

**Written Testimony Submitted for Inclusion in the Record in the
U.S. Senate Finance Committee Hearing held on June 12, 2024
“Youth Residential Treatment Facilities: Examining Failures and Evaluating
Solutions”**

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Submitted electronically on June 26, 2024

I. Introduction

Disability Rights Idaho (DRI) is the designated Protection and Advocacy agency for the State of Idaho pursuant to the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §10801 *et seq.*, and the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §15001 *et. seq.* Both Acts were enacted in response to congressional hearings such as this one, evidencing widespread abuse and neglect of individuals with disabilities in facilities, resulting in the creation of a system of protection and advocacy agencies throughout the United States and its territories armed with authority under federal law to investigate allegations of abuse and neglect, respond to rights violations, and provide general advocacy services on behalf of individual with disabilities.

In fall of 2020, DRI re-organized into two units: an adult unit and a youth unit, each staffed with attorneys and non-attorney advocates specifically focused on serving the needs of either adults or youth with disabilities in Idaho. For the past four years, DRI’s Youth Unit has made a concerted effort to conduct monitors as well as abuse and neglect investigations within facilities licensed by the Idaho Department of Health and Welfare to provide care and treatment to youth with disabilities. So far, this work has included monitors and investigations at ten (10) facilities throughout the state of Idaho including private and public psychiatric hospitals, children’s residential treatment facilities, and Idaho’s psychiatric residential treatment facility (PRTF).

Unfortunately, our work has uncovered many of the same issues featured in the testimony of Reagan Stanford of Disability Rights Arkansas as well as in the Senate Finance Committee’s Staff Report: *that youth placed in residential treatment facilities in Idaho are often subjected to abuse and neglect, including the inappropriate and excessive use of physical restraints, and are denied adequate treatment and supervision. Even though multiple state agencies are involved in the placement and oversight of these facilities, such harms fail to be identified and/or addressed. To further compound these issues, Idaho sorely lacks appropriate community-based services and*

supports to address the needs of these youth to either avoid or successfully discharge from placement in these facilities – resulting in a revolving cycle of institutionalization for Idaho youth with severe emotional disturbance (SED) and those who are dually diagnosed with a developmental disability and severe emotional disturbance (DD/SED).

We applaud the efforts of this Committee to investigate residential treatment facilities and hope that the information provided in our testimony below helps to support much-needed change for youth placed or at risk of being placed in such facilities.

II. PRTFs – Psychiatric Residential Treatment Facilities in Idaho

In 1980, a class action lawsuit was filed against the Governor of Idaho and other state officials to address the lack of appropriate treatment and education for children who were patients at one of Idaho’s state-run psychiatric facilities, as well as a lack of community-based mental health services across Idaho for children with SED. Thirty-five (35) years later, the case was resolved through a comprehensive Settlement Agreement which outlines specific provisions that the State of Idaho must provide for children with SED. While the settlement agreement in this case is intended to establish a robust system of care and support for Idaho children with SED, the actual implementation of the settlement agreement provisions continues to be in various stages of development.

Part of the implementation of this settlement agreement includes the creation of three (3) Psychiatric Residential Treatment Facilities (PRTF) which are funded by Medicaid. A PRTF is a subacute, hospital-like setting typically directed by a psychiatrist, with support from licensed counselors and social workers and 24/7 supervision by nursing staff which provides a high level of care and supervision to youth with complex mental health needs under the age of twenty-one (21). Although Idaho previously had a PRTF operating at the Eastern Idaho Medical Center, it ultimately transitioned back to providing short term, acute hospitalization level of care in 2022. As a result, Idaho children needing that level of care have and continue to be sent out of state and across the country, including to facilities operated by some of the for-profit providers highlighted in the Committee’s investigative report such as Devereaux Advanced Behavioral Health (Devereaux) and Acadia Healthcare (Acadia).

In December of 2022, the State of Idaho budgeted \$15 million dollars to establish three (3) PRTF’s. The Idaho Department of Health and Welfare (Department) awarded grants to three facilities to establish PRTF’s: The Idaho Youth Ranch in Boise; Jackson House in Eastern Idaho; and Northwest Children’s Home in Northern Idaho.

Although the Idaho Youth Ranch opened its residential center in August of 2023, it has yet to be granted a PRTF license as of June of 2024. As a result, Idaho Medicaid eligible children in need of PRTF treatment cannot be placed at this facility. Jackson House, a parent organization which will oversee the Eastern Idaho PRTF, is a California-based company with several treatment-facilities and rehabilitation centers all in Southern-California. Ground was broken at Jackson House in Eastern Idaho in May of 2024.

The third contract was awarded to Northwest Children’s Home with plans to become operational as a PRTF at the end of the summer 2024. Northwest Children’s Home currently operates as a children’s residential treatment facility, licensed to house up to forty-six (46) children, ages six (6) to seventeen (17). This past year, the facility became the subject of an investigation by media outlet InvestigateWest highlighting the need for increased monitoring over Idaho youth residential facilities. In an article published on December 29, 2023, InvestigateWest journalist Wilson Criscione identified Northwest Children’s Home as one of the “several” facilities of which have “repeatedly failed to keep children safe,” citing to a 2016 investigation by the Department which found that “[c]hildren routinely elope, evade supervision, commit crimes, are detained by juvenile corrections, are victims of sexual crimes and perpetrators of physical results.” *Idaho Investigators Repeatedly Found Kids in Danger. Youth Treatment Programs Faced Few Consequences*, <https://www.invw.org/2023/12/29/idaho-investigators-repeatedly-found-kids-in-danger-youth-treatment-programs-faced-few-consequences/>. Although the Department originally indicated it would revoke the facility’s license, the revocation decision was appealed by the facility and, eventually, overturned. The facility has continued to operate despite subsequent investigations by the Department identifying additional problems as well as continued calls to law enforcement at a rate three times higher than the average of all similarly situated facilities in the state. DRI is also currently investigating a recent report of the excessive, inappropriate use of physical restraint at this facility and has made the Department aware of concerns originating out of its investigation. Despite such documented concerns, to DRI’s knowledge, the Department intends to move forward with its choice to award the facility state and federal tax dollars to operate as a PRTF in the future.

III. CRTF’s – Children’s Residential Youth Facilities in Idaho

Currently, Idaho is home to twenty-eight (28) facilities licensed as “children’s residential treatment facilities” and one (1) facility licensed as a “children’s therapeutic outdoor program.” CRTFs are licensed to provide a less intense level of care, for (twenty-four) 24 hours a day in a residential setting, essentially as step-down from a PRTF.

In total, the twenty-eight (28) CRTFs are licensed to house up to seven hundred and forty-five (745) children from as young as the age of five (5) to age seventeen (17). Idaho’s sole children’s therapeutic outdoor program, located in rural central Idaho, is licensed to house up to one hundred (100) children ages eleven (11) to seventeen (17). Children placed in these facilities are most commonly on Medicaid, and their stay is funded using state and federal Medicaid dollars.

Children placed in these facilities come from a variety of backgrounds and locations. Some may be placed in these facilities voluntarily by their parent or guardian. Others because of being involved in the foster care or juvenile justice system. While many of the children in these facilities are from Idaho, there are also facilities whose entire patient population consists of children from out of state.

Several state agencies play a role in the oversight of these facilities, all of which are housed under the Department. Such agencies include Children’s Residential Licensing (Licensing), the Division of Family and Community Services (FACS) which includes Child Protection Services, as well as the Divisions of Medicaid (Medicaid) and Behavioral Health. In many instances, FACS, Medicaid, and Behavioral Health are directly involved in arranging for the placement of children these facilities. In order to become licensed as a children’s residential treatment center, a facility must meet the requirements set forth in Idaho Administrative Code, specifically IDAPA 16.04.18, available at <https://adminrules.idaho.gov/rules/current/16/160418>. It is important to note, however, that in accordance with Idaho Governor Little’s Zero-Based Regulation initiative, Idaho has “cut or simplified 95-percent of regulations” from its administrative code. Office of the Governor, *Cutting Red Tape*, (last accessed on June 24, 2024), <https://gov.idaho.gov/cutting-red-tape/>. Such cuts have included cuts to the regulations which govern licensing and oversight over children’s residential treatment facilities.

Multiple media reports from the past year have highlighted the need to review of the oversight of these facilities, culminating in Idaho’s own Joint Legislative Oversight Committee approving the Office of Performance Evaluations to investigate and develop recommendations to ensure that the Department’s Division of Licensing and Certification is “functioning effectively as applied to Children’s Residential Treatment Facilities, Children’s Therapeutic Outdoor Programs, and Psychiatric Residential Treatment Facilities (PRTFs).” Wilson Criscione, *Idaho Oversight to Investigate Youth Treatment After ‘Shock’ Over Complaints*, Idaho Statesman, March 24, 2024, <https://www.idahostatesman.com/news/politics-government/state-politics/article287021680.html>. As stated in the article, “The state has no record of suspending or revoking the license of any Idaho youth residential program, despite finding instances of serious danger to children at several facilities in the last decade.” *Id.*

IV. Observations and Concerns from DRI Monitors and Investigations of Idaho Children’s Residential Treatment Facilities

The following provides an overview of our concerns identified from our work in these facilities.

