# Florida

Department of Health and Human Services
SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

FY 2024
PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS
Short Title: 2024 PAIMI Progress Report

Funding Opportuntity Announcement (FOA)
No. SM-17-F2

Catalog of Federal Domestic Assistance (CFDA)
No.: 93-138

# A. PAIMI Program Information

## General Information

### 1. P &A Identification

| | |
|---|---|
| Name of state or jurisdiction | Florida |
| Name of P&A systems | Disability Rights Florida |
| Unique Entity ID | H4YLJSF4JXN4 |

### 2. Main Office

| | |
|---|---|
| Agency Name of Main Office | Disability Rights Florida |
| Mailing Address of Main Office | 2473 Care Drive Suite 200 |
| City | Tallahassee |
| Zip Code | 32308 |
| Phone Number of Main Office | 850-488-9071 |
| Toll Free Number | 800-342-0823 |
| Email address | CherieH@disabilityrightsflorida.org |
| Website address | http://www.disabilityrightsflorida.org |
| TTY phone number | 800-346-4127 |
| County of Main Office | Leon |

### 3. Other Offices (if any)

| | |
|---|---|
| Agency Name of Other Office | DRF - South Florida Office |
| Mailing Address (Each Statellite Office) | 2400 East Commercial Blvd. #525 |
| City | Ft. Lauderdale |
| Zip Code | 33308 |
| County of Each Satellite Office (Location) | Broward |
| Agency Name of Other Office | DRF - Tampa Office |
| Mailing Address (Each Statellite Office) | Times Building, Suite 640 1000 Ashley Drive |
| City | Tampa |
| Zip Code | 33602 |
| County of Each Satellite Office (Location) | Hillsborough |
| Agency Name of Other Office | DRF - Gainesville Office |
| Mailing Address (Each Statellite Office) | 4723 NW 53rd Ave., Suite B |
| City | Gainesville |

| | |
|---|---|
| Zip Code | 32653 |
| County of Each Satellite Office (Location) | Alachua |

### 4. Executive Director/Chief Executive Officer Contact Information

| | |
|---|---|
| Name | Cherie Hall |
| Mailing Address | 2473 Care Dr Suite 200 |
| City | Tallahassee |
| Zip Code | 32308 |
| Phone Number & Extension | 850-617-9716 |
| E-mail Address | CherieH@DisabilityRightsFlorida.org |

### 5. PPR Preparer Contact Information

| | |
|---|---|
| Name | Aaron Victoria |
| Title | PAIMI Program Coordinator |
| Phone Number & Extension | 850-617-9777 |
| Email Address | AaronV@disabilityrightsflorida.org |

### 6. Governing Board President/Chair Name

| | |
|---|---|
| Name | Katherine DeBriere, Esquire |
| Mailing Address | [redacted] |
| City | [redacted] |
| Zip Code | [redacted] |
| County of Residence | [redacted] |
| Email Address | [redacted] |
| Current Term Started | 10/1/2020 12:00:00 AM |
| Current Term Expires | 9/30/2024 11:59:00 PM |

### 7. PAIMI Advisory Council President/Chair Name

| | |
|---|---|
| Name | Lindsey Betterman |
| Mailing Address | [redacted] |
| City | [redacted] |
| Zip Code | [redacted] |
| County of Residence | [redacted] |
| Email Address | [redacted] |
| Current Term Started | 9/8/2022 12:00:00 AM |
| Current Term Expires | 9/7/2026 12:00:00 AM |

### 8. Name Of P&A Chief Financial Officer/Accountant

| | |
|---|---|
| Name | Cherie Hall |
| Title | Director of Operations |

| | |
|---|---|
| Phone Number/Extension | 850-488-9071 |
| Email Address | cherieh@disabilityrightsflorida.org |

### 9. Governor's Liaison

| | |
|---|---|
| Name | Chris Spencer |
| Official Title | Director of Policy & Budget |
| Mailing Address | EOG #1701, The Capitol, 400 S. Monroe St. |
| City | Tallahassee |
| Zip Code | 32399 |
| County of Residence | Leon |
| Phone Number/Extension | |
| Email Address | Chris.Spencer@laspbs.state.fl.us |

### 10. Commissioner/Director of the State Mental Health Agency

| | |
|---|---|
| Name | Erica Floyd Thomas |
| Mailing Address | 2415 North Monroe Street, Suite 400 |
| City | Tallahassee, FL |
| Zip Code | 32303 |
| Phone Number/Extension | 850-487-1111 |
| Email Address | erica.floydthomas@myflfamilies.com |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# A. PAIMI Program Information

### Demographic Composition of PAIMI Governing Board, Advisory Council, and Program Staff

| | | Governing Board | Advisory Council | Program Staff |
|---|---|---|---|---|
| **Ethnicity** | | | | |
| | Hispanic/Latino | 5 | 1 | 10 |
| | Non-Hispanic/Latino | 10 | 8 | 71 |
| | Ethnicity Unknown | 0 | 0 | 0 |
| **Race** | | | | |
| | American Indian/Alaska Native | 0 | 0 | 0 |
| | Asian | 0 | 0 | 2 |
| | Black/African American | 2 | 2 | 13 |
| | Native Hawaiian/Pacific Islander | 0 | 0 | 0 |
| | White | 12 | 6 | 66 |
| | Two or more races | 1 | 1 | 0 |
| | Some other race | 0 | 0 | 0 |
| | Race Unknown | 0 | 0 | 0 |
| **Gender** | | | | |
| | Female | 6 | 5 | 61 |
| | Male | 3 | 1 | 20 |
| | Transgender (Trans Woman) | 0 | 0 | 0 |
| | Transgender (Trans Man) | 0 | 0 | 0 |
| | Two-Spirit (if Client is AIAN) | 0 | 0 | 0 |
| | Gender Non-Conforming | 0 | 1 | 0 |
| | Other (if use a different term) | 0 | 0 | 0 |
| | Prefer not to say | 6 | 2 | 0 |
| **Sexual Orientation** | | | | |

| | | | | |
|---|---|---|---|---|
| | Lesbian or gay | 1 | 0 | 0 |
| | Straight (not lesbian or gay) | 7 | 5 | 0 |
| | Bisexual | 1 | 1 | 0 |
| | Other (if use a different term) | 0 | 1 | 0 |
| | Prefer not to say | 6 | 2 | 81 |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# A. PAIMI Program Information

### Governing Board Information

### Governing Board (GB) Type and Number of Members Included in Governing Board Information

| Governing Board | Minimum # of Members | Maximum # of Members |
|---|---|---|
| Private, non-profit with multi-member | 13 | 15 |
| State-operated with governing board | 0 | 0 |
| State-operated with no governing board | 0 | 0 |

### Governing Board Information

In the following table, please provide the requested information for the GB members

| | Number |
|---|---|
| Total seats available | 15 |
| Total members serving as of 9/30/2023 | 15 |
| Total vacancies on 9/30/2023 | 0 |
| Term of appointment (number of years) | 4 |
| Term maximum | 2 |
| Meeting Frequency | 4 |
| Number of meetings held this fiscal year (2023) | 5 |
| Percentage of members present at meetings during the 2023 | 89 % |

### Governing Board Composition

The governing board shall be composed of members who broadly represent or are knowledgable about the needs of clients served by the P&A System (count each GB member only once)

| | Number |
|---|---|
| Number of individuals with mental illness who are recipients/former recipients (CR/FR) of mental health services or have been eligible for services. | 1 |
| Number of family members of individuals with mental illness who are (CR/FR) of mental health services, guardians, advocates or authorized representatives or other persons who broadly represent or are knowledgeable about the needs of clients served by the P&A system | 13 |
| **Total** | **14** |

**Footnotes:**

# A. PAIMI Program Information

### Executive Director

| | |
|---|---|
| Intial Appointment Date | 06/12/2020 (mm/dd/yyyy) |
| Recent performance evaluation completed | 06/03/2024 (mm/dd/yyyy) |
| Date of previous performance evaluation | 09/08/2023 (mm/dd/yyyy) |

Agency has written policy and procedures to guide the ED's evaluation process? Yes ◉ No ○

| Input on ED's performance evaluation obtained from the following (check all that apply) | |
|---|---|
| All agency employees/staff | Yes ◉ No ○ |
| Senior managers | Yes ◉ No ○ |
| All board directors | Yes ○ No ◉ |
| All PAIMI Advisory Council members | Yes ◉ No ○ |
| Stakeholders | Yes ◉ No ○ |
| Consumers | Yes ◉ No ○ |
| Family members of consumers | Yes ◉ No ○ |
| State mental health providers | Yes ◉ No ○ |
| Private mental health providers | Yes ◉ No ○ |
| Other | Yes ◉ No ○ |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# A. PAIMI Program Information

### Number of Mental Health Professionals On the Advisory Council

| Professional Category | Number On Advisory Council |
|---|---|
| Social Worker | 1 |
| Psychologist | 0 |
| Psychiatric Nurse | 0 |
| Psychiatrist | 0 |
| Psychiatric Nurse Practitioner | 0 |
| Peer Support Specialist | 1 |
| Other (Identify the Professional in the Footnotes) | 0 |
| **Total** | **2** |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# A. PAIMI Program Information

### PAIMI Advisory Council (PAC)/Assigned Staff

| PAIMI Advisory Council (PAC) | |
|---|---|
| Sits on the governing board?* | (•) Yes ( ) No |
| Appointment Date | 08/30/2024 |
| Other PAC member(s) sit on the governing board? | ( ) Yes (•) No |
| If yes, number serving | |

** If no please explain in Footnotes*

### Assigned PAIMI Staff

| | Attorneys | | | | | Advocates | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | # | Full-time | Part-time | Male | Female | # | Full-time | Part-time | Male | Female |
| Ethnicity | | | | | | | | | | |
| Hispanic/Latino (of any race) | 0 | 0 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 3 |
| Non-Hispanic/Latino | 20 | 20 | 0 | 7 | 13 | 20 | 19 | 1 | 8 | 12 |
| Race | | | | | | | | | | |
| American Indian/Alaska Native | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Asian | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 1 |
| Black/African American | 2 | 2 | 0 | 0 | 2 | 6 | 6 | 0 | 1 | 5 |
| Native Hawaiian/Pacific Islander | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| White | 17 | 17 | 0 | 6 | 11 | 16 | 15 | 1 | 7 | 9 |
| Two or more races | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Some other race | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Race Unknown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## B. Demographics - Interventions on Behalf of PAIMI Individuals

### Population Information

### Age of PAIMI-eligible Individuals Served

| Age | Number |
|---|---|
| **0-2** | 0 |
| **3-5** | 2 |
| **6-10** | 14 |
| **11-22** | 60 |
| **23-64** | 160 |
| **65+** | 12 |
| **Prefer not to say** | 0 |
| **Total** | **248** |

### Gender and Sexual Orientation of PAIMI-eligible Individuals Served

| Gender | Number |
|---|---|
| **Female** | 43 |
| **Male** | 155 |
| **Transgender (Trans Woman)** | 4 |
| **Transgender (Trans Man)** | 0 |
| **Two-Spirit (if Client is AIAN)** | 0 |
| **Gender Non-Conforming** | 0 |
| **Other (if use a different term)** | 0 |
| **Prefer not to say** | 46 |
| **Total** | **248** |

| Sexual Orientation | Number |
|---|---|
| **Lesbian or Gay** | 1 |

| | |
|---|---|
| **Straight (not lesbian or gay)** | 23 |
| **Bisexual** | 1 |
| **Other (if use a different term)** | 0 |
| **Prefer not to say** | 223 |
| **Total** | **248** |

### Ethnicity and Race of Individuals Served

| Ethnicity | Number | PAIMI % | State % |
|---|---|---|---|
| **Hispanic/Latino (of any race)** | 35 | 14.11 | 27.40 |
| **Non-Hispanic/Latino** | 174 | 70.16 | 72.60 |
| **Ethnicity Unknown** | 39 | 15.73 | 0.00 |
| **Total** | **248** | | |

| Race | Number | PAIMI % | State % |
|---|---|---|---|
| **American Indian/Alaska Native** | 1 | 0.40 | 0.40 |
| **Asian** | 3 | 1.21 | 3.00 |
| **Black/African American** | 90 | 36.29 | 14.90 |
| **Native Hawaiian/Other Pacific Islander** | 0 | 0.00 | 0.10 |
| **White** | 126 | 50.80 | 55.50 |
| **Two or more races** | 13 | 5.24 | 19.30 |
| **Some other race** | 0 | 0.00 | 6.80 |
| **Race unknown** | 15 | 6.04 | 0.00 |
| **Total** | **248** | | |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

Gender Identity and Sexual Orientation: Disability Rights Florida put considerable thought into the process for which we gather this newly required information from our clients. We fully implemented data collection for these fields midway through FY 23-24. For this reason, we expect to be able to present more complete data in the upcoming FYs.

Ethnicity and Race: State data for ethnicity and race in Florida was obtained from the United States Census Bureau's American Community Survey 2023: ACS 1-Year Estimates Date Profile for Demographic and Housing Estimates. Data can be found at the following location: https://data.census.gov/table/ACSDP1Y2023.DP05?q=DP05&g=040XX00US12

## B. Demographics - Interventions on Behalf of PAIMI Individuals

### PAIMI-Eligible Individuals served with PAIMI Program Funds

*Count individual once per fiscal year (FY). Multiple counts not permitted for lines 1-2.*

| | | Enter Number |
|---|---|---|
| **1. Number of PAIMI-eligible individuals continued to be served with PAIMI program funds, including any program income resulting from legal actions supported by PAIMI program funds as of October 1, from the previous FY into the reporting year.** | | 117 |
| **2. Number of new PAIMI-eligible individuals served during the reporting year.** | | 131 |
| **3. Total number of PAIMI-eligible individuals served during this FY (Add lines 1 and 2).** | | 248 |
| **4. Individuals with more than one (1) intervention opened/closed during the reporting year.** | | 18 |
| **5. Individuals with a co-occurring mental illness and Intellectual and Developmental Disability (IDD).** | | 12 |
| **6. Total number of PAIMI-eligible individuals who requested program related advocacy services during the reporting year, but were not served within 30-days of initial contact due to:** | | |
| | **a. insufficient PAIMI Program resources.** | 0 |
| | **b. non-priority areas.** | 0 |
| **7. Individuals served as of September 30 and will be carried over to next reporting year (This should equal ≤ item 3 above).** | | 62 |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## B. Demographics - Interventions on Behalf of PAIMI Individuals

### Living Arrangements of PAIMI-eligible Individuals at Intake

| Living Arrangements | Number |
|---|---|
| Community Residential Home for Children/Youth up to age 18 Yrs. | 0 |
| Community Residential Home for Adults | 4 |
| Non-Medical Community-Based Residential Facility for Children/Youth | 0 |
| Foster Care | 1 |
| Nursing homes, including skilled nursing facilities | 0 |
| Intermediate care facilities | 0 |
| Public and Private general hospitals including Emergency Rooms | 0 |
| Public Institutional living arrangement | 2 |
| Private Institutional living arrangement | 18 |
| Psychiatric Hospitals (Public or Private) | |
| a. Public/State | 76 |
| b. Private | 20 |
| Jails | 13 |
| State Prison | 83 |
| Federal Detention Center | 0 |
| Federal Prison | 0 |
| Veterans' administration hospital/Clinic | 0 |
| Other Federal Facility | 0 |
| Homeless | 1 |
| Independent (in the community & PAIMI-eligible) | 5 |
| Parental or Other Family Home & PAIMI-eligible | 50 |
| Unknown | 0 |
| **Total** | 273 |

**Footnotes:**

## C. Complaints/Problems of PAIMI Individuals

### Areas of Alleged Abuse

Number of complaints/problems – Make every effort to report within the following categories:

| Areas of Alleged Abuse | Outcomes | | | | | | | | | | | Number from Closed Cases Only |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | A | B | C | D | E | F | G | H | I | J | K | Total |
| a. Inappropriate or excessive medication | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 5 |
| b. Inappropriate or excessive restraint and seclusion | 2 | 0 | 2 | 0 | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 9 |
| c. Involuntary medication | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| d. Involuntary Electric Convulsive Therapy (ECT) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| e. Involuntary aversive behavioral therapy | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| f. Involuntary sterilization | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| g. Physical assault | 20 | 10 | 9 | 0 | 3 | 0 | 0 | 4 | 4 | 0 | 0 | 50 |
| h. Sexual assault | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| i. Threats of retaliation or verbal abuse by facility staff | 5 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 6 |
| j. Coercion | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 3 |
| k. Financial exploitation | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| l. Suspicious death | 9 | 0 | 1 | 0 | 11 | 0 | 0 | 0 | 0 | 1 | 0 | 22 |
| m. Other<br>*Specify types of complaints. Please describe below. [This number should be less than 1% of the total number of total complaints.]* | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| Abuse Complaints Disposition | |
|---|---|
| **For total closed cases listed in Table C.1., provide the number of abuse complaints/problems for each disposition category.** | |
| A. Number of complaints/problems determined after investigation not to have merit | 41 |

| | |
|---|---|
| B. Number of complaints/problems withdrawn or terminated by client | 11 |
| C. Number of complaints/problems resolved in the client's favor | 13 |
| D. Number of complaints/problems not resolved in the client's favor | 0 |
| E. Other Indicators of success or outcomes that resulted from P&A involvement | 19 |
| F. Other Representation found | 0 |
| G. Services not needed due to client death or relocation | 2 |
| H. P&A withdrew due to conflict of interest or other reasons | 5 |
| I. Lost Contact | 5 |
| J. Outcome Unknown | 1 |
| K. Lack of Resources | 0 |
| **Total number of Abuse complaints/problem addressed from closed cases** | **97** |

*At least 1 case required.*

**Case of Alleged Abuse**

CC is an adult with significant mental illness who was recently transferred to a State Mental Health Treatment Facility (state hospital) from a County Jail when Disability Rights Florida (DRF) received a referral from the state hospital's Resident Attorney regarding potential abuse while CC was previously at a County Jail. They explained that CC arrived completely naked with complaints that he was assaulted by security guards. After receiving the referral, DRF staff interviewed CC to obtain more information. While the initial referral focused on abuse in the county jail, CC remembered very little from this period and had no complaints about the jail or the Baker Act. Instead, CC presented allegation that hospital security guards assaulted him during intake for unknown reasons and without any explanation. DRF accepted the case for investigation to focus on the issues related to abuse during intake at the state hospital. To investigate this request, DRF staff requested and reviewed all available records of CC's treatment. The records indicated that he was nonverbal, actively psychotic on arrival, and would not put on clothes. Although severely symptomatic, records did not note any actual danger to himself or others during this admission period, just refusal to obey instructions and likely due to the symptoms he was experiencing. The records also noted that CC refused to comply with the mandatory shower and lice treatment, resulting in an emergency treatment order (ETO), which is likely the experience he recounted with security at admission. Due to the delay in reporting, video was no longer available of this incident and DRF staff were unable to substantiate the specific abuse allegation on that date. However, these issues regarding treatment at admission are consistent with other recent cases and DRF considered them credible even if not objectively provable. DRF presented CC's case to the facility's Risk Manager as a demonstration of systemic issues about treatment during admission that DRF commonly receives, specifically the practice of using ETOs without proper de-escalation attempts during the admission process. The Risk Manager agreed to follow up with senior staff about addressing incoming patient symptoms via de-escalation and, if actual danger exists to justify an ETO, ensuring that it is accurately documented. DRF continued to discuss this issue with the facility through periodic contacts with facility administrators. Ultimately, they agreed that there was an issue with security responses in the presented contexts and proposed adding additional staff to focus on quality assurance and de-escalation in the forensic admissions context. They also removed the unit supervisor who they believed was responsible for some of these issues and replaced her with a new nurse who will be tasked with crisis response and quality assurance. The facility also hired a consultant to provide additional training to security staff about the criteria for emergency treatment orders and manual restraints. While DRF continues to monitor these changes across other cases in Forensic Admissions, all

work on this individual case is complete and the issues were resolved in the client's favor.

**Case of Alleged Abuse**

ET is an adult with significant mental illness committed to a state mental health treatment facility for competency restoration. ET called Disability Rights Florida (DRF) to allege verbal abuse and retaliatory harassment by staff in his dorm. Specifically, ET alleged that, on numerous occasions, staff were verbally abusive to him, taunting and making fun of him in various ways. He also alleged that staff were tampering with his food and that staff purposefully retaliated against him by failing to promptly respond to a recent severe self-harm event, where he had severely cut his wrist in a bathroom. Finally, he believed that he'd been transferred from CTU to Forensic Admissions in retaliation for reporting these events. As a part of DRF's investigation, staff met with ET's psychologist about the alleged incidents. Regarding lack of response to ET's self-harm incident and retaliation for reporting incidents, they confirmed that they had been monitoring ET's behaviors closely and sent him to the Emergency Room after he cut his wrist in the facility bathroom. Furthermore, they explained that ET's transfer from the CTU to Forensic Admissions was a proactive response to the steady increase of ET's suicide-risk behavior, with placement on Forensic Admissions allowing for his movement to be more securely tracked. For ET's abuse allegations, they had no direct knowledge about any verbal harassment. DRF staff also met with ET's recovery team facilitator who explained that they never witnessed staff harassment. Moreover, they believed that ET's claims were a manifestation of his declining behavior. DRF staff also reviewed video and clinical records from the facility. Their review did not find any evidence of ET's allegations of abuse, neglect, nor purposefully slow response to ET's self-harm incident. The remainder of his records show a pattern of making unfounded claims against staff and threatening self-harm if they were not transferred away from his presence. As a result of the above steps, DRF closed this case due to their investigation concluding that ET's allegations lacked merit. DRF also communicated with the facility psychologist to confirm ET's current status, given his history of threats of self-harm, who confirmed that ET was back in CTU with the treatment team that ET trusts and that they can help him process it.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## C. Complaints/Problems of PAIMI Individuals

### Areas of Alleged Neglect

| Number of complaints/problems | Outcomes | | | | | | | | | | | Number from closed cases only |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | A | B | C | D | E | F | G | H | I | J | K | TOTAL |
| a. Failure to provide necessary or appropriate medical (other than psychiatric) treatment. | 2 | 2 | 5 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 11 |
| b. Failure to provide necessary or appropriate mental health treatment, including access to prescribed medication | 4 | 0 | 16 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 21 |
| c. Failure to provide necessary or appropriate personal care and safety | 0 | 0 | 13 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 16 |
| d. Failure to provide appropriate discharge planning or release from a residential care or treatment facility | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| e. Mental health diagnostic or other evaluation (does not include treatment) | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| f. Medical (non-mental health related) diagnostic physical examination | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| g. Other<br>*[Describe and make every effort to report within the above categories].* | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

## Neglect Complaints Disposition

| **For total closed cases listed in Table C.3., provide the numbers of neglect complaints or problem areas for each disposition category.** | |
|---|---|
| A. Number of complaints/problems determined after investigation not to have merit | 6 |
| B. Number of complaints/problems withdrawn or terminated by client | 3 |
| C. Number of complaints/problems resolved in the client's favor | 35 |
| D. Number of complaints/problems not resolved in the client's favor | 0 |
| E. Other Indicators of success or outcomes that resulted from P&A involvement | 3 |
| F. Other Representation found | 0 |
| G. Services not needed due to client death or relocation | 3 |
| H. P&A withdrew due to conflict of interest or other reasons | 0 |
| I. Lost Contact | 0 |
| J. Outcome Unknown | 0 |
| K. Lack of Resources | 0 |

| Total number of Neglect complaints/problem addressed from closed cases | 50 |
|---|---|

**Case of Alleged Neglect**

SS is an adult female with a significant mental illness (Schizoaffective Disorder, Bi Polar Type) and a vision impairment (Blindness via Pseudotumor Cerebri) who was residing in a State Mental Health Treatment Facility (state hospital) at the time of her initial request for assistance from Disability Rights Florida (DRF). SS contacted DRF to request assistance with accessing accommodations for her vision impairment, as the only accommodation provided by the facility was staff assistance. SS explained that she would like to be able to move around the facility on her own in order to have the same level of privacy and freedom of movement as the other non-blind residents. Additionally, SS explained that facility staff had been refusing to provide her with Habeas Corpus forms even though she had been requesting them for over three weeks. To investigate this service request, DRF staff visited with SS on-site at her facility to obtain more information about her disabilities and her request for assistance from DRF. While on-site, DRF communicated with senior staff about concerns that facility staff had failed to provide SS with Habeas Corpus forms within a reasonable timeframe. The senior staff confirmed that they would have the forms sent to SS by the end of the day and would schedule a translator to assist SS with completing the form. Additionally, DRF staff followed-up with senior staff via phone call to confirm that they had provided SS with the form and assistance. To investigate SS's accommodations issues, DRF staff requested and reviewed her medical records. The records review identified concerns about the facility's available accommodations for residents with co-occurring, non-mental health-related disabilities. DRF communicated these concerns with the facility's accommodations liaison, who provided information about how residents can request additional ADA accommodations. DRF scheduled a second on-site visit with SS and communicated this self-advocacy information with her. SS confirmed that she understood how to request additional accommodations, if necessary. During final communication with SS for this case, DRF confirmed that SS received accommodations for her blindness (talking watch, talking Bible, and signature card). SS also expressed gratitude for her receiving accommodations for her vision impairment and explained that she had been elected a Vice President of the Resident's Committee and that she has achieved success in advocating for herself and other residents through this role. She also confirmed that she had been approved for discharge and was pending transfer to a Residential Treatment Facility. SS noted that she was looking for information on day programs near her home. DRF staff provided community-based referrals to programs to help her transition back into the community. As a result of the above steps, DRF closed this case as issues resolved in client's favor due to SS receiving self-advocacy information about requesting ADA accommodations and receiving a Habeas Corpus form.

**Case of Alleged Neglect**

JS is an adult with significant mental illness who was residing in a state mental health facility for competency restoration when he contacted DRF for assistance with alleged neglect by their facility. Specifically, JS alleged that he was not receiving adequate nutrition while inpatient at the state mental health facility. He also indicated that his current treating doctor may be unaware of current dietary needs/requests, and that current dietary orders may not be being followed. DRF investigated the complaint by interviewing JS, who reported that he lost 30 pounds since his initial admission to jail. He also described extensive dietary restrictions that he alleged his current facility was not meeting and was the cause of his dramatic weight loss. Upon further discussion, he confirmed that the facility was complying with only his religious dietary restriction of no pork, but was still serving him a list of other foods he prefers not to eat (many other meats, greens, beans, etc.) due to unspecified gastric issues. JS adamantly instructed DRF to not investigate or even speak to his doctors about these other stomach problems. His only goal was to make sure that he received the additional food that his doctors ordered. DRF staff requested and reviewed records related to JS' diet and treatment while at the state hospital. Records showed that he requested additional food and asked for 'Boost' supplemental drinks. In response, the facility entered new diet orders for double portions and supplemental Boost drinks. After speaking with JS' nurse and social worker, who confirmed that he'd been receiving double portions, they mentioned some inconsistencies in actually being served those portions. DRF staff later spoke with his treatment team's advanced registered nurse practitioner (ARNP) about his dietary issues. The ARNP confirmed that she had ordered supplemental Boost and double portions, though she did not think his current body mass index actually required it. She stated that he weighed ten pounds more since his arrival to the facility, according to documentation in his chart. As a result of the above steps, DRF closed this case due to issues being favorably resolved through limited advocacy, resulting in DRF confirming that the facility was meeting JS' dietary needs.

**Footnotes:**

## C. Complaints/Problems of PAIMI Individuals

### Areas of Alleged Rights Violations

| Number of Complaints/Problems | Outcomes | | | | | | | | | | | Number from Closed Cases only |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | A | B | C | D | E | F | G | H | I | J | K | TOTAL |
| a. Failure to provide individualized written treatment or service plan | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Failure to provide written discharge plan including a description of mental health services needed upon discharged from such program or facility | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| c. Failure to allow ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan) | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| d. The right to refuse treatment | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| e. The right to refuse to take prescribed medications | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| f. The denial of financial benefits/entitlements (e.g., SSI, SSDI, Insurance) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| g. Guardianship/Conservator problems | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| h. The denial of rights protection information or legal assistance, including adequate and appropriate representation during commitment hearings | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| i. The denial of privacy rights (e.g., congregation, telephone calls, receiving mail) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| j. The denial of recreational opportunities (e.g., grounds access, television, and smoking) | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| k. The denial of visitors | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| l. The denial of access to or correction of records | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| m. Breach of confidentiality of records (e.g., failure to obtain consent before disclosure) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| n. Failure to obtain informed consent | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| o. Advance directives issues | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| p. The denial of parental/family rights | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| q. Housing Discrimination | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| r. The denial of access to administrative or judicial process | 1 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| s. Failure to provide educational services in the least restricted environment for PAIMI-eligible individuals | 3 | 3 | 24 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 33 |
| t. The denial of access to community-based rehabilitation services and/or treatment | 1 | 2 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 6 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| u. The denial of access to transportation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| v. Employment Discrimination | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| w. The denial of access to personal possessions | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| x. Failure to comply with commitment regulations | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| y. Failure to comply with commitment time frames | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| z. Other<br>*[Please make every effort to report within the above categories].* | 0 | 0 | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 6 |

| Rights Violations Disposition | |
|---|---|
| **For closed cases listed in this Table, provide the number of rights complaints or problem areas for each disposition category.** | |
| A. Number of complaints/problems determined after investigation not to have merit | 10 |
| B. Number of complaints/problems withdrawn or terminated by client | 7 |
| C. Number of complaints/problems resolved in the client's favor | 38 |
| D. Number of complaints/problems not resolved in the client's favor | 0 |
| E. Other Indicators of success or outcomes that resulted from P&A involvement | 6 |
| F. Other Representation found | 1 |
| G. Services not needed due to client death or relocation | 0 |
| H. P&A withdrew due to conflict of interest or other reasons | 1 |
| I. Lost Contact | 1 |
| J. Outcome Unknown | 0 |
| K. Lack of Resources | 0 |
| **Total number of Rights Violation complaints/problems addressed from closed cases** | **64** |

**Cases of Alleged Rights Violations**

RB is an individual committed to a state mental health treatment facility for competency restoration due to diagnosed significant mental illness. RB is blind and reported to Disability Rights Florida (DRF) that staff committed "fraud" by giving him psychotropic medications despite his refusal to consent to them. DRF staff interviewed RB in person, where he reported that he had never consented to psychotropic medications but that his treatment team told him that he had previously signed the informed consent form for psychotropic medications. Furthermore, they had added Zyprexa to his daily medications. RB feels that the signed form is fraudulent and violates his right to refuse treatment. To investigate this service request, DRF staff requested and reviewed medical records from the facility. The records substantiated RB's account that the informed consent he signed at admission explicitly only consented to Benadryl and checked that he did not consent to psychotropic medications. The records also reflect that, for unknown

reasons and seemingly without any behavioral antecedents, his psychiatrist added Zyprexa to his daily medications. Due to RB's blindness, he took the medication at least one day without knowing there was a new pill. Relatedly, after refusing these medications in February 2023, RB's treatment team requested a court order for involuntary medication. DRF's records review concluded that these requests were based on false information, claiming incorrectly that RB's medication refusal was new behavior and treating his displeasure with being medicated without his consent as evidence that he was unstable and thus required involuntary medication. At RB's request, DRF began communicating their findings to the facility's legal department, as their involuntary medication petition was based on false representations by his treating psychiatrist. The facility attorney conceded that the above narrative was generally correct, and that RB's behavioral records did not show the kind of danger to himself or others that would necessitate court-ordered involuntary medication. The facility subsequently dismissed the petition voluntarily. As a result of the above steps, DRF closed this case due to issues being favorably resolved through Negotiation.

**Cases of Alleged Rights Violations**

RP is an adult who contacted Disability Rights Florida's (DRF) Institutional Intake Line while at a Baker Act Receiving Facility. RP reported concerns that her rights were being violated as she was not being given proper food due to a reported food allergy, she was refused Habeas Corpus and grievance forms, and that she was not otherwise evaluated upon admittance to the facility. To investigate RP's concerns, DRF conducted an on-site investigation at RP's facility. DRF staff interviewed RP. With RP's permission, DRF discussed RP's concerns with social work staff, reviewed records, and viewed portions of the inpatient unit relevant to this investigation. Based on DRF's investigation, RPs allegations could not be substantiated. Regarding RP's concerns with the phone, the patient phone was found to be operational and accessible to RP except for times when she was meeting with the doctor, and RP had no phone restrictions. Regarding RP's concerns with evaluation, significant mental health symptoms were impairing her ability to engage with her treatment providers, but records indicated that she had been evaluated at admission and the doctor had worked consistently to alleviate those symptoms. Regarding RP's concerns with food allergies, RP did not have any documented food allergies. Regarding RP's concerns with obtaining a Habeas Corpus form, records showed RP had already filed for Habeas Corpus which a court had denied, but the social worker agreed to re-provide the necessary forms to RP. DRF also verified that the required legal documentation for a proxy was complete and that the family was working with RP's family members to ensure that she had needed personal care items during her stay at the facility. As a result of this investigation, this case was closed as DRF's investigation revealed that the issues were resolved in client's favor.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

For the 6 "Other" cases in this category, the Rights Violations were as follows: multiple issues of complaint (2), telephone restrictions (1), denial of case management assistance to obtain state issued ID (1), religious accommodations (1), and service animal issues (1).

## C. Complaints/Problems of PAIMI Individuals

### Reasons for Closing Individual Advocacy Case Files

| | Number |
|---|---|
| 1. Client's objective was partially or fully met. | 64 |
| 2. Case or investigation lacked merit. | 54 |
| 3. Case withdrawn or terminated by the client. | 24 |
| 4. Issue favorably resolved. | 37 |
| 5. Issue not favorably resolved. | 0 |
| 6. Other success or outcomes due to P&A involvement (i.e., provided self-advocacy assistance) | 9 |
| 7. Other representation found. | 2 |
| 8. Services not needed due to client's death or relocation. | 8 |
| 9. P&A withdrew due to conflict of interest or other reasons (i.e., client would not cooperate). | 3 |
| 10. Appeal(s) unsuccessful. | 0 |
| 11. Other appropriate entity investigating. | 3 |
| 12. Lost Contact. | 7 |
| 13. Lack of Resources. | 0 |
| **Total** | **211** |

*At least 1 case required.*

**Case of Closing an Individual Advocacy Case File**

As an example of an individual case that Disability Rights Florida closed due to the case or investigation lacking merit, DE is an adult male with significant mental illness (Unspecified Psychosis not due to substance or known physiological condition and Bipolar Disorder). DE and his father met Disability Rights Florida (DRF) staff during a rights training presentation at a drop-in center. DRF staff conducted an onsite intake regarding DE's allegations of physical abuse by corrections officers that had occurred while he was incarcerated in a county jail. During DRF's investigation, DRF staff interviewed DE and DE's father, communicated with county jail personnel, reviewed DE's medical records from the Baker Act receiving facility where he was transferred directly from the county jail, and reviewed video footage of the alleged abuse incident. As a result of these measures, DRF staff was unable to substantiate DE's allegation of abuse by corrections officers. DRF explained the investigative findings to DE and provided him with self-advocacy information and resources in the event he decided to pursue other avenues of relief. DRF closed this case due to the client's allegation lacking merit.

