

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

DISABILITY RIGHTS FLORIDA,

Plaintiff,

v.

Case No. _____

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

Defendant.

COMPLAINT

Plaintiff Disability Rights Florida (“DRF”) sues the Florida Department of Children and Families (“the Department”) and alleges as follows:

INTRODUCTION

1. Since 2007, Florida law has required that the Florida Department of Children and Families collect and publish reports on certain specific data about the use of involuntary psychiatric examination under the Florida Mental Health Act, known as the Baker Act. § 394.461(4); Ch. 2007-169, Laws of Fla (“subsection 4”). Yet despite this unambiguous statutory command, the Department does not collect or report on this data.
2. DRF brings suit to compel the Department to comply with its statutory obligations by collecting and publishing this important data.
3. Under the Baker Act, people with mental illnesses may be held against their will for psychiatric examination and treatment under certain circumstances. *See* §§ 394.463(1), 394.467(1), Fla. Stat. Only “designated receiving facilities” licensed by the department may perform this function. § 394.455(13), Fla. Stat. Detaining and treating someone against their will is a “massive curtailment of liberty,” *Doe v. State*, 217 So.3d 1020, 1026 (Fla. 2017) (quoting *Humphrey v. Cady*, 405 U.S. 504, 509 (1972)), and hence it is important that receiving facilities be monitored to ensure they are using their powers under the Baker Act appropriately.

4. One important part of monitoring Baker Act use is tracking how and when it occurs. In 2007, the Florida Legislature voted unanimously¹ to require receiving facilities to collect some basic information about who is held in receiving facilities and for how long:

(a) A facility designated as a public receiving or treatment facility under this section shall report to the department on an annual basis the following data, unless these data are currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnoses.
4. Number of bed days by payor class.
5. Average length of stay by payor class.
6. Total revenues by payor class.

(b) For the purposes of this subsection, “payor class” means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-pay health insurance, private-pay HMO, private preferred provider organization, the Department of Children and Families, other government programs, self-pay patients, and charity care.

(c) The data required under this subsection shall be submitted to the department no later than 90 days following the end of the facility’s fiscal year.

§ 394.461(4), Fla. Stat.

5. The Department, in turn, is required to “issue an annual report based on the data required pursuant to this subsection.” § 394.461(4)(d), Fla. Stat. “The report shall include individual facilities’ data, as well as statewide totals. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.” *Id.*

6. The information required by subsection 4, if collected, would answer a number of important questions about use of the Baker Act such as how long an average patient is held, what conditions lead to shorter or longer stays, whether insured patients are being held longer than others, and whether patients insured by the state are being held for longer, costing the state more money, than others.

7. These questions are particularly important to answer in Florida, because the state uses the Baker Act at a higher rate than any other state uses its equivalent involuntary commitment statute.² In the most recent year for which data exists, 173,7321 Floridians were involuntarily examined under the Baker Act, of whom 33,685 were children and 12,131 were seniors.³ Media reports have also suggested that some facilities treat patients differently in length of stay

¹ CS/SB 430, “Vote History”, Fla. Senate, <https://www.flsenate.gov/Session/Bill/2007/430/?Tab=VoteHistory>.

² Gi Lee and David Cohen, *Incidence of Involuntary Psychiatric Detention in 25 US States*, 7 *Psychiatric Services in Advance* (2020).

³ Baker Act Reporting Center, “Baker Act Reporting Center fiscal Year 2019/2020 Report Highlights,” (2022), https://www.usf.edu/cbcs/baker-act/documents/ba_usf_exerptfromdraftfy19_20report_sentatecommittee.pdf. This data, and the report that contains it, is based on data collection provisions in 394.463(2)(a)2, Fla. Stat., not 394.461(4). See Baker Act Reporting Center, “Data Reporting Requirements,” (visited March 30, 2022), <https://www.usf.edu/cbcs/baker-act/for-providers/datareporting.aspx>.

depending on payor type.⁴ Understanding how long children enrolled in Medicaid and seniors enrolled in Medicare stay in receiving facilities compared to other patients would help policymakers and advocates, like DRF, understand how best to reduce unnecessary and traumatic Baker Act use.

PARTIES

8. Plaintiff Disability Rights Florida is an independent, non-profit corporation organized under the laws of the State of Florida and its primary office is in Tallahassee, Florida. DRF is Florida’s Protection and Advocacy (“P&A”) organization, as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041 et seq., the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. § 10801 et seq., and the Protection and Advocacy of Individual Rights Act, 29 U.S.C. § 794e et seq.

9. As Florida’s P&A system, DRF is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A)(i). DRF’s constituents consist of all individuals residing in Florida who have been diagnosed with a disability, have a disability which has not yet been diagnosed, or are perceived as or regarded as having a disability. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2).

10. One of DRF’s responsibilities is to monitor psychiatric hospitals, including Baker Act receiving facilities. This includes investigating improper Baker Act admissions, conditions in receiving facilities, and inappropriate failure to release those who have been admitted. The data the Department has failed to collect and publish would assist DRF in conducting this monitoring.

11. Defendant Florida Department of Children and Families is the state agency charged with enforcing the Florida Mental Health Act, Ch. 394, Part I, Fla. Stat.

12. The Department is an “agency” subject to the Public Records Act. § 119.011(1)-(2), Fla. Stat.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter under Section 26.012(2)(c), Fla. Stat. and Article V, Section 5 of the Florida Constitution.

14. Venue is proper in Leon County because the Department of Children and Families is headquartered in this county. *Fla. Dep’t of Child. & Fams. v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1286 (Fla. 2004).

