

Memorandum of Understanding
Between the Missouri Department of Mental Health and
Missouri Protection and Advocacy Services

This Memorandum of Understanding, hereinafter "MOU," is entered into this 10th day of March 2009 by and between the Missouri Department of Mental Health, hereinafter "DMH," and Missouri Protection and Advocacy, hereinafter "Mo. P & A," and collectively identified hereinafter as the "PARTIES." This MOU is not a contract. It is not binding on either party. It is not legally enforceable. The Parties herein recognize the legal rights and responsibilities of each other and agree to formalize the cooperative relationship between DMH and Mo. P & A to ensure the protection and safety of consumers and their rights.

1. Consumers covered by MOU: This MOU addresses "covered consumers" of DMH's services who are covered by Mo. P & A's legal authority. Therefore, the MOU is limited to individuals with developmental disabilities, mental disabilities or both. Any information sought by Mo. P & A for consumers with primary diagnosis of alcohol or drug shall be pursuant to Federal laws and regulations, more particularly found at 42 CFR Part 2. "Covered Consumers" shall refer to the description of consumers covered in this provision.

2. Programs and Facilities Covered by MOU: This agreement establishes agreements that apply to Mo. P & A responsibilities with DMH consumers receiving DMH services in the following facilities and programs:
 - State operated CPS and DD facilities and programs;
 - Contractual community services providers for CPS including:
 - Administrative Agents
 - Affiliated community service providers
 - Residential providers

- Contractual DD community based providers
 - Licensed, certified or funded providers
 - Senate Bill 40 Developmental Disability Boards when serving consumers receiving DMH funded supports and services

These programs and facilities will be referenced in the agreement as “covered programs”.

3. Authority of Mo. P & A Not Limited: The authority for Mo. P & A to act is found in the Developmental Disabilities Assistance and Bill of Rights Act, known as the “DD Act,” and its regulations found at 45 CFR Part 1386, et al., and the Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI ACT”) and its regulations found at 42 CFR Part 51, et al. Nothing in this MOU shall be construed to limit or modify the authority of Mo. P & A under the statutes and regulations set out above.

I. Purpose

4. Facilitate Interaction: The purpose of this MOU is to facilitate interaction between Mo. P & A and DMH, its facilities, programs and employees; and programs operated, funded, licensed, recognized and/or certified by DMH.

The provisions of the DD Act, as amended, provide for an authorized system to provide protection and advocacy services to persons with developmental disabilities. Mo. P & A is the designated protection and advocacy system in Missouri since 1977. Under the provisions of the DD Act, Mo. P & A is required to be independent of any agency that provides services to persons with developmental disabilities. Nothing in this MOU shall be construed as making Mo. P & A a part of DMH or its service delivery system.

The provisions of the PAIMI Act provide that Mo. P & A is the authorized system to protect and advocate for the rights of individuals with mental illness. The PAIMI Act provides authority for access to facilities and programs providing care or treatment to individuals with mental illness, their consumers, and the records of the consumers.

II. Mo. P & A

Access to Department Facilities, Programs, Consumers

5. Department Acknowledgement: DMH acknowledges that Mo. P & A, on its own initiative, has the legal authority to access consumers of the facilities and programs operated, funded, licensed, recognized and/or certified by DMH. Access can be for, but is not limited to, providing information about Mo. P & A services; explaining legal rights obtained through applicable State and Federal laws; completing an application for Mo. P & A services; investigating allegations of abuse, neglect, death, or other violations of rights; advocating for the legal rights of consumers, and to monitor compliance with respect to the rights and safety of consumers.

6. Notification of Facility/Program Official: When Mo. P & A staff visits a facility or program for one or more of the purposes set forth above in paragraph 5, Mo. P & A shall notify the facility administrator or program director as a courtesy. Nothing in this agreement or this provision shall be construed to impede or delay access. It is understood by the parties that prior to initiating access or contact, Mo. P & A will notify the parent or guardian of minor. If consent is denied, Mo. P & A will evaluate whether an emergency exists. If it is determined by Mo. P & A that an emergency exists, Mo. P & A will be given access and proceed with the visit.

