

Report to the Developmental Disabilities Council

From  
Advocacy Center  
July, 2008

- Advocacy Center was very involved in helping to host the National Disability Rights Network's annual conference, which was held in New Orleans this year. Six members of the AC staff presented at the conference, as did the DDC's own Lynette Fontenot. (As an aside, I heard several people say they wished Lynette had been the sole speaker during her panel's time slot. People were so taken with Lynette's presentation that they wished they had more time to hear her and ask questions.)

Louisiana also shone at the conference through Lieutenant Governor Mitch Landrieu's address at the opening plenary. His speech was rousing and left all 500 conference attendees with a fuller and deeper appreciation of the many issues facing Louisiana after the hurricanes and with a better idea of "why Louisiana matters".

After the conference ended on Thursday, June 5, thirty conference attendees stayed in New Orleans an extra day to join forces with 20 Advocacy Center staff to work on the repairs of three homes, two in the Hollygrove neighborhood of N.O. and one in the St. Roch neighborhood. The group worked from 8:30 a.m. to 4:00 p.m. in the hot humid Louisiana weather, painting, laying floors, and landscaping.

- On June 24, the Advocacy Center released *Out of Control: Louisiana's Failure to Insure the Health and Safety of Children in Residential Facilities*. The report represents five years of work by AC staff and focuses on the more than 50 "child residential facilities" that provide 24-hour care to children. The majority of these children are either in the custody of the Office of Community Services, having been removed from their homes due to abuse or neglect, or in the custody of the Office of Youth Development. Warning: if you are squeamish, the report is tough to read. No child in the world, let alone in Louisiana, should live in the conditions described in this report. Our staff made many visits to these facilities and spent countless hours pouring over licensing reports to gather the information contained in the report. We hope the result of all that work will horrify the public and public officials as much as it horrifies us and will, ultimately, result in change for the 1,000 children living in the facilities. I hope you will read the report (squeamish or not). We will post it on our web site.
- AC, like the Council and many others, follows Louisiana legislation very closely during the session. Below are our priorities and their outcomes. Excluded are all

budgetary items which had not been finally decided as of the date this was written.

1. HB 641 (now Act 218) Amend LRS 40:1734(b) to raise multifamily housing accessible unit threshold from “more than four units” to “four or more units”—became law without action by the Governor.
2. HB 967 (Now Act 308) Amend State Personal Care Program legislation to allow choice of qualified service provider without regard to program participant’s geographical residency”—became law without action by the Governor.
3. HB 923: expands documentation that voter can present to document disability in order to vote absentee by mail and provides that ability to vote absentee by mail by reason of disability continues indefinitely, instead of only for one year. AC was able to have language removed that would have prevented persons involuntarily confined in institutions for mental treatment, persons who had been found not guilty by reason of insanity in a criminal trial, or who had been determined not to have mental capacity to proceed with a criminal trial from voting except absentee by mail. Passed both House and Senate and sent to Governor. Also, in the realm of voting:

HB 987—Expanded documentation that a person could produce to show that they need assistance in voting, to include, in addition to a letter from a physician, a mobility-impaired placard from the Office of Motor Vehicles, proof of disability showing eligibility for social security benefits, veteran's disability benefits, paratransit services, benefits from the office for citizens with developmental disabilities, or benefits from Louisiana Rehabilitation Services. Sent to the Governor.

4. Amend statute that provides for sanctions against group homes and nursing facilities to increase intermediate sanctions. DHH introduced its own bill on this, and sanctions were increased—the maximum aggregate fine in a month for repeat class A violations was increased from \$10,000 to \$20,000 and for repeat class B violations (substantial probability of death or serious physical or mental harm) was increased from \$10,000 to \$15,000. Signed by speaker. We had wanted stiffer aggregate fines--\$50,000 for repeat Class A violations and \$30,000 for repeat class B violations.
5. Strengthening oversight and quality control over local human service districts and authorities: This was primarily due to serious problems at Metropolitan Human Services District. Prior to the session, Gov. Jindal issued an Executive Order directing DHH to assess the current operational performance of MHSD, including review of policies and procedures, purchasing and contracting, clinical continuum of care, governance and quality of service. The assessment will result in a detailed report of the findings and any recommendations for sustained improvement. A “transformation team” lead by a retired Army colonel who

headed the Florida prison system was appointed to provide assistance and oversight to the District.

6. Other bills we took an active role on:

SB 182: “Nicola’s law” passed both houses and was sent to the Governor for signature. This bill creates a new system for involuntary outpatient commitment that AC argued was unnecessary and expensive and would impose a dramatic infringement upon civil rights of persons with mental illness. The bill as finally enacted was amended in such a way as to remove some of our objections: a provision was added that the petition did have to be served on the person, and that refusal to comply with a medication order or an order of involuntary outpatient commitment will not in and of itself be grounds for involuntary inpatient commitment. Due process protections on extensions of such orders were improved, and the bill was amended to specify that involuntary inpatient commitment standards are not relaxed for people who have been the subject of involuntary outpatient commitment. In addition, either case management or assertive community treatment has to be provided as part of the treatment plan. AC testified in opposition to the bill. Despite the amendments, we remain concerned that the bill was not tied to a dedication of sufficient funds to insure that services are available to treat people who voluntarily or involuntarily seek treatment, and that no one will be tracking the cost and the effects of involuntary treatment.

