



Disability Advocacy Alliance

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May 25, 2019

Chairman Matt Dolan
Senate Finance Committee
1 Capitol Square
Columbus, Ohio 43215

Ranking Member Vernon Sykes
Senate Finance Committee
1 Capitol Square
Columbus, Ohio 43215

Dear Chairman Dolan and Ranking Member Sykes:

Disability Advocacy Alliance (DAA) is a grassroots organization formed by parents, family members and guardians to advance the rights of individuals with intellectual and developmental disabilities in Ohio.

Families of DAA strongly support an amendment (the "P&A amendment") to the operating budget that provides for a joint committee to biennially review Ohio's Protection & Advocacy (P&A) System. The P&A currently operates with no oversight, but has enormous power to undermine the health care, residential, day habilitation, and employment supports of Ohioans with intellectual and developmental disabilities. An entity that is charged with protecting the rights of this fragile population, coupled with the responsibility to be a good steward of the millions of tax dollars it receives each year, should welcome objective review.

On May 16th, Mr. Kirkman submitted testimony to the Senate Finance Subcommittee on Health & Medicaid. Below, we respond to points he raised.

- Mr. Kirkman suggests the P&A amendment has no relationship with the state budget's allotment of funds. We disagree. The P&A amendment will put in place responsible oversight over an entity that has had an outsized influence over Ohio's state budget. DAA estimates that HB 166 and future budget legislation includes/will include as much as **\$100 million** in funding to settle DRO's lawsuit against the State of Ohio, Ball v. Kasich. This lawsuit has been a primary focus of DRO's service system since 2014. \$1.2 million of this funding will go directly to DRO for attorney fees. We estimate the cost to the State of Ohio to litigate the lawsuit since March 2016 approaches \$10 million when one considers staff time in the Governor's office, the AG's office, DOM, DODD, OOD, and the State's outside attorney fees. Aside from the cost of settling the lawsuit, DRO's threats of litigation and the litigation itself has increased the state budget by over \$400 million over the previous two bienniums.
- Mr. Kirkman remarks its activities are not "of the kind" to be subject to regulation by the State. DAA disagrees. The Developmental Disabilities Assistance and Bill of Rights Act (the DD Act) requires states receiving financial assistance under the Act to have in place a Protection & Advocacy System.¹ Under Ohio Revised Code, the P&A System is designated by the Governor. The DD Act further stipulates that "the State" may redesignate the P&A for "good cause." The P&A amendment establishes a transparent means to identify or rule out good cause, and thus support the Governor in making his P&A designation.

¹ 42 USC § 15043

- Mr. Kirkman suggests DRO's recent lawsuit against the State of Ohio has resulted in a "fair and equitable" settlement. Yet, in the same sentence, DRO dismisses and marginalizes people who objected to the lawsuit as a "narrow sector of the I/DD community." This sector is made up of ICF residents and sheltered workplace clients whose supports were attacked in the lawsuit. These individuals represent some of DRO's most disabled constituents. That DRO disregards this population and is wholly disinterested in protecting their rights speaks loudly to why the P&A amendment is necessary. ADA regulation does not allow DRO to refuse to protect a portion of its constituency:

"No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." 28 CFR § 35.130(a).

- With respect to the suggestion by Mr. Kirkman that the P&A amendment causes "potential issues" with federal regulation, please see attached Legislative Services Commission (LSC) opinion which finds no issues.

For these reason and those stated in our testimony to the Subcommittee on Health and Medicaid (attached), we urge the Senate to include the P&A amendment in the Senate version of HB 166. Checks and balances serve as the basis of our democracy. The responsible review of a public entity that is charged to protect the rights of the most vulnerable members of our democracy naturally follows.

Thank you for your consideration of our concerns and for your service to Ohioans.

