



OAKLAND LEGAL OFFICE
449 15th Street, Suite 401, Oakland, CA 94612-2821
Telephone: (510) 839-0811 Fax: (510) 839-5780
Toll Free/TTY/TDD: (800) 776-5746

Note: When this memorandum was originally published, we were known as Protection & Advocacy, Inc. (PAI). In October 2008, we changed our name from PAI to Disability Rights California.

MEMORANDUM

TO: Interested Advocates
FROM: Elissa Gershon, Staff Attorney
RE: Regional Center Responsibility to Place Children
DATE: May 2, 2000 – PAI Publication #5106.01

Protection and Advocacy, Inc. (PAI) has received numerous requests for clarification of the rights of adolescents with both developmental disabilities and psychiatric needs to residential placement and supports through the regional center. The concern is that many adolescents are placed at psychiatric hospitals or juvenile detention facilities for short-term commitments. When they are ready to be discharged, the regional center does not have placements for them. They often remain hospitalized or detained for much longer periods than necessary, or are discharged to inappropriate placements from which they cycle back. Many adolescents are released to unsupportive or even unsafe situations which may harm them physically and emotionally.

Briefly, in response to these questions, regional centers have a legal obligation to provide appropriate living arrangements for their clients. This means that regional centers must secure placements with supports that meet the unique needs of adolescents with dual diagnoses. If such a placement is not readily available, the regional center must develop one or adapt an existing placement with appropriate and adequate supports. In addition, children who are eligible for special education services may receive them up to the age of 22, and those who have a qualifying psychiatric diagnosis are eligible for services through county mental health.

Regional center services may not substitute for services from these other agencies; rather, children are entitled to receive services from any agency for which they are eligible. This memorandum will address only regional center responsibilities; see the accompanying memorandum for the obligations of county mental health to provide appropriate community services. (PAI pub. No. 5105.01).

JUVENILE AND DEPENDENCY COURT JURISDICTION

The juvenile or dependency court may order a regional center to secure an appropriate placement. The courts have jurisdiction over two different categories of minors. One group of minors are those that have been abused or neglected pursuant to Welfare & Institutions Code § 300.¹ The other group are minors who have violated a law, commonly known as delinquents, and come under the court's jurisdiction pursuant to section 602.

The court may, for minors described by section 300, "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance and support of the minor, including medical treatment..." § 362(a). In 1992, the legislature further expanded this section to give juvenile courts authority "to join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor." § 362(a). The purpose of this expansion is to ensure coordination and cooperation among government agencies, including regional centers. Parallel provisions for minors under section 602 are contained in section 727.

The Legislative history of this 1992 amendment, Assembly Bill 3553, specifies that the ultimate goal is to see that children "receive the mandated services to which they are entitled." This amendment was initiated to address children with multiple service needs who are legally entitled to receive services from several public agencies. "The fact that multiple agencies are involved often results in a failure to provide legally mandated services: the buck gets passed from agency to agency without the child getting any services". (Quoting the authors of assembly Bill 3553). The California Committee analysis report named agencies typically involved in providing children services: regional centers, Department of Mental Health, Department of Health Services, and Department of Rehabilitation.

Thus, for adolescents who are clients of the regional center, the court may order the regional center to appear in court and may order it to provide the services and supports to which the person is entitled, as discussed below. The law specifies that "nothing in this section shall prohibit agencies which have received notice of the hearing on the joinder from meeting prior to the hearing to coordinate services for the minor." § 362(a). The involved agencies should be encouraged to participate in

the individual program planning (IPP) process to facilitate securing appropriate services and supports for the person, without resorting to a formal court procedure. The court may not "impose duties upon the agency beyond those mandated by law."

Additionally, "the court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services." § 362(a). Therefore, if a minor is not already a client of a regional center, but is suspected of having a developmental disability, an application should be submitted to the regional center. Once the person is accepted, the court will have jurisdiction over the regional center.

ENTITLEMENT TO REGIONAL CENTER SERVICES

All regional center clients, whether or not under the jurisdiction of the juvenile court, are entitled to receive appropriate supports and services from the regional center. Persons with developmental disabilities have the same legal rights guaranteed to all other individuals by the United States Constitution and the laws and the Constitution of the State of California. § 4502. California, through the Lanterman Developmental Disabilities Services Act (hereafter, "Lanterman Act"), Welfare and Institutions Code §§ 4500 et seq., has created a comprehensive service entitlement program which grants developmentally disabled Californians "certain statutory rights, including the right to treatment and habilitation services at state expense." *Association for Retarded Citizens v. Department of Developmental Services* (hereafter, "ARC"), 38 Cal.3d, 384, 389, 211 Cal.Rptr. 758 (1985).

The responsibility of regional centers is to provide people with developmental disabilities with the services and supports to which they are entitled under the Act. ARC. 38 Cal. 3d at 391-392. Regional centers must use an individual program planning process ("IPP process") to (1) assess the individual capabilities, needs, and preferences of their clients (hereafter "consumers"); and (2) ensure that services and supports are provided that will promote community integration, independent, productive, and normal lives, and stable and healthy environments. §§ 4646-4648; ARC, 38 Cal.3d at 388-90. Developmentally disabled persons are entitled to receive those services specified in their IPPs.

