



These new investigations focus on whether DMH has implemented the recommendations from the 2007 report. Preliminary findings indicate that DMH has failed to take sufficient action to remedy many of the deficiencies raised in the 2007 report. Disability Rights California's expert found that, as with the previous suicides, hospital staff failed to conduct periodic, rigorous suicide risk assessments and adjust their treatment approach according to the resident's risk. In one case, a resident at high risk of suicide (noted to be on suicide "alert" by the facility) received two cursory suicide assessments in more than one year without the recommended serial probative questions. There was very little notation in the medical record about his level of suicide risk and no attention to his suicidality in his wellness and recovery plan. The Investigations Unit is reviewing the expert's findings in light of Disability Rights California's previous recommendations, and will recommend corrective action to DMH as necessary.

**Workgroup:** Abuse & Neglect, Goal 1, Obj. A

**Disability Rights California Staff:** Charis Moore, Paul Duryea, Leslie Morrison

**Grant/Funding Source(s):** PAIMI; Trust Fund

## **BENEFITS WORKGROUP**

### **Judge Prohibits In-Home Support Services (IHSS) Functional Index Cuts**

*V.L., et al. v. Wagner, et al.*

Case No. CV 09-04668 CW, Federal District Court Northern District of Calif., Judge Claudia Wilken, filed October 1, 2009

On October 1, 2009, Disability Rights California, four other public interest law firms and two private firms filed a class action complaint in federal district court in San Francisco, challenging the state's plan to cut In-Home Supportive Services (IHSS) benefits to an estimated 130,000 Californians. These changes were mandated by ABX4 4, part of the package budget cuts passed by the Legislature last summer. These cuts in IHSS were based on recipients' "functional index" (FI) ranks and scores, a measure developed only for quality assurance purposes that had never before used to determine eligibility. Effective November 1, 2009, the state planned to

terminate all IHSS services to approximately 40,000 recipients because they had an FI score of below 2, and to eliminate all domestic and related services for IHSS recipients with FI ranks below 4 in these areas. In the lawsuit, IHSS recipients were represented by Disability Rights California, the National Senior Citizen's Law Center, Disability Rights Legal Center, the National Health Law Program and the firm of Charles Wolfinger. The lawsuit also included as plaintiffs the SEIU unions that represent IHSS providers, represented by Altshuler Berzon LLP.

On October 6, 2009, Disability Rights California and our co-counsel filed a motion for a preliminary injunction and for class certification. In support of these motions, the plaintiffs submitted declarations from the five named plaintiffs, dozens of other affected IHSS recipients, local officials from six California counties, five experts including nationally renown researchers from universities across the country, and dozens of agency directors and stakeholders. Plaintiffs asked for a motion on shortened time to ensure that the injunction would issue in time to stop the state from mailing out termination and reduction notices, which were scheduled to be sent on October 20, 2009.

While the motions were pending, we learned that the state planned to mail the termination notices early, starting at midnight on October 15, 2009. On only a few hours notice, plaintiffs filed a request for an emergency Temporary Restraining Order (TRO) to stop the notices. Judge Wilken granted the emergency TRO that evening, just a few hours before the mailing was to begin.

After a hearing on October 19, 2009, Judge Claudia Wilken granted the plaintiffs' request for a preliminary injunction, and then issued a 31 page written order on October 23, 2009. Judge Wilken considered the "human suffering" that would have resulted found that "the increase in more expensive hospitalization and institutionalization of needy disabled and elderly people will likely outweigh the short-term savings." She also found that a functional index was a "complicated mathematical formula devised years ago, which was not designed, and has never been used, to measure an individual's need for care." The Court concluded that the cuts based on this index likely violated federal law, specifically, constitutional due process, three provisions of the federal Medicaid Act and the Americans with Disabilities Act. Judge Wilken ordered the state to send a notice to all affected recipients informing them of her order, which is also posted on the

CDSS' website:

[http://www.cdss.ca.gov/cdssweb/entres/pdf/VL\\_et\\_al\\_v\\_Wagner.pdf](http://www.cdss.ca.gov/cdssweb/entres/pdf/VL_et_al_v_Wagner.pdf)

By the time the Court issued its Preliminary Injunction stopping the cuts, the state had already re-programmed its IHSS computer system to terminate and reduce benefits, so it directed the counties to manually restore all 120,000 files to their previous status. By November 2, 2009, most files had been updated, but more than 4000 had not been changed. Since counties began issuing timecards on November 6, 2009, the providers for these 4000 were likely to stop working or reduce their hours. Consequently, we filed a motion for contempt on November 10, 2009, seeking fines of \$250,000 per day for each day that recipient files were not corrected. A hearing on the contempt motion is set for November 19, 2009.

**Benefits:** Goal 3, Obj. A.

**Discrimination:** Goal 1, Obj. A.

**Disability Rights California Staff:** Melinda Bird, Bernadette Bautista, Sujatha Branch, Deborah Dorfman, Elissa Gershon, Marilyn Holle, Maria Iriarte, Ann Menasche, Fred Nisen, Jung Pham, Taymour Ravandi, Rachel Scherer, Dara Schur, Kim Swain, and many other staff.

**Outside Counsel:** Paula Pearlman and Shawna Parks, Disability Rights Legal Center; Charles Wolfinger, Law Office of Charles Wolfinger; Jane Perkins and Anna Rich, National Health Law Program, representing the individual plaintiffs and the class. We are also working with Stephen P. Berzon, Eve H. Cervantez, Stacey M. Leyton, and Peder J. Thoreen of Altshuler Berzon LLP, representing the unions.

**Grant/Funding Sources:** PAIR/PAIMI.

### **Lawsuit Filed Against State to Ensure that People Receiving In-Home Supportive Services Get Required Notice**

***Northern California ADAPT (Bay Area), et al. v. California Department of Social Services, et al.***

Case No. CPF-09-509912, San Francisco Superior Court, filed October 19, 2009.

On October 19, 2009, Disability Rights California, along with a consortium of legal aid, public interest, disability rights organizations and a private law firm filed a lawsuit in San Francisco Superior Court to stop the state from

implementing a new state law reducing benefits to certain IHSS recipients. The change would force 10,000 indigent, frail, disabled and elderly people to pay an additional \$250 per month toward the personal care services they receive from the In-Home Supportive Services (IHSS). We alleged that these cuts cannot be implemented without adequate notice, which the state has failed to provide. The cuts are expected to take effect in early November.

IHSS services help the frail elderly and disabled remain safely in their own home by providing personal attendant services to help them do their shopping, laundry, meal preparation, dressing, bathing, and even provide for transportation to the doctor. Officials at the state contend that they only need to send a notice out ten days in advance to recipients.

The Department of Social Services (DSS) sent a “notice” on September 16, 2009; however, a readability expert determined that the notice was at both an 11<sup>th</sup> grade reading level and also at college level, and was incomprehensible. The letter was printed in a difficult-to-read font and incorrectly told recipients they could not appeal the notice even if they received it by mistake. The notice violates the requirements in state law concerning the adequacy of notices which must be sent to recipients facing a reduction in their benefits. In addition, the state sent notices only in English, violating state law.

