

Draft

BYLAWS

of the
Hawaii Disability Rights Center
PAIMI ADVISORY COUNCIL

Date Adopted _____

Article 1. Name, Authority, and Purpose

1.1 Name. The name of this body is the Hawaii Disability Rights Center PAIMI Advisory Council (Council).

1.2 Authority. The Council is established pursuant to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act¹ and applicable regulations²

1.3 Purpose. The Council's purpose is to jointly develop and establish the annual priorities and policies under the PAIMI Act with the Hawaii Disability Rights Center (HDRC),³ and otherwise provide independent advice and recommendations to HDRC on its activities pursuant to the PAIMI Act.⁴

Article 2. Definitions

2.1 The term "individual with mental illness" means, except as provided in 42 U.S.C § 10804(d), an individual--

(a) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(b) (1)(i) who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;

(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or

(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense; or

¹ 42 U.S.C. § 10801, et seq.

² 42 C.F.R. Part 51.

³ 42 U.S.C. § 10805(c)(2); 42 C.F.R. § 51.22(a); and 42 C.F.R. § 51.23(a)2.

⁴ 42 C.F.R. § 51.23(a)(1).

(2) who satisfies the requirements of subparagraph 2.1(a) and lives in a community setting, including their own home.⁵

2.2 "Family member" means a

- (a) parent, stepparent, mother-in-law, or father-in-law;
- (b) grandparent;
- (c) spouse or domestic partner;
- (d) sibling or stepsibling;
- (e) adult child; or
- (f) primary care giver for an individual who is currently a minor child or youth who is receiving or has received mental health services.⁶

2.3 "Minor child or youth" means through 24 years of age.⁷

Article 3. Membership

3.1 Composition. Members of the Council shall be residents of the State of Hawaii and include

- (a) attorneys,
- (b) mental health professionals,
- (c) individuals from the public who are knowledgeable about mental illness, the advocacy needs of persons with mental illness and have demonstrated a substantial commitment to improving mental health services,
- (d) a provider of mental health services, and
- (e) individuals who have received or are receiving mental health services, and family members of such individuals.⁸

At least one family member shall be a primary care giver for an individual who is currently a minor child or youth who is receiving or has received mental health services.⁹ Continuing efforts shall be made to include members of racial and ethnic minority groups on the advisory council.¹⁰

⁵ 42 U.S.C. § 10802(4).

⁶ There is no definition of "family member" in the PAIMI statute or regulations promulgated thereunder, nor are there any cases defining the term.

⁷ There is no definition of "minor child or youth" in the PAIMI statute or regulations promulgated thereunder.

⁸ 42 USCA § 10805(a)(6)(B); 42 C.F.R. § 51.23(b).

⁹ 42 C.F.R. § 51.23(b)(1).

¹⁰ 42 C.F.R. § 51.23(b).

Commented [JG1]: These are the categories I came up with, but they could be expanded or contracted. It is also possible to not have a definition of "family member," but I think it is better to have one so we don't have to make up eligibility as we go along.

Commented [JG2]: There is no definition in the statute or regulations for "minor child or youth." I haven't tried to research if there is any case law defining it. Google says the most common definition of youth is 15-24.

3.2 Required Majority. At least 60 percent of the Council's membership shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals.¹¹

3.3 Size. The Council shall consist of no fewer than 11 and no more than 17 members.

3.5 Working Together and Conflicts of Interest. Council Members shall

- (a) work together to accomplish the Council's purposes, and
- (b) comply with Council's conflict of interest and confidentiality policies.

3.6 Appointment. Council Members shall be appointed by the Council.

3.7 Terms. The terms of Council Members shall be staggered and for 4 years, except that any Council Member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. A Council Member who has been appointed for a term of 4 years may not be reappointed to the council during the 2-year period beginning on the date on which such 4-year term expired.¹²

3.8 Vacancies. A vacancy shall occur upon resignation, removal, incapacity, or death, or when a Council Member is no longer a resident of Hawaii. Vacancies shall be filled for the remainder of the unexpired term pursuant to Section 3.6.

3.9 Resignation. A Council Member may resign by written notice to the Chair, which may be by email or other electronic means. Resignations are effective upon receipt unless a later effective date is specified.

3.10 Removal. A Council Member may be removed for cause, including but not limited to unexcused failure to attend meetings, violation of confidentiality, conflict of interest violations, or misconduct, upon the affirmative vote of two-thirds of the Council Members present at a meeting with a quorum, following notice to the Council Member and an opportunity to be heard. Such Council Member shall not vote on the removal and shall not be counted for determining whether a quorum exists and the number needed for a majority.

