

1094.0.0 DHS/DRC COOPERATION RULE

1094.1.0 Policy

1094.1.1 Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act in 1984 and the Protection and Advocacy for Mentally Ill Individuals Act in 1985 to protect the human and civil rights of individuals with mental or physical disabilities or both. Both Acts require that a state receiving federal funds to assist this population designate a protection and advocacy system (hereinafter P & A) that is independent from the state to protect the rights of these individuals. To accomplish this goal, federal statutes give a P & A access to records, facilities, and individuals under certain conditions. Although the provisions of the two statutes are not identical, courts read the acts together to ensure consistent interpretation of the statutory language.

1094.1.2 Disability Rights Center, Inc. (DRC) is the P & A for the State of Arkansas. This rule is intended to provide guidance for DHS employees in cooperating with requests made by DRC.

1094.2.0 Substantive Rules

1094.2.1 Definitions:

- A. Client of DRC means an individual, as defined below, who personally or through a legal guardian/representative requests assistance or representation from DRC.
- B. Complaint includes but is not limited to any report or communication, whether formal or informal, written or oral, received by DRC, including media accounts, newspaper articles, and telephone calls (including anonymous calls) from any source alleging abuse or neglect as defined by law.
- C. Emergency Situation refers to a situation where DRC has probable cause to believe that the health or safety of an individual is in serious and immediate jeopardy.
- D. Facilities means any public or private residential setting for individuals with mental or physical disabilities or both that provide care accompanied by treatment services. Examples of facilities are human development centers, the Arkansas State Hospital, and the Arkansas Health Center.
- E. Individual is defined as:
 - 1. An individual who is a "client" of DRC.
 - 2. An individual, including a person who is dead or whose whereabouts is unknown, if all of the following conditions apply:

- a) The individual, due to his or her mental or physical condition, cannot give authorization to DRC; and
 - b) The individual does not have a legal guardian/legal representative or the individual's guardian is the State; and
 - c) A complaint or report has been received and DRC has determined the individual has been or may be subject to abuse or neglect.
3. An individual with a legal guardian/representative, if a complaint or report has been received by DRC or if DRC has determined probable cause exists to believe the health or safety of the individual is in serious and immediate jeopardy, if all the following conditions exist:
- a) DRC has made a good faith effort to contact the individual's legal guardian/representative upon prompt receipt of the legal guardian/representative's name, address, and telephone number; and
 - b) DRC has offered assistance to the legal guardian/representative; and
 - c) The legal guardian/representative has failed or refused to act on behalf of the individual.
- F. Legal guardian/representative includes a conservator, and is defined as a person whose appointment is made and regularly reviewed by a state court or agency empowered under state law to appoint and review such officers. A legal guardian/representative has authority to consent to health/mental health care or treatment for individuals with disabilities. This term does not include persons acting only as representative payee, persons acting only to handle financial payments, attorneys or persons acting on behalf of an individual with disabilities only in individual legal matters, or officials responsible for the provision of health or mental health services to individuals with disabilities, or their designees.
- G. Probable cause means reasonable grounds to suspect that an individual has been or may be at significant risk of abuse or neglect.
- H. Reasonable Access means the access to be afforded DRC to facilities and records as provided in this rule.
1. To facilities, means access as provided in this rule.
 2. To records relevant to a DRC investigation of an alleged emergency, means access within twenty-four hours after receipt of DRC's written request, regardless of whether the individual consents to the disclosure (either directly or through a legally responsible party such as a guardian)
 3. To records relevant to a DRC investigation where no emergency is alleged, means access within three business days after receipt of DRC's written request for records made on behalf of an individual.

- I. Records includes not only writings in draft or final form and hand written notes, but also records in other forms such as electronic files, photographs, and video and audio tape records:
 1. Prepared by any staff of a facility rendering care and treatment, or reports prepared by an agency charged with investigating incidents of abuse, neglect, and injury occurring at a facility which describe incidents of alleged abuse, neglect, injury or death occurring at the facility, as well as steps taken to investigate such incidents;
 2. Prepared or received in the course of providing intake, assessment, evaluation, education, training and other supportive services, medical and financial records, reports prepared or received by personnel providing care or treatment to the individual, and discharge planning records;
 3. Prepared in connection with certification or licensure reviews, reports by professional accreditation organizations, and assessments prepared for the facility by its staff, contractors, or other similar entities;
 4. Containing information on professional, performance, building or other safety standards and demographic and statistical information relating to a facility; or,
 5. Comprising annual survey reports and plans of correction for cited deficiencies. Survey reports and plans of correction must be furnished within 30 days after the report or plan is complete as defined by federal or state law.

1094.2.2 Application

This rule applies to all divisions within the Department of Human Services.

