

**NOTICE OF INTENT TO
REDESIGNATE
THE PROTECTION AND ADVOCACY SYSTEM
IN NORTH CAROLINA**

Public notice is hereby given of Governor Michael F. Easley's intent to redesignate the responsibility for provision of federally mandated protection and advocacy services (P&A) from the North Carolina's Governor's Advocacy Council for Persons with Disabilities (GACPD) to Carolina Legal Assistance (CLA).

Comments regarding the Governor's Intent to Redesignate the P&A from GACPD to CLA should be sent to the attention of:

**McKinley Wooten, Jr., Deputy Secretary
Department of Administration
Internal Services and Programs
1301 Mail Services Center
Raleigh, NC 27699-1301**

Input from the public will be accepted until April 30, 2007.

Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Governor of each state must designate a protection and advocacy system (P&A) for individuals with developmental disabilities.

The Federal requirements for the PADD (Section 142 of the Act); and, where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System.

The Protection and Advocacy for Persons with Developmental Disabilities (PADD) Program was created by the Developmental Disabilities Assistance and Bill of Rights (DD) Act of 1975. Currently authorized by the Developmental Disabilities Assistance and Bill of Rights of Act of 2000 (PUBLIC LAW 106-402--October 30, 2000 114 STAT. 1677), P&As are required by the Act to "(A) have the authority to-(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities; (B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred; (C) on an annual basis, develop, submit to the Secretary, and take action with regard to goals (each of which is related to 1 or more areas of emphasis) and priorities, developed through data driven strategic planning, for the system's activities; (D) on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairment, and their representatives, and as appropriate, non-State agency representatives of the State

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Councils on Developmental Disabilities, and Centers, in the State, an opportunity to comment on- (i) the goals and priorities established by the system and the rationale for the establishment of such goals; and (ii) the activities of the system, including the coordination of services with the entities carrying out advocacy programs under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Older Americans Act.” Under the DD Act, the governor in each state designates an agency to be the P&A system, and provides assurance that the system was and would remain independent of any service provider. Within the Administration for Children and Families, the Administration on Developmental Disabilities (ADD) administers the PADD program.

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program was established in 1986. Reauthorized in 2000 (Title 42. The Public Health and Welfare Chapter 114–Protection and Advocacy for Mentally Ill Individuals Subchapter I), PAIMI is mandated to (1) protect and advocate for the rights of people with mental illness and (2) investigate reports of abuse and neglect in facilities that care for or treat individuals with mental illness. The PAIMI is required to give priority to representing persons with mental illness who live in treatment facilities. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PAIMI program. Within the Substance Abuse and Mental Health Services Administration (SAMHSA) the Center for Mental Health Services (CMHS) administers the PAIMI program.

The Protection and Advocacy for Voter Accessibility (PAVA) was established in 2002 as part of the Help America Vote Act of 2002 (42 U.S.C. § 15461). PAVA is charged with removing barriers to voting for people with disabilities. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PAVA program. Within the Administration for Children and Families, Administration on Developmental Disabilities (ADD) administers the PAVA program.

The Protection and Advocacy for Individual Rights (PAIR) Program was established by Congress in 1993 as a national program under the Rehabilitation Act (29 USC § 794e). PAIR protects and advocates for the legal and human rights of persons who have disabilities as defined under the Americans with Disabilities Act. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PAIR program. Within the Department of Education’s Office of Special Education and Rehabilitative Services, the Rehabilitation Services Administration (RSA) administers PAIR.

The Protection & Advocacy for Assistive Technology (PAAT) Program was created in 1994 when Congress expanded the Technology-Related Assistance for Individuals with Disabilities Act (Tech Act) to include funding for a PAAT. Reauthorized with the passage of the Assistive Technology Act of 2004 (29 U.S.C.A. § 3004), PAAT assists individuals with disabilities in accessing technology devices and assistive technology services through case management, legal representation and self advocacy training.

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The system designated to serve as the PADD program in each state and territory is also responsible for operating the PAAT program. Within the Department of Education's Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration (RSA) administers PAAT.

The Protection and Advocacy for Beneficiaries of Social Security (PABSS) Program was created in 2000 when Congress passed the Ticket to Work and Work Incentive Improvement Act (TWWIA), 42 U.S.C. § 1320b-21. The purpose of this program is to provide advocacy services to individuals with disabilities who receive Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) to secure or return to gainful employment. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PABSS program. Through the Division of Employment Policy of the Social Security Administration, the Office of Employment Support Programs (OESP) administers PABSS.

