



Program Guidance

Date February 11, 2016

TO: Protection & Advocacy Systems Grantees

From: Aaron Bishop, Commissioner, Administration on Disabilities, Administration for Community Living, United States Department of Health & Human Services

RE: Protection & Advocacy Program Guidance on FY 2016 Appropriations Language Regarding Lawsuits and State Intermediate Care Facilities Closure

Background:

The Consolidated Appropriations Act of 2016, P.L. 114-113, contains the following language that applies for FY 2016 to funding for Protection & Advocacy Systems (P&As) under Subtitle C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as amended [42 U.S.C. § 15041 - § 15045]. The language remains in effect during any Continuing Resolution of FY 2016 funding. The language also applies to FY 2016 funds that may be carried over to subsequent years.

Summary:

The below language is the excerpt from the appropriations law. Following the Omnibus language are some brief points providing guidance on such language.

Omnibus Language:

Provided further, That none of the funds made available under this heading may be used by an eligible system (as defined in section 102 of the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10802)) to continue to pursue any legal action in a Federal or State court on behalf of an individual or group of individuals with a developmental disability (as defined in section 102(8)(A) of the Developmental Disabilities and Assistance and Bill of Rights Act of 2000 (20 U.S.C. 15002(8)(A)) that is attributable to a mental impairment (or a combination of mental and physical impairments), that has as the requested remedy the closure of State operated intermediate care facilities for people with intellectual or developmental disabilities, unless reasonable public notice of the action has been provided to such individuals (or, in the case of mental incapacitation, the legal guardians who have been specifically awarded authority by the courts to make healthcare and residential decisions on behalf of such individuals) who are affected by such action, within 90 days of instituting such legal action, which informs such individuals (or such legal guardians) of their legal rights and how to exercise such rights consistent with current Federal Rules of Civil Procedure: Provided further, That the limitations in the immediately preceding proviso shall not apply in the case of an individual who is neither competent to consent nor has a legal guardian, nor shall the proviso apply in the case of individuals who are a ward of the State or subject to public guardianship.

Guidance on the Appropriation Language:

As guidance for both ACL/HHS grant officers, and the P&A grantees, we note the following regarding the above language:

- The language applies to legal actions where the remedy being sought is closure of a State-operated intermediate care facility (ICF) for people with intellectual or developmental disabilities. It does not apply to legal actions seeking closure of a privately-operated ICF.
- The language requires reasonable public notice of such legal action within 90 days of instituting a legal action which informs individuals (or covered legal guardians) of their legal rights and how to exercise such rights.
 - ACL considers a P&A posting a notice on their public website that is accessible to people with disabilities and Limited English Proficiency to be “reasonable public notice.” If the applicable rules of civil procedure specify a different means of providing public notice (e.g. publication in the relevant newspaper of record), ACL considers such notice to provide “reasonable public notice,” so long as it is provided within 90 days of instituting a covered legal action.
 - The notice should inform parties of their legal rights and how to exercise such rights, and the explanation should be consistent with the Federal Rules of Civil Procedure.
 - The language applies to both continuing and newly instituted legal actions supported by FY 2016 funds. P&A’s with continuing legal actions seeking closure of a State operated ICF for people with intellectual or developmental disabilities should post notice as soon as feasible, but no later than March 17, 2016 (90 days after enactment of the appropriations law above).

If you have any further questions, please contact Andrew Morris of the Administration on Disabilities at 202-795-7408 or at andrew.morris@acl.hhs.gov.

Sincerely,



Aaron Bishop, M.S.S.W
Commissioner
Administration on Disabilities
Administration on Community Living