

**Protection and Advocacy for Individuals with Mental Illness (PAIMI)**

*42 U.S.C.A. §§ 10801-10807, 10821-10827*

**Title 42--**The Public Health and Welfare

**Chapter 114--** Protection and Advocacy for Mentally Ill Individuals

**Subchapter I--** Protection and Advocacy Systems

**Part A--** Establishment of Systems

**§ 10801. Congressional findings and statement of purpose**

**(a) The Congress finds that--**

(1) individuals with mental illness are vulnerable to abuse and serious injury;

(2) family members of individuals with mental illness play a crucial role in being advocates for the rights of individuals with mental illness where the individuals are minors, the individuals are legally competent and choose to involve the family members, and the individuals are legally incompetent and the legal guardians, conservators, or other legal representatives are members of the family;

(3) individuals with mental illness are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and

(4) State systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate.

**(b) The purposes of this chapter are--**

(1) to ensure that the rights of individuals with mental illness are protected; and

(2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

## § 10802. Definitions

For purposes of this subchapter:

**(1)** The term "abuse" means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a individual with mental illness, and includes acts such as—

- (A)** the rape or sexual assault of a individual with mental illness;
- (B)** the striking of a individual with mental illness;
- (C)** the use of excessive force when placing a individual with mental illness in bodily restraints; and
- (D)** the use of bodily or chemical restraints on a individual with mental illness which is not in compliance with Federal and State laws and regulations.

**(2)** The term "eligible system" means the system established in a State to protect and advocate the rights of persons with developmental disabilities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

**(3)** The term "facilities" may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.

**(4)** The term "individual with mental illness" means, except as provided in section 10804(d) of this title, an individual—

- (A)** who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and
  - (B) (i) (I)** who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;
  - (II)** who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or;

(III) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense; or

(ii) who satisfies the requirements of subparagraph (A) and lives in a community setting, including their own home.

(5) The term "neglect" means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to a individual with mental illness or which placed a individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a individual with mental illness, or the failure to provide a safe environment for a individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(6) The term "Secretary" means the Secretary of Health and Human Services.

(7) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(8) The term "American Indian consortium" means a consortium established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042 *et seq.*).

### **§ 10803. Allotments**

The Secretary shall make allotments under this subchapter to eligible systems to establish and administer systems--

(1) which meet the requirements of section 10805 of this title; and

(2) which are designed to—

(A) protect and advocate the rights of individuals with mental illness; and

- (B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

## **§ 10804. Use of allotments**

### **(a) Contracts**

(1) An eligible system may use its allotment under this subchapter to enter into contracts with State agencies and nonprofit organizations which operate throughout the State. In order to be eligible for a contract under this paragraph—

- (A) such an agency shall be independent of any agency which provides treatment or services (other than advocacy services) to individuals with mental illness; and
- (B) such an agency or organization shall have the capacity to protect and advocate the rights of individuals with mental illness.

(2) In carrying out paragraph (1), an eligible system should consider entering into contracts with organizations including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which, provide protection or advocacy services to individuals with mental illness.

### **(b) Obligation of allotments; technical assistance and training**

(1) If an eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment under this subchapter in any fiscal year for administrative expenses.

(2) An eligible system may not use more than 10 percent of any allotment under this subchapter for any fiscal year for the costs of providing technical assistance and training to carry out this subchapter.

**(c) Representation of individuals with mental illness:** An eligible system may use its allotment under this subchapter to provide representation to individuals with mental illness in Federal facilities who request representation by the eligible system. Representatives of such individuals from such system shall be accorded all the rights and authority accorded to other representatives of residents of such facilities pursuant to State law and other Federal laws.

**(d) The definition of "individual with a mental illness"** contained in section 10802(4)(B)(iii) of this title shall apply, and thus an eligible system may use its allotment under this subchapter to provide representation to such individuals, only if the total allotment under this subchapter for any fiscal year is \$30,000, 000 or more, and in such case, an eligible system must give priority to representing persons with mental illness as defined in subparagraphs (A) and (B)(i) of section 10802(4) of this title.

### **§ 10805. System requirements**

**(a) Authority; independent status; access to facilities and records; advisory council; annual report; grievance procedure:** A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall--

**(1)** have the authority to—

**(A)** investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

**(B)** pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and

**(C)** pursue administrative, legal, and other remedies on behalf of an individual who—

**(i)** was a individual with mental illness; and

**(ii)** is a resident of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

**(2)** be independent of any agency in the State which provides treatment or services (other than advocacy services) to individuals with mental illness;

**(3)** have access to facilities in the State providing care or treatment;

**(4)** in accordance with section 10806 of this title, have access to all records of—

**(A)** any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

- (B)** any individual (including an individual who has died or whose whereabouts are unknown)—
  - (i)** who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;
  - (ii)** who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and
  - (iii)** with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect; and
- (C)** any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—
  - (i)** such representative has been contacted by such system upon receipt of the name and address of such representative;
  - (ii)** such system has offered assistance to such representative to resolve the situation; and
  - (iii)** such representative has failed or refused to act on behalf of the individual;
- (5)** have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act (*42 U.S.C.A. § 1396 et seq.*) for the furnishing of the information required by subsection (b) of this section;
- (6)** establish an advisory council—
  - (A)** which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness;

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least 60 percent the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(C) which shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system;

(9) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter; and

(10) not use allotments provided to a system in a manner inconsistent with section 14404 of this title.

