

Advocacy Center
Quarterly Report to the DD Council
(September 24, 2014)

Update/progress on agency initiatives

1. Five Things You Need to Know for the November 4th Election

The Advocacy Center wants to make sure people with disabilities have the information they need to vote in the November 4th election.

1. To learn more about the view of the candidates for US Senate and House on issues impacting people with disabilities, visit 2014election.advocacyla.org. Candidates' responses on a variety of issues impacting people with disabilities will be published on September 30th. The Advocacy Center partnered with the LA Developmental Disabilities Council and a number of disability groups across the state to survey candidates and share the results.
2. If you encounter problems voting during early voting (October 21-28) or on Election Day, call or email the Advocacy Center's voter hotline at 1-800-960-7705 or advocacycenter@advocacyla.org.
3. Anyone can vote early; no excuse is required. Visit www.geauxvote.com to find early voting locations in your parish. Early voting is open from October 21-28, except on October 26th.
4. Poll workers and election officials cannot judge competency. If individuals with disabilities are registered and want to vote, they are entitled to do so.
5. A number of accommodations are available for voters with disabilities including an audio ballot attachment and magnifying glass. Individuals with visible disabilities or a mobility impairment identification card can go to the front of the line on Election Day or during early voting.

2. Advocacy Center Files Class Action Lawsuit on Behalf of People who are Not Guilty By Reason of Insanity in Prisons and Jails

In August, the Advocacy Center filed a class action lawsuit against the Department of Health and Hospitals on behalf of people with mental illnesses found Not Guilty by Reason of Insanity who are being incarcerated in parish prisons across the state. The lawsuit identifies six men who are incarcerated in parish prisons even though, months ago, the courts ordered that they be provided mental health treatment in a psychiatric hospital after being found not guilty by reason of insanity (NGRI).

The lawsuit states that Louisiana has violated the prisoners' constitutional rights to due process as well as their rights protected by the Americans with Disabilities Act and the Rehabilitation Act of 1973,

“All of these men need mental health treatment, but the state has ignored judges’ orders to provide the help that they need,” said Ronald K. Lospennato, an attorney with the Advocacy Center. “Prisons are not mental health facilities. They do not have the capacity to help these men who have spent months in jail cells where, at best, they receive only drugs to control them. Even though they have not been convicted of any crime and there are no criminal charges pending, Louisiana is denying them treatment and intentionally subjecting them to punishment by incarceration.”

3. Waiver Participants and Bayou Health

The Advocacy Center continues to monitor waiver recipients’ participation in Bayou Health and welcomes complaints or issues. We remain concerned that individuals may not be fully informed about the benefits and risks of this move.

4. Concerns Regarding Department of Labor Overtime Regulations

The Advocacy Center is very concerned about the potential impact of the US Department of Labor’s changes to the overtime regulations for direct service worker on individuals with disabilities who need home and community based services, whether they receive them through provider agencies or via self direction and has recommended the following actions to the Department of Health and Hospitals.

- A. Analysis of the current rates to ensure that the needs of individuals with disabilities will be met once the regulations are implemented. If evidence shows that the current rates are insufficient, we recommend raising rates as needed.
- B. Development of an exceptions policy for the current rate structure to allow for a higher rate on an individual basis if there is documented evidence that the individual’s needs cannot be met at the typical hourly rate.
- C. Close monitoring of the implementation of the rules to insure individuals are not institutionalized because they cannot obtain the care that they need in a home and community based setting or that they are at risk of institutionalization because they are forgoing necessary services. This includes insuring that consumers are not left without services if their provider is unable to provide the necessary services due to cost.
- D. Specialized training for individuals in self-direction and their families in advance of the January 1, 2015 rule change so that these individuals can determine whether they will need to hire and train additional staff to avoid paying overtime or otherwise reassess their services so that funds are available to pay overtime.