It is through the IPP (individualized program plan) procedure that the right the Act grants to each developmentally disabled person and the obligation it imposes on the state are implemented; through it, the developmentally disabled person on an individual basis receives, as an

entitlement, services that enable him to live a more independent and productive life in the community.

ARC, 38 Cal.3d at 392. Thus, the IPP process and resulting document are the cornerstone for regional center clients' receipt of necessary and appropriate services and supports.

LIVING ARRANGEMENTS AND EMERGENCY AND CRISIS SERVICES

Regional centers must provide appropriate community living arrangements in the least restrictive environment for people with developmental disabilities. § 4501. The Lanterman Act places the highest priority on services and supports that will allow minors with developmental disabilities to remain in their family homes. §§4648(a)(1), 4685. Thus, for minors who prefer to remain with their families, and for whom living at home is the preferred objective in the IPP, the regional center must provide the supports that the child and family need. These supports must be individualized and include such services as behavioral training and consultation for the child and family, respite to relieve parents from the daily care of their children, parent training, mental health services, and advocacy to assist in securing services from other agencies. §4685(c)(1).

If an out-of-home placement is requested, the regional center must make every effort to secure a living arrangement reasonably close to the family home, if this is consistent with the child's IPP. § 4685.1(a). If a placement cannot be secured near the family home, the regional center must document in the IPP its efforts to locate, develop, or adapt appropriate services and supports nearby and what steps will be taken to develop the services and supports to return the child to, or in close proximity to, the family home. § 4685.1(b). The regional center must update this statement every six months. § 4685.1(b).

If a minor cannot remain in the family home, regional centers must offer living arrangements, including community care facilities (group homes) or foster family placements. Regional centers may also provide supplemental staffing or follow-along services to enable children to live or remain in community homes. § 4648(a)(8), (9). Regional centers have a legal obligation to "assure the availability of community living facilities of good quality for persons with developmental disabilities, and to ensure that persons placed out of home are in the most appropriate, least restrictive living arrangement..." §4680. Regional centers must also provide emergency and crisis services to prevent consumers' removal from their community living arrangements. This is a critical service for many youth with psychiatric needs, because it is often a mental health crisis that causes the failure of

their living arrangement and admittance to the psychiatric hospital. The law provides that:

Emergency and crisis intervention services including, but not limited to, mental health services and behavior modification services, must be provided as needed, to maintain persons with developmental disabilities in the living arrangement of their own choice. Crisis services shall first be provided without disrupting a person's living arrangement. If crisis intervention services are unsuccessful, emergency housing shall be available in the person's home community. If a dislocation cannot be avoided, every effort shall be made to return the person to his or her living arrangement of choice, with all necessary supports, as soon as possible. § 4648(a)(10).

Like any other regional center service, crisis and emergency services should be identified and available to meet the specific needs of individuals, and may include supplemental staffing, a mobile crisis unit, or crisis homes operated by the regional center. While some regional centers have short-term crisis homes, the existence of a crisis home does not, in and of itself, fulfill the regional center's obligation. For many people, the most crucial crisis services are crisis prevention services. This means that counseling, trained staff, and specific behavioral techniques must often be integral parts of a community living arrangement to avoid crises that require removal from the home. The state has also opened three children's crisis homes, which provide short-term housing with intensive treatment, medications stabilization, and evaluation. There are two two-bed homes in Stockton which can be accessed by calling the Delta Project at 209-948-7457 and one two-bed home in Porterville which can be accessed through the Porterville Regional Project at 559-782-2120.

A further requirement under the Lanterman Act is that when a community placement is at risk and it is likely that a consumer may be admitted to a state developmental center, the regional center shall immediately notify the Department of Developmental Services (DDS), the consumer, and the parents or conservator. § 4418.7(a). When this occurs, DDS shall immediately arrange for an assessment of the situation. If DDS determines that different services and supports are necessary, it shall ensure that the regional center provides those services and supports on an emergency basis. An IPP meeting shall be held, with a DDS representative present, to review the emergency services and supports and determine the consumer's ongoing needs for services and supports. § 4418.7(b).

DDS' designee for this role is a Regional Resource Development Project (RRDP), which are located at the state developmental centers. Their responsibility is to

conduct functional behavioral assessments, arrange for therapeutic medication reviews, and facilitate community placements. We have found that RRDP involvement can be very helpful in locating community placements and arranging for supports and staff training in new or existing placements.

While regional centers often claim that the type of placement or supports to meet the complicated needs of adolescents with psychiatric needs are not available, this does not relieve the regional center of its obligation to serve its clients. If the type of placement or the supports needed in an existing placement are not readily available, the regional center must develop them. § 4648(e). The regional center may solicit agencies or individuals by requests for proposals or other means when needed services or supports are not available. § 4648(e)(1). The regional center may also pay the startup costs of a program when needed. § 4649(e)(2). In emergency situations, regional centers may provide services directly, rather than utilizing outside service providers. § 4648(f). Finally, the Department of Developmental Services (DDS) may provide services directly when there is no provider available. § 4648(g).