A. Excessive Elopements and Inconsistent Reporting of Incidents

In fall 2023, DRI monitored a children’s residential treatment facility in Northern Idaho that housed female youth between the ages of (eleven) 11 and (eighteen) 18, the majority of whom were in the foster care system. Prior to the monitor, DRI gathered public police records and reviewed Licensing’s survey results and media reports detailing incidents of abuse, including rape, against youth housed there. Based on these reports, DRI also became aware of multiple incidents of children eloping at the facility within the last year. This was particularly concerning given that the facility was located near a very busy highway. In fact, an elopement occurred during DRI’s two-day monitor.

Youth reported to DRI that they knew they could get away with eloping because during the evening shift staff were untrained and therefore unable to stop them. To dissuade youth from elopement, facility staff indicated they would take away the youth's shoes and warm clothing. However, several youth stated they did not care if they ran away in socks instead of shoes and even admitted to getting into cars with strangers, sleeping outside during winter, and attempting to steal illegal substances. Beyond the policy of taking their shoes away, the facility did not appear concerned as to the ongoing elopement and did not change/update their policies.

After the monitor, DRI met with state Licensing staff to review DRI's concerns. Licensing stated they would conduct an unannounced visit to monitor the situation. DRI then completed a review of records from January 2023 through September 2023 comparing Licensing's records to local police records to determine if Licensing received all incidents that the facility reported to the police, as required by Idaho law. DRI found several discrepancies between the reports to the Licensing and the incidents at the facility. In fact, the facility failed to report the elopement that took place during DRI's monitor, as well as several police/EMS calls recorded in the police record, during at least one of which a child was dragged out of her bedroom by police and hospitalized following threats of suicide.

B. Inappropriate, Excessive Use of Restraint and Seclusion

One of the most common issues we have observed regarding these facilities is the inappropriate and altogether excessive use of physical restraint and seclusion. At another children's residential treatment facility in rural Idaho, DRI received a report that a child was being excessively restrained by staff, including "multiple times a week" and DRI staff themselves even observed noticeable bruising on the child's arms, reportedly caused by staff restraints. Upon initiating an investigation into these allegations, DRI observed video of the restraint and events leading up to the restraint. In the video, the child can be seen with their hands in their pockets backing away from a staff member. The staff member then rushes the child, pulling them to the ground in a restraint. When the incident was further investigated by Licensing, facility staff referred to the restraint (which resulted in an injury) as "a therapeutic hug." Facility administration initially found that the staff member had not violated their restraint policy during the interaction, although later admitted they had failed to review the footage and that the staff member had acted inappropriately.

The use of restraints traumatizes not only the youth restrained, but also the youth who witness the incidents. During an interview, another youth at the same facility indicated that other kids are restrained a lot and that it makes them extremely anxious when this happens. To escape the trauma, they often decide to isolate themselves in their room. No counseling or debrief is offered to the youth restrained or those who may have witnessed the restraint. They are left to console themselves in a "therapeutic" facility.

At another facility, DRI was able to obtain documentation showing that children were restrained multiple times a week, even multiple times a day. Although it has since closed, the facility was owned/operated by Sequel, a company notorious for abuse and neglect allegations. Additional documentation provided to DRI demonstrated that facility policy allowed for restraints to last for up to an hour at a time in direct violation of Idaho facility licensure rules which limit restraints to no more than fifteen (15) consecutive minutes. In a six-month span, the facility documented twenty-five (25) incidents of restraint lasting longer than the required fifteen minutes. There were also frequent examples of youth being restrained multiple times in one week with as many as eleven (11) restraints in a week for one child and fifteen (15) restraints in one day for another.

C. Restrictions on Communications and Access to the Community

Access to private, confidential communications as well as access to the community are non-existent or severely and regularly restricted in these settings. Such restricted and censored access only adds to the risk that instances of abuse or neglect remain unreported as the children have no means in which to report such allegations outside of the facility, nor are they regularly observed by others outside of the facility who could report these instances on their behalf. Neither state statute nor licensure regulations for these facilities require the facility to offer or provide children with a private, confidential means of communication. At one Idaho facility, residents are prohibited from communicating with their family within the first thirty (30) days of admission. After that, all calls (including those to other providers or family members) are listened to and monitored by facility staff. Facility staff warn parents/guardians that their child will attempt to “manipulate” them by reporting negative things about the facility, encouraging parents to disregard such reports as false.

