

## Enabling Laws

### Protection and Advocacy for Individuals with Developmental Disabilities (PADD)

*42 USC §§ 15041-15045*

Title 42-- The Public Health and Welfare

Chapter 144-- Developmental Disabilities Assistance and Bill of Rights

Subchapter I--Programs for Individuals with Developmental Disabilities

Part C-- Protection and Advocacy of Individual Rights

#### **42 USC § 15041-- Purpose**

The purpose of this part is to provide for allotments to support a protection and advocacy system (referred to in this subtitle as a "system") in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with this part.

#### **42 USC § 15042-- Allotments and Payments**

##### **(a) Allotments:**

**(1) In General:** To assist States in meeting the requirements of section 15043(a) of this title, the Secretary shall allot to the States the amounts appropriated under section 15045 of this title and not reserved under paragraph (6). Allotments and reallootments of such sums shall be made on the same basis as the allotments and reallootments are made under subsections (a)(1)(A) and (e) of section 15022 of this title, except as provided in paragraph (2).

##### **(2) Minimum Allotments:** In any case in which—

**(A)** the total amount appropriated under section 15045 of this title for a fiscal year is not less than \$20,000,000, the allotment under paragraph (1) for such fiscal year-

**(i)** to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than \$107,000; and

**(ii)** to any State not described in clause (i) may not be less than \$200,000;  
or

**(B)** the total amount appropriated under section 15045 of this title for a fiscal year is less than \$20,000,000, the allotment under paragraph (1) for such fiscal year-

**(i)** to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than \$80,000; and

**(ii)** to any State not described in clause (i) may not be less than \$150,000.

**(3) Reduction of Allotment:** Notwithstanding paragraphs (1) and (2), if the aggregate of the amounts to be allotted to the States pursuant to such paragraphs for any fiscal year exceeds the total amount appropriated for such allotments under section 15045 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

**(4) Increase in Allotments:** In any year in which the total amount appropriated under section 15045 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of Title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in subparagraphs (A) and (B) of paragraph (2). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between-

**(A)** the total amount appropriated under section 15045 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

**(B)** the total amount appropriated under section 15045 of this title (or a corresponding provision) for the immediately preceding fiscal year, bears to the total amount appropriated under section 15045 of this title (or a corresponding provision) for such preceding fiscal year.

**(5) Monitoring the Administration of the System:** In a State in which the system is housed in a State agency, the State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under section 15043(a) of this title.

**(6) Technical Assistance and American Indian Consortium:** In any case in which the total amount appropriated under section 15045 of this title for a fiscal year is more than \$24,500,000, the Secretary shall-

**(A)** use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems with respect to activities carried out under this subtitle (consistent with requests by such systems for such assistance for the year); and

**(B)** provide a grant in accordance with section 15043(b) of this title, and in an amount described in paragraph (2)(A)(i), to an American Indian consortium to provide protection and advocacy services.

**(b) Payment to Systems:** Notwithstanding any other provision of law, the Secretary shall pay directly to any system in a State that complies with the provisions of this subtitle the amount of the allotment made for the State under this section, unless the system specifies otherwise.

**(c) Unobligated Funds:** Any amount paid to a system under this subtitle 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 such amount was paid.

#### **42 USC § 15043-- System Required**

**(a) System Required:** In order for a State to receive an allotment under part B of this subchapter or this part-

**(1)** the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

**(2)** such system shall—

**(A)** have the authority to—

**(i)** pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and

**(ii)** provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

- (B)** have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;
- (C)** on an annual basis, develop, submit to the Secretary, and take action with regard to goals (each of which is related to 1 or more areas of emphasis) and priorities, developed through data driven strategic planning, for the system's activities;
- (D)** on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairment, and their representatives, and as appropriate, non-State agency representatives of the State Councils on Developmental Disabilities, and Centers, in the State, an opportunity to comment on-
  - (i)** the goals and priorities established by the system and the rationale for the establishment of such goals; and
  - (ii)** the activities of the system, including the coordination of services with the entities carrying out advocacy programs under the Rehabilitation Act of 1973 (*29 U.S.C. 701 et seq.*), the Older Americans Act of 1965 (*42 U.S.C. 3001 et seq.*), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (*42 U.S.C. 10801 et seq.*), and with entities carrying out other related programs, including the parent training and information centers funded under the Individuals with Disabilities Education Act (*20 U.S.C. 1400 et seq.*), and activities authorized under section 3003 or 3004 of Title 29;
- (E)** establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with developmental disabilities have full access to services of the system;
- (F)** not be administered by the State Council on Developmental Disabilities;
- (G)** be independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities;
- (H)** have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are

provided to such an individual, in order to carry out the purpose of this subtitle;

