



October 15, 2021

Boswell Regional Center
1049 Simpson Hwy. 149
Magee, Mississippi 39111

RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES¹
("PADD")

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at Boswell Regional Center ("BRC"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 15043, DRMS has the authority to investigate abuse and neglect in any setting where a person with intellectual or developmental disabilities receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and neglect³. A determination of probable cause can come from routine

¹ 42 U.S.C. § 15043(a)(2)(B) - Congress enacted the PADD, PAIMI and PAIR Acts (also known as the "P&A laws") to protect the human and civil rights of individuals with mental and developmental disabilities institutionalized in state facilities. The PADD Act, which was originally enacted in 1975 but repealed and replaced in its entirety in 2000, established the Protection and Advocacy System to provide protections for persons with developmental disabilities. See 42 U.S.C. § 15041. The PAIMI Act was modeled after the PADD Act to provide parallel protections for persons with mental disabilities. See 42 U.S.C. § 10803. The PAIR Act further extended the protection and advocacy mandate to protect the rights of individuals with disabilities who are ineligible for services under the PADD and PAIMI Acts. See 29 U.S.C. § 794e(f).

² 42 U.S.C. § 15043(a)(2)(B)

³ 45 C.F.R. § 1326.27(b)

Exhibit D

monitoring, external reports, direct complaint from client and/or their family, and/or other available sources.⁴ DRMS, as the P&A, is the final arbiter of probable cause for the purpose of triggering its authority to access and this decision is not subject to review. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request⁵. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might be reasonably believe to have knowledge of the incident under investigation.⁶ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons.⁷

Further, DRMS has access to a wide range of records⁸ as part of its investigatory authority⁹. This includes records made or received by facility staff (i.e. intake, assessment, evaluation, education, training, and other services)¹⁰, medical records¹¹, financial records¹², investigation records from other governmental or regulatory agencies¹³, discharge planning records¹⁴, and professional, performance, building, or other safety standards including demographic and statistical information¹⁵.

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of BRC.

⁴ 45 C.F.R. § 1326.25(a)(2)(iii)

⁵ 45 C.F.R. § 1326.27(b)(2)

⁶ 45 C.F.R. § 1326.27(b)(1)

⁷ 45 C.F.R. § 1326.27(b)(2)

⁸ In order to fulfill its duty to investigate and remedy instances of abuse and neglect of persons with disabilities, the Acts provide Advocacy with the express authority to access the records, as well as facilities and residents of the facilities who have developmental disabilities or mental illness, to ensure that the rights of these vulnerable populations are not violated. 42 U.S.C. §15043(a)(2)

⁹ The P&A laws provide state-designated agencies [. . .] with broad investigatory authority, including access to records. *See* 42 U.S.C. § 15043(a)(2) (PADD Act); 42 U.S.C. §§ 10805(a), 10806(3)(A) (PAIMI Act); 29 U.S.C. § 794e(f)(2) (2008) (PAIR Act). *Advoc. Inc. v. Horn*, No. A-08-CA-071-LY, 2009 WL 10698769, at *2 (W.D. Tex. Mar. 26, 2009) Records may be "written or in another medium, draft or final, [and] includ[e] handwritten notes, electronic files, photographs or video or audio tape records." [45 C.F.R. § 1326.25(b)]

¹⁰ 45 C.F.R. §1326.25(b)(1) ["This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers."]

¹¹ 45 C.F.R. § 1326.25 (b)(1)

¹² *Id.*

¹³ 42 U.S.C. § 10543(b)(2)

¹⁴ 42 U.S.C. § 10543(c)(3); 45 C.F.R. § 1326.25 (b)(2)(iii)

¹⁵ 45 C.F.R. § 1326.25 (b)(4)

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at BRC. However, monitoring access¹⁶ and investigative access are different. As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, BRC must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,



Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General

¹⁶ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. Compare 42 C.F.R. § 51.42(c) with 42 C.F.R. § 51.42(b).



October 15, 2021

North Mississippi Regional Center
967 Regional Center Drive
Oxford, Mississippi 38655

**RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES¹
("PADD")**

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at North Mississippi Regional Center ("NMRC"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 15043, DRMS has the authority to investigate abuse and neglect in any setting where a person with intellectual or developmental disabilities receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 U.S.C. § 15043(a)(2)(B) - Congress enacted the PADD, PAIMI and PAIR Acts (also known as the "P&A laws") to protect the human and civil rights of individuals with mental and developmental disabilities institutionalized in state facilities. The PADD Act, which was originally enacted in 1975 but repealed and replaced in its entirety in 2000, established the Protection and Advocacy System to provide protections for persons with developmental disabilities. See 42 U.S.C. § 15041. The PAIMI Act was modeled after the PADD Act to provide parallel protections for persons with mental disabilities. See 42 U.S.C. § 10803. The PAIR Act further extended the protection and advocacy mandate to protect the rights of individuals with disabilities who are ineligible for services under the PADD and PAIMI Acts. See 29 U.S.C. § 794e(f).