**Case of Closing an Individual Advocacy Case File**

As an example of an individual case that Disability Rights Florida closed with other success or outcomes due to P&A involvement, RC is an adult male with significant mental illness who was

residing at a State Mental Health Facility (state hospital) at the time of his initial request for assistance from Disability Rights Florida (DRF). Specifically, RC contacted DRF for assistance with obtaining personal belongings from his previous facility where he resided for two (2) years before to being transferred. To investigate this request, DRF staff communicated with RC's previous facility and advocated for RC's belongings to be sent to his current facility. RC then contacted DRF to report he had only received some of his belongings and that his counselor at his current facility had assisted him with sending a grievance to his previous facility. DRF spoke with RC's counselor, who confirmed that RC's items were received and that a grievance was sent to the previous facility. At this point, DRF accepted RC's case for investigation regarding an alleged rights violation pertaining to loss of personal property upon transferring institutions. Throughout the investigation, DRF staff had frequent communication with RC, his counselor, the Health Administration Services Manager, and staff from RC's previous facility. DRF staff also obtained and reviewed property inventory logs from both facilities. After conducting a thorough investigation into this matter, DRF was unable to substantiate that RC's previous facility lost or mishandled RC's property but did identify improvements that could be made to documenting resident property during transfers to prevent future concerns. As a result of the above information, DRF closed RC's case due to other success or outcomes due to P&A involvement. Although DRF could not substantiate RC's claim that his previous facility lost or misplaced his personal items, DRF negotiated with RC's previous facility to amend its policies and procedures to ensure proper handling of patients' personal inventory—ultimately enhancing the rights of future patients with significant mental illness.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## C. Complaints/Problems of PAIMI Individuals

### Intervention Strategies

The totals reported for the Abuse, Neglect, and Rights Violations Outcomes in this table **should be** the same as the totals reported in the Areas of Alleged Abuse, Areas of Alleged Neglect, and Areas of Alleged Rights Violations tables.

| Outcomes | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Abuse** | **A** | **B** | **C** | **D** | **E** | **F** | **G** | **H** | **I** | **J** | **K** | **Total** |
| 1. Self Advocacy Assistance | 3 | 6 | 2 | 0 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 14 |
| 2. Limited Advocacy | 1 | 0 | 1 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 5 |
| 3. Administrative Remedies | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Litigation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Abuse/Neglect Investigations | 37 | 5 | 9 | 0 | 18 | 0 | 0 | 4 | 3 | 1 | 0 | 77 |
| 6. Mediation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Negotiation | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| **Total** | **41** | **11** | **13** | **0** | **19** | **0** | **2** | **5** | **5** | **1** | **0** | **97** |
| **Neglect** | **A** | **B** | **C** | **D** | **E** | **F** | **G** | **H** | **I** | **J** | **K** | |
| 1. Self Advocacy Assistance | 2 | 2 | 8 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 14 |
| 2. Limited Advocacy | 1 | 1 | 23 | 0 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 29 |
| 3. Administrative Remedies | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Litigation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Abuse/Neglect Investigations | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| 6. Mediation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Negotiation | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| **Total** | **6** | **3** | **35** | **0** | **3** | **0** | **3** | **0** | **0** | **0** | **0** | **50** |
| **Rights Violations** | **A** | **B** | **C** | **D** | **E** | **F** | **G** | **H** | **I** | **J** | **K** | |
| 1. Self Advocacy Assistance | 5 | 4 | 8 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 19 |
| 2. Limited Advocacy | 3 | 3 | 12 | 0 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 22 |
| 3. Administrative Remedies | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 4. Litigation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Abuse/Neglect Investigations | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| 6. Mediation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Negotiation | 0 | 0 | 18 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 20 |
| **Total** | **10** | **7** | **38** | **0** | **6** | **1** | **0** | **1** | **1** | **0** | **0** | **64** |

*At least 1 case required.*

**Case of Intervention**

As an example of an individual case using the intervention strategy of Negotiation, RB, an adult committed to a State Mental Health Treatment Facility due to diagnosed significant mental illness, contacted Disability Rights Florida (DRF) with a service request for a physical accommodation. RB is an individual who is blind and reported multiple falls in his dorm due to a lack of assistance from staff. RB relies on staff members to get around as needed. DRF staff interviewed RB in person, where he informed DRF that staff had discontinued their observation at night and that this had contributed to him falling in his bedroom, falls that had caused minor injuries. DRF staff also requested and reviewed treatment records. Those records confirmed that RB was previously on a higher observation level but that his current Fall Risk Assessments categorized him as the lowest possible risk category, despite multiple documented recent falls and well-established difficulty getting around due to blindness. A DRF Advocate-Investigator met with RB's treatment team to discuss these safety issues. The treatment team agreed to provide RB with a new fall risk assessment, reassigned him to 1:1 observation status, and changed his housing status to single room. These steps resolved most of the immediate safety concerns. Over the course of the investigation, DRF staff also learned that RB was manually restrained and involuntarily medicated with Emergency Treatment Orders (ETOs) on two occasions in June 2023. Each event stemmed from staff asking RB to come out of his bedroom to attend classes and RB refusing to do so. These events were related to the original service request because these incidents were attributable to friction between staff and RB due to having to provide accommodation related to his vision impairments. DRF staff again requested and reviewed additional records of these incidents and interviewed one staff member who was a witness of one incident. Video footage confirmed that there was never any imminent risk of harm to RB or others that would justify the ordering of ETOs. Instead, staff had orders to get him out of his room and the unit's Nursing Director directly endorsed this abusive treatment. In response to these findings, DRF staff spoke with the facility's Risk Manager regarding these issues, who admitted fault by the unit's Nursing Director and other staff members and noted failures in related documentation of the associated ETOs. DRF drafted a summary of their investigation, which they shared with the Risk Manager, Nursing Director, and facility staff. In response to DRF’s findings, the facility terminated the employment of the employee who was directly responsible for these incidents and made other formal recommendations and professional licensing complaints about another employee who was also determined to be responsible for the abuse. Finally, the facility re-trained staff across the unit on the criteria for manual restraints and ETOs, focusing on de-escalation and avoiding these interventions whenever possible. As a result of the above steps, DRF closed this case due to issues being favorably resolved through negotiation.

**Case of Intervention**

As an example of an individual case using the intervention strategy of Limited Advocacy, DM is an adult male with a significant mental illness (Schizoaffective Disorder depressive type, Polysubstance Abuse) who was residing in a Mental Health Treatment Facility. He contacted Disability Rights Florida (DRF) for assistance with obtaining a birth certificate so that he could receive a State Identification Card. The challenge in obtaining the birth certificate is that DM was unsure where he was born, the name used on his official birth records, and the exact year of his birth. The lack of identification was presenting a barrier to discharge to a less-restrictive setting and community integration. To assist with this request, DRF held multiple meetings with DM to deduce details about his birth and family history, eventually determining the city and estimated year of his birth. DRF used this information to contact the local Social Security Administration office and the Vital Records office in the city of DM’s birth. The Vital Records office provided DRF

with instructions that would allow DM's sister to order a new birth certificate with the assistance of staff at DM's facility. DRF staff provided this information to DM's Case Manager at his facility, who confirmed that they would handle the remainder of the birth certificate request. Between September 2020 and February 2023, there was a delay in the progress of this case as DRF waited for DM's Case Manager to complete the birth certificate request. During this time, both of DM's sisters had passed away and his Case Manager had failed to find an alternative solution to obtaining a birth certificate for DM. In February 2023, DRF took over the birth certificate re-creation process from DM's Case Manager. DRF re-initiated contact with the Vital Records Case Manager, who provided DRF with instructions for submitting a Birth Certificate Delay Packet to the Social Security Administration. DRF staff then met with DM, in person, to assist with completion of the Delay Packet. Once complete, DRF mailed the Delay Packet to the Social Security Administration, covering the mailing and processing fees—with non-PAIMI funds—as part of their assistance to DM and to avoid further delays and roadblocks with this service request. The Delay Packet request succeeded and DRF delivered DM's new birth certificate to him at his facility in May 2024, also instructing DM's Case Manager to assist in scheduling an appointment for DM to receive a State Identification Card. Finally, DRF followed-up with DM's Case Manager and DM, who both confirmed that DM was able to use his birth certificate to receive a State Identification Card and that he was currently in possession of his identification card. As a result of the above steps, DRF closed this case as client's issues resolved in the client's favor.

**Case of Intervention**

As a second example of an individual case using the intervention strategy of Limited Advocacy, RH is an adult individual with a significant mental illness committed to a State Mental Health Treatment Facility (SMHTF) due to being found not guilty by reason of insanity. RH contacted Disability Rights Florida (DRF) to request assistance with determining his medication schedule due to concerns about not being able to get sufficient information about medications from staff. To investigate this service request, DRF staff requested and reviewed RH's medical records from the SMHTF to better understand which medications were on his schedule. This information was then discussed with RH, who requested DRF's assistance with: 1.) general concerns about which medications are on his schedule, why he is on each medication, and which medications are court -ordered; and 2.) adjustments to his medication schedule to address sleep issues, such as intense nightmares and waking up every couple of hours throughout the night. To address these issues, DRF staff attended RH's next treatment team meeting to help communicate his concerns and ensure that RH received information about each issue. For the general medication concerns, RH's treatment team reviewed each of the medications on his schedule and answered RH's questions. For adjustments to his current medications, RH's treatment team listened to his concerns and agreed to review his medications to attempt to address his sleep issues. DRF staff later spoke with RH, who confirmed that his medications were stabilized and that he considered this issue to be resolved. Due to the above steps, DRF closed this case as issues in the client's favor due to limited advocacy.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## C. Complaints/Problems of PAIMI Individuals

### Death Investigation Activities

| A. The number of deaths reported to the P&A for investigation by the following entities: | |
|---|---|
| 1. State | 21 |
| 2. The Center for Medicaid & Medicare Services (Regional Offices). If zero means the P&A did not receive any death reports from CMS for investigation, please note this in the Footnotes. | 0 |
| 3. Other Sources. Briefly list the source for each death reported in this category (e.g., newspaper, concerned citizen, relative, etc.). Media reports, other inmates/facility residents, third party referrals. | 11 |
| **Total Number of deaths investigated** | **32** |

**If the information requested in this section was not available please explain**

| B. All death investigations conducted involving PAIMI-eligible individuals related to the following: | |
|---|---|
| a. Number of deaths investigated involving incidents of seclusion (S). | 0 |
| b. Number of deaths investigated involving incidents of abuse (A). | 3 |
| c. Number of deaths investigated involving incidents of restraint (R). | 1 |
| d. Number of deaths investigated NOT related to incidents of S&R, (e.g., suicides.). | 15 |
| e. Death investigations with a finding of determination. | 12 |
| f. Provision in policy added or prevented as a result of a death investigation. | 0 |
| **Total Number of deaths investigated [Sum of 9b 1-6]** | **31** |

**C. Provide a brief summary example of an individual's death, P&A involvement, and outcome.**
**If you reported deaths in categories B.9.b., please provide the following information on one death from each category, as appropriate:**

**A brief summary of the circumstances about the death.**

**A brief description of P&A involvement in the death investigation.**

**A summary of the outcome(s) resulting from the P&A death investigation.**

As an example of a death investigation involving incidents of abuse, Disability Rights Florida (DRF) learned of the death of RI—an adult male with significant mental illness housed in a state prison—during the course of DRF's litigation against the Florida Department of Corrections (FDC) related to the care and treatment being provided to inmates residing on inpatient mental health units (MHUs) within the FDC (DRF v Jones 3). This client was assigned to an inpatient level of mental health care at the time of their death and, therefore, fell under the purview of that litigation. Initial reports indicated that RI was beaten and visibly injured prior to being placed in the transport van, where he died en route to another state prison facility. The publication of RI's death resulted in one FDC Correctional Officer resigning and the FDC placing ten additional Correctional Officers on administrative leave. DRF suspected that RI's death may have been the result of an excessive Use of Force by FDC staff. To investigate RI's death, DRF requested and reviewed various records related to the inmate, including Medical Examiner reports, Classification, Medical, and Mental Health Records, and Inspector General Records. DRF also consulted an expert witness who reviewed select medical and facility records. The medical expert provided a summary report for use by DRF in settlement negotiations related to FDC's initial non-compliance with the terms of the aforementioned settlement agreement. During DRF's investigation, monitoring of the ongoing settlement agreement related to care and treatment being provided to inmates residing on MHUs within the FDC (DRF v Jones 3) concluded that the FDC maintained substantial compliance (80%+) with the terms of the settlement agreement and that the court's jurisdiction of the settlement agreement was complete. DRF used the information gathered from their review of RI's records to facilitate

settlement negotiations with the FDC in the context of the larger case (DRF v Jones 3). DRF also reviewed the County Clerk of Court docket to monitor the ongoing criminal homicide cases against correctional officers being charged for RI's death. Over the course of their investigation, DRF learned that all involved officers were being held at the county jail without bond. DRF closed this case as "Other Appropriate Entity Investigating" because the State Attorney's Office had initiated felony charges against four officers related to their involvement in the death of RI. At the time of case closure, the outcome of these criminal proceedings was unknown. However, in the time since this case has been closed, all four officers have been sentenced for their involvement in the incident. One officer was acquitted on all felony charges, but found guilty of misdemeanor Culpable Negligence. Three officers were found guilty and received sentences of 20 years each for felony charges including Second Degree murder, Aggravated Abuse of Elderly or Disabled, and other, lesser, charges. They are all currently in the custody of the FDC.

As an example of a death investigation involving incidents of restraint, Disability Rights Florida (DRF) received a verbal report from staff of one of the Florida Department of Children and Families' (DCF) Managing Entities that contracts with the Crisis Stabilization Unit (colloquially referred to as a Baker Act Receiving Facility) where the death occurred. According to the report, BS, an adult male with significant mental illness, died during a restraint incident, during which four staff members used physical holds to restrain BS in August 2023. Initial review of the incident suggests that BS died from suffocation due to excessive use of restraint. While the facility's Quality Assurance Manager and the Managing Entities Chief Strategy Officer reviewed video and records of the incident, DRF is currently investigating the incident to determine if the death of BS is the result of abuse or neglect. Additionally, the local police are conducting a criminal investigation of the incident. Throughout FY 2023-2024, DRF requested and reviewed BS' clinical records (including details of the police investigation) and consulted a medical expert about the medical details of the investigation. DRF also requested the Medical Examiner's report, video records, and drafted a letter to the facility with their investigative findings and recommendations. This case will remain open into FY 2024-2025 as DRF awaits receipt of the remaining records, finalizes and send their investigative findings to the facility, and communicates with the facility to implement any corrective action resulting from DRF's investigative summary letter.

As an example of a death investigation not related to incidents of seclusion and restraint, Disability Rights Florida (DRF) received a report from Florida's Department of Children and Families, Adult Protective Services division, indicating that LS had died while a patient at a state mental health treatment facility. LS was an adult female who was a vulnerable adult per Florida Statute 415. She was 60 years old with significant mental illness. LS had capacity and was her own decision maker, according to facility records. LS relied on caregivers to keep her safe and to assist or guide her with her daily needs. At the time of her death, LS was a patient at Florida State Hospital (FSH) on the Forensic Admission Unit. On December 16, 2021, at about 8:33 a.m. another patient, who observed that LS was absent from breakfast, went to LS' room to check on her and observed her not moving. They alerted staff, who conducted a room check and found LS with a washcloth in her mouth and a plastic bag over her head. The facility's mortality investigation determined that LS' manner of death was a suicide. To investigate this death, DRF, by way of its access authority, requested and received LS' records from the facility, including medical records, progress notes and incident reports. They also conducted a field visit to the facility where they interviewed staff and reviewed surveillance video footage surrounding the date/time of LS' death, the Psychological autopsy report, as well as the coroner's report. Additionally, DRF also reviewed the law enforcement investigation report and photographs along with other secondary reports. DRF concluded a thorough investigation which lasted over 6 months. The Investigative Staff concluded that there was preponderance of evidence of neglect and inadequate supervision on the unit that contributed to LS' death. Most notably, they observed a failure of facility staff to conduct consistent and effective patient face-checks. DRF staff also uncovered discrepancies between what staff recorded in the facility's Residential Area Coverage log versus what DRF observed through their review of video surveillance footage. DRF determined that there was clear evidence of falsification of clinical records by facility staff. Finally, they concluded that there were inconsistencies in how staff carried out room checks, which gives concern for risk management and quality of care issues. Following the conclusion of the individual investigation of LS' death, DRF provided facility administrators with their report along with their requested corrective actions. At the closing of this individual investigation FSH Administrators and DRF continue to work on meeting the corrective action requirement. The outcomes of this death investigation include: 1.) revision of facility policies for conducting and documenting patient face checks; 2.) training/re-training of facility staff on conducting and documenting patient face checks; 3.) DRF staff completing random reviews of facility surveillance video to assess if staff conduct patient face checks according to the updated facility policies (these reviews will continue into FY 2024-2025).

As an example of a death investigation with a finding of determination, Disability Rights Florida (DRF) learned of the death of AL—an adult male with significant mental illness—during a routine review of the Florida Department of Corrections (FDC) Inmate Mortality Index, in which he was listed as deceased while housed at a state prison. Based on documents previously received from the FDC during the course of DRF's litigation related to care and treatment being provided to inmates residing on inpatient mental health units (MHUs) (DRF v Jones 3), DRF was aware that AL was assigned to the highest possible level of inpatient care (S-6) within the FDC. Since AL was assigned to an inpatient level of mental health care at the time of their death, they fell under the purview of that litigation. DRF requested and reviewed records related to AL's death, including Medical Examiner reports, Classification, Medical and Mental Health Records, and Inspector General Records. DRF concluded that AL's repeated refusal to participate in treatment likely contributed to the death of AL. However, the records also reflected that the FDC took steps to involve the statewide Director of MH Services as recommended, due AL's refusals. DRF brought their concerns regarding inmate refusals of treatment services to the attention of the FDC Director of MH Services and General Counsel during their communications related to inmate deaths. DRF also brought these concerns to the attention of the FDC via written letter as part of their ongoing systemic death investigation work, with acknowledgement from the FDC.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

A2. Disability Rights Florida does not receive death reports from The Center for Medicaid & Medicare Services.

B. For one death investigation, Disability Rights Florida is currently unaware of the cause of death. Therefore, we are unable to speculate regarding what the death was related to. This one death accounts for the discrepancy between the numbers in Section A (32) and Section B (31).

## C. Complaints/Problems of PAIMI Individuals

### Number of Interventions on behalf of Groups of PAIMI Eligible Individuals - Individuals Impacted

*Multiple counts not permitted for lines 1 –3 and 6.*

| What to Count | |
|---|---|
| 1. Group cases/projects still open on October 1, 2022 to 2023. (Carried over from prior FY (s)) | 61 |
| 2. New group cases/projects opened during the year. | 19 |
| 3. Total group cases/projects worked on during the year (Add lines 1 & 2) | 80 |
| 4. Total group cases/projects as of September 30, 2023 to 2024. (Carry over to next FY) | 53 |
| 5. Group cases/projects targeted at serving the following special populations: | |
| a. Ethnicity | 4 |
| b. Racial Minorities | 4 |
| c. Homeless | 5 |
| d. Veterans | 3 |
| e. Urban | 20 |
| f. Rural/Frontier | 9 |
| g. Older Adults/geriatric | 4 |
| 6. Total # of individuals potentially impacted by line 3 | 44,583,331 |

Only the number of cases are needed for the last three columns, not the number of individuals

| Intervention Types (See the Instructions for Guidance) | Potential # of Individuals Impacted | Concluded Successfully | Concluded Unsuccessfully | On-going |
|---|---|---|---|---|
| Group Advocacy (non-Litigation) | 13,467,256 | 6 | 1 | 11 |
| Abuse and Neglect Investigations (non-death related) | 793 | 0 | 1 | 4 |
| Facility Monitoring Services | 8,446 | 11 | 0 | 8 |
| Community Based Monitoring Services | 0 | 0 | 0 | 0 |
| Court Ordered Monitoring | 0 | 0 | 0 | 0 |
| Systemic Litigation | 11,176,084 | 2 | 1 | 5 |

| | | | | |
|---|---|---|---|---|
| Educating Policy Makers | 5,180,076 | 2 | 0 | 11 |
| Other Systemic Advocacy | 14,750,676 | 3 | 0 | 14 |
| **Total** | **44,583,331** | **24** | **3** | **53** |

**Case of Intervention on Behalf of a Group**

During FY 2023-2024, Disability Rights Florida (DRF) continued monitoring compliance with a court-ordered settlement obtained in the case of Disability Rights Florida v. Jones and the Florida Department of Corrections (FDC). (See Case No. 3:18-cv- 179-J-20JRK, M.D. Fla.). The settlement agreement addresses the constitutionally deficient treatment of patients in the custody of the FDC that reside on the inpatient mental health units (MHUs) for inmates with significant mental illness that require the highest level of care. The original agreement required two periods of compliance monitoring to be conducted by the Correctional Medical Authority (CMA), acting as a neutral monitoring authority. The second monitoring period was completed in FY 2021-2022 and revealed significant deficiencies in the FDC's compliance at six of their eight MHUs. As a result, DRF prepared to file a motion for contempt regarding the FDC's continued non-compliance with the settlement agreement. However, after multiple negotiation meetings and a court hearing, the parties ultimately agreed to extend jurisdiction for two additional years (until July 1, 2024) to provide the FDC additional time to come into compliance and to allow the CMA to conduct a third round of limited settlement monitoring at the six non-compliant institutions to verify compliance. During FY 2023-2024, the CMA completed the third round of monitoring at the remaining two institutions. The CMA issued reports indicating compliance with the terms of the settlement agreement. Based on FDC's substantial compliance with the terms of the settlement agreement, the Court's jurisdiction terminated on March 29, 2024. The parties filed a stipulated Notice on April 2, 2024 confirming that jurisdiction was over. Based on the foregoing, this project concluded as a successfully completed DRF priority for FY 2023-2024.

**Case of Intervention on Behalf of a Group**

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## C. Complaints/Problems of PAIMI Individuals

### Performance Measures of P&A Activities

| Outcomes | Number from Closed Cases Only |
|---|---|
| a) PAIMI-eligible individuals who access community-based mental health or health care services that resulted in community integration and independence or are better able to advocate to do so; | 2 |
| b) PAIMI-eligible individuals who access benefits or services or are better able to advocate to do so; | 24 |
| c) PAIMI-eligible individuals who live in a healthier, safer, improved, or more integrated settings or are better able to advocate to do so; | 959 |
| d) PAIMI-eligible individuals are able to stay in their own home or better able to advocate to do so; | 3 |
| e) PAIMI-eligible individuals who can secure or maintain employment and/or are not subject to workplace discrimination or are better able to advocate for to do so; | 0 |
| f) PAIMI-eligible individuals who receive appropriate educational services and supports and/or are not subject to discrimination in educational settings or are better able to advocate for those outcomes; | 3 |
| g) PAIMI-eligible individuals who go to school in safe and more humane conditions; | 4 |
| h) PAIMI-eligible children (individuals) who receive appropriate services in the most integrated settings; | 24 |
| i) PAIMI-eligible individuals who were not subject to discrimination in government benefits/services, housing, public accommodations, etc. or are better able to advocate for such outcomes; | 1 |
| j) PAIMI-eligible individuals who were not subject to abuse, neglect, or rights violations or are better able to advocate for to do so; | 762 |
| k) PAIMI-eligible individuals who can make their own decisions to the maximum extent feasible or are better able to advocate to do so; | 2 |
| l) PAIMI-eligible individuals who had their rights enforced, retained, restored and/or expanded or are better able to advocate for to do so; and | 113 |
| m) PAIMI-eligible individuals who were more able to participate in the voting process or are better able to advocate for to do so. | 0 |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# D. Non-Client Directed Advocacy Activities

### Non-client Directed Advocacy Activities

| 1. Individual Information and Referral (I&R). | Total |
|---|---|
| Provide the number of PAIMI Program I&R services. | 1,371 |
| **2. State Mental Health planning activities** | |
| DRF's Director of Public Policy serves as a voting member of the Florida SAMHSA Block Grant Planning Council. This seat is designated for an advocacy organization, and DRF keeps the Planning Council appraised of our relevant work, gathers information from members regarding initiatives and service delivery across the state, and reviews and comments on the state's relevant block grants as a part of the Council. Additionally, DRF's representative on the Planning Council is a member of both the Legislative/Advocacy and Nominating/Membership Committees. | |
| **3. Education, Public Awareness Activities, and Events** | |
| 1. Number of public awareness activities or events. | 56 |
| 2. Number of education/training activities undertaken. | 50 |
| 3. Number (approximate) of persons trained in 2. | 2,658 |
| **4. Technical Assistance** | |
| Provide the number of PAIMI Program TA services. | 1 |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# E. Grievance Procedures

### Grievance Procedures

| | |
|---|---|
| 1. Do you have a systemic/program assurance grievance policy as mandated 42 CFR 51.25 (a)(2)? | (●) Yes ( ) No |
| If Yes please upload your organizations Grievance Policy using the attachment tab | |
| 2. The number of grievances filed by PAIMI-eligible clients, including representatives or family member of such individuals receiving services during this fiscal year. Total | 0 |
| 3. The number of grievances filed by prospective PAIMI-eligible clients (those who were not served due to limited PAIMI Program resources or because of non-priority issues). 42 CFR § 51.25 (a)(1)(2) | 0 |
| 4. The number of grievances appealed to :<br>a. The Governing Authority/Board<br>b. The Executive Director | <br>0<br>0 |
| Total 4.a & 4.b | 0 |
| 5. The number of reports sent to the Governing Board and the Advisory Board. Total | 4 |
| 6. Please IDENTIFY ALL INDIVIDUALS, by name & title, responsible for grievance reviews (maximum 5):<br>Name:Peter Sleasman Title:DRF Executive Director<br>Name:Dr. Beth Boone Title:Chair, BOD Client Grievance Committee | |
| 7. What is the timetable (in days) used to ensure prompt notification of the grievance procedure process to clients, prospective clients or persons derided representation, and ensure prompt resolution? Total # of days | 30 |
| 8. Were written responses sent to each grievant?<br>*If no, explain below* | ( ) Yes (●) No |
| DRF received 0 grievances from PAIMI-eligible clients in FY 2023-2024. | |
| 9. Was client confidentiality protected?<br>*If no, explain below* | (●) Yes ( ) No |
| | |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# Notice to Individuals about Disability Rights Florida Grievance Procedure

## How to File a Grievance

### You may file a grievance if:

- You asked for help from Disability Rights Florida but were told you could not get help;
- You currently are getting help from Disability Rights Florida but are unhappy with the help; or
- The help you were receiving ended and Disability Rights Florida denied further help.

### To file a grievance you may do the following:

#### Step 1 (optional): Discuss the Disagreement with the Disability Rights Florida Employee.

You may want to talk about the problem with the Disability Rights Florida staff person. You do not have to do this.

#### Step 2: Disability Rights Florida Executive Director

You may file a grievance with Disability Rights Florida's Executive Director within 30 days of when Disability Rights Florida made the decision you do not like.

You may file a grievance using the attached form, by writing your grievance on another piece of paper, or by calling Disability Rights Florida for assistance in preparing your grievance.

*Updated 4/27/15*

**Send your grievance:**

- **Via mail**
  Executive Director
  Disability Rights Florida
  2473 Care Drive, Suite 200
  Tallahassee, FL 32308
- **Via fax**
  (850) 488-8640
- **Via e-mail**
  executivedirector@disabilityrightsflorida.org
- **Via phone or TDD (if assistance is required)**
  (800) 342-0823
  TDD (800) 346-4127

The Executive Director will review your grievance and give you a written decision within 30 days unless the Director tells you that he/she needs more time.

## Step 3: Disability Rights Florida Board of Directors

If you disagree with the Executive Director's decision, you may request a review by Disability Rights Florida's Board Grievance Committee within 30 days of the Executive Director's decision.

You may request a review by using the attached form, by writing your request on another piece of paper, or by calling Disability Rights Florida for assistance in preparing your grievance.

**Send your request:**

- **Via mail**
  Grievance Committee of the Board of Directors
  Disability Rights Florida
  2473 Care Drive, Suite 200
  Tallahassee, FL 32308
- **Via fax**
  (850) 488-8640
- **Via e-mail**
  clientgrievancecommittee@disabilityrightsflorida.org

*Updated 4/27/15*

- **Via phone or TDD (if assistance is required)**
  (800) 342-0823
  TDD (800) 346-4127

The Board Grievance Committee will review your request and issue a written decision within 30 days unless the Grievance Committee Chair tells you that he/she needs more time. The Grievance Committee's decision is Disability Rights Florida's final decision.

*Updated 4/27/15*

# Client Grievance Form

To file a grievance, you may use this form, write your grievance on another piece of paper or call (800) 342-0823 and ask a Disability Rights Florida staff person to assist you in writing your grievance. You may also call us on the TDD line at (800) 346-4127, send us a fax at (850) 488-8640, or send an e-mail to executivedirector@disabilityrightsflorida.org

Your name:

Your address:

Your daytime telephone number: ( )

Your e-mail:

If you are helping someone file a grievance, their name:

Please explain why you are filing a grievance:

What do you want Disability Rights Florida to do differently?

*Updated 4/27/15*

# Disability Rights Florida
# PAIMI Assurance Grievance Procedure

Disability Rights Florida, Inc., is required by the Protection and Advocacy for Individuals with Mental Illnesses (PAIMI) Act to establish a grievance procedure for individuals who have received or are receiving mental health services, family members of such individuals with mental illnesses, or representatives of such individuals or family members to assure that Disability Rights Florida is operating in compliance with the PAIMI Act, 42 U.S.C. Sec. 10805(a) (9).

Any individuals identified above may file a PAIMI Assurance Grievance if s/he believes that Disability Rights Florida has violated any of the following federal assurances:

1. Be independent of service providers;
2. Have the capacity to protect and advocate for the rights of individuals with mental illnesses;
3. Have trained staff;
4. Have the authority to investigate allegations of abuse and neglect;
5. Have the authority to pursue legal, administrative, and other appropriate remedies;
6. Have access to individuals with mental illnesses, records and facilities;
7. Maintain confidentiality of records;
8. Not take action on behalf of individuals with mental illnesses which are duplicative of actions taken by the individual's legal guardian, conservator, or representative other than the State, unless such legal representatives request assistance from Disability Rights Florida;
9. Exhaust administrative remedies prior to initiating legal action, except in an emergency;
10. Have a multi-member governing board which develops priorities and includes members who are broadly representative of people who receive services

*Updated 4/27/15*

from Disability Rights Florida and includes the Disability Rights Florida PAIMI Advisory Council Chair;

11. Have a Disability Rights Florida PAIMI Advisory Council that has 60% of membership composed of service recipients, former recipients, or family members, that offers advice on policies and priorities and completes an Advisory Council Report on an annual basis.
12. Provide the public with an opportunity to comment on priorities;
13. Use court judgments to further purposes of federal laws; and
14. Use federal allotments to supplement, not supplant, non-federal funds.

Any individual who is receiving or has received mental health services, their family member or representative may file a written complaint with Disability Rights Florida's Executive Director. The complaint should specify which Assurance the individual believes Disability Rights Florida is violating and the reason(s) the individual believes the Assurances are being violated.

The complaint form should be sent:

- **Via mail**
  Executive Director
  Disability Rights Florida
  2473 Care Drive, Suite 200
  Tallahassee, FL 32308

- **Via fax**
  (850) 488-8640

- **Via e-mail**
  executivedirector@disabilityrightsflorida.org

- **Via phone or TDD (if assistance is required)**
  (800) 342-0823
  TDD (800) 346-4127

The Executive Director will review the Assurance Grievance and issue a written decision within 30 days of receiving the complaint, unless the Director notifies the individual that s/he requires additional time.

The Executive Director shall advise Disability Rights Florida's Board of Directors and PAIMI Advisory Council of all Assurance Grievances and the outcome of those grievances at their next regularly scheduled meetings. If the assurance grievance includes confidential information, the Assurance Grievance will be discussed in a session that is closed to the public.

*Updated 4/27/15*

# Disability Rights Florida
# PAIMI Assurance Grievance Form

Thank you for contacting Disability Rights Florida. We are providing this notice to file a grievance if you believe Disability Rights Florida  is in violation of the assurances in the Protection and Advocacy for Individuals with Mental Illnesses (PAIMI) Act, 42 U.S.C. Sec. 10805(a)(9).

**Please indicate if you are:**

___ An individual who is receiving or has received mental health services.

___ A family member of an individual who is receiving or has received mental health services

___ A representative of either an individual who is receiving or has received mental health services or of the family member of such an individual.

**Please explain why you believe Disability Rights Florida is in violation of the PAIMI Act (please be as specific as possible and use additional paper if needed):**

Signature: Date:

*Updated 4/27/15*

Name:

Mailing Address:

Daytime phone number:

Email address:

Please send the completed form:

- **Via mail**
  Executive Director
  Disability Rights Florida
  2473 Care Drive, Suite 200
  Tallahassee, FL 32308
- **Via fax**
  (850) 488-8640
- **Via e-mail**
  executivedirector@disabilityrightsflorida.org
- **Via phone or TDD (if assistance is required)**
  (800) 342-0823
  TDD (800) 346-4127

The Executive Director will investigate your complaint and respond to you in writing within 30 working days, unless the Director notifies you that s/he requires additional time.

*Updated 4/27/15*

## F. Other Services & Activities

### Public Comment

1. Does the P&A have procedures established for public comment?

a. (●) Yes, briefly describe how the notice is used to reach persons with mental health illness and their families.

In FY 2023-2024, Disability Rights Florida (DRF) collected public input by requesting comments to the draft Goals, Priorities, Objectives that were posted to the DRF website, as well as by collecting public comments through completion of a public input survey. Notice of the public comment period was posted on the DRF website and input was collected at in-person events held during the input period. DRF also promoted completion of GPO comments and/or a survey on all social media pages, including Facebook, e-newsletter to the organization's email list, and by letter to the governing Board and PAC. Additionally, DRF's Frontline Intake and Referral Services Team (FIRST) provided notice of the DRF's collection of GPO comments and public input surveys along with a link to each on all electronic communications, and provided electronic copies of the survey to individuals, including individuals in facilities who contact us and provide an email as part of the general Information and Referral packet. Surveys were made available in English, Spanish, Haitian Creole, and American Sign Language. The PAC also provided notice at outreach events during the input period.

b. ( ) No, (if no, briefly explain, limit to 500 characters).

2. Were the notices provided to the following persons:

a. Individuals with mental illness in residential facilities? (●) Yes ( ) No

b. Family members and representatives of such individuals? (●) Yes ( ) No

c. Other individuals with disabilities? (●) Yes ( ) No

d. Brief explanation is required for each no answer in 2.a., b., or c.

3. Do the procedures provide for receipt of the comments in writing or in person?

3a. (●) Yes, attach a copy of the agency's Policies & Procedures pertaining to public comment.

3b. ( ) If no to 2 a, b, c., explain why the agency does not have such procedures in place

4. Was the public provided an opportunity for public comment. (●) Yes ( ) No

5. If you answered Yes to 4 briefly describe the activities used to obtain public comment.

Throughout the input period, in addition to electronic reminders to access DRF's website to complete the GPO comments or the Survey Monkey electronic survey tool to complete the public input survey, staff, Board and PAC members were encouraged to make personal contact with family, friends and colleagues asking them to participate and share the link to the comment page and survey. There are several well attended statewide conferences for individuals with disabilities during the input period. Staff, in addition to distributing surveys at these events, conducted workshops and solicited additional input and feedback from participants. Additionally, in FY 2023-2024, DRF hosted a public forum at which public input was received via written surveys and verbal comments at roundtable discussions led by DRF staff and members of DRF's PAC and Board of Directors.

6. What formats and languages (as applicable) were used in materials to solicit public comment?

Written surveys were available in electronic and paper versions in English, Spanish, Haitian Creole, and an electronic version in American Sign Language. DRF has bilingual Spanish/English staff available to accept verbal input. DRF also uses a service to assist with interpretation/translation and can assist with completion of the survey in other languages upon request, including American Sign Language.

7. If you answered No to 4, briefly explain why the public was not provided an opportunity to comment.

8. List groups (e.g., states, consumer advocacy, service providers, professional organizations and others, including groups of current and former mental health consumers or family members of such individuals) with whom the PAIMI Program coordinated systems, activities and mechanisms. [42 CFR 51.21 (a) (D)]

SA/MH Planning Council, Trauma Informed Care Workgroup, Florida Supportive Housing Coalition, FADAA, Family Café/Governor's Summit on Disabilities, Guardian Ad Litem, Florida Bar, Florida Supreme Court Taskforce on Substance Abuse and Mental Health, the Public Interest Law Section of the Florida Bar, state and local NAMI, DD Act organizations and AHCA ALF Workgroup.

9. Briefly describe the outreach efforts/activities used to increase the number of ethnic and racial minority clients served or educated about the PAIMI program [this information will be evaluated by using the demographic/state profile information contained in the PAIMI application for the same FY]

During FY 2023-2024, Disability Rights Florida's (DRF) designated staff—who conduct community outreach, education, and training events

to underserved populations across the state of Florida--conducted 21 events that aimed to provide underserved populations with information about DRF and the PAIMI program. Of these 21 events, 7 events focused on areas of the state that serve racially and ethnically diverse populations, including individuals who speak languages other than English (Spanish and Haitian Creole). In total, these 7 training events provided educated 1,507 individuals about the PAIMI program. DRF also held events targeting the following underserved and/or disadvantaged groups: older/elderly adults, Veterans and Military personnel, the LGBTQ+ community, economically disadvantaged areas, rural/urban areas. During these outreach activities, DRF staff not only provided individuals with information on the PAIMI program, but also spoke with individuals about disability/PAIMI-related issues in their communities and completed on-site intakes for individuals who presented allegations of abuse, neglect, or rights violations.

10. Did the activities described in question 9 result in an increase of ethnic and/or minorities in the following categories?

a. Staff ○ Yes ◉ No

b. Advisory Council ○ Yes ◉ No

c. Governing Board ○ Yes ◉ No

d. Clients ◉ Yes ○ No

If you answer no to any item (10.a-d), please provide a brief explanation, such as 10.a, b., or c. – no vacancies.
10a-c. Board, PAC, and staff vacancies are filled through other recruitments methods.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

Public Comment Procedure Memo

Disability Rights Florida annually updates our goals survey for public input and annually distributes our goals survey via our website and Facebook page, provided electronically through Constant Contact to the organization's email list, by letter to the governing Board and PAC, and notice and survey are made available at outreach events. Additionally, our Intake and Information & Referral Team provides notice of the public input survey along with a link on all electronic communications and provides electronic and hard copies of the survey to individuals, including individuals in facilities who contact us and provide an email or physical address as part of the general Information and Referral packet. The PAC also provides notice at on-site outreach events during the input period including outreach visits at facilities. Surveys are made available in English, Spanish, Haitian-Creole, and American Sign Language.

