

## WESTLAW

## NOTES OF DECISIONS (3)

Public policy

Disclosure

Persons entitled to bring action

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs &amp; Annos)

§ 10801. Congressional findings and statement of purpose

United States Code Annotated Title 42. The Public Health and Welfare (Approx. 2 pages)

Part A. Establishment of Systems

## Proposed Legislation

42 U.S.C.A. § 10801

## § 10801. Congressional findings and statement of purpose

Currentness

## (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.

## CREDIT(S)

(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.)

## Notes of Decisions (3)

42 U.S.C.A. § 10801, 42 USCA § 10801

Current through P.L. 114-115 approved 12-28-2015

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## WESTLAW

## NOTES OF DECISIONS (5)

Abuse

Facility

Individual with mental illness

United States Code Annotated  
 Title 42. The Public Health and Welfare  
 Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs & Annos)  
**§ 10802. Definitions** Subchapter I. Protection and Advocacy Systems  
 United States Code Annotated Title 42. The Public Health and Welfare Effective: October 30, 2000 (Approx. 3 pages)  
 Part A. Establishment of Systems

Effective: October 30, 2000

42 U.S.C.A. § 10802

## § 10802. Definitions

Currentness

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

#### CREDIT(S)

(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.)

#### Notes of Decisions (5)

#### Footnotes

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

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

<sup>3</sup> So in original. Probably should read "(42 U.S.C.A. § 15042 et seq.)".

42 U.S.C.A. § 10802, 42 USCA § 10802

Current through P.L. 114-115 approved 12-28-2015

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## WESTLAW

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs &amp; Annos)

**§ 10803. Allotments** Subchapter I. Protection and Advocacy Systems  
 United States Code Annotated Title 42. The Public Health and Welfare (Approx. 2 pages)  
 Part A. Establishment of Systems

## Proposed Legislation

42 U.S.C.A. § 10803

§ 10803. Allotments

Currentness

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.

## CREDIT(S)

(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.)

42 U.S.C.A. § 10803, 42 USCA § 10803

Current through P.L. 114-115 approved 12-28-2015

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## WESTLAW

## NOTES OF DECISIONS (1)

Investigation

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs &amp; Annos)

**§ 10804. Use of allotments**

United States Code Annotated Title 42. The Public Health and Welfare Effective: October 17, 2000 (Approx. 2 pages)

Part A. Establishment of Systems

**Proposed Legislation**

Effective: October 17, 2000

42 U.S.C.A. § 10804

**§ 10804. Use of allotments**

Currentness

**(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 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.

**CREDIT(S)**

(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.)

**Notes of Decisions (1)****Footnotes**

1 So in original. The comma probably should not appear.

42 U.S.C.A. § 10804, 42 USCA § 10804

Current through P.L. 114-115 approved 12-28-2015

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## WESTLAW

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs &amp; Annos)

§ 10805. System requirements

United States Code Annotated Title 42. The Public Health and Welfare Effective: April 30, 1997 (Approx. 4 pages)

Part A. Establishment of Systems

## Proposed Legislation

Effective: April 30, 1997

42 U.S.C.A. § 10805

## § 10805. System requirements

Currentness

(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

## NOTES OF DECISIONS (56)

Law governing

Disclosure, law governing

Records access, law governing

Preemption

Regulations

Facilities governed

Probable cause determination

Facilities access

Disclosure

Records access

Confidentiality

Legal representatives

Judicial review

Persons or entities entitled to maintain action

Standing

Ripeness

Moot questions

Injunction

Contempt

(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.

#### CREDIT(S)

(Pub.L. 99-319, Title I, § 105, May 23, 1986, 100 Stat. 480; Pub.L. 100-509, §§ 4 to 6(a), 7 (c), Oct. 20, 1988, 102 Stat. 2543 to 2545; Pub.L. 102-173, §§ 6, 10, Nov. 27, 1991, 105 Stat. 1218, 1219; Pub.L. 105-12, § 9(m), Apr. 30, 1997, 111 Stat. 28.)

#### Notes of Decisions (56)

#### Footnotes

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

42 U.S.C.A. § 10805, 42 USCA § 10805  
Current through P.L. 114-115 approved 12-28-2015

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United States Code Annotated  
 Title 42. The Public Health and Welfare  
 Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs & Annos)  
**§ 10806. Access to records**  
 United States Code Annotated Chapter I. Protection and Advocacy Systems  
 Title 42. The Public Health and Welfare (Approx. 2 pages)  
 Part A. Establishment of Systems

42 U.S.C.A. § 10806

§ 10806. Access to records

Currentness

(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.

NOTES OF DECISIONS (16)

Law governing  
 Records  
 Individual records  
 Peer review reports  
 Disclosure  
 Record access  
 Confidentiality  
 Consent  
 Probable cause

(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.

**CREDIT(S)**

(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.)

**Notes of Decisions (16)**

42 U.S.C.A. § 10806, 42 USCA § 10806

Current through P.L. 114-115 approved 12-28-2015

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## WESTLAW

United States Code Annotated  
 Title 42. The Public Health and Welfare  
 Chapter 114. Protection and Advocacy for Mentally Ill Individuals (Refs & Annos)  
**§ 10807. Legal actions**  
 United States Code Annotated Subchapter I. Protection and Advocacy Systems  
 Title 42. The Public Health and Welfare (Approx. 2 pages)  
 Part A. Establishment of Systems

42 U.S.C.A. § 10807

## § 10807. Legal actions

## Currentness

(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.

## CREDIT(S)

(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.)

## Notes of Decisions (11)

## Footnotes

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

42 U.S.C.A. § 10807, 42 USCA § 10807

Current through P.L. 114-115 approved 12-28-2015

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## NOTES OF DECISIONS (11)

Construction with other laws

Discretion of court

Sovereign immunity

Qualified immunity

Moot questions

Standing

Associational standing

Adequacy of administrative remedies

Exhaustion of administrative remedies

