



July 2014

DRC NEWS

The 126th Legislature: A Look Back Sara Squires, Public Policy Director

Dear Friends,

This past legislative session was my first as DRC's Public Policy Director and I am delighted to be writing this year's legislative wrap-up column for our newsletter. Each year, the Disability Rights Center monitors proposed legislation that has the potential to impact, either positively or negatively, the lives of people with disabilities in Maine. It is imperative that our staff be aware of the changing legal landscape in our state, so that we can effectively enforce and protect the rights of the individuals we serve. In addition to more than 200 carry-over bills, the Legislature also worked on over 250 new pieces of legislation before adjourning on May 2, 2014.

Perhaps the most disappointing news of this session was the unsuccessful attempt to pass Medicaid expansion in Maine. Although the legislature passed several bills that would have directed the State to accept federal funds and increase our Medicaid program, the support was not enough to overcome the Governor's vetoes. Below is a highlight of other important issues taken up by this year's Legislature.

Bills Carried Over From the First Session

L.D. 87, "An Act To Improve Community Mental Health Treatment" This bill would have required the Department of Health and Human Services to develop programs that provide services and housing to persons with chronic mental illness, and which ensure that psychiatric rehabilitation and recovery occur in the least restrictive setting, consistent with the person's choice within the person's chosen community. Ultimately, this bill died in the legislature.

L.D. 156, "RESOLUTION, Proposing an Amendment to the Constitution of Maine Concerning Early Voting and Voting by Absentee Ballot" If passed, this bill would have authorized a question to be placed on the November ballot, which would have allowed individuals to vote on proposed changes to Maine's Constitution. The first proposed change would have created a process for early voting. That is, individuals could cast their vote – just as they do on Election Day – prior to the election. The second change would have allowed individuals to vote via absentee ballot on Election Day. This change would have made it so that individuals were not required to be A) absent from their municipality, or B) physically incapacitated on Election Day in order to vote via absentee ballot. For this question to go before Maine voters, the bill required passage by a 2/3 majority of both Houses of the Legislature. The bill failed to gain the required support and therefore this proposed Constitutional amendment will not go before Maine voters.

L.D. 968, "An Act To Provide Needed Psychiatric Hospitalization for Persons with Mental Illness" This bill proposed that when a person with mental illness has been determined (by a health care practitioner) to be in need of hospitalization, the Commissioner of Health and Human Services is required to make psychiatric hospitalization available to a within 12 hours of that determination. The hospital could be an out of state facility. The sponsor and supporters were ultimately seeking solutions to the problem of individuals waiting in emergency departments and jails, for extended periods of time, for an available psychiatric bed. The Legislature did not pass this piece of legislation.

L.D. 1515, “An Act To Increase the Availability of Mental Health Services” This bill is probably most well-known for the fact that it created a Mental Health Unit at the Maine State Prison (MSP) in Warren. It is important to note that individuals found not criminally responsible (NCR) or Incompetent to Stand Trial (IST) cannot be transferred to the MSP. However, this bill also gives the Commissioner of the Department of Health & Human Services the authority to place individuals determined IST to facilities other than Riverview Psychiatric Center, including other residential programs, nursing homes and even outpatient programs. This bill also:

- Establishes guidelines for the involuntary medication of individuals with mental illness;
- Creates a forensic oversight committee to oversee the provision of mental health services to individuals receiving services as forensic patients in correctional facilities in the State;
- Includes a “sunset provision”, which repeals the above-listed items on August 1, 2017;
- Directs the Department of Health & Human Services to develop a plan that outlines how it will meet the needs of individuals with traumatic or acquired brain injuries who enter DHHS custody.

Second Session Bills

L.D. 1594, “Resolve, To Improve Access to Emergency Behavioral Health Services and Increase Public Safety” As originally drafted, this bill proposed to create a statewide crisis system and was later amended to direct DHHS to convene a stakeholder group to “review and make recommendations on challenges, gaps and inefficiencies in the State’s emergency crisis hotline and “warm line” services.” The amendment was proposed and adopted to include stakeholder input into the creation of a new crisis system. Its purpose was to increase consumer involvement and to ensure that the process was consumer-driven. Unfortunately, while the bill received legislative approval, it was ultimately vetoed by the governor.