5. Supported Independent Living Program Update

The Advocacy Center continues to accept cases in the Human Services Districts for greater New Orleans and Jefferson. We will be expanding the SILAP into the greater Baton Rouge area after October 1, as soon as the contract for services is finalized.

On July 28th, a full time hire joined the SILAP, Suzanne Chevallier. The AC is currently interviewing for a new Client Advocate in the greater New Orleans area. We anticipate having someone hired by the end of September.

In regard to outreach, SILAP staff are developing continued outreach plans in the Greater New Orleans area and initial outreach plans for the greater Baton Rouge area.

In regard to systemic issues, AC staff members (including SILAP staff members) have been invited to attend a meeting with the Louisiana Support Coordination Alliance board members to discuss the upcoming changes to the Home and Community Based service delivery system.

SILAP staff continue to address individual issues through individual case advocacy.

6. APS Pro Bono Project Update

The AC has identified three firms with attorneys who are interested in assisting with APS cases: Adams and Reese, Kean Miller and Stone Pigman. Staff are working to develop training materials for these attorneys. Staff plans to present an in-person and video CLE in November and is currently identifying collaborators and obtaining CLE approval.

6. Recent Successes

Mental Health Treatment Changes Life

On a routine visit to a group home, one of the Advocacy Center's ombudsman saw that a resident, KL, looked depressed. She found out that Ms. L was depressed because of recent family trauma and was having suicidal thoughts. The ombudsman talked to Ms. L about the need for treatment and Ms. L agreed. The ombudsman contacted the group home provider agency and helped Ms. L to talk to them about her feelings and the need for treatment. Ms. L was hospitalized that day. The ombudsman continued to visit Ms. L at the hospital and after a few weeks, Ms. L was released.

However, Ms. L was not happy at her group home and the ombudsman helped her to transfer to a different one. Ms. L now holds her head up high and tells others what she needs. She likes the other residents and doesn't feel isolated like before. She's very grateful to her ombudsman for her help.

Last Days At Home

One Saturday afternoon, one of the Advocacy Center's attorney received a call from her client, Mrs. C who was in the hospital and wanted to go home. However, Mrs. C was being not allowed to leave because her doctor did not believe her home care was adequate.

The attorney explained that to Mrs. C that she had the right to leave against medical advice; she had capacity and knew the consequences of her actions. Mrs. C told her attorney that if it was her time to go, she could pass at home just as easily as she could at the hospital, "When it's your time to go, it's your time to go."

The AC attorney explained Mrs. C's rights to her nurse and doctor and the doctor finally agreed to let her go home. Mrs. C called her AC attorney an angel sent from above. Both Mrs. C and her son said that without the intervention of a lawyer, they would have been bullied into remaining at the hospital or signing into a skilled nursing facility.

Status of agency's activities/participation on DDC plan initiatives and impact

Objective 3.1 4,000 people on the waiting list will begin receiving home- and community-based services by educating stakeholders, policy makers and the public about the waiting list and needed systems reforms.

Activity 3.1.2 Collaborate with other advocacy groups to plan and support Disability Rights Rallies.

Activity 3.1.3 Advocate for systems change initiatives, revenue generating strategies, policies and practices needed to expand supports and services.

Activity 3.1.4 Monitor the possible restructuring of long-term supports and services to a managed care system and advocate for an increased quality and quantity of services to be included in the reorganized system.

Activity 3.1.5 Research impact of managed care on individuals determined to be dual eligible and make recommendations to DHH.

Activity 3.1.6 Monitor the effect of Medicare/Medicaid dual eligibility on services for people with developmental disabilities.

The Advocacy Center continues to monitor the transition to managed long term services and support for people with disabilities and to participate in stakeholder meetings regarding the possible transition to managed care for long term services and supports. No new information to report in this area.

Objective 3.2 Admissions to residential facilities will decrease by increasing access to behavioral and medical intervention in the community and the discontinuation of people adjudicated into state-operated facilities.

