

PROTECTION & ADVOCACY FOR THE DEVELOPMENTALLY DISABLED (PADD):

PADD's Mandate:

To protect and advocate for the legal and human rights of individuals with developmental disabilities.

Eligibility for PADD:

To be eligible for services from the PADD program, an individual must have a "developmental disability" as defined in the Developmental Disabilities (DD) Assistance and Bill of Rights Act. Generally, this will mean that the individual has a severe, chronic disability which is manifested before the age of 22 and results in substantial functional limitations in 3 or more specified major life activities. However, PADD can serve an individual from birth to age 9 who does not have 3 or more such limitations if he or she has a substantial developmental delay or specific congenital or acquired condition, provided that the individual, without services or supports, has a high probability of developing those limitations later in life.

Legal Authority for PADD:

Public Law 106-402, The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (repealed and replaced the DD Act of 1996) – to be published at 42 U.S.C. 15001 et seq. The regulations implementing the Act are published at 45 CFR Parts 1385-1386.

Key Definition:

Developmental Disability: (Section 102(8) of the DD Act)

(A) In General -- The term "developmental disability" means a severe, chronic disability of an individual that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in three or more of the following areas of major life activity:
 - (I) self-care;
 - (II) receptive and expressive language;
 - (III) learning;
 - (IV) mobility;
 - (V) self-direction;
 - (VI) capacity for independent living; and
 - (VII) economic self-sufficiency; and
- (v) reflects the individual's need for a combination and sequence of

special, interdisciplinary, or generic services, individualized supports, or other assistance that is of lifelong or extended duration and are individually planned and coordinated.

(B) Infants and Young Children – An Individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting the 3 or more criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

Key Provisions:

1. **Section 109** of the DD Act sets forth the "Rights of Individuals with Developmental Disabilities." Two of the more general rights are as follows:

Congress makes the following findings respecting the rights of individuals with developmental disabilities:

- (1) Individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.
- (2) The treatment, services, and habilitation for an individual with developmental disabilities should be designed to maximize the potential of the individual and should be provided in the setting that is least restrictive of the individual's personal liberty.

2. **Section 143** of the DD Act sets forth the requirements of the PADD program in the P&A system. The most relevant mandates for our purposes follow:

(a) **SYSTEM REQUIRED.** In order for a State to receive an allotment under part B:

- (1) the State must have in effect a system to protect and advocate the rights of individuals with developmental disabilities;
- (2) such system must:
 - (A) have the authority to:
 - (i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and
 - (ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;
 - (B) have the authority to investigate incidents of abuse and

neglect of individuals with developmental disabilities if the incidents are reported to the [P&A] system or if there is probable cause to believe that the incidents occurred;

- (C) on an annual basis, develop, submit to the Secretary (of the Department of Health and Human Services), and take action with regard to goals (each of which is related to 1 or more areas of emphasis) and priorities, developed through data driven strategic planning, for the system's activities. [The areas of emphasis spelled out in the Act include activities related to: quality assurance, education and early intervention, employment, housing and transportation.]
- (D) have access at reasonable times to any individual with a developmental disability in a location in which services, supports, or other assistance are provided to such an individual, in order to carry out the purposes of [the Act]
- (E) have access to the records of any individual with a developmental disability. . . . [P&As shall have such authority to access records under specified circumstances – similar to those set forth under the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act – in order to investigate abuse and neglect (see fact sheet on the PAIMI Act).]

3. **45 CFR 1386.21** sets forth the regulatory "requirements and authority of the protection and advocacy system." Relevant portions of the regulation for our purposes follow:

- (a) Allotments must be used to supplement and not supplant the level of non-federal funds available in the State for activities under the Act, which shall include activities on behalf of individuals with developmental disabilities to remedy abuse, neglect, and violations of rights as well as information and referral activities.
- (b) A [P&A] shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the [P&A] to pursue such remedies through litigation, legal action or other forms of advocacy. However, the above requirement does not prevent the P&A from developing case or client acceptance criteria as part of the annual priorities identified by the P&A
- (c) A [P&A] may exercise its authority under State law where the authority exceeds the authority required by the [DD] Act. However, State law must not diminish the required authority of the [P&A].

Authorized: PADD was first authorized in 1970 with the enactment of the Disabilities Services and Facilities Construction Amendments of 1970 (P.L. 91-517), which amended the Mental Retardation Facilities and Construction Act of 1963 (P.L. 88-164).

Funding: Congress authorized an appropriation of \$32 million for the PADD Program FY 2001, \$35 million in FY 2002, \$36.626 million in FY 2003, and \$38.416 million in FY 2004.

Administered by: PADD is administered by the Administration on Developmental Disabilities of the Administration for Children and Families, U.S. Department of Health and Human Services.