## F. Other Services & Activities

### Impediments

| External Impediments |
| --- |
| Describe any problems with implementation of mandated PAIMI activities, including those activities required by Parts H and I of the Children's Heath Act of 2000 that pertain to requirements related to incidents involving seclusion and restraint and related deaths and serious injuries (e.g., access issues, delays in receiving records and documents, etc.). |
| None identified during FY 2023-2024 |
| **Internal Impediments** |
| Describe any problems with implementation of mandated PAIMI activities, including any identified annual priorities and objectives (e.g., lack of sufficient resources, necessary expertise, etc.). |
| None identified during FY 2023-2024 |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

## F. Other Services & Activities

### Accomplishments/Recommendations/Training Needs

| Accomplishments |
| --- |
| For this fiscal year, briefly describe the most important accomplishment(s) that resulted from PAIMI Program activities. Provide copies of supporting documents, e.g., case law, news, articles, legislation, etc. |
| In the context of outreach and Supported Decision Making (SDM), members of DRF's Community and Health Services team have been working to educate the public about SDM, now that it has been signed into law. The goal of their outreach program is to educate people with disabilities, their families, facility staff, and the general public about SDM as an alternative to guardianship. This includes education about the inner workings of HB 73: SDM. One way that they've been able to achieve this goal is through their media presence. For example, CHS Director Caitlyn Clibbon has provided interviews for news outlets (such as CBS 12 West Palm Beach, WFTV 9 Orlando, and the Florida Phoenix) to speak about SDM and provide factsheets about SDM (See attachments 1 and 2). |
| **Recommendations** |
| Please provide recommendations for activities and services to improve the PAIMI Program. Include a brief description of why such activities and services are needed. [42 U.S.C. 10824(a)(4)]. |
| None identified in FY 2023-2024. |
| **Training Needs** |
| Please identify any training and technical assistance requests. [42 U.S.C. 10825] |
| None identified in FY 2023-2024. |

Upload supporting documents for Accomplishments here

**Floridians with disabilities applaud new law protecting their rights**

By Sabrina Maggiore, WFTV.com and Charles Frazier, WFTV.com

July 02, 2024 at 5:19 pm EDT

ORLANDO, Fla. — Millions of Floridians with disabilities are celebrating a new law that protects their rights. Those new protections are listed under a Florida law that took effect this week. Under the law, courts are now required to consider what's known as "supportive decision-making agreements" before they place someone in legal guardianship, allowing people with disabilities to appoint helpers for certain jobs.

Michael Lincoln-McCreight became the first person in Florida to end a guardianship in favor of a supported decision-making agreement. He spent four years lobbying for a change to the law after his rights were stripped from him.

Born with fetal alcohol syndrome, autism, and ADHD, Lincoln-McCreight today is living his dream life.

He's accomplished a life-long goal of working for Universal Orlando and supports himself in his Orange County home. He says he does not take it for granted.

"I feel like I went from being a prisoner to being a free human being," Lincoln-McCreight said.

Lincoln-McCreight says he remembers the moments he aged out of foster care, was declared incapacitated, and was placed under guardianship.

"They take all your rights away," Lincoln-McCreight recalled. "The right to vote. The right to get married. The right to choose who your relationships are…everything is literally stripped for you."

https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/

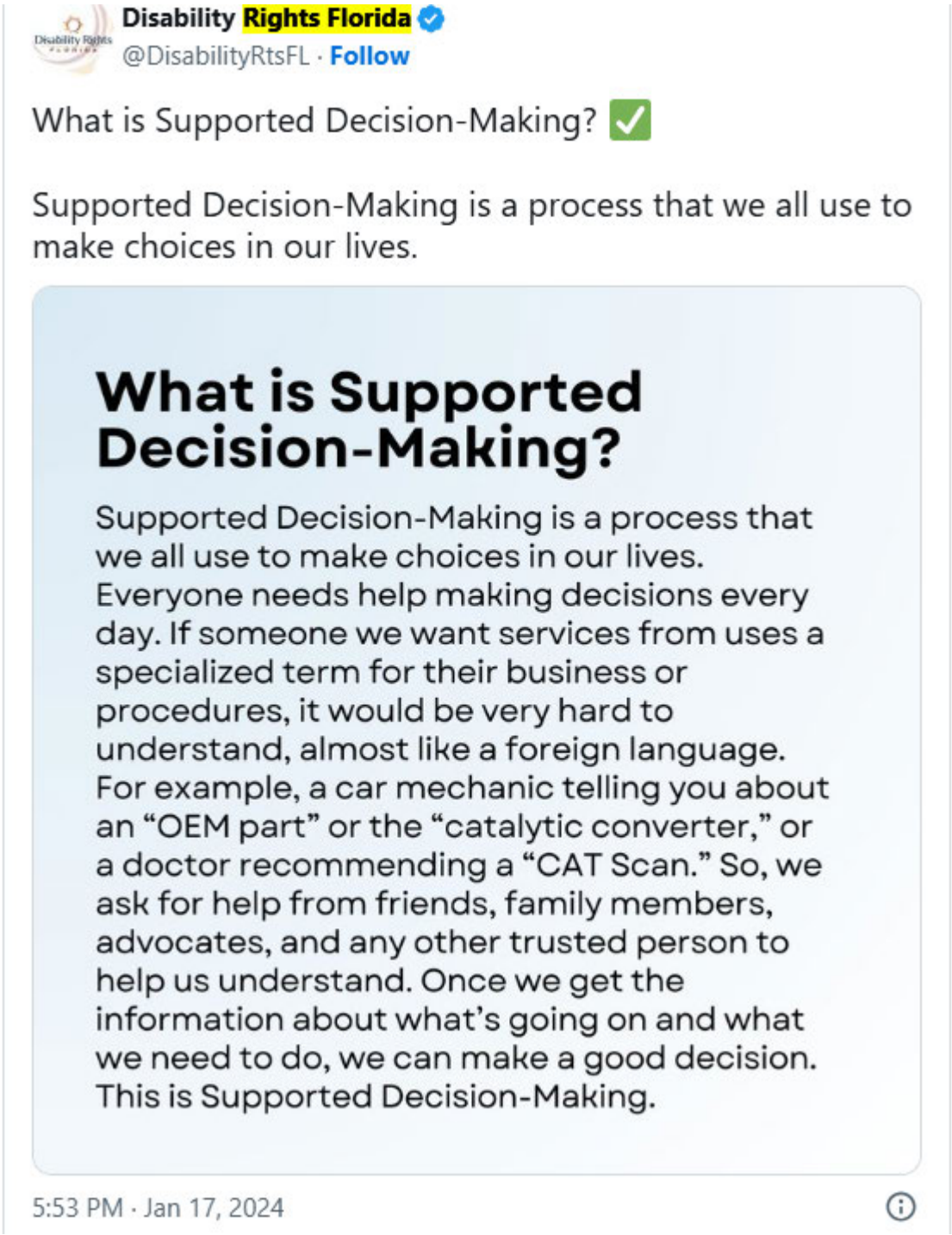
**Disability Rights Florida** · Jan 17, 2024
@DisabilityRtsFL · **Follow**

Florida Legislative Session Update 🚨
Supported Decision-Making Authority (HB 73)

HB 73 will be heard tomorrow morning (1/18) at 9 AM in the House Civil Justice Committee. Watch the hearing on the FL Channel: bit.ly/3SnqNrC

@AllisonTantFL @TraciLKoster @csime90


https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/




Lincoln-McCreight spent years in court fighting to restore those freedoms. In 2016, a doctor and judge found he could make his own decisions, and his guardianship ended in favor of supported decision-making.

"You get help with the support of family and friends that you trust," Lincoln-McCreight said.

https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/

For the last four years, he lobbied for the new state law requiring judges to consider alternatives to guardianship, like a notirzed, supported decision-making agreement.

Matt Dietz of Nova Southeastern Law School says the informal agreements grant supporters privileges to help those with special needs.

“Think of it as a continuum between the most restrictive and the least restrictive,” Dietz explained. “Courts now have to say, ‘Okay, you’ve come here for a guardianship, what types of decisions can this person make by themselves,’ before they say ‘the person loses all of their rights.’”

For Lincoln-McCreight, the law was worth the fight.

“This is going to make not only a difference for one person but millions of Floridians with disabilities,” Lincoln McCreight said.

The law also requires third parties to recognize supported decision-making agreements.

For example, schools and hospitals must allow appointed supporters to access confidential records if the agreements are in place.

https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/

**Floridians with disabilities have a new legal pathway to make their own decisions**

By: Jackie Llanos - June 17, 2024 4:53 pm

For years, Democratic Rep. Allison Tant of Tallahassee has tried to pass a law so other parents don't have to make the same decision she did: Put their adult children with disabilities under guardianship.

Gov. Ron DeSantis signed that law on Friday, establishing a new legal pathway for Floridians with disabilities to remain autonomous while letting "supporters" obtain information on the person's behalf and communicate their wishes.

So-called "supported decision-making" will function as a kind of power of attorney, and judges will have to consider such agreements before putting anyone with a disability under a guardianship, which heavily restricts what a person can do on their own.

"If a supporter abused or took advantage of a person with disabilities, there would be penalties, and so by putting it in the power of attorney statute, those penalties apply for anyone who abuses them," Tant said in a phone interview with Florida Phoenix.

"That was a key issue for me, is letting them have the support that they need to make decisions with more autonomy, because everyone deserves autonomy and the dignity of autonomy, but at the same time ensuring that they had some protections if there was ever any malfeasance."

When her son, who has Williams Syndrome, a rare genetic condition with symptoms including developmental delays, turned 18, one of his teachers recommended that Tant place him under a guardianship because as an adult he could be held liable for any incidents that happened in his public school, she said.

Tant also wanted to remain involved in decisions around his schooling. People with disabilities can remain in public school until they turn 22.

She now says it was a rushed decision.

HB 73 goes into effect on July 1. After that, courts would have to justify why they're placing a person under guardianship over the less restrictive supportive decision-making.

**Growing list of states**

Floridians such as Michael Lincoln-McCreight, who testified in support of the legislation during this year's legislative session, already have a supported decision-making agreement in place. Lincoln-McCreight, who has a developmental disability, was the first person in Florida to get a guardianship replaced by a supported decision-making agreement.

https://floridaphoenix.com/2024/06/17/floridians-with-disabilities-have-a-new-legal-pathway-to-make-their-own-decisions/

Disability Rights Florida is one of the groups that has been advocating for Florida to join the growing list of states that have codified supported decision-making.

“In my experience, a lot of folks did not know about it. Disability Rights Florida has been trying to educate as many people as possible about it for years now, but it wasn’t widely understood or known,” said Caitlyn Clibbon, the advocacy group’s director of community health services.

“So even if someone tried to use it in the context of a guardianship proceeding, the judge, if they don’t know what it is or understand it, there’s no requirement they even have to consider it,” she said.

Clibbon has been holding workshops to inform people with disabilities, their families, and attorneys about the change. She hopes to inform judges about it, too.

https://floridaphoenix.com/2024/06/17/floridians-with-disabilities-have-a-new-legal-pathway-to-make-their-own-decisions/

DRF's FY 2023-2024 PAIMI-focused YouFirst Podcast Episodes

The following are links to the DRF YouFirst podcasts episodes History of the Mad Movement with Vesper Moore and The ABCs of IEPs with April Katine and Daysi Ortiz, as outlined in paragraphs two and three of DRF's statement of accomplishments:

**History of the Mad Movement—with Vesper Moore**

https://disabilityrightsflorida.org/podcast/story/episode_65

**The ABCs of IEPs with April Katine and Daysi Ortiz**

https://disabilityrightsflorida.org/podcast/story/episode_61

**No. 23-20171**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

---

Disability Rights Texas,

Plaintiff–Appellee v.

Roy Hollis, in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC,

Defendant–Appellant

---

On Appeal from United States District Court for the Southern District of Texas
4:22-CV-121

---

# BRIEF FOR *AMICI CURIAE* NATIONAL DISABILITY RIGHTS NETWORK AND DISABILITY RIGHTS LOUISIANA IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE COURT'S ORDER BELOW

---

Melanie A. Bray
Disability Rights Louisiana
8325 Oak Street
New Orleans, LA 70118
*Counsel of Record*

Kathryn J. Strobach*
Disability Rights Florida
2400 E. Commercial Blvd., Suite 525
Ft. Lauderdale, FL 33308
**Not admitted in this jurisdiction.*

*Attorneys for Amici Curiae*

---

**No. 23-20171**

**IN THE**
**UNITED STATES COURT OF**
**APPEALS FOR THE FIFTH CIRCUIT**

---

Disability Rights Texas,

Plaintiff–Appellee v.

Roy Hollis, in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC,

Defendant–Appellant

---

On Appeal from
United States District Court for the Southern District of
Texas 4:22-CV-121

---

# BRIEF FOR *AMICI CURIAE* NATIONAL DISABILITY RIGHTS NETWORK AND DISABILITY RIGHTS LOUISIANA IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE COURT'S ORDER BELOW

---

## SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

---

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5TH CIR. R. 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges



of this court may evaluate possible disqualification or recusal.

## A. Amici Curiae for Plaintiff-Appellee

National Disability Rights Network
Rule 26.1 Disclosure Statement: National Disability Rights Network, Inc., is a Florida Not for Profit Corporation whose corporate office is located in the District of Columbia. National Disability Rights Network is the national membership organization for the Protection and Advocacy network. National Disability Rights Network does not have a parent corporation or publicly traded stock.

Disability Rights Louisiana
Rule 26.1 Disclosure Statement: Disability Rights Louisiana was authorized and is designated as the Protection and Advocacy (P&A) system for individuals with disabilities in the State of Louisiana pursuant to a series of federal statutes that authorized and created a P&A entity in each state and territory charged with protecting and advocating for the rights of individuals with disabilities. The relevant federal statutes include the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 10801 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.; and the Protection and Advocacy of Individual Rights Program, 29 U.S.C. § 794e. Founded in 1977, Disability Rights Louisiana is a non-profit that provides legal representation, information and referral, educational services, and other systemic advocacy on issues related to disability. Our practice areas focus on the rights of individuals with disabilities living in institutions, special education rights, access to home- and community-based care services, and what can broadly be described as "anti- discrimination" advocacy—i.e., the rights of people with disabilities to physical and programmatic access to publicly available programs and services.

## B. Counsel of Record

For Amici Curiae:

Represented by:
Melanie A. Bray
Louisiana Bar No. 37049

8325 Oak Street
New Orleans, LA 70118
Phone (504) 208-5141
Fax (504) 272-2531
mbray@disabilityrightsla.org

*/s/ Melanie A. Bray*
Melanie A. Bray

*Counsel for Amici Curiae*

# TABLE OF CONTENTS

**PAGE**





## TABLE OF AUTHORITIES

**PAGE**

**CASES**

**STATUTES**

**REGULATIONS**

**CONGRESSIONAL MATERIALS**



**LAW REVIEW ARTICLES AND MISCELLANEOUS**

## STATEMENT OF CONSENT

Disability Rights Louisiana sought consent of the parties to the filing of this amicus. The Appellants and Appellees have consented.

## INTEREST OF THE *AMICI CURIAE*[1]

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, as well as the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

Disability Rights Louisiana (DRLA) is the designated Protection and Advocacy organization for Louisiana. DRLA was founded pursuant to federal law establishing

[1] All parties consented to the filing of this brief. Pursuant to Fed. R. app. 29(a)(4)(A)-(E), counsel for *amici curiae* states that no counsel for a party authored the brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

P&A systems in each state and territory, and as such, have been charged with the responsibility to advocate for individuals with disabilities for decades—DRLA since 1977. Each of these P&As is currently authorized by law to "pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of individuals with mental illness, which is the most relevant authority to this matter. 42 U.S.C. § 10805(a)(1)(B). DRLA possesses the same statutory authority as Disability Rights Texas (DRTx). As *Amici*, NDRN and DRLA have a strong interest in ensuring that P&As can carry out their statutory duty to represent the rights of people with disabilities including their established practice of receiving video records of alleged abuse and neglect.

The P&A network was established by Congress in response to wide-spread abuse and neglect of people with disabilities. One important component of this Congressional mandate was assigning P&As the responsibility of investigating abuse and neglect of people with disabilities. *See* 42 U.S.C. § 15043(a)(2)(B), 42 CFR § 51.2. To fulfill that mandate, these organizations were provided with extensive access, including the authority to request and review various records that relate to their investigation. *Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Center*, 97 F.3d. 492, 497 (11th Cir. 1996); *Center for Legal Advocacy v. Hammons*, 323 F.3d 1262, 1270 (10th Cir. 2003).



Overturning the District Court's Order[2] granting an injunction allowing DRTx access to video records pertaining to a client would negatively impact the ability of P&As to access records and conduct meaningful investigations. Limiting a P&A's investigative authority could likely result in the inability to mitigate abuse and neglect of people with disabilities in locked, restricted settings. Because the ability to effectively investigate and mitigate harm is critical to a P&A's ability to protect the legal rights of persons with disabilities, NDRN and its members, including the *Amici*, have an interest in this case and believe that their views may assist the Court in resolving the issues before it.

## SUMMARY OF THE ARGUMENT

The District Court properly ruled that Plaintiff–Appellee was entitled to access video records capturing the involuntary administration of medication to its client who was inpatient in a psychiatric hospital. As a P&A organization, DRTx is charged with a federal mandate to protect and advocate for the rights of individuals with disabilities, including those with mental illness. This authority is broad, and the investigative authority granted to P&As provides a layer of independent oversight to prevent and address the abuse and neglect of people with mental illness while

[2] The lower court's decision at issue in the instant appeal that is addressed in this *Amici Curiae* brief is the Memorandum and Order entered by US District Court Judge Keith P. Ellison on February 28, 2023, in *Disability Rights Texas v. Roy Hollis*, Civil Action No. 4:22-CV-00121, ECF No. 32, ROA page range 23.20171.249-23.20171.260. (Referred to herein as "the Order".)



receiving care and treatment. The timely ability of P&As to access video records is a critical part of conducting a thorough investigation. Concerns regarding confidentiality of residents who are not clients of the P&A would not be a justification to restrict access to video, because (1) access to video would not permit the P&A to view anything that they are not already entitled to view under the P&A Acts, and (2) P&As are required to maintain the confidentiality of investigative information to the same degree as the facility itself. For these reasons, this Court should uphold the District Court's Order.

## ARGUMENT

### I. The history of the P&A system provides context for unique federal access authority afforded by Congress.

The history of mistreatment, abuse, and neglect of persons with psychiatric, developmental, and other disabilities within public and private institutions and facilities in the United States is well documented. *See, e.g.*, Stanley S. Herr, The New Clients: Legal Services for Mentally Retarded Persons, 31 Stan. L. Rev. 553, 558 (1979); Michael Perlin, International Human Rights Law and Comparative Mental Disability Law: The Universal Factors, 34 Syracuse J. Int'l L & Com. 333, 335 (2007). In 1958, the president of the American Psychiatric Association categorized state psychiatric hospitals as "bankrupt beyond remedy." *See* Perlin at 335. During a Congressional hearing in 1961, a witness testified that he had interviewed physicians

at state hospitals who "frankly admitted that the animals of nearby piggeries were better housed, fed and treated than many of the patients on their wards." *Id.*

During the decades of nearly complete reliance on public and private institutions established to house and ostensibly treat persons with developmental, intellectual, and mental health disabilities, institutes such as the Pennhurst School and Hospital in Pennsylvania, Forest Haven in Maryland, Partlow State School in Alabama, and the Willowbrook and Suffolk Developmental Centers in New York became notorious for the horrible conditions and treatment of residents. During the 1970's and early 1980's, advocates brought to light the widespread neglect and mistreatment of people with disabilities in these facilities. Willowbrook was exposed to the public in 1972 through an investigative report by Geraldo Rivera who testified to Congress about his experience. *See* S. Rep. No. 94-160, at 28-32 (May 22, 1975). The inhumane conditions at the Partlow School also played a prominent role in Congressional investigations regarding the treatment of persons with intellectual disabilities in facilities at that time. *Id.*

Several high-profile cases connected to the horrendous treatment of persons with intellectual and developmental disabilities at the Pennhurst School eventually reached the Supreme Court, who analyzed the Constitutional parameters of the rights of residents in such facilities. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981). The Supreme Court noted that "conditions at Pennhurst are not only dangerous, with the residents often physically abused or drugged by staff members,



but also inadequate for […] habilitation[.] Indeed, the [district] court found that the physical, intellectual, and emotional skills of some residents have deteriorated at Pennhurst." *Id.* at 7; *see also Youngberg v. Romero*, 457 U.S. 307 (1982) (holding that a resident with intellectual disability involuntarily confined to Pennhurst enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests).

In 1975, in response to these conditions and highly publicized incidents, Congress created the P&A system through what is now known as the Developmental Disabilities Assistance and Bill of Rights Act (the "DD Act"). Pub. L. No. 94-103, 89 Stat. 486 (1975) (originally codified at 42 U.S.C. §§ 6041-6043 and currently codified at 42 U.S.C. §§ 15041-15045). The DD Act's purpose is "to provide for allotments to support a protection and advocacy system […] in each State to protect the legal and human rights of individuals with developmental disabilities[.]" 42 U.S.C. § 15041. The DD Act provides that to receive allotments under the Act, a state must put "in effect a system to protect and advocate the rights of individuals with developmental disabilities[.]" 42 U.S.C. § 15043(a)(1). NDRN's member P&As were created pursuant to this provision. And as the "system to protect and advocate the rights of individuals with developmental disabilities," P&As are granted numerous authorities under the DD Act, including the ability to have on-site access to service providers and to receive records of individuals with developmental disabilities. 42 U.S.C. §§15043(a)(2)(H)&(I).



A decade after the passage of the DD Act, Congress expanded the P&As' responsibilities by enacting what is now the Protection and Advocacy for Individuals with Mental Illness Act (the "PAIMI Act"), Pub. L. No. 99-319, 100 Stat. 478 (1986), codified at 42 U.S.C. § 10801, *et seq.* Through the PAIMI Act, P&As were tasked with protecting and advocating for those with mental illness, in addition to those with developmental disabilities under the DD Act. P&As' responsibilities were again expanded in 1993 with the enactment of the Protection & Advocacy of Individual Rights ("PAIR"), designed to protect the legal and human rights of all other persons with disabilities not covered by the DD and PAIMI Acts (e.g., individuals with physical disabilities). 29 U.S.C. § 794e. Currently, P&As are granted similar authorities under the PAIMI and PAIR Acts with respect to the populations covered by those Acts as they are to the developmentally disabled population covered by the DD Act. *See, e.g.*, 42 U.S.C. § 10805(a)(4) (P&As have access to records of individuals with mental illness); *see also* 29 U.S.C. § 794e(f)(2) (a P&A under the PAIR Act shall "have the same general authorities, including the authority to access records and program income, as are set forth in [the DD Act]"). It should also be noted that the PAIMI, PADD, and PAIR Acts are to be read coextensively. *See* S. Rep. 454, 100th Cong., 2d Sess. 10 (1988); S. Rep. 109, 99th Cong., 1st Sess. 2-3 (1985); S. Rep. 113, 100th Cong, 1st Sess. 24 (1987); *see also* 29 U.S.C § 794e(f)(2). Therefore, the case law and regulations interpreting the scope of one P&A's access authority is equally applicable with respect to the interpretation of the counterpart provisions for any other P&A.

To ensure that the P&As can carry out their mandates, Congress established a baseline of authority a P&A must have for the state to qualify to receive funding under the DD Act, the PAIMI Act, or the PAIR Act (collectively, the "P&A Acts"). The critical required features of all P&As, explained in part *infra*, include independence from state agencies that provide treatment, services, and/or habilitation to individuals covered by the P&A Acts; rights to access the records of individuals with disabilities under various circumstances; and the right to pursue legal, administrative, and other appropriate remedies to protect the rights of those covered by the P&A Acts. *See generally* 42 U.S.C. § 15043; 42 U.S.C. § 10805 (DD and PAIMI Act statutes containing many of the P&A authorities). Consequently, a P&A's exercise of its authority to access records of individuals with disabilities and facilities where they receive treatment is a mandatory requirement under the P&A Acts. For example, in 2018, Disability Rights Oregon (DRO) used its access authority to review video footage of a police canine attacking a person with a disability.[3] Through the use of their access authority, DRO was able to work with the local sheriff's office to investigate the incident and resulted in statewide ban.

## II. P&As have the right under the P&A Acts to investigate incidents of abuse and neglect as well as access to records of individuals with disabilities, including video records.

[3] "You are Going to Get Bitten: Columbia County Jail's Use of Canines to Intimidate or Control Inmates" available at https://www.droregon.org/successes/banning-the-use-of-canines-in-jail-to-control-inmates



Investigating allegations of abuse and neglect of individuals in psychiatric treatment facilities, such as the one reviewed by the court in the instant case (*see* ROA.250), is a cornerstone activity of P&As. Because Congress developed both the DD and PAIMI Acts in response to widespread abuse and neglect in facilities and the lack of effective state-run systems to monitor compliance, all P&A Acts authorize the P&As to conduct such investigations. *See* S. Rep 109, 99th Cong., 1st Sess. 2-3 (1985); 42 U.S.C. § 15043(a)(2)(B); and 42 U.S.C. § 10805(a)(1)(A).

The District Court correctly determined that the case before the Court is governed by the PAIMI Act because it involves DRTx's efforts to obtain video records of an individual with a mental illness. (*See* ROA.250). Like all P&A Acts, the PAIMI Act authorizes the P&A to conduct investigations, specifically to "investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred[.]" 42 U.S.C. § 10805(a)(1)(A). As part of this investigatory power, Congress intended the P&A system to "have the fullest possible access to client records with appropriate authorization and access to facilities where a complaint has been received on behalf of" a person with mental illness. S. Rep 109, 99th Cong., 1st Sess. 10 (1985). Whenever a P&A receives a report or has determined that there is probable cause of abuse or neglect it "shall" have access to "all records" of an individual with mental illness to carry out its investigation. *See* 42 U.S.C. § 10805(a)(4).



A P&A may access "all records…of any individual" with mental illness when the individual "has authorized the system to have such access," as the District Court found occurred in the underlying case. 42 U.S.C. § 10805(a)(4)(A); (ROA.252). Such access to records explicitly includes access to "video or audio tape records." 42 C.F.R. § 51.41(c). Even though a facility's video records are not made or maintained as part of an individual patient's chart, the PAIMI Act requires a facility to release them to a P&A when related to an abuse or neglect investigation and when the patient has authorized the P&A to obtain "all" of their records. *See* 42 U.S.C. § 10805(a)(4)(A).

Courts have held in analogous situations that the PAIMI Act requires the disclosure of facility records maintained outside of a patient's chart, namely peer review or quality assurance records, because those records are related to the care and treatment of individuals who were the subject of an authorized P&A investigation. *See Pennsylvania Protection & Advocacy, Inc. v. Houstoun*, 228 F.3d 423, 427 (3d Cir. 2000) (Alito, J.) (finding that peer reviewed reports are "records" accessible under the PAIMI Act because records "of any individual" includes those records that are "connect[ed] or associate[ed]" to the individual); *Center for Legal Advocacy v. Hammons*, 323 F. Ed 1262, 1272 (10th Cir. 2003) (agreeing with the Third Circuit's opinion in *Houstoun*, that the PAIMI Act required a facility to disclose peer review and other quality assurance records to a P&A).

Courts have consistently held that P&As have a federal mandate to "broad access to records, facilities, and residents to ensure that the Act's mandates can be



effectively pursued." *Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Center*, 97 F.3d. 492, 497 (11th Cir. 1996) (referring in this instance to the DD Act). Several courts have noted that a P&A's access to records is fundamental to the exercise of its Congressional mandate. *See Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Ctr.*, 894 F. Supp. 424, 429 (M.D. Ala. 1995), *aff'd* 97 F.3d 492 (11th Cir. 1996) ("The authority to investigate would mean nothing and advocacy in the form of investigation would be ineffective without access to records."); *Robbins v. Budke*, 739 F. Supp. 1479, 1488 (D.N.M. 1990) (mem.) ("Access to patient records is necessary for [a] P&A to serve its clients, evaluate its clients' concerns, and determine whether a client has a legal claim.").

Contrary to Defendant's "sweeping arguments" below (ROA.254), the Health Insurance Portability and Accountability Act (HIPAA) does not preempt DRTx, as the state's P&A, from accessing Houston Behavioral Healthcare Hospital's video footage of patients. HIPAA states that "a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. § 164.152(a)(1).

Congress' commentary on HIPAA specifically mentions that it does not impede a P&A's access to an individual's identifiable health information, stating that "covered entities may make these disclosures under § 164.512(a) without first obtaining an individual's authorization, except in those circumstances in which the



[Developmental Disabilities] Act requires the individual's authorization. Therefore, the rules below will not impede the functioning of the existing Protection and Advocacy System." 65 Fed. Reg. 82462, 82594 (Dec. 28, 2000); *see also Ohio Legal Rights Service v. Buckeye Ranch, Inc.*, 365 F. Supp. 2d 877, 890 (S.D. Ohio 2005).

The United States Department of Health and Human Services (HHS) also has commented on this issue, providing that "[t]he Privacy Rule permits a covered entity to disclose protected health information (PHI) without the authorization of the individual to the state-designated Protection and Advocacy system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law. 45 C.F.R. § 164.512(a)." Health Information Privacy, U.S. DEPT'T OF HEALTH AND HUMAN SVCS, https://www.hhs.gov/hipaa/for-professionals/faq/909/may-a-covered-entity-disclose-information-to-a-protection-system/index.html (last visited September 26, 2023).

Once a P&A requests records, it is entitled to receive prompt access to those records:

> If a P&A system's access to facilities, programs, residents or records covered by the Act or this part is delayed or denied, the P&A system shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name, address and telephone number of the legal guardian, conservator, or other legal representative of an individual with mental illness. Access to facilities, records or residents shall not be delayed or denied without the prompt provision of written statements of the reasons for the denial.



42 C.F.R. § 51.43; *see also id.* 42 C.F.R. § 51.41(a) ("Access to records shall be extended promptly to all authorized agents of a P&A system."); 42 U.S.C. § 15043(A)(2)(J)(i) (under the DD Act, a P&A shall have access to records "not later than 3 business days after the system makes a written request for the records involved"). Courts have found that timely access to records by a P&A is so important that denial of this access constitutes irreparable harm to the P&A sufficient to allow for preliminary or permanent injunctive relief. *See Connecticut Office of Protection and Advocacy v. Hartford Bd. of Ed.*, 464 F.3d 229 (2nd Cir. 2006); *Indiana Prot. & Advoc. Servs. v. Indiana Fam. & Soc. Servs. Admin.*, 603 F.3d 365 (7th Cir. 2010).

Some courts have gone further and found that even tardy access to records presents the same irreparable harm to a P&A's ability to investigate under its Congressional mandate. *See The Advocacy Center v. Stalder*, 128 F. Supp. 2d 358, 364 (M.D. La. 1999) ("Prompt access to records is necessary [. . . ] [T]he defendants maintain that, under state law and departmental policy, the Advocacy Center needs a court order. However, it cannot be disputed that the delay in getting a court order frustrates the goal of the [PAIMI] Act."); *Robbins*, 739 F. Supp. at 1488 (holding that "[t]imely access to records is essential for effective communication" and that delays may "preclude[] [a] P&A from evaluating and acting on a patient's concerns in a timely manner" and "prevent P&A from acting within prescribed deadlines or may cause a violation of rights to go unaddressed until it is too late to remedy"). Moreover, any delay in the process gives "facilities the time to conceal evidence, change medical

records, coordinate stories among witnesses and/or impose a code of silence upon staff." National Association of Protection & Advocacy Systems, Inc., Annual Report of the P&A System 1995-1996 (1996), at 8.

## III. A P&A's confidentiality obligations address any privacy concerns.

Once a P&A obtains records through its federal authority, it is not free to do whatever it pleases with them: the P&A Acts generally, and the PAIMI Act specifically, place guardrails on how the P&A can utilize the records it obtains. In fact, P&As are required to maintain the confidentiality of the records obtained "to the same extent as is required of the provider of such services." 42 U.S.C. § 10806(a); *see also* 42 C.F.R. § 51.45(a)[4]. In other words, if a P&A receives records from a facility that is bound to maintain the confidentiality of that record, the P&A must also maintain that same level of confidentiality.

The district courts have been active and persistent in their interpretation of the PAIMI Act's duty of confidentiality. *See, e.g.*, *Protection & Advocacy Sys., Inc. v. Freudenthal*, 412 F.Supp.2d 1211, 1215-16 (D.Wyo.2006); *State of Conn. Office of Prot. &*

[4] "The P&A must: (1) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:

(i) Clients to the same extent as is required under Federal or State laws for a provider of mental health services;
(ii) Individuals who have been provided general information or technical assistance on a particular matter;
(iii) Identity of individuals who report incidents of abuse or neglect or furnish information that forms the basis for a determination that probable cause exists; and
(iv) Names of individuals who are residents and provide information for the record."



*Advocacy for Persons with Disabilities v. Hartford Bd. of Educ.*, 355 F.Supp.2d 649, 663-64 (D.Conn.2005); *Advocacy Ctr. v. Stalder*, 128 F.Supp.2d 358, 366 (M.D.La.1999); *Ala. Disabilities Advocacy Prog.*, 97 F.3d at 497, 499. Furthermore, this duty of confidentiality is "especially significant" because P&A organizations have a "special function [. . .] to serve individuals with disabilities or mental illness." *Disability Rts. Wis., Inc. v. State of Wis. Dep't of Pub. Instruction*, 603 F.3d 365, 728 (7th Cir. 2006).

This is particularly relevant in the present case where Defendant is concerned about producing video records to DRTx due to its assertion that it must protect the confidentiality of the individuals who have not signed releases to DRTx. (*See* ROA.254). Defendant's concern is unfounded, because as the District Court explained in detail, DRTx is required by federal law to maintain the same confidentiality that binds Defendant. *See id.* Accordingly, Defendant's contention that DRTx is not entitled to video records due to confidentiality concerns is a violation of DRTx's broad authority under federal law and ignores the fact that the same exact confidentiality restrictions bind DRTx in an identical manner. As noted *supra*, the duty of confidentiality imposed on P&A organizations prevents the disclosure of unredacted records and third-party information without additional consent.

Based on the foregoing, P&As have long been held to the stringent requirement that confidentiality be maintained to the same extent as is required of the provider of such services. 42 U.S.C. § 10806(a); 42 C.F.R. § 51.45; 45 C.F.R. § 1386.22(e); *Robbins*, 739 F. Supp. at 1488; *Houstoun*, 228 F.3d at 427. Such rulings

affirm that the duty of confidentiality is a core principle within the P&A and further emphasize the need for P&A organizations to access unredacted records to effectively carry out their mandates.

## IV. The District Court's Order allowing P&A access to video is consistent with the P&As' otherwise broad authority to physically access facilities.

The District Court's Order permitting DRTx to access video recordings of the administration of involuntary medication to their client should be upheld because it allows the P&A system to view something that they would have been able to view had they happened to be on-site when it occurred. During an abuse or neglect investigation, a P&A system is permitted "reasonable unaccompanied access…to all areas of the facility which are used by residents or are accessible to residents…at all times necessary to conduct a full investigation." 42 C.F.R. § 51.42 (b). A P&A's authority to conduct a "full investigation" of possible abuse and neglect includes access to records, as well as physical locations, service recipients, and staff. *See* 42 C.F.R. § 51.2; 42 C.F.R. § 51.41(b); 42 C.F.R. § 51.42(b).

Not only do P&As have the right to unaccompanied access to facilities as part of their investigatory powers, the P&A Acts also grant them access to "facilities in the State providing care or treatment" to individuals with mental illness for certain other federally authorized purposes. *See* 42 U.S.C. § 10805(a)(3). It is through this authority that many P&As frequently conduct "monitoring" of facilities that serve individuals with mental illness, which includes inspecting and photographing areas of the facility



accessible to residents, unaccompanied access to the residents to conduct interviews and welfare checks, and generally ensuring patient rights and safety. *See* 42 C.F.R. § 51.42(c) & (d). All of these activities may occur routinely, without any need for a triggering report or probable cause of abuse and neglect sufficient to conduct an investigation.

Any time P&A staff is on site at a facility—whether to conduct an abuse or neglect investigation, to monitor patient rights and safety, or to provide information and training to residents—P&As encounter a majority, if not all, of the residents and often make efforts to speak with as many of the residents as possible. In fact, as part of the PAIMI Act's regulations, it is envisioned that the P&A shall be given "the opportunity to meet and communicate privately with individuals [at facilities] regularly, both formally and informally, by telephone, mail and in person." 42 C.F.R. § 51.42(d). However, as with records obtained by a P&A, it should be noted that any resident names must be kept confidential by the P&A. 42 C.F.R. § 51.45(a)(1)(iv).