Article 4. Officers

4.1 Officers. The officers shall be Chair, Vice Chair, and Secretary. The Chair and Vice Chair shall be individuals who have received or are receiving mental health services or who is a family member of such an individual.¹³

¹¹ 42 USCA § 10805(a)(6)(B); 42 C.F.R. § 51.23(b)(1).

¹² 42 C.F.R. § 51.23(b)(3).

¹³ 42 USCA § 10805(a)(6)(C).

Commented [JG3]: These are the numbers I came up with, but could be different.

Except for people who qualify under two or more categories (like me) if that is allowed, if we are going to be literal about the required categories, it takes a minimum of 9 members, unless a provider can also be counted as a mental health professional.

Commented [JG4]: These need to be developed/promulgated.

Commented [JG5]: SAMHSA was allowing multiple three 3 year terms and we need to come into compliance in an orderly way.

Commented [JG6]: The Vice Chair does not have to be an individual who is receiving or has received mental health or a family member under the statute or regulations, but if they are not, they can't become Chair.

4.2 Duties of Officers.

(a) The Chair presides at meetings, is the chief executive officer of the Council, sets agendas in consultation with HDRC, appoints committee members and chairs with Council consent, serves on HDRC's board of directors,¹⁴ and performs such other duties as may be assigned from time to time by the Council.

(b) The Vice Chair acts in the place of the Chair when the Chair is unavailable or as requested by the Chair, and performs such other duties as may be assigned from time to time by the Chair or Council.

(c) The Secretary shall ensure accurate minutes of Council meetings are kept, oversees records of membership, attendance, and actions including certification of actions, and ensures compliance with notice requirements.

4.3 Election and Term. The Council shall elect Officers by majority vote at the annual meeting and shall serve one-year terms, with eligibility for re-election.

4.4 Removal and Vacancies. Officers may be removed by two-thirds vote of Council Members at a meeting with a quorum. Officer vacancies shall be filled by election at a special meeting called for that purpose or the next regular meeting.

Article 5. Roles and Responsibilities of Council Members

5.1 Council Member Responsibilities. Council Members shall

(a) Attend and participate in Council meetings;

(b) Solicit and consider input from diverse stakeholders regarding PAIMI priorities and policies, including individuals who are receiving or have received mental health services and their families;

(c) Provide input to the Council on PAIMI priorities, policies and budget;

(d) Maintain confidentiality of nonpublic information and comply with applicable confidentiality laws and confidentiality policies; and

(e) Disclose conflicts of interest and recuse as appropriate.

5.2 Training. Council Members shall participate in orientation and ongoing training regarding the PAIMI Act, confidentiality, ethics, and Council functions.

5.4 Compensation and Reimbursement. Council Members shall serve without compensation, except that HDRC shall reimburse reasonable and necessary

¹⁴ 42 C.F.R. § 51.22(b)(3).

expenses for Council service, including but not limited to travel, lodging, meals, and accommodations, consistent with policy and available funds, to facilitate participation of all Council Members, including those with disabilities and from rural areas.

Article 6. Meetings

6.1 Regular Meetings. The Council shall have at least four regular meetings per year.¹⁵

6.2 Annual Meeting. The first meeting of the Council after September 30th of each year, which is the end of the federal fiscal year, shall be the annual meeting, at which officers shall be elected and the annual work plan set.

6.3 Special Meetings. Special meetings may be called by the Chair or by at least three Council Members stating the purpose of the special meeting.

6.4 Work Sessions. The Council may hold work sessions between formal Council meetings at which all Council Members may attend. No formal Council action may be taken at work sessions.

6.5 Notice. Written notice of meetings and work sessions, which may be provided by email, stating the date, time, teleconference/videoconference information, and agenda shall be provided at least seven days before meetings and work sessions, unless waived by all Council Members or in exigent circumstances as determined by the Chair.

6.6 Open Meetings and Confidentiality. Meetings are generally open to the public except when the Council enters executive session to consider confidential matters, including client-identifying information, privileged communications, personnel matters, or other sensitive information.

6.7 Videoconference Participation. Council meetings normally take place by videoconference and Council Members are present for quorum and voting purposes if they can hear and be heard. For any in person meetings, Council Members may also participate remotely by audio or videoconference.

6.8 Accessibility. Meetings shall be accessible, with reasonable accommodations and language access provided upon request with sufficient notice.