INDIVIDUAL PROGRAM PLAN (IPP)

The process for identifying an appropriate placement and the services and supports necessary in the placement is the individual program planning process (IPP). A written IPP must be developed which describes a consumer's choices, needs, and preferences, goals and objectives, and the services and supports needed to reach those goals. It should be focused on the consumer and his/her family where appropriate. The IPP should promote community integration, an independent, productive and normal life, and a stable and healthy environment. § 4646(a). The regional center must hold an IPP meeting within 30 days of a request. § 4646.5(b). A request should be made in writing and should list the services and supports to be discussed.

The IPP is developed by the planning team, which includes the consumer, parents, and one or more regional center representatives, at least one of whom must have the authority to commit the regional center to authorize funds for agreed-upon services. §4512(j), 4646(d). It is important, and entirely appropriate, that staff from the psychiatric hospital or other service providers participate in the IPP process. Staff can be particularly useful in making treatment recommendations, including the level and types of supports needed, and identifying treatment methods that have proven successful or unsuccessful. An IPP meeting can be incorporated into the discharge planning process from a psychiatric hospital. Likewise, a regional center representative should be invited to discharge planning meetings to offer input as to

regional center resources and be alerted to the recommendations that hospital staff make.

The first step in creating a IPP is gathering information and conducting an assessment. § 4646.5(a)(1). The regional center uses an assessment to diagnose a consumer's condition(s) and determine life goals, capabilities and strengths, preferences, any barriers to achieving life goals, and any other problems or concerns. § 4646.5(a)(1). The IPP must be tailored to a consumer's own goals, needs, preferences and choices. This is called person centered planning. Again, the recommendations and input of hospital staff and service providers can be critical in ensuring that the IPP identifies the supports that a consumer will need to be successful in the community.

The IPP must contain a statement of goals and objectives, a schedule of the types and amounts of services and supports, and a schedule for review and evaluation of the IPP. §§ 4646.5(a)(2)-(5). The IPP should specify an approximate starting date for services and supports and time lines for getting them. Regular reviews and reevaluations should be scheduled to make sure that a consumer is getting the right services, whether the objectives are being met, and whether a consumer and family is happy with the way the plan is working. § 4646.5(a)(2), (4) and (5).

If the IPP team cannot reach an agreement at the meeting, then a second meeting must be held within 15 days. § 4646(f). After this second meeting, a consumer may insist on a decision from the regional center regarding his or her requests. § 4646(f). If a service is denied, the regional center must send the consumer a letter within 5 days explaining its decision and how to file for a hearing. § 4646(g). The first step is a voluntary informal hearing which is held at the regional center. § 4710.7. Beginning in July, 1999, the next step is a voluntary mediation. §4707. If the matter is not resolved, a consumer may request a fair hearing before a hearing officer; this is known as the state level hearing. §§ 4711.5, 4712.

COORDINATION WITH COUNTY MENTAL HEALTH

Recognizing that many people who are eligible for services from both regional centers and county mental health are poorly served by both systems, recent changes in the law require that each county mental health agency and regional center develop a memorandum of understanding (MOU) by July 1, 1999. These MOU's must identify staff who will coordinate services between the two agencies, identify eligible consumers, and resolve problems. They must also develop a crisis intervention plan and procedures for case conferencing and planning for consumers who are admitted to mental health facilities. Significantly, the law requires that a consumer's discharge plan include subsequent treatment needs and the

identification of the agency responsible for those services. The MOU's must also develop procedures for collaboration to provide trainings and to resolve disagreements regarding eligibility for county mental health services. PAI will be monitoring the development and implementation of these MOU's. We hope and expect that they will help to identify and resolve some of the problems in trying to secure appropriate services for dually diagnosed adolescents.

CONCLUSION

Adolescents with developmental disabilities who also have psychiatric labels often have complex needs that can be met only through coordination between the mental health, education, and regional center systems. Regional centers do have an obligation to serve these youth appropriately, including securing or adapting existing living arrangements or developing new ones. Regional centers do not relieve themselves from their legal responsibility to appropriately place dually diagnosed adolescents by failing to make placements or supports available. Such a position would violate the entitlement to services under the Lanterman Act. For more information about the rights of regional center clients under the Lanterman Act, see PAI's publication entitled Rights Under the Lanterman Act, PAI Pub. No. 5063.01, which is available on PAI's web page at www.pai-ca.org or by calling PAI at 1-800-776-5746.

OAKLAND LEGAL OFFICE, 449 15th Street, Suite 401, Oakland, CA 94612-2821. Telephone: (510) 839-0811 Fax: (510) 839-5780 Toll Free/TTY/TDD: (800) 776-5746.

ⁱ All code section references are to the Welfare and Institutions Code unless otherwise indicated.