Given the P&As' broad authority to unaccompanied access to investigate and monitor facilities that provide care or treatment to individuals with mental illness, P&As routinely encounter confidential or HIPAA-protected information while on-site. P&A staff may witness active medical treatment, hear therapeutic activities being provided to residents, or view information such as residents' names on their rooms, posted allergies by kitchen staff, or other information relating to patient care,

treatment, and safety that the P&A must keep confidential. *See* 42 C.F.R. § 51.42 (c); 42 C.F.R. § 51.45.

While the Defendant expressed concerns that video footage sought by DRTx contains images of residents for whom DRTx does not have releases, (*see* ROA.254), this concern is unfounded given that DRTx could access Defendant's facility at any time that may be "necessary" to conduct another abuse or neglect investigation, or at any "reasonable time" to monitor the facility or provide residents with information and training services. 42 C.F.R. § 42(b) & (c). In any of these visits, DRTx would have the right to unaccompanied access to the residents of the facility regardless of whether they signed a release or not. 42 C.F.R. § 51.42(c). It would therefore be illogical to restrict DRTx's authority to obtain and view video related to an abuse or neglect investigation that captures facility activities P&A staff could have viewed had they been present when the incident occurred.

## V. Access to records, including video records, is a crucial part of a P&As' operations.

Access to records, specifically video records, is a crucial part of any P&A's operations. Congress did not intend for facilities serving people with disabilities to operate in the dark. Quite the contrary: one court, analyzing a restriction on P&A access to records, noted that "[t]o shield from independent review valuable records of this type of appraisal would directly contradict the expressly stated public policy of Congress." *Iowa Prot. & Advoc. Servs., Inc. v. Rasmussen*, 521 F. Supp. 2d 895, 902 (S.D.



Iowa 2002). Placing any limits on reasonable P&A access shields facility staff from appraisal and creates a more dangerous situation for people with disabilities as any potential abuse or neglect may go unchecked. Further, accessing video records is often the first step in investigating a claim of abuse or neglect. When a P&A receives a report of abuse or neglect, or otherwise develops probable cause to believe abuse or neglect occurred, it begins an investigation. 42 U.S.C. § 10805(a)(1)(A). Once this report is obtained, the P&A quickly works to obtain a release for that individual so that they can begin determining the veracity of the allegation, which typically involves obtaining records. By reviewing an individual's records, including any video of an alleged incident, the P&A can typically determine whether the claim has veracity and whether immediate action is needed to protect the rights and safety of a person with a disability.

Reviewing video of an alleged incident is crucial to a P&A's mandate to investigate abuse and neglect. It would be devastating to a P&A's capacity to investigate abuse or neglect if the ability to review video was limited. Because paper records and files are created by the very facility that is the subject of an abuse or neglect allegation, video records often provide the most salient information in helping a P&A determine the veracity of an allegation. Even seemingly minor alterations to a P&A's broad authority to access video records would directly harm its ability to fulfill its statutory duties. For example, if a P&A were only able to receive video where all individuals who did not sign a release to the P&A had their faces blurred, it would

significantly hamper a P&A's ability to identify witnesses. Instead, the P&A would have to rely on the facility to provide an accounting of who was present during an incident; again, the same facility that the individual alleged caused them abuse or neglect.

Moreover, courts that have interpreted P&A's broad federal authority to review all records have included video recordings as subject to PAIMI's records-access provisions. *See e.g. Disability Rights Texax v. Bishop*, 615 F.Supp. 3d 454, 467 (2022)(citing to *Disability Rights Pennsylvania v. Pennsylvania Department of Human Services,* 2020 WL 1491186; *Disability Rights Ohio v. Buckeye Ranch, Inc.,* 375 F. Supp. 3d 873, 878 (S.D. Ohio 2019).

The federal enforcement agency that oversees the provisions of the PAIMI Act also issued a rule the specifies that "electronic files, photographs or video or audio tape records" are subject to the records-access authority of the P&A systems under Section 10805(a)(4). *See* 42 C.F.R. § 51.41(c). As the *Bishop* court just held last year, this regulation helps address any conflicting policies including confidentiality provisions. *Bishop,* 615 F. Supp at 469.

Finally, P&As often receive abuse or neglect reports after another entity has already investigated the same allegation. In these instances, P&As may conduct what is commonly referred to by the P&A system as a "secondary investigation," wherein a P&A gathers facts and reviews records that include "reports prepared by an agency charged with investigating reports of incidents of abuse and neglect, and injury

occurring at such facility that describes the incidents of abuse, neglect and injury occurring at such facility and the steps taken to investigate such incidents." 42 U.S.C. § 10806(b)(3)(A). Due to the passage of time, P&As conducting secondary investigations are typically less focused on the immediate health and safety of the affected individual and more focused on evaluating the quality of the primary investigation. Such work is critical to P&As' ability to verify that the person with a disability received adequate protections and to further advance rights and safety protections for present and future facility residents.

For the above reasons, unencumbered access to records, especially video recordings, is critical to P&As' ability to provide independent oversight to facilities as envisioned by Congress.

## CONCLUSION

Congress intended P&As to be independent, non-State actors to protect and advocate for individuals with disabilities, including those individuals with mental illness who receive care and treatment from psychiatric facilities. To effectuate that purpose, Congress imbued P&As with broad authority to ensure that individuals' rights were being complied with, and to investigate any incidents of abuse and neglect that were alleged by individuals with disabilities. To conduct these investigations, and to ensure patient safety, and to ensure that we do not find ourselves with the same kinds of facilities that were exposed in the 1970s, one of the tools given to P&As was

the ability to obtain and review video footage. To restrict use of that tool in this case would be contrary to the Congressional authority granted to the P&As. For the foregoing reasons, the *Amici* respectfully request that this Court uphold the District Court's Order.

**October 2, 2023**

Respectfully Submitted,

*/s/ Melanie A. Bray*

Melanie A. Bray
Disability Rights Louisiana
8325 Oak Street
New Orleans, LA 70118
mbray@disabilityrightsla.org
*Counsel of Record*

Kathryn J. Strobach*
Disability Rights Florida
2400 E. Commercial Blvd., Suite 525
Ft. Lauderdale, FL 33308
kathryns@disabilityrightsflorida.org
**Not admitted in this jurisdiction.*

*Attorneys for Amici Curiae*

## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) because, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), it contains 5,437 words. This document complies with the typeface requirements under Fed. R. App. P. 32(a)(5) and the type-face style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond.

*/s/ Melanie A. Bray*
Melanie A. Bray

*Counsel for Amici Curiae*

## CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Melanie A. Bray*
Melanie A. Bray

*Counsel for Amici Curiae*

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

**TEL. 504-310-7700**
**600 S. MAESTRI PLACE,**
**Suite 115**
**NEW ORLEANS, LA 70130**

October 04, 2023

Ms. Melanie Ann Bray
Disability Rights Louisiana
8325 Oak Street
New Orleans, LA 70118

No. 23-20171 Disability Rights Texas v. Hollis
USDC No. 4:22-CV-121

Dear Ms. Bray,

The following pertains to your brief electronically filed on 10/2/2023.

You must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see **FED. R. APP. P.** 12(b) and **5TH CIR. R.** 12 & 46.3. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, the brief will be stricken and returned unfiled.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk
504-310-7651

cc:
Ms. Sophia Mariam George
Ms. Elizabeth Parr Hecker
Mr. Brant Levine
Ms. Courtney Luther
Ms. Beth L. Mitchell
Mr. Mark S. Whitburn

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

**FILED**
June 5, 2024

Lyle W. Cayce
Clerk

No. 23-20171

DISABILITY RIGHTS TEXAS,

*Plaintiff—Appellee*,

*versus*

ROY HOLLIS, *in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC*,

*Defendant—Appellant*.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-121

Before STEWART, DUNCAN, and ENGELHARDT, *Circuit Judges*.

CARL E. STEWART, *Circuit Judge*:

Disability Rights Texas ("DRTx"), an advocacy organization designated to protect the rights of persons with mental illness pursuant to the Protection and Advocacy for Individuals with Mental Illness Act brought this action against Houston Behavioral Healthcare Hospital ("Houston Behavioral") to compel the disclosure of video footage pertaining to the involuntary confinement of its client G.S., an individual with mental illness. Holding that the videotape footage must be disclosed, the district court

granted summary judgment for DRTx and issued an injunction. Houston Behavioral appealed. We AFFIRM.

## I. Factual and Procedural History

In August 2021, G.S. was detained in a psychiatric inpatient program at the Houston Behavioral Psychiatric Intensive Care Unit ("PICU").[1] Following his release, G.S. filed a complaint with DRTx, alleging that he was abused at Houston Behavioral, and signed a waiver allowing DRTx to access his records. Relevant here, the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, *et seq.* (the "DD Act"); the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq.* (the "PAIMI Act");[2] and the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e, (the "PAIR Act") (collectively, the "P&A Acts") mandate states to designate nonprofits ("P&A organizations")[3] to protect and advocate for the civil rights of individuals with disabilities. DRTx serves as the P&A organization for Texas pursuant to the PAIMI Act, 42 U.S.C. § 10801(b)(2).

---

[1] Houston Behavioral is a for-profit company that provides treatment and stabilization for acute psychiatric conditions.

[2] We use "PAIMI Act" herein for "Protection and Advocacy for Individuals with Mental Illness." In 1988, Congress amended the statute to remove all references to the phrase "mentally ill individuals" and replaced those references with "individuals with mental illness." *See* Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness, 62 Fed. Reg. 53548–01 (Dep't of Health & Human Servs. Oct. 15, 1997) (final rule). However, some opinions abbreviate the Protection of Mentally Ill Individuals Act of 1986 to "PAMII." *See Disability Rts. Wis. v. Wis. Dep't of Pub. Instr.*, 463 F.3d 719, 722 (7th Cir. 2006).

[3] We use "P&A organizations" to describe state-designated nonprofits that protect and advocate for the civil rights of individuals with disabilities. Some courts use organizations, agencies, and systems interchangeably. A P&A system is "a system established in a State under [42 U.S.C. § 10803] to protect and advocate the rights of individuals with mental illness." 42 U.S.C. § 10805(a).

On August 19, 2021, DRTx requested G.S.'s records from his confinement at Houston Behavioral, including records from the PICU. Houston Behavioral cooperated with DRTx's first set of requests for information, and on August 26, 2021, it produced all records requested. On September 8, 2021, DRTx requested that Houston Behavioral preserve surveillance video footage, which it claimed was necessary to investigate the alleged abuse of its client, G.S., and other Houston Behavioral patients. The video footage depicts G.S. and other patients receiving care in the PICU. With its record request, DRTx included G.S.'s signed authorization to permit release of his relevant health information. Thereafter, Houston Behavioral refused to provide DRTx with the requested video record.

On or about September 17, 2021, DRTx received a letter explaining that Houston Behavioral was prohibited from releasing the video because the footage depicts substance use disorder ("SUD") treatment information protected under 42 C.F.R. Part 2 regulations.[4] On November 18, 2021, DRTx replied to Houston Behavioral explaining that the Part 2 SUD confidentiality requirements did not apply to G.S.'s treatment because (1) he was receiving mental health services in a psychiatric services unit and (2) Houston Behavioral records did not identify G.S. as someone with an SUD. Additionally, DRTx maintained that it would not be possible to identify any individual on the silent video as someone with an SUD.

---

[4] The 42 C.F.R. Part 2 ("Part 2") regulations protect the confidentiality of SUD treatment records. Part 2 protects "records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States." 42 U.S.C. § 290dd-2.

When Houston Behavioral continued to deny it access to the requested video footage, DRTx filed this suit to compel Roy Hollis, in his official capacity as the Chief Executive Officer of Houston Behavioral, to produce the video record. DRTx sought declaratory and permanent injunctive relief. Both parties filed cross-motions for summary judgment. After conducting a motion hearing on February 24, 2023, the district court granted DRTx's motion with modifications and denied Hollis's motion. The district court granted an injunction limited to the footage pertaining to G.S.'s complaint. Hollis appealed the district court's final judgment. Houston Behavioral has preserved the video record evidence pending this court's adjudication of the issue. We issued a temporary administrative stay and ordered that Hollis's opposed motion for injunction pending appeal be carried with the case on July 11, 2023.

## II. Standard of Review

"This court reviews de novo a district court's grant of summary judgment, applying the same standard as the district court." *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 328 (5th Cir. 2017) (citation omitted). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Alkhawaldeh v. Dow Chem. Co.*, 851 F.3d 422, 426 (5th Cir. 2017).

## III. Discussion

Enacted in 1975, the DD Act authorizes P&A organizations "to pursue legal, administrative, and other appropriate remedies or approaches" to ensure that individuals with disabilities are protected. 42 U.S.C. § 15043(a)(2)(A)(i). However, the DD Act is limited in scope to P&A organizations designed to protect and advocate for individuals with developmental disabilities. *Id.* at § 15043(a)(1). Relevant here, the PAIMI



Act protects the rights of individuals with mental illness. Enacted in 1986, the PAIMI Act conditions states' federal funding on their establishment of P&A organizations with the authority to investigate and remedy suspected abuse or neglect of individuals with mental illness. *Id.* at § 10805(a)(1). The PAIMI Act, like the DD Act, directs that P&A organizations shall have broad investigatory authority to carry out their responsibility to protect individuals with mental illness and to advocate on their behalf. *Id.* (authorizing P&A organizations to "investigate incidents of abuse and neglect . . . ; pursue administrative, legal, and other appropriate remedies . . . ; and . . . pursue administrative, legal, and other remedies on behalf of an individual"). Enacted in 1994, the PAIR Act serves people with disabilities who are not covered under either the DD Act or the PAIMI Act. 29 U.S.C. § 794e.

In addition to their general investigative authority, P&A organizations have the authority, consistent with the requirements of the P&A Acts, to "have access to all records of any individual" with disabilities or mental illness "who is a client of the [P&A] system if such individual or legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access." 42 U.S.C. § 15043(a)(2)(I)(i); 42 U.S.C. § 10805(a)(4)(A); 29 U.S.C. § 794e(f)(2).

The district court correctly determined that this suit is governed by the PAIMI Act because it involves DRTx's efforts to obtain video records of an individual with a mental illness. Specifically, § 10805(a) provides that a P&A organization such as DRTx:

> shall . . . (4) in accordance with section 10806 of this title, have access to all records of—
>
> (A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

> (B) any individual (including an individual who has died or whose whereabouts are unknown)-(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access; (ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and (iii) with respect to whom a complaint has been received by the system or . . . there is probable cause to believe that such individual has been subject to abuse or neglect; and
>
> (C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy . . . .

42 U.S.C. § 10805(a). Section 10806 then provides:

> As used in this section, the term "records" includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

*Id.* § 10806(b)(3)(A).

Where an individual has no parent or guardian, the P&A organizations may access records so long as they have probable cause to believe that abuse has occurred. 42 U.S.C. § 15043(a)(2)(I)(ii); 42 U.S.C. § 10805(a)(4)(B); 29 U.S.C. § 794e(f)(2). Where an individual's guardian has failed or refused to act, the P&A organizations may access records under the DD Act and the PAIR Act so long as they have probable cause to believe that the individual has been subject to abuse or neglect. 42 U.S.C. § 15043(a)(2)(I)(iii); 29 U.S.C. § 794e(f)(2). Under the PAIMI Act, they may do so if they have

probable cause to believe that an individual's health or safety is in serious and immediate jeopardy. 42 U.S.C. § 10805(a)(4)(C).

In accordance with the requirements for receiving federal funds, P&A organizations are authorized to engage in various pursuits on behalf of persons with the mental illness and impairments, such as investigating complaints of discrimination, abuse, and neglect. *See* 42 U.S.C. § 15043; 42 U.S.C. § 10805. It is undisputed that, as a P&A organization, DRTx is charged with a federal mandate to protect and advocate for the rights of individuals with mental illness by accessing their confidential records from programs serving them and investigating allegations of abuse and neglect. The dispute between the parties herein hinges on a determination of how broad that grant of authority is. The district court determined that the "(1) plain language of the law, (2) purpose of the P&A Acts, and (3) existence of stringent statutory privacy protections for P&A systems provide clear and consistent evidence for [DRTx's] position that [Houston Behavioral] must grant [it] access to the video." We agree.

*A. Statutory Language & Purpose*

Houston Behavioral concedes that "[t]he P&A Acts are read broadly to ensure that DRTx can conduct its investigation," but it contends that DRTx's authority under the P&A Acts "pertain[s] to records and review of information that pertain specifically to the patient at issue." It argues that "there are other patients within the video who have not been put on notice that the investigation is ongoing and most importantly, have not provided their consent for their facial images to be a part of the investigative file." Similar to the court in *Disability Rights Texas v. Bishop*, the district court here held that DRTx is entitled to the video records it requested and Houston Behavioral's denial of the request is a violation of the PAIMI Act. *See* 615 F. Supp. 3d 454, 461 (N.D. Tex. 2022). Like the *Bishop* court, the district court



here determined that both declaratory and permanent injunctive relief—though limited in scope—was warranted. Relying on federal court precedent[5] and citing 42 U.S.C. § 10805(a)(4), the district court surmised that the PAIMI Act's statutory language has consistently been read to provide P&A organizations with broad access to records. We agree.

Still, Houston Behavioral argues that *Bishop* is inapplicable to the instant case because Houston Behavioral advances arguments that are dissimilar to those of the defendant in *Bishop*. In *Bishop*, the court rejected the defendant's argument that, under the PAIMI Act, "records" only includes those produced as part of "the care and treatment" or "a specific investigation into allegations of abuse, neglect or injury" of a specific individual. 615 F. Supp. 3d at 460. In *Bishop*, the defendant claimed that because the video footage captured more than just the DRTx client at a particular time and place, the requested footage was not part of the "records" required to be produced to the P&A organization. *Id.* at 460–61.[6] Houston Behavioral, too, contends that the video footage at issue here goes beyond the "care" or "alleged abuse" of a "specific individual." And because the video footage also includes other patients, it contends that the video footage is not encapsulated in the definition of "records" required to

---

[5] Namely, the district court relies on: (1) *Bishop*, 615 F. Supp. 3d at 465 (holding that "the statutory text and the cases interpreting Section 10805(a)(4) confirm that the statutory phrase 'all records of . . . any individual' is quite broad") (internal quotation marks and citations omitted) and (2) *Disability Rts. N.Y. v. Wise*, 171 F. Supp. 3d 54, 59 (N.D. N.Y. 2016) (determining that the P&A Acts "make clear that P & A systems . . . are entitled to all records of subject individuals, and give no indication that investigative agencies should redact or withhold portions of their reports").

[6] Notably, the county sheriff defendant in *Bishop* also argued that video footage is not a record prescribed by the PAIMI Act. The district court disposed of these arguments, as well, to conclude that "records," for purposes of Section 10805(a)(4), includes video record evidence of a P&A client's alleged abuse or neglect. 615 F. Supp. 3d at 461. Houston Behavioral does not adopt these arguments here.

be produced to DRTx. We disagree because such an argument is contrary to the broad investigatory powers Congress bestowed upon P&A organizations. Specifically, "the ordinary public meaning of 'records,' as well as statutory structure and context, confirm that the term includes videos of a P&A client's alleged abuse or neglect." *Id.* at 461. The *Bishop* court also made note of "existing statutory protections [which] adequately protect the privacy rights of other detainees [or patients]." *Id.* There, it noted that:

> [T]he phrase, "of . . . any individual," need not be read so narrowly—as Bishop suggests—to imply that a record must be exclusively produced for or regarding a particular individual. The "preposition 'of' may be used to show connection or association, as well as ownership . . . and it seems clear that the term is used in the former sense here." *Pa. Prot. & Advoc., Inc. v. Houstoun*, 228 F.3d 423, 427 (3d Cir. 2000) (Alito, J.) (citing RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 999 (1967)) (construing "records" in Section 10805(a)(4) to include peer-review reports belonging to a hospital rather than an individual patient).

*Id.* at 465.

In this case, the district court also maintained that, notwithstanding other individuals' privacy rights which may be implicated, the purpose of the P&A Acts necessitates DRTx's access to video record evidence. Allowing Houston Behavioral to block DRTx from reviewing video records would significantly hinder the P&A organization from fulfilling its federal mandate. The district court noted that the stated statutory purpose of P&A organizations' investigative powers is to "investigate incidents of abuse and neglect of individuals with mental illness" and "to ensure the rights of individuals with mental illness are protected." 42 U.S.C. § 10801(b). We agree and hold that the statutory plain language and purpose grants DRTx

access to "all records of . . . any individual," including the video footage requested here. *Id.*

*B. HIPAA & Confidentiality*

Houston Behavioral devotes most of its briefing to describe the potential penalties it may incur under the Heath Insurance Portability and Accountability Act ("HIPAA") if it were to release the video record to DRTx. It contends that this suit implicates its "ability to remain in compliance with two separate statutes [HIPAA and the P&A Acts] when there is no administrative guidance as to how the statutes co-exist in relation to third-party facial images within video footage for a P&A entity." It maintains that the district court's judgment disfavors "protecting covered entities [or healthcare providers] from violations under HIPAA." It asserts that just because "DRTx has been able to obtain unredacted footage from other parties does not mean it follows the requirements of HIPAA." Houston Behavioral maintains that "[i]n order for covered entities to disclose the [video] footage [including] third-party patients" one of the following paths must be pursued: (1) the facility must ensure all patients captured in the video footage give consent for the disclosure of the footage; (2) DRTx must have probable cause for all patients in the video; or (3) DRTx must obtain a court order for a full copy of the footage. It argues that presently no guidance from the Office of Civil Rights exists as to whether HIPAA applies in the instant case. It posits that although a court order would prevent the Office of Civil Rights from penalizing Houston Behavioral for producing the unredacted video footage of G.S., it does not preclude the agency from penalizing Houston Behavioral for producing footage of other patients.

Notably, the privacy of individuals' health records is governed by regulations issued by the United States Department of Health and Human Services ("HHS") under HIPAA, 42 U.S.C. § 1320d, *et seq*. *See* 45 C.F.R.

Pt. 164. In 2001, HHS proposed and subsequently adopted a privacy rule. *See* 45 C.F.R. Pt. 160, 164 (the "Privacy Rule"). The Privacy Rule prohibits an organization subject to its requirements, such as a healthcare provider (a "covered entity"), from using or disclosing an individual's protected health information ("PHI") except as mandated or permitted by its provisions. 45 C.F.R. § 164.502(a). However, a covered entity may disclose an individual's PHI without that person's consent "to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law" under the required-by-law exception. 45 C.F.R. § 164.512(a)(1). The regulations define the pertinent phrase, required-by-law, here:

> Required by law means a mandate contained in law that compels an entity to make a use or disclosure of [PHI] and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

*Id*. at § 164.103.

The PAIMI Act requires P&A organizations to "maintain the confidentiality of such records to the same extent as is required of the provider of [the mental health services]." 42 U.S.C. § 10806(a); *see also* 42 C.F.R. § 51.45(a)(1) ("The P&A system must . . . keep confidential all records and information, including information contained in any automated

electronic database."); 42 C.F.R. § 51.46 (stating that "if a P&A system has access to records pursuant to [§ 10805(a)(4)] which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, it may not disclose information from such records").[7] Weighing the parties' arguments in this statutory context, we hold that HIPAA is not violated when video records containing third-party patients are released to P&A organizations in accordance with the P&A Acts. *See* 42 U.S.C. § 10805(a)(1)(A).

This is particularly relevant here where Houston Behavioral refuses to produce video records to a P&A organization because it posits that it must protect the confidentiality of those individuals who have not signed releases to DRTx. This concern is unfounded. DRTx argues, and we agree, that HHS guidance outlines that "[w]here disclosures are required by law, the Privacy Rule's minimum necessary standard does not apply . . . Moreover, . . . a covered entity cannot use the Privacy Rule as a reason not to comply with its other legal obligations." U.S. Dep't Of Health & Human Servs., *May a Covered Entity Disclose Protected Health Information to a Protection and Advocacy System Where the Disclosure is Required by Law?* (June 10, 2005) https://www.hhs.gov/hipaa/for-professionals/faq/909/may-a-covered-entity-disclose-information-to-a-protection-system/index.html.
Furthermore, in one of the seminal district court cases concerning whether P&A record access was barred by HIPAA or Medicaid laws, the court held

---

[7] *See also Advoc. Inc. v. Tarrant Cnty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *5 (N.D. Tex. Oct. 11, 2001) ("When Congress passed [the PAIMI Act], it recognized the need for preserving the confidentiality of records pertaining to patients' treatment and care in facilities that are subject to investigation by an outside advocacy group. Specifically, the P&A system is required by the Act to maintain the confidentiality of such records to the same extent as is required of the provider of the mental health services. 42 U.S.C. § 10806(a); 42 C.F.R. § 51.45–51.46.").

that "[w]here a release of records is specifically allowed under the PAIMI [Act] . . . HIPAA does not bar disclosure since such records are produced based on the 'as required by law' exception . . . If there is no probable cause, HIPAA would prohibit facilities from disclosing . . . [PHI] without the authorization of the individual." *Protec. & Advoc. Sys., Inc. v. Freudenthal*, 412 F. Supp. 2d 1211, 1220 (D. Wyo. 2006); *see also id.* at 1219 (holding that the PAIMI Act grants P&A organizations the "authority to investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe the incidents occurred").

In its amicus briefing, the United States maintains that HIPAA does not require a healthcare provider to withhold video footage during a P&A organization's investigation of alleged abuse, even if the footage shows other patients. The United States contends that "[a]s HHS explained when it issued the Privacy Rule, the required-by-law exception permits disclosure of [PHI] to [P&A] organizations when the [P&A] Acts require disclosure: 'the rules below will not impede the functioning of the existing [P&A] System.'" *See* 65 Fed. Reg. 82,594 (Dec. 28, 2000). It continues by arguing that "nothing in the [P&A] Acts requires a healthcare facility to withhold or even redact an individual's records under these circumstances." *See Wise*, 171 F. Supp. 3d at 59 ("The statutes make clear that P&A systems . . . are entitled to all records of subject individuals, and give no indication that investigative agencies should redact or withhold portions of their reports."). The United States' argument is persuasive here.

The United States contends that "Congress could have restricted [P&A] organizations from accessing records that included other patients' confidential health information, but it did not." Rather, the only restriction, amicus points out, is the requirement to keep records confidential. *See* 42 U.S.C. 10806(a). It maintains that "[b]ecause the [P&A] Acts impose 'an

especially significant duty of confidentiality' on [P&A] organizations, courts have refused to allow entities to withhold records based on purported privacy concerns." It cites to a Seventh Circuit case, *Disability Rights Wisconsin, Inc. v. State of Wisconsin Department Of Public Instruction*, for this proposition. 463 F.3d at 728. There, the Seventh Circuit compelled a school to produce confidential information about students to a P&A organization without the consent of those students or their guardians, explaining that the P&A Acts "impose[] a specific duty of confidentiality upon the P&A organizations in the context of mental health records obtained from a provider of mental health services." *Id.* at 729–30.

Undeniably, the video footage in dispute here qualifies as PHI, and HIPAA generally restricts disclosure of that information. *See* 45 C.F.R. § 164.502(a). However, pursuant to the required-by-law exception, disclosure is permitted when another law requires it. *See* 45 C.F.R. §§ 164.502(a)(1)(vi), 164.512(a). The United States argues that the definition of "required by law" sweeps broadly and includes "a mandate contained in law that compels an entity to make a use or disclosure of [PHI] and that is enforceable in a court of law." *See* 45 C.F.R. § 164.103. The United States further argues that DRTx is required by law to keep the video footage confidential to the same extent that Houston Behavioral itself is required to do. 42 U.S.C. § 10806(a); *see also* 45 C.F.R. § 1326.21. We agree. Under the required-by-law exception, healthcare providers like Houston Behavioral may disclose an individual's PHI without that person's consent "to the extent that such . . . disclosure is required by law and the . . . disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. § 164.512(a)(1).

Lastly, the United States contends that HHS's longstanding interpretation of the required-by-law exception reinforces the conclusion that healthcare providers face no liability under HIPAA when they comply with a P&A organization's request for access under the P&A Acts. Amici curiae—

National Disability Rights Network ("NDRN") and Disability Rights Louisiana ("DRLA") also add that HHS has spoken on this issue, providing that "[t]he Privacy Rule permits a covered entity to disclose [PHI] without the authorization of the individual to the state-designated [P&A] system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law. 45 C.F.R. § 164.512(a)." *See* Health Information Privacy, U.S. Dep't Of Health & Human Servs., https://www.hhs.gov/hipaa/forprofessionals/faq/909/may-a-covered-entity-disclose-information-to-a-protectionsystem/index.html (last visited September 26, 2023). Thus, as Amici curiae note, we do not see a conflict between HIPAA and the P&A Acts under the circumstances presented in this case.

## IV. Conclusion

For the foregoing reasons, we AFFIRM the judgment of the district court. Further, the temporary administrative stay issued by this court on July 11, 2023, is VACATED and the motion for stay pending appeal is DISMISSED AS MOOT.

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

**TEL. 504-310-7700**
**600 S. MAESTRI PLACE,**
**Suite 115**
**NEW ORLEANS, LA 70130**

June 05, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 23-20171 Disability Rights Texas v. Hollis
USDC No. 4:22-CV-121

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellee the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

By:_____
Melissa V. Mattingly, Deputy Clerk

Enclosure(s)

Ms. Melanie Ann Bray
Ms. Sophia Mariam George
Ms. Elizabeth Parr Hecker
Mr. Brant Levine
Ms. Courtney Luther
Ms. Beth L. Mitchell
Mr. Jeffery T. Nobles
Mr. Mark S. Whitburn
Mr. Clay B. Wortham

**Footnotes:**

Although we only uploaded our attachments one time, they are appearing twice when the PAIMI PPR is "printed" to pdf. For this reason, we apologize for the unnecessary inclusion of duplicative documents. It appears to be the result of a glitch in the WebBGAS system.

**Floridians with disabilities applaud new law protecting their rights**

By Sabrina Maggiore, WFTV.com and Charles Frazier, WFTV.com

July 02, 2024 at 5:19 pm EDT

ORLANDO, Fla. — Millions of Floridians with disabilities are celebrating a new law that protects their rights. Those new protections are listed under a Florida law that took effect this week. Under the law, courts are now required to consider what's known as "supportive decision-making agreements" before they place someone in legal guardianship, allowing people with disabilities to appoint helpers for certain jobs.

Michael Lincoln-McCreight became the first person in Florida to end a guardianship in favor of a supported decision-making agreement. He spent four years lobbying for a change to the law after his rights were stripped from him.

Born with fetal alcohol syndrome, autism, and ADHD, Lincoln-McCreight today is living his dream life.

He's accomplished a life-long goal of working for Universal Orlando and supports himself in his Orange County home. He says he does not take it for granted.

"I feel like I went from being a prisoner to being a free human being," Lincoln-McCreight said.

Lincoln-McCreight says he remembers the moments he aged out of foster care, was declared incapacitated, and was placed under guardianship.

"They take all your rights away," Lincoln-McCreight recalled. "The right to vote. The right to get married. The right to choose who your relationships are…everything is literally stripped for you."

https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/

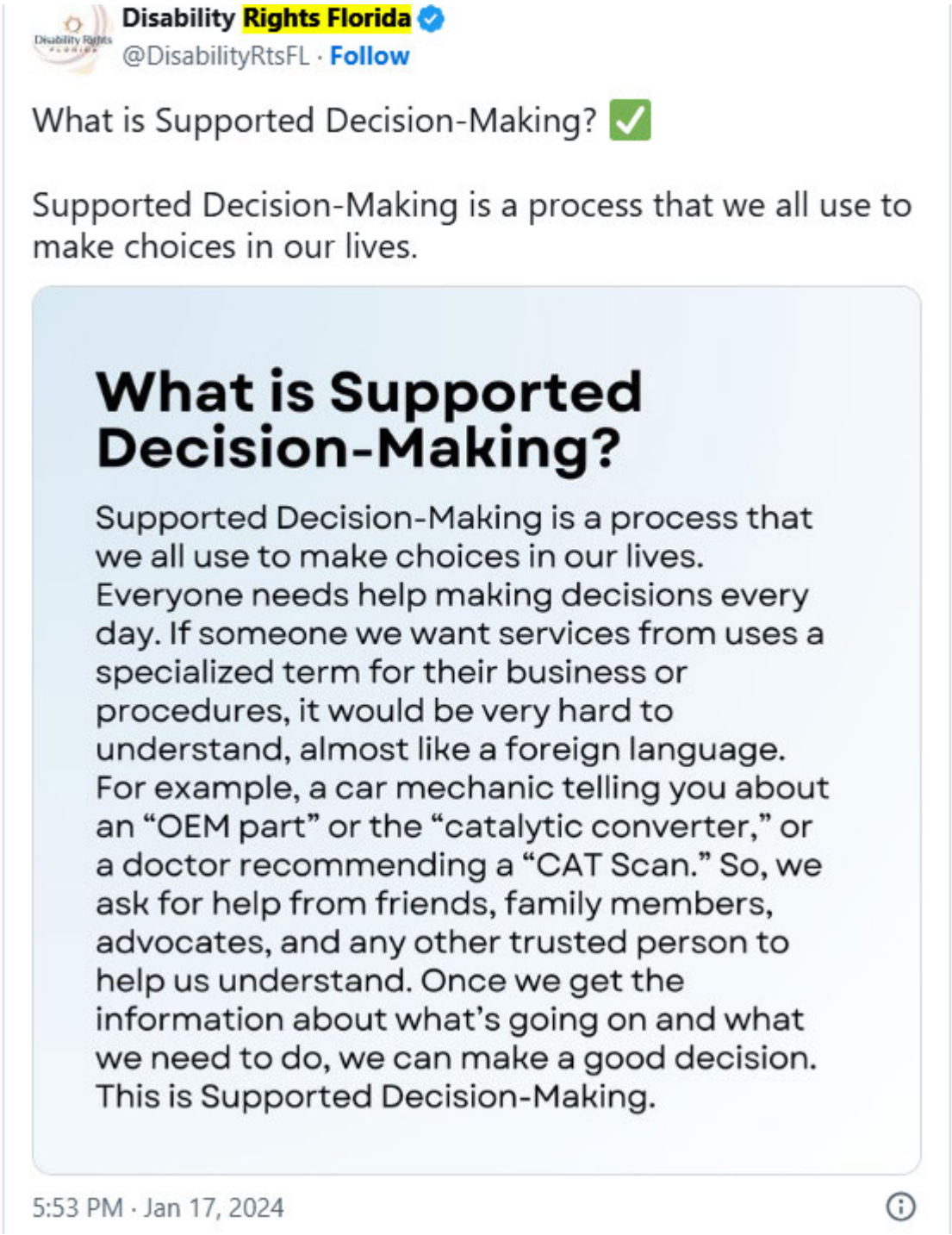
**Disability Rights Florida** · Jan 17, 2024
@DisabilityRtsFL · **Follow**

Florida Legislative Session Update 🚨
Supported Decision-Making Authority (HB 73)

HB 73 will be heard tomorrow morning (1/18) at 9 AM in the House Civil Justice Committee. Watch the hearing on the FL Channel: bit.ly/3SnqNrC

@AllisonTantFL @TraciLKoster @csime90


https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/




Lincoln-McCreight spent years in court fighting to restore those freedoms. In 2016, a doctor and judge found he could make his own decisions, and his guardianship ended in favor of supported decision-making.

"You get help with the support of family and friends that you trust," Lincoln-McCreight said.

https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/

For the last four years, he lobbied for the new state law requiring judges to consider alternatives to guardianship, like a notirzed, supported decision-making agreement.

Matt Dietz of Nova Southeastern Law School says the informal agreements grant supporters privileges to help those with special needs.

“Think of it as a continuum between the most restrictive and the least restrictive,” Dietz explained. “Courts now have to say, ‘Okay, you’ve come here for a guardianship, what types of decisions can this person make by themselves,’ before they say ‘the person loses all of their rights.’”

For Lincoln-McCreight, the law was worth the fight.

“This is going to make not only a difference for one person but millions of Floridians with disabilities,” Lincoln McCreight said.

The law also requires third parties to recognize supported decision-making agreements.

For example, schools and hospitals must allow appointed supporters to access confidential records if the agreements are in place.

https://www.wftv.com/news/local/floridians-with-disabilities-applaud-new-law-protecting-their-rights/2QC62Q7F3VDMXKNFUTDNNGPCWQ/

**Floridians with disabilities have a new legal pathway to make their own decisions**

By: Jackie Llanos - June 17, 2024 4:53 pm

For years, Democratic Rep. Allison Tant of Tallahassee has tried to pass a law so other parents don't have to make the same decision she did: Put their adult children with disabilities under guardianship.

Gov. Ron DeSantis signed that law on Friday, establishing a new legal pathway for Floridians with disabilities to remain autonomous while letting "supporters" obtain information on the person's behalf and communicate their wishes.