HB 886: placed additional notice requirements on LHFA for multifamily housing projects—AC, at LHFA’s request, requested that Jindal veto the bill because it places additional hurdles on the creation of new affordable, accessible rental housing—**not acted upon at press time.**

HB 76: provides for reporting to the FBI of persons prohibited from possessing a firearm under federal law 18 U.S.C. 922(g)(4), which prohibits the persons who have been adjudicated as a “mental defective” or who have been “committed to a mental institution” from shipping or transporting firearms or ammunition in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

AC was able to have “developmental disabilities” removed from the law, but the following persons will be reported to the FBI:

- (1) A person ordered by a court to receive inpatient mental health services.
- (2) A person with mental retardation committed by a court to an intermediate care facility for the mentally retarded.
- (3) A person who has been ordered interdicted.
- (4) A person determined to have mental incapacity to proceed with a criminal trial.
- (5) A person acquitted in a criminal case by reason of insanity.

--**has not been passed by the House as of 6/20/09.**

HB 1341 (now Act 333) amends the Direct Service Worker Registry law, LRS 40:2179(B) to provide that it is State policy that no relative should serve as a direct service worker unless the relative has received a waiver from DHH stating that the relative is the best available appropriate direct service worker for the recipient. Persons serving as DSW's as of July 1, 2008 are "grandfathered" and the provision will not take effect until approved by CMS. AC and other advocates opposed this bill and testified in committee that it could restrict the availability of home- and community-based services. It passed and became law without action by the Governor.

HB 1224 (now Act 228) imposes a moratorium until July 1, 2010, (subject to approval from CMS) on licenses for new home- and community-based service providers that provide personal care attendant services, respite care services, and supervised independent living program services, except to facilitate the conversion of intermediate care facilities for persons with developmental disabilities to the proposed Residential Options Waiver. Despite the moratorium, DHH may license new providers if it finds there is a need for more providers in any geographic area. Became law without action by the Governor. AC had testified in committee that a moratorium was not needed and could create shortages of some types of workers in some regions.

SB 66 Would prohibit a person from registering to vote or voting who is committed to a mental institution or forensic facility after being found not guilty by reason of insanity or after a court determines lack of mental capacity for criminal trial.—AC succeeded in having this pulled—no action was taken on it.

Other legislation of interest:

SB 546 Extends the period for direct service workers providing home- and community-based care (including self-directed care) to receive training in order to provide certain tasks currently covered by licensing statutes to 36 months after regulations concerning that training are promulgated, and provides for DHH to monitor quality of care in order to propose revisions to the regulations. This will allow for appropriate training in quasi-nursing tasks without unduly restricting the supply of workers who can perform these tasks.—sent to the Governor.

HB 670 (now Act 154)—signed by Governor—moves "center for excellence" for autism services to Caddo Parish and provides that Upon the creation of a special fund by the legislature, the center is empowered to receive funds by gift, grant, donation, Such a center was already created by existing law (it was located at LSU Human Development Center in the New Orleans area), and is supposed to provide resource and training assistance to private and public agencies providing services to autistic citizens and their families.

SCR 20—sent to the Governor: resolves that the Legislature of Louisiana supports the implementation of Louisiana's Plan for Choice in Long Term Care and does

hereby urge and requests that the Department of Health and Hospitals work in collaboration with designated agencies and departments to develop programs, policies and rule-making to implement the recommendations of the plan.

HB 914: Advocates from across Louisiana were successful in their efforts to stop HB 914 by Rep. Fannin from becoming law. If passed, this bill would have changed the intent of Act 481 of 2007 which created the New Opportunities Waiver (NOW) Trust Fund to provide revenue solely for new waiver slots for people with developmental disabilities on the waiting list to also paying to sustain waiver slots over the years. When HB 914 was presented to the House Appropriations Committee by House Speaker Jim Tucker and DHH Undersecretary Charles Castille, Mr. Castille stated that the intent was to amend HB 1 to fund approximately 500 NOW slots this year, and with the passage of HB 914, the money in the trust fund could be used to sustain those slots over the next four – five years. HB 914 passed out of committee without opposition and was passed by the House unanimously. However, very strong grassroots advocacy efforts directed to the Senate Finance Committee and the Governor's Office were effective in stopping the administration from going forward with the bill. (HB 914 was in the Governor's legislative package.) (synopsis provided by Sandee Winchell)

SB 535: the Mental Health Parity bill which would require health insurance coverage for mental illness, and treatment for drug addiction and alcoholism under the same terms as those which are provided for the treatment of other illnesses, upon the enactment of an income tax credit equal to the cost of premiums related to providing such coverage, died in the Senate.

HB 958 provides that all health insurance policies (except plans for employers with less than 50 employees and individually underwritten plans), must, after January 1, 2009, cover diagnosis and treatment of autism spectrum disorders in children under the age of 17, and insurance coverage cannot be refused or terminated to anyone because they have an autism spectrum disorder. Treatment includes rehabilitative and habilitative care, psychological and psychiatric services, pharmacy, and therapies. There can be no limit on annual visits, and the plans may have a maximum annual benefit for ASD diagnosis and treatment of \$36,000 and a lifetime cap of \$100,000. Passed both houses and was sent to the Governor for signature.