Plaintiffs sought a Temporary Restraining Order stopping the cuts but it was denied. A motion for a Preliminary Injunction stopping the cuts will be heard on November 30, 2009.

Legal Aid Foundation of Los Angeles (LAFLA), Western Center on Law and Poverty, Seyfarth Shaw LLP, and Disability Rights Legal Center initiated this challenge, along with Disability Rights California.

**Benefits:** Goal 3, Obj. A.

**Discrimination:** Goal 1, Obj. A.

**Disability Rights California Staff:** Marilyn Holle.

**Other Counsel:** Legal Aid Foundation of Los Angeles, Western Center on Law and Poverty, Seyfarth Shaw LLP, and Disability Rights Legal Center.

**Grant/Funding Source(s):** PAAT, PADD, and PAIMI.

## **Judge Halts Cuts to the Adult Day Health Care Program**

*Lillie Brantley et al. v. David Maxwell-Jolly, Department of Health Care Services.*

Case No. C-09-03798, Federal District Court, Northern District of Calif., Judge Sandra Brown Armstrong. Cite as 2009 WL 2941519 (N.D. Cal.)

On August 18, 2009, Disability Rights California, along with co-counsel AARP Foundation Litigation, National Senior Citizens Law Center, and the National Health Law Project, filed a class action lawsuit to stop devastating cuts to Adult Day Health Care (ADHC) services. ADHC is a Medi-Cal funded community-based program for low income seniors and younger disabled adults that provides a variety of services, including therapeutic, social, and skilled nursing services designed to maintain individuals in their own homes and to avoid institutionalization. Approximately 37,000 Californians across the state participate in the program.

ABx4 5, one of a number of bills enacted in response to California's budget crisis this past summer, cut the maximum number of days an individual could receive ADHC services from five to three days per week regardless of their need for the services. In addition, the bill imposed new restrictions limiting eligibility for ADHC services which were to go into effect when the Director of the California Department of Health Care Services provided a written declaration that the new restrictions were ready for implementation. At that point, the ADHC benefit would return to being available five days per week, but new restrictions would also be in place.

On behalf of three named plaintiffs, and putative class members, all of whom receive ADHC services 4 or 5 days per week, Disability Rights California and its co-counsel argued that the reduction in days contained in ABx4 5 would place as many as 8,000 recipients at immediate risk of institutionalization, hospitalization, injury or death if implemented. Plaintiffs' legal claims as to both the reduction in days and the new restrictions on eligibility included violations of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act; violation of procedural due process under 42 U.S.C. section 1983 and the Medicaid Act; and violation of the Medicaid Act's Comparability requirement. Plaintiffs filed a preliminary injunction motion, only as to the reduction in days, on August 26, 2009.

On September 10, 2009, in a major victory for Plaintiffs, Judge Sandra Brown Armstrong granted Plaintiffs' motion for a preliminary injunction, and stopped the implementation of the reduction in days of the program. Judge Armstrong ordered that Defendants are enjoined and restrained from cutting benefits to Plaintiffs and putative class members, "unless and until appropriate alternative Medi-Cal services are provided to prevent inappropriate institutionalization in violation of their rights under the ADA and Section 504 of the Rehabilitation Act." In finding that the Plaintiffs had shown irreparable harm, the Judge, in her Order, noted:

The harm in this instance is particularly irreparable and imminent. The ADHC cuts are scheduled to take effect immediately, at which time Plaintiffs and putative Class Members will immediately have their services significantly reduced. As discussed, these services are necessary and critical to Plaintiffs' physical and mental well-being. Given the tenuousness and complexities of their conditions, an interruption in their care, even if temporary, will have serious consequences for Plaintiffs.

Named plaintiffs and their families, and ADHC participants across the state were thrilled with the result in Judge Armstrong's ruling. Phase 2 of the cuts is scheduled to go into effect in early 2010, and Plaintiffs are preparing to seek orders stopping those cuts as well. A case management conference is scheduled for December 3, 2009, at which time a trial schedule will be set by Judge Armstrong.

**Benefits:** Goal 2, Obj. A; Goal 3, Obj. A.

**Discrimination:** Goal 1, Obj. A.

**Disability Rights California Staff:** Elissa Gershon, Jay Koslofsky, Dara Schur, Kim Swain, Elizabeth Zirker, Dan Brzovic.

**Other Counsel:** AARP Foundation Litigation, National Senior Citizens Law Center, National Health Law Project.

**Grant/Funding Source(s):** PAIR/PAIMI.

### **P.D. Found Eligible for SSI Back to October 2003**

P.D. is a young man with psychiatric disabilities, learning disabilities, mild mental retardation and acute asthma. P.D. had been found eligible as a child for SSI benefits, but when he turned 18 was found not to meet the adult disability standard. P.D. reapplied for benefits repeatedly and each

time he was denied. After the last denial, P.D. asked for a hearing. At that hearing, the Administrative Law Judge (ALJ) found that illegal drug use was material to his disability and denied his appeal. P.D. appealed to the Appeals Council and the issue was remanded for a de novo hearing. Disability Rights California represented P.D. at this hearing. Disability Rights California hired a neuropsychologist who testified to the severity of P.D.'s impairments and that his past experimentation with drugs was not related to his disability. At the hearing, Social Security's "impartial medical expert" concurred with the neuropsychologist and added testimony of his own in support of P.D.'s disability claim. P.D. was found disabled and eligible for SSI going back to October 2003.

**Benefits:** Goal 1, Obj. A.

**Disability Rights California Staff:** Ann Coller, Suzanna Gee.

**Grant/Funding Source(s):** PAIMI.

### **Disability Rights California Helps Client Obtain Repairs to Wheelchair**

D.R. is a 37 year-old African American with quadriplegia. D.R. lives in the community with supports and services and uses a wheelchair. D.R.'s wheelchair needed repairs to make it useable but the vendor he purchased the wheelchair from was ignoring his requests for repairs even after agreeing to make them. The vendor also refused to go to D.R.'s home to repair the wheelchair.

Taking the wheelchair to the vendor meant risking injury and/or experiencing pain. Disability Rights California successfully advocated on behalf of D.R. by informing the vendor of its responsibility to repair the wheelchair. The vendor agreed go to D.R.'s home and make the necessary repairs.

**Benefits:** Goal 3, Obj. A.

**Discrimination:** Goal 1, Obj. A.

**Disability Rights California Staff:** Crystal Padilla.

**Grant/Funding Source(s):** PAIR.

## **J.B. Obtains Communication Assistive Technology Device Through California Children's Services (CCS)**

Twelve year old J.B. has cerebral palsy and uses a walker. J.B. is a Regional Center client and receives special education services through his school district. Due to J.B.'s increased fine motor skills, he was able to effectively use a hand-held communication device provided as a result of the school's assessment, however, the school district only allowed J.B. to use the device while at school. J.B.'s mother sought assistance from Disability Rights California in obtaining a new communication device for J.B. to use while at home and on the bus to practice his communication skills after California Children's Services (CCS) denied her request for a new device. CCS denied the request because the family had private insurance that could cover the device and the fact that CCS had funded the old device three years ago and thus, asserted that funding new one would violate rules regarding the frequency of such devices.