So-called "supported decision-making" will function as a kind of power of attorney, and judges will have to consider such agreements before putting anyone with a disability under a guardianship, which heavily restricts what a person can do on their own.

"If a supporter abused or took advantage of a person with disabilities, there would be penalties, and so by putting it in the power of attorney statute, those penalties apply for anyone who abuses them," Tant said in a phone interview with Florida Phoenix.

"That was a key issue for me, is letting them have the support that they need to make decisions with more autonomy, because everyone deserves autonomy and the dignity of autonomy, but at the same time ensuring that they had some protections if there was ever any malfeasance."

When her son, who has Williams Syndrome, a rare genetic condition with symptoms including developmental delays, turned 18, one of his teachers recommended that Tant place him under a guardianship because as an adult he could be held liable for any incidents that happened in his public school, she said.

Tant also wanted to remain involved in decisions around his schooling. People with disabilities can remain in public school until they turn 22.

She now says it was a rushed decision.

HB 73 goes into effect on July 1. After that, courts would have to justify why they're placing a person under guardianship over the less restrictive supportive decision-making.

**Growing list of states**

Floridians such as Michael Lincoln-McCreight, who testified in support of the legislation during this year's legislative session, already have a supported decision-making agreement in place. Lincoln-McCreight, who has a developmental disability, was the first person in Florida to get a guardianship replaced by a supported decision-making agreement.

https://floridaphoenix.com/2024/06/17/floridians-with-disabilities-have-a-new-legal-pathway-to-make-their-own-decisions/

Disability Rights Florida is one of the groups that has been advocating for Florida to join the growing list of states that have codified supported decision-making.

“In my experience, a lot of folks did not know about it. Disability Rights Florida has been trying to educate as many people as possible about it for years now, but it wasn’t widely understood or known,” said Caitlyn Clibbon, the advocacy group’s director of community health services.

“So even if someone tried to use it in the context of a guardianship proceeding, the judge, if they don’t know what it is or understand it, there’s no requirement they even have to consider it,” she said.

Clibbon has been holding workshops to inform people with disabilities, their families, and attorneys about the change. She hopes to inform judges about it, too.

https://floridaphoenix.com/2024/06/17/floridians-with-disabilities-have-a-new-legal-pathway-to-make-their-own-decisions/

DRF's FY 2023-2024 PAIMI-focused YouFirst Podcast Episodes

The following are links to the DRF YouFirst podcasts episodes History of the Mad Movement with Vesper Moore and The ABCs of IEPs with April Katine and Daysi Ortiz, as outlined in paragraphs two and three of DRF's statement of accomplishments:

**History of the Mad Movement—with Vesper Moore**

https://disabilityrightsflorida.org/podcast/story/episode_65

**The ABCs of IEPs with April Katine and Daysi Ortiz**

https://disabilityrightsflorida.org/podcast/story/episode_61

**No. 23-20171**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

---

Disability Rights Texas,

Plaintiff–Appellee v.

Roy Hollis, in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC,

Defendant–Appellant

---

On Appeal from United States District Court for the Southern District of Texas
4:22-CV-121

---

# BRIEF FOR *AMICI CURIAE* NATIONAL DISABILITY RIGHTS NETWORK AND DISABILITY RIGHTS LOUISIANA IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE COURT'S ORDER BELOW

---

Melanie A. Bray
Disability Rights Louisiana
8325 Oak Street
New Orleans, LA 70118
*Counsel of Record*

Kathryn J. Strobach*
Disability Rights Florida
2400 E. Commercial Blvd., Suite 525
Ft. Lauderdale, FL 33308
**Not admitted in this jurisdiction.*

*Attorneys for Amici Curiae*

---

**No. 23-20171**

**IN THE**
**UNITED STATES COURT OF**
**APPEALS FOR THE FIFTH CIRCUIT**

---

Disability Rights Texas,

Plaintiff–Appellee v.

Roy Hollis, in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC,

Defendant–Appellant

---

On Appeal from
United States District Court for the Southern District of
Texas 4:22-CV-121

---

# BRIEF FOR *AMICI CURIAE* NATIONAL DISABILITY RIGHTS NETWORK AND DISABILITY RIGHTS LOUISIANA IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE COURT'S ORDER BELOW

---

## SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

---

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5TH CIR. R. 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges



of this court may evaluate possible disqualification or recusal.

## A. Amici Curiae for Plaintiff-Appellee

National Disability Rights Network
Rule 26.1 Disclosure Statement: National Disability Rights Network, Inc., is a Florida Not for Profit Corporation whose corporate office is located in the District of Columbia. National Disability Rights Network is the national membership organization for the Protection and Advocacy network. National Disability Rights Network does not have a parent corporation or publicly traded stock.

Disability Rights Louisiana
Rule 26.1 Disclosure Statement: Disability Rights Louisiana was authorized and is designated as the Protection and Advocacy (P&A) system for individuals with disabilities in the State of Louisiana pursuant to a series of federal statutes that authorized and created a P&A entity in each state and territory charged with protecting and advocating for the rights of individuals with disabilities. The relevant federal statutes include the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 10801 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.; and the Protection and Advocacy of Individual Rights Program, 29 U.S.C. § 794e. Founded in 1977, Disability Rights Louisiana is a non-profit that provides legal representation, information and referral, educational services, and other systemic advocacy on issues related to disability. Our practice areas focus on the rights of individuals with disabilities living in institutions, special education rights, access to home- and community-based care services, and what can broadly be described as "anti- discrimination" advocacy—i.e., the rights of people with disabilities to physical and programmatic access to publicly available programs and services.

## B. Counsel of Record

For Amici Curiae:

Represented by:
Melanie A. Bray
Louisiana Bar No. 37049

8325 Oak Street
New Orleans, LA 70118
Phone (504) 208-5141
Fax (504) 272-2531
mbray@disabilityrightsla.org

*/s/ Melanie A. Bray*
Melanie A. Bray

*Counsel for Amici Curiae*

# TABLE OF CONTENTS

**PAGE**





## TABLE OF AUTHORITIES

**PAGE**

**CASES**

**STATUTES**

**REGULATIONS**

**CONGRESSIONAL MATERIALS**



**LAW REVIEW ARTICLES AND MISCELLANEOUS**

## STATEMENT OF CONSENT

Disability Rights Louisiana sought consent of the parties to the filing of this amicus. The Appellants and Appellees have consented.

## INTEREST OF THE *AMICI CURIAE*[1]

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, as well as the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

Disability Rights Louisiana (DRLA) is the designated Protection and Advocacy organization for Louisiana. DRLA was founded pursuant to federal law establishing

[1] All parties consented to the filing of this brief. Pursuant to Fed. R. app. 29(a)(4)(A)-(E), counsel for *amici curiae* states that no counsel for a party authored the brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

P&A systems in each state and territory, and as such, have been charged with the responsibility to advocate for individuals with disabilities for decades—DRLA since 1977. Each of these P&As is currently authorized by law to "pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of individuals with mental illness, which is the most relevant authority to this matter. 42 U.S.C. § 10805(a)(1)(B). DRLA possesses the same statutory authority as Disability Rights Texas (DRTx). As *Amici*, NDRN and DRLA have a strong interest in ensuring that P&As can carry out their statutory duty to represent the rights of people with disabilities including their established practice of receiving video records of alleged abuse and neglect.

The P&A network was established by Congress in response to wide-spread abuse and neglect of people with disabilities. One important component of this Congressional mandate was assigning P&As the responsibility of investigating abuse and neglect of people with disabilities. *See* 42 U.S.C. § 15043(a)(2)(B), 42 CFR § 51.2. To fulfill that mandate, these organizations were provided with extensive access, including the authority to request and review various records that relate to their investigation. *Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Center*, 97 F.3d. 492, 497 (11th Cir. 1996); *Center for Legal Advocacy v. Hammons*, 323 F.3d 1262, 1270 (10th Cir. 2003).



Overturning the District Court's Order[2] granting an injunction allowing DRTx access to video records pertaining to a client would negatively impact the ability of P&As to access records and conduct meaningful investigations. Limiting a P&A's investigative authority could likely result in the inability to mitigate abuse and neglect of people with disabilities in locked, restricted settings. Because the ability to effectively investigate and mitigate harm is critical to a P&A's ability to protect the legal rights of persons with disabilities, NDRN and its members, including the *Amici*, have an interest in this case and believe that their views may assist the Court in resolving the issues before it.

## SUMMARY OF THE ARGUMENT

The District Court properly ruled that Plaintiff–Appellee was entitled to access video records capturing the involuntary administration of medication to its client who was inpatient in a psychiatric hospital. As a P&A organization, DRTx is charged with a federal mandate to protect and advocate for the rights of individuals with disabilities, including those with mental illness. This authority is broad, and the investigative authority granted to P&As provides a layer of independent oversight to prevent and address the abuse and neglect of people with mental illness while

[2] The lower court's decision at issue in the instant appeal that is addressed in this *Amici Curiae* brief is the Memorandum and Order entered by US District Court Judge Keith P. Ellison on February 28, 2023, in *Disability Rights Texas v. Roy Hollis*, Civil Action No. 4:22-CV-00121, ECF No. 32, ROA page range 23.20171.249-23.20171.260. (Referred to herein as "the Order".)



receiving care and treatment. The timely ability of P&As to access video records is a critical part of conducting a thorough investigation. Concerns regarding confidentiality of residents who are not clients of the P&A would not be a justification to restrict access to video, because (1) access to video would not permit the P&A to view anything that they are not already entitled to view under the P&A Acts, and (2) P&As are required to maintain the confidentiality of investigative information to the same degree as the facility itself. For these reasons, this Court should uphold the District Court's Order.

## ARGUMENT

### I. The history of the P&A system provides context for unique federal access authority afforded by Congress.

The history of mistreatment, abuse, and neglect of persons with psychiatric, developmental, and other disabilities within public and private institutions and facilities in the United States is well documented. *See, e.g.*, Stanley S. Herr, The New Clients: Legal Services for Mentally Retarded Persons, 31 Stan. L. Rev. 553, 558 (1979); Michael Perlin, International Human Rights Law and Comparative Mental Disability Law: The Universal Factors, 34 Syracuse J. Int'l L & Com. 333, 335 (2007). In 1958, the president of the American Psychiatric Association categorized state psychiatric hospitals as "bankrupt beyond remedy." *See* Perlin at 335. During a Congressional hearing in 1961, a witness testified that he had interviewed physicians



at state hospitals who "frankly admitted that the animals of nearby piggeries were better housed, fed and treated than many of the patients on their wards." *Id.*

During the decades of nearly complete reliance on public and private institutions established to house and ostensibly treat persons with developmental, intellectual, and mental health disabilities, institutes such as the Pennhurst School and Hospital in Pennsylvania, Forest Haven in Maryland, Partlow State School in Alabama, and the Willowbrook and Suffolk Developmental Centers in New York became notorious for the horrible conditions and treatment of residents. During the 1970's and early 1980's, advocates brought to light the widespread neglect and mistreatment of people with disabilities in these facilities. Willowbrook was exposed to the public in 1972 through an investigative report by Geraldo Rivera who testified to Congress about his experience. *See* S. Rep. No. 94-160, at 28-32 (May 22, 1975). The inhumane conditions at the Partlow School also played a prominent role in Congressional investigations regarding the treatment of persons with intellectual disabilities in facilities at that time. *Id.*

Several high-profile cases connected to the horrendous treatment of persons with intellectual and developmental disabilities at the Pennhurst School eventually reached the Supreme Court, who analyzed the Constitutional parameters of the rights of residents in such facilities. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981). The Supreme Court noted that "conditions at Pennhurst are not only dangerous, with the residents often physically abused or drugged by staff members,



but also inadequate for […] habilitation[.] Indeed, the [district] court found that the physical, intellectual, and emotional skills of some residents have deteriorated at Pennhurst." *Id.* at 7; *see also Youngberg v. Romero*, 457 U.S. 307 (1982) (holding that a resident with intellectual disability involuntarily confined to Pennhurst enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests).

In 1975, in response to these conditions and highly publicized incidents, Congress created the P&A system through what is now known as the Developmental Disabilities Assistance and Bill of Rights Act (the "DD Act"). Pub. L. No. 94-103, 89 Stat. 486 (1975) (originally codified at 42 U.S.C. §§ 6041-6043 and currently codified at 42 U.S.C. §§ 15041-15045). The DD Act's purpose is "to provide for allotments to support a protection and advocacy system […] in each State to protect the legal and human rights of individuals with developmental disabilities[.]" 42 U.S.C. § 15041. The DD Act provides that to receive allotments under the Act, a state must put "in effect a system to protect and advocate the rights of individuals with developmental disabilities[.]" 42 U.S.C. § 15043(a)(1). NDRN's member P&As were created pursuant to this provision. And as the "system to protect and advocate the rights of individuals with developmental disabilities," P&As are granted numerous authorities under the DD Act, including the ability to have on-site access to service providers and to receive records of individuals with developmental disabilities. 42 U.S.C. §§15043(a)(2)(H)&(I).



A decade after the passage of the DD Act, Congress expanded the P&As' responsibilities by enacting what is now the Protection and Advocacy for Individuals with Mental Illness Act (the "PAIMI Act"), Pub. L. No. 99-319, 100 Stat. 478 (1986), codified at 42 U.S.C. § 10801, *et seq.* Through the PAIMI Act, P&As were tasked with protecting and advocating for those with mental illness, in addition to those with developmental disabilities under the DD Act. P&As' responsibilities were again expanded in 1993 with the enactment of the Protection & Advocacy of Individual Rights ("PAIR"), designed to protect the legal and human rights of all other persons with disabilities not covered by the DD and PAIMI Acts (e.g., individuals with physical disabilities). 29 U.S.C. § 794e. Currently, P&As are granted similar authorities under the PAIMI and PAIR Acts with respect to the populations covered by those Acts as they are to the developmentally disabled population covered by the DD Act. *See, e.g.*, 42 U.S.C. § 10805(a)(4) (P&As have access to records of individuals with mental illness); *see also* 29 U.S.C. § 794e(f)(2) (a P&A under the PAIR Act shall "have the same general authorities, including the authority to access records and program income, as are set forth in [the DD Act]"). It should also be noted that the PAIMI, PADD, and PAIR Acts are to be read coextensively. *See* S. Rep. 454, 100th Cong., 2d Sess. 10 (1988); S. Rep. 109, 99th Cong., 1st Sess. 2-3 (1985); S. Rep. 113, 100th Cong, 1st Sess. 24 (1987); *see also* 29 U.S.C § 794e(f)(2). Therefore, the case law and regulations interpreting the scope of one P&A's access authority is equally applicable with respect to the interpretation of the counterpart provisions for any other P&A.

To ensure that the P&As can carry out their mandates, Congress established a baseline of authority a P&A must have for the state to qualify to receive funding under the DD Act, the PAIMI Act, or the PAIR Act (collectively, the "P&A Acts"). The critical required features of all P&As, explained in part *infra*, include independence from state agencies that provide treatment, services, and/or habilitation to individuals covered by the P&A Acts; rights to access the records of individuals with disabilities under various circumstances; and the right to pursue legal, administrative, and other appropriate remedies to protect the rights of those covered by the P&A Acts. *See generally* 42 U.S.C. § 15043; 42 U.S.C. § 10805 (DD and PAIMI Act statutes containing many of the P&A authorities). Consequently, a P&A's exercise of its authority to access records of individuals with disabilities and facilities where they receive treatment is a mandatory requirement under the P&A Acts. For example, in 2018, Disability Rights Oregon (DRO) used its access authority to review video footage of a police canine attacking a person with a disability.[3] Through the use of their access authority, DRO was able to work with the local sheriff's office to investigate the incident and resulted in statewide ban.

## II. P&As have the right under the P&A Acts to investigate incidents of abuse and neglect as well as access to records of individuals with disabilities, including video records.

[3] "You are Going to Get Bitten: Columbia County Jail's Use of Canines to Intimidate or Control Inmates" available at https://www.droregon.org/successes/banning-the-use-of-canines-in-jail-to-control-inmates



Investigating allegations of abuse and neglect of individuals in psychiatric treatment facilities, such as the one reviewed by the court in the instant case (*see* ROA.250), is a cornerstone activity of P&As. Because Congress developed both the DD and PAIMI Acts in response to widespread abuse and neglect in facilities and the lack of effective state-run systems to monitor compliance, all P&A Acts authorize the P&As to conduct such investigations. *See* S. Rep 109, 99th Cong., 1st Sess. 2-3 (1985); 42 U.S.C. § 15043(a)(2)(B); and 42 U.S.C. § 10805(a)(1)(A).

The District Court correctly determined that the case before the Court is governed by the PAIMI Act because it involves DRTx's efforts to obtain video records of an individual with a mental illness. (*See* ROA.250). Like all P&A Acts, the PAIMI Act authorizes the P&A to conduct investigations, specifically to "investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred[.]" 42 U.S.C. § 10805(a)(1)(A). As part of this investigatory power, Congress intended the P&A system to "have the fullest possible access to client records with appropriate authorization and access to facilities where a complaint has been received on behalf of" a person with mental illness. S. Rep 109, 99th Cong., 1st Sess. 10 (1985). Whenever a P&A receives a report or has determined that there is probable cause of abuse or neglect it "shall" have access to "all records" of an individual with mental illness to carry out its investigation. *See* 42 U.S.C. § 10805(a)(4).



A P&A may access "all records…of any individual" with mental illness when the individual "has authorized the system to have such access," as the District Court found occurred in the underlying case. 42 U.S.C. § 10805(a)(4)(A); (ROA.252). Such access to records explicitly includes access to "video or audio tape records." 42 C.F.R. § 51.41(c). Even though a facility's video records are not made or maintained as part of an individual patient's chart, the PAIMI Act requires a facility to release them to a P&A when related to an abuse or neglect investigation and when the patient has authorized the P&A to obtain "all" of their records. *See* 42 U.S.C. § 10805(a)(4)(A).

Courts have held in analogous situations that the PAIMI Act requires the disclosure of facility records maintained outside of a patient's chart, namely peer review or quality assurance records, because those records are related to the care and treatment of individuals who were the subject of an authorized P&A investigation. *See Pennsylvania Protection & Advocacy, Inc. v. Houstoun*, 228 F.3d 423, 427 (3d Cir. 2000) (Alito, J.) (finding that peer reviewed reports are "records" accessible under the PAIMI Act because records "of any individual" includes those records that are "connect[ed] or associate[ed]" to the individual); *Center for Legal Advocacy v. Hammons*, 323 F. Ed 1262, 1272 (10th Cir. 2003) (agreeing with the Third Circuit's opinion in *Houstoun*, that the PAIMI Act required a facility to disclose peer review and other quality assurance records to a P&A).

Courts have consistently held that P&As have a federal mandate to "broad access to records, facilities, and residents to ensure that the Act's mandates can be



effectively pursued." *Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Center*, 97 F.3d. 492, 497 (11th Cir. 1996) (referring in this instance to the DD Act). Several courts have noted that a P&A's access to records is fundamental to the exercise of its Congressional mandate. *See Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental Ctr.*, 894 F. Supp. 424, 429 (M.D. Ala. 1995), *aff'd* 97 F.3d 492 (11th Cir. 1996) ("The authority to investigate would mean nothing and advocacy in the form of investigation would be ineffective without access to records."); *Robbins v. Budke*, 739 F. Supp. 1479, 1488 (D.N.M. 1990) (mem.) ("Access to patient records is necessary for [a] P&A to serve its clients, evaluate its clients' concerns, and determine whether a client has a legal claim.").

Contrary to Defendant's "sweeping arguments" below (ROA.254), the Health Insurance Portability and Accountability Act (HIPAA) does not preempt DRTx, as the state's P&A, from accessing Houston Behavioral Healthcare Hospital's video footage of patients. HIPAA states that "a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. § 164.152(a)(1).

Congress' commentary on HIPAA specifically mentions that it does not impede a P&A's access to an individual's identifiable health information, stating that "covered entities may make these disclosures under § 164.512(a) without first obtaining an individual's authorization, except in those circumstances in which the



[Developmental Disabilities] Act requires the individual's authorization. Therefore, the rules below will not impede the functioning of the existing Protection and Advocacy System." 65 Fed. Reg. 82462, 82594 (Dec. 28, 2000); *see also Ohio Legal Rights Service v. Buckeye Ranch, Inc.*, 365 F. Supp. 2d 877, 890 (S.D. Ohio 2005).

The United States Department of Health and Human Services (HHS) also has commented on this issue, providing that "[t]he Privacy Rule permits a covered entity to disclose protected health information (PHI) without the authorization of the individual to the state-designated Protection and Advocacy system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law. 45 C.F.R. § 164.512(a)." Health Information Privacy, U.S. DEPT'T OF HEALTH AND HUMAN SVCS, https://www.hhs.gov/hipaa/for-professionals/faq/909/may-a-covered-entity-disclose-information-to-a-protection-system/index.html (last visited September 26, 2023).

Once a P&A requests records, it is entitled to receive prompt access to those records:

> If a P&A system's access to facilities, programs, residents or records covered by the Act or this part is delayed or denied, the P&A system shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name, address and telephone number of the legal guardian, conservator, or other legal representative of an individual with mental illness. Access to facilities, records or residents shall not be delayed or denied without the prompt provision of written statements of the reasons for the denial.



42 C.F.R. § 51.43; *see also id.* 42 C.F.R. § 51.41(a) ("Access to records shall be extended promptly to all authorized agents of a P&A system."); 42 U.S.C. § 15043(A)(2)(J)(i) (under the DD Act, a P&A shall have access to records "not later than 3 business days after the system makes a written request for the records involved"). Courts have found that timely access to records by a P&A is so important that denial of this access constitutes irreparable harm to the P&A sufficient to allow for preliminary or permanent injunctive relief. *See Connecticut Office of Protection and Advocacy v. Hartford Bd. of Ed.*, 464 F.3d 229 (2nd Cir. 2006); *Indiana Prot. & Advoc. Servs. v. Indiana Fam. & Soc. Servs. Admin.*, 603 F.3d 365 (7th Cir. 2010).

Some courts have gone further and found that even tardy access to records presents the same irreparable harm to a P&A's ability to investigate under its Congressional mandate. *See The Advocacy Center v. Stalder*, 128 F. Supp. 2d 358, 364 (M.D. La. 1999) ("Prompt access to records is necessary [. . . ] [T]he defendants maintain that, under state law and departmental policy, the Advocacy Center needs a court order. However, it cannot be disputed that the delay in getting a court order frustrates the goal of the [PAIMI] Act."); *Robbins*, 739 F. Supp. at 1488 (holding that "[t]imely access to records is essential for effective communication" and that delays may "preclude[] [a] P&A from evaluating and acting on a patient's concerns in a timely manner" and "prevent P&A from acting within prescribed deadlines or may cause a violation of rights to go unaddressed until it is too late to remedy"). Moreover, any delay in the process gives "facilities the time to conceal evidence, change medical

records, coordinate stories among witnesses and/or impose a code of silence upon staff." National Association of Protection & Advocacy Systems, Inc., Annual Report of the P&A System 1995-1996 (1996), at 8.

## III. A P&A's confidentiality obligations address any privacy concerns.

Once a P&A obtains records through its federal authority, it is not free to do whatever it pleases with them: the P&A Acts generally, and the PAIMI Act specifically, place guardrails on how the P&A can utilize the records it obtains. In fact, P&As are required to maintain the confidentiality of the records obtained "to the same extent as is required of the provider of such services." 42 U.S.C. § 10806(a); *see also* 42 C.F.R. § 51.45(a)[4]. In other words, if a P&A receives records from a facility that is bound to maintain the confidentiality of that record, the P&A must also maintain that same level of confidentiality.

The district courts have been active and persistent in their interpretation of the PAIMI Act's duty of confidentiality. *See, e.g.*, *Protection & Advocacy Sys., Inc. v. Freudenthal*, 412 F.Supp.2d 1211, 1215-16 (D.Wyo.2006); *State of Conn. Office of Prot. &*

[4] "The P&A must: (1) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:
(i) Clients to the same extent as is required under Federal or State laws for a provider of mental health services;
(ii) Individuals who have been provided general information or technical assistance on a particular matter;
(iii) Identity of individuals who report incidents of abuse or neglect or furnish information that forms the basis for a determination that probable cause exists; and
(iv) Names of individuals who are residents and provide information for the record."



*Advocacy for Persons with Disabilities v. Hartford Bd. of Educ.*, 355 F.Supp.2d 649, 663-64 (D.Conn.2005); *Advocacy Ctr. v. Stalder*, 128 F.Supp.2d 358, 366 (M.D.La.1999); *Ala. Disabilities Advocacy Prog.*, 97 F.3d at 497, 499. Furthermore, this duty of confidentiality is "especially significant" because P&A organizations have a "special function [. . .] to serve individuals with disabilities or mental illness." *Disability Rts. Wis., Inc. v. State of Wis. Dep't of Pub. Instruction*, 603 F.3d 365, 728 (7th Cir. 2006).

This is particularly relevant in the present case where Defendant is concerned about producing video records to DRTx due to its assertion that it must protect the confidentiality of the individuals who have not signed releases to DRTx. (*See* ROA.254). Defendant's concern is unfounded, because as the District Court explained in detail, DRTx is required by federal law to maintain the same confidentiality that binds Defendant. *See id.* Accordingly, Defendant's contention that DRTx is not entitled to video records due to confidentiality concerns is a violation of DRTx's broad authority under federal law and ignores the fact that the same exact confidentiality restrictions bind DRTx in an identical manner. As noted *supra*, the duty of confidentiality imposed on P&A organizations prevents the disclosure of unredacted records and third-party information without additional consent.

Based on the foregoing, P&As have long been held to the stringent requirement that confidentiality be maintained to the same extent as is required of the provider of such services. 42 U.S.C. § 10806(a); 42 C.F.R. § 51.45; 45 C.F.R. § 1386.22(e); *Robbins*, 739 F. Supp. at 1488; *Houstoun*, 228 F.3d at 427. Such rulings



affirm that the duty of confidentiality is a core principle within the P&A and further emphasize the need for P&A organizations to access unredacted records to effectively carry out their mandates.

## IV. The District Court's Order allowing P&A access to video is consistent with the P&As' otherwise broad authority to physically access facilities.

The District Court's Order permitting DRTx to access video recordings of the administration of involuntary medication to their client should be upheld because it allows the P&A system to view something that they would have been able to view had they happened to be on-site when it occurred. During an abuse or neglect investigation, a P&A system is permitted "reasonable unaccompanied access…to all areas of the facility which are used by residents or are accessible to residents…at all times necessary to conduct a full investigation." 42 C.F.R. § 51.42 (b). A P&A's authority to conduct a "full investigation" of possible abuse and neglect includes access to records, as well as physical locations, service recipients, and staff. *See* 42 C.F.R. § 51.2; 42 C.F.R. § 51.41(b); 42 C.F.R. § 51.42(b).

Not only do P&As have the right to unaccompanied access to facilities as part of their investigatory powers, the P&A Acts also grant them access to "facilities in the State providing care or treatment" to individuals with mental illness for certain other federally authorized purposes. *See* 42 U.S.C. § 10805(a)(3). It is through this authority that many P&As frequently conduct "monitoring" of facilities that serve individuals with mental illness, which includes inspecting and photographing areas of the facility



accessible to residents, unaccompanied access to the residents to conduct interviews and welfare checks, and generally ensuring patient rights and safety. *See* 42 C.F.R. § 51.42(c) & (d). All of these activities may occur routinely, without any need for a triggering report or probable cause of abuse and neglect sufficient to conduct an investigation.

Any time P&A staff is on site at a facility—whether to conduct an abuse or neglect investigation, to monitor patient rights and safety, or to provide information and training to residents—P&As encounter a majority, if not all, of the residents and often make efforts to speak with as many of the residents as possible. In fact, as part of the PAIMI Act's regulations, it is envisioned that the P&A shall be given "the opportunity to meet and communicate privately with individuals [at facilities] regularly, both formally and informally, by telephone, mail and in person." 42 C.F.R. § 51.42(d). However, as with records obtained by a P&A, it should be noted that any resident names must be kept confidential by the P&A. 42 C.F.R. § 51.45(a)(1)(iv).

Given the P&As' broad authority to unaccompanied access to investigate and monitor facilities that provide care or treatment to individuals with mental illness, P&As routinely encounter confidential or HIPAA-protected information while on-site. P&A staff may witness active medical treatment, hear therapeutic activities being provided to residents, or view information such as residents' names on their rooms, posted allergies by kitchen staff, or other information relating to patient care,



treatment, and safety that the P&A must keep confidential. *See* 42 C.F.R. § 51.42 (c); 42 C.F.R. § 51.45.

While the Defendant expressed concerns that video footage sought by DRTx contains images of residents for whom DRTx does not have releases, (*see* ROA.254), this concern is unfounded given that DRTx could access Defendant's facility at any time that may be "necessary" to conduct another abuse or neglect investigation, or at any "reasonable time" to monitor the facility or provide residents with information and training services. 42 C.F.R. § 42(b) & (c). In any of these visits, DRTx would have the right to unaccompanied access to the residents of the facility regardless of whether they signed a release or not. 42 C.F.R. § 51.42(c). It would therefore be illogical to restrict DRTx's authority to obtain and view video related to an abuse or neglect investigation that captures facility activities P&A staff could have viewed had they been present when the incident occurred.

## V. Access to records, including video records, is a crucial part of a P&As' operations.

Access to records, specifically video records, is a crucial part of any P&A's operations. Congress did not intend for facilities serving people with disabilities to operate in the dark. Quite the contrary: one court, analyzing a restriction on P&A access to records, noted that "[t]o shield from independent review valuable records of this type of appraisal would directly contradict the expressly stated public policy of Congress." *Iowa Prot. & Advoc. Servs., Inc. v. Rasmussen*, 521 F. Supp. 2d 895, 902 (S.D.



Iowa 2002). Placing any limits on reasonable P&A access shields facility staff from appraisal and creates a more dangerous situation for people with disabilities as any potential abuse or neglect may go unchecked. Further, accessing video records is often the first step in investigating a claim of abuse or neglect. When a P&A receives a report of abuse or neglect, or otherwise develops probable cause to believe abuse or neglect occurred, it begins an investigation. 42 U.S.C. § 10805(a)(1)(A). Once this report is obtained, the P&A quickly works to obtain a release for that individual so that they can begin determining the veracity of the allegation, which typically involves obtaining records. By reviewing an individual's records, including any video of an alleged incident, the P&A can typically determine whether the claim has veracity and whether immediate action is needed to protect the rights and safety of a person with a disability.

Reviewing video of an alleged incident is crucial to a P&A's mandate to investigate abuse and neglect. It would be devastating to a P&A's capacity to investigate abuse or neglect if the ability to review video was limited. Because paper records and files are created by the very facility that is the subject of an abuse or neglect allegation, video records often provide the most salient information in helping a P&A determine the veracity of an allegation. Even seemingly minor alterations to a P&A's broad authority to access video records would directly harm its ability to fulfill its statutory duties. For example, if a P&A were only able to receive video where all individuals who did not sign a release to the P&A had their faces blurred, it would

significantly hamper a P&A's ability to identify witnesses. Instead, the P&A would have to rely on the facility to provide an accounting of who was present during an incident; again, the same facility that the individual alleged caused them abuse or neglect.

Moreover, courts that have interpreted P&A's broad federal authority to review all records have included video recordings as subject to PAIMI's records-access provisions. *See e.g. Disability Rights Texax v. Bishop*, 615 F.Supp. 3d 454, 467 (2022)(citing to *Disability Rights Pennsylvania v. Pennsylvania Department of Human Services,* 2020 WL 1491186; *Disability Rights Ohio v. Buckeye Ranch, Inc.,* 375 F. Supp. 3d 873, 878 (S.D. Ohio 2019).

The federal enforcement agency that oversees the provisions of the PAIMI Act also issued a rule the specifies that "electronic files, photographs or video or audio tape records" are subject to the records-access authority of the P&A systems under Section 10805(a)(4). *See* 42 C.F.R. § 51.41(c). As the *Bishop* court just held last year, this regulation helps address any conflicting policies including confidentiality provisions. *Bishop,* 615 F. Supp at 469.

Finally, P&As often receive abuse or neglect reports after another entity has already investigated the same allegation. In these instances, P&As may conduct what is commonly referred to by the P&A system as a "secondary investigation," wherein a P&A gathers facts and reviews records that include "reports prepared by an agency charged with investigating reports of incidents of abuse and neglect, and injury

occurring at such facility that describes the incidents of abuse, neglect and injury occurring at such facility and the steps taken to investigate such incidents." 42 U.S.C. § 10806(b)(3)(A). Due to the passage of time, P&As conducting secondary investigations are typically less focused on the immediate health and safety of the affected individual and more focused on evaluating the quality of the primary investigation. Such work is critical to P&As' ability to verify that the person with a disability received adequate protections and to further advance rights and safety protections for present and future facility residents.

For the above reasons, unencumbered access to records, especially video recordings, is critical to P&As' ability to provide independent oversight to facilities as envisioned by Congress.

## CONCLUSION

Congress intended P&As to be independent, non-State actors to protect and advocate for individuals with disabilities, including those individuals with mental illness who receive care and treatment from psychiatric facilities. To effectuate that purpose, Congress imbued P&As with broad authority to ensure that individuals' rights were being complied with, and to investigate any incidents of abuse and neglect that were alleged by individuals with disabilities. To conduct these investigations, and to ensure patient safety, and to ensure that we do not find ourselves with the same kinds of facilities that were exposed in the 1970s, one of the tools given to P&As was

the ability to obtain and review video footage. To restrict use of that tool in this case would be contrary to the Congressional authority granted to the P&As. For the foregoing reasons, the *Amici* respectfully request that this Court uphold the District Court's Order.

**October 2, 2023**

Respectfully Submitted,

*/s/ Melanie A. Bray*

Melanie A. Bray
Disability Rights Louisiana
8325 Oak Street
New Orleans, LA 70118
mbray@disabilityrightsla.org
*Counsel of Record*

Kathryn J. Strobach*
Disability Rights Florida
2400 E. Commercial Blvd., Suite 525
Ft. Lauderdale, FL 33308
kathryns@disabilityrightsflorida.org
**Not admitted in this jurisdiction.*

*Attorneys for Amici Curiae*

## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) because, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), it contains 5,437 words. This document complies with the typeface requirements under Fed. R. App. P. 32(a)(5) and the type-face style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond.

*/s/ Melanie A. Bray*
Melanie A. Bray

*Counsel for Amici Curiae*

## CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Melanie A. Bray*
Melanie A. Bray

*Counsel for Amici Curiae*

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

**TEL. 504-310-7700**
**600 S. MAESTRI PLACE,**
**Suite 115**
**NEW ORLEANS, LA 70130**

October 04, 2023

Ms. Melanie Ann Bray
Disability Rights Louisiana
8325 Oak Street
New Orleans, LA 70118

No. 23-20171 Disability Rights Texas v. Hollis
USDC No. 4:22-CV-121

Dear Ms. Bray,

The following pertains to your brief electronically filed on 10/2/2023.

You must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see **FED. R. APP. P.** 12(b) and **5TH CIR. R.** 12 & 46.3. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, the brief will be stricken and returned unfiled.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk
504-310-7651

cc:
Ms. Sophia Mariam George
Ms. Elizabeth Parr Hecker
Mr. Brant Levine
Ms. Courtney Luther
Ms. Beth L. Mitchell
Mr. Mark S. Whitburn

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

**FILED**
June 5, 2024

Lyle W. Cayce
Clerk

No. 23-20171

DISABILITY RIGHTS TEXAS,

*Plaintiff—Appellee*,

*versus*

ROY HOLLIS, *in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC*,

*Defendant—Appellant*.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-121

Before STEWART, DUNCAN, and ENGELHARDT, *Circuit Judges*.

CARL E. STEWART, *Circuit Judge*:

Disability Rights Texas ("DRTx"), an advocacy organization designated to protect the rights of persons with mental illness pursuant to the Protection and Advocacy for Individuals with Mental Illness Act brought this action against Houston Behavioral Healthcare Hospital ("Houston Behavioral") to compel the disclosure of video footage pertaining to the involuntary confinement of its client G.S., an individual with mental illness. Holding that the videotape footage must be disclosed, the district court

granted summary judgment for DRTx and issued an injunction. Houston Behavioral appealed. We AFFIRM.

## I. Factual and Procedural History

In August 2021, G.S. was detained in a psychiatric inpatient program at the Houston Behavioral Psychiatric Intensive Care Unit ("PICU").[1] Following his release, G.S. filed a complaint with DRTx, alleging that he was abused at Houston Behavioral, and signed a waiver allowing DRTx to access his records. Relevant here, the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, *et seq.* (the "DD Act"); the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq.* (the "PAIMI Act");[2] and the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e, (the "PAIR Act") (collectively, the "P&A Acts") mandate states to designate nonprofits ("P&A organizations")[3] to protect and advocate for the civil rights of individuals with disabilities. DRTx serves as the P&A organization for Texas pursuant to the PAIMI Act, 42 U.S.C. § 10801(b)(2).