The Protection and Advocacy for Traumatic Brain Injury (PATBI) was created in 2002 when Congress authorized a state grant program to improve access to health care and other services for individuals with TBI under Title XIII of the Traumatic Brain Injury Act, as part of the Children's Health Act of 2000 (Public Law 106-310). PATBI provides information and referral services to people with disabilities and helps them find solutions to problems involving discrimination and employment, education, health care and transportation, personal decision-making, and overall quality of life. The system designated to serve as the PADD program in each state and territory is also responsible for operating the PATBI program. Within the Department of Health and Human Services, the Health Resources and Services Administration administers the PATBI program through its Division of Child, Adolescent and Family Health.

Current Statement of Objectives and Priorities

DEATH, ABUSE, NEGLECT AND EXPLOITATION

Goal #1: To enforce the right of persons with disabilities to live in a safe environment, free from abuse/neglect/exploitation/death in public and private community settings and institutions.

1. To participate in the development of regulations of all Rules in 122-C and 131-D and to advocate that any changes will not reduce client rights, but strengthen them.
2. To review and track trends based on deaths reported from 122-C and 131-D facilities to ensure that meaningful recommendations are made and implemented.
3. To ensure that all deaths in 122c and 131d facilities are reported to the Department of Health and Human Services and to GACPD.
4. To review and/or investigate incidents of deaths reported to the agency by the Center for Medicare/Medicaid Services (CMS) and the Division of Facility Services (DFS), and issue death investigation reports in select cases and ensure that our recommendations are implemented.

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5. To ensure that psychiatric residential treatment facilities (PRTF) are complying with the requirements of 42 CFR §483.374 for reporting serious occurrences, i.e. all deaths, serious injuries and suicide attempts to the P&A.
6. To investigate allegations of violations of the new seclusion and restraint law in public schools.
7. To monitor and enforce that State psychiatric hospitals are participating in an effective discharge planning process.
8. To ensure that the local management entities are participating in an effective discharge planning process from the state psychiatric hospitals as specified in 10 NCAC §28D.0105.
9. To advocate for a legislative and administrative change to expand the use of temporary management as described in NCGS §131E-234.
10. To monitor and enforce the NC law regarding national criminal background checks.
11. To investigate targeted incidences of deaths, abuse, neglect, exploitation and to take appropriate action regarding the findings.
12. To monitor and enforce NC DHHS' implementation of the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT), including any necessary litigation.
13. To advocate for a humane and dignified method and to facilitate the development of legislation concerning the humane treatment of persons with disabilities when being transported by law enforcement officials and others during commitment and discharge procedures.
14. To continue to monitor the implementation of the terms of the deaf/mentally ill settlement agreement.
15. To ensure appropriate levels of treatment, supports and affordable choice of providers for persons who have disabilities and who are insured, uninsured or underinsured, regardless of whether or not they have Medicaid or Medicare, and to protect them from exploitation.
16. To conduct a jail study identifying the experiences of persons with a mental illness or developmental disability in the North Carolina county jails, including their special needs, challenges/impediments and successes, when incarcerated.
17. To advocate for more vigorous enforcement of residents rights by the Division of Facility Services.

Education and Training:

18. To train at least 100 residents, with an increased focus on youth in long-term care facilities, on client rights, annually.
19. To hold a cross-disability conference for constituents, in order for them to develop effective self-advocacy skills and plans.

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Outreach:

20. To visit at least 10 residential facilities for individuals with mental illness, 10 residential facilities for individuals with developmental disabilities, 3 psychiatric units of private hospitals, and 5 large community ICF/MR facilities to ensure that P&A posters are displayed, that the residents have been informed about the P&A's services, that there is evidence of an active clients rights committee. The team will visit with and distribute brochures to residents and staff annually.
21. To continue to develop and expand a system of volunteer facility monitors to enhance rights, protections and accountability with community-based facilities.

COMMUNITY INCLUSION

Goal#2: We will enforce, monitor and promote the rights of persons with disabilities to live in an integrated community setting of their choice with appropriate supports, services and protection

1. To investigate issues and, where appropriate, to represent individuals with disabilities, including those with traumatic brain injury, who have lost public funding, which permits them to live at home or in the least restrictive environment.
2. To investigate issues, and to provide representation to those who have been denied Medicaid and/or CAP services, which permits them to live at home or in the least restrictive environment.
3. To collaborate with the NC Association of the Deaf and others to advocate teaching American Sign Language as a language in public schools and colleges.
4. To promote and advocate for decisions from the Office of Administrative Hearings (OAH) and other entities be rendered in time frames set by law.
5. To advocate for legislative and administrative changes so that all decisions rendered by the Office of Administrative Hearings are final decisions directly appealable to federal and/or State courts.
6. To research and investigate the provision of publicly funded 24-hour attendant care for qualified individuals.

