IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:24-cv-352

DISABILITY RIGHTS NORTH CAROLINA, Plaintiff, v. SAMUEL SCOTT PAGE, in his official capacity as Sheriff for Rockingham County, and ROCKINGHAM COUNTY, Defendants.	)	STATEMENT OF INTEREST

STATEMENT OF INTEREST OF THE UNITED STATES

The United States of America (the United States) respectfully submits this Statement of Interest under 28 U.S.C. § 517[1] to provide its views regarding the proper interpretation of the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (the PAIMI Act), 42 U.S.C. § 10801 *et seq.*[2] The Department of Justice has

[1] Section 517 provides that the "Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517. A submission by the United States pursuant to this provision does not constitute intervention under Rule 24 of the Federal Rules of Civil Procedure.

[2] Before this Court is Defendant's Motion to Dismiss, which asserts in part that Plaintiff fails to allege a violation of the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (the PAIMI Act), 42 U.S.C. § 10801 *et seq.*; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act), 42 U.S.C. § 15001 *et seq.*; and the Protection and Advocacy of Individual Rights Act (the PAIR Act), 29 U.S.C. § 794(e) (collectively, the P&A Acts). The P&A Acts "establish separate but largely parallel regimes to serve particular populations of

authority to enforce the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, which empowers the Department to uphold the federal rights of individuals residing in correctional facilities and other institutions. The national network of protection and advocacy organizations (P&As) plays a significant role in furthering the objectives of this law by advocating for the rights of people placed in institutional settings and notifying the Department of potentially unlawful conditions in such settings.

Protection and advocacy organizations have broad authority to protect the rights of individuals with disabilities. Under this authority, P&As are entitled to reasonable unaccompanied, unannounced access to jails, including all areas used by, or accessible to, residents. PAIMI requires a facility to provide a written explanation for denial or delay of access, and facilities must justify restrictions they seek to impose on access.

BACKGROUND

As alleged in its complaint, Disability Rights North Carolina (DRNC) filed this lawsuit to gain access to the Rockingham County Detention Center (RCDC) in Reidsville, NC. ECF No. 1 ¶ 30. As the federally designated P&A, DRNC asserts that it has the right to reasonable unaccompanied access to monitor facilities that provide

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people with disabilities." *Disability Rights Wis., Inc. v. Wis. Dep't of Pub. Instruction*, 463 F.3d 719, 724 (7th Cir. 2006). Because the Acts established largely parallel regimes, courts often apply case law interpreting one P&A Act to another P&A Act. *See, e.g.*, *Disability Rights Md. v. Prince George's Cnty. Pub. Sch.*, No. 8:21-cv-03001-JRR, 2023 WL 2648783, at *25 (D. Md. Mar. 11, 2023) (applying cases analyzing the DD Act to its holding under the P&A Acts). For its purposes here, the United States will reference PAIMI to describe the requirements of the P&A Acts.

services to people with disabilities. ECF No. 1 ¶ 2. In 2023, DRNC notified RCDC of its authority under PAIMI and its intention to access the detention center for the purpose of routine monitoring. ECF No. 1 ¶ 21. Initially, the jail denied access to the facility and instead offered to provide any requested records necessary to investigate a specific incident. ECF No. 1 ¶ 23. Earlier this year, RCDC agreed to grant DRNC access. ECF No. 1 ¶ 27. However, RCDC denied DRNC access to some areas of the facility, such as living units, known as "pods,"[3] and instead the facility allowed the P&A to access only the booking and holding areas, nurses' station, Magistrate's office, and control center. ECF No. 1 ¶¶ 28-29. DRNC alleges that RCDC's denial of access to all areas used or accessible to residents violates PAIMI and requests declarative and injunctive relief. ECF No. 1 at 10-11.

ARGUMENT

A. PAIMI grants broad authority to protect and advocate for the rights of individuals with disabilities, including by accessing facilities for monitoring purposes.

Congress created a system of independent P&As in response to a history of widespread abuse and neglect of individuals with disabilities and mental illness by the providers charged with their care. *See*, *e.g.*, 42 U.S.C. §§ 15001(a)(5), 10801(a). Congress required the establishment of P&As "in each State to protect the legal and human rights of individuals with developmental disabilities," 42 U.S.C. § 15001(b)(2),

[3] "Pods" is another term for cell blocks.

and "to ensure that the rights of individuals with mental illness are protected," 42 U.S.C. § 10801(b)(1).

