

Public Health Service, HHS

§ 51.2

- 45 CFR part 16—Procedures of the Departmental Grant Appeals Board
- 45 CFR part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations
- 45 CFR part 79—Program fraud civil remedies
- 45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State, local, and tribal governments

- 51.44 [Reserved]
- 51.45 Confidentiality of protection and advocacy system records.
- 51.46 Disclosing information obtained from a provider of mental health services.

AUTHORITY: 42 U.S.C. 10801, *et seq.*

SOURCE: 62 FR 53564, Oct. 15, 1997, unless otherwise noted.

§ 51.1 Scope.

The provisions of this part apply to recipients of Federal assistance under the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended.

PART 51—REQUIREMENTS APPLICABLE TO THE PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS PROGRAM

§ 51.2 Definitions.

In addition to the definitions in section 102 of the Act, as amended, the following definitions apply:

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 an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue.

Act means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, also referred to as Protection and Advocacy for Individuals with Mental Illness Act.

ADD means the Administration on Developmental Disabilities within the Administration for Children and Families, Department of Health and Human Services.

Care or Treatment means services provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other

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adjunctive therapies, medication supervision, special education and rehabilitation, even if only “as needed” or under a contractual arrangement.

Center or *CMHS* means the Center for Mental Health Services, a component of the Substance Abuse and Mental Health Services Administration.

Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the P&A system, including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness.

Department or *HHS* means the U.S. Department of Health and Human Services.

Designated Official is the State official or public or private entity empowered by the Governor or State legislature to be accountable for the proper use of funds by the P&A system.

Director means the Director of the Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, or his or her designee.

Facility includes any public or private residential setting that provides overnight care accompanied by treatment services. Facilities include, but are not limited to the following: general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.

Fiscal Year or *FY* means the Federal fiscal year (October 1–September 30) unless otherwise specified.

Full Investigation is based upon a complaint or a determination of probable cause and means the access to facilities, clients and records authorized under this part that is necessary for a P&A system to make a determination about whether an allegation of abuse or neglect is taking place or has taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Governor means the chief executive officer of the State, Territory or the

District of Columbia, or his or her designee, who has been formally designated to act for the Governor in carrying out the requirements of the Act and this part.

Individual with Mental Illness means an individual 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

(1) Who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident is unknown;

(2) Who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility, or

(3) Who is involuntarily confined in a detention facility, jail or prison.

Legal Guardian, Conservator, and Legal Representative all mean an individual whose appointment is made and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers, and having authority to consent to health/mental health care or treatment of an individual with mental illness. It does not include persons acting only as a representative payee, persons acting only to handle financial payments, attorneys or persons acting on behalf of an individual with mental illness only in individual legal matters, or officials responsible for the provision of health or mental health services to an individual with mental illness, or their designees.

Neglect means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff.

Private Entity means a nonprofit or for-profit corporation, partnership or other nongovernmental organization.

Probable cause means reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

Program means activities carried out by the P&A system and operating as part of a P&A system to meet the requirements of the Act.

Public Entity means an organizational unit of a State or local government or a quasi-governmental entity with one or more governmental powers.

System means the organization or agency designated in a State to administer and operate a protection and advocacy program under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, 6042) and thereby eligible to administer a program for individuals with mental illness.

Subpart A—Basic Requirements

§51.3 Formula for determining allotments.

The Secretary shall make allotments to eligible Systems from amounts apportioned each year under the Act on the basis of a formula prescribed by the Secretary in accordance with the requirements of sections 112 and 113 of the Act (42 U.S.C. 10822 and 10823).

§51.4 Grants administration requirements.

The following parts of titles 42 and 45 CFR apply to grants funded under this part.

- 42 CFR Part 50, Subpart D.
- 45 CFR Part 16—Procedures of the Departmental Grant Appeal Board.
- 45 CFR Part 74—Administration of Grants.
- 45 CFR Part 75—Informal Grant Appeals Procedures.
- 45 CFR Part 76—Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace.

45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and Procedure for Hearings under Part 80 of This Title.

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance.

45 CFR Part 91—Nondiscrimination on the Basis of Age in Education Programs and Activities Receiving Federal Financial Assistance from HHS.

45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

45 CFR Part 93—New Restrictions on Lobbying.

45 CFR Part 1386, subpart A.

§51.5 Eligibility for allotment.

(a) Federal financial assistance for protection and advocacy activities for individuals with mental illness will be given only to a System that has been established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, *et seq.*) and designated in accordance with 45 CFR part 1386, subpart B.

(b) The P&A system must meet the requirements of sections 105 and 111 of the Act (42 U.S.C. 10805 and 10821) and that P&A system must be operational. Each system shall submit an application at the beginning of each PAIMI authorization period. This application shall contain at a minimum the program priorities and budget for the first year of the authorization period and the required assurances and certifications. Thereafter, the system shall submit yearly updates of the budget and program priorities for the upcoming fiscal year through its annual report.

(c) Written assurances of compliance with sections 105 and 111 of the Act (42 U.S.C. 10805 and 10821) and other requirements of the Act and this part shall be submitted by the P&A system in the format designated by the Director. These assurances will remain in effect for the period specified in the application for funds unless changes