Although both the Regional Center and school district were legally obligated to provide the device to meet J.B.'s education and communication goals, Disability Rights California appealed the CCS denial so that if successful, J.B. would own the device and have unlimited access to it. Based upon federal medically necessary EPSDT standards and laws and regulations applicable to CCS services, Disability Rights California prepared a position statement and filed it with the appeal. Prior to the hearing, the case settled with CCS agreeing to authorize the hand-held communication device and pay any residual co-payments or deductibles amounts for the device after private insurer paid the portion that it was responsible. CCS also provided the case management necessary to handle the actual receipt of the device by J.B.

**Benefits:** Goal 2, Obj. A.

**Disability Rights California Staff:** Debra Marley, Marilyn Holle.

**Other Counsel:** N/A.

**Grant/Funding Source(s):** PAAT.

## **Court Approved Class Settlement in Martinez, the “Fleeing Felons” Case.**

*Martinez, et al. v. Astrue, et al.*

Case No. 08-CV-4735 CW., United States District Court, Northern District of California, Judge Claudia Wilken

On September 24, 2009, the Honorable Claudia Wilken, United States District Court Judge for the Northern District of California, approved the nationwide class action settlement in *Martinez v. Astrue*. The class includes approximately two hundred thousand people whose Social Security Insurance (SSI) or Social Security Title II benefits were suspended or denied since January 1, 2000, because they were presumed to be “fleeing felons” solely on the basis of the existence of a warrant.

Class members are potentially eligible for varying amounts of back benefits. About 80,000 are eligible for full retroactive reinstatement and benefits worth over \$500 million. Since California has at least 10% of the national population, 10% of the settlement’s benefits will go to Californians. See the Disability Rights California and other websites for more information about the *Martinez* fleeing felon case and settlement:

[http://www.disabilityrightsca.org/advocacy/Martinez\\_v\\_Astrue/index.htm](http://www.disabilityrightsca.org/advocacy/Martinez_v_Astrue/index.htm),  
<http://www.ssa.gov/martinezsettlement/> and <http://www.nsclc.org/front-page/areas/social-security-ssi/Martinez-Settlement>

The lawsuit challenged the Social Security Administration’s (SSA) illegal implementation of the “Fleeing Felon” law that was first adopted in 1996 by Congress to stop SSI recipients and applicants from using SSI benefits if there was a determination that the person was “fleeing” to avoid arrest. The law said no benefits could be paid for any period when a person was “fleeing to avoid prosecution” or “to avoid ... custody or confinement after conviction” for a felony. 42 U.S.C. § 1382(e)(4)(A). The SSA issued regulations saying benefits would only be denied or suspended “on the basis of an appropriate finding” that the individual is in fact “fleeing.”

When the SSA began implementing the program in 2000, it established a *de facto* policy of suspending or denying benefits solely on the basis of the existence of a warrant even though the notice language tracked the statute

and regulations on the “fleeing” requirement. In 2004 Congress extended the “fleeing” provision to Social Security Title II beneficiaries.

Additionally, as a result of litigation at the time, courts held that there must be a determination of the term “fleeing” and that SSA’s policy was illegal. As a result of these decisions, the SSA removed the reference to the statutory and regulatory “fleeing” standard in the notices, which discouraged people who had a basis for appeal from doing so. Social Security never appealed any of the cases it lost in district court. When one case made it to the Second Circuit Court of Appeals on a fluke (*Fowlkes v. Adamec*), Social Security issued an “Acquiescence Ruling” saying it would follow the decision only in the Second Circuit. It was clear that the SSA’s policy would not be changed through individual suits.

In October of 2008, Disability Rights California joined the National Senior Citizens Law Center, Munger Tolles & Olson, the Urban Justice Center and the Legal Aid Society of San Mateo County in filing suit. Plaintiffs included a woman who was a SSI recipient with multiple disabilities and a common name. The SSA tried to stop her benefits because decades ago another woman with the same name who was eight inches taller got a warrant in Miami while the plaintiff was pregnant and living in Chicago under her married name. Also included was J. H., a Regional Center client whose benefits were stopped because of a warrant issued in another state when he was 12 years old and which he could not remember.

The centerpiece of the settlement is that, with the exception of warrants issued on charges of escape or flight, a warrant will no longer automatically trigger denial or suspension of SSI, Title II or Special Veterans Benefits (SVB) or trigger denial or suspension of representative payee status. Further, while the parties were still negotiating the settlement, the SSA agreed to end its illegal policy as of April 1, 2009, so that as of that date people no longer were being denied benefits or having their benefits suspended.

**Benefits:** Goal 1, Obj. A.

**Disability Rights California Staff:** Marilyn Holle, Tim Poe.

**Other Counsel:** Gerald McIntyre (lead), Anna Rich, Kevin Prindiville, National Senior Citizens Law Center; David Fry, Mark R. Conrad, Jeremy S. Kroger, Munger, Tolles & Olson, LLP, San Francisco; Emilia Sicilia,

Jennifer Parish, Urban Justice Center, New York: Christopher A. Douglas, Legal Aid Society of San Mateo County.

**Grant/Funding Source(s):** PADD, PAIMI, and PAIR.

**One-Year-Old Moved from Early Start to Regional Center Eligibility and Qualified for Medi-Cal through DD Waiver**

A similar case was reported on in ROR #54, page 10.

Disability Rights California was contacted by a mother of a child, C.B., in obtaining Regional Center services under the Home and Community Based Services Waiver (DD Waiver). C.B. has a low incidence congenital disability, and access to health care is essential because of his complex care needs. Because C.B.'s health care coverage through the mother's former employer was terminating, C.B. needed institutional deeming under the DD Waiver for Regional Center clients who otherwise would qualify for care in one of the categories of ICF/DD (intermediate care facilities/developmentally disabled) facilities. With institutional deeming, C.B. would qualify for Medi-Cal because his financial eligibility would be determined as if he were in a medical facility – that is, without regard to his parents' income and resources and looking only to his own nonexistent income.

At the time, C.B. was under the age of three and was enrolled in the Early Start program at the Regional Center. His Regional Center eligibility had not yet been determined. Because of her impending insurance termination, the mother requested that the Regional Center determine C.B.'s Regional Center eligibility so that he could obtain DD Waiver services. The Regional Center refused, insisting that C.B. remain in Early Start until age three and that his Regional Center eligibility could not be determined prior to age three. Thus, C.B. could not be considered for DD waiver services until age three, assuming he was found eligible for Regional Center services. Disability Rights California represented the mother in an appeal. In doing so, Disability Rights California contacted the Division of Developmental Services and immediately started working with the Regional Center to reach a settlement. Following a developmental assessment, the Regional Center and DDS agreed that C.B. met the Regional Center eligibility criteria.

The State then determined C.B. did not meet the medical criteria for admission to an ICF/DD per the criteria in Appendix 2 of the DDS Waiver

Policy Manual and 22 CCR § 51343.2(e). To establish that if placed out of the home, C.B. would require developmental and habilitative program services in a setting with intermittent nursing care and ongoing nurse supervision, the mother submitted detailed descriptions regarding the requisite care regimens for C.B.'s conditions. Additionally, C.B.'s treating physicians reviewed these descriptions and wrote letters to DDS on behalf of C.B. concurring with his mother's descriptions of his care needs. With this additional medical evidence, DDS agreed that C.B. met the eligibility requirements for DD waiver services. C.B. now qualifies for Medi-Cal.

