



SENT VIA ELECTRONIC MAIL ONLY TO: Stephen.Russo@la.gov

April 7, 2020

Mr. Stephen Russo
Interim Secretary
Louisiana Department of Health
628 N. 4th Street
Baton Rouge, LA 70802

Re: Request for Information

Dear Mr. Russo:

Disability Rights Louisiana (DRLA) is requesting information regarding the scope of Covid-19 infections at all Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) as defined in 48 LA ADC Pt I, § 8503 and the provision of protections for and treatment available to individuals with disabilities that reside in these facilities. This request is under both the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (PADD Act), 42 U.S.C. §§ 15001 et seq. and the Louisiana Public Records Act (LPRA), L.R.S. §44.1 et seq. If you are not the proper person to whom to direct this request, please direct this request to him or her, or inform me of that individual's name and address so that I may redirect this request.

We request the following:

1. The total number of private ICF/DD facilities in Louisiana as of April 6, 2020.
2. For each private ICF/DD, we request the following information, for each day starting March 13, 2020 and continuing through April 10, 2020:
 - a. The total number of residents in each private Louisiana ICF/DD diagnosed as Covid-19 positive;
 - b. The total number of residents in each private Louisiana ICF/DD designated as presumptive Covid-19 positive;
 - c. The total number of residents in each private Louisiana ICF/DD hospitalized as a result of Covid-19 (either presumptive or based on a positive test);
 - d. The total number of residents in each private Louisiana ICF/DD who have died as a result of Covid-19 (either presumptive or based on a positive test);
 - e. The total number of residents in each private Louisiana ICF/DD who have died as a result of a respiratory illness (for example, pneumonia);
 - f. The total number of employees at each private Louisiana ICF/DD;
 - g. The total number of employees of each private Louisiana ICF/DD diagnosed as Covid-19 positive;
 - h. The total number of employees of each private Louisiana ICF/DD designated as presumptive Covid-19 positive;

- i. The total number of employees of each private Louisiana ICF/DD hospitalized as a result of Covid-19 (either presumptive or based on a positive test);
 - j. The total number of employees of each private Louisiana ICF/DD who have died as a result of Covid-19 (either presumptive or based on a positive test);
 - k. The total number of Covid-19 clusters in private Louisiana ICF/DDs. A cluster is identified as two or more cases that appear to be connected; and
 - l. The total number of Covid-19 clusters in private Louisiana ICF/DDs per LDH region as defined by the designation of a separate human services district or authority.
3. For each item in number 2 above, the total number to be provided on each subsequent Monday, Wednesday, and Friday until the end of the of the Louisiana Governor's emergency declaration.
 4. Any correspondence between LDH (including Health Standard and Office of Public Health) and private ICF/DDs that concern or relate to the provision of care, treatment, and the protection of persons with developmental disabilities in private ICF's.
 5. Any complaints filed with Health Standards regarding the failure to protect or provide adequate services to a person with a Developmental Disabilities in a private ICF/DD since March 13, 2020..

Authority for Record Request: P&A Authority

Disability Rights Louisiana is the "Protection and Advocacy System" or "P&A" for the state of Louisiana. Among other laws, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("PADD Act"), 42 U.S.C. §§ 15001 et seq. authorizes P&A agencies such as ours to act to protect individuals with developmental disabilities.

Our agency is federally mandated by the PADD Act to provide legal and advocacy services to people with developmental disabilities, including persons who live in facilities, community group home settings, or their own homes. ICF-DD and related day programs are indisputably within these covered categories.

As a P&A, DRLA has the authority to pursue legal, administrative and other remedies to ensure the protection of individuals with disabilities who are receiving care or treatment in Louisiana. Specifically, DD Act provides Disability Rights Louisiana with broad access rights to facilities and to facility records for the purpose of investigating allegations of abuse and neglect, monitoring facility conditions, and providing protection and advocacy services to individuals with disabilities. 42 U.S.C. §15043.

Specifically, Section 15043(a)(2)(J) of the DD Act provides that the P&A shall:

- (i) have access to ... records that are relevant to conducting an investigation ... not later than 3 business days after the system makes a written request for the records involved; and
- (ii) have immediate access, not later than 24 hours after the system makes such a request, to the records without consent from another party, in a situation in which

services, supports, and other assistance are provided to an individual with a developmental disability--

(I) if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy;

Our agency has received reports sufficient to trigger our authority under the DD Act to initiate an investigation. Those reports indicate that individuals with developmental disabilities who reside in private ICF-DD facilities across the state are not being adequately protected from or receiving treatment for Covid 19 at serious risk to their health and safety. Courts have repeatedly ruled that the P&A is the final arbiter regarding a determination of probable cause for purposes of triggering our authority to access records. Consent for the release of such records to the P&A is not required. *See, The Protection and Advocacy for the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §15043 and 45 C.F.R. 1326.25(b); the Protection and Advocacy for Individual Rights Program of the Rehabilitation Act, 29 U.S.C. §794(e); Alabama Disabilities Advocacy Program v. J.S. Tarwater Development Center, 97 F.3d 492 (11th Cir. 1996); Arizona Center for Disability Law v. Allen, 197 F.R.D. 689 (D. Ariz. 2000).*

Authority for Record Request: LPRA

This request is also being made under the Louisiana Public Records Act, L.R.S. §44.1 et seq., to inspect and copy the public records described above. If these records can be supplied in electronic form, please let me know.

Under the Public Records Act, accessible records include data in computer systems. La. R.S. 44:1(A)(2)(a). If the data requested is in a format that is not self-explanatory, please provide a copy of the instructions as to the formatting of any reports that would help in interpreting them.

Date and form of Disclosure of Records Being Requested

These records are sought for a public purpose. As a result, I request that the fees for copying be waived under the authority of La. R.S. 44:32(C)(2). Considering the breadth and scope of this request, and in an effort to reduce the burden on the continuing production of data, we request access to the online portal or reporting system where this information is stored and may be viewed. Information about this pandemic is changing daily and we want to find the most efficient means of obtaining the information to track how this pandemic is impacting the residents of ICF/DDs in Louisiana.

Based on the above, although we are seeking these records, or access to the online system, as soon as possible and federal law provides that records that are relevant to conducting an investigation must be made available within 3 business days after the written request, we request that the records be provided to us no later than the close of business on April 10, 2020.

If for any reason you refuse to produce the requested information, please provide the legal basis for such refusal in writing no later than April 10, 2020. If anything about the above request is unclear, please contact me as soon as possible so that we can clarify any potential ambiguity at

RE: Document Requests

April 7, 2020

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dweinberg@disabilityrightsla.org or via fax at (504) 267-2243. Thank you in advance for your cooperation during this difficult time.

Sincerely,



Debra J. Weinberg

Director of Community Advocacy

CC: Mark A. Thomas, Deputy Secretary of LDH <Mark.Thomas@la.gov>
Dr. Alexander Billieux, Assistant Secretary LDH's Office of Public Health
<Alexander.Billioux@LA.GOV>
Julie Foster Hagan, Assistant Secretary OCDD <Julie.Hagan@la.gov>
Cecile Castello, Director LDH Health Standards Section <Cecile.Castello@la.gov>
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