

(Pub. L. 98-620, title II, §215, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 100-690, title VII, §7321(a), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, §607, Nov. 19, 1988, 102 Stat. 4654; Pub. L. 101-162, title V, Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102-572, title VIII, §801, Oct. 29, 1992, 106 Stat. 4515; Pub. L. 108-372, §2, Oct. 25, 2004, 118 Stat. 1754.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 3336, known as the State Justice Institute Act of 1984, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 10701 of this title and Tables.

## AMENDMENTS

2004—Pub. L. 108-372 amended section generally, inserting section catchline and substituting provisions authorizing appropriations for fiscal years 2005 to 2008 for provisions authorizing appropriations for fiscal years 1993 to 1996.

1992—Pub. L. 102-572 amended section generally. Prior to amendment, section authorized appropriations of \$15,000,000 for each of fiscal years 1989, 1990, 1991, and 1992.

1989—Pub. L. 101-162 repealed Pub. L. 100-702, §607, and revived Pub. L. 100-690, §7321(a). See 1988 Amendment notes below.

1988—Pub. L. 100-702, §607, which amended section generally, substituting appropriations authorization of \$15,000,000 for fiscal years 1989 and 1990, such amounts to remain available until expended for authorization of \$15,000,000 for fiscal years 1989, 1990, 1991, and 1992, was repealed by Pub. L. 101-162, title V.

Pub. L. 100-690, §7321(a), as revived by Pub. L. 101-162, title V, amended section generally, substituting appropriations authorization of \$15,000,000 for fiscal years 1989 through 1992 for authorization of \$13,000,000 for fiscal year 1986 and \$15,000,000 for fiscal years 1987 and 1988.

## EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 216 of Pub. L. 98-620, set out as a note under section 10701 of this title.

## CHAPTER 114—PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS

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### 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.

(Pub. L. 99-319, title I, §101, May 23, 1986, 100 Stat. 478; Pub. L. 102-173, §§3, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 99-319, May 23, 1986, 100 Stat. 478, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

## AMENDMENTS

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

Subsec. (a)(2) to (4). Pub. L. 102-173, §3, added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b). Pub. L. 102-173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals" in three places.

## SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-173, §1, Nov. 27, 1991, 105 Stat. 1217, provided that: "This Act [amending this section and sections 10802 to 10807, 10821, 10824, 10826, 10827, 10841, and 10851 of this title] may be cited as the 'Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991'."

## SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-509, §1, Oct. 20, 1988, 102 Stat. 2543, provided that: "This Act [amending sections 10802, 10804 to

10806, 10821, 10822, 10825, and 10827 of this title and enacting a provision set out as a note under section 10827 of this title] may be cited as the 'Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988'.<sup>1</sup>

#### SHORT TITLE

Pub. L. 99-319, §1, May 23, 1986, 100 Stat. 478, as amended by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, provided that: "This Act [enacting this chapter and section 247a of this title and enacting provisions set out as a note below] may be cited as the 'Protection and Advocacy for Individuals with Mental Illness Act'."

#### SUPERSEDITION OF BALANCED BUDGET PROVISIONS

Pub. L. 99-319, title IV, §402, May 23, 1986, 100 Stat. 490, provided that: "This Act [see Short Title note above] shall not be construed as superseding any of the balanced budget provisions set forth in section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 622(7)]."

### § 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<sup>1</sup> individual with mental illness, and includes acts such as—

(A) the rape or sexual assault of a<sup>1</sup> individual with mental illness;

(B) the striking of a<sup>1</sup> individual with mental illness;

(C) the use of excessive force when placing a<sup>1</sup> individual with mental illness in bodily restraints; and

(D) the use of bodily or chemical restraints on a<sup>1</sup> 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 [42 U.S.C. 15041 et seq.].

(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<sup>2</sup>;

(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<sup>1</sup> individual with mental illness or which placed a<sup>1</sup> 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<sup>1</sup> individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a<sup>1</sup> individual with mental illness, or the failure to provide a safe environment for a<sup>1</sup> 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<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, 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. Provisions similar to former part C of the Act are contained in subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. 106-402, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title.

#### 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".

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

<sup>2</sup> So in original.

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