L.D. 1598, “An Act To Improve Hospital-based Behavioral Health Treatment for Persons with Intellectual Disabilities or Autism” This bill, which went into law with the Governor’s signature, prohibits the use of severely intrusive behavior plans for individuals who have intellectual disabilities or autism and who are inpatient in either a psychiatric facility or on a psychiatric unit of an acute hospital.

L.D. 1738, “An Act To Improve Maine's Involuntary Commitment Processes” Although this bill was intended to address issues around wait times in Emergency Departments, the resulting language raised significant concerns regarding potential due process and other rights violations. Subsequent to the public hearing, the bill was amended so that a work group would be convened to review the situation in emergency departments from the perspectives of both the hospitals and the individuals being served. The final bill, “Resolve, Concerning Maine's Involuntary Treatment and Involuntary Commitment Processes,” went into law without the Governor’s signature. This resulting law directs the work group to develop recommendations for addressing the needs of individuals, hospitals, psychiatric hospitals and health care providers. Specifically, the group is to look at the following issues: “The timing and length of preliminary and follow-up holding and commitment periods and requirements for involuntary treatment during such periods; process improvements for holding and commitment period determinations; the current lack of health care providers available to address compliance with due process requirements and any procedural changes recommended by the working group; and, any additional recommendations for improvement in the judicial commitment and involuntary treatment process.”

L.D. 1757, “Resolve, To Establish the Blue Ribbon Commission on Independent Living and Disability” This bill proposed to establish a Blue Ribbon Commission to “evaluate the needs of Maine citizens with disabilities, review existing available resources and services and recommend priorities for cost-effective changes designed to promote independent living and community inclusion.” Although the Legislature voted to pass this bill, it was later vetoed by the Governor. After an unsuccessful vote to override the veto, the Legislature instead voted to adopt House Paper 1361, Joint Study Order Establishing the Commission on Independent Living and Disability. This bill creates a commission that has the same duties outlined in LD 1757, but does so without requiring the Governor’s approval.

New Federal Regulation to Increase Job Opportunities for Individuals with Disabilities

Kristin Aiello, Esq., Managing Attorney

A newly adopted U.S. Department of Labor regulation promises to increase job opportunities for individuals with disabilities. As of March 24, 2014, federal contractors must now show that individuals with disabilities make up at least 7 percent of their workforce. This historic change is significant because it promises to address longstanding differences in labor force participation, employment rates, and wages for individuals with disabilities compared to people without disabilities.

The new regulations make changes to existing regulations implementing Section 503 of the Rehabilitation Act of 1973. According to the Department of Labor, "Section 503 prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities, and requires these employers to take affirmative action to recruit, hire, promote, and retain these individuals."

How do revised regulations increase employment opportunities for people with disabilities? Highlights include the following changes:

- **Utilization Goal:** The new regulations establish, for the first time, a nationwide 7% target goal for qualified individuals with disabilities. Contractors must apply the goal to each of their job groups or to their entire workforce if the contractor has 100 or fewer employees. Contractors must review their progress and take steps if they fall short of this goal.
- **Data Collection:** The new regulations require that contractors document and update annually their efforts in hiring and the number of individuals with disabilities who apply for jobs and the number of individuals with disabilities they hire. This data will assist contractors in measuring the effectiveness of their outreach and recruitment efforts and in spotting trends.
- **Invitation to Self-Identify:** The new regulations require that contractors invite applicants to self-identify as having a disability at both the pre-offer and post-offer phases of the application process, using language prescribed by DOL. The new regulations also require that contractors invite their employees to self-identify as individuals with disabilities every five years. This language is posted in a self-identification form available at: http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary_Self-Identification_of_Disability_CC-305_SD_Edit1.24.14.pdf.

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Why Employment *First*?

Rick Langley, Advocacy Director

Employment First Maine (EFM) is a broad coalition of individuals with disabilities, families, advocates, providers and state agency representatives committed to achieving employment opportunities for Maine citizens with disabilities.

EFM is part of Maine's response to the national movement towards *real* work for *real* wages, in *real*, integrated work settings, for people with disabilities.