² 42 U.S.C. § 15043(a)(2)(B)

³ 45 C.F.R. § 1326.27(b)

sources.⁴ DRMS, as the P&A, is the final arbiter of probable cause for the purpose of triggering its authority to access and this decision is not subject to review. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request⁵. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might reasonably believe to have knowledge of the incident under investigation.⁶ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons.⁷

Further, DRMS has access to a wide range of records⁸ as part of its investigatory authority⁹. This includes records made or received by facility staff (i.e. intake, assessment, evaluation, education, training, and other services)¹⁰, medical records¹¹, financial records¹², investigation records from other governmental or regulatory agencies¹³, discharge planning records¹⁴, and professional, performance, building, or other safety standards including demographic and statistical information¹⁵.

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of NMRC.

⁴ 45 C.F.R. § 1326.25(a)(2)(iii)

⁵ 45 C.F.R. § 1326.27(b)(2)

⁶ 45 C.F.R. § 1326.27(b)(1)

⁷ 45 C.F.R. § 1326.27(b)(2)

⁸ In order to fulfill its duty to investigate and remedy instances of abuse and neglect of persons with disabilities, the Acts provide Advocacy with the express authority to access the records, as well as facilities and residents of the facilities who have developmental disabilities or mental illness, to ensure that the rights of these vulnerable populations are not violated. 42 U.S.C. §15043(a)(2)

⁹ The P&A laws provide state-designated agencies [. . .] with broad investigatory authority, including access to records. See 42 U.S.C. § 15043(a)(2) (PADD Act); 42 U.S.C. §§ 10805(a), 10806(3)(A) (PAIMI Act); 29 U.S.C. § 794e(f)(2) (2008) (PAIR Act). *Advoc. Inc. v. Horn*, No. A-08-CA-071-LY, 2009 WL 10698769, at *2 (W.D. Tex. Mar. 26, 2009) Records may be "written or in another medium, draft or final, [and] includ[e] handwritten notes, electronic files, photographs or video or audio tape records." [45 C.F.R. § 1326.25(b)]

¹⁰ 45 C.F.R. §1326.25(b)(1) ["This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers."]

¹¹ 45 C.F.R. § 1326.25 (b)(1)

¹² Id.

¹³ 42 U.S.C. § 10543(b)(2)

¹⁴ 42 U.S.C. § 10543(c)(3); 45 C.F.R. § 1326.25 (b)(2)(iii)

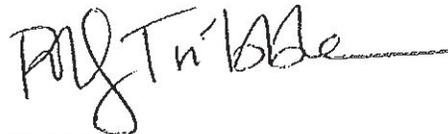
¹⁵ 45 C.F.R. § 1326.25 (b)(4)

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at NMRC. However, monitoring access¹⁶ and investigative access are different. As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, NMRC must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@dtms.ms.

Sincerely,



Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General

¹⁶ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).



October 15, 2021

South Mississippi Regional Center
1170 W. Railroad Street
Long Beach, Mississippi 39560

**RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES'
("PADD")**

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at South Mississippi Regional Center ("SMRC"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 15043, DRMS has the authority to investigate abuse and neglect in any setting where a person with intellectual or developmental disabilities receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 U.S.C. § 15043(a)(2)(B) - Congress enacted the PADD, PAIMI and PAIR Acts (also known as the "P&A laws") to protect the human and civil rights of individuals with mental and developmental disabilities institutionalized in state facilities. The PADD Act, which was originally enacted in 1975 but repealed and replaced in its entirety in 2000, established the Protection and Advocacy System to provide protections for persons with developmental disabilities. See 42 U.S.C. § 15041. The PAIMI Act was modeled after the PADD Act to provide parallel protections for persons with mental disabilities. See 42 U.S.C. § 10803. The PAIR Act further extended the protection and advocacy mandate to protect the rights of individuals with disabilities who are ineligible for services under the PADD and PAIMI Acts. See 29 U.S.C. § 794e(f).