Education and Training

7. To provide training on client rights in facilities and community sites. At least three trainings will be conducted annually.
8. To hold a cross-disability conference for constituents, in order for them to develop effective self-advocacy skills and plans.

Outreach

9. To visit and dispense agency brochures to grassroots groups in rural counties. At least three will be visited annually.

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10. To collaborate, with individuals with TBI and organizations, such as the Brain Injury Association of NC (BIANC) to identify and develop solutions to community integration barriers encountered by persons with TBI.

EDUCATION

Goal #3: To protect individuals with disabilities through age 21 who experience disability related exclusion from services and to ensure a free appropriate public education in the least restrictive environment.

1. To research conditions and trends of suspensions and homebound services that inhibit students with disabilities from receiving a free appropriate public education and to develop a report with recommendations which will be shared with all appropriate advocacy organizations, school based agencies, the Department of Juvenile Justice and other law enforcement agencies.
2. To investigate and improve services for students with disabilities in suspension and expulsion matters.
3. To provide training and consultation regarding implementation of the seclusion and restraint statute in public schools.
4. To investigate cases of substantial failure of public school systems to implement the individualized education programs or 504 plans of students with disabilities, including students with traumatic brain injury.
5. To keep children who have been suspended from school and referred to the criminal justice system, in school by addressing their special education needs.
6. To increase the provision and the prompt delivery of assistive technology for students with disabilities.

Education and Training

7. To inform parents about the rights of students with disabilities under the Individuals with Disabilities Education Improvement Act (IDEIA), Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). At least four workshops will be held statewide in 2005-2006.
8. To serve as a resource to parents by providing information and guidance on the inclusion of assistive technology in the individualized education plan (IEP).
9. To educate members of the State Bar through continuing legal education regarding special education laws, issues and procedures, with an ultimate goal of developing a network of private lawyers across the State to whom special education cases can be referred, particularly on a pro bono basis.
10. To hold a cross-disability conference for constituents, in order for them to develop effective self-advocacy skills and plans.

Outreach

- 11 To collaborate, with individuals with TBI and organizations, such as the Brain Injury Association of NC to identify and develop solutions to the educational integration barriers encountered by persons with TBI.

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- 12 To collaborate with all the law schools located in North Carolina to educate law students regarding special education laws, issues and procedures, with the ultimate goal of developing present and future advocates to whom special education cases can be referred.
- 13 To identify at least 2 rural underserved counties per region for implementing outreach efforts.
- 14 To identify at least 2 underserved ethnic, minority groups statewide for implementing outreach efforts.

ACCESSIBILITY

Goal #4: To ensure access to programs, services and activities of public and private entities.

1. To investigate and enforce the rights of students with disabilities who have been denied accommodations or not provided effective accommodations, including electronic accessibility and assistive technology supports and services, in the State's colleges and universities.
2. To investigate and enforce the rights of persons with disabilities who have been denied appropriate accommodations in the community, including electronic accessibility and assistive technology supports and services.
3. To investigate and enforce the rights of persons with disabilities to equal access to voting systems including North Carolina's compliance with the Help America Vote Act.
4. To ensure that 911 emergency services provide effective communications for persons with disabilities as required by the Americans with Disabilities Act.
5. To provide technical assistance to persons with disabilities who allege discrimination in employment, both in hiring and in termination, including the need for electronic accessibility and assistive technology supports and services.

Education and Training:

6. To conduct training to students at both of the schools for the deaf on their rights and responsibilities after high school graduation.
7. To hold a cross-disability conference for constituents, in order for them to develop effective self-advocacy skills and plans.

Outreach:

8. To develop, publish and dispense a handbook for students with disabilities in North Carolina colleges and universities outlining their rights and responsibilities.
9. To produce a video on how to communicate with persons with disabilities.

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Currently designated P&A

Governor's Advocacy Council for Persons with Disabilities (GACPD)
1314 Mail Service Center
Raleigh, NC 27699-1314
Phone: 919-733-9250 Voice/TDD \ 800-821-6922 (in state)
Fax: 919-733-9173

GACPD currently administers the above referenced programs (PADD, PAIMI, PAVA, PAIR, PAAT, PABSS, and PATBI).

