

Public Law 100-509
100th Congress

An Act

To amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such Act, and for other purposes.

Oct. 20, 1988
[S. 2393]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".

SEC. 2. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.).

Protection and
Advocacy for
Mentally Ill
Individuals
Amendments
Act of 1988.
42 USC 10801
note.

SEC. 3. SCOPE OF COVERAGE.

Section 102 (42 U.S.C. 10802) is amended—

(1) in paragraph (1), by inserting "or death" after "caused, injury";

(2) in paragraph (3)—

(A) by inserting "(i)" after the subparagraph designation in subparagraph (B);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof the following: ", even if the whereabouts of such inpatient or resident are unknown;"; and

(C) by adding at the end thereof the following new clauses:

"(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";

"(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense."; and

(3) in paragraph (4)—

(A) by inserting "or death" after "injury" each place such word occurs; and

(B) by inserting before the period at the end thereof the following: ", including the failure to maintain adequate numbers of appropriately trained staff".

Health care
facilities.

SEC. 4. ESTABLISHMENT OF A GOVERNING AUTHORITY.

Section 105 (42 U.S.C. 10805) is amended—

(1) in subsection (a)(6), by striking out "a board" and inserting in lieu thereof "an advisory council"; and

(2) by adding at the end thereof the following new subsection:

State and local
governments.

“(c)(1)(A) Each system established in a State, through allotments received under section 103, to protect and advocate the rights of mentally ill individuals 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.

“(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.”

SEC. 5. ADVISORY COUNCIL REPORT.

Section 105(a)(7) (42 U.S.C. 10805(a)(7)) is amended by striking out the period and inserting in lieu thereof the following: “, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;”.

SEC. 6. ACCESS TO RECORDS.

(a) **SYSTEM REQUIREMENT.**—Section 105(a)(4)(B) (42 U.S.C. 10805(a)(4)(B)) is amended by striking out “any individual” and inserting in lieu thereof “any individual (including an individual who has died or whose whereabouts are unknown)”.

(b) **DEFINITION OF RECORDS.**—Section 106(b) (42 U.S.C. 10806(b)) is amended by adding at the end thereof the following new paragraph:

“(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).”

SEC. 7. MISCELLANEOUS PROVISIONS.

Health and
medical care.

(a) **SUBCONTRACTING.**—Section 104(a)(2) (42 U.S.C. 10804(a)(2)) is amended by striking out “which, on the date of enactment of this Act” and inserting in lieu thereof “including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which”.

(b) **TECHNICAL ASSISTANCE LIMITATIONS.**—

(1) **STATE ASSISTANCE.**—Section 104(b)(2) (42 U.S.C. 10804(b)(2)) is amended by striking out “5 percent” and inserting in lieu thereof “10 percent”.

(2) ASSISTANCE BY THE SECRETARY.—Section 10 (42 U.S.C. 10825) is amended to read as follows:

“TECHNICAL ASSISTANCE

“SEC. 115. The Secretary shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance to eligible systems with respect to activities carried out under this title, consistent with requests by such systems for such assistance.”.

(c) ADDITIONAL SYSTEM REQUIREMENTS.—Section 105(a) (42 U.S.C. 10805(a)) (as amended by section 5), is further amended by adding at the end thereof the following new paragraphs:

“(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and

“(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system.”.

(d) APPLICATIONS.—Section 111 (42 U.S.C. 10821) is amended—

(1) by inserting “(a)” after the section designation; and

(2) by adding at the end thereof the following new subsection:

“(b) Applications submitted under this section shall remain in effect for a 3-year period, and the assurances required under this section shall be for the same 3-year period.”.

(e) ALLOTMENT FORMULA.—Section 112(a) (42 U.S.C. 10822(a)) is amended—

(1) in paragraph (2) to read as follows:

“(2) Notwithstanding paragraph (1) and subject to the availability of appropriations under section 117—

“(A) if the total amount appropriated in a fiscal year is at least \$13,000,000—

“(i) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall be the greater of—

District of
Columbia.
Puerto Rico.

“(I) \$140,000; or

“(II) \$125,000 in addition to the amount determined under paragraph (3); and

“(ii) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be the greater of—

Territories, U.S.

“(I) \$75,000; or

“(II) \$67,000 in addition to the amount determined under paragraph (3); and

“(B) if the total amount appropriated in a fiscal year is less than \$13,000,000, the amount of the allotment of the eligible system—

“(i) of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than \$125,000 in addition to the amount determined under paragraph (3); and

District of
Columbia.
Puerto Rico.

“(ii) of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than \$67,000 in addition to the amount determined under paragraph (3).”; and

Territories, U.S.

(2) by adding at the end thereof the following new paragraph:

“(3) In any case in which the total amount appropriated under section 117 for a fiscal year exceeds the total amount appropriated under such section, as in effect on the day before the date of enactment of this paragraph, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

“(A) the total amount appropriated under section 117 for the fiscal year for which the increase in minimum allotment is made, minus;

“(B) the total amount appropriated under section 117 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 117 for such preceding fiscal year.”.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—Section 117 (42 U.S.C. 10827) is amended to read as follows:

“**AUTHORIZATION OF APPROPRIATIONS**

“SEC. 117. For allotments under this title, there are authorized to be appropriated \$14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.”.

SEC. 8. EFFECTIVE DATE.

(a) **IN GENERAL.**—The amendments made by this Act, other than the amendment made by section 7(f), shall become effective on the date of the enactment of this Act.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—The amendment made by section 7(f) shall become effective on October 1, 1988.

Approved October 20, 1988.

42 USC 10827
note.

LEGISLATIVE HISTORY—S. 2393 (H.R. 5155):

HOUSE REPORTS: No. 100-903 accompanying H.R. 5155 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-454 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Aug. 9, considered and passed Senate.

Sept. 20, H.R. 5155 considered and passed House; proceedings vacated and S. 2393, amended, passed in lieu.

Oct. 4, Senate concurred in certain House amendment with an amendment and disagreed to another.

Oct. 5, House receded and concurred in Senate amendment.