

§ 1386.23

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standards, demographic and statistical information relating to a facility.

(d) A system shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs.

(e) The client's record is the property of the Protection and Advocacy System which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy System must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and release of information from the client's record; and

(3) Be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuals who furnish information that forms the basis for a determination that probable cause exists.

(f) Access to Facilities and Individuals with Developmental Disabilities—A system shall have reasonable unaccompanied access to public and private facilities which provide services, supports, and other assistance for individuals with developmental disabilities in the State when necessary to conduct a full investigation of an incident of abuse or neglect under section 142(a)(2)(B) of the Act. This authority shall include the opportunity: to interview any facility service recipient, employee, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation; and to inspect, view and photograph all areas of the facility's premises that might be reasonably believed by the system to have been connected with the incident under investigation.

(g) Under section 142(a)(2)(H) of the Act, the system and all of its authorized agents shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum

shall include normal working hours and visiting hours, for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

(h) Unaccompanied access to residents of a facility shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person.

(i) If a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities.

[61 FR 51158, Sept. 30, 1996]

§ 1386.23 Periodic reports: Protection and Advocacy System.

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By January 1 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities, (SOP) for the coming fiscal year as required under section 142(a)(2)(C) of the Act.

(1) The SOP is a description and explanation of the priorities and selection criteria for the system's individual advocacy caseload; systemic advocacy work and training activities, and the outcomes which it strives to accomplish.

(2) Where applicable, the SOP must include a description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with other Protection and Advocacy (P&A) programs administered by the State Protection and Advocacy System. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs.

(3) Priorities as established through the SOP serve as the basis for P&As to determine which cases are selected in a given fiscal year. P&As have the authority to turn down a request for assistance when it is outside the scope of the SOP but they must inform individuals that this is the basis for turning them down.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Objectives and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Incorporate or address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated

Program in the final Statement submitted to the Department; and

(5) Address how the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program will collaborate with each other and with other public and private entities.

(The requirements under paragraph (b) are approved under control number 0348-0039 by the Office of Management and Budget (OMB). Information collection requirements contained in paragraph (c) are approved under OMB control number 0970-0132 pursuant to sections 142(a)(2) (C) and (D) and section 107(b) of the Act.)

[61 FR 51159, Sept. 30, 1996]

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace. Such activities include but are not limited to: Preparation of wills, divorce decrees, and real estate proceedings. Allowable costs in such cases would include the Protection and Advocacy System providing disability related technical assistance information and referral to appropriate programs and services; and

(2) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

(b) Attorneys fees are considered program income pursuant to Part 74-Administration of Grants and Part 92-Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those earned by contractors and those received after the project period in which they were earned.

[52 FR 44847, Nov. 20, 1987; 61 FR 51159, Sept. 30, 1996]