**Lanterman:** Goal 3, Obj. A.

**Benefits:** Goal 2, Obj. A.

**Disability Rights California Staff:** Marilyn Holle and Tim Poe, Connie Huang.

**Grant/Funding Source(s):** PADD.

**Disability Rights California Joins other Amici in Signing on to an Amicus Curiae Letter Seeking California Supreme Court Review of the Adverse Appellate Decision in *Watkins, et al, v. County of Alameda, et al.***

*Watkins, et al. v. County of Alameda, et al.*

California Supreme Court No. S177058; *Amicus Curiae* Letter in Support of Publication.

Disability Rights California, represented by Thomas V. Loran III, Pillsbury Winthrop Shaw Pittman LLP, joins other amici Disability Rights Advocates, Disability Rights Education and Defense Fund, National Employment Law Project, and The Legal Aid Society – Employment Law Center in signing on to an Amicus Curiae Letter seeking California Supreme Court review of the adverse appellate decision in *Watkins, et al, v. County of Alameda, et al.*, California Supreme Court No. S177058.

**Summary of Amicis**

The Amici are five disability rights organizations involved in service to persons with disabilities in California and concerned with the laws prohibiting disability-based discrimination. If successful, this case will impact thousands of indigent residents of Alameda County, a large number of whom are people with disabilities.

In the appellate decision in *Watkins v. County of Alameda*, the First Appellate District upheld Alameda County’s provisions barring individuals from receiving general assistance benefits for more than six months unless they met an extremely restrictive definition of “unemployability.” As a strong dissenting opinion pointed out, the decision “permits the county to terminate the last vestige of relief to thousands of indigent who cannot find work and have no other source of sustenance.”

Disability Rights California and other amici seek review of this decision by the California Supreme Court because it misinterprets the applicable laws, particularly discrimination laws and their effect on the meaning of the word “employable.”

Amici argue that the decision wrongfully conflates “disability” with “unemployability” without considering many other factors. Such an interpretation is not supported by the history and structure of disability discrimination laws, which require, among other things, distinct consideration, based on the particular statute, of the specific nature of the disability, the practical and legal availability of reasonable accommodations, and the nature of the available employment.

**Discrimination:** Goal 3, Obj. A.

**Disability Rights California Staff:** Stuart Seaborn, Sacramento Senior Attorney (lead).

**Counsel for Disability Rights California:** Thomas V. Loran III, Pillsbury Winthrop Shaw Pittman LLP.

**Other Amici:** Disability Rights Advocates; Disability Rights Education and Defense Fund; National Employment Law Project; the Legal Aid Society – Employment Law Center.

**Grant/Funding Source(s):** PAIMI, PAIR, and PADD.











































**Voting (Discrimination):** Goal 4B  
**Disability Rights California Staff:** Hillary Sklar  
**Grant/Funding Source(s):** PAVA

**Disability Rights California Comments on Election Assistance Commission's Voting System Guidelines**

The U.S. Election Assistance Commission (EAC) recently called for comments on the latest draft of Voluntary Voting System Guidelines (VVSG). These guidelines are intended to ensure that voting system manufacturers are producing machines for elections which are accessible to all voters.

Disability Rights California staff provided comments to the EAC regarding the guidelines. The comments included a request that voters with disabilities be involved in all stages of the development and testing of voting systems. Additionally, Disability Rights California asked that the guidelines be more fully descriptive of how voters with different disabilities are helped by the recommendations, in order to make clear to the manufacturers that some voters may confront myriad barriers to voting as a result of the poor design of a voting system.

Currently, the EAC is reviewing the comments. Disability Rights California will continue to monitor the guidelines to ensure that voting is accessible to all.

**Voting (Discrimination):** Goal 6.  
**Disability Rights California Staff:** Hillary Sklar, Margaret Jakobson, Kevin Bayley.  
**Grant/Funding Source(s):** PAVA

**OTHER**

**Disability Right California Submits Comments on Proposed State Bar Ethics Rule 1.14 on "Clients with Diminished Capacity"**

The California State Bar is considering a proposed new Rule of Professional Conduct (ethics rule) regarding the relationship between lawyers and "clients with diminished capacity." On November 13, 2009, Disability Rights California, along with six other advocacy organizations, submitted comments to the Bar opposing the new rule.

The new rule was developed in response to the perceptions and concerns of many lawyers, particularly those who specialize in estates and trusts (wills), that clients with increasingly severe Alzheimer's disease or other cognitive disabilities sometimes are unable to provide necessary direction to their lawyers so that the lawyers can assist in preventing harm to the clients. Under the current ethical rules, a lawyer cannot reveal client confidences even if they are doing so to assist the client. The proposed rule provides: "When the lawyer reasonably believes (i) that the client has significantly diminished capacity such that the client is unable to make adequately considered decisions in connection with a representation and further that, as a result of such significantly diminished capacity, (ii) the client is at risk of substantial physical, financial or other harm unless action is taken, and (iii) the client cannot adequately act in his or her own interest, the lawyer may, but is not required to, notify an individual or organization that has the ability to take action to protect the client." This rule, although new to California, is similar to the ethical rule that currently exists in most states.

While recognizing the genuine concerns for clients that have triggered the rule, Disability Rights California believes that the new rule, as drafted, contains many ambiguities and would unnecessarily jeopardize attorney-client confidences and trust in the attorney-client relationship, would erode rights to personal autonomy, does not adequately address lawyers' obligations to provide reasonable accommodations under state and federal disability rights laws, doesn't adequately address the need for training before lawyers could make determinations about client capacity and alternate resources, and fails to appropriately consider the express interests of clients.

The State Bar will be considering comments to this and other rules changes. Any changes will ultimately have to go to the California Supreme Court, and in some circumstances the state Legislature, before final adoption.

**Advocacy Principle:** Enforcing Rights: Make sure that there is access to courts, administrative agencies, and legal services so that individuals with disabilities can defend and enforce their rights.

**Disability Rights California Staff:** Michael Stortz, Dara Schur, Stephen Rosenbaum.

**Other Counsel:** Disability Rights Education and Defense Fund, Disability Rights Legal Center, Law Foundation of Silicon Valley, Mental Health Advocacy Services, and the National Senior Citizen Law Center.

**Grant/Funding Source(s):** All Feds/IOLTA

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## **GLOSSARY OF SELECTED TERMS**

(Updated November 19, 2009)

### **“A&D FPL PROGRAM” or AGED & DISABLED FEDERAL POVERTY LEVEL PROGRAM (Also referred to as the Medi-Cal 133% Program)**

Individuals or married couples whose income is more than SSI levels, but who are still considered low income, may be eligible to receive Medi-Cal with no share of cost under this program. Under this program an individual who needs assistance with personal care and/or housekeeping tasks so they can remain safely in their homes can also receive these services with no share of cost.

### **AB 2726/3632**

Assembly Bills 2726 and 3632 provide referrals to County Mental Health Services for children with special education needs beyond what schools can offer. These services are considered special education services, and they include behavioral assessments, individual or group therapy, occupational and physical therapy, and mental health services. (Also known as “AB 3632,” or “Chapter 26.5” or Gov. Code §§ 7570 – 7588)

### **“ADHD” or ATTENTION DEFICIT-HYPERACTIVITY DISORDER**

Attention deficit-hyperactivity disorder (ADHD) is a neurobehavioral disorder that affects 3 - 5 percent of all American children. It interferes with a person's ability to stay on a task and to exercise age-appropriate inhibition (cognitive alone or both cognitive and behavioral). Some of the warning signs of ADHD include failure to listen to instructions, inability to organize oneself and school work, fidgeting with hands and feet, talking too much, leaving projects, chores and homework unfinished, and having trouble paying attention to and responding to details. There are several types of ADHD: a predominantly inattentive subtype, a predominantly hyperactive-impulsive subtype, and a combined subtype. ADHD is usually diagnosed in childhood, although the condition can continue into the adult years.

### **“ADR” or ALTERNATIVE DISPUTE RESOLUTION**

Methods of resolving disputes without official court proceedings. These methods include MEDIATION and ARBITRATION.

### ***AMICUS CURIAE***

Disability Rights California is often asked to appear as an organizational

“*amicus curiae*,” or “*friend of the court*” in court cases raising important issues for people with disabilities. Appearing as an “*amicus*” means that Disability Rights California submits a brief to the court raising issues as an organization, rather than on behalf of individual clients, because the issues are important to us as an advocacy organization or important to people with disabilities. When Disability Rights California appears as *amicus curiae*, DRC Staff usually assists with drafting and revising the brief, and co-signs the brief with other interested parties.

## **ARBITRATION**

When a person that isn't involved in the case looks at the evidence, hears the arguments, and makes a decision.

## **BEHAVIOR INTERVENTION PLAN**

Plans made by a local educational agency (LEA) as part of an individualized education program (IEP), to change the behavior of students who harm themselves, assault others, or are destructive.

## **“BPAO” or BENEFITS, PLANNING, ASSISTANCE, AND OUTREACH**

The Social Security Administration (SSA), as authorized by the Ticket to Work and Work Incentives Improvement Act of 1999, awarded cooperative agreements to a variety of community organizations called Benefits Planning, Assistance, and Outreach (BPAO) projects. These BPAO projects provide all SSA beneficiaries with disabilities (including transition-to-work aged youth) access to benefits planning and assistance services. The goal of the Benefits Planning, Assistance, and Outreach (BPAO) Program is to better enable SSA’s beneficiaries with disabilities to make informed choices about work. Each BPAO Project has Benefits Specialists who will:

- Provide work incentives planning and assistance to SSA’s beneficiaries with disabilities
- Conduct outreach efforts to those beneficiaries (and their families), who are potentially eligible to participate in Federal or State work incentives programs; and
- Work in cooperation with Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities.

### **“BWE” or BLIND WORK EXPENSES**

If the Social Security Administration (SSA) considers you statutorily blind, you can have your actual benefit amount increased by up to 100% of all your work expenses, whether or not those expenses are related to your disability. You can claim transportation expenses, the cost of lunch at work, and even the taxes you pay because of earnings. If your SSA Claims Representative agrees that your claimed work expenses can be included in a BWE, you may be able to recover up to 100% of those expenses by increasing your SSI check up to its maximum. Exactly how much your SSI benefit may increase depends on your living situation, your earned and unearned income, and the amount of your BWE.

### **CALWORKs**

“CalWORKs” is California's welfare program for people who have children under 19 years old. CalWORKs provides money for children and the relatives caring for them. Work and training is required of most parents. Adults can only get CalWORKs cash aid for five years in a lifetime. If you qualify under the rules, you are entitled to cash aid from the county.

### **“CDR” or CONTINUING DISABILITY REVIEW**

Social Security Administration (SSA) reviews disability cases periodically to see if the person with a disability still meets SSA disability rules. SSA performs two types of reviews, a medical Continuing Disability Review and a work Continuing Disability Review. Under a work review, SSA looks at earnings to determine if an individual is eligible for monthly benefits. A medical review determines if an individual is meeting the medical requirements to collect disability. If the person does not meet the medical requirements, SSA may stop the disability benefits.

### **“CI” or COUNTABLE INCOME**

Countable Income is the amount of your income that is included in calculations to determine your eligibility for Supplemental Security Income (SSI) benefits.

### **CLASS ACTION**

A lawsuit brought by one or more persons on behalf of a larger group where certain individuals (called “class representatives” or “named plaintiffs”) act on behalf of a larger group of people who have similar issues. The court has to determine whether a case can proceed as a class

action. If so, certain specific procedures apply relating to how the members of the larger group can get notice of the lawsuit and participate in it.

### **CONSERVATOR, CONSERVATEE and CONSERVATORSHIP**

Conservatorship is a legal proceeding in which an individual or agency (to be known as the “conservator”) is appointed by a court to be responsible for a person who needs assistance in activities of daily living (the “conservatee”). A Conservator of the person must ensure that the conservatee is properly fed, clothed, and housed. A Conservator of the estate is responsible for managing the conservatee’s money and other property. One individual may serve as either conservator of the person or conservator of the estate or both. Conservatorship applies to an adult, i.e., a person eighteen (18) years of age or older.

### **“CASA” or COURT APPOINTED SPECIAL ADVOCATES**

Court appointed special advocates are specially trained volunteers who are appointed by a juvenile court to provide advocacy to children in the foster care system. CASA responsibilities include gathering information regarding the child; advocating for the child in IEP meetings and other forums; and making recommendations to the juvenile court about the child’s best interests.

### **“CYA” or CALIFORNIA YOUTH AUTHORITY**

The California Youth Authority (CYA), a California State agency of facilities for youths who have committed serious offenses.

### **DAMAGES**

Money that the losing side must pay to the winning side to make up for losses or injuries. There are three kinds of damages: (1) "compensatory," meaning money to pay for the actual cost of an injury or loss; (2) "punitive" or "exemplary," meaning an amount of money that's more than the actual damages. Acts as punishment or deterrence for willful or malicious acts; and (3) statutory damages, which are specific amounts in the law awarded for specific legal violations.

### **DECLARATION**

A statement that a person writes and files with the court. It tells the judge why the person should win the case. Sometimes, a person signs this under penalty of perjury.

## **DECLARATORY JUDGMENT**

A judgment of the court that explains what the existing law is or expresses the opinion of the court without the need for enforcement.

## **DEMURRER**

A “demurrer” is a specific kind of request filed with the Court in response to a lawsuit. A demurrer alleges that even if the facts are true, there is no legal violation. The court decides on the demurrer at a hearing after both parties present memos and argument to the court.

## **DEPOSITION**

Written or oral testimony given under oath in front of an authorized third person like a court reporter. Depositions take place outside of the court. They allow the parties to get a record of a person's testimony, or to get testimony from a witness that lives far away. They can help the lawyers prepare their court papers called “pleadings.” (See *also* DISCOVERY.)

## **“DDS” or CA DEPARTMENT OF DEVELOPMENTAL SERVICES**

The California Department of Developmental Services (DDS), which funds and oversees services to people with developmental disabilities in California.

## **“DFEH” or CA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

The California Department of Fair Employment and Housing is the state agency that investigates employment and housing discrimination claims and is responsible for enforcing state fair housing and fair employment laws, including disability rights laws in the housing and employment context.

## **“DHS” or CA DEPARTMENT OF HEALTH SERVICES**

The California Department of Health Services (DHS), which funds and oversees health services in California, including nursing home care and home care.

## **DISCOVERY**

The gathering of information (facts, documents, or testimony) before a case goes to trial. Discovery is done in many ways, such as through depositions, interrogatories, or requests for admissions. It can also be done through independent investigation or by talking with the other side's lawyer.

## **DISMISSAL WITH PREJUDICE**

When a court dismisses a case and will not allow any other suit to be filed on the same claim in the future.

## **DISMISSAL WITHOUT PREJUDICE**

When a court dismisses a case, but will allow other suits to be filed on the same claim.

## **“DMH” or CA DEPARTMENT OF MENTAL HEALTH**

The California Department of Mental Health (DMH), which funds and oversees mental health services in California.

## **“DOE” or DEPARTMENT OF EDUCATION**

## **“DSS” or CA DEPARTMENT OF SOCIAL SERVICES**

The California Department of Social Services (DSS) funds and oversees public assistance programs in California, including CalWORKS (family assistance) and case management for personal care services.

## **DYSAUTONOMIA**

(Familial) Dysautonomia affects the autonomic nervous system, which controls involuntary actions such as digestion, breathing, tearing, and the regulation of blood pressure and body temperature. This condition also affects the sensory nervous system, which controls activities related to the senses, such as taste and the perception of pain, heat, and cold.

## **“EA” or EQUAL ACCESS**

Disability Rights California receives grants from the state Equal Access to Justice Program to serve indigent people with disabilities on specified projects.

## **ELLIS ACT**

The Ellis Act (California Government Code §§ 7600 et seq.) is a California law that bars local governments from enacting regulations, such as condominium conversion ordinances, that would prevent some landlords from leaving the rental housing market.

## **EN BANC**

Court sessions where all the judges of a court participate, instead of the usual number. For example, the U.S. circuit courts of appeals usually use panels of three judges, but all the judges in the court may decide certain

matters together. When that happens, they are sitting "*en banc*" (sometimes spelled "in banc"). It comes from the French language and means "on the bench."

### **“EPSDT” or EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT**

The Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) provides health care diagnostic and treatment services to individuals under age 21. Under federal law, California must give people under age 21 specified diagnostic services. They also must provide treatment services to correct or ameliorate defects and physical and mental illnesses and conditions discovered as a result of the diagnostic services.

### **EXCEPTION PAYMENT**

“Exception Payment” is a subsidy above the amount usually allowed.

### **“EXR” or EXPEDITED REINSTATEMENT**

This term is used under The Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs to allow benefits for a person with a disability to be reinstated quickly if they are no longer working. It provides for temporary benefits during a period of evaluation, rather than requiring a new application for benefits.

### **“EPE” or EXTENDED PERIOD OF ELIGIBILITY**

This term is used under the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs to provide additional protections to people whose disabilities may only allow periodic employment. Under these programs, if you stop working you may automatically have your benefits restored without having to reapply.

### **FAIR HEARING**

A hearing in front of an agency or administrative law judge to review an agency decision. People have certain rights in fair hearings such as the right to present evidence, to cross examine and to have findings supported by evidence.

### **“FMR” or FAIR MARKET RENT**

The Fair Market Rent (FMR) is the amount that the Housing and Urban Development (HUD) sets for rent. Tenants have to pay extra if rents exceed the FMR, as they usually do because the FMR's are unrealistically low.

## **“FIFTH CATEGORY” REGIONAL CENTER ELIGIBILITY**

A person is eligible for the "fifth category" if he or she has a condition that is similar to mental retardation and/or has treatment needs that are similar to a person with mental retardation.

## **FORENSIC**

A term used by both DDS and DMH and intended to indicate individuals who have had some involvement with the criminal justice system, though sometimes used too broadly for people with aggressive behavioral challenges. The intersection between the mental health system and the criminal justice system is often called “forensic mental health.” In California, there are six different commitment categories for people who are involved with the mental health system because of their contact with the criminal justice system.

## **“FAA” or FUNCTIONAL ANALYSIS ASSESSMENT**

An FAA is a mental health behavior analysis to review an individual’s behavior in order to come up with a behavioral intervention plan to address problem behaviors.

## **“G-TUBE” or GASTROSTOMY TUBE**

A Gastrostomy Tube (G-Tube) is a tube that is placed on the stomach to vent for air or drainage, and/or is an alternate way for feeding.

## **GUARDIAN AD LITEM**

An adult appointed by a court who represents a minor child an individual who has difficulties in acting on his or her own behalf. Comes from Latin meaning for the "purposes of the lawsuit."

## **GUARDIANSHIP**

A guardianship applies only to minors, i.e., person under the age of eighteen (18) years. The principal purpose of guardianship is to provide protection for a child who has no parent.

## **HABEAS CORPUS**

A “writ of *habeas corpus*” is a judicial mandate to someone who has custody of a person ordering that the person be brought to the court so it can be determined whether or not that person is lawfully confined and whether or not the person should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to the

person's own or another's confinement, or to the conditions of confinement. The term comes from Latin.

**“HHS” or HEALTH & HUMAN SERVICES**

HHS is the federal agency overseeing health and human services.

**“HIPAA” or HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

The new federal Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of medical records and other confidential health information, and restricts access to records except under specified circumstances.

**“HOUSING CHOICE VOICHER” OR “SECTION 8”**

Housing Choice Vouchers, often referred to as Section 8 Vouchers, help subsidize rents for lower income tenants, including tenants with disabilities. The local Public Housing Authority (PHA) pays part of the tenant's rent when the tenant rents from a private landlord.

**“HUD” or U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

The U.S. Department of Housing and Urban Development (HUD) funds and regulates many housing and community development programs for lower income people and people with disabilities, including Section 8.

**“ICF-DD-N” or INTERMEDIATE CARE FACILITY DEVELOPMENTALLY DISABLED-NURSING**

Intermediate Care Facility-Developmentally Disabled-Nursing (ICF-DD-N) are a category of community facilities licensed by the California Department of Health Services (DHS), which generally house 6 residents.

**“IDEA” or INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

The Individuals with Disabilities Education Act (IDEA) is the federal statute that requires school districts receiving federal funds to provide all students who have a categorically defined disability with a free appropriate public education (FAPE) in the least restrictive environment. FAPE includes specialized instruction and related services that meet the state educational standards and are implemented as called for in a student's individualized education program (IEP).

### **“IEP” or INDIVIDUALIZED EDUCATION PROGRAM**

An Individualized Education Program (IEP) describes the educational program that has been designed to meet the unique needs of a child with disabilities. Each child who receives special education and related services must have an IEP, which is an individualized document developed in consultation with the parents, school, advocates, students (as appropriate), and health professionals.

