

**DISABILITIES LAW PROGRAM
PROTECTION & ADVOCACY FOR TRAUMATIC BRAIN INJURY
(PATBI)
FY18 PRIORITIES**

INTRODUCTION

The Disabilities Law Program (“DLP”) of the Community Legal Aid Society, Inc. provides services to address the advocacy needs of persons with traumatic brain injury (“TBI”) consistent with the Traumatic Brain Injury Act reauthorized in November, 2014. This document identifies the priorities, rationale, and projected outcome measures for the DLP’s Protection & Advocacy for Traumatic Brain Injury (PATBI) program for FY18.

I. PREVENTION

GOAL: The PATBI will promote TBI prevention and recourse options.

SYSTEMIC ADVOCACY OBJECTIVE:

0100 Collaborate with the State Council for Persons with Disabilities [“SCPD”] Brain Injury and Policy & Law Committees in development and analysis of State legislation, regulations and selected policies with significant effect on TBI prevention and recourse options.

OUTCOME MEASURE:

As a result of PATBI composition or analysis, a minimum of 5 laws, regulations, or policies affecting TBI prevention and recourse options will be adopted or improved.

RATIONALE: In FY18, the PATBI anticipates action on highway safety bills and initiatives which would reduce the prevalence and severity of TBI and enhance recourse options. Delaware was recently ranked the most dangerous state for pedestrians and the ninth worst state for driving [“Delaware Gets High Marks in Low Places”, Delaware News Journal (August 3, 2016)]. A recently established Advisory Council on Walkability and Pedestrian Awareness has published several legislative and policy recommendations [“Officials look to cut pedestrian accidents in Del.”, Delaware News Journal (July 28, 2016)]. Multiple highway safety bills introduced in 2017 will likely receive action in 2018, including H.B. No. 14 (requiring motorcycle drivers and passengers to wear a helmet); H.B. No. 83 (authorizing counties to address sidewalk and State right of way maintenance and safety); and S.B. No. 57 (requiring drivers to remove ice and snow from vehicles and requiring violators to pay civil penalties for injuries to pedestrians and vehicle occupants. The PATBI anticipates promoting revision of a DIAA regulation categorically requiring that parents of students with sport activities included in IEPs or §504 Plans sign a liability waiver. Such waivers undermine recourse options for students experiencing concussions. Finally, the PATBI will assist with implementation of recently enacted PATBI-authored legislation (“Concussion in Youth Sports Activities Act”) addressing concussions sustained in youth sports programs which will be effective in September, 2017.

II. SPECIAL EDUCATION

GOAL: The PATBI will advocate for access to appropriate special education services by students with TBI.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0200 A. Collaborate with SCPD and Governor's Advisory Council for Exceptional Citizens ["GACEC"] to promote the timely and valid identification of students with TBI.

INDIVIDUAL ADVOCACY OBJECTIVE:

- 0201 B. Provide legal advocacy services to students with TBI denied special education eligibility or essential direct or related services.

OUTCOME MEASURES:

- A. The number of students identified as eligible for special education under the "TBI" classification will increase from the FY 04 baseline of zero (0), FY 05 baseline of seven (7), FY 06 baseline of twenty-six (26), FY 07 baseline of thirty-eight (38), FY 08 baseline of thirty-four (34), FY 09 baseline of twenty-nine (29), FY10 baseline of forty-two (42), FY11 baseline of forty-nine (49), FY12 baseline of fifty-nine (59) students, FY13 baseline of sixty-six (66) students, FY14 baseline of 73 students, FY15 baseline of 72 students, FY16 baseline of 68 students, and FY 17 baseline of 71 students to a minimum of at least seventy-five (75) students.
- B. As a result of PATBI intervention, a minimum of 3 students with TBI will secure special education identification or access to essential services.

