agreements and similar authorizing documents.

OUTCOME INDICATORS:

- A. The DLP will provide information and referral services to 80 individuals and agencies.
- B. The DLP will provide training to 10,000 individuals through articles, seminars, training events, and dissemination of training materials.
- C. The DLP will prepare a minimum of 10 powers of attorney, advance directives, supported decision-making agreements, and similar authorizing documents.

RATIONALE: This priority encompasses the provision of individual technical assistance as well as group training activities. For example, the DLP anticipates presentation of seminars, drafting articles, enhancing its Website, and other information dissemination activities to promote informed constituent decision-making and empowerment. An informed constituency is confident, self-reliant, and enabled to engage in proactive advocacy. The DLP leverages resources through wide dissemination of information and advice to consumers.

**GENERAL STANDARDS FOR DETERMINATION OF LEVEL
AND TYPE OF SERVICES**

Recognizing that the demand for assistance has historically outstripped available resources, the following factors will be considered in determining the level and type of services to be offered to an eligible applicant:

- (1) potential impact on client;
- (2) merits of case (both factually and legally);
- (3) realistic alternate sources for referral and assistance;
- (4) applicant's ability to self advocate; and
- (5) potential impact on other constituents or systems.