### **“IHSS” or IN-HOME SUPPORTIVE SERVICES PROGRAM**

The In-Home Supportive Services Program (IHSS) helps pay for services to eligible people to enable them to stay in their own homes. To be eligible you must be blind or have a disability or be over 65 and need these services so you can remain safely in your home. IHSS is an alternative to out-of-home care such as nursing homes or board and care facilities.

### **“IMD” or INSTITUTION FOR MENTAL DISEASE**

An IMD is defined in the Code of Federal Regulations at 42 CFR 435.1009 as a facility of more than 16 beds that is primarily engaged in providing treatment services for individuals diagnosed with mental illness.

### **IMPLIED WARRANTY OF HABITABILITY**

The right to get an apartment in good condition.

### **IN-HOME OPERATIONS HOME AND COMMUNITY-BASED SERVICES (IHO-HCBS WAIVER)**

The new IHO HCBS waiver combines several existing waivers, including the NF/AB waiver, to expand the number of slots and services that waiver recipients who would otherwise be institutionalized in a nursing facility, sub acute facility or acute hospital can receive in the community.

### **INDIAN CHILD WELFARE ACT (ICWA)**

This is a federal law to protect the integrity of American Indian families. It acknowledges and implements the tribe’s right to intervene in state child custody proceedings.

### **INJUNCTION**

An injunction or permanent restraining order is a court order requiring someone to take specific actions or ordering them to stop certain behaviors, based on legal obligations. It is issued after both sides have been heard by the court in a hearing or trial. The court order specifies the specific actions, people and time for compliance.

### ***IN FORMA PAUPERIS (IFP)***

A court says a person does not have to pay a filing fee because the person can't afford it. In Latin, it means "in the manner of a pauper."

### ***IN PROPIA PERSONA (IN PRO PER)***

*In Propia* is when a person represents himself or herself without a lawyer. This comes from the Latin for "in one's own proper person." (See also PRO PER AND PRO SE.)

### **INTERROGATORIES**

Written questions asked by one party in a lawsuit, which the opposing party must answer in writing.

### **INTERVENOR**

A person who voluntarily participates in a lawsuit or other proceeding brought by other people. The court must approve the participation of the intervener.

### **"IOLTA" or INTEREST ON LAWYERS TRUST ACCOUNTS**

This is a method of funding for legal services to low income people and people with disabilities. It is also referred to as "Trust Fund". It is administered by the State Bar Association. Disability Rights California receives IOLTA funding.

### **"IPP" or INDIVIDUAL PROGRAM PLAN**

California's Lanterman Act provides that persons with developmental disabilities are entitled to "IPPs," or Individual Program Plans that identifies the person's goals and the services and supports they will get to help them meet their goals. This action plan helps provide community supports to prevent institutionalization of people with developmental disabilities.

### **"IRWE" or IMPAIRMENT RELATED WORK EXPENSES**

This term is used under The Social Security Disability Insurance (SSDI) AND Supplemental Security Income (SSI) programs to refer to out-of-pocket expenses that are needed in order to be able to work. These expenses are deducted from earnings before certain benefit calculations are made.

### **JUDGMENT (JUDGEMENT)**

The judge's final decision in a case.

## **LANTERMAN ACT**

The California law which grants people with developmental disabilities an entitlement to services and supports.

## **LEVEL 14 GROUP HOME PLACEMENTS**

Level 14 refers to a rate classification that reflects the staffing needs of an individual in Community Care Licensing Facilities. 14 is the highest rate available.

## **“LPS” or LANTERMAN-PETRIS-SHORT ACT**

The Lanterman-Petris-Short Act is one of the main California laws governing services to and treatment of people with mental illness. It covers certain conservatorship proceedings as well as establishes that persons are statutorily entitled to individualized treatment that is least restrictive of their personal liberties.

## **MANIFESTATION DETERMINATION**

The manifestation determination meeting is a meeting of the relevant members of the IEP team to determine whether a child with a disability may be expelled or have his placement changed for more than 10 consecutive school days. At the meeting, the IEP team reviews the relevant information from the student's file, including the IEP and any information from teachers and the parents and then decides two things: 1) was the behavior caused by, or did it have a direct and substantial relationship to, the child's disability, and 2) was the behavior the direct result of the school's failure to implement the IEP? If the team answers yes to either question, the child cannot be expelled and a placement change would require the consent of the parent or a hearing officer's order. If the IEP team members representing the school district believe the answer to both questions is “no” and the parent disagrees, the parent can appeal to a special education hearing.

## **MEDI-CAL (See Medicare)**

Medi-Cal is California's program to pay for medical care for many low income people, especially families, children, people with disabilities, and the elderly. Medi-Cal is funded by the state and federal government. There are many Medi-Cal programs with different rules. Depending on which program you qualify for and how much money you make, Medi-Cal may pay for all your medical expenses or only part of them.

## **MEDICARE (See Medi-Cal)**

Medicare is a federal health insurance program which provides benefits for eligible people. There are two parts to the program: "Part A" is hospital insurance and "Part B" is medical insurance. Medicare does not cover everything, and is not free for most people.

## **MOTION**

An oral or written request made by a party to an lawsuit before, during, or after a trial asking the judge to issue a ruling or order in that party's favor.

## **“MSSP” or MULTIPURPOSE SENIOR SERVICES PROGRAM**

The Multipurpose Senior Services Program (MSSP), operated by the California Department of Aging, provides case management and a range of services to assist seniors with disabilities to live independently.

## **NURSING FACILITY WAIVER**

The Nursing Facility Waiver allows someone who is otherwise eligible for nursing facility services to instead receive services in the community. It is called a "Waiver" because it waives certain federal Medicaid rules in order to provide different or more services than the State offers to other Medicaid (Medi-Cal) eligible people.

## **“OCRA” or OFFICE OF CLIENT’S RIGHTS**

## **“ODD” or OPPOSITIONAL DEFIANT DISORDER**

Oppositional Defiant Disorder (ODD) is a type of disruptive behavior disorder characterized by a recurrent pattern of defiant, hostile, disobedient, and negativistic behavior directed toward those in authority, including such actions as defying the requests or rules of adults, deliberately annoying others, arguing, spitefulness, and vindictiveness that occur much more frequently than would be expected on the basis of age and developmental stage.

## **OPINION**

A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. A *PER CURIAM* OPINION is an unsigned opinion “of the court.”

## **“OPR” or OFFICE OF PATIENT’S RIGHTS**

## **ORDER TO SHOW CAUSE**

A court order that makes someone go to court to explain to the judge why he or she did not follow the rules.

## **“PAAT” or PROTECTION & ADVOCACY FOR ASSISTIVE TECHNOLOGY**

Beginning in 1998, Disability Rights California received limited funds under the Protection and Advocacy for Assistive Technology (PAAT) Act to increase access to assistive devices and equipment.

## **“PABBS” or PROTECTION & ADVOCACY FOR BENEFICIARIES OF SOCIAL SECURITY**

Under the Protection and Advocacy for Beneficiaries of Social Security (PABSS) Act, Disability Rights California provides advocacy assistance to Beneficiaries of Social Security Disability or Supplemental Security Income (SSI), and to people who are working and are beneficiaries of Medicare, Medi-Cal or In-Home Supportive Services (IHSS) about securing or requiring employment.