The energy behind EFM comes from the fact that for too long, expectations around work and disability have been shockingly low. Some of the attitudes and beliefs around disability and employment that we've all heard include:

"It's normal to be dependent on benefits and to live in poverty".
Social Security benefits, which provide a crucial safety-net for some, have become the default expectation for many.

"Some people are too disabled to work and always will be".
Some people with significant disabilities are described by others as unable to work, and as a result we fail to make the effort to work together to creatively identify true strengths and skills and how they match a person's goals and aspirations.

"Other people work – but I don't".
Some people, who have not been encouraged to consider work a basic right, have resigned themselves to the idea that work is for other people, not them. For many, the expectation is that "other people work, earn money, enjoy new experiences, learn, and grow – other people, but not me."

EFM seeks to alter these assumptions and to raise expectations for all of us and to direct policy and practice in Maine to reflect those new expectations.

Making employment a priority in service planning is crucial in order to meet this goal. Employment First (EF) principles require that employment be the "first and preferred option" when exploring service goals for people with disabilities. Everyone will have an employment goal of some kind as a core service component.

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The contents of this publication are the sole responsibility of the authors and do not represent the official views of these agencies.

The Disability Rights Center is a non-profit 501(c)(3) corporation. Donations are tax deductible and gratefully accept-

Meet DRC's Newest Staff Members!

Benjamin Y. Jones, Esq., Developmental Services Advocate, Portland

A Mainer, Ben is thrilled to join DRC as the Developmental Services Advocate in Portland. Ben graduated in 2013 from New England Law where he developed his passion for poverty alleviation through access to justice. While in Boston, Ben worked with low-income veterans, public defendants, and people with disabilities through his work with six legal aid organizations. Most rewarding for Ben was his representation of a client with an intellectual disability in a Social Security appeal hearing in which Ben and his client had a \$70k overpayment successfully waived.

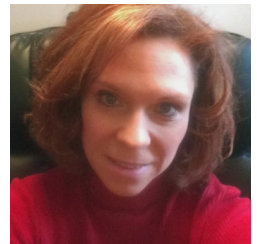
Ben believes strongly in MLK, Jr.'s words: "Injustice anywhere is a threat to justice everywhere" and looks forward to representing Mainers across Cumberland and York counties as an Advocate with DRC. When Ben is not advocating for individuals throughout Southern Maine, you will most likely find him out biking and running in the summer and at home cooking, canning, and fermenting in the fall and winter.



Mary Rohn, Developmental Services Advocate, Caribou

In March 2014, Mary Rohn joined the Disability Rights Center as the Developmental Services Advocate (DSA) in Aroostook County. She took over this role from Laura Rowland, who has since become the DSA advocate in Hancock, Penobscot, Piscataquis, and Washington Counties. For the past 14 years, Mary worked at an agency in Presque Isle that assisted victims of domestic violence. Her responsibilities included being a court advocate, a volunteer coordinator and a public educator. She spent countless hours at hospitals and local domestic violence shelters working to help families affected by violence.

Previously, Mary was the Business & Professional Women's Young Careerist of the Year and sat on several committees throughout her community in an effort to help end violence in Aroostook County. Mary is very active in her church and she loves animals and rescuing them; she has two beautiful cats, Maggie and Charlie. Mary writes, "I have always had a desire for advocacy, and I am very excited to be working at the DRC, where I can put my passion for seeking justice and eliminating inequality to work."



Andrea Sneden, Esq., Staff Attorney

A 2008 graduate of the Sandra Day O'Connor College of Law at Arizona State University, Andrea Sneden joined the Disability Rights Center in January as the patient advocate at Dorothea Dix Psychiatric Center. Previous to joining DRC, Andrea spent 5 years as an attorney with a non-profit children's law organization in Indianapolis where she represented abused and neglected children and provided legal outreach to the community on children's law issues. Although originally from Indiana, Andrea is enjoying the change of pace Maine offers and is excited to be a part of the DRC team.



In April, DRC said goodbye to long-time special education advocate Karen Farber. This opening provided an opportunity for Andrea to relocate to the Augusta office, where she could once again be an advocate for children. Currently transitioning from DDPC to DRC's main office, Andrea will join staff attorney Atlee Reilly as a full-time special education attorney beginning in July.