Sincerely,



Caroline Lahrmann
President

Attachments: LSC Opinion Regarding P&A Amendment's Compliance With Federal Law
DAA Testimony to Senate Finance Subcommittee on Health & Medicaid



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Mark Flanders, Director

Office of Research
and Drafting

Legislative Budget
Office

R-133-1232

To: The Honorable Mark Romanchuk
Ohio House of Representatives

From: Jason Hoskins, Attorney *JH*

Date: May 14, 2019

Subject: H.B. 166 provisions that create a state protection and advocacy system study committee

You asked whether a provision of the House-passed version of H.B. 166 (the FY 2020-2021 biennial budget bill) violates federal law. The provision in question requires the Speaker of the House of Representatives and the President of the Senate to establish a joint committee every two years to examine whether a new entity should be designated to serve as the state's protection and advocacy system and client assistance program (P&A system). There are several requirements under federal law that must be satisfied before a state may redesignate the agency responsible for administering its P&A system. However, it does not appear that the provision included in H.B. 166 likely does not trigger these federal requirements and therefore does not violate federal law.

Background

Federal law authorizes allotments of federal funds to states to support protection and advocacy systems for individuals with developmental disabilities.¹ A state must satisfy a number of requirements to be eligible for its allotment, including requirements regarding the administration of the P&A system.

In 1980, the Ohio Legal Rights Service (OLRS) was designated, under federal law, as Ohio's P&A system. On January 19, 2010, OLRS submitted to the Governor and General Assembly a transition feasibility study as required by H.B. 1 of the 128th General Assembly (the FY 2010-2011 biennial budget bill). That report concluded that a transition from OLRS to a nonprofit entity to serve as the state's P&A system was feasible.

H.B. 153 of the 129th General Assembly required the transition from OLRS to a nonprofit entity to serve as Ohio's P&A system. In July 2012, the Governor announced an intention to move the P&A designation from OLRS to Disability Rights Ohio. On October 1, 2012, OLRS was

¹ 42 United States Code (U.S.C.) 15041 to 15045.

abolished and Disability Rights Ohio officially took over as the state's P&A system. Disability Rights Ohio remains Ohio's P&A system.

Redesignating the P&A system

H.B. 166 language

R.C. 5123.603 as included in the House-passed version of H.B. 166 requires the General Assembly to complete a periodic study of the entity serving as Ohio's P&A system. It reads as follows:

Every two years, the president of the senate and speaker of the house of representatives shall establish a joint committee to examine whether a new entity should be designated to serve as the state's protection and advocacy system and client assistance program. The joint committee shall consist of a number of members of the senate appointed by the president and an equal number of members of the house of representatives appointed by the speaker. The president and speaker shall determine the total number of members of the joint committee. The president and the speaker shall also determine the dates on which members' terms on the joint committee are to begin and end. Vacancies shall be filled in the manner of the original appointments.

Every two years, the president and speaker shall specify a deadline for the joint committee to complete a new report containing the joint committee's recommendations. The joint committee shall submit the report to the president, speaker, and governor by the deadline.

Federal requirements

There are four requirements under federal law that must be satisfied before a state may redesignate the agency responsible for implementing its P&A system. A P&A system may not be redesignated unless:

1. There is good cause for the redesignation;
2. The state has given the agency both notice of the intention and an opportunity to respond to the assertion that good cause has been shown for the redesignation;
3. The state has given timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives;

4. The system has an opportunity to appeal the redesignation to the U.S. Secretary of Health and Human Services, on the basis that the redesignation was not for good cause.²

H.B. 166 does not require the General Assembly or the Governor to redesignate Ohio's P&A system. Instead, it requires only that the General Assembly establish a joint committee to determine whether there should be a redesignation. Because this section does not require a redesignation of Ohio's P&A system, the federal requirements regarding the procedure for redesignating a P&A system are not triggered.

Contact information

I hope this memorandum is helpful. If you have any questions or need additional assistance, please contact me by telephone at (614) 466-1523 or by email at jason.hoskins@lsc.ohio.gov.