**(b) Annual survey report; plan of corrections:** The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act (42 U.S.C.A. § 1396 *et seq.*) shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act (42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*) with respect to any facility rendering care or treatment to individuals with mental illness in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

**(c) Governing authority**

- (1) (A) Each system established in a State, through allotments received under section 10803 of this title, to protect and advocate the rights of individuals with mental illness shall have a governing authority.
- (B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—
- (i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and
  - (ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

As used in this subparagraph, the term "members who broadly represent or are knowledgeable about the needs of the clients served by the system" shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals.

- (2) The governing authority established under paragraph (1) shall—
- (A) be responsible for the planning, design, implementation, and functioning of the system; and
  - (B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

**§ 10806. Access to records**

**(a) Confidentiality:** An eligible system which, pursuant to section 10805(a)(4) of this title, has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, shall, except as provided in subsection (b) of this section, maintain the confidentiality of such records to the same extent as is required of the provider of such services.

**(b) Disclosure**

**(1)** Except as provided in paragraph (2), an eligible system which has access to records pursuant to section 10805(a)(4) of this title may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to such individual has provided the system with a written determination that disclosure of such information to such individual would be detrimental to such individual's health.

**(2) (A)** If disclosure of information has been denied under paragraph (1) to an individual—

**(i)** such individual;

**(ii)** the legal guardian, conservator, or other legal representative of such individual; or

**(iii)** an eligible system, acting on behalf of an individual described in subparagraph (B), may select another mental health professional to review such information and to determine if disclosure of such information would be detrimental to such individual's health. If such mental health professional determines, based on professional judgment, that disclosure of such information would not be detrimental to the health of such individual, the system may disclose such information to such individual.

**(B)** An eligible system may select a mental health professional under subparagraph (A)(iii) on behalf of—

**(i)** an individual whose legal guardian is the State; or

**(ii)** an individual who has a legal guardian, conservator, or other legal representative other than the State if such guardian, conservator, or representative does not, within a reasonable time after such individual is denied access to information under paragraph (1), select a mental health professional under subparagraph (A) to review such information.

**(C)** If the laws of a State prohibit an eligible system from obtaining access to the records of individuals with mental illness in accordance with section 10805(a)(4) of this title and this section,

section 10805(a)(4) of this title and this section shall not apply to such system before—

- (i) the date such system is no longer subject to such a prohibition; or
  - (ii) the expiration of the 2-year period beginning on May 23, 1986, whichever occurs first.
- (3)
  - (A) As used in this section, the term "records" includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.
  - (B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) of this section and paragraphs (1) and (2) of subsection (b) of this section.

### § 10807. Legal actions

**(a) Administrative remedies:** Prior to instituting any legal action in a Federal or State court on behalf of a individual with mental illness, an eligible system, or a State agency or nonprofit organization which entered into a contract with an eligible system under section 10804(a) of this title, shall exhaust in a timely manner all administrative remedies where appropriate. If, in pursuing administrative remedies, the system, agency, or organization determines that any matter with respect to such individual will not be resolved within a reasonable time, the system, agency, or organization may pursue alternative remedies, including the initiation of a legal action.

**(b) Exception:** Subsection (a) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to a individual with mental illness.

## **Part B-- Administrative Provisions**

### **§ 10821. Applications**

**(a) Submission for allotment; contents:** No allotment may be made under this subchapter to an eligible system unless an application therefor is submitted to the Secretary. Each such application shall contain--

(1) assurances that amounts paid to such system from an allotment under this subchapter will be used to supplement and not to supplant the level of non-Federal funds available in the State in which such system is established to protect and advocate the rights of individuals with mental illness;

(2) assurances that such system will have a staff which is trained or being trained to provide advocacy services to individuals with mental illness and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members;

(3) assurances that such system, and any State agency or nonprofit organization with which such system may enter into a contract under section 10804(a) of this title, will not, in the case of any individual who has a legal guardian, conservator, or representative other than the State, take actions which are duplicative of actions taken on behalf of such individual by such guardian, conservator, or representative unless such guardian, conservator, or representative requests the assistance of such system; and

(4) such other information as the Secretary may by regulation prescribe.

**(b) Satisfaction of requirements regarding trained staff:** The assurance required under subsection (a)(2) of this section regarding trained staff may be satisfied through the provision of training by individuals who have received or are receiving mental health services and family members of such individuals.

