

enhance the development and implementation of effective protection and advocacy services for individuals with mental illness, including at a minimum:

(a)(1) Training of program staff to work with family members of clients served by the program where the individual with mental illness is:

- (i) A minor,
- (ii) Legally competent and chooses to involve the family member; or
- (iii) Legally incompetent and the legal guardian, conservator or other legal representative is a family member.

(2) This training may be provided by individuals who have received or are receiving mental health services and family members of such individuals.

(b) Training to enhance sensitivity to and understanding of individuals with mental illness who are members of racial or ethnic minorities and to develop strategies for outreach to those populations.

(c) Training to conduct full investigations of abuse or neglect.

§§ 51.28–51.30 [Reserved]

Subpart C—Protection and Advocacy Services

§51.31 Conduct of protection and advocacy activities.

(a) Consistent with State and Federal law and the canons of professional ethics, a P&A system may use any appropriate technique and pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals with mental illness to address abuse, neglect or other violations of rights.

(b) A P&A system shall establish policies and procedures to guide and coordinate advocacy activities. The P&A system shall not implement a policy or practice restricting the remedies which may be sought on behalf of individuals with mental illness or compromising the authority of the P&A system to pursue such remedies through litigation, legal action or other forms of advocacy. However, this requirement does not prevent the P&A system from placing limitations on case or client acceptance criteria developed as part

of the annual priorities. Prospective clients must be informed of any such limitations at the time they request service.

(c) Wherever possible, the program should establish an ongoing presence in residential mental health care or treatment facilities, and relevant hospital units.

(d) Program activities should be carried out in a manner which allows program staff to:

- (1) Interact regularly with those individuals who are current or potential recipients of protection and advocacy services;
- (2) Interact regularly with staff providing care or treatment;
- (3) Obtain information and review records; and
- (4) Communicate with family members, social and community service workers and others involved in providing care or treatment.

(e) A P&A system may support or provide training, including related travel expenses, for individuals with mental illness, family members of such individuals, and other persons who are not program staff, contractors, or board or council members, to increase knowledge about protection and advocacy issues, to enhance leadership capabilities, or to promote Federal-State and intra-State cooperation on matter related to mental health system improvement. Decisions concerning the selection of individuals to receive such training shall be made in accordance with established policies, procedures and priorities of the P&A system.

(f) A P&A system may monitor, evaluate and comment on the development and implementation of Federal, State and local laws, regulations, plans, budgets, levies, projects, policies and hearings affecting individuals with mental illness as a part of federally funded advocacy activities. A P&A system shall carry out systemic advocacy—those efforts to implement changes in policies and practices of systems that impact persons with mental illness.

(g) Determination of “probable cause” may result from P&A system monitoring or other activities, including observation by P&A system personnel, and reviews of monitoring and

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other reports prepared by others whether pertaining to individuals with mental illness or to general conditions affecting their health or safety.

(h) A P&A which is a public P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies imposed by the State to the extent that such policies would impact program staff or activities funded with Federal dollars and would prevent the P&A system from carrying out its mandates under the Act.

(i) A P&A system may exercise its authority under State law where the authority exceeds the authority required by the Act. However, State law must not diminish the required authority of the Act.

§ 51.32 Resolving disputes.

(a) Each P&A system is encouraged to develop and employ techniques such as those involving negotiation, conciliation and mediation to resolve disputes early in the protection and advocacy process.

(b) Disputes should be resolved whenever possible through nonadversarial process involving negotiation, mediation and conciliation. Consistent with State and Federal laws and canons of professional responsibility, family members should be involved in this process, as appropriate, where the individual with mental illness is:

- (1) A minor,
- (2) Legally competent and chooses to involve the family member, or
- (3) Legally incompetent and the legal guardian, conservator or other legal representative is a family member or the legal guardian, conservator or other legal representative chose to involve the family member.

(c) A P&A system must exhaust in a timely manner all administrative remedies, where appropriate, prior to initiating legal action in a Federal or State court.

(d) Paragraph (c) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to an individual with mental illness nor does it apply in circumstances where administrative procedures do not exist. If in pursuing administrative remedies, the P&A system

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determines that any matter with respect to an individual with mental illness with mental illness with not be resolved within a reasonable time, the P&A system may pursue alternative remedies, including initiating legal action.

(e) A P&A system shall be held to the standard of exhaustion of remedies provided under State and Federal law. The Act imposes no additional burden respecting exhaustion of remedies.

§§ 51.33–51.40 [Reserved]

Subpart D—Access to Records, Facilities and Individuals

§ 51.41 Access to records.

(a) Access to records shall be extended promptly to all authorized agents of a P&A system.

(b) A P&A system shall have access to the records of any of the following individuals with mental illness:

(1) An individual who is a client of the P&A system if authorized by that individual or the legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition, is unable to authorize the P&A system to have access.

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State or one of its political subdivisions; and

(iii) A complaint or report has been received and the P&A system has determined that there is probable cause to believe that the individual has been or may be subject to abuse or neglect.

(3) An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint or report has been received by the P&A system and with respect to whom the P&A system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all of the following conditions exist: