

- (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) and paragraphs (1) and (2) of subsection (b).

(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) 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;

(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) 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.

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