**(I)** have access to all records of—

**(i)** any individual with a developmental disability 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;

**(ii)** any individual with a developmental disability, in a situation in which—

**(I)** the individual, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;

**(II)** the individual does not have a legal guardian, conservator, or other legal representative, or the legal guardian of the individual is the State; and

**(III)** a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect; and

**(iii)** any individual with a developmental disability, in a situation in which—

**(I)** the individual has a legal guardian, conservator, or other legal representative;

**(II)** a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect;

**(III)** such representative has been contacted by such system, upon receipt of the name and address of such representative;

**(IV)** such system has offered assistance to such representative to resolve the situation; and

**(V)** such representative has failed or refused to act on behalf of the individual;

**(J)** **(i)** have access to the records of individuals described in subparagraphs (B) and (I), and other records that are relevant to conducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved; and

**(ii)** have immediate access, not later than 24 hours after the system makes such a request, to the records without consent from another party, in a situation in which services, supports, and other assistance are provided to an individual with a developmental disability—

**(I)** if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy; or

**(II)** in any case of death of an individual with a developmental disability;

**(K)** hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out such system's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the system, to the extent that such policies would impact the staff or functions of the system funded with Federal funds or would prevent the system from carrying out the functions of the system under this part;

**(L)** have the authority to educate policymakers; and

**(M)** provide assurances to the Secretary that funds allotted to the State under section 15042 of this title will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the allotted funds are provided;

**(3)** to the extent that information is available, the State shall provide to the system-

- (A) a copy of each independent review, pursuant to section 1396a(a)(30)(C) of this title, of an Intermediate Care Facility (Mental Retardation) within the State, not later than 30 days after the availability of such a review; and
  - (B) information about the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive; and
- (4) the agency implementing the system shall not be redesignated unless-
- (A) there is good cause for the redesignation;
  - (B) the State has given the agency notice of the intention to make such redesignation, including notice regarding the good cause for such redesignation, and given the agency an opportunity to respond to the assertion that good cause has been shown;
  - (C) the State has given timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives; and
  - (D) the system has an opportunity to appeal the redesignation to the Secretary, on the basis that the redesignation was not for good cause.

**(b) American Indian Consortium:** Upon application to the Secretary, an American Indian consortium established to provide protection and advocacy services under this subtitle, shall receive funding pursuant to section 15042(a)(6) of this title to provide the services. Such consortium shall be considered to be a system for purposes of this subtitle and shall coordinate the services with other systems serving the same geographic area. The tribal council that designates the consortium shall carry out the responsibilities and exercise the authorities specified for a State in this subtitle, with regard to the consortium.

**(c) Record:** In this section, the term "record" includes--

- (1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;
- (2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and
- (3) a discharge planning record.

## **42 USC §15044--Administration**

**(a) Governing Board:** In a State in which the system described in section 15043 of this title is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that-

**(1) (A)** the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system;

**(B)** a majority of the members of the board shall be-

**(i)** individuals with disabilities, including individuals with developmental disabilities, who are eligible for services, or have received or are receiving services through the system; or

**(ii)** parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i); and

**(C)** the board may include a representative of the State Council on Developmental Disabilities, the Centers in the State, and the self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title;

**(2)** not more than 1 /3 of the members of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint members of the board;

**(3)** the membership of the governing board shall be subject to term limits set by the system to ensure rotating membership;

**(4)** any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs; and

**(5)** in a State in which the system is organized as a public system without a multimember governing or advisory board, the system shall establish an advisory council—

**(A)** that shall advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and

**(B)** on which a majority of the members shall be-



- (i) individuals with developmental disabilities who are eligible for services, or have received or are receiving services, through the system; or
- (ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i).

**(b) Legal Action:**

**(1) In General:** Nothing in this title shall preclude a system from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.

**(2) Use of Amounts from Judgment:** An amount received pursuant to a suit described in paragraph (1) through a court judgment may only be used by the system to further the purpose of this subtitle and shall not be used to augment payments to legal contractors or to award personal bonuses.

**(3) Limitation:** The system shall use assistance provided under this part in a manner consistent with section 14404 of this title.

**(c) Disclosure of Information:** For purposes of any periodic audit, report, or evaluation required under this part, the Secretary shall not require an entity carrying out a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

**(d) Public Notice of Federal Onsite Review:** The Secretary shall provide advance public notice of any Federal programmatic or administrative onsite review of a system conducted under this part and solicit public comment on the system through such notice. The Secretary shall prepare an onsite visit report containing the results of such review, which shall be distributed to the Governor of the State and to other interested public and private parties. The comments received in response to the public comment solicitation notice shall be included in the onsite visit report.

