

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of programs provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DDA; and

(D) The PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994; 59 FR 33680, June 30, 1994]

Subpart C—How Does the Secretary Make an Award?

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than \$5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (f))

[62 FR 10404, Mar. 6, 1997]

§ 381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than \$5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide training and technical assistance to eligible systems established under this program.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)-(e) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than \$5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(Authority: Sec. 509(c)-(e) of the Act; 29 U.S.C. 794e(c)-(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or subgrant to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program in whole or in part, but only if the agency, entity, or individual with whom the eligible system has contracted—

(1) Does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, “services under the Act” and “treatment, services, or habilitation” does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under part C of the DDA and the PAIMI, or any other protection and advocacy services.

(Authority: Secs. 12 and 509(i) of the Act; 29 U.S.C. 711(c) and 794e(i))

[58 FR 43022, Aug. 12, 1993, as amended at 59 FR 8344, Feb. 18, 1994]

§ 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system’s use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized

representative or advocate (including the individual’s advocate from the eligible system), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the