

29 USC 794e

Protection and advocacy of individual rights

(a) Purpose and construction

(1) Purpose

The purpose of this section is to support a system in each State to protect the legal and human rights of individuals with disabilities who -

(A) need services that are beyond the scope of services authorized to be provided by the client assistance program under section 732 of this title; and

(B)(i) are ineligible for protection and advocacy programs under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.] because the individuals do not have a developmental disability, as defined in section 102 of such Act [42 U.S.C. 15002]; and

(ii) are ineligible for services under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (11) (42 U.S.C. 10801 et seq.) because the individuals are not individuals with mental illness, as defined in section 102 of such Act (42 U.S.C. 10802).

(2) Construction

This section shall not be construed to require the provision of protection and advocacy services that can be provided under the Assistive Technology Act of 1998 [29 U.S.C. 3001 et seq.].

(b) Appropriations less than \$5,500,000

For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of subparagraphs (A) and (B) of subsection (a)(1) of this section.

(c) Appropriations of \$5,500,000 or more

(1) Reservations

(A) Technical assistance

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$5,500,000, the Commissioner shall set aside not less than 1.8 percent and not more than 2.2 percent of the amount to provide training and technical assistance to the systems established under this section.

(B) Grant for the eligible system serving the American Indian consortium

For any fiscal year in which the amount appropriated to carry

out this section equals or exceeds \$10,500,000, the Commissioner shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian consortium. The Commission shall make the grant in an amount of not less than \$50,000 for the fiscal year.

(2) Allotments

For any such fiscal year, after the reservations required by paragraph (1) have been made, the Commissioner shall make allotments from the remainder of such amount in accordance with paragraph (3) to eligible systems within States to enable such systems to carry out protection and advocacy programs authorized under this section for individuals referred to in subsection (b) of this section.

(3) Systems within States

(A) Population basis

Except as provided in subparagraph (B), from such remainder for each such fiscal year, the Commissioner shall make an allotment to the eligible system within a State of an amount bearing the same ratio to such remainder as the population of the State bears to the population of all States.

(B) Minimums

Subject to the availability of appropriations to carry out this section, and except as provided in paragraph (4), the allotment to any system under subparagraph (A) shall be not less than \$100,000 or $\frac{1}{3}$ of 1 percent of the remainder for the fiscal year for which the allotment is made, whichever is greater, and the allotment to any system under this section for any fiscal year that is less than \$100,000 or $\frac{1}{3}$ of 1 percent of such remainder shall be increased to the greater of the two amounts.

(4) Systems within other jurisdictions

(A) In general

For the purposes of paragraph (3)(B), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

(B) Allotment

The eligible system within a jurisdiction described in subparagraph (A) shall be allotted under paragraph (3)(A) not less than \$50,000 for the fiscal year for which the allotment is made.

(5) Adjustment for inflation

For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section for the preceding fiscal year, the Commissioner shall increase each of the minimum grants or allotments under paragraphs (1)(B), (3)(B),

and (4)(B) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this section between the preceding fiscal year and the fiscal year involved.

(d) Proportional reduction

To provide minimum allotments to systems within States (as increased under subsection (c)(5) of this section) under subsection (c)(3)(B) of this section, or to provide minimum allotments to systems within States (as increased under subsection (c)(5) of this section) under subsection (c)(4)(B) of this section, the Commissioner shall proportionately reduce the allotments of the remaining systems within States under subsection (c)(3) of this section, with such adjustments as may be necessary to prevent the allotment of any such remaining system within a State from being reduced to less than the minimum allotment for a system within a State (as increased under subsection (c)(5) of this section) under subsection (c)(3)(B) of this section, or the minimum allotment for a State (as increased under subsection (c)(5) of this section) under subsection (c)(4)(B) of this section, as appropriate.

(e) Reallotment

Whenever the Commissioner determines that any amount of an allotment to a system within a State for any fiscal year described in subsection (c)(1) of this section will not be expended by such system in carrying out the provisions of this section, the Commissioner shall make such amount available for carrying out the provisions of this section to one or more of the systems that the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a system for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the allotment of the system (as determined under the preceding provisions of this section) for such year.

(f) Application

In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will -

- (1) have in effect a system to protect and advocate the rights of individuals with disabilities;
- (2) have the same general authorities, including access to records and program income, as are set forth in subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.];
- (3) have the authority to pursue legal, administrative, and

other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1) of this section;

(4) provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State or the American Indian consortium;

(5) develop a statement of objectives and priorities on an annual basis, and provide to the public, including individuals with disabilities and, as appropriate, the individuals' representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the system including -

(A) the objectives and priorities for the activities of the system for each year and the rationale for the establishment of such objectives and priorities; and

(B) the coordination of programs provided through the system under this section with the advocacy programs of the client assistance program under section 732 of this title, the State long-term care ombudsman program established under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.], and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (!2) (42 U.S.C. 10801 et seq.);

(6) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system; and

(7) provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided.

(g) Carryover and direct payment

(1) Direct payment

Notwithstanding any other provision of law, the Commissioner shall pay directly to any system that complies with the provisions of this section, the amount of the allotment of the State or the grant for the eligible system that serves the American Indian consortium involved under this section, unless the State or American Indian consortium provides otherwise.