**(e) Reports:** Beginning in fiscal year 2002, each system established in a State pursuant to this part shall annually prepare and transmit to the Secretary a report that describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's goals, the extent to which the goals were achieved, barriers to their achievement, the process used to obtain public input, the nature of such input, and how such input was used.

**42 USC §15045—Authorization of Appropriations**

For allotments under section 15042 of this title, there are authorized to be appropriated \$32,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

**Client Assistance Program (CAP)**

*29 USC § 732*

**Title 29-- Labor**

**Chapter 16-- Vocational Rehabilitation and Other Rehabilitation Services**

**Subchapter I-- Vocational Rehabilitation Services**

**Sec. 112.-- Basic Vocational Rehabilitation Services**

**(a) Establishment of grant program**

From funds appropriated under subsection (h), the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this Act, and, upon request of such clients or client applicants, to assist and advocate for such clients or applicants in their relationships with projects, programs, and services provided under this Act, including assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this Act and to facilitate access to the services funded under this Act through individual and systemic advocacy. The client assistance program shall provide information on the available services and benefits under this Act and title I of the Americans with Disabilities Act of 1990 (*42 U.S.C. 12111 et seq.*) to individuals with disabilities in the State, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. In providing assistance and advocacy under this subsection with respect to services under this title, a client assistance program may provide the assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual.

**(b) Existence of State program as requisite to receiving payments**

No State may receive payments from its allotment under this Act in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program which--

(1) has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under this Act within the State; and

(2) meets the requirements of designation under subsection (c).

**(c) Designation of agency to conduct program**

(1) (A) The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this

subparagraph, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this Act. If there is an agency in the State which has, or had, prior to the date of enactment of the Rehabilitation Amendments of 1984, served as a client assistance agency under this section and which received Federal financial assistance under this Act, the Governor may, in the initial designation, designate an agency which provides treatment, services, or rehabilitation to individuals with disabilities under this Act.

**(B)** **(i)** The Governor may not redesignate the agency designated under subparagraph (A) without good cause and unless—

**(I)** the Governor has given the agency 30 days notice of the intention to make such redesignation, including specification of the good cause for such redesignation and an opportunity to respond to the assertion that good cause has been shown;

**(II)** individuals with disabilities or the individuals' representatives have timely notice of the redesignation and opportunity for public comment; and

**(III)** the agency has the opportunity to appeal to the Commissioner on the basis that the redesignation was not for good cause.

**(ii)** If, after the date of enactment of the Rehabilitation Act Amendments of 1998—

**(I)** a designated State agency undergoes any change in the organizational structure of the agency that results in the creation of 1 or more new State agencies or departments or results in the merger of the designated State agency with 1 or more other State agencies or departments; and

**(II)** an agency (including an office or other unit) within the designated State agency was conducting a client assistance program before the change under the last sentence of subparagraph (A), the Governor shall redesignate the agency conducting the program. In conducting the redesignation, the Governor shall designate to conduct the program an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals with disabilities under this Act.

**(2)** In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental

disability protection and advocacy agency, and with representatives of professional and consumer organizations serving individuals with disabilities in the State.

**(3)** The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

**(d) Class action by designated agency prohibited**

The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

**(e) Allotment and reallocation of funds**

**(1)** **(A)** The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than \$50,000.

**(B)** The Secretary shall allot \$30,000 each to American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

**(C)** For the purpose of this paragraph, the term "State" does not include American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

**(D)** **(i)** In any fiscal year that the funds appropriated for such fiscal year exceed \$7,500,000, the minimum allotment shall be \$100,000 for States and \$45,000 for territories.

**(ii)** For any fiscal year in which the total amount appropriated under subsection (h) exceeds the total amount appropriated under such subsection for the preceding fiscal year, the Secretary shall increase each of the minimum allotments under clause (i) by a percentage that shall not exceed the percentage increase in the total amount appropriated under such subsection between the preceding fiscal year and the fiscal year involved.

**(2)** The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary at appropriate times to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period, and the total of such reduction shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any such amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

**(3)** Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) the amount specified in the application approved under subsection (f).

**(f) Application by State for grant funds**

No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

**(g) Regulations; minimum requirements**

The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

**(1)** No employees of such programs shall, while so employed, serve as staff or consultants of any rehabilitation project, program, or facility receiving assistance under this Act in the State.

**(2)** Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

**(3)** **(A)** Each program shall contain provisions designed to assure that to the maximum extent possible alternative means of dispute resolution are available for use at the discretion of an applicant or client of the program prior to resorting to litigation or formal adjudication to resolve a dispute arising under this section.

