



## Disability Law Center

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DLC is nonprofit legal services agency designated by the Governor as the federally mandated Protection and Advocacy (“P&A”) agency for Massachusetts. As the P&A, DLC has federal authority to monitor any facility or service provider in Massachusetts that provides care and treatment to individuals with disabilities. Below is a description of DLC’s access authority, followed by a list of primary statutes and regulations setting forth that authority.

### Access Authority:

To carry out our P&A activities, DLC has federal authority for the following:

1. DLC may inspect all areas of a facility or program used by residents or accessible to residents without the presence of facility or program staff. DLC does not need the consent of any party to access the facility.
2. DLC shall have the opportunity to meet and speak privately with any resident at all reasonable times, including any time necessary to conduct a full investigation of abuse or neglect. Private communications may include regular telephone contact and mail correspondence. DLC does not need the consent of a parent/guardian to speak with a minor or adult with a guardian. Any resident may choose not to speak with DLC.
3. When conducting an investigation of abuse or neglect, DLC must have the opportunity to interview any facility service recipient, employee, or other persons who DLC reasonably believes has knowledge of the incident(s) under investigation.
4. DLC may access to information and records maintained by the facility, whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs, and video or audio recordings. Confidential records and information obtained through P&A authority must be kept confidential to the same level of the original holder with limited exceptions.

The Protection and Advocacy System for Massachusetts

## **Federal Statutes and Regulations:**

### Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI”)

- 42 U.S.C. § 10805 (establishes system requirements and authority)
- 42 C.F.R. § 51.2 (definitions of “abuse,” “neglect,” and other terms)
- 42 C.F.R. § 51.41 (access to records)
- 42 C.F.R. § 51.42 (access to facilities and residents)
- 42 C.F.R. § 51.43 (actions required when access is denied or delayed)
- 42 C.F.R. § 51.45 and § 51.46 (confidentiality requirements)

### Protection and Advocacy for Persons with Developmental Disabilities (“PADD”)

- 42 U.S.C. § 15043 (establishes system requirements and authority)
- 45 C.F.R. § 1326.19 (definitions of “abuse,” “neglect,” and other terms)
- 45 C.F.R. § 1326.25 (access to records)
- 45 C.F.R. § 1326.26 (actions required when access is denied or delayed)
- 45 C.F.R. § 1326.27 (access to facilities and residents)
- 45 C.F.R. § 1326.28 (confidentiality requirements)

### Protection and Advocacy for Individual Rights (“PAIR”)

- 29 U.S.C. § 794e (incorporates PADD access authority)

### Protection and Advocacy Services Related to Assistive Technology (“PAAT”)

- 29 U.S.C. § 3004 (incorporates PADD access authority)

### Protection and Advocacy for Traumatic Brain Injury (“PATBI”)

- 42 U.S.C. § 300d-53 (incorporates PADD access authority)

### Protection and Advocacy for Voting Access (“PAVA”)

- 52 U.S.C. § 21061 (incorporates PADD access authority)

**If you have questions about DLC or the information provided above, please contact us.**