In another facility example, youth were not permitted to make telephone calls until they had been at the facility for forty-five (45) days, at which time the calls were limited only to immediate family members, twice a month. In a handbook at this same facility, youth were warned that home/family visits will be cancelled or limited in time/location if the youth choose to break facility rules. Elsewhere, youth were required obtain a certain status before they were allowed on outings outside of the facility’s walls – even to the local McDonald’s. Because of how stringent the status or level requirements were, some children never obtained the appropriate “level” or “status” to have an outing – potentially being restricted to the facility’s campus for the entirety of their eighteen (18) month stay. None of these are therapeutic, evidence-based practices. Rather, they are more akin to practices you would expect to find in a correctional facility.

D. Questionable Therapeutic Techniques

Despite being licensed to provide twenty-four (24) hour care, treatment, and rehabilitation, DRI has observed that such care, treatment, and rehabilitation is often minimal, at best, and even includes the use of non-evidence-based practices. For instance, one facility utilized polygraph examinations initially upon admission and then again throughout the child’s stay at the facility. Although the facility’s clinical director

claimed the purpose of the polygraph is for the treatment process and was not used in a manner to criminally charge the client, children were required to acknowledge that they may be prosecuted for previously committed crimes. If they were suspected of committing a new sex offense the facility would then recommend to law enforcement that the child be prosecuted. Not only is there a plethora of evidence demonstrating that such examinations can be coercive and harmful to youth, but such use also calls into question violations of the youth's right against self-incrimination.

V. Additional Concerns

A. Lack of Oversight of Out of State Placements for Idaho Children

Through our work in representing youth attempting to access medically necessary services, including residential treatment, we have uncovered additional concerns regarding facilities outside of the state. As enumerated above, Idaho lacks placements that can care for youth who need treatment, resulting in Idaho youth being sent to facilities out of state to receive care and treatment in a residential setting. In fact, it is estimated “[o]n average, every three days an Idaho family on Medicaid sends their child out state in search of treatment.” Idaho Youth Ranch Residential Center for Healing & Resilience, *The Need*, <https://www.youthranch.org/the-need-to-bring-them-home> (last visited August 23, 2023). Often, these out-of-state facilities have a known history of abuse, neglect, and licensure issues, failing to provide any therapeutic benefit to the child and, instead, exposing them to more harm.

It is unknown what, if any, vetting is conducted by Idaho state agencies prior to the referral and placement of a child in these out of state settings. In a recent case, DRI learned that Department staff routinely send youth to the Judge Rotenberg Education Center (JRC) in Massachusetts, an approved Medicaid provider. The JRC is marketed as a school for emotionally disturbed youth that uses Applied Behavior Analysis (ABA) treatment plans. However, to this day it is the only placement in the country that uses electric shock devices to stop unwanted student behavior. The U.S. Food and Drug Administration unsuccessfully sought to ban this practice in 2020 and the JRC has been condemned for torture for these practices by the United Nations. Six residents have died at this facility since it was founded in 1971. Once placed in such a facility, it is also unknown what, if any, oversight is conducted by Idaho state agencies in terms of ensuring the youth is not being subjected to such practices.

Another frequent out of state placement for Idaho children is Copper Hills Youth Center in Utah. DRI is aware of Department staff attempting to refer and place a child in this facility as recently as 2022, despite the Idaho Department of Juvenile Corrections terminating its contract with the facility after reports of sexual misconduct surfaced in 2015. Idaho Press-Tribune, *Copper Hills Youth Center Investigated in Early 2000's*, May 9, 2015, https://www.idahopress.com/members/copper-hills-youth-center-investigated-in-early-2000s/article_17da5580-f60b-11e4-91cf-07a2cc035c21.html. DRI staff have

also discovered that Department staff were reaching out to facilities in Indiana and Utah for potential placement while such facilities were on admissions holds due to serious incidents by their own state facility licensure agency. Abuse allegations as recent as March of this year have been substantiated at Utah facilities which have been used as Medicaid-funded placements for Idaho youth.

DRI shares the same concerns Disability Rights Arkansas identified regarding the inherent lack of transparency that exists for those concerned about out-of-state placements that Medicaid routinely funds. In some states, little information can be found about these facilities, leaving Idaho families unaware of the conditions their youth are subject to. Families are forced to trust that Medicaid or other state agencies would not put their youth in danger.

However, in some instances, facilities will only admit youth from out-of-state, further complicating which state, if any, is conducting oversight of the facility and ensuring the safety of the youth placed within it.