² 42 U.S.C. § 15043(a)(2)(B)

³ 45 C.F.R. § 1326.27(b)

sources.⁴ DRMS, as the P&A, is the final arbiter of probable cause for the purpose of triggering its authority to access and this decision is not subject to review. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request⁵. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might reasonably believe to have knowledge of the incident under investigation.⁶ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons.⁷

Further, DRMS has access to a wide range of records⁸ as part of its investigatory authority⁹. This includes records made or received by facility staff (i.e. intake, assessment, evaluation, education, training, and other services)¹⁰, medical records¹¹, financial records¹², investigation records from other governmental or regulatory agencies¹³, discharge planning records¹⁴, and professional, performance, building, or other safety standards including demographic and statistical information¹⁵.

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of SMRC.

⁴ 45 C.F.R. § 1326.25(a)(2)(iii)

⁵ 45 C.F.R. § 1326.27(b)(2)

⁶ 45 C.F.R. § 1326.27(b)(1)

⁷ 45 C.F.R. § 1326.27(b)(2)

⁸ In order to fulfill its duty to investigate and remedy instances of abuse and neglect of persons with disabilities, the Acts provide Advocacy with the express authority to access the records, as well as facilities and residents of the facilities who have developmental disabilities or mental illness, to ensure that the rights of these vulnerable populations are not violated. 42 U.S.C. §15043(a)(2)

⁹ The P&A laws provide state-designated agencies [. . .] with broad investigatory authority, including access to records. See 42 U.S.C. § 15043(a)(2) (PADD Act); 42 U.S.C. §§ 10805(a), 10806(3)(A) (PAIMI Act); 29 U.S.C. § 794e(f)(2) (2008) (PAIR Act). *Advoc., Inc. v. Horn*, No. A-08-CA-071-LY, 2009 WL 10698769, at *2 (W.D. Tex. Mar. 26, 2009) Records may be "written or in another medium, draft or final, [and] includ[e] handwritten notes, electronic files, photographs or video or audio tape records." [45 C.F.R. § 1326.25(b)]

¹⁰ 45 C.F.R. §1326.25(b)(1) ["This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers."]

¹¹ 45 C.F.R. § 1326.25 (b)(1)

¹² Id.

¹³ 42 U.S.C. § 10543(b)(2)

¹⁴ 42 U.S.C. § 10543(c)(3); 45 C.F.R. § 1326.25 (b)(2)(iii)

¹⁵ 45 C.F.R. § 1326.25 (b)(4)

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at SMRC. However, monitoring access¹⁶ and investigative access are different. As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, SMRC must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink, appearing to read "Polly Tribble", with a horizontal line extending to the right.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General

¹⁶ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. Compare 42 C.F.R. § 51.42(c) with 42 C.F.R. § 51.42(b).



October 15, 2021

North Mississippi State Hospital
1937 Briar Ridge Road
Tupelo, Mississippi 38804

**RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS¹ ("PAIMI")**

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at North Mississippi State Hospital ("NMSH"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 10801(b)(2)(B), DRMS has the authority to investigate abuse and neglect in any setting where a person with mental illness receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and/or neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 C.F.R. § 51.42(c)(2)

² 42 U.S.C. § 10801(b)(2)(B)

³ 42 C.F.R. § 51.42(b)

sources⁴. DRMS, as the P&A, is the final arbiter of probable cause⁵ for the purpose of triggering its authority to access and this decision is not subject to review⁶. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might reasonably believe to have knowledge of the incident under investigation.⁷ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons. Further, DRMS shall have broad right of access to all records relevant to an investigation⁸.

Further, DRMS has access to a wide range of records as part of its investigatory authority. The PAIMI Act defines records to which the P&A must have access to as information and individual records, whether written or in another medium (draft or final), including handwritten notes, electronic files, photographs, or video/audio records including but not limited to:

- (1) Information and individual records, obtained in the course of intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility and/or program rendering care and treatment. This includes records stored or maintained in locations other than the facility or program as long as the system as obtained appropriate consent consistent with Section 105(a)(4) of the PAIMI Act.
- (2) Reports prepared by an agency charged with investigating abuse/neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that described any or all of the following: abuse/neglect/ injury occurring at the facility, steps taken to investigate the incidents, reports/records (including personnel) records, prepared or maintained by the facility, and/or supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect, or injury

⁴ 42 U.S.C. § 10801(b)(2)(B)

⁵ "Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁶ "Because the act indicates that the P & A system is the final arbiter of probable cause as between itself and the subject facility, the facility may not refuse access to records merely because it disagrees with the existence of probable cause." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁷ 42 C.F.R. § 51.42(b)

⁸ 42 U.S.C. §§ 10805(a)(4), 15043(a)(2)(I), (J)

such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

- (3) Discharge planning records
- (4) Reports prepared by individuals and entities performing certification or licensure reviews or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors, or related entities
- (5) Professional, performance, building, or other safety standards, demographic, and statistical information relating to facility
- (6) Reasonable access to interview and examine all relevant records of any facility service recipient consistent with Section 10805(a)(4) of the Act or employee
- (7) Inspect and copy records, subject to a reasonable charge

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of NMSH.

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at NMSH. However, monitoring access⁹ and investigative access are different.

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⁹ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).

DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, NMSH must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink that reads "Polly Tribble". The signature is written in a cursive style with a long horizontal line extending to the right.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General



October 15, 2021

Ellisville State School
1101 Old Hwy 11
Ellisville, Mississippi 39437

RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES¹
("PADD")

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at Ellisville State School ("Ellisville"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 15043, DRMS has the authority to investigate abuse and neglect in any setting where a person with intellectual or developmental disabilities receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 U.S.C. § 15043(a)(2)(B) - Congress enacted the PADD, PAIMI and PAIR Acts (also known as the "P&A laws") to protect the human and civil rights of individuals with mental and developmental disabilities institutionalized in state facilities. The PADD Act, which was originally enacted in 1975 but repealed and replaced in its entirety in 2000, established the Protection and Advocacy System to provide protections for persons with developmental disabilities. See 42 U.S.C. § 15041. The PAIMI Act was modeled after the PADD Act to provide parallel protections for persons with mental disabilities. See 42 U.S.C. § 10803. The PAIR Act further extended the protection and advocacy mandate to protect the rights of individuals with disabilities who are ineligible for services under the PADD and PAIMI Acts. See 29 U.S.C. § 794e(f).

² 42 U.S.C. § 15043(a)(2)(B)

³ 45 C.F.R. § 1326.27(b)

sources.⁴ DRMS, as the P&A, is the final arbiter of probable cause for the purpose of triggering its authority to access and this decision is not subject to review. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request⁵. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might be reasonably believe to have knowledge of the incident under investigation.⁶ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons.⁷

Further, DRMS has access to a wide range of records⁸ as part of its investigatory authority⁹. This includes records made or received by facility staff (i.e. intake, assessment, evaluation, education, training, and other services)¹⁰, medical records¹¹, financial records¹², investigation records from other governmental or regulatory agencies¹³, discharge planning records¹⁴, and professional, performance, building, or other safety standards including demographic and statistical information¹⁵.

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of Ellisville.

⁴ 45 C.F.R. § 1326.25(a)(2)(iii)

⁵ 45 C.F.R. § 1326.27(b)(2)

⁶ 45 C.F.R. § 1326.27(b)(1)

⁷ 45 C.F.R. § 1326.27(b)(2)

⁸ In order to fulfill its duty to investigate and remedy instances of abuse and neglect of persons with disabilities, the Acts provide Advocacy with the express authority to access the records, as well as facilities and residents of the facilities who have developmental disabilities or mental illness, to ensure that the rights of these vulnerable populations are not violated. 42 U.S.C. §15043(a)(2)

⁹ The P&A laws provide state-designated agencies [. . .] with broad investigatory authority, including access to records. See 42 U.S.C. § 15043(a)(2) (PADD Act); 42 U.S.C. §§ 10805(a), 10806(3)(A) (PAIMI Act); 29 U.S.C. § 794e(f)(2) (2008) (PAIR Act). *Advoc., Inc. v. Horn*, No. A-08-CA-071-LY, 2009 WL 10698769, at *2 (W.D. Tex. Mar. 26, 2009) Records may be "written or in another medium, draft or final, [and] includ[e] handwritten notes, electronic files, photographs or video or audio tape records." [45 C.F.R. § 1326.25(b)]

¹⁰ 45 C.F.R. §1326.25(b)(1) ["This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers."]

¹¹ 45 C.F.R. § 1326.25 (b)(1)

¹² *Id.*

¹³ 42 U.S.C. § 10543(b)(2)

¹⁴ 42 U.S.C. § 10543(c)(3); 45 C.F.R. § 1326.25 (b)(2)(iii)

¹⁵ 45 C.F.R. § 1326.25 (b)(4)

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at Ellisville. However, monitoring access¹⁶ and investigative access are different. As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, Ellisville must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,



Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General

¹⁶ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. Compare 42 C.F.R. § 51.42(c) with 42 C.F.R. § 51.42(b).



