

(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<sup>3</sup> (42 U.S.C. 6042 et seq.).

(Pub. L. 99-319, title I, §102, May 23, 1986, 100 Stat. 478; Pub. L. 100-509, §3, Oct. 20, 1988, 102 Stat. 2543; Pub. L. 102-173, §§4, 10(1), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106-310, div. B, title XXXII, §3206(b), Oct. 17, 2000, 114 Stat. 1194; Pub. L. 106-402, title IV, §401(b)(13)(A), Oct. 30, 2000, 114 Stat. 1739.)

#### REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in par. (2), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in par. (8), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

2000—Par. (2). Pub. L. 106-402 substituted “subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part C of the Developmental Disabilities Assistance and Bill of Rights Act”.

Par. (4). Pub. L. 106-310, §3206(b)(1)(A), inserted “, except as provided in section 10804(d) of this title,” after “means” in introductory provisions.

Par. (4)(B). Pub. L. 106-310, §3206(b)(1)(B), designated existing provisions as cl. (i), redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i), and added cl. (ii).

Par. (8). Pub. L. 106-310, §3206(b)(2), added par. (8).

1991—Par. (1). Pub. L. 102-173, §10(1), substituted “individual with mental illness” for “mentally ill individual” wherever appearing.

Pars. (3) to (7). Pub. L. 102-173 added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, and substituted “individual with mental illness” for “mentally ill individual” wherever appearing in pars. (4) and (5).

1988—Par. (1). Pub. L. 100-509, §3(1), inserted “or death” after “caused, injury”.

Par. (3)(B). Pub. L. 100-509, §3(2), designated existing provisions as cl. (i), substituted “, even if the whereabouts of such inpatient or resident are unknown;” for period at end, and added cls. (ii) and (iii).

Par. (4). Pub. L. 100-509, §3(3), inserted “or death” after “injury” in two places and inserted before period at end “, including the failure to maintain adequate numbers of appropriately trained staff”.

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

<sup>3</sup> See References in Text note below.

#### § 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.

(Pub. L. 99-319, title I, §103, May 23, 1986, 100 Stat. 479; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

#### AMENDMENTS

1991—Par. (2). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals” in two places.

#### § 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<sup>1</sup> 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

<sup>1</sup> So in original. The comma probably should not appear.

rights and authority accorded to other representatives of residents of such facilities pursuant to State law and other Federal laws.

**(d) Definition for purposes of representation of individuals with mental illness; priority**

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.

(Pub. L. 99-319, title I, §104, May 23, 1986, 100 Stat. 479; Pub. L. 100-509, §7(a), (b)(1), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102-173, §§5, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106-310, div. B, title XXXII, §3206(c), Oct. 17, 2000, 114 Stat. 1194.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-310 added subsec. (d).

1991—Subsec. (a). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals” in three places.

Subsec. (c). Pub. L. 102-173, §5, added subsec. (c).

1988—Subsec. (a)(2). Pub. L. 100-509, §7(a), substituted “including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which” for “which, on May 23, 1986”.

Subsec. (b)(2). Pub. L. 100-509, §7(b)(1), substituted “10” for “5”.

**§ 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<sup>1</sup> 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. 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;

<sup>1</sup> So in original. Probably should be “an”.