Activity 3.2.1 Advocate in collaboration with the Advocacy Center for

- additional providers with specialized expertise in behavioral services;
- the development of plan upon admission that includes specific activities, persons responsible and timelines for discharge or transition; and
- improving the home and community based system by soliciting feedback from individual families using or trying to access behavioral health services and sharing that information with the DHH leadership.

Activity 3.2.2 Advocate for self-direction to be exempted from medication administration requirements.

Activity 3.2.3 Advocate for adequate rates that support services for people with complex medical and behavioral needs.

Advocacy Center staff continue to assist individuals with intellectual disabilities and behavioral health needs to access community services via Magellan. In addition, we submitted comments to DHH's Request for Proposals for the LA Behavioral Health Partnership and will monitor the RFP process. We continue to work with the Department of Health and Hospitals regarding access to therapeutic foster care and to address issues for individuals as we receive them.

Objective 3.3 The number of people in private ICFs/DD per capita in Louisiana will decrease to reach the national average through the transition of people to home- and community-based services.

Activity 3.3.1 Advocate for

- changes to the rate structure of the Residential Options Waiver to encourage private ICF/DD providers to convert their beds so individuals can transition to waiver services,

Activity 3.3.2 Advocate for initiatives that allow residents of private ICFs/DD to obtain waiver services.

The Advocacy Center continues to monitor access to waiver services for individuals with disabilities, particularly for individuals in group homes.

Objective 7.3 There will be an increase in the number of charter schools, early education programs, and other publically funded education facilities that approximate the percentage of students statewide served with developmental disabilities across all LEAs.

Activity 7.3.1 Advocate for improved oversight and monitoring of admissions and service delivery to students with disabilities in Charter Schools, early education programs, and other publicly funded education facilities in collaboration with the Advocacy Center.

Advocacy Center staff will continue to collaborate with the DD Council and LA TEACH to address systemic educational issues as resources permit.

Objective 7.4 Students will be protected from discipline practices that cause harm and/or violate their rights.

Activity 7.4.1 Monitor and advocate as necessary against the use of harmful practices (e.g., restraint and seclusion, corporal punishment, unnecessary use of law enforcement, etc.) and alternative positive evidence based options (e.g., positive behavior practices, etc.) and advocate for policies and practices that promote the safe and effective practices in collaboration with the Advocacy Center.

Recently, the Advocacy Center began an investigation of arrests at school to determine if there is a disparate impact on students with disabilities. We welcome information in this area.

Objective 9.1 Louisiana will develop and implement an Employment First plan.

Activity 9.1.1 Advocate for

- policies that incentivize services for individualized integrated, competitive employment and dis-incentivize segregated, sheltered day habilitation services,
- sheltered workshops to transition people into individualized, competitive, paid employment and discontinue admissions into segregated day programs,
- collaborative policy making and practices across state agencies that promote students being supported in and transitioning into competitive paid employment,
- LRS and OCDD will collaborate to mandate that all supported employment vendors/providers complete a university-based 40-hour training,
- Support family members and other advocates to serve on the Louisiana work team in developing an Employment First agenda and implementation plan including participation in state level meetings.

The Advocacy Center is excited to lead a group of organizations, including the LADDC to promote the employment of people with disabilities during National Disability Employment Awareness Month in October.

Objective 9.3 The Louisiana Vocational Rehabilitation (VR) program's federal draw down will increase.

Activity 9.3.1 Advocate for Louisiana to draw down the entire VR grant award and serve individuals with the most severe disabilities.

The Advocacy Center will continue to support efforts to increase LRS funding as resources allow.

Objective 9.4 Family members and others will be knowledgeable about options for integrated, competitive employment in collaboration with the Advocacy Center and the LSU-HSC Human Development Center.

See above regarding activities to promote the employment of people with disabilities during National Disability Employment Awareness Month (NDEAM) 2014.