**(B)** In subparagraph (A), the term "alternative means of dispute resolution" means any procedure, including good faith negotiation, conciliation, facilitation, mediation, fact finding, and arbitration, and any combination of procedures, that is used in lieu of litigation in a court or formal adjudication in an administrative forum, to resolve a dispute arising under this section.

**(4)** For purposes of any periodic audit, report, or evaluation of the performance of a client assistance program under this section, the Secretary shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

**(h) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary for fiscal years 1999 through 2003 to carry out the provisions of this section.

**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 reallocation in the Federal Register). A reallocation 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 reallocated among eligible systems whose proportionate amounts were not so reduced. Any amount so reallocated 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.

## **Protection and Advocacy for Individual Rights (PAIR)**

*29 USC § 794e*

**Title 29--** Labor

**Chapter 16--** Vocational Rehabilitation and Other Rehabilitation Services

**Subchapter V—**Rights and Advocacy

### **Sec. 794e—Protection and advocacy of individual rights**

#### **(a) Purpose and construction**

**(1) Purpose:** The purpose of this section is to support a system in each State to protect the legal and human rights of individuals with disabilities who—

- (A)** need services that are beyond the scope of services authorized to be provided by the client assistance program under section 732 of this title; and
- (B)**
  - (i)** are ineligible for protection and advocacy programs under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (*42 U.S.C.A. § 15041 et seq.*) because the individuals do not have a developmental disability, as defined in section 102 of such Act (*42 U.S.C. 6002*); and
  - (ii)** are ineligible for services under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (*42 U.S.C. 10801 et seq.*) because the individuals are not individuals with mental illness, as defined in section 102 of such Act (*42 U.S.C. 10802*).

**(2) Construction:** This section shall not be construed to require the provision of protection and advocacy services that can be provided under the Assistive Technology Act of 1998.

**(b) Appropriations less than \$5,500,000:** For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of subparagraphs (A) and (B) of subsection (a)(1) of this

section.

**(c) Appropriations of \$5,500,000 or more**

**(1) Reservations**

**(A) Technical assistance:** For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$5,500,000, the Commissioner shall set aside not less than 1.8 percent and not more than 2.2 percent of the amount to provide training and technical assistance to the systems established under this section.

**(B) Grant for the eligible system serving the American Indian consortium:** For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$10,500,000, the Commissioner shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian consortium. The Commission shall make the grant in an amount of not less than \$50,000 for the fiscal year.

**(2) Allotments:** For any such fiscal year, after the reservations required by paragraph (1) have been made, the Commissioner shall make allotments from the remainder of such amount in accordance with paragraph (3) to eligible systems within States to enable such systems to carry out protection and advocacy programs authorized under this section for individuals referred to in subsection (b) of this section.

**(3) Systems within States**

**(A) Population basis:** Except as provided in subparagraph (B), from such remainder for each such fiscal year, the Commissioner shall make an allotment to the eligible system within a State of an amount bearing the same ratio to such remainder as the population of the State bears to the population of all States.

**(B) Minimums:** Subject to the availability of appropriations to carry out this section, and except as provided in paragraph (4), the allotment to any system under subparagraph (A) shall be not less than \$100,000 or 1/3 of 1 percent of the remainder for the fiscal year for which the allotment is made, whichever is greater, and the allotment to any system under this section for any fiscal year that is less than \$100,000 or 1/3 of 1 percent of such remainder shall be increased to the greater of the two amounts.

#### **(4) Systems within other jurisdictions**

**(A) In general:** For the purposes of paragraph (3)(B), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

**(B) Allotment:** The eligible system within a jurisdiction described in subparagraph (A) shall be allotted under paragraph (3)(A) not less than \$50,000 for the fiscal year for which the allotment is made.

**(5) Adjustment for inflation:** For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section for the preceding fiscal year, the Commissioner shall increase each of the minimum grants or allotments under paragraphs (1)(B), (3)(B), and (4)(B) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this section between the preceding fiscal year and the fiscal year involved.

**(d) Proportional reduction:** To provide minimum allotments to systems within States (as increased under subsection (c)(5) of this section) under subsection (c)(3)(B) of this section, or to provide minimum allotments to systems within States (as increased under subsection (c)(5) of this section) under subsection (c)(4)(B) of this section, the Commissioner shall proportionately reduce the allotments of the remaining systems within States under subsection (c)(3) of this section, with such adjustments as may be necessary to prevent the allotment of any such remaining system within a State from being reduced to less than the minimum allotment for a system within a State (as increased under subsection (c)(5) of this section) under subsection (c)(3)(B) of this section, or the minimum allotment for a State (as increased under subsection (c)(5) of this section) under subsection (c)(4)(B) of this section, as appropriate.

**(e) Reallocation:** Whenever the Commissioner determines that any amount of an allotment to a system within a State for any fiscal year described in subsection (c)(1) of this section will not be expended by such system in carrying out the provisions of this section, the Commissioner shall make such amount available for carrying out the provisions of this section to one or more of the systems that the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a system for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the allotment of the system (as determined under the preceding provisions of this section) for such year.

**(f) Application:** In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will--

- (1)** have in effect a system to protect and advocate the rights of individuals with disabilities;
- (2)** have the same general authorities, including access to records and program income, as are set forth in subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (*42 U.S.C.A. § 15041 et seq.*);
- (3)** have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1) of this section;
- (4)** provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State or the American Indian consortium;
- (5)** develop a statement of objectives and priorities on an annual basis, and provide to the public, including individuals with disabilities and, as appropriate, the individuals' representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the system including—
  - (A)** the objectives and priorities for the activities of the system for each year and the rationale for the establishment of such objectives and priorities; and
  - (B)** the coordination of programs provided through the system under this section with the advocacy programs of the client assistance program under section 732 of this title, the State long-term care ombudsman program established under the Older Americans Act of 1965 (*42 U.S.C. 3001 et seq.*), the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (*42 U.S.C.A. § 15001 et seq.*), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (*42 U.S.C. 10801 et seq.*);
- (6)** establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system; and

**(7)** provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided.

**(g) Carryover and direct payment**

**(1) Direct payment:** Notwithstanding any other provision of law, the Commissioner shall pay directly to any system that complies with the provisions of this section, the amount of the allotment of the State or the grant for the eligible system that serves the American Indian consortium involved under this section, unless the State or American Indian consortium provides otherwise.

**(2) Carryover:** Any amount paid to an eligible system that serves a State or American Indian consortium for a fiscal year that remains unobligated at the end of such year shall remain available to such system that serves the State or American Indian consortium for obligation during the next fiscal year for the purposes for which such amount was paid.

**(h) Limitation on disclosure requirements:** For purposes of any audit, report, or evaluation of the performance of the program established under this section, the Commissioner shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

**(i) Administrative cost:** In any State in which an eligible system is located within a State agency, a State may use a portion of any allotment under subsection (c) of this section for the cost of the administration of the system required by this section. Such portion may not exceed 5 percent of the allotment.

**(j) Delegation:** The Commissioner may delegate the administration of this program to the Commissioner of the Administration on Developmental Disabilities within the Department of Health and Human Services.

**(k) Report:** The Commissioner shall annually prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the types of services and activities being undertaken by programs funded under this section, the total number of individuals served under this section, the types of disabilities represented by such individuals, and the types of issues being addressed on behalf of such individuals.

**(l) Authorization of appropriations:** There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.



**(m) Definitions:** As used in this section:

**(1) Eligible system:** The term "eligible system" means a protection and advocacy system that is established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (*42 U.S.C.A. § 15041 et seq.*) and that meets the requirements of subsection (f) of this section.

**(2) American Indian consortium:** The term "American Indian consortium" means a consortium established as described in section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (*42 U.S.C. 6042*).

### **State Grants for Protection and Advocacy Services Related to Assistive Technology (PAAT)**

*29 U.S.C.A. § 3004*

**Title 2-- Labor**

**Chapter 31-- Assistive Technology for Individuals with Disabilities**

**§ 3004**

**(a) Grants**

**(1) In general**

The Secretary shall make grants under subsection (b) of this section to protection and advocacy systems in each State for the purpose of enabling such systems to assist in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services for individuals with disabilities.

**(2) General authorities**

In providing such assistance, protection and advocacy systems shall have the same general authorities as the systems are afforded under part C of subchapter I of chapter 144 of Title 42 (*42 U.S.C.A. § 15041 et seq.*), as determined by the Secretary.

**(b) Grants**

**(1) Reservation**

For each fiscal year, the Secretary shall reserve such sums as may be necessary to carry out paragraph (4).

## **(2) Population basis**

From the funds appropriated under [section 3007\(b\)](#) of this title for a fiscal year and remaining after the reservation required by paragraph (1) has been made, the Secretary shall make a grant to a protection and advocacy system within each State in an amount bearing the same ratio to the remaining funds as the population of the State bears to the population of all States.

## **(3) Minimums**

Subject to the availability of appropriations, the amount of a grant to a protection and advocacy system under paragraph (2) for a fiscal year shall—

- (A)** in the case of a protection and advocacy system located in American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, not be less than \$30,000; and
- (B)** in the case of a protection and advocacy system located in a State not described in subparagraph (A), not be less than \$50,000.