7. Identification of Mo. P & A Staff: Mo. P & A staff shall carry proper identification, such as identification card or original letter, while at the facility or program. It is understood that these requirements are for security and informational purposes and are not designated to limit access to the facility or program.
8. Unaccompanied Access to Facilities/Programs: Mo. P & A shall have reasonable unaccompanied access, without advanced notice, to all areas of the facility/program used by consumers or that are accessible to consumers for the purpose set out in paragraph 5 above. [Such visits should take place at a time and in a manner that does not disrupt the operations of the facility or program or interfere with the rights of other consumers.]
9. Unaccompanied Access to Consumers: DMH facilities and its programs as identified herein shall provide confidential access to consumers so Mo. P & A staff can interview consumers in a quiet and private area. Mo. P & A shall be allowed to meet with consenting consumers in the living areas, unless special security issues exist on the unit that would prevent such a living area visit. In such event, the visit shall be allowed in a private area.
10. Interviewing Facility/Program Staff: If Mo. P & A desires to interview a member of the facility or program staff, Mo. P & A shall be permitted to do so as long as it does not interfere with treatment delivery or coverage. Mo. P & A may provide a courtesy call to the director of the covered program or on-site designee to set up interviews.
11. Investigation Notification Waiver: The notification described or outlined in paragraph 6 above may be waived for an investigation if Mo. P & A determines that its investigation would be hindered by issuing notice to the facility administrator or program director, but in such case Mo. P & A shall notify the DMH director or division director.

II. A. Abuse, Neglect & Death Investigations

12. Unaccompanied Access for Mo. P & A: Mo. P & A shall have reasonable unaccompanied access to the consumers at all times necessary to conduct a full investigation of a consumer's death or an allegation of abuse or neglect. This includes access to person safely constrained in restraint or seclusion but not in time out.
13. Probable Cause: The determination of probable cause for abuse and neglect may result from observations by Mo. P & A staff, Mo. P & A system monitoring, and reviews of reports prepared by others, pertaining to covered consumers affecting health or safety, as well as other sources. The determination of probable cause shall be made by Mo. P & A.
14. Formal Action: Mo. P & A has the authority to take formal action on behalf of consumers with legal guardians or conservators, or initiate a formal attorney-client or advocate-client relationship without written consent, as provided by Federal law, when the guardian has failed or refused to act on behalf of the consumer.
15. Mo. P & A Investigation Reports: Following the completion of a formal investigation, Mo. P & A shall produce a summary of the report. Mo. P & A shall provide a copy of the report to the DMH Director or his/her designee if the client or guardian consents to the release. Mo. P & A will make every effort to contact and obtain a release to provide the summary to DMH.

II. B. Monitoring

16. DMH Acknowledgement: DMH acknowledges that Mo. P & A has the legal right to monitor compliance with respect to the rights and safety of covered consumers.

17. Written Notification of Monitoring: Mo. P & A shall provide notice of monitoring to the office of the facility administrator or program director upon arrival. The facility administrator or program director shall sign and date the notice as proof that the notification was given. Upon notification, Mo. P & A shall be given immediate access to monitor.
18. Unaccompanied access for Mo. P & A: Mo. P & A shall have reasonable unaccompanied access to monitor compliance with respect to the rights and safety of covered consumers. Mo. P & A shall have the option to request accompanied access.
19. Interviews: Mo. P & A shall have the right to informally and formally interview consumers in a facility or program regardless of whether the consumer has a guardian. The purpose of the interview with the consumer is to determine whether the consumer has been abused or neglected, is receiving treatment and programming, and/or to provide information on Mo. P & A services.
20. Effort to Notify Guardian Regarding Monitoring Activities: Mo. P & A shall make every reasonable effort to ensure that parents of minors or guardians of covered consumers are informed that Mo. P & A will be conducting monitoring activities at the facility or program and may in the course of such monitoring have access to the minor or adult with a legal guardian. To this end, Mo. P & A will provide signs to DMH programs and facilities to give guardians, parents, and other visitors notice that Mo. P & A monitors the facility and program. The signs shall be posted by facilities and programs in conspicuous locations where they can be seen by guardians, parents and other visitors.
21. Monitoring Reports: Formal written reports of the monitoring shall be provided to the facility or program.