6.9 Agenda and Materials. The Chair shall set agendas, accepting input from Council Members and HDRC. Materials shall be provided reasonably in advance to permit informed decision-making.

¹⁵ See, 42 C.F.R. § 51.23(b)(3) requiring the Council to meet no less than three times annually.

6.10 Minutes. The Secretary shall ensure accurate minutes of actions taken, attendance, and votes are prepared. Approved minutes shall be maintained by the Secretary and HDRC.

6.11 Procedure. The most recent edition of The Modern Rules of Order shall be used to guide meetings.

Commented [JG7]: I have seen only one organization actually follow Roberts Rules of Order. The Modern Rules of Order is how meetings are actually conducted, which I characterize as normally proceeding without great formality and increasing formality as needed.

Article 7. Quorum and Voting

7.1 Quorum. A quorum consists of a majority of Council Members. Vacant seats are excluded in determining the number needed for a quorum. Once having been established, a quorum shall continue to exist notwithstanding the departure of one or more Council Members.

7.2 Voting. Each Council Member has one vote. Unless otherwise specified in these bylaws, actions require a majority of votes cast at a meeting with a quorum.

7.3 Proxies. Voting by proxy is not permitted.

7.4 Recusal. A Council Member with a conflict of interest shall disclose the conflict and be recused from deliberation and voting on the affected matter. Such Council Member shall be excluded from the number needed to establish a quorum and majority.

7.5 Action Without Meeting. The Council may take action without a meeting by written votes, including *via* electronic communications, with such actions recorded in the minutes of the next meeting.

Article 8. Committees

8.1 Establishment. The Council may establish committees by motion or resolution for defined purposes, authority, and durations, including standing committees.

8.2 Composition and Procedures. Committee members and chairs shall be appointed by the Chair from among Council Members.

Commented [JG8]: We might want to allow non Council Members to serve on committees. There are pros and cons with one pro being it giving the Council an opportunity to evaluate potential Council Members.

Article 9. Duties

9.1 The Council's and HDRC's roles and responsibilities under the PAIMI include:

- (a) The Council provides independent advice and recommendations to HDRC on
 - (i) protecting and advocating the rights, and
 - (ii) investigating incidents of abuse and neglect,

Commented [JG9]: There may be other tasks/functions the Council is supposed to perform. Lou has indicated he might ask the National Disability Rights Network (NDRN) which provides technical advice to Protection and Advocacy agencies.

of individuals with mental illness.¹⁶

(b) HDRC is responsible for the planning, design, implementation, and functioning of its activities under the PAIMI Act.¹⁷

(c) Subject to (b), the Council and HDRC jointly determine annual PAIMI Act priorities and policies,¹⁸ including HDRC's PAIMI budget and resource allocation.¹⁹

(d) The Council monitors, assesses, and advises HDRC on the effectiveness of HDRC's PAIMI program in

- (i) protecting the rights, and
- (ii) investigating incidents of abuse and neglect,

of individuals with mental illness;²⁰

(e) The Council receives and reviews at least annually reports describing the grievances received and processed from HDRC clients or prospective clients and their resolution, providing such advice and recommendations as it deems necessary or desirable.²¹

(f) The Council may provide independent advice and recommendations to HDRC on how to provide the public with an opportunity to comment on the priorities and activities of HDRC under the PAIMI Act.²²

(g) The Council prepares a section of HDRC's annual report, due January 1st of each year, that describes the activities of the Council and its assessment of the operations of HDRC's PAIMI activities, accomplishments, and expenditures during the most recently completed fiscal year.²³

(h) The Council performs such other functions as are jointly determined by HDRC and the Council, or as required under the PAIMI Act and its implementing regulations.

(i) Under the direction of the Council's Chair, HDRC provides staff to assist the Council in fulfilling its responsibilities.

9.2 Budget Information. HDRC shall provide the Council with reports, materials and fiscal data to enable review of existing program policies,

¹⁶ 42 USCA § 10805(a)(6)(A); 42 C.F.R. § 51.23(a)(1).

¹⁷ 42 USCA § 10805(c)(2)(A).

¹⁸ 42 U.S.C. § 10805(c)(2)(B); 42 C.F.R. § 51.22(a).

¹⁹ 42 U.S.C. § 10805(c)(2); 42 C.F.R. § 51.22(a); and 42 C.F.R. § 51.23(a)2; 42 C.F.R. § 51.23(c).

²⁰ 42 U.S.C. § 10805(a)(7); 42 U.S.C. § 10801.

²¹ 42 C.F.R. § 51.25(b)(2).