A description of the current P&A

GACPD, a division of the N.C. Department of Administration, is guided by a 21-member board is comprised of volunteers appointed by the state's top leaders in government. GACPD provides advocacy services to citizens of North Carolina who have a physical or mental condition that substantially limits at least one major life activity and who falls within the agency's priorities and case selection criteria as set by the board each year. GACPD serves individuals with a wide range of disabilities – including, but not limited to, those with cognitive, mental, sensory, and physical disabilities – by guarding against abuse; advocating for basic rights; and ensuring accountability in health care, education, employment, housing, transportation, and within the juvenile and criminal justice systems. GACPD maintains a presence in facilities that care for people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions.

A clear and detailed explanation of the good cause for the proposed redesignation:

Governor Easley's decision to redesignate is based on the recommendations of the governing board of GACPD that P&A services could be provided more efficiently and effectively in an agency independent from the executive branch of state government. The intent of redesignation is to address concerns of the disability community that North Carolina has a protection and advocacy system which is able to provide the full range of mandated advocacy services and the independence necessary to properly carry out these responsibilities.

Interested persons may wish to write the GACPD at the address below to obtain a copy of its response to the notice. Copies shall be provided in accessible formats to individuals with disabilities upon request.

Governor's Advocacy Council for Persons with Disabilities (GACPD)
1314 Mail Service Center
Raleigh, NC 27699-1314
Attention: Allison Breedlove

New agency proposed to administer and operate the P&A.

CLA, as the designated P&A, will be eligible to administer other Federal programs (PAIMI, PAVA, PAIR, PAAT, PABSS and PATBI).

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A description of the system CLA will administer and operate

Carolina Legal Assistance (CLA) is an established non-profit organization that is well positioned to assume the responsibility of serving as the state's Protection and Advocacy agency. CLA has an experienced Board and staff and the organization enjoys the respect of the disability community, the legal community and government policy makers. CLA has advocated continuously for people with mental disabilities in North Carolina since its inception in 1978. Starting out as a "special client program" within Legal Services of North Carolina, CLA expanded from providing civil legal assistance to patients at Dorothea Dix Hospital to serving people with mental illness and developmental disabilities statewide. With the designation as P&A, CLA will expand its services to all people with disabilities consistent with the federal mandates.

Information & Referral and Individual representation. CLA will provide legal advice and representation to people with disabilities. In the past, CLA served approximately 400-500 cases per year to individuals and families of people with mental disabilities. Individual representation includes advice and consultation, brief services, document preparation, negotiation (e.g. attendance at IEP meetings), and litigation. CLA has devised intake methods to maximize the opportunity for potential clients to speak with an attorney and will continue to do so as the P&A. CLA will provide services statewide as the P&A. In 2004 and 2005, CLA provided assistance to clients from more than 65 of the state's 100 counties. CLA clients have included individuals with multiple disabilities including psychiatric, developmental, brain injury, learning, and physical disabilities.

Training and Public Education. Historically, CLA has provided training to those who are interested in the rights of people with disabilities. Some training/public awareness activities include: Consumers, Families and the General Public (Representatives of CLA speak at statewide conferences on a regular basis. With a grant from the State Justice Institute, CLA partnered with the Administrative Office of the Courts to create a training video for court personnel on compliance with the ADA.); Disability professionals and advocates (CLA has presented programs to medical residents and direct care staff at the state hospitals, and seminars for Continuing Education credit to clinical and social work professionals.); and Lawyers and Law Students (CLA staff has made a number of Continuing Legal Education (CLE) presentations to lawyers on topics including mental patients' rights, guardianship, special education, and professional responsibility in representing clients with cognitive impairments. CLA has presented to judges, and trained victims' service providers about victims with disabilities. CLA staff has served on the faculty for programs sponsored by the North Carolina Bar Association and the Academy of Trial Lawyers, as well as making class presentations at UNC, NCCU, Duke and Campbell Law Schools. CLA also provides technical assistance to lawyers in private practice and those working in legal services programs throughout the state. Through a collaborative effort with the Partners in Justice Project of The Arc, CLA has provided training for various segments of the criminal justice system on the importance of recognizing and accommodating intellectual disabilities in the criminal justice system.).

