

Advocacy Center
Quarterly Report to the DD Council
(December 18, 2015)

Update/progress on agency initiatives

1. Access to ABA therapy in Schools

The Advocacy Center has received notice that some students cannot access Applied Behavioral Analysis (ABA) therapy in school, provided by school-funded ABA therapists.

Staff is currently assisting 5 children across the state on this issue with possible complaints under Title II of the Americans with Disabilities Act. Under Title II, schools must ensure that communication with students with speech disabilities is as effective as communication with all other students. It also allows for parental preference of the service, unless the school system can prove something else is equally effective. The argument is that if ABA is necessary for the child to effectively communicate, then the school must provide it under Title II, even if it is not necessary under IDEA or 504.

If you know anyone who needs ABA therapy in school and cannot access it, contact the Advocacy Center.

2. Access to Assistive Technology in Schools

The Advocacy Center is helping several children with disabilities to access assistive technology in school, including iPads, for communication. Under the federal government's November 2014 guidance on effective communication under Title II of the ADA, an iPad may be an effective communication device for children with disabilities.

Schools may be required to provide assistive technology to students with disabilities if there is an educational benefit. Assistive technology can also include specialized software to help the student learn; hearing aides; wheelchairs and scooters, screen readers; modified keyboards and many other things.

If you know anyone who needs assistive technology in school and cannot access it, contact the Advocacy Center.

3. Discipline in Schools

The Advocacy Center is currently investigating several issues related to school discipline, which impact students with disabilities.

First, staff is looking at whether school discipline policies have a disparate impact on students with disabilities. Staff analyzed data from the US Department of Education's Civil Rights Data Collection to identify problematic school districts.

In addition, the Advocacy Center wants to talk to students with disabilities who have been arrested in school, particularly for incidents that do not involve weapons, drugs or serious harm. We are currently helping several students for incidents that arose when the school resource officer or other school official did not follow the students' behavior plans, which

lead to an arrest and charges.

In addition to the issue above, the Advocacy Center was successful in requiring the Recovery School District in New Orleans to change its policy as it relates to children with disabilities, who were expelled based on incidents not related to their disabilities. Prior to AC's intervention, a Hearing Officer with the Recovery School District would order all these children to be placed at the alternative school, which violates both state and federal law.

The law requires that the student's IEP Team, not the school district, select the setting to which the student will be removed, regardless of the reason for the removal. Now, the Recovery School District will refer all students with disabilities who are expelled for an incident found not related to their disability, to their IEP team and the team will determine placement.

If you know of any students facing inappropriate discipline in schools, contact the Advocacy Center.

4. Preparing for the March 5th, 2016 Election

Election Date: Saturday, March 5th

Early Voting: February 20th – 27th

The Advocacy regularly communicates information about voting to people with disabilities in Louisiana. The following is the most recent issues that we are communicating:

The March 5th election is a closed party election, which means that each political party sets the rules for who can vote in their primary. For this election, both the Democratic and Republican parties decided that only voters registered with their party are eligible to vote in the primary. All registered voters in other parties (Green, Libertarian, Reform, Other) or registered as No Party can vote in any local elections, but will not be able to select a candidate for president.

To change your political party or register to vote, visit <http://www.sos.la.gov/ElectionsAndVoting/RegisterToVote/Pages/default.aspx>. The deadline to register to vote or change your party to be eligible to vote on March 5th is February 3, 2016.

To find the locations for early voting in your parish and your polling place on Election Day, view your ballot, determine if you are registered to vote, and view election results, visit www.geauxvote.com.

5. Behavioral Health Integration

The Advocacy regularly monitors changes in health care. The following is what we are communicating about the behavioral health integration process:

On December 1, 2015, the State's five Bayou Health/Medicaid managed care companies began managing all Medicaid-funded, specialized mental health, substance abuse, and non-emergency transportation services for most people who are enrolled in Medicaid.

Are there exceptions to getting specialized mental health, substance abuse, and non-emergency medical transportation through a Bayou Health plan?