RATIONALE: Disincentives to identify students with TBI were removed based on enactment of legislation [S.B. No. 105] authored by the PATBI with an effective date of July 1, 2004. In subsequent fiscal years, the PATBI collaborated with the Developmental Disabilities Council, GACEC, the DuPont Hospital for Children, Delaware BIA, and SCPD to educate key public school staff in identification and program needs of students with TBI. These efforts resulted in increased identification of students with TBI through 2017. However, advocacy is still needed to prompt public schools to properly identify and program for students with TBI. Students with a TBI classification are currently categorically eligible for 12-month programs but this entitlement is regularly jeopardized by proposed changes in the funding system. The PATBI contemplates collaborating with the DOE and GACEC to analyze legislation, regulations and policies which preserve protections and improve access to special education services by students with TBI, including pending S.B. No. 85 (detering unreasonable discipline of students with disabilities); pending HCR No. 34 (proposing task force to assess special education "cost"); and proposed systemic initiatives which would discourage and suppress the availability of legal assistance and administrative remedies for special education students. The PATBI anticipates monitoring implementation of PATBI-authored legislation effective in 2014 limiting the use of seclusion and restraint in public schools. Finally, the PATBI contemplates individual advocacy on behalf of students with TBI to secure special education identification and access to essential services.

III. HEALTH & FINANCIAL BENEFITS

GOAL: The PATBI will advocate for enhanced access to “safety-net” health and financial benefits for persons with TBI.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0300 A. Collaborate with the SCPD Brain Injury and Policy & Law Committees in analyzing State legislation, regulations, Medicaid initiatives, and selected policies with significant effect on access to “safety-net” health and financial benefits.

INDIVIDUAL ADVOCACY OBJECTIVE:

- 0301 B. Provide advocacy services to individuals with TBI facing program eligibility or significant service denials/terminations in “safety-net” health and financial public benefits contexts (e.g. SSI; Medicaid; Food Supplement Program).

OUTCOME MEASURES:

- A. As a result of PATBI analysis, a minimum of 5 laws, regulations, or policies affecting access to health and financial benefits will be improved.
- B. As a result of PATBI intervention, a minimum of 5 individuals with TBI will secure enhanced access to “safety-net” public health or financial benefits.

RATIONALE: Effective April, 2012, the Department of Health & Social Services completed its sequential conversion of most Medicaid waivers (including its ABI waiver) into a managed care Diamond State Health Plan Plus program. This transition to a managed care model with non-State case managers and coordinators has prompted the PATBI to provide advocacy on behalf of individuals with TBI denied program and service eligibility. The Division of Developmental Disabilities (“DDDS”), which serves individuals with TBI, established a new “Lifespan” Medicaid Waiver program offering a wide array of supports effective July 1, 2017. The PATBI will provide advocacy and educational assistance to promote client-oriented implementation of this initiative. Recently enacted legislation (H.B. No. 245) establishes a Behavioral and Mental Health Commission which explicitly includes DLP membership to assess and improve Delaware’s behavioral and mental health services system. The PATBI will advocate for a consumer-responsive system. Pending legislation (SCR No. 36; HCR No. 49) would establish task forces to address State health care and Medicaid spending which could affect the availability of health services for individuals with TBI. The PATBI will monitor the initiatives. The PATBI drafted multiple versions of enabling legislation to establish a TBI trust fund in FY13. As a compromise, enabling language and \$40,000 were added to the FY14 State budget authorizing the State to initiate the program followed by inclusion of \$50,000 in the FY15 budget (\$45-01-00), \$50,000 in the FY16 budget (\$45-01-00), \$50,000 in the FY17 budget (\$45-01-00), and \$50,000 in the FY 18 budget (\$45-01-00). The PATBI will continue to serve on an application review committee, otherwise assist with implementation of the program, and, on request, prepare

conforming enabling legislation in FY18. Finally, the PATBI envisions both systemic and individual advocacy to promote access to other financial and health care benefits.

IV. GOVERNMENT PROGRAMS & SERVICES

GOAL: The PATBI will sustain and promote non-discriminatory and effective access to governmental programs.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0400 A. Collaborate with the SCPD Brain Injury and Policy & Law Committees to reduce statutory, regulatory, and policy barriers and promote effective constituent access to governmental programs.

INDIVIDUAL ADVOCACY OBJECTIVE:

- 0401 B. 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.

OUTCOME MEASURES

- A. As a result of PATBI analysis, 5 laws, regulations, or policies will be changed or other barriers to accessing government services will be reduced.
- B. As a result of PATBI intervention, 3 persons with TBI will secure non-discriminatory or equal access to governmental services.