## **(4) Payment to the system serving the American Indian Consortium**

### **(A) In general**

The Secretary shall make grants to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this section.

### **(B) Amount of grants**

The amount of such grants shall be the same as the amount provided under paragraph (3)(A).

### **(c) Direct payment**

Notwithstanding any other provision of law, the Secretary shall pay directly to any protection and advocacy system that complies with this section, the total amount of the grant made for such system under this section, unless the system provides otherwise for payment of the grant amount.

### **(d) Certain States**

#### **(1) Grant to lead agency**

Notwithstanding any other provision of this section, with respect to a State that, on November 12, 1998, was described in [section 102\(f\)\(1\)](#) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, the Secretary shall pay the amount of the grant described in subsection (a) of this section, and made under subsection (b) of this section, to the lead agency designated under [section 3003\(c\)\(1\)](#) of this title for the State.

### **(2) Distribution of funds**

A lead agency to which a grant amount is paid under paragraph (1) shall determine the manner in which funds made available through the grant will be allocated among the entities that were providing protection and advocacy services in that State on the date described in such paragraph, and shall distribute funds to such entities. In distributing such funds, the lead agency shall not establish any additional eligibility or procedural requirements for an entity in the State that supports protection and advocacy services through a protection and advocacy system. Such an entity shall comply with the same requirements (including reporting and enforcement requirements) as any other entity that receives funding under this section.

### **(3) Application of provisions**

Except as provided in this subsection, the provisions of this section shall apply to the grant in the same manner, and to the same extent, as the provisions apply to a grant to a system.

### **(e) Carryover**

Any amount paid to an eligible system for a fiscal year under this section that remains unobligated at the end of such fiscal year shall remain available to such system for obligation during the subsequent fiscal year. Program income generated from such amount shall remain available for 2 additional fiscal years after the year in which such amount was paid to an eligible system and may only be used to improve the awareness of individuals with disabilities about the accessibility of assistive technology and assist such individuals in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

### **(f) Report to Secretary**

An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report that contains such information as the Secretary may require, including documentation of the progress of the entity in--

- (1)** conducting consumer-responsive activities, including activities that will lead to increased access, for individuals with disabilities, to funding for assistive technology devices and assistive technology services;
- (2)** engaging in informal advocacy to assist in securing assistive technology devices and assistive technology services for individuals with disabilities;
- (3)** engaging in formal representation for individuals with disabilities to secure systems change, and in advocacy activities to secure assistive technology devices and assistive technology services for individuals with disabilities;
- (4)** developing and implementing strategies to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to advocate the provision of assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this chapter;
- (5)** coordinating activities with protection and advocacy services funded through sources other than this chapter, and coordinating activities with the capacity building and advocacy activities carried out by the lead agency; and
- (6)** effectively allocating funds made available under this section to improve the awareness of individuals with disabilities about the accessibility of assistive technology and assist such individuals in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

**(g) Reports and updates to State agencies**

An entity that receives a grant under this section shall prepare and submit to the lead agency of the State designated under section 3003(c)(1) of this title the report described in subsection (f) of this section and quarterly updates concerning the activities described in subsection (f) of this section.

**(h) Coordination**

On making a grant under this section to an entity in a State, the Secretary shall solicit and consider the opinions of the lead agency of the State with respect to efforts at coordination of activities, collaboration, and promoting outcomes between the lead agency and the entity that receives the grant under this section.

**Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA)**

**State Grants for Work Incentives Assistance to Disabled Beneficiaries (PABSS – Protection and Advocacy for Beneficiaries of Social Security)**

*42 U.S.C.A. § 1320b-21*

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

**Chapter 7**-- Social Security

**Subchapter XI**-- General Provisions, Peer Review, and Administrative Simplification

**Part A**-- General Provisions

**§ 1320b-21. State grants for work incentives assistance to disabled beneficiaries**

**(a) In general**

Subject to subsection (c) of this section, the Commissioner may make payments in each State to the protection and advocacy system established pursuant to part C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act (*42 U.S.C. 6041 et seq.*) for the purpose of providing services to disabled beneficiaries.

**(b) Services provided**

Services provided to disabled beneficiaries pursuant to a payment made under this section may include--

(1) information and advice about obtaining vocational rehabilitation and employment services; and

(2) advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain gainful employment.

**(c) Application**

In order to receive payments under this section, a protection and advocacy system shall submit an application to the Commissioner, at such time, in such form and manner, and accompanied by such information and assurances as the Commissioner may require.