FACTUAL ALLEGATIONS

⁴ Bedi, Neal, *You’re Trapped. They’re Cashing in. How one Florida psychiatric hospital makes millions off patients who have no choice.* Tampa Bay Times (Sept. 18, 2019); Silver-Greenberg, Jessica and Thomas, Katie, *How a Leading Chain of Psychiatric Hospitals Traps Patients*, New York Time (Sept. 1, 2024).

15. DRF made the following public records request on October 4, 2024:

1. For each public receiving or treatment facility designated by DCF,
 - a. Number of licensed beds.
 - b. Number of contract days.
 - c. Number of admissions by payor class and diagnoses.
 - d. Number of bed days by payor class.
 - e. Average length of stay by payor class.
 - f. Total revenues by payor class as defined in Section 394.461(4)(b).We are requesting each of these data points for each designated receiving facility for the past five fiscal years.
2. The last five annual reports issued by DCF pursuant to Section 394.461(4)(d).

Exh. A.⁵

16. On December 2nd, the Department responded that the reports available under subsection 4, paragraph (d) “were available at the following link: <https://www.myflfamilies.com/services/samh/publications>.” Exh. B. That link, however, does not contain any of the information listed under subsection 4, subparagraphs(a)(2)-(6).

17. The Department also stated that it is “working on paragraph 1.” It did not, however, provide any further details, either in that email or in response to further correspondence from DRF. The Department has been aware of its failure to comply with subsection 4 for many years and has taken no action to obtain the relevant information from receiving facilities.

18. The Department has the power and obligation to compel receiving facilities to comply with subsection 4. It is authorized to adopt rules to enforce Ch. 394, Part I, the Baker Act, and to “suspend or withdraw ... designation [as a receiving facility] for failure to comply with this part.” § 394.461(6), Fla. Stat.

19. Receiving facilities possess the information they are required to provide to the Department under subsection 4(a).

20. The Department has not compelled receiving facilities to report the data required by subsection 4(a).

21. The Department has not and does not publish annual reports as required by subsection 4(d).

FIRST CAUSE OF ACTION

⁵ Subsection 4 provides that this data be reported to the Department unless it is “currently being submitted to the Agency for Health Care Administration.” DRF sent a request for this data to that agency which replied that it had no responsive records.

(Violation of the Public Records Act, § 119.01(1), Fla. Stat.)

22. The allegations in paragraphs 1, 3-5, 8-12 and 15-19 are realleged and incorporated herein by reference.

23. DRF made a valid public records request for data on involuntary commitments in Florida and related reports.

24. Responsive records exist either in the Department's custody or in the custody of receiving facilities.

25. The Department has the power to obtain responsive records from receiving facilities.

26. The Department has refused to provide the records in a timely manner to DRF.

27. The Department has never complied with subsection 4 and has not indicated that it will in the future.

28. The Department's ongoing refusal to provide the requested records will harm DRF's ability to advance its mission of monitoring the use of involuntary psychiatric care in Florida.

29. Because Chapter 119, Fla. Stat. exists, in part, to protect the public, violation of its provisions also constitutes irreparable injury to the public generally. Thus, the public interest will be served by granting an injunction in furtherance of the provisions of Chapter 119, Fla. Stat.

Wherefore, Plaintiff respectfully requests that this Court:

- a. Issue an injunction requiring, or in the alternative issue a writ of mandamus compelling, the department to collect and produce to DRF the information sought in its public records request.
- b. Award to DRF its attorneys' fees, expenses, and costs pursuant to Section 119.12(1).
- c. Order such other and further relief as this Court may deem appropriate.

SECOND CAUSE OF ACTION

(Mandamus to Compel the Department to Comply with § 394.461(4), Fla. Stat.)

30. The allegations in paragraphs 1, 3-5, 8-11 and 20-21 are realleged and incorporated herein by reference.

31. The Department has an indisputable and non-discretionary duty under subsection 4 to collect specified data from receiving facilities and produce a report containing that data.

32. The Department has not complied with that legal duty.

Wherefore, Plaintiff respectfully requests that this Court:

- a. Issue a writ of mandamus compelling the department to collect and produce to DRF the information sought in its public record request.
- b. Order such other and further relief as this Court may deem appropriate.

THIRD CAUSE OF ACTION
(Declaratory Relief, Ch. 86., Fla. Stat)

33. The allegations in paragraphs 1, 3-5, 8-11 and 20-21 are realleged and incorporated herein by reference.

34. Under subsection 4, the Department is required to collect and report data listed in subsection 4, subparagraphs (4)2-6 and to issue an annual report based on that data.

35. The Department nonetheless does not collect that data.

36. DRF is therefore not able to obtain information needed to advance its monitoring and oversight mission concerning overuse of the Baker Act.

37. The Department's failure to collect the data listed in subsection 4 causes DRF irreparable harm.

38. DRF has a bona fide, actual, present and practical need for a declaration that the Department is required to collect and publish data listed in subsection 4.

39. Unless DRF obtains relief under one of the claims alleged in this Complaint, it has no adequate remedy at law.

Wherefore, Plaintiff respectfully requests that this Court:

- a. Declare that the department is required by law to collect, and publish an annual report containing, the data covered by Section 394.461(4).
- b. Order supplemental relief, including injunctive relief pursuant to Section 86.061, Florida Statutes, compelling the department to comply with Section 394.461(4).
- c. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted,

/s/ Sam Boyd

SAMUEL T. BOYD
Florida Bar. No. 1012141
sam.boyd@splcenter.org

Southern Poverty Law Center
PO Box 33101
Miami, FL 33137-0037
(786) 347-2056

KATY DEBRIERE
Florida Bar. No. 58509
debriere@floridahealthjustice.org
LYNN C. HEARN
Florida Bar No. 0123633
hearn@floridahealthjustice.org
Florida Health Justice Project
(352) 496-5419

Counsel for Plaintiff