II. C. Advocacy Assistance for Consumers

22. Informing Consumers: DMH agrees to advise consumers, their guardians and families of the opportunity to consult with Mo. P & A staff regarding their legal rights. DMH and covered programs shall provide assistance in contacting Mo. P & A if such consultation is requested.
23. Mo. P & A Staff Presence and Assistance: Mo. P & A staff may attend meetings with the consumer or with DMH staff and staff of covered providers, at the request of the consumer, and may assist the consumer in providing information, asking questions, requesting clarification, and in other manners designed to ensure that the consumer's rights are protected.
24. Assistance Request by DMH: DMH and covered programs may request Mo. P & A to assist a consumer in advocating for the consumer's legal rights. Where Mo. P & A cannot honor this request, Mo. P & A shall reply to the requestor that it is unable to do so.
25. Unrestricted Access to Mo. P & A: DMH and covered programs agree to allow consumers unrestricted access by confidential mail or telephone with Mo. P & A, and will provide such access as soon as practicable following a request for access.
26. Notice and Posters: DMH and covered programs will facilitate consumer access to Mo. P & A by allowing the posting of informational notices and posters regarding Mo. P & A services in the covered programs. Mo. P & A shall give DMH and covered programs the opportunity to review and approve these notices and posters prior to posting.

II. D. Presentations to Consumers

27. Presentation of Information and Notices: Mo. P & A is authorized by law to present information regarding Mo. P & A services and disability rights to groups of consumers or an individual consumer during normal working hours, visiting hours, or monitoring. Mo. P & A will post meeting notices, fliers, or posters and hold meetings at DMH covered programs.

III. Access to Records, Documents & Information

28. DMH Acknowledgement: DMH acknowledges that Mo. P & A has the legal authority to access all records of individuals with developmental disabilities and mental illness as outlined pursuant to provisions of the DD Act and PAIMI Act and subsequent amendments. The Department agrees to provide copies of records at no cost to Mo. P & A – up to a limit of fifty (50) pages per request. Mo. P & A requests for copies shall be reasonable in number and Mo. P & A shall limit its requests to copies of documents that are necessary for review of the pending matter or investigation. Specific information that is potentially detrimental to the consumer, that involves confidential information involving a third party, including past or potential victims, will be stamped or otherwise identified by DMH and its covered providers as “Detrimental to the Consumer if Shared”. Such information will be redacted by Mo. P & A, if shared with a consumer, or challenged through the provisions of the DD and PAIMI Act, as appropriate.
29. Definitions of Records under DD Act and PAIMI Act: Records shall include, but are not limited to:
- Records prepared or received in the course of providing intake, assessment, evaluation, education, training and other supportive services, including medical records, financial records, and

monitoring and other reports prepared or received by a member of the covered program that is providing care and treatment; and

- Reports prepared by an agency charged with investigating incidents of abuse and neglect, injury or death occurring at a facility or while the individual with a developmental disability is under the care of a member of the covered program, or by or for such covered program that describe any or all of the following:

- Abuse, neglect, injury or death; or
- Steps taken to investigate the incident; or
- Reports and records, including personnel records, prepared or maintained by the covered program in connection with such reports of incidents; or
- Supporting information that was relied upon in creating the report including all information and records that describe the people interviewed, physical and documentary evidence that was reviewed, and the related investigative findings; or
- Information in reports prepared by individuals and entities performing certification and licensure reviews or by professional accreditation organizations, related assessments prepared by a covered program, contractors, or related entities; or
- Information in professional, performances, building or other safety standards, demographic and statistical information relating to the covered program; or
- Discharge planning records; or
- Peer Review documents.

30. Mo. P & A Medium Access: Mo. P & A shall be given access to the above records whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs or video or audio tape records.