(2) Carryover

Any amount paid to an eligible system that serves a State or American Indian consortium for a fiscal year that remains unobligated at the end of such year shall remain available to such system that serves the State or American Indian consortium

for obligation during the next fiscal year for the purposes for which such amount was paid.

(h) Limitation on disclosure requirements

For purposes of any audit, report, or evaluation of the performance of the program established under this section, the Commissioner shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(i) Administrative cost

In any State in which an eligible system is located within a State agency, a State may use a portion of any allotment under subsection (c) of this section for the cost of the administration of the system required by this section. Such portion may not exceed 5 percent of the allotment.

(j) Delegation

The Commissioner may delegate the administration of this program to the Commissioner of the Administration on Developmental Disabilities within the Department of Health and Human Services.

(k) Report

The Commissioner shall annually prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the types of services and activities being undertaken by programs funded under this section, the total number of individuals served under this section, the types of disabilities represented by such individuals, and the types of issues being addressed on behalf of such individuals.

(l) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

(m) Definitions

As used in this section:

(1) Eligible system

The term "eligible system" means a protection and advocacy system that is established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.] and that meets the requirements of subsection (f) of this section.

(2) American Indian consortium

The term "American Indian consortium" means a consortium established as described in section 142 (!2) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042).

AMENDMENTS

2000 - Subsecs. (a)(1)(B)(i), (f)(2). Pub. L. 106-402, Sec. 401(b)(3)(C), substituted "subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)".

Subsec. (f)(5)(B). Pub. L. 106-402, Sec. 401(b)(3)(D), substituted "Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.)".

Subsec. (m)(1). Pub. L. 106-402, Sec. 401(b)(3)(C), substituted "subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)".

1998 - Pub. L. 105-220 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (n) relating to protection and advocacy of individual rights.

Subsec. (a)(2). Pub. L. 105-394 substituted "the Assistive Technology Act of 1998" for "the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (42 U.S.C. 2201 et seq.)".

1997 - Subsec. (f)(8). Pub. L. 105-12 added par. (8).

1993 - Subsec. (a)(1). Pub. L. 103-73, Sec. 112(c)(1), added par. (1) and struck out former par. (1) which read as follows: "are ineligible for client assistance programs under section 732 of this title; and".

Subsec. (b). Pub. L. 103-73, Sec. 112(c)(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows:

"(1) Allotments. - For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of paragraphs (1) and (2) of subsection (a) of this section.

"(2) Other jurisdictions. - For the purposes of this subsection, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau shall not be considered to be States."

Subsec. (c)(4)(A). Pub. L. 103-73, Sec. 112(c)(3)(A)(i), substituted "paragraph (3)(B)" for "this subsection".

Subsec. (c)(4)(B). Pub. L. 103-73, Sec. 112(c)(3)(A)(ii), substituted "allotted under paragraph (3)(A)" for "allotted".

Subsec. (c)(5). Pub. L. 103-73, Sec. 112(c)(3)(B), added par. (5) and struck out heading and text of former par. (5). Text read as

follows:

"(A) States. - For purposes of determining the minimum amount of an allotment under paragraph (3)(B), the amount \$100,000 shall, in the case of such allotments for fiscal year 1994 and subsequent fiscal years, be increased to the extent necessary to offset the effects of inflation occurring since October 1992, as measured by the percentage increase in the Consumer Price Index For All Urban Consumers (U.S. city average) during the period ending on April 1 of the fiscal year preceding the fiscal year for which the allotment is to be made.

"(B) Certain territories. - For purposes of determining the minimum amount of an allotment under paragraph (4)(B), the amount \$50,000 shall, in the case of such allotments for fiscal year 1994 and subsequent fiscal years, be increased to the extent necessary to offset the effects of inflation occurring since October 1992, as measured by the percentage increase in the Consumer Price Index For All Urban Consumers (U.S. city average) during the period ending on April 1 of the fiscal year preceding the fiscal year for which the allotment is to be made."

Subsec. (d). Pub. L. 103-73, Sec. 112(c)(4), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "Amounts necessary to provide allotments to systems within States in accordance with subsection (c)(3)(B) of this section as increased under subsection (c)(5) of this section, or to provide allotments in accordance with subsection (c)(4)(B) of this section as increased in accordance with subsection (c)(5) of this section, shall be derived by proportionately reducing the allotments of the remaining systems within States under subsection (c)(3) of this section, but with such adjustments as may be necessary to prevent the allotment of any such remaining systems within States from being thereby reduced to less than the greater of \$100,000 or one-third of one percent of the sums made available for purposes of this section for the fiscal year for which the allotment is made, as increased in accordance with subsection (c)(5) of this section."

Subsec. (i). Pub. L. 103-73, Sec. 112(c)(6), which directed the amendment of this section "in subsection (i), to read as follows:", was executed by adding subsec. (i). Former subsec. (i) redesignated (n).

Subsec. (j). Pub. L. 103-73, Sec. 112(c)(7), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: "An eligible system may not use more than 5 percent of any allotment under subsection (c) of this section for the cost of administration of the system required by this section."

Subsec. (n). Pub. L. 103-73, Sec. 112(c)(5), redesignated subsec. (i) as (n).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, and also applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.