Andrea enjoys staying active and spends her free time hiking and running. Prior to relocating to Maine, she and her husband thru-hiked over half of the Appalachian Trail with their two German Shepherds.

Gabrielle Bérubé Pierce, Patient Advocate, DDPC

A 2014 graduate of the Maine School of Law, Gabrielle Bérubé Pierce is the new patient advocate at Dorothea Dix Psychiatric Center (DDPC). Gabi joined DRC almost immediately after graduation and has been steadily transitioning into her new role, with the help of past DDPC advocates Andrea Sneden and Kevin Voyvodich (now a patient advocate at Riverview Psychiatric Center).



Before enrolling in law school, Gabi spent several years working in the mental health field as a direct support professional for UCP of Maine, a mental health residential technician in group homes for individuals with co-occurring substance abuse and mental health diagnoses, and in a group home for individuals with traumatic brain injuries. More recently, Gabi completed a legal fellowship and internship in the Maine State Legislature, where she worked in the office of House Speaker Mark Eves.

A Bangor-area native, Gabi is excited to return to the community and be working with individuals with disabilities.

Job Opportunities for Individuals with Disabilities *(Continued from Page 2)*

- Incorporation of the Equal Opportunity Clause: The new regulations require that specific language be used when incorporating the equal opportunity clause into a subcontract, alerting subcontractors to their responsibilities as Federal contractors.

The changes to be brought about by the revised regulations promise to increase contractors' affirmative action and nondiscrimination responsibilities, which will in turn put more people with disabilities to work. Despite inroads made in areas such as education, housing, and community inclusion, employment rates of individuals with disabilities have lagged behind. While the basic framework for affirmative action under Section 503 has been in place since the 1970s, over 40 years later, people with disabilities still face persistent unemployment and underutilization. The time is long overdue to address these disparities and the new regulations are a step in the right direction.

For guidance about the new Section 503 regulations, a helpful resource is the Office of Federal Contract Compliance, which can be reached at 1.800.397.6251 (TTY: 1.877.889.5627) or OFCCP-Public@dol.gov.

Employment First *(Continued from Page 3)*

For individuals who are not working, their decision to ignore employment in the community will be re-evaluated on a regular basis. The reasons and rationale for this decision will be fully documented and addressed in service provision. In too many instances, real thoughtful discussion around work opportunities has been marginalized. The EF movement seeks to shift that discussion so that the life-changing value of work is given the priority it deserves.

For more information on Employment First Maine and to get involved in the coalition, visit our website at www.employmentfirstmaine.org.

Expanding Housing Opportunities for Individuals with Mental Illness

Bernadette O'Donnell, Staff Attorney

As part of my work at the Disability Rights Center, I often hear from individuals with psychiatric disabilities who struggle to find safe and affordable housing. Without a place to call home, individuals with mental illness may experience a worsening in their symptoms, which can often result in an increase in psychiatric hospitalizations. One hurdle that many individuals face in finding affordable housing is the long waiting list for the federal government's Section 8 Housing Choice Voucher Program. However, two housing assistance programs exist that are specifically designed to help eligible individuals with disabilities by expediting the housing process: the Bridging Rental Assistance Program (BRAP) and the Shelter Plus Care Program. Unlike Section 8, these programs often have either very short or no waiting lists.



BRAP

The Bridging Rental Assistance Program (BRAP) was created by the Maine Department of Health and Human Services (DHHS) to help individuals with psychiatric disabilities find safe and affordable housing in the communities of their choice. Program participants pay 51% of their income toward rent, and BRAP subsidizes the remaining portion to equal fair market rent. Participants are encouraged, but not required, to obtain supportive services as a condition of receiving the voucher.

In order to be eligible for BRAP, an individual must either be a member of the AMHI Consent Decree or have a mental health diagnosis which would make the individual eligible for community integration services under MaineCare. In addition, DHHS requires that all applicants for BRAP must provide the following: 1) documentation of financial need; and 2) proof that they have previously applied for a Section 8 voucher.

DHHS prioritizes applicants for vouchers in the following order, from highest to lowest: 1) applicants who apply either from a psychiatric hospital or within 6 months of discharge; 2) homeless applicants; 3) eligible applicants who are living in substandard housing in the community; and 4) eligible applicants who are moving from a community residential facility to a more independent living arrangement.

Shelter Plus Care

Shelter Plus Care is a federal program funded by the U.S. Department of Housing and Urban Development (HUD) designed to provide rental subsidies and supportive services to homeless individuals with disabilities, primarily those with chronic mental illness, a history of substance abuse, and HIV/AIDS. Shelter plus care recipients are encouraged, but not required, to accept the provision of services to complement the voucher. Program participants pay 30% of their income towards rent and Shelter Plus Care subsidizes the remaining portion.

In order to be eligible for Shelter Plus Care, an individual must: 1) have a disability; 2) be homeless; and 3) have an annual income that does not exceed the very low income limit. The applicant must also be in need of the subsidy. These criteria are based on HUD definitions of disability, homelessness and income limits.

If you have any questions about either of these programs, or would like information on how to apply, please call the Disability Rights Center at 1.800.452.1948.

Aroostook Medical Center Training

Laura Rowland, Advocate

In response to serious rights concerns raised by DRC, the Aroostook Medical Center (TAMC), invited DRC to provide rights training to staff from across the hospital's departments. The focus of the training was on emergency department services and the care provided to individuals with developmental disabilities. The training, entitled "Understanding and Supporting Clients with Disabilities in a Hospital Setting", was conducted by advocates Jodi Benvie and Laura Rowland, as well as staff attorney Lydia Paquette. TAMC made a serious commitment to this training, with 60 staff members from across all departments at the medical center participating in a three hour overview of client rights, the service system for people with disabilities, and a Q&A session.

The Disability Rights Center initially became involved when the concerned guardian of a young woman contacted a developmental services advocate raising serious concerns regarding medication and informed consent, physical restraint, and the ability of medical providers to understand her ward's needs and interact with her appropriately. DRC intervened and, in response, the TAMC interdisciplinary team created a Special Care plan to standardize care received by clients identified as needing special accommodation. The advocates reviewed the plan and incorporated it into their training to assist staff with gaining direct experience in developing special care plans. The training provided information on the types of community support services available to clients with developmental disabilities, and how to access these services and incorporate them into a comprehensive discharge plan.

The reviews of the training were overwhelmingly positive and the hospital care director has requested that the training be repeated for all physicians on staff. DRC has also received requests from affiliated hospitals throughout the state to provide this specialized training to make responders more sensitive to the needs of clients with developmental disabilities.

The Disability Rights Center welcomes the opportunity to engage in training and education activities aimed at promoting the rights of all people with disabilities. DRC conducts training events for students and families regarding educational rights, as well as for people with disabilities and their supporters seeking information on employment rights and reasonable accommodation, voting rights, housing rights, Advance Directives, inpatient rights, and the Americans with Disabilities Act and access issues, among other areas.

For more information, or to inquire about scheduling a training in your area, please call DRC at 1.800.452.1948.

The Disability Rights Center seeks public comment on our Program Priorities throughout the year.

To submit a comment, please send an e-mail to advocate@drcme.org.

Disability Rights Center's 14th Annual Membership Dinner

Friday, October 17, 2014

Hilton Garden Inn, Freeport

DRC Welcomes Sally Conway, Deputy Chief, Disability Rights Division, Department of Justice as This Year's Keynote Speaker

Sally Conway directs the Department's wide reaching ADA Technical Assistance Program, which carries out a variety of activities to promote voluntary compliance with the ADA, which include the operation of the Department's highly used and popular nationwide ADA Information Line and ADA Website as well as the development of technical assistance materials. Having worked in the fields of disability and civil rights for more than 30 years, she has conducted training sessions, workshops, and presentations on the ADA for representatives from the public and private sectors, and people with disabilities throughout the country. She also oversees the Department's innovative ADA Mediation Program, which provides businesses, State and local governments, and people with disabilities an efficient, effective, and voluntary alternative for resolving complaints under the ADA. Prior to coming to the Department in 1994, Ms. Conway worked as a program director for Granite State Independent Living in New Hampshire, as an investigator for the NH Commission for Human Rights, as the director of medical social work in a hospital, and as a music teacher in the public schools.

For more information about this exciting event, please call DRC at 1.800.452.1948.

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