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Systems Change. CLA is well known in North Carolina for its role in the *Willie M.* and *Thomas S.* litigation which changed the way services are delivered to people who had been institutionalized without adequate treatment or habilitation. As a result of these cases, thousands of North Carolina children and adults with mental disabilities were given the opportunity to live in the community with individualized services that had previously been unavailable. The *Willie M.* class members (children with aggressive behaviors rooted in mental disability) and the *Thomas S.* class members (adults with mental retardation who resided in state psychiatric hospitals) were among the state's most vulnerable populations. CLA has also represented nursing home residents who were not receiving adequate care and prisoners who were eligible for but denied special education services by the Department of Correction. CLA staff continues to work with Partners in Justice and the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to refine the Competency to Proceed evaluation process for persons with intellectual disabilities.

Public Policy Advocacy. CLA has participated in policy debate on issues affecting children and adults with mental disabilities at every level of state government. In 1981, CLA worked for the passage of N.C.G.S. Chapter 168A, the "Handicapped Persons Protection Act". CLA was active in the successful effort to obtain legislation to eliminate the death penalty for defendants with mental retardation and works closely with the Legislative Study Commission on Special Education. CLA has presented to the State Board of Education, the NC Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services, and other policy making boards. CLA participates in numerous interagency task forces and work groups, and the program's input is often sought by the very people who have been the nominative defendants in legal actions brought by CLA. Most recently, CLA provided leadership for passage of House Bill 1032, legislation that sets new policies regarding the safe implementation of seclusion and restraint in schools, prohibits unsafe procedures and requires school systems to train school personnel. This new law will be officially entitled the "Deborah Greenblatt¹ Act" in honor of her commitment to protect students from inappropriate use of seclusion and restraint, especially children with severe disabilities who are most vulnerable and in recognition of her twenty-five years of leadership given to CLA and the disability community of North Carolina.

Coalition Building and Participation. CLA is an active participant in The Coalition and the Developmental Disabilities Consortium. CLA initiated the Citizens' Task Force on Community Services which was the pre-cursor to The Coalition. CLA founded the Special Needs Federation which brings together advocates for children with disabilities on education issues. Through a Governor's Crime Commission grant, CLA formed and participates in the Victims with Disabilities Task Force Project to increase awareness and improve assistance to victims with disabilities. The meetings are attended by

¹ Deborah Greenblatt died in June 2005 and was the Director of the Carolina Legal Assistance.

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representatives from victim assistance agencies, DD community, mental health, the department of social services, district attorneys and law enforcement agencies. CLA participates in the Legal Services Planning Council and various committees of the North Carolina Bar Association. CLA forms and maintains strategic alliances as needed with friends and allies, as well as rivals and adversaries.

The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

CLA will assume responsibility for providing protection and advocacy services on July 2, 2007. Transition of case work and intake functions from GACPD to CLA will begin in June with a short term contract for program services.

Subcontracts	\$ 50,000 ²
GACPD Employee Severance	\$ 750,000 ³
Public Hearings	\$ 800 ⁴

State monies will be used for the above referenced expenses.

A statement of assurance that CLA will continue to serve existing GACPD clients and cases without disruption.

All existing GACPD clients and active, open cases will be transferred to CLA. There will be no disruption of service.

² A contract with Vicki Smith (350 hours @ \$75/hr) to conduct on-site visits as well as offering extensive off-site technical assistance during the period February 1 – June 15, 2007. Smith will be responsible for developing the client services, personnel and the financial management manuals. The client services manual will integrate all aspects of how a call becomes a case, how cases are transferred internally from core service to priority team to legal. Realistic timelines and quality assurance mechanisms will be clearly identified. Also included in the manual will be protocols for how typical situations should be handled, such as client-on-client abuse, documentation in the agency's database, physical case protocols, case opening and closing procedures (case assignment and sign-off), record retention and reporting requirements. The financial management manual will develop the internal controls for the agency's financial practices consistent with federal requirements and based on best practices. Smith will also develop a protocol for transitioning cases from GACPD to the staff who will assume the responsibility of completing the case(s).

Smith will subcontract for \$7,500 (100 hours @ \$75 per hour) with an accountant from within the P&A network to assist programming the accounting software. This individual will assist in the set up of the accounting system to be used by the new P&A. This will include installation and development of the chart of accounts. This individual will also assist in training the accountant.

³ This figure is based on an March 2007 estimate of a severance for all GACPD employees and assumes that none of those individuals will transfer to a position within State government.

⁴ This figure includes the projected cost for the rental of two rooms for the Public Hearings and the cost of sign language interpreters.

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An accessible version of the notice can be downloaded from the Department of Administration website at <http://www.doa.state.nc.us/>.