**(c) Duration of applications and assurances:** Applications submitted under this section shall remain in effect for a 4-year period, and the assurances required under this section shall be for the same 4- year period.

## § 10822. Allotments

### (a) Formula

- (1) (A) Except as provided in paragraph (2) and subject to the availability of appropriations under section 10827 of this title, the Secretary shall make allotments under section 10803 of this title from amounts appropriated under section 10827 of this title for a fiscal year to eligible systems on the basis of a formula prescribed by the Secretary which is based equally—
- (i) on the population of each State in which there is an eligible system; and
  - (ii) on the population of each such State weighted by its relative per capita income.
- (B) For purposes of subparagraph (A)(ii), the term "relative per capita income" means the quotient of the per capita income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the Virgin Islands, the quotient shall be considered to be one.
- (2) (A) The minimum amount of the allotment of an eligible system shall be the product (rounded to the nearest \$100) of the appropriate base amount determined under subparagraph (B) and the factor specified in subparagraph (C).
- (B) For purposes of subparagraph (A), the appropriate base amount—
- (i) for American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands, is \$139,300; and
  - (ii) for any other State, is \$260,000.
- (C) The factor specified in this subparagraph is the ratio of the amount appropriated under section 10827 of this title for the fiscal year for which the allotment is being made to the amount appropriated under such section for fiscal year 1995.
- (D) If the total amount appropriated for a fiscal year is at least \$25,000,000, the Secretary shall make an allotment in accordance with

subparagraph (A) to the eligible system serving the American Indian consortium.

**(b) Reallotments**

**(1)** To the extent that all the amounts appropriated under section 10827 of this title for a fiscal year are not allotted to eligible systems because—

**(A)** one or more eligible systems have not submitted an application for an allotment for such fiscal year; or

**(B)** one or more eligible systems have notified the Secretary that they do not intend to use the full amount of their allotment, the amount which is not so allotted shall be reallotted among the remaining eligible systems.

**(2)** The amount of an allotment to an eligible system for a fiscal year which the Secretary determines will not be required by the system during the period for which it is available shall be available for reallotment by the Secretary to other eligible systems with respect to which such a determination has not been made.

**(3)** The Secretary shall make reallotments under paragraphs (1) and (2) on such date or dates as the Secretary may fix (but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make such reallotment in the Federal Register). A reallotment to an eligible system shall be made in proportion to the original allotment of such system for such fiscal year, but with such proportionate amount for such system being reduced to the extent it exceeds the sum the Secretary estimates such system needs and will be able to use during such period. The total of such reductions shall be similarly reallotted among eligible systems whose proportionate amounts were not so reduced. Any amount so reallotted to an eligible system for a fiscal year shall be deemed to be a part of its allotment under subsection (a) of this section for such fiscal year.

**§ 10823. Payments under allotments**

For each fiscal year, the Secretary shall make payments to each eligible system from its allotment under this subchapter. Any amount paid to an eligible system for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year for the purposes for which it was made.

## **§ 10824. Reports by Secretary**

**(a)** The Secretary shall include in each report required under section 15005 of this title a separate statement which contains—

**(1)** a description of the activities, accomplishments, and expenditures of systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter, including—

**(A)** a specification of the total number of individuals with mental illness served by such systems;

**(B)** a description of the types of activities undertaken by such systems;

**(C)** a description of the types of facilities providing care or treatment with respect to which such activities are undertaken;

**(D)** a description of the manner in which such activities are initiated; and

**(E)** a description of the accomplishments resulting from such activities;

**(2)** a description of—

**(A)** systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter;

**(B)** activities conducted by States to protect and advocate such rights;

**(C)** mechanisms established by residential facilities for individuals with mental illness to protect and advocate such rights; and

**(D)** the coordination among such systems, activities, and mechanisms;

**(3)** a specification of the number of systems established with allotments under this subchapter and of whether each such system was established by a public or nonprofit private entity; and

**(4)** recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a

description of needs for such activities and services which have not been met by systems established under this subchapter.

**(b)** In preparing each statement required by subsection (a) of this section, the Secretary shall use and include information submitted to the Secretary in the reports required under section 10805(a)(7) of this title.

#### **§ 10825. Technical assistance**

The Secretary shall use not more than 2 percent of the amounts appropriated under section 10827 of this title to provide technical assistance to eligible systems with respect to activities carried out under this subchapter, consistent with requests by such systems for such assistance.

#### **§ 10826. Administration**

##### **(a) In general**

The Secretary shall carry out this subchapter through the Administrator of the Substance Abuse and Mental Health Services Administration.

##### **(b) Regulations**

Not later than 6 months after November 27, 1991, the Secretary shall promulgate final regulations to carry out this subchapter and subchapter III of this chapter.

#### **§ 10827. Authorization of appropriations**

There are authorized to be appropriated for allotments under this subchapter, \$19,500,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.