

MINNESOTA DISABILITY LAW CENTER

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June 6, 2008

Commissioner
Administration for Children and Families
3770 L'Enfant Promenade SW, Mail Stop HHH 405D
Washington, DC 20447

**Re: Notice of Proposed Rulemaking (NPRM) Proposing Clarifications
and New Requirements to Implement the Developmental Disabilities Assistance
and Bill of Rights Act of 2000 (DD Act of 2000), 73 Fed. Reg. 19, 708
(April 10, 2008) (to be codified at 45 C.F.R. Parts 1385, 1386, 1387 and 1388)**

INTRODUCTION

The Minnesota Disability Law Center (MDLC) is a state-wide project of the Legal Aid Society of Minneapolis. The Legal Aid Society of Minneapolis is designated as the state's Protection and Advocacy (P&A) system for persons with disabilities in Minnesota, and carries out its P&A duties through the MDLC. The MDLC is a member of the National Disability Rights Network (NDRN), the membership association of P&A systems. MDLC hereby adopts the comments submitted by NDRN (copy attached). In addition, in these comments we would like to highlight some of our concerns.

Proposed Part 1385 Requirements—Requirements Applicable to the DD Program.

Section 1385.3 Definition of Collaboration.

The proposed new definition of collaboration is limited to formal agreements and only between the DD partner groups. The new definition and the standard for meeting the definition of collaboration creates an unnecessary administrative burden that will have a likely impact of taking resources away from our ability to pursue legal, administrative and other remedies.

MDLC collaborates with many organizations in addition to the DD partners, and that collaboration should be included in the definition. We recommend that the definition be revised to include the pursuit of joint activities by agencies under the Act or with private individuals, groups, and organizations and state and local government agencies to foster cooperation in achieving the purposes of the Act.

Section 1385.5 Program Accountability and Indicators of Progress.

The proposed regulation would completely revise P&A obligations regarding our annual priority setting process. MDLC, like other P&A's, scrupulously follows an elaborate process to gain public input, combined with reviewing our service data over the past year, to determine the greatest needs of the disability community in Minnesota. Based on the results of these activities, MDLC crafts priorities and goals. The proposed program accountability process outlined in Section 1385.5 (a)(1) appears to contradict the established philosophy that our work should be driven by the needs of individuals in our state, and would instead require us to direct resources toward pre-established areas of emphasis that would rob us of flexibility and responsiveness. We urge ADD to clarify that P&A priorities should reflect the needs of the disability community within our state, and to affirm our ability to respond to unanticipated events.

Section 1385.5(a)(2).

The proposed regulations regarding measuring collaboration exceed the language of the DD Act, do not appear to reflect Congressional intent or facilitate the attainment of the purposes of the Act, and are simply untenable. MDLC recommends that ADD revise the proposed regulations to allow for informal collaboration with our DD partners and other organizations. Meaningful collaboration is important, but should not be required as suggested by the proposed regulations. Similarly, Section 1385.5(c), which would require the P&A, State Council on Developmental Disabilities and UCEDD to meet indicators of progress for each of the areas of emphasis fails to take into account the nature of the P&A's work as a non-profit, the changing nature of issues within the developmental disability community, and many other factors that could affect the ability of any of the DD partners to meet indicators. MDLC recommends that ADD remove the term "required" and replace it with "encouraged".

Section 1385.5(d)(1). Measuring Consumer Satisfaction.

MDLC is concerned that the suggested methods of surveying clients to determine satisfaction would create an excessive administrative burden that would divert casehandling funds and time to administrative tasks. In our experience with the PAIR program, the use of satisfaction surveys is of limited utility unless followed by extremely intensive follow-up postcards, phone calls and repeated attempts to contact. When federal funding is static and state budget cuts have targeted services to our client population, increasing the need for those services, diverting our resources to these ancillary activities seems imprudent at best.

ADD Requests for Public Comment.

MDLC is deeply concerned about the ADD's request for public comment on matters for which ADD has published no proposed language, that is, comments regarding class action litigation and educating policymakers. 73 Fed. Reg. 19, 709-19, 710. The request for comments on these two issues falls outside ADD's scope of authority under the Administrative Procedures Act. There is nothing in the DD Act of 2000 that authorizes ADD to modify current requirements regarding class actions or educating policymakers. Moreover, ADD has proposed no regulatory language in the NPRM, and, therefore, may not include changes in the final regulations related to either of these issues. 5 U.S.C. § 553. Because both the issues of class actions and educating policymakers are critical to MDLC's ability to carry out our statutorily mandated functions, we briefly addressed the questions posed by the ADD.

Class Action.

Like other P&A's, MDLC only litigates when all other advocacy avenues have proven ineffective. Class actions are rarely used as a litigation strategy, but in a tiny number of cases, may be necessary to protect the health and safety of individuals or otherwise correct egregious problems for people with disabilities. Because class action lawsuits are already governed by the Federal Rules of Civil Procedure and, in Minnesota, the Minnesota Rules of Civil Procedure, ADD's request for public comment is completely misguided. The Judicial Conference of the United States Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Civil Procedure promulgates the Federal Rules of Civil Procedure. The legal community gives input to the promulgation process by this body, and the result is an elaborate set of rules and requirements that provide ample protection of potential class members' rights. Any attempt by ADD to create additional requirements for class actions is completely inappropriate and far beyond ADD's authority and expertise. As already noted, because class actions require extensive use of P&A resources, MDLC considers such actions only as a last resort. Indeed, even individual litigation is rarely used compared to the many other types of legal advocacy and intervention at MDLC's disposal. MDLC and the other P&A's must continue, however, to have the authority to pursue all needed administrative, legal and other appropriate remedies and approaches to protect the rights of people with developmental disabilities, including class actions.

Educating Policymakers.

As with the class action issue, MDLC views ADD's request for comments on the issue of educating policymakers as inappropriate and misplaced. All major ADD grantees--the P&A's, State Councils and UCEDD's--have the authority to educate policymakers with the goal of protecting the rights of individuals with developmental disabilities. As the P&A, MDLC has specific statutory authority to educate policymakers. 42 U.S.C. § 15043(a)(2)(L). The education of policymakers is a particularly effective tool for MDLC. In Minnesota, which has a culture of collaborative policy-making in state government, MDLC has used its educational ability to

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protect and advance the rights of people with developmental disabilities in a very constructive and positive way. In short, MDLC's ability to educate policymakers is critical to our ability to carry out our function as the P&A.

CONCLUSION

MDLC appreciates the opportunity to comment on the NPRM. In addition to supporting the comments provided by NDRN, MDLC also states its support for the comments provided by the University Centers of Excellence in Developmental Disabilities and the National Association of Councils on Developmental Disabilities. If you have any questions regarding this submission, please contact Pamela Hoopes at (612)746-3711 or phoopes@midmnlegal.org.

Respectfully submitted,

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PSH:jw

Enclosures

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