To accomplish this objective, PAIMI grants broad authority to access facilities providing care or treatment to individuals with disabilities. 42 U.S.C. § 10805(a)(3); 42 C.F.R. §§ 51.2, 51.42; *see also Ala. Disabilities Advoc. Program v. SafetyNet Youthcare, Inc.*, 65 F. Supp. 3d 1312, 1324 & n.7 (S.D. Ala. 2014) (collecting cases and noting that "[c]ourts have recognized that P&A access is fundamental, and P&A agencies have almost universally prevailed in litigation based on access."). This authority includes access to both facilities and residents. 42 C.F.R. § 51.42(a); *see also Ala. Disabilities Advoc. Program v. J.S. Tarwater Developmental Ctr.*, 97 F.3d 492, 497 (11th Cir. 1996) ("It is clear that the Act provides express authority for P&As to gain broad access to records, facilities, and residents."). "The access authority is one of the most important features of the P&A system." *SafetyNet*, 65 F. Supp. 3d at 1324.

PAIMI grants facility access for three primary purposes: to investigate, to educate, and to monitor. 42 C.F.R. § 51.42(b)-(c). Here, DRNC notified Defendants of its intent to monitor at RCDC. ECF No. 1 ¶¶ 3, 21. Courts have long recognized the authority of P&As, like DRNC, to monitor facilities. *See, e.g.*, *Conn. Off. of Prot. & Advoc. for Persons with Disabilities v. Hartford Bd. of Educ.*, 464 F.3d 229, 242 (2d Cir. 2006) ("Congress intended P&A systems not simply to respond to reports of maltreatment, but also to monitor facilities in order to prevent abuse or neglect."); *Disability Rts. Fla., Inc. v. Jacobs*, No. 6:18-cv-1863-Orl-78DCI, 2019 WL 13280380, at *2 (M.D. Fla. Nov. 18,

2019) (the P&As' authority includes access for monitoring purposes); *Equip for Equality, Inc. v. Ingalls Mem. Hosp.*, 292 F. Supp. 2d 1086, 1095-98, 1100 (N.D. Ill. 2003) ("A P&A system must be given the leeway to discover problems or potential problems at a facility…."); *Robbins v. Budke*, 739 F. Supp. 1479, 1489 (D.N.M. 1990) (ordering that defendant permit P&A access for monitoring purposes).

B. PAIMI requires facilities, including jails, to provide reasonable unaccompanied access.

i. Jails are facilities under PAIMI.

PAIMI defines facilities to include jails, like Rockingham County Detention Center. *See* 42 U.S.C. § 10802(3); 42 C.F.R. § 51.2; *Ind. Prot. & Advoc. Servs. Comm'n v. Comm'r, Ind. Dep't of Corr.*, 642 F. Supp. 2d 872, 875 (S.D. Ind. 2009) ("Congress has defined 'facilities' to include jails and prisons."); *Off. of Prot. & Advoc. for Persons with Disabilities v. Armstrong*, 266 F. Supp. 2d 303, 315-17 (D. Conn. 2003) (finding that jails and prisons are facilities under PAIMI). Facilities are further defined to include "all general areas as well as special mental health or forensic units." 42 C.F.R. § 51.2; *Armstrong*, 266 F. Supp. 2d at 316. Defendants do not dispute that RCDC is a facility under the PAIMI Act. *See* Defendants' Brief in Support, ECF No. 10 at 6-7; Affidavit of Samuel Page ¶ 2, ECF No. 9 at 5.

ii. PAIMI requires facilities to provide reasonable unaccompanied access.

PAIMI requires facilities like RCDC to provide reasonable unaccompanied access. 42 U.S.C. § 10805(a)(3); 42 C.F.R. § 51.42(b)-(c); *see also Conn. Off. of Prot. & Advoc.*

for Persons with Disabilities v. Hartford Bd. of Educ., 464 F.3d 229, 241-42 (2d Cir. 2006) (finding that the P&A is entitled to reasonable unaccompanied access and collecting cases); *Equip for Equality, Inc. v. Ingalls Mem. Hosp.*, 329 F. Supp. 2d 982 (N.D. Ill. 2004) (finding that the P&A is entitled to reasonable unaccompanied access); *Disability Rts. Fla., Inc. v. Jacobs*, No. 6:18-cv-1863-Orl-78DCI, 2019 WL 13280380, at *3 (M.D. Fla. Nov. 18, 2019) (same). Reasonable access includes all areas of the facility which are used by residents and are accessible to residents. 42 C.F.R. § 51.42(b)-(c).