---

[1] Houston Behavioral is a for-profit company that provides treatment and stabilization for acute psychiatric conditions.

[2] We use "PAIMI Act" herein for "Protection and Advocacy for Individuals with Mental Illness." In 1988, Congress amended the statute to remove all references to the phrase "mentally ill individuals" and replaced those references with "individuals with mental illness." *See* Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness, 62 Fed. Reg. 53548–01 (Dep't of Health & Human Servs. Oct. 15, 1997) (final rule). However, some opinions abbreviate the Protection of Mentally Ill Individuals Act of 1986 to "PAMII." *See Disability Rts. Wis. v. Wis. Dep't of Pub. Instr.*, 463 F.3d 719, 722 (7th Cir. 2006).

[3] We use "P&A organizations" to describe state-designated nonprofits that protect and advocate for the civil rights of individuals with disabilities. Some courts use organizations, agencies, and systems interchangeably. A P&A system is "a system established in a State under [42 U.S.C. § 10803] to protect and advocate the rights of individuals with mental illness." 42 U.S.C. § 10805(a).



On August 19, 2021, DRTx requested G.S.'s records from his confinement at Houston Behavioral, including records from the PICU. Houston Behavioral cooperated with DRTx's first set of requests for information, and on August 26, 2021, it produced all records requested. On September 8, 2021, DRTx requested that Houston Behavioral preserve surveillance video footage, which it claimed was necessary to investigate the alleged abuse of its client, G.S., and other Houston Behavioral patients. The video footage depicts G.S. and other patients receiving care in the PICU. With its record request, DRTx included G.S.'s signed authorization to permit release of his relevant health information. Thereafter, Houston Behavioral refused to provide DRTx with the requested video record.

On or about September 17, 2021, DRTx received a letter explaining that Houston Behavioral was prohibited from releasing the video because the footage depicts substance use disorder ("SUD") treatment information protected under 42 C.F.R. Part 2 regulations.[4] On November 18, 2021, DRTx replied to Houston Behavioral explaining that the Part 2 SUD confidentiality requirements did not apply to G.S.'s treatment because (1) he was receiving mental health services in a psychiatric services unit and (2) Houston Behavioral records did not identify G.S. as someone with an SUD. Additionally, DRTx maintained that it would not be possible to identify any individual on the silent video as someone with an SUD.

---

[4] The 42 C.F.R. Part 2 ("Part 2") regulations protect the confidentiality of SUD treatment records. Part 2 protects "records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States." 42 U.S.C. § 290dd-2.

When Houston Behavioral continued to deny it access to the requested video footage, DRTx filed this suit to compel Roy Hollis, in his official capacity as the Chief Executive Officer of Houston Behavioral, to produce the video record. DRTx sought declaratory and permanent injunctive relief. Both parties filed cross-motions for summary judgment. After conducting a motion hearing on February 24, 2023, the district court granted DRTx's motion with modifications and denied Hollis's motion. The district court granted an injunction limited to the footage pertaining to G.S.'s complaint. Hollis appealed the district court's final judgment. Houston Behavioral has preserved the video record evidence pending this court's adjudication of the issue. We issued a temporary administrative stay and ordered that Hollis's opposed motion for injunction pending appeal be carried with the case on July 11, 2023.

## II. Standard of Review

"This court reviews de novo a district court's grant of summary judgment, applying the same standard as the district court." *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 328 (5th Cir. 2017) (citation omitted). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Alkhawaldeh v. Dow Chem. Co.*, 851 F.3d 422, 426 (5th Cir. 2017).

## III. Discussion

Enacted in 1975, the DD Act authorizes P&A organizations "to pursue legal, administrative, and other appropriate remedies or approaches" to ensure that individuals with disabilities are protected. 42 U.S.C. § 15043(a)(2)(A)(i). However, the DD Act is limited in scope to P&A organizations designed to protect and advocate for individuals with developmental disabilities. *Id.* at § 15043(a)(1). Relevant here, the PAIMI

Act protects the rights of individuals with mental illness. Enacted in 1986, the PAIMI Act conditions states' federal funding on their establishment of P&A organizations with the authority to investigate and remedy suspected abuse or neglect of individuals with mental illness. *Id.* at § 10805(a)(1). The PAIMI Act, like the DD Act, directs that P&A organizations shall have broad investigatory authority to carry out their responsibility to protect individuals with mental illness and to advocate on their behalf. *Id.* (authorizing P&A organizations to "investigate incidents of abuse and neglect . . . ; pursue administrative, legal, and other appropriate remedies . . . ; and . . . pursue administrative, legal, and other remedies on behalf of an individual"). Enacted in 1994, the PAIR Act serves people with disabilities who are not covered under either the DD Act or the PAIMI Act. 29 U.S.C. § 794e.

In addition to their general investigative authority, P&A organizations have the authority, consistent with the requirements of the P&A Acts, to "have access to all records of any individual" with disabilities or mental illness "who is a client of the [P&A] system if such individual or legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access." 42 U.S.C. § 15043(a)(2)(I)(i); 42 U.S.C. § 10805(a)(4)(A); 29 U.S.C. § 794e(f)(2).

The district court correctly determined that this suit is governed by the PAIMI Act because it involves DRTx's efforts to obtain video records of an individual with a mental illness. Specifically, § 10805(a) provides that a P&A organization such as DRTx:

> shall . . . (4) in accordance with section 10806 of this title, have access to all records of—
>
> (A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

> (B) any individual (including an individual who has died or whose whereabouts are unknown)-(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access; (ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and (iii) with respect to whom a complaint has been received by the system or . . . there is probable cause to believe that such individual has been subject to abuse or neglect; and
>
> (C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy . . . .

42 U.S.C. § 10805(a). Section 10806 then provides:

> As used in this section, the term "records" includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

*Id.* § 10806(b)(3)(A).

Where an individual has no parent or guardian, the P&A organizations may access records so long as they have probable cause to believe that abuse has occurred. 42 U.S.C. § 15043(a)(2)(I)(ii); 42 U.S.C. § 10805(a)(4)(B); 29 U.S.C. § 794e(f)(2). Where an individual's guardian has failed or refused to act, the P&A organizations may access records under the DD Act and the PAIR Act so long as they have probable cause to believe that the individual has been subject to abuse or neglect. 42 U.S.C. § 15043(a)(2)(I)(iii); 29 U.S.C. § 794e(f)(2). Under the PAIMI Act, they may do so if they have

probable cause to believe that an individual's health or safety is in serious and immediate jeopardy. 42 U.S.C. § 10805(a)(4)(C).

In accordance with the requirements for receiving federal funds, P&A organizations are authorized to engage in various pursuits on behalf of persons with the mental illness and impairments, such as investigating complaints of discrimination, abuse, and neglect. *See* 42 U.S.C. § 15043; 42 U.S.C. § 10805. It is undisputed that, as a P&A organization, DRTx is charged with a federal mandate to protect and advocate for the rights of individuals with mental illness by accessing their confidential records from programs serving them and investigating allegations of abuse and neglect. The dispute between the parties herein hinges on a determination of how broad that grant of authority is. The district court determined that the "(1) plain language of the law, (2) purpose of the P&A Acts, and (3) existence of stringent statutory privacy protections for P&A systems provide clear and consistent evidence for [DRTx's] position that [Houston Behavioral] must grant [it] access to the video." We agree.

*A. Statutory Language & Purpose*

Houston Behavioral concedes that "[t]he P&A Acts are read broadly to ensure that DRTx can conduct its investigation," but it contends that DRTx's authority under the P&A Acts "pertain[s] to records and review of information that pertain specifically to the patient at issue." It argues that "there are other patients within the video who have not been put on notice that the investigation is ongoing and most importantly, have not provided their consent for their facial images to be a part of the investigative file." Similar to the court in *Disability Rights Texas v. Bishop*, the district court here held that DRTx is entitled to the video records it requested and Houston Behavioral's denial of the request is a violation of the PAIMI Act. *See* 615 F. Supp. 3d 454, 461 (N.D. Tex. 2022). Like the *Bishop* court, the district court



here determined that both declaratory and permanent injunctive relief—though limited in scope—was warranted. Relying on federal court precedent[5] and citing 42 U.S.C. § 10805(a)(4), the district court surmised that the PAIMI Act's statutory language has consistently been read to provide P&A organizations with broad access to records. We agree.

Still, Houston Behavioral argues that *Bishop* is inapplicable to the instant case because Houston Behavioral advances arguments that are dissimilar to those of the defendant in *Bishop*. In *Bishop*, the court rejected the defendant's argument that, under the PAIMI Act, "records" only includes those produced as part of "the care and treatment" or "a specific investigation into allegations of abuse, neglect or injury" of a specific individual. 615 F. Supp. 3d at 460. In *Bishop*, the defendant claimed that because the video footage captured more than just the DRTx client at a particular time and place, the requested footage was not part of the "records" required to be produced to the P&A organization. *Id.* at 460–61.[6] Houston Behavioral, too, contends that the video footage at issue here goes beyond the "care" or "alleged abuse" of a "specific individual." And because the video footage also includes other patients, it contends that the video footage is not encapsulated in the definition of "records" required to

---

[5] Namely, the district court relies on: (1) *Bishop*, 615 F. Supp. 3d at 465 (holding that "the statutory text and the cases interpreting Section 10805(a)(4) confirm that the statutory phrase 'all records of . . . any individual' is quite broad") (internal quotation marks and citations omitted) and (2) *Disability Rts. N.Y. v. Wise*, 171 F. Supp. 3d 54, 59 (N.D. N.Y. 2016) (determining that the P&A Acts "make clear that P & A systems . . . are entitled to all records of subject individuals, and give no indication that investigative agencies should redact or withhold portions of their reports").

[6] Notably, the county sheriff defendant in *Bishop* also argued that video footage is not a record prescribed by the PAIMI Act. The district court disposed of these arguments, as well, to conclude that "records," for purposes of Section 10805(a)(4), includes video record evidence of a P&A client's alleged abuse or neglect. 615 F. Supp. 3d at 461. Houston Behavioral does not adopt these arguments here.

be produced to DRTx. We disagree because such an argument is contrary to the broad investigatory powers Congress bestowed upon P&A organizations. Specifically, "the ordinary public meaning of 'records,' as well as statutory structure and context, confirm that the term includes videos of a P&A client's alleged abuse or neglect." *Id.* at 461. The *Bishop* court also made note of "existing statutory protections [which] adequately protect the privacy rights of other detainees [or patients]." *Id.* There, it noted that:

> [T]he phrase, "of . . . any individual," need not be read so narrowly—as Bishop suggests—to imply that a record must be exclusively produced for or regarding a particular individual. The "preposition 'of' may be used to show connection or association, as well as ownership . . . and it seems clear that the term is used in the former sense here." *Pa. Prot. & Advoc., Inc. v. Houstoun*, 228 F.3d 423, 427 (3d Cir. 2000) (Alito, J.) (citing RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 999 (1967)) (construing "records" in Section 10805(a)(4) to include peer-review reports belonging to a hospital rather than an individual patient).

*Id.* at 465.

In this case, the district court also maintained that, notwithstanding other individuals' privacy rights which may be implicated, the purpose of the P&A Acts necessitates DRTx's access to video record evidence. Allowing Houston Behavioral to block DRTx from reviewing video records would significantly hinder the P&A organization from fulfilling its federal mandate. The district court noted that the stated statutory purpose of P&A organizations' investigative powers is to "investigate incidents of abuse and neglect of individuals with mental illness" and "to ensure the rights of individuals with mental illness are protected." 42 U.S.C. § 10801(b). We agree and hold that the statutory plain language and purpose grants DRTx

access to "all records of . . . any individual," including the video footage requested here. *Id.*

*B. HIPAA & Confidentiality*

Houston Behavioral devotes most of its briefing to describe the potential penalties it may incur under the Heath Insurance Portability and Accountability Act ("HIPAA") if it were to release the video record to DRTx. It contends that this suit implicates its "ability to remain in compliance with two separate statutes [HIPAA and the P&A Acts] when there is no administrative guidance as to how the statutes co-exist in relation to third-party facial images within video footage for a P&A entity." It maintains that the district court's judgment disfavors "protecting covered entities [or healthcare providers] from violations under HIPAA." It asserts that just because "DRTx has been able to obtain unredacted footage from other parties does not mean it follows the requirements of HIPAA." Houston Behavioral maintains that "[i]n order for covered entities to disclose the [video] footage [including] third-party patients" one of the following paths must be pursued: (1) the facility must ensure all patients captured in the video footage give consent for the disclosure of the footage; (2) DRTx must have probable cause for all patients in the video; or (3) DRTx must obtain a court order for a full copy of the footage. It argues that presently no guidance from the Office of Civil Rights exists as to whether HIPAA applies in the instant case. It posits that although a court order would prevent the Office of Civil Rights from penalizing Houston Behavioral for producing the unredacted video footage of G.S., it does not preclude the agency from penalizing Houston Behavioral for producing footage of other patients.

Notably, the privacy of individuals' health records is governed by regulations issued by the United States Department of Health and Human Services ("HHS") under HIPAA, 42 U.S.C. § 1320d, *et seq*. *See* 45 C.F.R.

Pt. 164. In 2001, HHS proposed and subsequently adopted a privacy rule. *See* 45 C.F.R. Pt. 160, 164 (the "Privacy Rule"). The Privacy Rule prohibits an organization subject to its requirements, such as a healthcare provider (a "covered entity"), from using or disclosing an individual's protected health information ("PHI") except as mandated or permitted by its provisions. 45 C.F.R. § 164.502(a). However, a covered entity may disclose an individual's PHI without that person's consent "to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law" under the required-by-law exception. 45 C.F.R. § 164.512(a)(1). The regulations define the pertinent phrase, required-by-law, here:

> Required by law means a mandate contained in law that compels an entity to make a use or disclosure of [PHI] and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

*Id*. at § 164.103.

The PAIMI Act requires P&A organizations to "maintain the confidentiality of such records to the same extent as is required of the provider of [the mental health services]." 42 U.S.C. § 10806(a); *see also* 42 C.F.R. § 51.45(a)(1) ("The P&A system must . . . keep confidential all records and information, including information contained in any automated

electronic database."); 42 C.F.R. § 51.46 (stating that "if a P&A system has access to records pursuant to [§ 10805(a)(4)] which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, it may not disclose information from such records").[7] Weighing the parties' arguments in this statutory context, we hold that HIPAA is not violated when video records containing third-party patients are released to P&A organizations in accordance with the P&A Acts. *See* 42 U.S.C. § 10805(a)(1)(A).

This is particularly relevant here where Houston Behavioral refuses to produce video records to a P&A organization because it posits that it must protect the confidentiality of those individuals who have not signed releases to DRTx. This concern is unfounded. DRTx argues, and we agree, that HHS guidance outlines that "[w]here disclosures are required by law, the Privacy Rule's minimum necessary standard does not apply . . . Moreover, . . . a covered entity cannot use the Privacy Rule as a reason not to comply with its other legal obligations." U.S. Dep't Of Health & Human Servs., *May a Covered Entity Disclose Protected Health Information to a Protection and Advocacy System Where the Disclosure is Required by Law?* (June 10, 2005) https://www.hhs.gov/hipaa/for-professionals/faq/909/may-a-covered-entity-disclose-information-to-a-protection-system/index.html.
Furthermore, in one of the seminal district court cases concerning whether P&A record access was barred by HIPAA or Medicaid laws, the court held

---

[7] *See also Advoc. Inc. v. Tarrant Cnty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *5 (N.D. Tex. Oct. 11, 2001) ("When Congress passed [the PAIMI Act], it recognized the need for preserving the confidentiality of records pertaining to patients' treatment and care in facilities that are subject to investigation by an outside advocacy group. Specifically, the P&A system is required by the Act to maintain the confidentiality of such records to the same extent as is required of the provider of the mental health services. 42 U.S.C. § 10806(a); 42 C.F.R. § 51.45–51.46.").

that "[w]here a release of records is specifically allowed under the PAIMI [Act] . . . HIPAA does not bar disclosure since such records are produced based on the 'as required by law' exception . . . If there is no probable cause, HIPAA would prohibit facilities from disclosing . . . [PHI] without the authorization of the individual." *Protec. & Advoc. Sys., Inc. v. Freudenthal*, 412 F. Supp. 2d 1211, 1220 (D. Wyo. 2006); *see also id.* at 1219 (holding that the PAIMI Act grants P&A organizations the "authority to investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe the incidents occurred").

In its amicus briefing, the United States maintains that HIPAA does not require a healthcare provider to withhold video footage during a P&A organization's investigation of alleged abuse, even if the footage shows other patients. The United States contends that "[a]s HHS explained when it issued the Privacy Rule, the required-by-law exception permits disclosure of [PHI] to [P&A] organizations when the [P&A] Acts require disclosure: 'the rules below will not impede the functioning of the existing [P&A] System.'" *See* 65 Fed. Reg. 82,594 (Dec. 28, 2000). It continues by arguing that "nothing in the [P&A] Acts requires a healthcare facility to withhold or even redact an individual's records under these circumstances." *See Wise*, 171 F. Supp. 3d at 59 ("The statutes make clear that P&A systems . . . are entitled to all records of subject individuals, and give no indication that investigative agencies should redact or withhold portions of their reports."). The United States' argument is persuasive here.

The United States contends that "Congress could have restricted [P&A] organizations from accessing records that included other patients' confidential health information, but it did not." Rather, the only restriction, amicus points out, is the requirement to keep records confidential. *See* 42 U.S.C. 10806(a). It maintains that "[b]ecause the [P&A] Acts impose 'an

especially significant duty of confidentiality' on [P&A] organizations, courts have refused to allow entities to withhold records based on purported privacy concerns." It cites to a Seventh Circuit case, *Disability Rights Wisconsin, Inc. v. State of Wisconsin Department Of Public Instruction*, for this proposition. 463 F.3d at 728. There, the Seventh Circuit compelled a school to produce confidential information about students to a P&A organization without the consent of those students or their guardians, explaining that the P&A Acts "impose[] a specific duty of confidentiality upon the P&A organizations in the context of mental health records obtained from a provider of mental health services." *Id.* at 729–30.

Undeniably, the video footage in dispute here qualifies as PHI, and HIPAA generally restricts disclosure of that information. *See* 45 C.F.R. § 164.502(a). However, pursuant to the required-by-law exception, disclosure is permitted when another law requires it. *See* 45 C.F.R. §§ 164.502(a)(1)(vi), 164.512(a). The United States argues that the definition of "required by law" sweeps broadly and includes "a mandate contained in law that compels an entity to make a use or disclosure of [PHI] and that is enforceable in a court of law." *See* 45 C.F.R. § 164.103. The United States further argues that DRTx is required by law to keep the video footage confidential to the same extent that Houston Behavioral itself is required to do. 42 U.S.C. § 10806(a); *see also* 45 C.F.R. § 1326.21. We agree. Under the required-by-law exception, healthcare providers like Houston Behavioral may disclose an individual's PHI without that person's consent "to the extent that such . . . disclosure is required by law and the . . . disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. § 164.512(a)(1).

Lastly, the United States contends that HHS's longstanding interpretation of the required-by-law exception reinforces the conclusion that healthcare providers face no liability under HIPAA when they comply with a P&A organization's request for access under the P&A Acts. Amici curiae—

National Disability Rights Network ("NDRN") and Disability Rights Louisiana ("DRLA") also add that HHS has spoken on this issue, providing that "[t]he Privacy Rule permits a covered entity to disclose [PHI] without the authorization of the individual to the state-designated [P&A] system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law. 45 C.F.R. § 164.512(a)." *See* Health Information Privacy, U.S. Dep't Of Health & Human Servs., https://www.hhs.gov/hipaa/forprofessionals/faq/909/may-a-covered-entity-disclose-information-to-a-protectionsystem/index.html (last visited September 26, 2023). Thus, as Amici curiae note, we do not see a conflict between HIPAA and the P&A Acts under the circumstances presented in this case.

## IV. Conclusion

For the foregoing reasons, we AFFIRM the judgment of the district court. Further, the temporary administrative stay issued by this court on July 11, 2023, is VACATED and the motion for stay pending appeal is DISMISSED AS MOOT.

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

**TEL. 504-310-7700**
**600 S. MAESTRI PLACE,**
**Suite 115**
**NEW ORLEANS, LA 70130**

June 05, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 23-20171 Disability Rights Texas v. Hollis
USDC No. 4:22-CV-121

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellee the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

By:_____
Melissa V. Mattingly, Deputy Clerk

Enclosure(s)

Ms. Melanie Ann Bray
Ms. Sophia Mariam George
Ms. Elizabeth Parr Hecker
Mr. Brant Levine
Ms. Courtney Luther
Ms. Beth L. Mitchell
Mr. Jeffery T. Nobles
Mr. Mark S. Whitburn
Mr. Clay B. Wortham

# G. PAIMI Budget - Actual

## PAIMI Expenditures and Revenues

| PAIMI Expenditures | |
|---|---|
| 1. Does your P&A have an approved Federal indirect cost rate?<br>If yes, what is the approved rate? | ○ Yes ● No<br>0.05%<br>% |
| 2. Total indirect costs | $0 |
| 3. Total of all PAIMI program costs listed in **I - VIII** in the Budget | $1,704,321 |
| **Total** | **$1,704,321** |

| Income sources and other resources (PAIMI program only) | | | |
|---|---|---|---|
| 1. PAIMI program carryover of grant funds identified by FY. | | | |
| Enter the last two digits of the Fiscal Year | FY | 2023 | $597,498 |
| 2. Program income (PAIMI only) | | | $0 |
| 3. State | | | $0 |
| 4. Other funding sources [identify each source] | | | |
| **Total of all PAIMI Program resources.** | | | **$597,498** |

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# H. Statement of Priorities & Objectives

## PAIMI Program Statement of Priorities and Objectives - Report

The PAIMI Program Statement of Priorities and Objectives (SPOs) **must be specific** to individuals with significant mental illness (adults) and/or significant emotional impairment (children/youth), as determined by a mental health professional qualified under the laws and regulations of the state in accordance with 42 U.S.C.A. § 10802(4) (A). The SPOs in the PPR **must match** the same format and order approved in the FY 2024 PAIMI Application.

**Priority/Goal Description:** REDUCE THE INCIDENCE OF ABUSE, NEGLECT, AND RIGHTS VIOLATIONS OF INDIVIDUALS WITH SIGNIFICANT MENTAL ILLNESS OR SIGNIFICANT EMOTIONAL DISTURBANCE

**Objective:** Investigate individual complaints of abuse, neglect, and rights violations of adults with significant mental illness and youth with significant emotional disturbance in facilities, including civil and forensic state mental health treatment facilities, psychiatric (Baker Act) receiving facilities, crisis stabilization units, psychiatric residential treatment facilities, residential treatment facilities, assisted living facilities, group homes, jails, Florida Department of Juvenile Justice detention and commitment centers, and prisons. Take further action as indicated.

**Strategies Used:**

### Target Measures

| | |
|---|---|
| **Target Population:** | PAIMI eligible adults and youth in facilities. |
| **Expected Target:** | 80 |
| **Expected Outcome:** | 80 |
| **Actual Outcome:** | 211 |
| **Achieved:** (●) | **Not Achieved:** ( ) |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

As an example of an abuse investigation, JH is an adult male with significant mental illness (Schizoaffective Disorder) who was residing in a State Mental Health Treatment Facility (State Hospital) at the time of their initial request for assistance from Disability Rights Florida (DRF). JH contacted DRF to request assistance with resolving an allegation of physical abuse that occurred during a physical restraint incident.

To investigate this service request, DRF staff held an in-person interview with JH to obtain more information about his service request. DRF also requested and reviewed JH's records from the State Hospital to determine if and how they could assist with the above requests. For the abuse allegation, DRF reviewed clinical records along with surveillance video of the alleged incident and confirmed that a facility security staff member did indeed punch JH in the face during a physical restraint incident. DRF staff communicated this information to the facility's customer relations staff.

In response to DRF's findings, the facility noted that, while they had previously investigated the incident and implemented a corrective action plan for the involved staff member (which included placement on alternate duty, additional MANDT training, and no contact with JH's building), they did not document the staff member punching JH in the face. DRF staff provided the facility with a timestamp of the strike and the facility then corroborated DRF's findings. Consequently, the facility submitted a recommendation for dismissal of the implicated security staff member.

As a result of the above steps, DRF closed this case as issues resolved in the client's favor through an abuse/neglect investigation.

As an example of a neglect investigation, LB is an adult male with significant mental illness who was a forensic patient residing at a State Mental Health Treatment Facility (state hospital) at the time of his initial request for assistance from Disability Rights Florida (DRF). LB is a returning client who contacted DRF to request assistance with accessing a higher level of medical care. Specifically, he explained that he was experiencing pain and swelling in his knee and had been unable to receive emergency treatment for the flare-up. LB receives routine appointments with an outside doctor for chronic knee issues and was told that he could wait until his next scheduled appointment, but LB was concerned that waiting may result in medical complications.

To investigate this service request, DRF staff met with senior staff on-site at LB's facility to communicate LB's concerns and obtain more information about LB's complaints of knee pain and swelling and to get an opinion on the risk of LB waiting for his next appointment (less than two weeks from the meeting date). The staff confirmed that LB had an appointment scheduled and that he was not at risk of medical complications. DRF staff then communicated these details to LB, who confirmed that he had an appointment and was comfortable waiting.

Additionally, DRF staff provided LB with self-advocacy information, specifically that he request a higher level of care or other treatment options during his next outside medical appointment. LB confirmed that he was satisfied with the outcome of DRF's work on his request.

As a result of the above steps, DRF closed this case as issues resolved in the client's favor through limited advocacy.

As an example of a rights violation investigation, NS is an adult with significant mental illness who was committed to State Hospital when they contacted Disability Rights Florida (DRF) to request assistance with a food-related rights violation. Specifically, NS alleged that the facility was retaliating against him by failing to provide an appropriate diet during the month of Ramadan.

To investigate this request, DRF staff interviewed NS in-person at their facility to obtain more information about NS' request. NS explained that his core issue was that he could not eat foods with rice, corn, or soy during Ramadan, and that he believed that staff were serving him breakfast items that contained these ingredients in retaliation for various complaints that he had filed and for him participating in patient government activities. However, NS and Disability Rights Florida could not find evidence that NS' food issues were connected to these other patient activities.

DRF agreed to provide limited advocacy to NS to resolve his food complaints. DRF staff communicated NS' food-related problems to the facility's resident advocacy staff, who confirmed that NS' dietary concerns would be communicated to his recovery team and kitchen staff. NS' physician also approved double portions at breakfast and for NS to receive Raisin Bran, specifically based on NS' preference due to it not containing any of the prohibited foods.

As a result of the above steps, DRF closed this case as issue favorably resolved in client's favor due to the facility agreeing to make all requested changes to NS' diet and Ramadan coming to an end.

**Objective:** Investigate individual complaints regarding the violation of the right of students with significant emotional disturbance or significant mental illness to a Free and Appropriate Public Education (FAPE). Advocate for appropriate remedies as indicated.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible students in public schools, alternative schools, segregated settings, and Department of Juvenile Justice detention and commitment centers. |
| **Expected Target:** | 4 |
| **Expected Outcome:** | 4 |
| **Actual Outcome:** | 33 |
| **Achieved:** (●) | **Not Achieved:** ( ) |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

As an example of a case involving advocacy on behalf of a PAIMI-eligible student to Free and Appropriate Public Education (FAPE), MC is a student with significant emotional disturbance (reactive attachment disorder (RAD), post-traumatic stress disorder (PTSD), and attention deficit hyperactive disorder (ADHD)) whose parent contacted Disability Rights Florida (DRF) for assistance with obtaining re-evaluations to determine MC's need for appropriate behavioral supports and related services. DRF investigated the parent's concerns and identified that, prior to DRF's involvement, the parent signed a consent for re-evaluations for academic achievement, adaptive behavior, a social developmental history, a language evaluation, and autism spectrum rating scales. However, the consent form did not include social emotional behavioral assessment, a functional behavioral assessment (FBA), nor executive functioning assessment.

To address these issues, DRF staff attended MC's individualized education plan (IEP) meeting. At the meeting, the re-evaluations were reviewed, and the team determined that MC did not meet eligibility for services under the autism spectrum disorder (ASD) program and did not meet eligibility for language therapy as a related service. Per the teachers input, parental concerns, and anecdotal data reviewed, it was evident that MS has social emotional and executive functioning needs. DRF successfully advocated for additional re-evaluations to include a FBA, executive functioning assessment, and social emotional behavioral assessment. The team agreed to re-convene an IEP meeting upon completion of the re-evaluations to review the results and develop a behavioral intervention plan (BIP) should the FBA reveal one is necessary and amend the IEP as necessary to support MC's social emotional and behavioral needs.

As a result of the above steps, DRF closed this case due to the complaint/problem being resolved in the client's favor through limited advocacy/mediation. DRF staff also provided the parent with technical assistance to help prepare them for the next IEP meeting where the team will be reviewing the additional re-evaluations. They also provided the parent with information related to MC's educational rights.

In another example of a case involving advocacy on behalf of a PAIMI-eligible student to FAPE, AB is a youth student with serious emotional disturbances (depression, generalized anxiety disorder, and attention deficit hyperactivity disorder (ADHD)) whose parent contacted Disability Rights Florida (DRF) for assistance transitioning AB back to a comprehensive school campus after being placed in an alternative school due to a behavioral incident. They explained that AB required assistance ensuring that appropriate behavioral supports and services were provided to meet AB's social emotional, academic, and independent functioning needs.

DRF staff investigated this request and found that AB had a 504 plan with academic accommodations, but that those were not enough to support AB's social emotional needs that were impeding their access to FAPE. The district was not responsive to the parent's request for initial evaluations to determined eligibility for special education service. AB's depression and generalized anxiety impacted AB's attendance and motivation at school which impacted AB's academic progress and poor assignment completion. AB had also been involuntarily committed pursuant to the Baker Act due to a decline in their mental health which impeded access to education.

DRF successfully advocated on AB's behalf and AB started school at their home-zoned school and the school district conducted comprehensive evaluations to determine whether AB was eligible for special education services. As a result, the school district found AB eligible for an Individualized Education Program under the other health impaired program and was ultimately provided with specially designed instruction to support their academic, social-emotional, and independent functioning needs along with counseling as related services. In addition, they found AB eligible AB for extended school year services. Since receiving these services, AB's attendance and assignment completion has improved and they are back on track toward meeting the necessary graduation requirement to obtain a standard high school diploma. DRF also provided AB's parent with information regarding AB's educational rights.

As a result of the above steps, DRF closed AB's case due to the primary issues being resolved in the client's favor.

**Objective:** Monitor facilities that provide residential care and treatment to adults with significant mental illness and youth with significant emotional disturbance regarding compliance with rights protections requirements per statute and rule and quality of service provided, including civil and forensic state mental health treatment facilities, psychiatric (Baker Act) receiving facilities, crisis stabilization units, psychiatric residential treatment facilities, residential treatment facilities, assisted living facilities, group homes, jails, Florida Department of Juvenile Justice detention and commitment centers, and prisons. Take further action as indicated.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible adults and youth in facilities. |
| **Expected Target:** | 10 |
| **Expected Outcome:** | 10 |
| **Actual Outcome:** | 19 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

In FY 2023-2024, Disability Rights Florida (DRF) continued efforts to monitor facilities that provide residential care and treatment to adults with significant mental illness and youth with serious emotional disturbance. DRF worked on monitoring projects at a total of 19 facilities in FY 2023 -2024. The facilities monitored include: 8 Baker Act Receiving Facilities; 1 State Mental Health Treatment Facility; 3 County Jails; 2 Youth Psychiatric Residential Treatment Facilities; 1 Group Homes; 1 Juvenile Incompetent to Proceed Program; 1 Florida Department of Corrections Facility (State Prison); and 2 Agency for Persons with Disabilities Facilities. Narratives for DRF's monitoring efforts by facility type are listed below.

BAKER ACT RECEIVING FACILITIES

In FY 2023-2024, DRF worked on monitoring projects at 8 Baker Act Receiving Facilities (Crisis Stabilization Units/Short-term Residential Treatment Facilities). In one example, DRF monitored a Baker Act Receiving Facility in Pensacola, Florida that serves up to 57 adults with significant mental illness and youth with serious emotional disturbance. DRF conducted the monitoring via virtual meeting with facility administrators followed by an in-person visit to the facility. During the in-person facility visit, DRF staff interviewed facility staff, talked with patients, provided patients with information about patient rights, and viewed all areas of the facility where patients reside and receive care and treatment. DRF also requested and reviewed records relating to facility accreditation, policies and procedures relating to patient care and treatment, staffing, and instances of restraint and seclusion. DRF wrote an internal report and sent a letter to the administrators detailing their recommendations for improvement. The recommendations included revisions to the facility's grievance policy in the patient handbook, revision to the facility policy on documenting patient refusal of fresh-air breaks, and changes to the options available in the patient snack room.

Following DRF's monitoring activities, the facility administrator confirmed that they had completed DRF's recommendations and provided voluntary corrective action measures addressing each recommendation. DRF had scheduled a six-month follow-up with the facility to confirm that they had implemented the corrective action. However, news articles and other public information revealed that the facility intended to decertify itself as a Baker Act receiving facility. Since DRF's recommendations and the facility's proposed corrective action were all based on protections contained in Chapter 394 of Florida State Statutes, DRF determined that the six-month follow-up was no longer applicable to the facility if the planned decertification occurred.

Throughout FY 2022-2023 and into FY 2023-2024, DRF continued to follow the facility's decertification process and requested updates on the newly implemented improvements, specifically patient refusals of outdoor recreation time, patient grievances, and further attempts to improve access to the outdoor recreation areas. The decertification date was postponed several times, with the most recent date being September 28, 2023. DRF also continued to follow the decertification process at this facility to determine if additional in-person follow-up is required to confirm implementation of DRF's recommendations.

Throughout FY 2023-2024, the facility continued to operate as a Baker Act receiving facility with their certification status still uncertain. However, DRF has not received complaints from residents regarding the primary issues of this monitoring project over the past few years. As a result, DRF ultimately closed this monitoring project in FY 2023-24 and determined that they will re-monitor the facility in the future if it continues to operate as a Baker Act Receiving Facility.

In a second example, Disability Rights Florida (DRF) opened a monitoring project for a Baker Act Receiving Facility located in Polk County that serves up to 95 youth and adults with significant mental illness and serious emotional disturbance. DRF selected this facility as a result of an individual service request through DRF's Institutional Intake Line that presented systemic concerns about the being non-compliant with Baker Act patient rights. In Q3 of FY 2022-2023, DRF completed its virtual pre-monitoring interview with facility administrators along with their on-site monitoring of the facility.

DRF identified the following areas requiring improvement, which they communicated to the administrative staff at the facility: 1.) lack of tracking and accountability for patients transferred to another facility via third-party carrier; 2.) the practice of using cameras with audio/video in the adolescents' bedrooms; 3.) lack of video cameras in the outdoor recreation areas; 4.) higher than average Restraint and Seclusion data. Throughout Q3 and Q4 of FY 2022-2023, DRF collaborated with the facility's administrators to resolve DRF's post-monitoring recommendations for improvement. In Q1 and Q2 of FY 2023-2024, DRF communicated with the facility's administrators as they worked to resolve each item of improvement. As a result of this work, this monitoring project produced four outcomes.

First, the facility developed and implemented a new policy to confirm and document the safe transfer of patients to another facility via third-party carrier. Second, DRF retracted their initial recommendation for discontinuing the use of cameras with audio/video in patient rooms after the facility provided additional policies ensuring patient confidentiality and responsible handling of video data along with a detailed explanation about the cameras' function to increase patient safety while in their rooms, which tend to be the most common areas for abuse to take place. Third, DRF confirmed the installation of video cameras in the outdoor recreation areas to improve patient safety. Fourth, the facility developed and implemented a Quality Improvement Project with the goal of reducing their Seclusion and Restraint usage.

DRF conducted a six-month review of the newly implemented Quality Improvement Project and confirmed that the facility had achieved positive results through the new program—with DRF completing all follow-up work in Q2 of 2023-2024. Additionally, as a result of the monitoring, the facility administrators requested that DRF provide five patient rights training sessions at their facility, which were completed in Q4 of FY 2022-2023.

DRF sent a monitoring closure letter to the facility with their monitoring conclusions in Q3 of FY 2023-2024.

In a third example, DRF opened a monitoring project for a Baker Act Receiving Facility located in Duval County that serves up 50 adults with significant mental illness and 39 youth with serious emotional disturbance. DRF selected this facility as a result of an individual service request through DRF's Institutional Intake Line that presented allegations of patient rights violations, including possible abuse or neglect, occurring at this facility. In Q2 of FY 2023-2024, DRF completed its virtual pre-monitoring interview with facility administrators along with their on-site monitoring of the facility.