- Medicaid-eligible nursing home residents and children under age 21 residing in Intermediate Care Facilities for individuals with Developmental Disabilities (ICF-DD) will receive non-emergency medical transportation services that do not require an ambulance through the nursing homes or ICF-DDs. If the non-emergency medical transportation has to be provided by ambulance, it will be arranged through and covered by the Health Plan.
- Children who are enrolled in the Coordinated System of Care waiver will receive specialized behavioral health services from Magellan. They will still receive their physical health care and non-emergency medical transportation through their Bayou Health plan, unless they fall within another exception.

Are there exceptions to getting physical health Medicaid services through a Bayou Health plan?

- Excluded - Medicare and Medicaid eligible: You **cannot** enroll in Bayou Health for Medicaid **physical health services** if you are eligible for Medicare. **However, you must enroll in Bayou Health for specialized mental health, substance abuse, and non-emergency medical transportation.**
- Optional - Not Medicare eligible: All people on waivers, and people aged 3-21 on the waiting list for the New Opportunities waiver who ARE NOT Medicare eligible, can choose whether to receive physical health services from Bayou Health or from legacy Medicaid. **They have to enroll in a Bayou Health plan for any specialized mental health, substance abuse, and non-emergency medical transportation services.**

The 5 Bayou Health/Medicaid managed care companies are responsible for making sure that all their members can get the mental health, substance abuse, and non-emergency medical transportation services that they need.

Even if you are not using them now, most Medicaid recipients in Louisiana are in a Bayou Health plan in case they need mental health, substance abuse, or non-emergency medical transportation services in the future.

For help in a crisis, contact your health plan at the number below.

- Aetna Behavioral Health Crisis Line: 1-855-242-0802, TTY 711
- Amerigroup Behavioral Health Crisis Line: 1-844-227-8350
- AmeriHealth Caritas Louisiana, Mental Health and Substance Crisis Hotline: 1-844-211-0971

- Louisiana Healthcare Connections, Mental Health Services line: 1-844-677-7553 (Hearing Loss: 1-800-846-5277)
- UnitedHealthcare: 1-866-675-1607, TTY: 711

If you are not sure about the name of your Bayou Health plan, you can call 1-855-BAYOU-4U (1-855-229-6848) to find out.

Can I change my plan?

- If you are not happy with your Bayou Health plan because you cannot access the services you need, or for any other reason, you can change plans until February 26, 2016. After that date, you must have a specific reason to change your plan.
- People on the waivers and ages 3-21 on the New Opportunities waiver waiting list can drop out of Bayou Health for physical health services, but must stay in Bayou Health for specialized mental health, substance abuse and non-emergency medical transportation services.

For more information on the Bayou Health plans and links to the plans' websites, visit https://bayouhealth.com/LASelfService/en_US/home.html.

To change your plan, call 1-855-BAYOU-4U (1-855-229-6848) or visit <https://bayouhealth.com/LASelfService/faces/secured/Address.xhtml>.

The Advocacy Center of Louisiana wants to ensure that everyone is able to access the mental health, substance abuse, and non-emergency medical services he or she needs during this transition. Call 1-800-960-7705 or email advocacycenter@advocacyla.org for help.

6. Rules Regarding Overtime for Personal Care Workers

The Advocacy Center has been following this issue, insuring that the following advice is communicated to people with disabilities and their families:

As you may know, there are new federal rules in place about paying your workers "time and a half" for work above 40 hours a week. Some of you have probably gotten letters from the Department of Health and Hospitals to explain these changes to you. Advocacy Center of Louisiana attorneys are following this issue and are available to help.

The Advocacy Center is trying to find out how this change is affecting NOW (New Opportunities) and CCW (Community Choices) waiver recipients. You may be able to adjust by hiring more workers, so that no worker works overtime; but if this isn't possible, you should not have to get fewer services because of the change.

