

## APPENDIX B

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**[CITE: 42USC10802]**

### TITLE 42 - THE PUBLIC HEALTH AND WELFARE

#### CHAPTER 114 - PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS

##### SUBCHAPTER 1 - PROTECTION AND ADVOCACY SYSTEMS

###### Part A - Establishment of Systems

Sec. 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 \1\ individual with mental illness, and includes acts such as --  
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\1\ So in original. Probably should be "an".  
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  - A. the rape or sexual assault of a \1\ individual with mental illness;
  - B. the striking of a \1\ individual with mental illness;
  - C. the use of excessive force when placing a \1\ individual with mental illness in bodily restraints
  - D. the use of bodily or chemical restraints on a \1\ 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 a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6041 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 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";  
(III) who is involuntarily confined in a municipal detention facility for reason 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 \1\ individual with mental illness or which placed a \1\ 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 \1\ individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a \1\ individual with mental illness, or the failure to provide a safe environment for a \1\ individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.
6. 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.

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**[CITE: 42USC10805]**

Sec. 10805. System requirements

- 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 of it 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 \1\ individual with mental illness; and  
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\1\ So in original. Probably should be "an".  
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    - ii. (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
    - iii. with respect to whom a complaint has been received by the system of 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;

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**[CITE: 42USC10806]**

Sec. 10806. Access to records

- 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.

(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.