During FY 2023-2024, DRF's monitoring team requested the following post-monitoring recommendations for improvement: 1.) review policies regarding physical holds while administering forcible medications to ensure their compliance with Florida and federal statutes and regulations; 2.) revise the policy for Therapeutic Seclusion to ensure that seclusion is only used when an individual is at imminent risk of serious harm to themselves or others, as permitted under Florida or federal statutes or regulations; 3.) amend policies on Therapeutic Seclusion and Therapeutic Restraint to remove requirements for discontinuing seclusion and restraint events only after at least 15 minutes of calm behavior; 4.) provide copies of any/all policies related to the order and administration of ETOs and clarify their operating procedure for which facility staff are currently authorized to order and approve ETOs; 5.) Review the Information Sheet for Persons Served and/or any other patient admission materials where the complaint process is outlined and include instructions for filing formal and informal complaints through a complaint process. DRF's monitoring team also provided the facility with updated DRF posters/brochures and information on ligature-free toilets, as requested by the facility.

In FY 2023-2024, the facility provided DRF with revised policies on criteria for seclusion, discontinuation of seclusion and restraint, and amended Comment Procedure, which resolved those recommendations for improvement. Additionally, the facility informed DRF that the renovation of inpatient bathrooms is underway, and they are installing the anti-ligature toilets from Grainger, as DRF suggested.

In response to communication about the above items, DRF requested the following additional post-monitoring recommendations for improvement: 1.) would the facility be including physical restraint events for involuntary administration of medication in their restraint reporting; 2.) can the facility confirm if physicians and psychiatric APRNs can order ETOs and, if both physicians and psychiatric APRNs can order ETOs at the facility, also clarify the authority that the facility relies on to authorize psychiatric APRNs to certify ETOs without physician oversight; 3.) confirmation that the facility received and distributed the updated DRF posters/brochures.

In Q4 of FY 2023-2024, the facility provided responses that resolved the additional post-monitoring recommendations for improvement, thus resolving all post-monitoring recommendations for improvement. DRF mailed a monitoring closing letter to the facility along with a summary of DRF's monitoring process and final resolutions.

The outcomes for this monitoring project include: 1.) revision of policies on the reporting of physical restraint events when used to involuntarily administer medication; 2.) revision of policies on the criteria for the use of Therapeutic Restraint and Seclusion that removed the language “seriously disruptive to the therapeutic milieu” and added that seclusion and restraint are not to be used when “the individual served is exhibiting behaviors that are disruptive, but not posing a serious or imminent danger to self or others; 3.) revision of policies on Therapeutic Seclusion and Restraint that removed requirements for a minimum duration and included language requiring seclusion and restraint events to end as soon as imminent danger has ceased; 4.) revision of policy on the ordering of Emergency Treatment Orders that removed ordering authority from psychiatric APRNs and placed it solely in the hands of physicians; 5.) amended the comment/complaint procedure by including instructions for filing formal and informal complaints through a complaint process and implementing a clear appeals process; 6.) replacement of outdated DRF posters/contact information on patient bulletin boards and distribution of DRF brochures throughout the facility's units.

STATE MENTAL HEALTH TREATMENT FACILITIES (STATE HOSPITALS)

In FY 2023-2024, DRF conducted monitoring activities at one State Mental Health Treatment Facility (State Hospital). For this monitoring activity, DRF opened a project to address nutrition issues at a State Hospital in Gadsden County that serves up to 949 adults with significant mental illness. Starting in FY 2022-2023, DRF selected this facility after receiving frequent resident complaints about a lack of food during mealtime and the absence of food options during medication administration. DRF staff conducted a targeted monitoring of a State Hospital that focused on food and nutrition issues. As part of the targeted monitoring, DRF staff developed nutrition-centered questionnaires that they used during interviews with staff and residents, and requested and reviewed facility policies, procedures, and records on residents' diets and nutrition options. DRF staff communicated their recommendations for improvements to resident nutrition plans.

Subsequently, DRF received a response from the facility indicating certain key improvements based on DRF's recommendations, including the provision of additional snacks during evening hours, improvements to the tracking and delivery of food to residents, and efforts to improve the quality of food. Throughout FY 2022-2023, DRF continued communications with the facility about improvements to their nutritional programs and confirmed that the facility started implementing new policies and procedures in trial phase one unit. Specifically, they added more snack options, updated policies for monitoring meal delivery times, projected renovations to the kitchen, and started research on new food items and ways to improve food quality. The facility also secured additional legislative funding to allow for facility-wide implementation of DRF's recommendations.

Throughout FY 2023-2024, DRF continued to monitor the implementation of the new nutrition programs by conducting periodic communications with the facility’s Assistant Hospital Administrator in charge of Food Services. These communications confirmed that, while the facility did meet some of the goals, some goals remained pending until the facility awaited approval of budget requests. These communications will continue into the next FY until DRF can confirm that the facility has met the goals of the new nutrition program.

COUNTY JAILS

In FY 2023-2024, Disability Rights Florida (DRF) conducted monitoring work in three County Jails, which provide mental health services to detainees with significant mental illness in accordance with Federal and State statute and rule. For the first example, DRF opened a monitoring project for a County Jail that serves as the primary jail for its metropolitan area in Northwest Florida. DRF selected this facility due to concerns regarding compliance with rights protections requirements of individuals with disabilities, including significant mental illness, per statute and rule.

In Q3 of FY 2023-2024, project staff completed initial monitoring activities at the jail. This included: 1.) meetings with senior staff and discussion of policies and procedures for detainees, particularly detainees with diagnosed disabilities; 2.) a site visit where staff toured the facility, visited all areas used by detainees with disabilities, and interviewed detainees about their experiences there; 3.) a review of policy and procedure documents from the facility. While DRF did not identify any immediate or severe conditions issues that would rise to the level of abuse, neglect, or rights violations while present at the jail, they subsequently sent the facility recommendations about several smaller issues, which the facility responded to politely but did not agree to resolve.

Between Q3 and Q4 of FY 2023-2024—immediately prior to monitoring and in the month subsequent—DRF became aware of four publicly reported suspicious deaths involving detainees in close management or in the mental health unit, at least one of which appears to involve a detainee with diagnosed mental illness dying via suicide. DRF launched individual case investigations into each death and the outcome of these investigations will inform further systemic change at the jail. Accordingly, this project will remain open into FY 2024-2025 as DRF continues to gather more information about the conditions at the facility, particularly regarding the mental health care offered to detainees, and determine whether follow-up monitoring activities are necessary.

For the second example, DRF opened a monitoring project for a County Jail with two locations in the Southeast region of Florida, one of which has a dedicated mental health unit. DRF selected this facility due to concerns regarding compliance with rights protections requirements of individuals with disabilities, including serious mental illness, per statute and rule. In Q2 of FY 2023-2024, DRF completed the virtual pre-monitoring interview with facility administrators along with the on-site monitoring of the jail's two locations.

During FY 2023-2024, DRF's monitoring team communicated the following post-monitoring recommendations for improvement to the facility administrators: 1.) provide details about any efforts to secure additional mental health staff and/or make improvements to mitigate overcrowding on the Step Units; 2.) provide self-advocacy information that DRF could provide to an interviewee with accessibility issues—or individuals voicing similar issues in the future—so that they can attempt to address their need through the formal channels of communication provided by the jail; 3.) post the updated DRF brochures and PAIMI program pamphlets on the Mental Health Units and Medically Necessary Assistive Devices Unit.
In FY 2023-2024, the facility provided DRF with responses that resolved the post-monitoring recommendations for improvement.

At this time, this project will remain open to allow for DRF to conduct a six-month follow-up on the jail's efforts to address staffing shortages and overcrowding on their mental health units, which will take place in Q1 of FY 2024-2025.

For the third example, DRF opened a monitoring project for a County Jail in North Central Florida. DRF selected this facility due to concerns regarding compliance with rights protections requirements of individuals with disabilities, including significant mental illness, per statute and rule. DRF's monitoring team completed the virtual pre-monitoring interview with facility administrators along with the on-site monitoring of the jail in Q3 of FY 2023-2024.

During FY 2023-2024, DRF's monitoring team communicated the following post-monitoring recommendations for improvement to the facility administrators: 1.) provide a comprehensive list of the medical devices that the jail can provide to inmates; 2.) clarify what other communication services the jail offers to deaf/hard of hearing inmates and which deaf/hard of hearing communication services are available on the unit kiosks; 3.) clarify if the re-entry resources also are available to inmates through the unit kiosks or are they only provided during the release process; 4.) provide the jail's seclusion and restraint logs for the last 12 months (dating from June 1, 2023 – May 31, 2024), specifically for inmates housed on the Medical Units and with Mental Health classifications; 5.) provide more information about the process for requesting access to the grievance computer for inmates on the Medical Units and with Mental Health classifications; 6.) include instructions explaining how inmates on the Medical Units and with Mental Health classifications can submit an Inmate Request form to speak with their Sector Sergeant.

During the monitoring process, DRF received additional complaints from the jail that increased concerns about inmate access to the inmate medical request and inmate grievance processes. They responded to these concerns by conducting a second round of monitoring at the jail in Q4 of FY 2023-2024, which focused on interviewing inmates on the Medical Units and with Mental Health classifications about those issues. This project will remain open into FY 2024-2025 as DRF continues to work with the jail to resolve the post-monitoring recommendations for improvement.

YOUTH PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES

In FY 2023-2024, Disability Rights Florida (DRF) conducted monitoring work at one Youth Psychiatric Residential Treatment Facility that provides treatment and care to youth with serious emotional disturbance. In Q2 of FY 2023-2024, DRF opened a monitoring project for a facility that treats up to 136 youth with serious emotional disturbance in Central East Florida. DRF selected this facility due to a relatively high number of PRTF serious incident reports received about this facility that may indicate a lack of supervision and patient rights violations at the facility. Previously, DRF identified this facility for monitoring based on an abuse report received from a patient's attorney at Legal Services of North Florida.

Throughout FY 2023-2024, DRF staff interviewed a sample of patients (mostly randomly selected), reviewed facility policies, reviewed data trends as it related to restraint and seclusions, elopement etc. This project will remain open in FY 2024-2025 due to findings from monitoring activities, as well as individual cases associated with this project.

JUVENILE INCOMPETENT TO PROCEED PROGRAMS

In FY 2023-2024, Disability Rights Florida (DRF) conducted monitoring work at one Juvenile Incompetent to Proceed Program (JITP). The program provides residential comprehensive programming, including competency restoration training, to youth with serious emotional disturbance who have been charged with a felony and are found by the court to be incompetent to proceed in accordance with Florida Statute 985.2333(c) due to mental illness, intellectual disabilities, or dual diagnoses. In FY 2022-2023, DRF started a monitoring project at a JITP with the goal of investigating any deficiencies, rights violations, potential abuse and neglect, and any threats to the health, safety and welfare of residents at the facility. DRF conducted on-site monitoring activities at the facility. They visited all areas of the facility where youth receive care and treatment, including residential areas, common areas, and educational areas. During the monitoring, DRF staff also interviewed facility administrators, staff, and residents and also requested and reviewed facility policies and procedures.

Based on these monitoring efforts, DRF provided recommendations to the facility to improve residents' rights and safety. These included correcting damaged or unclean living areas, considering furnishing changes that may reduce risk to youth, and addressing some food-related issues that youth discussed during interviews with DRF staff.

In FY 2023-2024, DRF received a response from the facility administrator indicating that they had addressed the above problems, including renovating bathrooms across the facility to address cleanliness and safety issues. DRF also completed an internal monitoring report summarizing the entirety of their contacts with the facility, including DRF staff notes, observations, interviews, and photos. With no remaining issues to address with the facility, DRF closed this monitoring project successfully.

FLORIDA DEPARTMENT OF CORRECTIONS FACILITIES (STATE PRISONS)

In FY 2023-2024, DRF conducted monitoring activities at one Florida Department of Corrections facility, a facility located in northwest Florida that houses 134 adult inmates with significant mental illness on its inpatient Mental Health Unit. DRF selected this facility as part of a strategy associated with the systemic investigation into widespread allegations of physical abuse on the facility's inpatient Mental Health Unit. In Q4 of FY 2023-2024, DRF conducted on-site interviews with all inmates housed on the inpatient mental health unit and communicated their findings to the facility's administrators. While DRF received three individual requests related to abuse allegations during the monitoring interviews, their monitoring activities found no systemic issues related to physical abuse that required further action within the scope of the monitoring project. As a result, DRF closed this monitoring project in Q4 of FY 2023-2024 while opening individual client cases in response to the three individual abuse allegations that they received during the monitoring interviews. DRF communicated the closing of the monitoring project with the Florida Department of Corrections' General Counsel via email.

AGENCY FOR PERSONS WITH DISABILITIES (APD) FACILITIES

In FY 2023-2024, Disability Rights Florida (DRF) conducted monitoring work in two APD facilities whose residents include individuals dually diagnosed with significant mental illness and developmental disabilities. While these facilities treat individuals with developmental disabilities, more than half of the residents at these facilities are have dual diagnoses of a developmental disability and significant mental illness, resulting in the partial use of PAIMI funding. As an example of DRF's monitoring efforts in APD facilities, DRF opened a monitoring project at an APD facility in Gadsden County, Florida that serves up to 146 adults. The purpose of this monitoring project was to investigate any deficiencies, rights violations, potential abuse and neglect, and any threats to the health, safety and welfare of residents at the facility. In FY 2020-2021, DRF investigated allegations of abuse and neglect, as well as reviewed numerous policies and procedures requested from the facility. Due to the COVID-19 pandemic, in-person work at the facility was paused until FY 2022-2023.

In FY 2022-2023, DRF resumed on-site monitoring activities. They interviewed facility administrators, staff, and residents and also visited all areas of the facility where residents reside and complete care and treatment activities. Based on these monitoring efforts, DRF provided additional recommendations to the facility to improve resident rights and safety in areas related to their grievance policy, physical accessibility issues, food quality and provision to residents, access to outdoor recreation time and activities, staffing, seclusion and restraints, and the general lack of activities and programming for residents.

The facility responded to DRF's concerns. In response to some of DRF's concerns, the facility agreed to take further action and provide updated information to DRF. However, in regard to certain issues, the facility failed to respond, take any action or offer to provide further information, most notably in regard to staffing shortages, seclusion and restraint issues, and general lack of meaningful activities and programming for residents.

Because of this, DRF conducted a follow-up monitoring in Q1 of FY 2023-2024, where they again toured the facility and interviewed numerous residents. Most notably, during this monitoring DRF discovered that the facility is placing residents in long-term solitary confinement—effectively seclusion with no determined length or termination criteria—due to behavioral issues. DRF launched a separate investigation related to this issue and have engaged in significant overlapping follow-up work related to both it and the monitoring throughout FY 2023-2024, where DRF continued to visit the facility, meet with clients there, and assess the facility's compliance with relevant Florida and federal law regarding patients' rights. Certain issues, such as persistent staffing shortages common throughout all state-operated mental health facilities, persist and are unresolved.

As a result of DRF's work, the Agency for Persons with Disabilities (APD) issued a memo limiting and restricting some elements of their long-term seclusion policies, which has had the practical effect of (at least temporarily) significantly curtailing their usage of the most problematic form of long-term seclusion—going from an average of approximately 14 days of seclusion per month from the period of October 2022 - October 2023 to just a single day of seclusion across the three months after the policy change.

DRF continues to work towards the seclusion issue under a separate project (Project 7161), since that work falls outside of DRF's monitoring activities.
Because DRF completed on-site monitoring in Q2 of FY 2022-2023, with a follow-up monitoring in Q1 of FY 2023-2024, they closed this monitoring project as successful and any future monitoring at this facility will be logged under a new project.

**Objective:** Monitor and enforce implementation of court-ordered settlement agreement regarding the systemic lack of care and treatment being provided to inmates with significant mental illness in inpatient mental health units throughout the Florida Department of Corrections. Take further action as indicated.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible adults in the inpatient mental health units of the Florida Department of Corrections. |
| **Expected Target:** | 1 |
| **Expected Outcome:** | 1 |
| **Actual Outcome:** | 1 |

**Achieved:** (●) **Not Achieved:** ( )

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

This litigation project was a systemic lawsuit filed by Disability Rights Florida (DRF) against the Florida Department of Corrections (FDC) alleging that FDC failed to provide constitutionally adequate mental health care to inmates with significant mental illness housed in prison inpatient mental health units (MHUs) across the state. (Disability Rights Florida v. Jones and the Florida Department of Corrections (FDC), 3:18-cv-179-J-20JRK, M.D. Fla.)

The central issues in the case were the segregation and isolation of individuals housed on the inpatient mental health units (MHUs) and the failure of FDC to provide the minimum required care and treatment outlined in its own policies. These policies required FDC and its contracted medical provider, Centurion, to provide basic components of mental health treatment, such as timely psychological and psychiatric assessments, the development and implementation of Individualized Service Plans, individual and group treatment activities, coordination of mental and physical health care needs, discharge planning, and access to recreational and other supportive services designed to enhance patient functioning and progress towards discharge. DRF filed suit to address FDC's failure to provide the required care because MHU patients were at substantial risk of serious mental and physical harm.

The case was resolved through a settlement agreement that was adopted as an order of the court in 2018. The settlement agreement required FDC to significantly modify the existing delivery of mental health services over the course of two years. Areas of required relief included the use of individualized, evidence-based treatment managed by a multi-disciplinary team; providing minimum amounts of treatment, recreational, and other activities for patients; improvements to the administration of psychotropic medications; addressing the needs of patients at risk of self-injurious behavior or resistant to treatment; use of specialized assessments to address risk and discipline concerns; improving care coordination and medical records documentation requirements; additional administrative oversight for the MHUs; and training for all staff that work on the MHUs.

The settlement agreement appointed a monitoring team (the Correctional Medical Authority or CMA) to review the MHUs using established criteria outlined in monitoring instruments to determine whether FDC was complying with the terms. Due to the multi-year approach to implementing the settlement agreement, the CMA was required to conduct two periods of compliance monitoring over the course of approximately two years.

The first settlement monitoring period occurred in FY 2018-2019. It revealed several areas in which FDC was significantly non-compliant with many terms of the agreement. DRF and FDC agreed upon corrective action to occur during the second compliance monitoring period, but implementation of the corrective action and continuation of the compliance monitoring were interrupted by the COVID-19 pandemic in March of 2020. DRF negotiated an agreement with FDC to extend jurisdiction of the agreement until July of 2022 to allow FDC time to implement corrective action measures and for the CMA to complete the second period of compliance monitoring.

The second monitoring period was completed during FY 2021-2022 and again revealed multiple significant and ongoing deficiencies in FDC's compliance at six of the eight remaining MHUs. The parties negotiated another agreement to extend jurisdiction for two additional years to provide FDC additional time to come into compliance and to allow the CMA to conduct a third round of limited settlement monitoring at the six non-compliant institutions.

During FY 2022-2023, FDC continued corrective action efforts to bring its six non-compliant institutions into compliance with the terms of the settlement agreement. The CMA monitored four of the six institutions and provided reports indicating compliance with the terms of the settlement agreement at issue during the third round of monitoring.

During FY 2023-2024, the CMA completed the third round of monitoring at the remaining two institutions. The CMA issued reports indicating compliance with the terms of the settlement agreement. Based on FDC's substantial compliance with the terms of the settlement agreement, the Court's jurisdiction terminated on March 29, 2024. The parties filed a stipulated Notice on April 2, 2024 confirming that jurisdiction was over. Based on the foregoing, this project concluded as a successfully completed DRF priority for the current fiscal year.

**Objective:** Improve protections and/or outcomes related to abuse, neglect, and/or rights protections of individuals with significant mental illness or significant emotional disturbance by analyzing relevant bills, rules, policies, procedures, and practices that affect PAIMI eligible individuals. Take further action as indicated.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible adults and youth in facilities and receiving community-based care and treatment. |
| **Expected Target:** | 4 |
| **Expected Outcome:** | 4 |
| **Actual Outcome:** | 6 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

During FY 2023-2024, DRF engaged in tracking and analyzing several bills related to abuse, neglect, and/or rights protections of individuals with significant mental illness or serious emotional disturbance during Florida's 2024 legislative session. One example is DRF' work related to HB 7021. As passed by the Florida legislature, HB 7021 allows law enforcement discretion in initiating (or not) involuntary examinations under the Baker Act, prohibits courts from ordering an individual with a developmental disability who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement, requires new person-centered elements of discharge planning under both the Baker and Marchman Acts, modifies the voluntary process for minors to require a clinical review in place of a hearing, allows an individual to be admitted as a civil patient in a state mental health treatment facility, removes the 30 bed cap for crisis stabilization units, provides for immediate notification as to the reason why if an individual's right to visitors is restricted, tightens provisions related to the 72 hour holding period, allows counties to include alternative funding for patient transport in their plans, including EMS services, and makes a number of other changes to court processes; particularly around involuntary outpatient treatment. Further, the bill requires Department of Children and Families (DCF) and the Louis de la Parte Florida Mental Health Institute at the University of South Florida to publish certain specified reports and appropriates $50 million to DCF to otherwise implement the legislation's various provisions.

Though this and several other bills related to DRF's work with individuals with significant mental illness and serious emotional disturbance passed, there were also several bills that, though they did not make it through the entirety of the legislative process, reman relevant.

One of these – HB 195, Mental Health Crisis Intervention Training for Law Enforcement Officers –would have developed minimum standards and training involving interactions with persons experiencing emotional disturbance or mental illness, including those with co-occurring substance use disorders. This training would have included instruction on de-escalation and been required as part of both initial certification (40 hours) and annually (8 hours) as part of continuing education requirements.

The second example of relevant legislation that did not pass, HB 491, would have eliminated "step therapy." This is a practice requiring patients to try certain medications before others are approved for Medicaid recipients with serious mental illness. This bill would have allowed these individuals access to appropriate medication within a much more abbreviated timeframe.

**Objective:** Investigate the impact of legislative changes made in 2022 known as the "School Safe Laws" (SB 7026 and SB 7030) that created a threat assessment process and changes to the rules on restraint and seclusion of school-aged youth. These legislative changes are likely to disproportionately impact students with significant emotional disturbance (SED) or significant mental illness (SMI), resulting in the denial of a Free and Appropriate Public Education and other federal due process rights and procedural safeguards. DRF will identify and analyze trends of inappropriate use of Baker Acts as a behavioral intervention tool, the overuse of suspensions and expulsions of students with SED/SMI, and schools' inappropriate use of the threat assessment process to remove students from schools which eventually leads to the student to prison pipeline. DRF will develop a report based on the investigation, and appropriate action will be taken on behalf of students with SED/SMI based on the findings.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI-eligible students in public schools, alternative schools, segregated settings, and Department of Juvenile Justice detention and commitment centers. |
| **Expected Target:** | 1 |
| **Expected Outcome:** | 1 |

**Actual Outcome:** 1

**Achieved:** (●) **Not Achieved:** ( )

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

During FY 2021-2022, DRF submitted public records requests to all of Florida's school districts for information about seclusion and restraint of students, including restraint used for the stated purpose of crisis prevention and intervention procedures, during the FY 2018-2019 and FY 2019 -2020 school years. The purpose of this request was to compile demographic information regarding the students who were subject to seclusion and restraint, the type of seclusion or restraint procedure used, the type of holds used during restraints, the duration of the restraints, the reasons for the restraints, and any injuries resulting from the restraint of students with mental illness.

DRF's ongoing investigation of these issues includes collaborating with the Southern Poverty Law Center, the National Center for Youth Law and other Florida legal aid and children's rights organizations, which led to the filing of a lawsuit against the Palm Beach County School District for its improper use of the Baker Act on students with disabilities. (See D.P. et al. vs. School Board of Palm Beach County, p:21cv81099, S.D. Fla.) This litigation concluded successfully in FY 2022-2023.

In FY 2023-2024, DRF continued analyzing and compiling information to use in future advocacy. In Q3, specifically, DRF continued reviewing data and preparing county-by-county narratives that will be used in future advocacy, which will continue into FY 2024-2025.

**Objective:** Litigation to address the Florida Department of Corrections' failure to provide students with significant emotional disturbance or significant mental illness a free and appropriate public education. DRF is litigating against the Department to address its failure to, among other things, ensure that students have access to (1) mental-health services on their Individualized Education Programs (IEPs) and (2) an appropriate educational curriculum.

**Strategies Used:**

**Target Measures**

**Target Population:** PAIMI eligible students in the Florida Department of Corrections.

**Expected Target:** 1

**Expected Outcome:** 1

**Actual Outcome:** 1

**Achieved:** (●) **Not Achieved:** ( )

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

During 2022-2023, DRF litigated a due process hearing on behalf of a student with disabilities who is in the custody of the Florida Department of Corrections (FDC) to enforce his rights under the Individuals with Disabilities Education Act (IDEA). Specifically, Disability Rights Florida (DRF) alleged that the FDC rewrote the student's pre-existing Individualized Education Plan to only include GED prep, denied him access to secondary school education, and denied him appropriate behavioral and mental-health supports—moves that DRF determined were made for the administrative convenience of the FDC and not the student's unique needs. Ultimately, DRF determined that the FDC's handling of the student's educational needs is a systemic issue that impacts all incarcerated students eligible for services under the IDEA. As a result, DRF transitioned the individual case to a systemic advocacy project to continue litigation to address the FDC's failure to provide PAIMI-eligible students a Free and Appropriate Education in FY 2023-2024.

In FY 2023-2024, the student prevailed in the hearing, with the Administrative Law Judge issuing a decision ruling that FDC's policy of forcing students into GED prep violates that IDEA. The FDC has since appealed the decision, and DRF has filed an enforcement action in the Northern District of Florida to ensure compliance with the ruling while FDC's appeal is pending. DRF is currently litigating FDC's appeal and awaiting a

final ruling in the enforcement action.

In Q2 of FY 2023-2024, DRF and FDC completed their appellate briefings and argued the case before the presiding Judge at the Northern District of Florida, Tallahassee Division. Throughout Q3, DRF continued to wait for the judge's decision on the appeal and, therefore, the enforcement action is on hold pending that decision. This project will continue into FY 2024-2025 while DRF awaits the judge's decision on the appeal.

**Objective:** Investigate individual complaints regarding housing discrimination occurring against youth with significant emotional disturbance (SED) or adults with significant mental illness (SMI) for reasons related to their SED/SMI diagnosis. Advocate for appropriate remedies as indicated.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible individuals residing in community-based facilities or their own homes. |
| **Expected Target:** | 2 |
| **Expected Outcome:** | 2 |
| **Actual Outcome:** | 2 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

In FY 2023-2024, Disability Rights Florida (DRF) continued to work to investigate housing discrimination complaints against adults with significant mental illness and youth with serious emotional disturbance. In one example involving housing discrimination of a PAIMI-eligible client, NL, an adult male with significant mental illness (bi-polar disorder), contacted DRF regarding a dispute over home ownership. Specifically, NL requested assistance with understanding his property rights to a home he owns jointly with his sister due to his sister continually reporting NL to the police in an attempt to remove him from the home so the sister could live there with her child and boyfriend.

DRF investigated the case by reviewing NL's legal housing documents and interviewing NL and his neighbors. DRF's investigation concluded that NL and a sibling were co-owners/tenants in common concerning a home that was willed to them by their mother. The two siblings were not getting along and had disagreements as to who would reside in the home. However, they could not identify disability-related assistance that they could provide to NL to resolve the matter. As a result, DRF closed the case because the case or investigation lacked merit due to the primary issue not pertaining to NL's mental illness/disabilities. DRF sent a closing letter to NL, which contained information and referral resources for NL to use should they wish to attempt to litigate the matter. The letter also included information for contacting DRF should any future disability-related issues arise.

In a second example, SH—an adult with significant mental illness who contacted Disability Rights Florida (DRF) while hospitalized under the Baker Act—presented concerns about the status of a Section 8 tenancy and the voucher associated with the tenancy. DRF's investigation revealed that SH had a Section 8 voucher that was in good standing. However, SH's landlord denied the renewal of the yearly tenancy and issued a Notice of Non-Renewal of Lease. DRF staff provided SH with self-advocacy advice concerning the need to vacate within the prescribed time frame or seek reasonable accommodation for additional time to vacate. They also provided SH with self-advocacy assistance concerning any possible need for reasonable accommodation for additional time beyond the initial expiration of the voucher to find suitable living. With the help of the Power of Attorney (POA), SH was able to timely vacate the apartment prior to the expiration of the lease and is currently residing with a family member while they search for alternate living arrangements for SH.

As a result of the above steps, DRF closed SH's case due to the issues being resolved in the client's favor.

**Objective:** Systemic Advocacy for meaningful improvements to treatment planning and discharge processes in state mental health treatment facilities (SMHTFs) ("state hospitals"). DRF will use its findings from a multi-year monitoring of three SMHTFs that treat civil commitment patients to engage key stakeholders and collaborate on the development and implementation of effective discharge planning measures for long-term residents of the SMHTFs monitored that are tailored to the unique strengths and needed areas of improvement in each facility.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible individuals residing in state mental health treatment facilities. |
| **Expected Target:** | 1 |
| **Expected Outcome:** | 1 |
| **Actual Outcome:** | 1 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

This priority stems from initial monitoring activities that presented significant PAIMI-related challenges, resulting Disability Rights Florida (DRF) to transition the monitoring project to an independent systemic advocacy priority on their PAIMI program. In previous FYs, DRF conducted on-site monitoring activities at three State Mental Health Treatment Facilities (SMHTFs) with a total licensed bed capacity of 2455. The focus of the monitoring efforts was to identify barriers to discharge planning. During that time, DRF worked with an expert nurse reviewer and Licensed Clinical Social Worker to complete a report related to the goals of the monitoring project. DRF then delivered the report to the DCF Hospital Administrator, along with the administration at the three facilities, with a request to implement targeted strategies by DCF and other stakeholders to remove barriers to discharge and finding appropriate placements for individuals that have been at these institutions the longest. As a result, DRF completed the initial monitoring project in FY 2022-2023 and transitioned to a systemic advocacy project to oversee implementation of the recommendations at the institutions in FY 2023-2024.

In Q1 of FY 2023-2024, DRF staff met with a key DCF administrator to have an initial discussion on DCF's response to DRF's report and recommendations and discuss next steps, including additional information DCF is going to gather and provide to DRF about current patients awaiting admission and discharge to the SMHTFs. In Q2 of 2023-2024, DRF again met with DCF, including administrators that oversee the SMHTFs. DCF provided information about admission and discharge numbers, bed availability, length-of-stay data for forensic and civil patients and discussed the possibility of DRF assisting with certain barriers to discharge of long-terms patients. DRF and DCF agreed to hold quarterly meetings to share information and discuss new and ongoing concerns.

In Q3 of FY 2023-2024, DRF was unable to meet with DCF due to lack of availability of DCF personnel. However, DRF resumed investigation and monitoring activities related to potential discharge barriers of individuals who have been hospitalized for several years. During Q3, specifically, DRF staff continued patient interviews and discharge planning-focused records reviews at the three SMHTFs. DRF also planned on-site monitoring activities at each of the three SMHTFs, which will take place in Q1 of FY 2024-2025. As a result, this project will remain open throughout FY 2024-2025.

**Priority/Goal Description:** INCREASE PUBLIC AWARENESS OF DISABILITY RIGHTS FLORIDA'S PAIMI PROGRAM WORK AND EDUCATE INDIVIDUALS WITH SIGNIFICANT MENTAL ILLNESS/SIGNIFICANT EMOTIONAL DISTURBANCE, THEIR FAMILIES, AND SUPPORTERS ABOUT THEIR RIGHTS.

**Objective:** Provide callers to Disability Rights Florida who are individuals with significant mental illness or significant emotional disturbance, or who are seeking to assist someone with significant mental illness or significant emotional disturbance, with direct access to intake specialists trained to provide prompt information, external referral, or internal referral.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible individuals, their families, and supporters. |
| **Expected Target:** | 1000 |
| **Expected Outcome:** | 1000 |
| **Actual Outcome:** | 1468 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

Disability Rights Florida's (DRF) intake staff are trained to accept requests for service and provide information and referral services to PAIMI-eligible individuals. DRF maintains a specialized intake line for callers from civil and forensic State Mental Health Treatment Facilities, Baker Act receiving facilities, and other inpatient facilities. This line is administered and staffed daily by DRF staff who are specially trained in receiving calls from individuals with mental illness, interfacing with institutional facilities, and addressing concerns that arise in institutional settings. DRF also dedicates staff to receiving and responding to mail from individuals residing in correctional settings (e.g. county jails and state prisons), including PAIMI-eligible individuals, to provide information and referral services or follow-up on requests for service. Additionally, DRF's Frontline Intake and Referral Service Team (FIRST) staff receive and process calls and written intakes (online and via fax) from individuals - including PAIMI-eligible individuals - that reside in various community-based facilities (e.g. Assisted Living Facilities, group homes and nursing homes) inquiring about information and referral services or requesting service.

**Objective:** Provide quality outreach services to adults with significant mental illness and youth with significant emotional disturbance who are members of underserved populations, as well as their families and supporters.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible individuals who are members of underserved populations, including cultural, ethnic, and racial minorities, and their families and supporters. |
| **Expected Target:** | 2 |
| **Expected Outcome:** | 2 |
| **Actual Outcome:** | 21 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

During FY 2023-2024, Disability Rights Florida (DRF) provided 21 separate outreach events to underserved populations, including older adults, Veterans/active military personnel, racial/ethnic minorities (including individuals who speak Spanish as their primary language), veterans, LGBTQ+ populations, individuals who reside in areas of the state that are underserved by DRF, individuals who reside in rural areas, and individuals who are economically disadvantaged. DRF provided outreach in a variety of ways, including live and virtual presentations in English and Spanish, tabling events, and distribution of DRF materials.

**Objective:** Provide public awareness activities to include newsletters, podcast episodes, blogposts, social media postings, website content, and general distribution of agency brochures.

**Strategies Used:**

**Target Measures**

| | |
|---|---|
| **Target Population:** | PAIMI eligible individuals, their families, and supporters. |
| **Expected Target:** | 60 |
| **Expected Outcome:** | 60 |
| **Actual Outcome:** | 218 |
| **Achieved:** (●) **Not Achieved:** ( ) | |

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

Disability Rights Florida (DRF) provided 218 public awareness activities that include E-Newsletters sent to DRF's external mailing list, social media posts on 9 social media platforms, the DRF website, the distribution of DRF brochures and public planning surveys, and news articles about DRF's work or authored by DRF staff. The content focused on resources, rights, and information on a variety of disability topics that are relevant to individuals with significant mental illness/serious emotional disturbance, their families, and their supporters.

**Objective:** Advocate for the increased use of Supported Decision Making (SDM) through education of state policy makers, school districts, the judiciary, and attorneys on SDM as an effective and less restrictive alternative to guardianship for individuals with significant mental illness and significant emotional disturbance. This objective is particularly important for PAIMI eligible youth transitioning from secondary school into adulthood.

**Strategies Used:**

**Target Measures**

**Target Population:** PAIMI eligible individuals, their families, supporters, policy makers, and legal professionals.

**Expected Target:** 2

**Expected Outcome:** 2

**Actual Outcome:** 4

**Achieved:** (●) **Not Achieved:** ( )

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

In FY 2023 - 2024 Disability Rights Florida (DRF) staff continued to advocate for the use of Supported Decision Making (SDM) as an effective and less restrictive alternative to guardianship for adults with significant mental illness and youth with significant emotional disturbance. DRF accomplished this by: 1.) conducting training and education programs on the importance and use of SDM agreements; and 2.) continuing to educate policymakers on the need for formal legal recognition of SDM as an alternative to guardianship.

DRF staff provided training and education to individuals with significant mental illness/emotional disturbance, family members, lawyers, and judges on the appropriate use of SDM as an alternative to guardianship. First, DRF staff provided SDM training to legal aid attorneys statewide. DRF worked with the FSU Elder Law Clinic to develop, arrange, and provide the presentation, which covered the basics of Supported Decision Making (SDM), how to use it to avoid guardianship, and how to use it in conjunction with guardianship to increase decision making capacity. DRF's presentation—which was sponsored by Florida Legal Services and the Public Interest Law Section of the Florida Bar—had 94 participants in attendance (mostly attorneys, some self-advocates and some professionals who work with people with disabilities). The presentation was provided free of charge to attorneys and was recorded and housed on both DRF's website as well as Florida Legal Services' YouTube channel as part of a larger effort to expand the number of attorneys in the state who know about and can use SDM.

In regard to SDM-related legislative work, DRF's Public Policy staff continued to advocate for the eventual passage of a SDM bill by coordinating and workshopping proposed bill language with stakeholders, bill sponsors, and jurisdictional sections of the Florida Bar (including both the Elder Law and Real Property, Probate, and Trust Law Sections) to develop support and understanding of the need for passage of the bill in the 2024 Florida Legislative Session. In Q2 of FY 2023-2024, House Bill 73: Supported Decision-Making Authority was submitted to the Florida Legislature and in March of Q2 the Legislature voted to approve the Bill. In short, the measure will create a guardianship alternative for people with disabilities, including PAIMI-eligible individuals. According to the Bill, it will codify into law SDM as an agreement in which a power of attorney instrument may grant an agent the authority to receive information and to communicate on behalf of the principal without granting the agent the authority to bind or act on behalf of the principal in any subject matter. Moving forward, DRF will continue work on this project by monitoring HB 73 and educating people on SDM and SDM agreements.