"P&A access is broad, but it is not unfettered." *Ala. Disabilities Advoc. Program v. SafetyNet Youthcare, Inc.*, 65 F. Supp. 3d 1312, 1325 (S.D. Ala. 2014). For example, access should minimize interference with facility programs. 42 C.F.R. § 51.42(c); *SafetyNet*, 65 F. Supp. 3d at 1325 (providing examples of minimal interference). *See also Miss. Prot. & Advoc. Sys., Inc. v. Cotten*, No. J87-0503(L), 1989 WL 224953, at *34 (S.D. Miss. Aug. 4, 1989) (P&A need not be provided "access to all parts of the facility at all times.").

But courts have rejected significant restrictions on unaccompanied access, such as barring access entirely or requiring advance notice. *See, e.g.*, *SafetyNet*, 65 F. Supp. 3d at 1325 (noting that defendants "thwarted the purpose of the P&A system by refusing to grant [the P&A] any access whatsoever" to a residential treatment program in the facility); *Equip for Equality*, 292 F. Supp. 2d at 1099 ("[R]equiring tours of a facility to be announced and accompanied would seriously hinder a P&A system's ability to monitor the facility for compliance with the rights and safety of the patients and would

thwart the purpose of the federal…acts."); *Robbins v. Budke*, 739 F. Supp. 1479, 1487 (D.N.M. 1990) (finding that hospital's policies requiring advanced notice and an administrative chaperone thwarted PAIMI's purpose).

C. *PAIMI requires a facility to provide a written explanation for denial or delay of access and does not obligate a P&A to provide a monitoring protocol.*

Defendants argue DRNC must provide a monitoring protocol as a prerequisite to obtaining access. ECF No. 10 at 4. But neither the applicable statutes nor their implementing regulations require that the P&A provide a monitoring protocol prior to accessing a facility. In fact, courts have disfavored imposing access prerequisites on P&As, such as providing advance notice. *See, e.g.*, *Equip for Equality*, 292 F. Supp. 2d at 1101 (finding that the P&A is entitled to unannounced access); *Robbins v. Budke*, 739 F. Supp. 1479, 1488 (D.N.M. 1990) (similar); *Pa. Prot. & Advoc., Inc. v. Royer-Greaves Sch. for the Blind*, No. 98-3995, 1999 U.S. Dist. LEXIS 4609, at *35-36 (E.D. Pa. Mar. 24, 1999) (granting the P&A "access to [the facility] without first having to make an appointment").

Instead, the burden is on facilities—not P&As—to promptly explain in writing the reasons for any denial or delay of access they impose. *See* 42 C.F.R. § 51.43 ("Access to facilities … or residents shall not be delayed or denied without the prompt provision of written statements of the reasons for the denial."); *Iowa Prot. & Advoc. Servs. v. Tanager Place*, No. C 04-0069, 2004 WL 2270002, at *27 (N.D. Iowa Sep. 30, 2004), *rev'd on other grounds sub nom. Iowa Prot. & Advoc. Servs. v. Tanager, Inc.*, 427 F.3d 541 (8th

Cir. 2005). This is to protect P&As' right of access and prevent facilities from engaging in lengthy denial processes. *See* Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness, 62 Fed. Reg. 53548, 53562. Further, facilities bear the burden of justifying why and how access should be restricted and must demonstrate why their restraints on access are necessary. *Mich. Prot. & Advoc. Serv., Inc. v. Miller*, 849 F. Supp. 1202, 1208 (W.D. Mich. Mar. 24, 1994) (Defendants "failed to demonstrate why present limitations on access are the only available methods to ensure the safety of [] visitors.").

Where a facility promptly demonstrates that particular restrictions on access are necessary and consistent with 42 C.F.R. § 51.43, the result may well be an acceptable access protocol. But here, Defendants concede that they denied access to the pods due to safety concerns, Affidavit of Windell Brown ¶ 2, ECF 9 at 8, without justification of what the specific safety concerns were and why the facility could not mitigate them.

CONCLUSION

For the reasons above, the Court should consider the United States' views when adjudicating Defendants' Motion to Dismiss.

Respectfully submitted, this the 25th day of July 2024.

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing document complies with the type-volume limitations of L.R. 7.3(d)(1) and (2) and contains 2,071 words, excluding those portions exempted by the rule.

This the 25th day of July 2024.

/s/ Cassie L. Crawford
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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2024, I electronically filed the foregoing **STATEMENT OF INTEREST** with the Clerk of Court using the CM/ECF system for the Middle District of North Carolina, which will email said document addressed to the following Counsel:

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