RATIONALE: This priority encompasses enforcement of Title II of the ADA, §504 of the Rehabilitation Act, and Delaware's equal accommodation law, Title 6 Del.C. Ch. 45. It also encompasses improving the public service delivery system for persons with TBI. The PATBI anticipates representation of aggrieved DDDS clients with TBI under appeal regulations adopted in 2010. The PATBI can invoke enforcement options to remedy discrimination against persons with TBI through Delaware's equal accommodations law. However, the enforcement agency (HRC) for the law has manifested a constrictive approach to disability-based claims in recent years prompting PATBI appellate litigation and SCPD remedial collaboration. On request, PATBI-drafted legislation to clarify the agency's mandate to process disability-based claims will be considered in FY18. In the past, the Delaware Division of Prevention and Behavioral Health Services vacillated on serving children with TBI. Through membership in the Division's Advisory & Advocacy Council, the PATBI anticipates provision of on-going technical assistance to preserve TBI eligibility and influence services offered by this State agency.

V. INAPPROPRIATE INSTITUTIONALIZATION; COMMUNITY LIVING

GOAL: The PATBI will deter inappropriate institutionalization of persons with TBI and promote the availability of appropriate community-based housing options.

SYSTEMIC ADVOCACY OBJECTIVES:

- 0500 A. The PATBI will collaborate with the SCPD Brain Injury and Policy & Law Committees in analyzing State legislation, regulations, and selected policies with significant effect on diversion of persons with TBI to appropriate community-based housing options.
- 0501 B. The PATBI will continue to provide technical assistance and serve on the SCPD Housing Committee to enrich the community-based service delivery system.

INDIVIDUAL ADVOCACY OBJECTIVES:

- 0502 A. The PATBI will facilitate appropriate discharge planning for inappropriately institutionalized persons with TBI.
- 0503 B. In collaboration with CLASI's fair housing program, the PATBI will provide direct advocacy services to individuals with TBI who have experienced housing discrimination in violation of fair housing laws.

OUTCOME MEASURES:

- A. As a result of PATBI analysis, a minimum of 3 laws, regulations, or policies affecting the institutionalization and fair housing rights of persons with TBI will be changed.
- B. As a result of PATBI intervention, a minimum of 3 persons with TBI will secure or retain access to appropriate community-based housing.

RATIONALE: The lack of community-based housing options for persons with TBI results in inappropriate institutionalization. The SCPD is engaged in systemic planning to enrich the service delivery system in the community. The PATBI served on its Housing Committee during FY17 and anticipates continued participation in FY18. In concert with the SCPD, the PATBI anticipates educating policymakers concerning a pending Delaware Bill of Rights for Homeless Individuals (S.B. No. 49) which would benefit individuals with TBI. Individuals with TBI often experience difficulty living in the community due to the lack of support services or landlord denial of reasonable accommodations. The PATBI will promote access to support services and enforce fair housing rights. Recently enacted PATBI-authored legislation (S.B. No. 179) bars housing discrimination based on source of income. The PATBI anticipates advocacy to promote implementation. Finally, the PATBI envisions analysis of a pending legislative package (H.B. Nos. 195, 196, 208, and 225) affecting the regulation of long-term care facilities.

VI. COMMUNITY EDUCATION

GOAL: The PATBI will educate persons with TBI, their families, and professionals to understand the service needs of persons with TBI, civil rights protections, and sources of supports.

SYSTEMIC OBJECTIVE:

- 0600 A. The PATBI will co-sponsor or support training events which provide information on the service needs of persons with TBI, civil rights protections, and sources of supports.

INDIVIDUAL OBJECTIVE:

- 0601 B. The PATBI will provide technical assistance to persons with TBI, their families, and professionals in response to inquiries concerning service needs, civil rights protections, and sources of support for persons with TBI.

OUTCOME INDICATORS:

- A. The PATBI will co-sponsor or support a minimum of 3 training events which provide information on service needs, civil rights protections, and sources of support for persons with TBI.
- B. The PATBI will provide information, referral, and technical assistance to 10 individuals with TBI, family members, and professionals.

RATIONALE: There is widespread misunderstanding of the needs of persons with TBI and the service delivery system. Consumer empowerment is enhanced through training of individuals with TBI and their families, including events such as the Delaware Brain Injury Association's annual conference and the LIFE conference. The PATBI will exhibit at the Association's conference. The PATBI will continue to serve on the design team of the LIFE conference which will convene in January, 2018 and include seminars of interest to persons with TBI. The PATBI will also exhibit at the conference. Finally, the PATBI anticipates exhibiting at the Fall, 2017 NAMI-DE and Mental Health Association conferences.