October 15, 2021

South Mississippi State Hospital
823 MS-589
Purvis, Mississippi 39475

**RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS' ("PAIMI")**

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at South Mississippi State Hospital ("SMSH"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 10801(b)(2)(B), DRMS has the authority to investigate abuse and neglect in any setting where a person with mental illness receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and/or neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 C.F.R. § 51.42(c)(2)

² 42 U.S.C. § 10801(b)(2)(B)

³ 42 C.F.R. § 51.42(b)

sources⁴. DRMS, as the P&A, is the final arbiter of probable cause⁵ for the purpose of triggering its authority to access and this decision is not subject to review⁶. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might reasonably believe to have knowledge of the incident under investigation.⁷ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons. Further, DRMS shall have broad right of access to all records relevant to an investigation⁸.

Further, DRMS has access to a wide range of records as part of its investigatory authority. The PAIMI Act defines records to which the P&A must have access to as information and individual records, whether written or in another medium (draft or final), including handwritten notes, electronic files, photographs, or video/audio records including but not limited to:

- (1) Information and individual records, obtained in the course of intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility and/or program rendering care and treatment. This includes records stored or maintained in locations other than the facility or program as long as the system as obtained appropriate consent consistent with Section 105(a)(4) of the PAIMI Act.
- (2) Reports prepared by an agency charged with investigating abuse/neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that described any or all of the following: abuse/neglect/ injury occurring at the facility, steps taken to investigate the incidents, reports/records (including personnel) records, prepared or maintained by the facility, and/or supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect, or injury

⁴ 42 U.S.C. § 10801(b)(2)(B)

⁵ "Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁶ "Because the act indicates that the P & A system is the final arbiter of probable cause as between itself and the subject facility, the facility may not refuse access to records merely because it disagrees with the existence of probable cause." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁷ 42 C.F.R. § 51.42(b)

⁸ 42 U.S.C. §§ 10805(a)(4), 15043(a)(2)(I), (J)

such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

- (3) Discharge planning records
- (4) Reports prepared by individuals and entities performing certification or licensure reviews or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors, or related entities
- (5) Professional, performance, building, or other safety standards, demographic, and statistical information relating to facility
- (6) Reasonable access to interview and examine all relevant records of any facility service recipient consistent with Section 10805(a)(4) of the Act or employee
- (7) Inspect and copy records, subject to a reasonable charge

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of SMSH.

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. **If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.**

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at SMSH. However, monitoring access⁹ and investigative access are different.

As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by

⁹ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).

DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, SMSH must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink that reads "Polly Tribble". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General



October 15, 2021

Central Mississippi Residential Center
701 Northside Drive
Newton, Mississippi 39345

RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS¹ ("PAIMP")

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at Central Mississippi Residential Center ("CMRC"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 10801(b)(2)(B), DRMS has the authority to investigate abuse and neglect in any setting where a person with mental illness receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and/or neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 C.F.R. § 51.42(c)(2)

² 42 U.S.C. § 10801(b)(2)(B)

³ 42 C.F.R. § 51.42(b)

sources⁴. DRMS, as the P&A, is the final arbiter of probable cause⁵ for the purpose of triggering its authority to access and this decision is not subject to review⁶. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might reasonably believe to have knowledge of the incident under investigation.⁷ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons. Further, DRMS shall have broad right of access to all records relevant to an investigation⁸.

Further, DRMS has access to a wide range of records as part of its investigatory authority. The PAIMI Act defines records to which the P&A must have access to as information and individual records, whether written or in another medium (draft or final), including handwritten notes, electronic files, photographs, or video/audio records including but not limited to:

- (1) Information and individual records, obtained in the course of intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility and/or program rendering care and treatment. This includes records stored or maintained in locations other than the facility or program as long as the system as obtained appropriate consent consistent with Section 105(a)(4) of the PAIMI Act.
- (2) Reports prepared by an agency charged with investigating abuse/neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that described any or all of the following: abuse/neglect/ injury occurring at the facility, steps taken to investigate the incidents, reports/records (including personnel) records, prepared or maintained by the facility, and/or supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect, or injury

⁴ 42 U.S.C. § 10801(b)(2)(B)

⁵ "Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁶ "Because the act indicates that the P & A system is the final arbiter of probable cause as between itself and the subject facility, the facility may not refuse access to records merely because it disagrees with the existence of probable cause." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁷ 42 C.F.R. § 51.42(b)

⁸ 42 U.S.C. §§ 10805(a)(4), 15043(a)(2)(I), (J)

such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

- (3) Discharge planning records
- (4) Reports prepared by individuals and entities performing certification or licensure reviews or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors, or related entities
- (5) Professional, performance, building, or other safety standards, demographic, and statistical information relating to facility
- (6) Reasonable access to interview and examine all relevant records of any facility service recipient consistent with Section 10805(a)(4) of the Act or employee
- (7) Inspect and copy records, subject to a reasonable charge

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of CMRC.