## **“PADD” or PROTECTION & ADVOCACY FOR DEVELOPMENTAL DISABILITIES**

In 1978, Disability Rights California became the agency in California responsible for protecting and advocating for the rights of people with developmental disabilities under the federal Developmentally Disabled Assistance and Bill of Rights Act of 1978.

## **“PAIMI” or PROTECTION & ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS**

The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI) extended Disability Rights California’s mandate to people with psychiatric disabilities.

## **“PAIR” or PROTECTION & ADVOCACY FOR INDIVIDUAL RIGHTS**

The Protection and Advocacy of Individual Rights Act of 1992 (PAIR) extended Disability Rights California’s mandate to people with physical, learning and sensory disabilities.

## **“PASRR” or PREADMISSIONS SCREENING AND RESIDENT REVIEW**

This is a federally mandated psychosocial, psychiatric and physical evaluation of persons admitted to nursing facilities or at risk of being placed in nursing facilities, funded by the Department of Mental Health and

administered by independent contractors. It helps identify the need for specialized services and helps identify appropriate community placements rather than institutionalization.

### **“PATBI” or PROTECTION & ADVOCACY FOR TRAUMATIC BRAIN INJURY**

Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI) assures that people with traumatic brain injury receive appropriate services and supports within their own communities. Disability Rights California promotes the rights of people with Traumatic Brain Injury (TBI) through advocacy assistance, education, and outreach to build TBI community awareness and support for inclusion. This program was established by federal grants from the Department of Health and Human Services.

### **“PAVA” or PROTECTION & ADVOCACY FOR VOTING ACCESS**

Part of the Help America Vote Act of 2002 (HAVA) was the Protection and Advocacy for Voting Access (PAVA) program. PAVA expanded Disability Rights California’s ability to work for full participation in the electoral process for people with disabilities, including registering to vote, casting a vote and accessing polling places.

### ***PRO BONO***

Legal work done for free. From the Latin meaning "for the public good." Private firms often work with Disability Rights California “*pro bono*” – without charge to clients.

### ***PRO PER***

People who present their own cases in court without lawyers (*See also IN PROPIA PERSONA and PRO SE.*)

### ***PRO SE***

People who present their own cases in court without lawyers (*See also PRO PER and PRO SE.*)

### **PROTECTIVE SUPERVISION**

Protective supervision is supervision for individuals who, because of cognitive or mental impairments, need continuous supervision in order to prevent self-inflicted harm while living at home.

### **PURCHASE OF SERVICES (POS)**

Purchase of Services (POS) dollars is money used by people served under

the Lanterman Act. It allows the person with a developmental disability to directly pay service providers.

### **RIESE HEARING**

A hearing to determine an individual's capacity to refuse administration of psychotropic medication.

### **REGIONAL CENTER S**

Non-profit corporations which, under the provisions of the Lanterman Act, contract with the Department of Developmental Services to provide service coordination to individuals with developmental disabilities and assist people to obtain the supports they need. There are 21 Regional Center s in California, each serving a different geographical area.

### **SECTION 8**

Section 8 is a federally funded housing assistance program that provides to low income families. The vouchers allow the family to rent any apartment or house where the landlord will accept them, and pay a limited amount of money, generally 30% of the family's income. Section 8 is operated by local housing authorities and usually has a long waiting list.

### **SELF-DIRECTED SERVICES**

"Self-Directed Services" is a new model for providing services to people with developmental disabilities that allows them to manage their own budgets and gives them more control over providers.

### **"SELPA" OR SPECIAL EDUCATION LOCAL PLAN AREA**

The Special Education Local Plan Area (SELPA) is an administrative unit under California law that joins together one or more local school districts in a geographic area. This allows districts to share in the coordination, funding, personnel or other administration of services for special education students. School districts with large populations usually stand alone as a single-district SELPA.

### **"SGA" or SUBSTANTIAL GAINFUL ACTIVITY**

Substantial Gainful Activity is the term used by Social Security when evaluating earned income and "work activity" of individuals applying for or receiving disability benefits.

There are two criteria that determine SGA: (1) Substantial activity: work that involves doing significant physical or mental work, or a combination of

both, that is productive and for profit. (2) Gainful work activity: work performed for pay or profit; work of a nature generally performed for pay or profit; or work intended for profit, whether or not a profit is realized.

This is a monthly amount that is specified by Social Security for individuals who are employed or self-employed. SGA may be determined by work done or hours worked in a month. Monthly SGA earnings limits are adjusted annually based on fluctuations in the national average wage index.

### **“SRO” OR SINGLE ROOM OCCUPANCY**

Single room occupancy hotels, or residency hotels, provide single room apartments with shared bathrooms for low income individuals. This is an important source of housing for people with disabilities who live on fixed incomes.

### **“SSI” OR SUPPLEMENTAL SECURITY INCOME**

Supplemental Security Income (SSI) is a cash benefit program for low-income people 65 and over and for people of any age, including infants and children, who are blind or have disabilities. CAPI is a similar program for immigrants who do not qualify for SSI.

### **STATUTE**

A law passed by the United States Congress or a state legislature.

### **STATUTE OF LIMITATIONS**

A law that says how much time you have to file a lawsuit after something happens.

### **STAY**

An order by a court that stops any further action in the case for a certain period of time.

### **SUMMARY JUDGMENT**

When the judge decides a case without going to trial. The decision is based on the papers filed by both sides.

### **TEMPORARY RESTRAINING ORDER (TRO)**

A Temporary Restraining Order (TRO) is a court order requiring immediate action. It is an emergency remedy of brief duration issued by a court only in

exceptional circumstances, usually when immediate or irreparable damages or loss might result before the opposition could take action.

### **“TBS” or THERAPEUTIC BEHAVIORAL SERVICES**

Therapeutic Behavioral Services (TBS) is a Medi-Cal mental health service. It provides short-term one-to-one assistance to children or youth under age 21 who have behaviors that are too hard for their families or foster placement to handle, such as tantrums, assaultive behavior or destruction of property. TBS can be provided to children at home, in a group home, in the community, during evening and weekends, and at other times and places as needed. The county mental health plan develops a behavior intervention plan and assigns a trained behavior aide to a child/youth for as many hours per day as needed. The county may also authorize another mental health organization to develop the plan and assign the behavior aide.

### **TRANSCRIPT**

A record of everything that is said in a deposition, hearing or trial. Transcripts may be prepared from tape recordings or may be done by certified court reporters that use special equipment to make a word-for-word record of the proceeding.

### **“TWP” or TRIAL WORK PERIOD**

A “Trial Work Period” under Social Security Disability law allows people with disabilities to test their ability to work for at least 9 months without reducing their Social Security Disability Income. During the TWP, an individual will receive full SSDI benefits regardless of how high their earnings might be, so long as they have a disability.

### **UNRUH CIVIL RIGHTS ACT**

This law provides protection from discrimination by all business establishments in California, including housing and public accommodations, because of age, ancestry, color, disability, national origin, race, religion, sex, or sexual orientation.

### **WRIT**

A court order that says certain action must be taken.

### **WRIT OF MANDATE**

A court order to a government agency, including another court, or to a

private entity requiring it to follow the law by correcting its prior actions, ceasing illegal acts, or taking certain actions.

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