1094.2.3 Access to Residents and Facilities

DRC has reasonable unaccompanied access to public and private facilities for persons with mental disabilities, physical disabilities, or both, to conduct a full investigation of an incident of alleged abuse or neglect or to carry out its advocacy and protection responsibilities. DRC also has reasonable access to Division of Youth Services (DYS) facilities to investigate alleged abuse or neglect of persons with mental disabilities, physical disabilities, or both, at DYS facilities. DRC's authority includes the opportunity to do the following:

- A. If abuse or neglect is suspected:
 1. Interview any facility service recipient, employee, or other person, including the person thought to be the victim of such abuse, who might reasonably be believed by DRC to have knowledge of the incident under investigation.

2. Inspect, view, and photograph all areas of the facility's premises that might reasonably be believed by DRC to have been connected with the incident under investigation.
- B. As part of its protection and advocacy responsibilities:
 1. Provide information and training on, and referral to, programs and services which address the needs of individuals with mental disabilities, physical disabilities, or both. DRC is authorized to provide information and training to disabled individuals, individual family members, and other persons who are not program staff to increase knowledge about protection and advocacy issues. DRC must be able to furnish its name, address, and telephone number, as well as other information including training about individual rights so that it can be contacted by residents or others.
 2. Monitor compliance with respect to the rights and safety of the residents.
 - C. Unaccompanied access to residents of a facility includes the opportunity to meet and communicate in private with these individuals on a regular basis, both formally and informally, and by telephone, mail, and in person.
 - D. If no abuse or neglect is suspected, unaccompanied access to residents at a facility at reasonable times includes, at a minimum, normal working hours and visiting hours and which gives DRC access to all areas of the facility.
 - E. DRC must conduct its activities to minimize interference with facility programs, respect residents' privacy interests, and honor a resident's request to terminate an interview.
 - F. DRC is required to make every effort to ensure that the parents of minors or guardians of individuals in the care of the facility are informed that the system will be monitoring activities at the facility and may in the course of the monitoring have access to the minor or adult with legal guardian.
 - G. DRC may not take formal action on behalf of a resident with a legal guardian/representative, or initiate a formal attorney/client or advocate/client relationship without appropriate consent, except in emergency situations (See II.A.3).

1094.2.4 Access to Employee Records

All information in an employee's file relating to allegations of abuse or neglect of individuals shall be promptly provided by central records upon request. All other employee information is subject to disclosure only in accordance with the Freedom of Information Act.

1094.2.5 Authority and Responsibility of DRC Federal statutes give DRC the authority to do the following:

- A. Use any appropriate technique and pursue legal, administrative, and other appropriate remedies or approaches to protect and advocate on behalf of

individuals with mental disabilities, physical disabilities, or both, to address abuse, neglect, or other violations of rights. Federal statutes encourage DRC to use non-adversarial processes such as negotiation, conciliation, and mediation to resolve disputes early in the protection and advocacy process. Note: DRC is required to exhaust all administrative remedies, where appropriate, prior to initiating legal action against the state or an agency of the state to enforce and protect the rights of individuals with mental disabilities, physical disabilities, or both.

- B. Establish an ongoing presence in facilities that treat and care for individuals with mental disabilities, physical disabilities, or both , and provide programs which allow DRC to:
1. Interact regularly with individuals who are current or potential recipients of protection and advocacy services.
 2. Interact regularly with staff providing care or treatment.
 3. Obtain information and review records as described above.
 4. Communicate with family members, social and community service workers, and others involved in providing care or treatment.
 5. Support or provide training, including related travel expenses, for individuals with mental disabilities, physical disabilities, or both, the family members of such individuals, and other persons to increase knowledge about protection and advocacy issues, to enhance leadership capabilities, and to promote state and federal cooperation on these issues.
 6. Monitor, evaluate, and comment upon the development and implementation of federal, state, and local laws, regulations, plans, budgets, projects, levies (impositions of a tax), policies, and hearings affecting individuals with mental disabilities, physical disabilities, or both.

1094.3.0 Procedural Rules

- 1094.3.1 Photocopies of Records: Photocopies of requested records shall be made for DRC which shall pay twenty-five cents per page as the reasonable cost for the reproduction of the records.
- 1094.3.2 Delay of Denial of Access: If access to facilities, programs, residents, or records is delayed or denied, DRC must be provided with a prompt written statement of reasons, including in the case of a denial for alleged lack of authorization, the name, address and telephone number of the resident's legal guardian/ representative.
- 1094.3.3 Employee Records: All requests for information from an employee's file shall be directed to the custodian of the file.

1094.3.4 Administrative Due Process: Administrative due process shall be accomplished using existing DHS processes for appeals.

1094.3.5 Administrative Hearing: If DRC is entitled to an administrative hearing, the hearing must be held within a reasonable time after denial of access to facilities or records.

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