

DISABILITIES LAW PROGRAM

FY 2014 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 2014 (October 1, 2013 - September 30, 2014) 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. §794e(f). 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 Legal Advocacy Director 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;
- 3) DLP Director and CAP representative serve together on the State’s special education council, the Governor’s Advisory Council for Exceptional Citizens;

- 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 critiques 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 Home and Community-based Services Ombudsman serves on the DLP's PAIR advisory council and 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 serve together on the State Council for Persons with Disabilities Housing Committee.
- 5) 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, 45 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 reduced.

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 managed care system. 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 transition to a DSHP Plus system effective April, 2012 has significantly increased the number of Medicaid beneficiaries subject to MCO oversight. 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] characterized by low statewide enrollment (36 participants in May, 2013). The DLP will support legislation (S.B. No. 56) expanding access of adult Medicaid beneficiaries to acute and preventative dental services. The DLP will also support enhanced implementation of the Money Follows the Person program which has been extended until 2016. The DLP contemplates supporting the work of the Home and Community-based Services Ombudsman (HCBSO). The DLP anticipates continuing efforts to support State planning and implementation of federal health care reform legislation. Apart from health care, the DLP routinely receives requests for assistance with "safety-net" income-maintenance programs (e.g. preservation of SSI 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 on-going litigation and collaboration with the SCPD on remedial legislation. The DLP will support implementation of recently enacted universal design legislation (H.S. No. 1 for H.B. No. 227) signed by the Governor in July, 2012. The DLP anticipates on-going advocacy to promote the accessibility of public parks and outdoor recreation sites. The DLP envisions support for pending legislation (H.B. No. 129) covering hospital bathroom access. Finally, a DLP senior staff attorney will address accessibility of public buildings through participation in the Architectural Review Board and assist with implementation of polling site accessibility legislation drafted by the DLP and enacted in 2011.

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); ADAPT] to promote improvement in Delaware paratransit system through both systemic and individual constituent advocacy.
- 0201 B. Collaborate with the State Council for Persons with Disabilities (SCPD) to promote:
 - 1. consumer-oriented motor vehicle license, operation and parking laws, regulations, and policies; and
 - 2. safety-related transportation laws, regulations, and policies to prevent or reduce injuries resulting in disability.
- 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, 5 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; supporting legislative initiative to promote availability of accessible taxi service; and enhancing pedestrian travel through barrier removal (e.g. curb cuts). The DLP envisions collaborating with the DelDOT ADA Coordinator to promote conformity with the ADA in DelDOT programs. Since many long-term injuries are transportation-related, the DLP also envisions supporting safety related legislation and regulations, including pending H.B. No. 155 deterring distracted driving. 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. Provide direct 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 State Council for Persons with Disabilities, systemic barriers to independent living. For example, the DLP anticipates collaboration with the State Council for Persons with Disabilities to educate policymakers on the merits of pending legislation (H.B. No. 196) barring discrimination in housing based on source of income. The DLP 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 contemplates advocacy to deter adoption of restrictive zoning laws and practices by local governments. The DLP also envisions continued participation in the Governor's Commission on Community-based Alternatives for Individuals with Disabilities and the Commission's Housing Committee. In concert with the SCPD, the DLP anticipates continuing advocacy to promote development and implementation of procedural safeguards for residents of long-term care facilities facing involuntary discharge, including enactment of DLP co-authored S.B. No. 143. In conjunction with the Delaware Guardianship Commission, the DLP will assess options to reduce a prevalent bias towards institutional placement of wards. 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 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, and similar authorizing documents.

OUTCOME INDICATORS:

- A. The DLP will provide information and referral services to 150 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 15 powers of attorney, advance directives, 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.