31. Signed Release: When requesting records or conducting interviews with staff of the facility or covered program, Mo. P & A will present a signed copy of the Release of Information form for the placement into the consumer's record.

32. Access to Records under DD ACT and PAIMI Act: Mo. P & A has the authority to access the records of an individual with a developmental disability without written consent if any of the following are met:
 1. The individual due to his/her physical or mental condition is unable to authorize the system to have access; or
 2. The individual does not have a legal guardian, conservator or the legal representative or the individual's guardian is the State or one of its political subdivision; or
 3. A complaint has been received by Mo. P & A or Mo. P & A has probable cause to believe the individual has been subject to abuse and/or neglect.

Mo. P & A shall have access to records under the PAIMI Act for the following individuals:

- a. Any individual who gives consent or guardian consents;
- b. Any individual who has died or whereabouts are unknown
 - i. Who by reason of mental or physical condition is unable to authorize the system to have access;
 - ii. Who does not have a guardian or the State is the guardian; or
 - iii. A complaint has been received by Mo. P & A or Mo. P & A has probable cause to believe abuse or neglect has occurred;
- c. Individual has a guardian and a complaint has been received by Mo. P & A or Mo. P & A has probable cause to believe the health or safety of the individual is in serious and immediate jeopardy when:
 - i. The guardian has been contacted by Mo. P & A;
 - ii. Mo. P & A offers assistance; and
 - iii. Guardian refuses or fails to act on individual's behalf.

33. Confidentiality Agreement: Mo. P & A agrees to maintain the confidentiality of all such records to the extent required by appropriate Federal and State laws.
34. Requests of DMH Investigations Reports and/or Inquiries: In those situations where Mo. P & A requests information about an investigation and/or inquiry, DMH shall provide, if requested in writing, a complete copy of all reports, prepared regarding the investigation and/or inquiry in accordance with relevant provisions of the DD and PAIMI Acts, with subsequent amendments, and applicable state provisions, not inconsistent with Federal law. The reports shall not be redacted.
35. Denial or Delay of Access: If access is denied or delayed, Mo. P & A shall be provided promptly with a written statement of reasons for denial or delay of providing access to covered programs, consumers and records. The written statement shall include, in the case of denial for alleged lack of authorization, the name, address, and telephone number of the legal guardian, conservator, of other legal representative of the consumer. Access to covered programs, records or consumers shall not be delayed or denied without prompt provision of written statements of the reasons for the denial.
36. Notifications of Deaths: DMH shall notify the Mo. P & A executive director of all unexpected consumer deaths, including any consumer death that occurred while the consumer was being restrained and/or secluded, or where a consumer's death was deemed suspicious for abuse/neglect, or involved suicide. Additionally, DMH shall provide information relating to the cause of death and numerical information on all consumer deaths.
37. Monthly Abuse/Neglect Reporting to Mo. P & A: DMH shall forward a report on a monthly basis to the Mo. P & A executive director relating to reported incidents of abuse and/or neglect. The

report shall contain information from the EMT System. Information related to the name and address of any guardian of the consumer who is the subject of such incident shall be provided upon Mo. P & A's request.

38. Record Release Restrictions & Summary Report Protections: Mo. P & A agrees that federal law requires that DMH investigation records be released only pursuant to Section 630.167.3, RSMo, and applicable federal laws. Where the consumer or guardian requests of Mo. P & A a copy of a DMH investigation report, Mo P & A agrees it will refer the consumer or guardian back to DMH for provision of the copy, and will provide notice to DMH that a referral of the request was made.
39. Protecting Confidentiality: When consumer records or DMH investigation reports are requested by a party other than the consumer or guardian, Mo. P & A shall refuse to comply unless compelled by court order to produce the record. If the requesting party initiates a legal procedure to obtain a court order for the release of the records, Mo. P & A shall take all reasonable steps before the court to protect the confidentiality of the record.
40. Access to Records & Custodian Presence: DMH acknowledges that Mo. P & A shall have access to consumer records in a quiet area, with a facility records custodian present (who is there solely for the purpose of preserving the record). DMH facilities and programs shall provide immediate access to such records whenever possible.
41. Access to Records Delays & Required Response: In instances where immediate access cannot be provided (e.g., records are not on site), such access shall be provided within a reasonable period of time, but no later than three (3) working days after receipt of the written request for access, specified in the current state Sunshine Law. In the event that access cannot be provided within three (3)

