

**DISABILITIES LAW PROGRAM
PROTECTION & ADVOCACY FOR TRAUMATIC BRAIN INJURY
(PATBI)
FY 14 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 April, 2008. This document identifies the priorities, rationale, and projected outcome measures for the DLP’s Protection & Advocacy for Traumatic Brain Injury (PATBI) program for FY 14.

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 intervention, a minimum of 5 laws, regulations, or policies affecting TBI prevention and recourse options will be adopted or improved.

RATIONALE: In FY14, the PATBI anticipates involvement with “holdover” highway safety bills introduced in FY13 which would reduce the prevalence and severity of TBI. For example, H.B. No. 155 was introduced to ban use of a “wearable computer with head mounted display” (including “Google Glass”) while operating a motor vehicle. In June 2013, a PATBI critique of the legislation was adopted by multiple councils and shared with policymakers. Other prevention bills introduced in June, 2013 include H.B. No. 212 (requiring DUI offenders to install an ignition interlock) and S.B. No. 95 (expansion of video speed enforcement system incorporating PATBI-prompted edits of previous legislation). In July, 2011, the Governor vetoed legislation (H.B. No. 95) which would have allowed motorcyclists to ride without a helmet on their vehicle. If reintroduced, the PATBI envisions preparation of an analytical critique. The PATBI will follow up on the 2013 refusal of DIAA to revise a categorical requirement 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. In the summer of 2013, the PATBI commented on proposed Office of Child Care Licensing regulations which included TBI-related considerations, including helmet usage and safety standards. The regulations should be finalized in FY14. The PATBI will serve on a crime/disability prevention task force

created by SCR No. 26 to issue a report by March 30, 2014 on crime victims with disabilities including the type of crime and type of disability (including TBI). Finally, the PATBI will support implementation of a CDC Violence & Injury Prevention Program grant to the Division of Public Health targeting the following: 1) older adult falls prevention; 2) teen motor vehicle injury prevention; 3) bullying/school violence prevention; and 4) child maltreatment prevention.

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), and FY12 baseline of fifty-nine (59) students to a minimum of at least sixty (60) 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 2012. As of July 6, 2013, data for 2013 had not yet been published. However, advocacy is still needed to prompt public schools to properly identify and program for students with TBI. Such advocacy and education will be particularly important in FY14 as the State continues its recent transition to a “needs-based” funding system which reduces the significance of a student’s disability category (e.g. TBI). The PATBI also envisions promotion of student access to educational services, including prompting the revision of Spanish IEP forms to include a field disclosing automatic eligibility to 12-month programs for TBI-classified students. The PATBI contemplates collaborating with the DOE and GACEC to develop

legislation, regulations and policies which preserve protections and improve access to special education services by students with TBI. For example, PATBI-authored legislation (S.B. No. 100) was enacted in July, 2013 limiting use of seclusion and restraint in public schools. The PATBI will participate in development of implementing regulations in FY14. 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 intervention, 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

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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 intervention, 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. Legislation (S.B. No. 41) co-authored by the PATBI was enacted in June, 2006. It amends Delaware's equal accommodation law to clarify that it applies to State and local government agencies. The legislation also enhances enforcement options. Given the amendments, the PATBI enjoys enhanced enforcement options to remedy discrimination against persons with TBI. 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. PATBI-drafted legislation to clarify the agency's mandate to process disability-based claims will be considered in FY14. 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. Finally, the PATBI expects to support efforts by the SCPD Brain Injury Committee to promote the availability of enhanced in-state acute care and rehabilitation options for adults with TBI.

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 to the Governor's Commission on Community-based Alternatives for Persons with Disabilities and serve on its 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. 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 intervention, a minimum of 3 laws, regulations, or policies affecting the institutionalization 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 PATBI envisions supporting implementation of a July, 2011 DOJ-DHSS Settlement Agreement expanding community-based alternatives to institutional care for individuals with mental health needs, including those with TBI. The Governor's Commission on Community-based Alternatives for Persons with Disabilities is engaged in systemic planning to enrich the service delivery system in the community. The PATBI served on its Housing Committee during FY13 and anticipates continued participation in FY14. Individuals with TBI often experience difficulty living in the community due to the lack of support services or landlord denial of reasonable accommodations. In FY13, the PATBI addressed multiple instances of housing discrimination against persons with TBI. The PATBI anticipates a similar need for housing advocacy in FY14. In June, 2013, the PATBI co-authored legislation (S.B. No. 143) facilitating the return of residents of long-term care facilities to return to their "home" after securing care in specialized facilities (e.g. TBI rehabilitation settings). The PATBI will offer continued technical assistance in FY14. Legislation (HJR No. 17) enacted in 2012 established a "study group" to comprehensively review Delaware's civil mental health commitment laws and issue reports in January, 2013 and January, 2014. The PATBI expects to continue to serve on the study group and its committees. Finally, the PATBI anticipates

advocacy within local governments to enhance housing options for persons with TBI.

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 15 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, 2014 and include seminars of interest to persons with TBI. Finally, the PATBI participated in a "Youth Concussion Summit" at the A.I. duPont Hospital for Children in May, 2013 which engaged in planning activities to address youth concussion. The PATBI envisions participation in a follow up event in the Fall of 2013.