B. Documentation of Abuse, Neglect in Reports to Law Enforcement

Instances of abuse or neglect in these facilities can also be uncovered through a public records request from the local law enforcement agency. Through its investigative work, media outlet InvestigateWest has accumulated police call log data to demonstrate high numbers of police calls from Idaho facilities. DRI is also starting to accumulate police call log data on facilities licensed in Idaho, including calls related to a children's therapeutic outdoor program in rural Idaho. Based on our review of records provided through a public records request, parents, staff members, or youth themselves have reported potential child abuse at the outdoor program at least nine (9) times since 2021. Such reports have alleged staff abusing and medically neglecting children, unsafe working conditions for staff, unclean living conditions for the children, and allegations that the program hires staff to clean the campsites only when Licensing is going to visit for their annual survey. Reports have also alleged that the staff have their personal phones checked by the administration before leaving their sites, to ensure no pictures can be reported to state agencies or the public. Despite numerous calls to law enforcement, DRI is unaware of any criminal charges being brought against staff of the facility. Records also indicate that a complaint was filed with and investigated by Licensing. When Licensing visited the facility, most of the youth and staff were not present. Records indicate that Licensing only visited the administrative building, not the campsites in which the youth lived and as a result, the complaint went unsubstantiated.

VI. Conclusion & Recommendations

As evidenced by the work of our fellow agencies within the P&A Network, we know that these problems are not specific to Idaho. We echo the recommendations made in the testimony submitted by Reagan Stanford of Disability Rights Arkansas and would

emphasize that this national problem demands congressional action, including but not limited to:

1. Increased investment in community-based services and concrete supports that can help prevent the use of congregate care.

Many youth facilities receive several million dollars each year in state and federal funding. In Idaho, many of these treatment facilities are used to house foster children. Yet, foster families in Idaho can receive as low as \$90 per day. A better investment of state and federal Funding would include investment in intensive, community-based services, rather than congregate care. Until a substantial system of community-based care is developed in Idaho, youth will continue to be subjected to an endless cycle of unnecessary institutionalization.

2. Require meaningful outcome measures and discontinue payments for models that do not provide active treatment and individualized services, **including residential treatment.**

The role of residential treatment on any continuum of care needs to be critically examined. Although there has been a focus and even insistence on evidence-based treatment in most other areas, there has been heavy investment in residential treatment despite no evidence to support its efficacy.

For example, research has demonstrated time and time again that prone restraints are dangerous, and that seclusion exacerbates existing trauma, however, both practices continue across the country with little to no regulation.

3. De-incentivize out-of-state placements.

It is well known that sending youth out of state for care and treatment causes a plethora of issues including: a) making it more difficult to maintain connections with family; b) making it more difficult for out of state agencies to monitor the facility and uphold their own state standards (which may be a higher standard than the receiving state); c) extremely difficult for meaningful discharge planning to occur due to the out of state facility not having relationships with providers or even understanding the community that the child is returning to; and d) it can allow a facility to evade regulation by shifting to court children from another state if one state stops sending children because of subpar conditions.

4. Remedy the failures of oversight that exist at all levels.

While oversight failures are not unique to Idaho, they are an extensive problem here. The primary organizations charged with protecting Idaho youth in these facilities are all housed within the same state agency – the Department - demonstrating a lack of

impartial oversight into reported abuse and neglect in youth facilities licensed by the same department.

However, stronger oversight is meaningless without strong legislation and regulations to protect these vulnerable youth. The State of Idaho's zero-based rule making regulation prevents state administrative agencies from creating new rules without ending old ones. This method of regulation is ineffective in an under-regulated industry where the most vulnerable children are sent to live and receive treatment in isolated environments.

In Idaho, failure in the oversight of youth facilities is so prevalent that the State Legislature requested the Office of Performance Evaluations investigate the state licensure agency, further demonstrating that current oversight procedures are not strong enough to protect youth and reiterating the need for impartial oversight.

5. *Create an easy to access and navigate system that accurately identifies all youth residential treatment facilities and publishes surveys conducted by state survey agencies, quality of care, and incident data.*

No database exists that accurately contains information on complaints, surveys, and incidents at youth treatment facilities across the country. Additionally, surveys do not capture individual abusers, who can move from facility to facility following abuse allegations. Unless these individuals are prosecuted, facilities have no way to check whether the person they are hiring to work with vulnerable children has been accused of abuse in the past.

6. *Requiring the Administrators of Children's Facilities to be Licensed – similar to the Administrator Licensing Requirements of Nursing Homes and Assisted Living Facilities, for additional accountability and oversight.*

7. *Requiring that all state agencies involved in the placement of children in these facilities work together to identify and address concerns regarding the care and treatment of children in these facilities – in Idaho, this would include Children's Residential Licensing, Idaho Medicaid, Children's Mental Health, Child Protection Services, and the Idaho Department of Juvenile Corrections.*