IF YOU RECEIVE THE NOW WAIVER AND ARE ON SELF DIRECTION:

OCDD recently sent you a letter asking you to decide if your worker qualifies for something called the "companionship exemption." The Advocacy Center is not sure this

will work. To qualify as a “companion,” your worker has to spend 80% or more of his or her time with you NOT doing tasks like helping you with grooming, eating, bathing, dressing, meal preparation, shopping, housekeeping, driving, and medical appointments. **If you choose to use the overtime exemption, contact the Advocacy Center to discuss your reasons for choosing this exemption and the records you keep concerning your worker's activities.**

We understand that Acumen is supposed to be paying overtime rates to your workers for hours over 40 per week, unless you have classified them as “companions.” **Please contact the Advocacy Center if you have a worker who is working more than 40 hours per week, and Acumen is not paying your worker overtime.**

IF YOU RECEIVE THE CCW WAIVER AND ARE ON SELF DIRECTION:

OAAS recently sent you a letter explaining that you have to pay your workers 1.5 times their normal rates for any hours they work over 40 hours a week. But OAAS has not increased your budget to make up for this new rate, so you may end up being able to afford fewer hours of help. **Please contact the Advocacy Center if this new rule has left you unable to afford the help you require.**

A possible solution for self directed CCW participants is live-in help. If your worker lives in your residence, he or she is exempt from the overtime rule.

If this new pay rate has left you unable to afford the help you require, please be ready to answer the following questions when you call Advocacy Center:

- Would it be possible for you to hire another worker so that no worker is employed for more than 40 hours?
- Is it possible to reduce your worker’s baseline pay rate so that, even with the new 1.5 overtime rate for overtime hours, you can still get the same amount of hours from the same worker? You have to pay your worker at least \$7.25 an hour (minimum wage). We can help you with that calculation.

IF YOU RECEIVE THE CCW OR NOW WAIVER AND ARE NOT ON SELF DIRECTION:

Advocacy Center has been alerted that these new pay rates have made it hard for some providers to keep the same level of staffing. **Please contact Advocacy Center if you think that your provider is reducing the level of care that you receive.**

Some examples of how providers could reduce your care are:

- You are being given fewer hours than are listed in your plan of care.
- More workers are helping you than there used to be and these workers are not able to properly assist you with your needs.
- Your provider has told you that they can no longer afford your care.
- You have been dropped by your provider or have been told that you need to find a new provider.

We know how difficult this change is and we will continue advocating for the Department to make sure you do not lose services as a result of this rule change.

If any of these issues apply to you, contact AC Attorney Amitai Heller at 1-800-960-7705 x116 or aheller@advocacyla.org.

7. Access to Supported Employment

As part of the Advocacy Center's collaboration with the DD Council and Human Development Center, staff is examining the availability of supported employment services across the state, particularly in rural areas. According to the LRS list of vendors for supported employment, there are providers in every region. However, we are concerned whether these vendors serve the whole region or only a select portion. If vendors do not serve the whole region, we'd like to understand why.

If you know anyone who cannot access supportive employment services from LRS, please contact the Advocacy Center.

6. Success stories

Home Nursing Services Preserved

The mother of a twenty (20) year old woman with quadriplegia and other significant disabilities from a car accident, CC, called AC for help when her request for 56 hours of home nursing services was denied. Her mother has to work and cannot care for her daughter during that time. The AC attorney represented CC in an administrative hearing and won. CC is now receiving services so that she can remain at home with her mother and her mother can continue to work to support the family.

Success in School

DD is a fifteen (15) year old with Attention Deficit Hyperactivity Disorder, Autism and an Intellectual disability. His parents called the Advocacy Center for help after he had a major behavioral episode at school involving another student and the school district suspended him and recommended expulsion. The Advocacy Center attorney advised parents that they should obtain a letter from the student's psychiatrist, describing DD's disabilities and explaining how his behavior was related to his disability. The parents obtained the letter and the attorney introduced it at the Manifestation Determination Review (MDR). DD's behavior was found related to his disability and he was not expelled. Subsequently, the attorney helped at the Individualized Education Plan (IEP) meeting where the IEP was modified and the parents concerns were satisfactorily resolved. Additionally, a new Behavior Intervention Plan (BIP) was developed to prevent future behavioral episodes.

Motorized Wheelchair Preserves Independence

The Advocacy Center was successful in obtaining a motorized wheelchair for an individual with physical disabilities that prevented her from operating a manual wheelchair. The woman called the Advocacy Center for help after her Medicaid managed care/Bayou Health plan denied her request for a power wheelchair, using criteria that were different from State Medicaid criteria spelled out in (hard to find) regulations. The AC attorney wrote to the Bayou Health plan, explaining their obligations and the correct criteria

according to Medicaid. The next day, the Bayou Health company approved the wheelchair and it's on the way.