R-133-1232.docx/ar

² 42 U.S.C. 15043(a)(4).



**Disability
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May 16, 2019

Chairman Bob Hackett
Subcommittee on Health & Medicaid
1 Capitol Square
Columbus, Ohio 43215

Ranking Member Cecil Thomas
Subcommittee on Health & Medicaid
1 Capitol Square
Columbus, Ohio 43215

Dear Chairman Hackett and Ranking Member Thomas:

Disability Advocacy Alliance is a grassroots advocacy organization formed by parents, family members and guardians to advance the rights of individuals with intellectual and developmental disabilities in Ohio.

On May 7, Michael Kirkman, Executive Director of Disability Rights Ohio (DRO), submitted testimony to the House Finance Committee. In his testimony, Mr. Kirkman expressed opposition to an amendment to the House version of the Ohio operating budget that calls for the Senate President and Speaker of the House of Representatives to appoint a joint committee every two years to examine whether a new entity should be designated to serve as the state's protection and advocacy system (P&A) and client assistance program (CAP) and to produce a report with a recommendation.

Families of Disability Advocacy Alliance strongly support this amendment that provides responsible review of an entity that has enormous power to affect the nature of or undermine the health care, residential, day habilitation, and employment supports of vulnerable Ohioans, many with no voice of their own. Any entity that is charged with protecting the rights of this fragile population, coupled with the responsibility to be a good steward of the millions of tax dollars it receives each year, should welcome objective review.

We note the following with respect to the points Mr. Kirkman raised in his testimony:

- Mr. Kirkman states that DRO is a non profit, however, through its designation as Ohio's P&A/CAP, DRO serves as a public entity. Its duties are outlined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, the Rehabilitation Act of 1973, and Ohio Revised Code. As noted above, DRO receives millions in tax dollars to fulfill its public charge.
- Mr. Kirkman indicates that DRO does not receive state funds, however, federal statute instills with the Governor of Ohio oversight authority over the P&A. The Governor may remove the P&A for good cause as provided in 42 USC 15043 (4)(A) - (D)/ 29 USC (c)(1)(B). DRO describes the procedures for redesignation as "elaborate." We urge you to review the procedures in statute which appear to be straightforward. Certainly, the State of Ohio understands the process for redesignation as it recently redesignated its P&A/CAP. Furthermore, please note that federal law describes "redesignation" procedures. These are distinct from review procedures that a joint committee would undertake.

- Mr. Kirkman indicates that DRO is an independent body. Independence in the statute is related to being “independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities.” [42 USC 15043(2)(H)/ 29 USC 732 (c)(1)(A)] The Speaker, Senate President, and the proposed joint committee do not/ would not provide direct services to the P&A/CAP constituency. Additionally, the statute does not preclude a state from establishing a review mechanism to support the Governor’s clear oversight authority.
- Mr. Kirkman suggests that any findings of “good cause” by a joint committee would be related to a “disagreement with advocacy priorities.” We believe it is unfair to characterize the work product of a joint committee that has not been appointed. There are many objective factors upon which a joint committee could base a biennial review of a P&A/CAP. Furthermore, no finding of good cause can occur or be ruled out unless the State is held to some process for carrying out ongoing review. The amendment establishes such a process that is transparent, representative, and includes multiple branches of government.
- Mr. Kirkman notes that redesignation can only be directed by the Governor. The proposed amendment does not infringe on this authority. The joint committee prepares a report that is submitted to the Speaker, Senate President, and the Governor. The Governor retains his/her oversight authority and can accept or reject the recommendation of the joint committee.
- Suggesting that federal funding is at stake for establishing a responsible review process to support the Governor in fulfilling his/her oversight authority is unreasonable. A review mechanism would only motivate all parties - the State and the P&A/CAP - to live up to their duties under the statute.

We urge you to support the P&A /CAP amendment in the operating budget. Thank you for your consideration of our concerns.

Sincerely,



Caroline Lahrmann
President