**Objective:** Conduct training events to educate adults with significant mental illness, youth with significant emotional disturbance, and facility staff regarding patient rights in facilities. Take further action as indicated.

**Strategies Used:**

**Target Measures**

**Target Population:** PAIMI eligible individuals and their supporters.

**Expected Target:** 4

**Expected Outcome:** 4

**Actual Outcome:** 15

**Achieved:** (●) **Not Achieved:** ( )

**Reason why priority/goal was not achieved or was partially achieved:**

**Results narratives of P&A activities and accomplishments related to above priority:**

In FY 2023-2024, Disability Rights Florida (DRF) conducted a total of 15 education and training events about rights to PAIMI-eligible individuals that focused on patient rights in facilities, as well as individual rights when accessing mental health care and related services in facilities and the community. These included training events at Baker Act Receiving Facilities, State Mental Health Treatment Facilities (Forensic and Civil Units), Residential Treatment Facilities, Homeless Coalitions, Drop-in Centers, and Clubhouses. Over the course of the fiscal year, 497 PAIMI-eligible individuals received education and training about their rights in facilities and in a variety of community settings. At these training and education events, DRF staff provided information about DRF (including P&A history and authority, grants, access authority, DRF history and current teams makeup), DRF services (including how to receive DRF services via FIRST and the Mental Health (Inpatient) Intake Line), information about the PAIMI grant and the PAIMI Advisory Council, and information about rights of persons with disabilities for individuals in inpatient settings and in the community. DRF staff also gathered information from participants about their needs, the needs of the mental health community, and how DRF may be able to support them. DRF informational materials--including DRF's "Supporting Individuals with Significant Mental Health Conditions" and our PAIMI Mental Health Resources Guide--were provided in English, Spanish and Haitian-Creole.

FACILITY BASED EXAMPLES:

As an example of rights and self-advocacy trainings to PAIMI-eligible individuals in an inpatient treatment setting, Disability Rights Florida (DRF) provided rights education and outreach to behavioral health patients at a private hospital/Baker Act Receiving Facility that provides mental health services to individuals with significant mental illness requiring inpatient care and intensive community-based follow-up. The facility is located in South Miami—an urban area with a diverse population—serving behavioral health patients ages 11 years and above.

The facility also maintains contracts with various state and federal correctional and law enforcement agencies to provide secure medical and mental health treatment to individuals who are in correctional or Immigration and Customs Enforcement (ICE) custody. There is a separate locked wing of the hospital for patients who require medical care and are accompanied by security officers from their correctional or ICE detention facility. In the behavioral health units, since these are locked/secure units, the behavioral health patients are not separated from the other patients and are able to participate in all treatment activities but must be accompanied by the security officers from their facility and remain foot shackled during their stay.

DRF presented to three different groups of patients: Inpatient adult/geriatric unit, inpatient youth, and partial hospitalization program (PHP) adults. Included in the inpatient adult group was an ICE detainee who required inpatient hospitalization due to symptoms of significant mental illness. All three patient groups received information about patient rights and DRF services and were provided copies of DRF's "Supporting Individuals with Significant Mental Health Conditions" brochure in the language of their choice (English, Spanish, or Haitian-Creole). A total of 47 patients received training (16 inpatient adults, 7 inpatient youth, and 24 PHP patients). Facility staff showed DRF all areas where care and treatment are provided to inpatient and PHP patients, including the Emergency Room where intake is conducted. DRF provided large quantities of brochures and extra inpatient posters to the Risk Manager for distribution to patients upon intake and discharge. The facility staff invited DRF to return and provide training at their Hollywood location in the near future, as well as to continue to provide resources and information helpful to individuals with psychiatric disabilities.

In a second example, DRF provided education and outreach to behavioral health patients at a public hospital designated as a Baker Act Receiving facility that provides mental health services to individuals with significant mental illness requiring inpatient care in St. Lucie County. DRF visited all six units of the facility and provided copies of DRF's "Supporting Individuals with Significant Mental Health Conditions" brochure to patients in the language of their choice. DRF also conducted rights and self-advocacy training for patients in four of the six units with a total of 35 patients receiving in-person training. DRF staff met with staff on each unit and provided them with information about DRF services, as well as DRF brochures. DRF staff also met with patients individually after some sessions and provided information and/or referred them to DRF's Inpatient Mental Health line.

Additionally, DRF provided the facility with 125 DRF brochures and "Supporting Individuals with Significant Mental Health Conditions" brochures in English, Spanish and Creole were provided to the facility along with PAIMI facility posters.

COMMUNITY BASED EXAMPLES:

As an example of rights and self-advocacy training to PAIMI-eligible individuals in a community-based setting, DRF provided rights to members of a Clubhouse in Polk County Florida. Clubhouses serve adults with serious, persistent mental illness the opportunity to achieve their full potential through friendship, wellness, skill development, community support, education, and employment.

DRF staff presented to members of the Clubhouse. All members received information about patient rights and DRF services, as well as brochures and other DRF materials. A total of 45 members received training. Additionally, DRF staff gathered information from the group about concerns they felt needed addressing in the mental health/disability community. DRF staff also met with members privately and individually after the training and provided information and/or referred them to DRF's intake process. In addition to the in-person training, DRF provided approximately DRF brochures and PAIMI facility posters (English, Spanish and Creole) to staff.

In a second example, DRF staff provided a rights and self-advocacy presentation, titled "Understanding Florida's Mental Health System", at the 2024 Family Café event in Orlando, Florida. The presentation walked attendees through the different types of mental health services available

for people with mental illness and youth with serious emotional disturbance, including, but not limited to, Community Mental Health Centers, State Mental Health Treatment Facilities, SIPPs, JITP, FACT teams, Mobile Response Teams, and Respite Care. Forty people attended the presentation, which included people with significant mental illness, family members of people with significant mental illness/serious emotional disturbance, youth with serious emotional disturbance, and mental health professionals. DRF staff also provided attendees with printed copies of the presentation slides (including large print options), DRF brochures, PAIMI brochures, the Mental Health Resource Guide, and printouts of the DCF service provider maps for Mobile Response Teams and Coordinated Specialty Care for Early Psychosis.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

# Advisory Council Report

## Advisory Council Report (Required)

Advisory Council Report (ACR)

The Advisory Council Report (ACR) section of the annual PAIMI Program Performance Report, to the Secretary of the U.S. Department of Health and Human Services, **is due by January 1**. The ACR is mandated under the PAIMI Act at 42 U.S.C. 10805 (a) (7). The ACR is the PAIMI Advisory's Council's (PAC) **independent assessment** of their protection and advocacy system's for the previous fiscal year. **The ACR must be prepared by the PAC and signed and dated by the PAC Chairperson.**

Please use the box below to indicate areas of technical assistance needed related to this section.

0930-0169 Approved: 07/27/2023 Expires: 07/31/2026

**Footnotes:**

OMB Approval: 0930-0169
Expiration Date: 07/31/2026

# THE ADVISORY COUNCIL REPORT (ACR) SECTION OF THE ANNUAL PAIMI PROGRAM PERFORMANCE REPORT (PPR)

| STATE | Florida | FISCAL YEAR | 2023-2024 |
|---|---|---|---|

The Advisory Council Report (ACR) section of the annual PAIMI Program Performance Report, to the Secretary of the U.S. Department of Health and Human Services, **is due by January 1**. The ACR is mandated under the PAIMI Act at 42 U.S.C. 10805 (a) (7). The ACR is the PAIMI Advisory's Council's (PAC) **independent assessment** of their protection and advocacy systems for the previous fiscal year. **The ACR must be prepared by the PAC and signed and dated by the PAC Chairperson.**

**For ACR assistance, please contact the PAIMI Program Coordinator.**

Please read and follow the instructions in each section and use the attached glossary in to complete the form.

Public reporting burden for the ACR section of the annual PAIMI PPR is estimated to average 10 hours per response. This includes the time needed to review the instructions, to search existing data sources, to gather the data needed, and to complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to SAMHSA Reports Clearance Officer; Paperwork Reduction Project (XXXX-XXXX); CBHSQ, Room 15E21B; 5600 Fishers Lane, Rockville, MD 20857. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is (XXXX-XXXX).

## The ACR Section of the ANNUAL PAIMI PPR

TABLE of CONTENTS

| The ACR Section of the Annual PAIMI PPR | |
|---|---|
| **SECTION A. GENERAL INFORMATION** | |
| Fiscal Year: | 2023-2024 |
| State: | Florida |
| Name of P&A system: | Disability Rights Florida |
| PAC Report Prepared By:<br>Provide the name [Print First, Middle and Last Name]<br>Title of the Preparer:<br>Phone Number: | Lindsey Nichole Betterman<br><br>PAC Chair<br>305.434.0367 |
| Name of PAC Chair:<br>[Print First, Middle and Last Name]<br>Provide updated contact information if the PAC Chair is different than the person listed on the most recent PAIMI Application. | Lindsey Nichole Betterman |
| Telephone Number: | (305) 434-0367 |
| E- Mail Address: | LNG4647@hotmail.com |
| Date Submitted: | 12/5/2024 |
| By signing this document, the Chair certifies that this report reflects the consensus of the PAC members. | Lindsey N. Betterman |

| SECTION B. The PAIMI ADVISORY COUNCIL (PAC) | |
|---|---|
| *Under Primary ID, select *ONLY ONE* (1) primary identity for each PAC member position **[B.1.b. - B.1.h.] that** is mandated per the PAIMI Act & Rules). | **Primary Identification** |
| **B.1.a. The TOTAL number of seats on the PAC.** | **Total 7-13** |
| B.1.b. Individuals who are recipients/former recipients (R/FR) of mental health services. | 1 |
| B.1.c. Family members of individuals who are recipients/former recipients (R/FR) of mental health services. | 3 |
| At least one (1) PAC member shall be a B.1.d. | |
| B.1.d. Family members of a minor child or youth (under 18 years old) who has received or is receiving mental health services. | 1 |
| B.1.e. Mental health service providers. | 1 |
| B.1.f. Mental health professionals: | 1 |

| | |
|---|---|
| B.1.f.1. Social Workers | 1 |
| B.1.f.2. Psychologists | |
| B.1.f.3. Psychiatric Nurses | |
| B.1.f.4. Psychiatrists | |
| B.1.f.5. Psychiatric Nurse Practitioners | |
| B.1.f.5. Peer Support Specialists | 1 |
| B.1.g. Attorneys. | 1 |
| B.1.h. Individuals from the public knowledgeable about mental illness. | 1 |
| B.1.i. Others (please identify by position held). | |
| B.1.j. Vacancies as of 9/30. [identify each vacant position & the date it was vacated]. | 0 |
| **B.1.k. TOTAL number of PAC members serving on 9/30.** | **Total** |
| B.1.l. Number of PAC members who are either R/FR of MH services or family members of these individuals (count each PAC member only once). | 9 |
| B.1.m. Percentage of PAC members who are either R/FR of MH services or family members of these individuals [B.1. k. divided by B.1.l.] | 100% |

| **B. 2. REPRESENTATION OF THE PAC CHAIRPERSON** | | |
|---|---|---|
| B.2. Is the PAC Chair an individual who has received or is receiving mental health services, or a family member of an individual who has received or is receiving mental health services? | **Yes** X | **No** |

| **B. 3. PAC TERMS of Appointment** | |
|---|---|
| B.3.a. Term of Appointment (number of years) | 4 |
| B.3.b. Maximum Number of Terms a Member May Serve | 1 |
| B.3.c. Frequency of Meetings | Quarterly |
| B.3.d. Number of Meetings Held in the FY [3 is the mandated minimum]. | 5 (4 quarterly meetings and 1 Special PAC input meeting) |
| B.3. e. Number (%Average) of PAC members present at Meeting. | 67.2% |

**SECTION C. PAC ETHNICITY & RACIAL DIVERSITY**

Please refer to the **GLOSSARY** for definitions. The following information is self-reported or self-identified and uses two separate questions. The data on race and ethnicity are collected SEPARATELY; provision shall be made to report the number of respondents in each category who are Hispanic or Latino. Collection of greater detail is encouraged; however, any collection that uses more detail shall be organized in such a way, that the additional information can be aggregated into these minimum categories for data on race and ethnicity.

| **C. A. ETHNICITY** | **Number of PAC Members** |
|---|---|
| C. A. 1. Hispanic or Latino | 1 |
| C. A. 2. Not of Hispanic Origin | 8 |

| | |
|---|---|
| C. A. 3. Ethnicity Unknown | 0 |
| (Add C.A.1 through C.A.3., the total should be the same as the one listed in B.1.k. (members serving as of 9/30). | **Total** |
| **C. B. RACE** | |
| C. B. 1. American Indian or Alaska Native | 0 |
| C. B. 2. Asian | 0 |
| C. B. 3. Black or African American | 2 |
| C. B. 4. Native Hawaiian/Other Pacific Islander | 0 |
| C. B. 5. White | 6 |
| C. B. 6. Two or more races | 1 |
| C. B. 7. Some other race | 0 |
| C. B. 8. Race unknown | 0 |
| C. B. 9. = C.B.1 through C.B.8. | **Total: 9** |
| Members may select as many racial identifications as they want. | |
| **C. C.1. Total Number of PAC member vacancies on September 30.** | **Total PAC Vacancies: 0** |
| | |

| **SECTION D. Gender of PAC Members** | |
|---|---|
| D.1 FEMALE 5 | D.2 MALE 1 |
| D.3 TRANSGENDER (Trans Woman) | D.4 TRANSGENDER (Trans Man) |
| D.5 TWO-SPIRIT (if AI or AN) | D.6 GENDER NON-CONFORMING 1 |
| D.7 OTHER (if use a different term) | D.8 PREFER NOT TO SAY 2 |
| **D.3. TOTAL : 9** | |

| **SECTION E. GOVERNING BOARD INFORMATION** | | |
|---|---|---|
| **E. 1. FOR STATE-OPERATED P&A SYSTEMS ONLY:** | | |
| E.1.a. Is this a State-operated P&A system? | Yes | No X |
| E.1.b. Does this State-operated system have a Governing Board/Authority authorized by State statute? If the answer is NO, proceed to Section F. | Yes | No X |
| E.1.c. If the answer to item E.1.b. is YES, does the PAC Chair sit on the Governing Board/Authority as a full voting member? | Yes | No |
| E.1.d. If the answer to item E.1.c. is no, briefly explain (e.g., State statute determines Governing Board/Authority composition, etc.). | | |
| **E.2. For PRIVATE, Not-for Profit P&A SYSTEMS only** | | |

| | | |
|---|---|---|
| E. 2.a. Does the P&A system have a multi-member Governing Board? | Yes<br>X | No |
| If you answered YES to E.2.a., please answer the questions E.2.b. 1. - 3. | | |
| E.2.b.1. Number of Governing Board members. | Total: 15 | |
| E.2.b.2. Is the PAC Chair a full voting member of the Governing Board? | Yes X | No |
| E.2.b.3. If you answered No to E.2.b.2., then explain why the PAC Chair is not a full voting member of the Governing Board as mandated by the PAIMI Rules at 42 CFR 51.22(b)(3). | | |
| E.2.b.4. Do any other PAC members hold seats on the Governing Board? If Yes, how many seats? ____ | Yes | No<br>X |

| SECTION F. PAC ACTIVITIES [See, PAIMI Act - 42 U.S.C. 10805(7)] | | |
|---|---|---|
| F.1. Are P&A program staff invited to attend PAC meetings? | Yes X | No |
| F.1.a. Did any of the invited program staff attend? | Yes X | No |

F.2.a. If the answer to F.1. is Yes, please identify the positions of staff (e.g., PAIMI Coordinator, Mental health advocate, etc.) usually invited to attend.

**At all meetings:**

- **Attorney-Director of Investigation Team**
- **PAIMI Program Coordinator**
- **DRF-PAC Liaison**
- **Executive Director**
- **Director of Operations**

**Invited as needed:**

- **Director of Public Policy**
- **Staff Attorneys on Public Policy Team**
- **Director of Systems Reform**
- **Director of Advocacy, Education, and Outreach**
- **Staff Attorneys on Investigations Team**
- **Advocate/Investigators on Investigations Team**

F.2.b. If the answer to F.1.a. is Yes, please identify the positions of the program staff in attendance (e.g., one advocate, one attorney) and their role at the meetings, e.g., information sharing, etc.

- **Director of Investigations (Institutions) Team: Planning, information sharing**
- **PAIMI Program Coordinator: Planning, information sharing**
- **Executive Director: Information sharing and PAIMI grievances**
- **Director of Operations: PAIMI financials and information sharing**
- **DRF-PAC Liaison: Meeting coordination, minutes, and travel assistance**
- **Team Directors: Training and information sharing**
- **Staff Attorneys: Training and information sharing**
- **Advocate/Investigators: Training and information sharing**

F.2.c. If the answer to F.1. is No, you *MAY* provide a brief explanation.

| | | |
|---|---|---|
| F. 3. a. Were governing board members, excluding the PAC Chair, invited to PAC meetings? | Yes<br>X | No |

F.3.b. If you answered Yes to F.3.a., which governing board members were invited, for what purpose (e.g., informational, etc.) and did they attend?

**An open invitation exists between the PACc and the Board to attend each other's meetings. During the FY 2023-2024, the following Board members attended PAC meetings:**

- **Kyle Romano, information sharing**
- **Beth Boone, information sharing**

| | | |
|---|---|---|
| F.3.c. Did any of the invited governing board members attend? | Yes X | No |
| F.4. Did the PAC work jointly with the governing board to develop the annual PAIMI priorities? [42 CFR 51.23(a) (2)]. | Yes<br>X | No* |

F.4.a. If Yes, briefly describe these joint activities.

**The PAC provided written input and comments to the Board regarding the annual PAIMI Goals, Priorities, and Objectives. In response, the Board provided written comments about how the PAC's input was incorporated into drafting the updated Goals, Priorities, and Objectives. The PAC also presented input at the 3rd Quarter Board meeting through the PAC chair. A copy of the written exchange between the PAC and the Board is attached.**

## SECTION F. PAC ACTIVITIES [See, PAIMI Act - 42 U.S.C. 10805(7)]

F.4. b. If No, PAC's affiliated with private, non-profit P&A systems must provide a brief explanation.

F.5. Did PAC members attend any in-state or out-of-state trainings or educational presentations related to PAIMI Program activities? *[42 CFR 51.27 - payments for PAC and Governing board/authority members by a State P&A system are optional].*

| F.5.a. In-State Trainings/Educational Activities. | Yes | No |
|---|---|---|
| If Yes, list each activity by number and provide a brief description of PAC involvement, e.g., Activity 1 – Attendance at local NAMI training.<br><br>**1. The Family Café from June 13 – June 16, 2024, in Orlando, Florida.**<br>**a. 1 PAC member presented "What I Need to Know to Successfully Transition from High School" (DRF Project No. 10818).**<br>**b. 1 PAC member spoke at and assisted with the Disability Rights Florida Public Forum (DRF Project No. 9564).**<br>**2. DRF's Rights Training at a Clubhouse in Gainesville, FL on May 29, 2024. 1 PAC member attended and participated by providing attendees with information about the PAC, PAC membership, and the PAC application process.** | X | |

| F.5.b. Out-of-State Trainings/Educational Activities. | Yes | No |
|---|---|---|
| If yes, list each activity by number and provide a brief description of PAC involvement, e.g., Activity 1 – Attendance at NDRN annual conference.<br><br>**1. 2024 Psychotherapy Networkers Symposium from March 21 – March 23, 2024 in Washinton D.C. PAC Member attended conference.**<br>**2. NDRN Conference from June 3 – June 7, 2024, Crystal City Virginia. PAC member attended conference.** | X | |

F.6. Does the P&A system have established written policies and procedures for reimbursing PAC members for expenses that takes into account the needs of the individual council members, available resources and applicable restrictions on use of grant funds, including the restrictions cited in and the restrictions in 51.31(e) and 51.6(e)? [See, 42 CFR 51.23 (d) (1)].

| F.6.a.1. Yes X | F.6.a.2. No* | F.6.a.3. Don't Know.* |
|---|---|---|

F.6.b. Brief explanation needed for F.6.a.2. or F.6.a.3. responses].

## SECTION F. PAC ACTIVITIES [See, PAIMI Act - 42 U.S.C. 10805(7)]

F.7. If the answer to F.6. was Yes, were PAC members reimbursed for expenses incurred for PAIMI Program related activities, consistent with the P&A system's policies and procedures.

| | | | |
|---|---|---|---|
| F.7.a. | 1.Yes X | 2. No* | 3. Don't Know* |

F.7.b. *Brief explanation required for either F.7.a. 2. No *or F.7.a.* 3. Don't Know responses.

F. 8. REIMBURSEMENT OF EXPENSES – If PAC member expenses were reimbursed, please complete the following chart. [42 CFR 51.23(d) (1)]. Under the Activity column, list the activity by the number used in above F.5.a. – In-State or F.5.b. – Out-of-State. Example: F.5.b. Out-of-State activity # 1, – 5 PAC members attended the NDRN annual meeting, 2 members reimbursed by the P&A; 2 self-paid, 1 NDRN scholarship.

| a. ACTIVITY | b. # ATTENDING | c. P&A | d. SELF | e. OTHER |
|---|---|---|---|---|
| F. 5.a. – In-State #1 | 2 | 1 | 1 | |
| F. 5.a. – In-State #2 | 1 | 0 | 1 | |
| F 5.b. – Out-of-State | 1 | 1 | | |
| F. 5.b. – Out-of-State | 1 | 1 | | |

## SECTION F. PAC ACTIVITIES [See PAIMI Act at 10805(7)]

F.9. Did the P&A system provide the PAC with reports, materials, & fiscal data to enable review of the following: [42 CFR 51.23(c)].

| | | |
|---|---|---|
| F.9.a. Existing program policies, priorities, and performance outcomes. | Yes<br>X | No* |
| F.9.b. If Yes, were the submissions (of P&A system documents referenced in F.9.a.) made at least annually and (shall) report expenditures for the past two (2) FISCAL *YEARS?* | Yes<br>X | No* |
| *F.9.c. If the answer to F.9. a. or F.9.b. is 'No", a brief explanation is required. | | |
| F.9.d. If you answered Yes in F.9.a., did the P&A system documents referenced also *INCLUDE THE PROJECTED EXPENSES FOR THE NEXT FISCAL YEAR (FY) IDENTIFIED BY BUDGET CATEGORY*, e.g. salary & wages, contracts for services, administrative expenses, including, the amount allotted for training of the PAC, the governing board and staff? | Yes<br>X | No* |
| F.9.d.1. If No*, a brief explanation is required]. | | |

## SECTION F. PAC ACTIVITIES [See, PAIMI Act at 10805(7)]

F.9.e. The PAIMI Rules mandate that members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by and the activities of the P&A system. Procedures for public comment must provide for notice in a format accessible to individuals with mental illness, including such individuals who are in residential facilities, to family members and representatives of such individuals with disabilities. [42 CFR at 51.24(b)].

F.9.e. Does the P&A have procedures established for public comment?

| | | |
|---|---|---|
| F.9.e. 1. Yes X | F.9.e. 2. No* | F.9.e.3. Don't Know* |
| F.9.e.4. *Brief explanation required for F.9.e.2. No or F.9.e.3. Don't know responses. | | |

F.9.f. Was the PAC provided a copy of these procedures?

| | | |
|---|---|---|
| F.9.f.1. Yes X | F.9.f.2. No* | F.9.f.3. Don't Know* |
| F.9.f.4. *Brief explanation required for F.9.f.2. No or F.9.f.3.Don't know responses. | | |

## SECTION F. PAC ACTIVITIES [See, PAIMI Act at 10805(7)]

F.9.g. The PAIMI Rules, at 42 CFR 51. 24(b), mandate that the public shall be given an opportunity, on an annual basis, to comment on the priorities established by and the activities of the P&A system. *WAS THE PUBLIC PROVIDED AN OPPORTUNITY FOR PUBLIC COMMENT?*

| F.9.g. 1. Yes# X | F.9.g. 2. No* | F.9.g.3. Don't Know* |
|---|---|---|

F.9.g 4. #If the answer to F.9.g.1. is Yes, briefly describe activities the P&A system used to obtain public comment.

**Notice of public comment period is posted on the DRF website, social media platforms (including Facebook), provided electronically to the organization's email list, and provided by letter to the Governing Board and the PAC. DRF's intake and information referral unit provides notice of the public input survey along with a link on all electronic communications and provides electronic or hard copies of the survey to individuals, including individuals in facilities who contact DRF and provide an email address. The PAC provided notice at the on-site outreach event during the input period at the 2024 Family CAFÉ event and led small group discussions to solicit input from the public at DRF's Public Forum at the 2024 Family CAFÉ event.**

F.9.g. 5. *If the answer to F.9.g.2. is NO, explain why public comment was not obtained.

F.9.g. 6. *If the answer to F.9.g.3. is DON'T KNOW, please explain (e.g., PAC needs training, etc.)

F.10. ***COMPLETION OF THIS SECTION (F.10 a. –e.) IS OPTIONAL.*** However, if you choose to respond, please describe in the spaces below any other PAC activities, *other than* mandated PAC membership meetings.

F.10.a. Briefly describe, governing board or PAC committee work.

F.10.b. Briefly describe any training or educational presentations to either constituency groups or the general public.

## SECTION F. PAC ACTIVITIES [See, PAIMI Act – 42 U.S.C.10805(7)]

F.10.d. Briefly describe any special projects (e.g., institutional monitoring).

F.10.e. Briefly describe any other activities, e.g., fund raising, public relations, etc.

## SECTION G. PAC ASSESSMENT OF PAIMI PROGRAM OPERATIONS

G.1. ***Please provide a NARRATIVE SUMMARY of the PAC'S ASSESSMENT of the PAIMI priorities (goals) and objectives included in the PPR for this Fiscal Year.***

| *Include in the narrative an assessment of the following items:* |
|---|
| G.1.a. The PAIMI Priorities (Goals) and Objectives selected. |
| G.1.b. The activities conducted towards achieving these priorities (goals) and objectives. |
| G.1.c. The outcomes. |
| G.1.d. Examples of individual or systemic cases, applicable legislative activities, and participation in State mental health planning activities. |
| G.1.e. Any recommendations regarding future priorities (goals) and objectives. |

It is the evaluation of the Council that Disability Rights Florida has taken appropriate steps and measures to ensure the concerns of the Council are reflected in the work performed around the state. Each objective has been quantified in a goal of individuals who have been assisted in accordance with the particular objective target. These targets have been met and frequently surpassed.

The advocacy work done on behalf of PAIMI eligible individuals to receive a Free and Appropriate Pubic Education is able to be quantified in the population outcome laid out in the PPR, this goal was of particular concern to several council members and the work done and described by DRF staff have adequately informed the council as to the progress made on this goal. This advocacy included legal intervention for children facing discriminatory practices as well as rights education for families and professionals.

Regarding the PAC's concern regarding the inappropriate use of Power of Attorney's for adults, DRF has been supportive of legislation promoting Supported Decision Making as an alternative to guardianship as well as provides ongoing education regarding self-determination in the transition to independence process.

The PAC is dedicated to improving access to community based supports and services. To that end DRF provides legal assistance whenever necessary to intervene on behalf of individuals with disabilities to ensure their access to medically necessary healthcare as well as advocate and educate policy makers and service providers on alternatives to institutionalization and available community supports.

The Council is working, on an ongoing basis, to improve access to public programs and services. DRF provides ongoing intervention for public accommodations, government services, disaster planning/recovery, voting, and transportation inadequacies.

DRF is on target with the protections and/or outcomes related to abuse, neglect and/or rights protections of individuals with significant mental illness. Cases regarding PAIMI eligible individuals are being investigated and ongoing updates are provided, keeping the council informed of how the Goals are actively held in high importance by staff in the work that they do.

The Council would like to increase the awareness of rights amongst those with disabilities and to educate policy makers. DRF regularly participates in community-based events bringing awareness of all of their available supports and services to include accessibility and to enhance their self-advocacy skills.

The service requests received and explained in the PPR are of continuing importance to the council and have guided the formation of future goals, priorities and objectives which will remain consistent with the above for fiscal year 2024 - 2025. The outreach of the underserved populations that DRF is prioritizing falls in line with the goals of the council as well.

## SECTION G. PAC ASSESSMENT OF PAIMI PROGRAM OPERATIONS

G.2. OTHER COMMENTS CONCERNING PAIMI SYSTEM OPERATIONS:

*Briefly describe any special initiatives, problem solving techniques, or innovative practices that may help other State P&A systems.*

| G.3. Please list any training & technical assistance needs identified by the PAC. |
|---|
| |

| SECTION H. GRIEVANCE PROCEDURES [42 CFR Section 51.25] | | |
|---|---|---|
| **Pursuant to the PAIMI Rules at 42 CFR 51.25, the P&A systems shall establish procedures to address grievances from: individuals at 42 CFR 51.25*(a)(1) – clients or prospective clients . . . ; and systemic complaints at 42 CFR 51.25(a)(2) – individuals who have received or are receiving mental health services in the state, family members or representatives of such individuals . . . .*** | | |
| H.1. Is the PAC aware of and knowledgeable of the above referenced policies and procedures? | Yes<br>X | No* |
| H.1.a. If you answered No to H.1. provide a brief explanation. | | |
| H.2. The number of grievances filed by PAIMI-eligible clients, including representatives or family-members of such individuals receiving services during this fiscal year. | Total: 0 | |
| H.3. The number of grievances filed by prospective PAIMI-eligible clients (those who were not served due to limited PAIMI Program resources or because of non-priority issues). | Total: 0 | |
| H.4. Add H.2 & H.3 **[42 CFR Section 51.25(a)(1),(2)]** | Total: 0 | |
| **H.5. The Number of Grievances Appealed to:** | | |
| H.5. a. The Governing Board (the PAC Chair of a private, non-profit P&A system should have this information). | Total: 0 | |
| H.5.b. The Executive Director | Total: 0 | |
| H.5 c. The number of Grievances appealed [H.5.a. + H.5.B = H.5.c.]. | Total: 0 | |

| | |
|---|---|
| H.6. The number of reports sent to the Governing Board AND the PAC (*at least one annually*) that describe the grievances received, processed, and resolved. | Total: 4 |

## SECTION H. GRIEVANCE PROCEDURES [42 CFR Section 51.25]

H.7. Please identify all individuals, by name & title, responsible for P&A system grievance reviews.

Dr. Beth Boone, Chair, Board of Directors Client Grievance Committee

Peter Sleasman, Executive Director

| | | |
|---|---|---|
| H.8. What is the timetable (in days) used to ensure prompt notification of the grievance procedure process to clients, prospective clients or persons denied representation, and ensure prompt resolution. **[42 CFR 51.25(B)(4)]** | | Days<br>30 |
| H.9. Were written responses sent to all grievants? | Yes<br>X | No* |
| H.9.a. *If you answered No, to H.9, briefly explain. | | |
| H.10. Was client confidentiality protected? ____. If not, explain below. **[42 CFR 51.25(B)(6)]** | Yes<br>X | No* |
| H.10.a. *If you answered No, to H.10, briefly explain. | Yes | No* |

## GLOSSARY

**Closed Case** - is when the advocate/attorney closes the client record or case file after providing advocacy interventions on behalf of a client and determining that the client either has no need of further intervention services or that the agency has no other services available to address the issue(s) or complaint(s) for which the case was initially opened.

**Grievance Procedures** - are policies and procedures developed by the P&A system to ensure that its clients and prospective PAIMI-eligible clients, their family members, or representatives have full access to the system services and that the system is fully compliant with the provisions of the PAIMI Act and Rules.

**Information and Referral (I&R) Services** - is the provision of brief written or oral information, such as generic information about the P&A, including information about additional programs and resources external to the P&A that relate to the individual's service needs and statutory or constitutional rights as a person with a disability. I &R services are generally of short duration, typically range from a few minutes to an hour, do not involve direct advocacy intervention by staff, and any type of staff follow-up. I&R services may include mailing generic agency information. Individuals receiving I &R services are not counted as PAIMI clients.

**Intervention Strategies:**

**Abuse/Neglect Investigations** - a systemic and thorough examination of information, records, evidence, and circumstances surrounding an allegation of abuse and neglect. Investigations are undertaken to determine if there is a basis for administrative or legal action on behalf of the client. Investigations require a significant allocation of time to interview witnesses, gather factual information, and to issue a written report of findings.

**Administrative Remedies** - includes the use of any systems for appeal within an agency or facility, or between agencies, which does not involve adjudication by a court of law.

**Legal Remedies** - the legal representation of clients in litigation in court processes concerned with rights, grievances, or appeals of such rights or grievances.
Legislative/Regulatory Advocacy - activities involve monitoring, evaluating, and commenting upon the development and implementation of Federal, State, and local laws, regulations, plans, budgets, taxes and other actions which may affect individuals with mental illness. [The PAIMI Rules at 42 FCR at 51.24 mandates that legislative activities shall also be addressed in the development of program priorities].

**Negotiation/Mediation** - is an informal, non-legal intervention by a PAIMI representative, attorney or case manager used to resolve problems with facility staff or other agency representatives; (does not involve a formal appeal).

**Objectives** - are activities undertaken to achieve annual program priorities (goals). All objectives required to have measurable outcomes and the use of numerical targets is encouraged. Each objective must clearly state why the activity was undertaken, who will benefit from the objective (the target population), how the activity will be accomplished, and what is the expected outcome for the activity? Generally, with the exception of litigation, legislative or regulatory activities, objectives shall be attainable within the fiscal reporting period (within one (1) fiscal year).

**Open Case** - is when a PAIMI-eligible individual with a complaint is accepted as a client by the P&A system. A case record or case file is opened for that individual. System staff maintain all intervention services provided to the client and other information t are maintained in this case record/file.

**Outreach** - is an activity that targets information on PAIMI Program activities to specific populations (e.g., cultural, ethnic, and racial minorities, and other underserved or un-served populations, etc. The activity is linked to an objective of a specific annual priority.

**PAIMI Clients (for purposes of this report)** - are individuals who meet the PAIMI eligibility criteria as defined in the PAIMI Act [42 U.S.C. 10802(4) and its Rules at 42 CFR 51.2 Definitions, who have a complaint, for whom demographic data is collected, and for whom the PAIMI Program, or any of its subcontractors, provides an intervention (as reported under Intervention Strategies in this form).

**Priorities (Goals)** - are broad general descriptions of short-term activities for the P&A system to accomplish within one (1) fiscal year (FY). [The exceptions are generally regulatory, legislative, and litigation activities]. The priorities must be directly related to the purpose of the enabling Federal legislation and the requirements of the Federal-funding agency and consistent with the priorities included in the PAIMI Application for the same FY. [See PAIMI Act at 42 U.S.C. 10801, PAIMI Rules at 42 CFR 51.24 (a) – Program Priorities, and the Children's Health Act of 2000 at 42 U.S.C. at 290ii-ii-1 and 290jj-jj-2].

**Public Awareness Activities** - provide general information on disability rights and the purpose and mission of the P&A system. Public awareness activities include public service announcements, newsletters, radio or television, publications in legal journals, web site services, general distribution of agency brochures, etc.

**Public Education and Constituency Training** - is the dissemination of information to one or more persons through an interactive event, which often promotes a greater understanding of the constitutional or statutory rights of persons with disabilities. Contrasted to Public Awareness Activities, education and training must be specifically targeted to meet the unique need of the group(s) trained.

**Racial/Ethnic Background** - The following minimum standards shall be used for all federal administrative reporting and grants reporting or record keeping requirements that include data on race and ethnicity [http://www.whitehouse.gov/omb/fedreg_1997standards/].

**CATEGORIES AND DEFINITIONS:**

Ethnicity:

Hispanic or Latino - A person of Cuban, Mexican, Puerto Rican, South or Central American descent.

Not of Hispanic Origin.

Race:

American Indian or Alaska Native (include tribal affiliation for the Alaska native when possible) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

Black or African American - A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific islands.

White - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Respondents have the option of selecting one or more racial designations.

**Resolution of Complaint/Problem Area** – is in a client's favor when (1) the client is satisfied with the result of the intervention or (2) the expressed wish or stated goal of the client is either fully attained or negotiated to an agreeable outcome, or (3) the violation in the stated case complaint/problem area was remedied.

**Systemic Advocacy Activities** – are the efforts taken to implement changes in policies and practices of systems that impact persons with mental illness. These "systems" include, but are not limited to, State agencies, various public and private residential care and treatment facilities, and other service providers, etc. [The PAIMI Rules at 42 CFR 51.24 (a) PAIMI Priorities state that systemic activities shall be addressed in the development and implementation of program priorities].

**Technical Assistance** - assistance provided to family members, non-legal guardians, professionals, or other advocates in consultation regarding an area of the law in which the P&A has expertise. It is considered a non-client directed activity.