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at CMRC. However, monitoring access⁹ and investigative access are different.

As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by

⁹ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).

DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, CMRC must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink, appearing to read "Polly Tribble", with a horizontal line extending to the right.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General



October 15, 2021

Mississippi State Hospital
3550 MS-468
Pearl, Mississippi 39208

RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS¹ ("PAIMI")

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at Mississippi State Hospital ("MSH"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 10801(b)(2)(B), DRMS has the authority to investigate abuse and neglect in any setting where a person with mental illness receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and/or neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 C.F.R. § 51.42(c)(2)

² 42 U.S.C. § 10801(b)(2)(B)

³ 42 C.F.R. § 51.42(b)

sources⁴. DRMS, as the P&A, is the final arbiter of probable cause⁵ for the purpose of triggering its authority to access and this decision is not subject to review⁶. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might reasonably believe to have knowledge of the incident under investigation.⁷ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons. Further, DRMS shall have broad right of access to all records relevant to an investigation⁸.

Further, DRMS has access to a wide range of records as part of its investigatory authority. The PAIMI Act defines records to which the P&A must have access to as information and individual records, whether written or in another medium (draft or final), including handwritten notes, electronic files, photographs, or video/audio records including but not limited to:

- (1) Information and individual records, obtained in the course of intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility and/or program rendering care and treatment. This includes records stored or maintained in locations other than the facility or program as long as the system as obtained appropriate consent consistent with Section 105(a)(4) of the PAIMI Act.
- (2) Reports prepared by an agency charged with investigating abuse/neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that described any or all of the following: abuse/neglect/ injury occurring at the facility, steps taken to investigate the incidents, reports/records (including personnel) records, prepared or maintained by the facility, and/or supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect, or injury

⁴ 42 U.S.C. § 10801(b)(2)(B)

⁵ "Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁶ "Because the act indicates that the P & A system is the final arbiter of probable cause as between itself and the subject facility, the facility may not refuse access to records merely because it disagrees with the existence of probable cause." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁷ 42 C.F.R. § 51.42(b)

⁸ 42 U.S.C. §§ 10805(a)(4), 15043(a)(2)(I), (J)

such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

- (3) Discharge planning records
- (4) Reports prepared by individuals and entities performing certification or licensure reviews or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors, or related entities
- (5) Professional, performance, building, or other safety standards, demographic, and statistical information relating to facility
- (6) Reasonable access to interview and examine all relevant records of any facility service recipient consistent with Section 10805(a)(4) of the Act or employee
- (7) Inspect and copy records, subject to a reasonable charge

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of MSH.

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at MSH. However, monitoring access⁹ and investigative access are different.

As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by

⁹ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).

DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, MSH must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink that reads "Polly Tribble". The signature is written in a cursive style and is followed by a horizontal line.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General



October 15, 2021

Hudspeth Regional Center
875 MS-475
Pearl, Mississippi 39208

**RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES¹
("PADD")**

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at Hudspeth Regional Center ("HRC"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 15043, DRMS has the authority to investigate abuse and neglect in any setting where a person with intellectual or developmental disabilities receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 U.S.C. § 15043(a)(2)(B) - Congress enacted the PADD, PAIMI and PAIR Acts (also known as the "P&A laws") to protect the human and civil rights of individuals with mental and developmental disabilities institutionalized in state facilities. The PADD Act, which was originally enacted in 1975 but repealed and replaced in its entirety in 2000, established the Protection and Advocacy System to provide protections for persons with developmental disabilities. See 42 U.S.C. § 15041. The PAIMI Act was modeled after the PADD Act to provide parallel protections for persons with mental disabilities. See 42 U.S.C. § 10803. The PAIR Act further extended the protection and advocacy mandate to protect the rights of individuals with disabilities who are ineligible for services under the PADD and PAIMI Acts. See 29 U.S.C. § 794c(f).

² 42 U.S.C. § 15043(a)(2)(B)

³ 45 C.F.R. § 1326.27(b)

sources.⁴ DRMS, as the P&A, is the final arbiter of probable cause for the purpose of triggering its authority to access and this decision is not subject to review. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request⁵. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might be reasonably believe to have knowledge of the incident under investigation.⁶ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons.⁷

Further, DRMS has access to a wide range of records⁸ as part of its investigatory authority⁹. This includes records made or received by facility staff (i.e. intake, assessment, evaluation, education, training, and other services)¹⁰, medical records¹¹, financial records¹², investigation records from other governmental or regulatory agencies¹³, discharge planning records¹⁴, and professional, performance, building, or other safety standards including demographic and statistical information¹⁵.

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of HRC.

⁴ 45 C.F.R. § 1326.25(a)(2)(iii)

⁵ 45 C.F.R. § 1326.27(b)(2)

⁶ 45 C.F.R. § 1326.27(b)(1)

⁷ 45 C.F.R. § 1326.27(b)(2)

⁸ In order to fulfill its duty to investigate and remedy instances of abuse and neglect of persons with disabilities, the Acts provide Advocacy with the express authority to access the records, as well as facilities and residents of the facilities who have developmental disabilities or mental illness, to ensure that the rights of these vulnerable populations are not violated. 42 U.S.C. §15043(a)(2)

⁹ The P&A laws provide state-designated agencies [. . .] with broad investigatory authority, including access to records. *See* 42 U.S.C. § 15043(a)(2) (PADD Act); 42 U.S.C. §§ 10805(a), 10806(3)(A) (PAIMI Act); 29 U.S.C. § 794e(f)(2) (2008) (PAIR Act). *Advoc. Inc. v. Horn*, No. A-08-CA-071-LY, 2009 WL 10698769, at *2 (W.D. Tex. Mar. 26, 2009) Records may be "written or in another medium, draft or final, [and] includ[e] handwritten notes, electronic files, photographs or video or audio tape records." [45 C.F.R. § 1326.25(b)]

¹⁰ 45 C.F.R. §1326.25(b)(1) ["This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers."]

¹¹ 45 C.F.R. § 1326.25 (b)(1)

¹² *Id.*

¹³ 42 U.S.C. § 10543(b)(2)

¹⁴ 42 U.S.C. § 10543(c)(3); 45 C.F.R. § 1326.25 (b)(2)(iii)

¹⁵ 45 C.F.R. § 1326.25 (b)(4)

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at HRC. However, monitoring access¹⁶ and investigative access are different. As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, HRC must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink that reads "Polly Tribble". The signature is written in a cursive style with a long horizontal line extending to the right.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General

¹⁶ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).



October 15, 2021

East Mississippi State Hospital
1818 College Drive
Meridian, Mississippi 39307

RE: PROBABLE CAUSE NOTICE - PURSUANT TO PROTECTION AND
ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS¹ ("PAIMI")

To Whom It May Concern:

Disability Rights Mississippi ("DRMS"), by and through this correspondence, is notifying you that our agency has probable cause to believe that there is potential abuse and/or neglect at East Mississippi State Hospital ("EMSH"). DRMS will be conducting an investigation into this facility as our monitoring has led us to believe that there is consistent and ongoing abuse and/or neglect. DRMS may investigate potential abuse and/or neglect as the Protection & Advocacy ("P&A") agency for the state of Mississippi.

AUTHORITY

Pursuant to 42 U.S.C. § 10801(b)(2)(B), DRMS has the authority to investigate abuse and neglect in any setting where a person with mental illness receives services. With this authority, we may access and monitor both facilities and records to ensure that people's rights are protected. DRMS may investigate an allegation of abuse or neglect if a report is made or "if there is probable cause to believe that abuse or neglect has occurred"²

DRMS must have reasonable unaccompanied access to residents at all time in order to investigate allegations of abuse and/or neglect³. A determination of probable cause can come from routine monitoring, external reports, direct complaint from client and/or their family, and/or other available

¹ 42 C.F.R. § 51.42(e)(2)

² 42 U.S.C. § 10801(b)(2)(B)

³ 42 C.F.R. § 51.42(b)

sources⁴. DRMS, as the P&A, is the final arbiter of probable cause⁵ for the purpose of triggering its authority to access and this decision is not subject to review⁶. DRMS' access to public and private service providers, programs in the state, and to all areas of the service provider's premises that are used by individuals with disabilities or are accessible to them will be provided without advance notice and made available immediately upon request. This authority includes the ability to interview any individual with a disability, employee, or other persons who DRMS might be reasonably believe to have knowledge of the incident under investigation.⁷ DRMS is not required to provide the name or other identifying information regarding the people with whom it plans to meet or justify or explain its interactions with such persons. Further, DRMS shall have broad right of access to all records relevant to an investigation⁸.