working days after receipt of the request, courtesy notice shall be provided to Mo. P & A (and a copy sent to the appropriate division director) within the period of time stating when access shall be provided and the reason why access could not be given within three (3) working days. In the event that access is denied, formal written notice shall be provided to Mo. P & A (and a copy sent to the appropriate division director) within the period of time stating the reason why access was denied.

42. Access to Records in Cases of Serious Jeopardy, Imminent Danger or Death: Where Mo. P & A determines that there is probable cause to believe that the health or safety of a consumer is in serious jeopardy or imminent danger, or in any case of the death of a consumer, immediate access to records shall be granted, not later than 24 hours after Mo. P & A's request, and shall not require written consent.
43. Access to Records Without Guardian Consent: Mo. P & A has legal authority to access records without a guardian's written consent, when the legal guardian, conservator or other legal representative, after notification by Mo. P & A, fails or refuses to act on behalf of a consumer where there is an allegation of abuse or neglect. This includes probable cause to believe that a consumer has been subject to abuse or neglect.
44. DMH Operating Rules & Regulations: A copy of DMH operating regulations, rules, procedures, and directives and any and all other DMH and/or facility and program documents concerning the delivery of consumer care shall be provided to the executive director of Mo. P & A at no charge when requested.

IV. Recording & Photographing

45. Recording & Photographic Equipment: Mo. P & A shall be permitted to utilize tape recording and/or photographic equipment

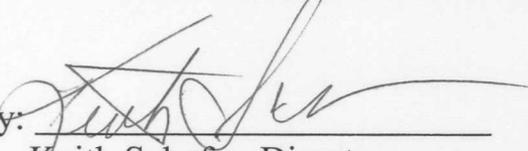
in the facilities and programs to record information. Mo. P & A shall notify the facility administrator or program director as a courtesy to facilitate Mo. P & A's use of such equipment. Nothing in this agreement or this provision shall be construed to impede or delay usage of such equipment.

46. Consent to Record or Photograph: The recordings/photographs shall be made with the written consent of the consumer(s) to be photographed/recorded. Mo. P & A shall identify the consumer(s) and places that are to be recorded and specific measures shall be identified so as not to record/photograph any other consumer(s) than those identified in advance. Mo. P & A shall provide a de-identified summary of such recordings, and shall provide a transcript of the recording and any photographs to the Deputy Director if the client or guardian consents to the release.

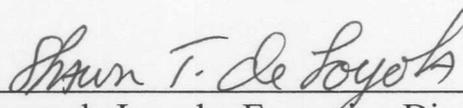
V. Litigation

47. Prior Notice for Hearings or Litigation: It is understood by Mo. P & A that before it initiates administrative hearings or legal proceedings to redress the rights of consumers in facilities or programs operated by DMH, except in the case of emergencies requiring immediate action, it shall take the following steps.
- a) Certified letter: Give written notice by certified letter to DMH's General Counsel, and request a pre-litigation meeting for the purpose of obtaining conciliation or resolution of the matter;
 - b) DMH Appeal Process: Endeavor to eliminate the alleged conditions and practices through internal appeal mechanisms established by DMH; and
 - c) Time to Correct: Provide DMH officials a reasonable time to take appropriate actions to correct such conditions and practices.

48. It is also agreed by parties below that this Memorandum of Understanding will be reviewed on an annual basis.
49. This Memorandum remains in effect until canceled by formal notice to all parties concerned.

By: 
Keith Schafer, Director
Department of Mental Health

Date: 3/10/09

By: 
Shawn de Loyola, Executive Director
Missouri Protection & Advocacy Services

Date: MARCH 10, 2009