**(d) Amount of payments**

(1) **In general:** Subject to the amount appropriated for a fiscal year for making payments under this section, a protection and advocacy system shall not be paid an amount that is less than—

**(A)** in the case of a protection and advocacy system located in a State (including the District of Columbia and Puerto Rico) other than Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the greater of—

**(i)** \$100,000; or

**(ii)** 1/3 of 1 percent of the amount available for payments under this section; and

**(B)** in the case of a protection and advocacy system located in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, \$50,000.

**(2) Inflation adjustment:** For each fiscal year in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Commissioner shall increase each minimum payment under subparagraphs (A) and (B) of paragraph (1) by a percentage equal to the percentage increase in the total amount so appropriated to carry out this section.

**(e) Annual report**

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Commissioner and the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (*42 U.S.C.A. § 1320b-19 note*) on the services provided to individuals by the system.

**(f) Funding**

**(1) Allocation of payments:** Payments under this section shall be made from amounts made available for the administration of subchapter II of this chapter (*42 U.S.C.A. § 401 et seq.*) and amounts made available for the administration of subchapter XVI of this chapter (*42 U.S.C.A. § 1381 et seq.*), and shall be allocated among those amounts as appropriate.

**(2) Carryover:** Any amounts allotted for payment to a protection and advocacy system under this section for a fiscal year shall remain available for payment to or on behalf of the protection and advocacy system until the end of the succeeding fiscal year.

**(g) Definitions-** In this section:

**(1) Commissioner-** The term "Commissioner" means the Commissioner of Social Security.

**(2) Disabled beneficiary-** The term "disabled beneficiary" means an individual—

**(A)** who is a disabled beneficiary as defined in section 1320b-18(k)(2) of this title;

**(B)** who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93-66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93-66);

**(C)** who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

**(D)** who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

**(3) Protection and advocacy system-** The term "protection and advocacy system" means a protection and advocacy system established pursuant to part C Title I of the Development Disabilities Assistance and Bill of Rights Act (*42 U.S.C. 6041 et seq.*).

#### **(h) Authorization of appropriations**

There are authorized to be appropriated to carry out this section \$7,000,000 each of the fiscal years 2000 through 2009.

#### **Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI)**

Title 42. The Public Health and Welfare

Chapter 6A. Public Health Service

Subchapter X Trauma Care

Part E Miscellaneous Programs

#### **§ 300d-53. State grants for protection and advocacy services**

**Effective: April 28, 2008**

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration (referred to in this section as the "Administrator"), shall make grants to protection and advocacy systems for the purpose of enabling such systems to provide services to individuals with traumatic brain injury.

(b) Services provided

Services provided under this section may include the provision of--

- (1) information, referrals, and advice;
- (2) individual and family advocacy;
- (3) legal representation; and
- (4) specific assistance in self-advocacy.

(c) Application

To be eligible to receive a grant under this section, a protection and advocacy system shall submit an application to the Administrator at such time, in such form and manner, and accompanied by such information and assurances as the Administrator may require.

(d) Appropriations less than \$2,700,000

(1) In general

With respect to any fiscal year in which the amount appropriated under subsection (l) of this section to carry out this section is less than \$2,700,000, the Administrator shall make grants from such amount to individual protection and advocacy systems within States to enable such systems to plan for, develop outreach strategies for, and carry out services authorized under this section for individuals with traumatic brain injury.

(2) Amount

The amount of each grant provided under paragraph (1) shall be determined as set forth in paragraphs (2) and (3) of subsection (e) of this section.

(e) Appropriations of \$2,700,000 or more

(1) Population basis

Except as provided in paragraph (2), with respect to each fiscal year in which the amount appropriated under subsection (l) of this section to carry out this section is \$2,700,000 or more, the Administrator shall make a grant to a protection and advocacy system within each State.

(2) Amount

The amount of a grant provided to a system under paragraph (1) shall be equal to an amount bearing the same ratio to the total amount appropriated for the fiscal year involved under



subsection (l) of this section as the population of the State in which the grantee is located bears to the population of all States.

(3) Minimums

Subject to the availability of appropriations, the amount of a grant a protection and advocacy system under paragraph (1) for a fiscal year shall--

**(A)** in the case of a protection and advocacy system located in American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and the protection and advocacy system serving the American Indian consortium, not be less than \$20,000; and

**(B)** in the case of a protection and advocacy system in a State not described in subparagraph (A), not be less than \$50,000.

(4) Inflation adjustment

For each fiscal year in which the total amount appropriated under subsection (l) of this section to carry out this section is \$5,000,000 or more, and such appropriated amount exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Administrator shall increase each of the minimum grants amount described in subparagraphs (A) and (B) of paragraph (3) by a percentage equal to the percentage increase in the total amount appropriated under subsection (l) of this section to carry out this section between the preceding fiscal year and the fiscal year involved.

