

obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of this title.

#### § 10806. Access to records

(a) 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)(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.

(Pub. L. 99-319, title I, §106, May 23, 1986, 100 Stat. 481; Pub. L. 100-509, §6(b), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

#### AMENDMENTS

1991—Subsec. (b)(2)(C). Pub. L. 102-173 substituted "individuals with mental illness" for "mentally ill individuals".

1988—Subsec. (b)(3). Pub. L. 100-509 added par. (3).

#### § 10807. Legal actions

(a) Prior to instituting any legal action in a Federal or State court on behalf of a<sup>1</sup> 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) Subsection (a) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to a<sup>1</sup> individual with mental illness.

(Pub. L. 99-319, title I, §107, May 23, 1986, 100 Stat. 482; Pub. L. 102-173, §10(1), Nov. 27, 1991, 105 Stat. 1219.)

#### AMENDMENTS

1991—Pub. L. 102-173 substituted "individual with mental illness" for "mentally ill individual" in subsecs. (a) and (b).

#### 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;

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