

## § 51.32

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: