	<b>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES</b> Administration on Developmental Disabilities	
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	3. Originating Office: Administration on Developmental Disabilities	
	4. Key Word: P&A Assurances	5. P.L. 100-146
	6.	7.

### PROGRAM INSTRUCTION

TO : Directors, State Protection and Advocacy Agencies

SUBJECT : New Assurances Required From State Protection and Advocacy Agencies

LEGAL AND RELATED REFERENCES : Public Law 100-146, "The Developmental Disabilities Assistance and Bill of Rights Act of 1987"

CONTENT : Public Law 100-146 was signed October 29, 1987. Among the new requirements were four provisions for the Protection and Advocacy System that require immediate State action.

This instruction provides guidance to States relative to the new requirements imposed in Section 142.

INSTRUCTION: States are advised that the new requirements referred to in this guidance are in effect as of October 1, 1987, and are as follows: States must submit new assurances listed below, in addition to those already required. These assurances must be signed by the Governor or other State official empowered to provide such assurances for the State and submitted to the appropriate Regional Office not later than March 15, 1988. (A Regional Office listing is attached for your information.) Third and fourth quarter formula grant awards will not be issued to any State which has not submitted a revised set of assurances.

Assurances to comply with the new requirements must be submitted as follows:

- o that the Protection and Advocacy System has the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.
- o that the Protection and Advocacy System will, on an annual basis, provide the public an opportunity to comment on priorities established by, and activities of, the system.
- o that the Protection and Advocacy System will establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system.
- o that the Protection & Advocacy System have access to all records of:
  - any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and
  - any person with developmental disabilities who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access, who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State, and with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse and neglect.

States are required to submit assurances that the designated Protection and Advocacy System in the State is in compliance with these new provisions. Each State will therefore be required to submit a new set of assurances which include the new provisions of the Act as well as the requirements which remained unchanged.

The assurances described in this Program Instruction, supercede previous assurances required by the Developmental Disabilities Act of 1984. (See attached listing)


If these assurances are not received by March 15, 1988, we will assume that there is non-compliance with the Act and the State will be subject to disallowance of expenditures in Fiscal Year 1988. .

ATTACHMENT: List of HDS Regional Offices for the Developmental Disabilities Program.

List of complete assurances due by March 15, 1988

EFFECTIVE DATE: Date of Issuance

INQUIRIES TO: Regional Administrators, HDS, Regions III, VI, VII, IX.

  
s/ Lucy C. Biggs  
Commissioner  
Administration on Developmental  
Disabilities

Protection and Advocacy System Assurances

Department of Health and Human Services  
Office of Human Development Services  
Administration on Developmental Disabilities

200 Independence Avenue, S.W.  
Washington, D.C. 20201

State: \_\_\_\_\_

Grantee: \_\_\_\_\_

☐ Public Agency

☐ Other

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

Designated State Official

\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

## Protection and Advocacy Assurances

1. Assurance is hereby given that the Protection and Advocacy System has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of such persons who are receiving treatment, services or habilitation within the State.
2. Assurance is hereby given that the Protection and Advocacy System has the authority to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities.
3. Assurance is hereby given that the Protection and Advocacy System is not administered by the State Planning Council, and is independent of any agency which provides treatment services, or habilitation to persons with developmental disabilities.
4. Assurance is hereby given that the Protection and Advocacy System is able to obtain access to records of a persons with developmental disabilities who resides in a facility for persons with developmental disabilities if: a) a complaint has been received by the system from or on behalf of such persons; and b) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such persons.
5. Assurance is hereby given that the funds allotted to the State for the Protection and Advocacy Program will be used to supplement and increase the level of funds which would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds.
6. Assurance is hereby given that the Protection and Advocacy System will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to Section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan.
7. Assurance is hereby given that the Protection and Advocacy System implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.
8. Assurance is hereby given that the Protection and Advocacy System has the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

9. Assurance is hereby given that the Protection and Advocacy System will on an annual basis, provide the public an opportunity to comment on priorities established by, and activities of, the system.
10. Assurance is hereby given that the Protection and Advocacy System will establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system.
11. Assurance is hereby given that the Protection & Advocacy System have access to all records of:

any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

any person with developmental disabilities who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access, who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State, and with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse and neglect.

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