²² 42 USCA § 10805(a)(8).

²³ 42 USCA § 10805(a)(7).

priorities and performance outcomes. Such submissions shall be made at least annually and shall report expenditures for the past two fiscal years, as well as projected expenses for the next fiscal year, identified by budget category (e.g., salary and wages, contract for services, administrative expenses) including the amount allotted for training of (a) the advisory council, (b) governing board and (c) staff.²⁴

9.3 Other Information. HDRC shall provide the Council with timely access to other information reasonably necessary to fulfill its responsibilities. Information identified as confidential shall be kept confidential by the Council and its Members.

9.4 Reporting. The Council may provide other reports, advice, and recommendations to HDRC including without limitation HDRC's PAIMI activities, priorities, policies, and outcomes.

Article 10. Ethics, Conflicts of Interest, and Confidentiality

10.1 Ethics. Council Members shall uphold the highest ethical standards, including integrity, respect, and avoidance of real or perceived conflicts.

10.2 Conflicts of Interest. The Council shall maintain and enforce a conflicts of interest policies and procedures to avoid actual or apparent conflict of interest involving clients, employees, contractors and subcontractors, and members of the advisory council, particularly with respect to matters affecting client services, particular contracts and subcontracts, grievance review procedures, reimbursements and expenses, and the employment or termination of staff.²⁵ Council Members shall annually complete disclosures and update them as needed.

10.3 Confidentiality. The Council and Council Members, except as otherwise provided in 42 C.F.R. 51.45, shall keep confidential all records and information, including information contained in any automated electronic database pertaining to:

- (a) Clients to the same extent as is required under Federal or State laws for a provider of mental health services;
- (b) Individuals who have been provided general information or technical assistance on a particular matter;

²⁴ 42 C.F.R. § 51.23(c).

²⁵ 42 C.F.R. § 51.26.

(c) 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

(d) Names of individuals who are residents and provide information for the record.²⁶

Council Members shall also protect other (i) privileged, (ii) client-identifying, and (iii) otherwise confidential information so designated, and shall sign confidentiality agreements to effectuate these confidentiality obligations.

Article 11. Non-Discrimination and Accessibility

11.1 Non-Discrimination. The Council shall not discriminate on the basis of race, color, national origin, ethnicity, religion, sex, gender identity or expression, sexual orientation, age, disability, veteran status, genetic information, or any other status protected by law.

11.2 Accessibility. The Council shall promote full participation by Council Members with disabilities and from underserved communities, including providing reasonable accommodations, remote access, and reasonable stipends for disability-related support services as permitted by available funds.

Article 12. Amendments

12.1 Proposed Amendments. Proposed amendments shall be provided in writing to all Council Members, with a consultative copy to HDRC, at least fourteen days prior to the meeting at which they will be considered.

12.2 Adoption. Amendments require the affirmative vote of a majority of all Council Members, not counting vacant seats.

Commented [JG10]: HDRC cannot have approval or disapproval authority because that would violate the requirement that the Council provide independent advice. However, it seems like HDRC should be able to provide its views on proposed amendments.

Article 13. Interpretation and Severability

13.1 Interpretation. These bylaws shall be interpreted to be consistent with the PAIMI Act and applicable regulations.²⁷ In the event of a conflict between these bylaws and applicable law, applicable law controls.

13.2 Severability. If any provision of these bylaws is determined to be invalid or unenforceable, the remaining provisions shall continue in full force and effect, and such provision shall be construed to most closely match the intent of such provision that is valid and enforceable.

²⁶ 42 USCA § 10806(a); 42 C.F.R. § 51.45.

²⁷ 42 U.S.C. § 10801, et seq.; 42 C.F.R. Part 51.

13.3 Captions. The captions to the sections and subsections of these Bylaws are solely for convenience of reference and shall not in any way limit, amplify or modify their provisions.

Article 14. Adoption and Effective Date

14.1 Adoption. These bylaws were adopted by the Council, after consultation with HDRC, on the date first written above upon a vote in accordance with Article 7.

14.2 Effective Date. These bylaws are effective upon adoption by the Council.

I hereby certify that the foregoing Bylaws were adopted on the date set forth above at a meeting of the HDRC PAIMI Advisory Council at which a quorum was present and acted throughout.

Date: _____

By: _____

Its: _____

Commented [JG11]: I'm not sure what role HDRC should play, if any. HDRC cannot have approval authority because that violates the requirement that the Council give HDRC independent advice and recommendations. I landed on consultation, which is already happening.