Further, DRMS has access to a wide range of records as part of its investigatory authority. The PAIMI Act defines records to which the P&A must have access to as information and individual records, whether written or in another medium (draft or final), including handwritten notes, electronic files, photographs, or video/audio records including but not limited to:

- (1) Information and individual records, obtained in the course of intake, assessment, evaluation, supportive and other services, including medical records, financial records, and reports prepared or received by a member of the staff of a facility and/or program rendering care and treatment. This includes records stored or maintained in locations other than the facility or program as long as the system as obtained appropriate consent consistent with Section 105(a)(4) of the PAIMI Act.
- (2) Reports prepared by an agency charged with investigating abuse/neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that described any or all of the following: abuse/neglect/ injury occurring at the facility, steps taken to investigate the incidents, reports/records (including personnel) records, prepared or maintained by the facility, and/or supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect, or injury

⁴ 42 U.S.C. § 10801(b)(2)(B)

⁵ "Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁶ "Because the act indicates that the P & A system is the final arbiter of probable cause as between itself and the subject facility, the facility may not refuse access to records merely because it disagrees with the existence of probable cause." *Advoc. Inc. v. Tarrant Cty. Hosp. Dist.*, No. 4:01-CV-062-BE, 2001 WL 1297688, at *4 (N.D. Tex. Oct. 11, 2001)

⁷ 42 C.F.R. § 51.42(b)

⁸ 42 U.S.C. §§ 10805(a)(4), 15043(a)(2)(I), (I)

such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

- (3) Discharge planning records
- (4) Reports prepared by individuals and entities performing certification or licensure reviews or by professional accreditation organizations, as well as related assessments prepared for the facility by its staff, contractors, or related entities
- (5) Professional, performance, building, or other safety standards, demographic, and statistical information relating to facility
- (6) Reasonable access to interview and examine all relevant records of any facility service recipient consistent with Section 10805(a)(4) of the Act or employee
- (7) Inspect and copy records, subject to a reasonable charge

INVESTIGATIVE REQUEST

As part of its investigation, DRMS requests access to any and all incident reports which occurred during the months of August and September of 2021 as well as the incident reports which have been filed thus far in the month of October 2021 in the possession of EMSH.

Please provide DRMS with copies of the requested documentation within five (5) business days upon receipt of this written notice. If the charge to produce such documentation exceeds an amount totaling \$100, please notify DRMS and we will come on site to inspect the documents prior to reproduction.

DRMS will continue to conduct routine monitoring visits and these visits will occur unannounced and during different shifts at EMSH. However, monitoring access⁹ and investigative access are different.

As this investigation progresses, DRMS may request other documents, employee/staff interviews, and/or video surveillance footage pursuant to the access authority referenced herein. DRMS requests that any further requested documentation that is required be provided to DRMS within five (5) business days of such request. If DRMS any video surveillance not noted in this correspondence, we will notify this facility immediately and we request that any footage that has been flagged by

⁹ Monitoring access allows a P&A system to provide information, training, and referral services to persons with mental illness, as well as ensure a mental health facility's "compliance with respect to the rights and safety of residents." 42 C.F.R. § 51.42(c)(1)-(2). A P&A system can engage in monitoring without any complaint of abuse or neglect, without probable cause to believe that an incident has occurred, and without an allegation of imminent danger. *Compare* 42 C.F.R. § 51.42(c) *with* 42 C.F.R. § 51.42(b).

DRMS be preserved until such time as a DRMS advocate can schedule an on-site visit to view such footage.

If DRMS's access to facilities, programs, residents, or records is delayed or denied, EMSH must promptly provide a written statement, outlining the reasons for such denial or delay immediately. Please do not hesitate to contact me if you have any questions regarding this notice. I can be reached at (601) 968-0600 (ext. 250) or via email at ptribble@drms.ms.

Sincerely,

A handwritten signature in black ink, appearing to read "Polly Tribble", with a horizontal line extending from the end of the signature.

Polly Tribble
Executive Director

cc: Cyndi Eubank, Office of the Attorney General
MaCall Chastain, Office of the Attorney General