(f) Carryover

Any amount paid to a protection and advocacy system that serves a State or the American Indian consortium for a fiscal year under this section that remains unobligated at the end of such fiscal year shall remain available to such system for obligation during the next fiscal year for the purposes for which such amount was originally provided.

(g) Direct payment

Notwithstanding any other provision of law, each fiscal year not later than October 1, the Administrator shall pay directly to any protection and advocacy system that complies with the provisions of this section, the total amount of the grant for such system, unless the system provides otherwise for such payment.

(h) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Administrator concerning the services provided to individuals with traumatic brain injury by such system.

(i) Data collection

The Administrator of the Health Resources and Services Administration and the Commissioner of the Administration on Developmental Disabilities shall enter into an agreement to coordinate the collection of data by the Administrator and the Commissioner regarding protection and advocacy services.

(j) Training and technical assistance

(1) Grants

For any fiscal year for which the amount appropriated to carry out this section is \$6,000,000 or greater, the Administrator shall use 2 percent of such amount to make a grant to an eligible national association for providing for training and technical assistance to protection and advocacy systems.

(2) Definition

In this subsection, the term “eligible national association” means a national association with demonstrated experience in providing training and technical assistance to protection and advocacy systems.

(k) System authority

In providing services under this section, a protection and advocacy system shall have the same authorities, including access to records, as such system would have for purposes of providing services under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

(l) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 2001, and such sums as may be necessary for each the fiscal years 2009 through 2012.

(m) Definitions

In this section:

(1) American Indian consortium

The term “American Indian consortium” means a consortium established under part C of the Developmental Disabilities Assistance Bill of Rights Act (42 U.S.C. 6042 et seq.) [should probably read 42 U.S.C. § 15043 et seq.]

(2) Protection and advocacy system

The term “protection and advocacy system” means a protection and advocacy system established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042 et seq.) under part C of the Developmental Disabilities Assistance Bill of Rights Act (42 U.S.C. 6042 et seq.) [

(3) State

The term “State”, unless otherwise specified, means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**Protection and Advocacy for Voting Access (PAVA)**

*42 USC §§ 15461-15462*

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

**Chapter 146--** Election Administration Improvement

**Subchapter II--** Commission

**Part D--** Election Assistance

**Subpart 5--** Protection and Advocacy Systems

**§ 15461. Payments for protection and advocacy systems**

**(a) In general:** In addition to any other payments made under this part, the Secretary of Health and Human Services shall pay the protection and advocacy system (as defined in *section 15002* of this title) of each State to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places. In providing such services, protection and advocacy systems shall have the same general authorities as they are afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (*42 U.S.C. 15041 et seq.*).

**(b) Minimum grant amount:** The minimum amount of each grant to a protection and advocacy system shall be determined and allocated as set forth in *subsections (c)(3), (c)(4), (c)(5), (e), and (g) of section 794e of Title 29*), except that the amount of the grants to systems referred to in *subsections (c)(3)(B) and (c)(4)(B) of that section* shall be not less than \$70,000 and \$35,000, respectively.

### **(c) Training and technical assistance program**

**(1) In general:** Not later than 90 days after the date on which the initial appropriation of funds for a fiscal year is made pursuant to the authorization under *section 15462* of this title, the Secretary shall set aside 7 percent of the amount appropriated under such section and use such portion to make payments to eligible entities to provide training and technical assistance with respect to the activities carried out under this section.

**(2) Use of funds:** A recipient of a payment under this subsection may use the payment to support training in the use of voting systems and technologies, and to demonstrate and evaluate the use of such systems and technologies, by individuals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals. At least one of the recipients under this subsection shall use the payment to provide training and technical assistance for nonvisual access.

**(3) Eligibility:** An entity is eligible to receive a payment under this subsection if the entity—

**(A)** is a public or private nonprofit entity with demonstrated experience in voting issues for individuals with disabilities;

**(B)** is governed by a board with respect to which the majority of its members are individuals with disabilities or family members of such individuals or individuals who are blind; and

**(C)** submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

### **§ 15462. Authorization of appropriations**

**(a) In general:** In addition to any other amounts authorized to be appropriated under this part, there are authorized to be appropriated \$10,000,000 for each of the fiscal years 2003, 2004, 2005, and 2006, and for each subsequent fiscal year such sums as may be necessary, for the purpose of making payments under *section 15461(a)* of this title; except that none of the funds provided by this subsection shall be used to initiate or otherwise participate in any litigation related to election-related disability access, notwithstanding the general authorities that the protection and advocacy systems are otherwise afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (*42 U.S. C. 15041 et seq.*).

**(b) Availability:** Any amounts appropriated pursuant to the authority of this section shall remain available until expended.