
LEGAL RIGHTS SERVICE (LRS)

- Requires establishment not later than December 31, 2011, of a nonprofit entity to provide advocacy services and client assistance for people with disabilities.
- Requires that the entity be established so as to be in compliance with all federal law regarding a protection and advocacy system.
- Requires, not later than September 30, 2012, the Governor to designate the entity as Ohio's protection and advocacy system and client assistance program for people with disabilities and specifies that, on October 1, 2012, the entity becomes the Ohio Protection and Advocacy System.
- Effective October 1, 2012, abolishes the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and OLRs Ombudsperson Section and eliminates all statutory provisions regarding the OLRs, Commission, and OLRs Ombudsperson Section, except provisions dealing with access to and confidentiality of client records.
- Provides for management and retention of OLRs personnel and fiscal records and for transfer of OLRs equipment, assets, and designated positions to the Ohio Protection and Advocacy System.
- Requires that compensation that may be awarded in a class action lawsuit pursued by OLRs or, starting October 1, 2012, the Ohio Protection and Advocacy System, for the work of OLRs and the System's attorneys or attorneys employed by another state agency or political subdivision be limited to the actual hourly rate of pay for that legal work.



Ohio Protection and Advocacy System

(Sections 319.20 (primary) and 120.20 to 120.23; R.C. 5123.60, 5123.601 (new), and 5123.602 (new); conforming changes in R.C. 3721.16, 5111.709, 5119.221, 5122.01, 5122.02, 5122.27, 5122.271, 5122.29, 5122.31, 5122.32, 5123.092, 5123.19, 5123.191, 5123.35, 5123.61, 5123.63, 5123.64, 5123.69, 5123.701, 5123.86, 5123.99, and 5126.33; R.C. 5123.601, 5123.602, 5123.603, 5123.604, and 5123.605 (repealed))

Overview

No later than December 31, 2011, the act requires the establishment of a nonprofit entity to provide advocacy services and client assistance for people with disabilities. Temporarily, the entity is to co-exist with the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and OLRS Ombudsperson Section. The Governor must, no later than September 30, 2012, designate the entity as Ohio's protection and advocacy system and client assistance program for people with disabilities. On October 1, 2012, the entity becomes the Ohio Protection and Advocacy System, and OLRS, the Commission, and the OLRS Ombudsperson Section are abolished. Except with regard to access to records, confidentiality of records, and certain notification requirements, the act eliminates on October 1, 2012, most of the statutory provisions that apply to OLRS.

OLRS is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. To receive federal funds for services to persons who are mentally disabled, federal law requires Ohio to have a protection and advocacy system.¹⁸⁹ OLRS administers several federally funded programs to protect and advocate for the rights of persons with mental illness, mental retardation, developmental disabilities, or other disabilities. OLRS is governed by the Legal Rights Service Commission, which is composed of seven members appointed by the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, and the Senate President.

Timeline for replacement of OLRS

Under the act, not later than December 31, 2011, the administrator of OLRS, in consultation with the Legal Rights Service Commission, must establish a nonprofit entity to provide advocacy services and a client assistance program for people with disabilities. The entity must be established in such a manner that it complies with all federal law regarding a protection and advocacy system and client assistance program.

¹⁸⁹ 42 U.S.C. 15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.



OLRS is permitted to subcontract with the entity to perform any functions OLRs is permitted or required to perform. OLRs, the Commission, and the OLRs Ombudsperson Section continue to exist until October 1, 2012.

Not later than September 30, 2012, the Governor is to designate the nonprofit entity as Ohio's protection and advocacy system and client assistance program. On October 1, 2012, the act abolishes OLRs, the Commission, and the OLRs Ombudsperson Section, and the entity becomes the Ohio Protection and Advocacy System. The System is thereafter required to serve as Ohio's protection and advocacy system and client assistance program.

Eliminated provisions

In contrast to the statutory enumeration of specific powers and duties of OLRs and its administrator, the act provides that the Ohio Protection and Advocacy System is to provide advocacy services for people with disabilities, as provided under the federal "Developmental Disabilities Assistance and Bill of Rights Act of 2000,"¹⁹⁰ and a client assistance program, as provided under the federal "Workforce Investment Act of 1998."¹⁹¹ It authorizes the System to establish any guidelines necessary for its operation.

In establishing a general duty for the Ohio Protection and Advocacy System to provide advocacy services and a client assistance program, the act eliminates on October 1, 2012, many OLRs-related statutory provisions, including the following:

- (1) A description of specific populations to be served, including persons with mental illness or developmental disabilities;
- (2) A requirement that there be an administrator, including the requirement that the administrator be an attorney;
- (3) The administrator's responsibilities, including preparing a budget and submitting it to the General Assembly and obtaining the OLRs Commission's approval before filing any class action lawsuit;
- (4) The administrator's membership on the Medicaid Buy-In Advisory Council;
- (5) A requirement that the administrator be notified of any proposed major aversive intervention for a mentally ill patient or a resident of an institution for the mentally retarded;

¹⁹⁰ 42 U.S.C. 15001.

¹⁹¹ 29 U.S.C. 732.



- (6) Notice requirements regarding the individuals served by OLRS;
- (7) Specific authority for an individual served by OLRS or denied service to file a grievance;
- (8) Authority to conduct public hearings;
- (9) Authority to ask any governmental agency for cooperation, assistance, services, or data necessary to enable the OLRS to perform its duties;
- (10) Indemnification of the administrator, attorneys, and staff in any judgment awarded or amount negotiated in a settlement, and for any court costs or legal fees incurred in defense of the claim;
- (11) All functions of the OLRS Ombudsperson Section, which mediates complaints and attempts to resolve disputes at the lowest administrative level appropriate;
- (12) Powers and duties related to court proceedings.

Continuing provisions

The act maintains all of the following OLRS-related statutory provisions as powers and duties of the Ohio Protection and Advocacy System:

- (1) Access to the records of the individuals who may be represented by the System;
- (2) Confidentiality of records received or maintained by the System;
- (3) Authority to compel testimony by subpoena;
- (4) Eligibility for grants or contracts provided through the Ohio Developmental Disabilities Council;
- (5) Exemption from the general requirement that reports be made of abuse or neglect regarding persons with mental retardation and developmental disabilities.

Transition provisions

Any aspect of the function of OLRS, the Legal Rights Service Commission, and the OLRS Ombudsperson Section that are commenced, but not completed on October 1, 2012, are to be completed by the Ohio Protection and Advocacy System in the same manner, and with the same effect, as if the function were completed by OLRS. The act specifies that no validation, cure, right, privilege, remedy, obligation, or liability



pertaining to OLRs is lost or impaired by reason of the abolishment of OLRs, and will instead be administered by the System. Any action or proceeding related to the function or duties of OLRs pending on September 30, 2012, is not to be affected by the abolishment of OLRs, but is required to be prosecuted or defended in the name of the System. In those actions and proceedings, on application to the court, the System is to be substituted as a party.

The act provides for OLRs records to be handled as follows after OLRs is abolished:

--All employee personnel records must be retained by the Office of Budget and Management (OBM) according to the applicable retention schedules and then transferred to the Department of Administrative Services to be kept permanently.

--All fiscal records must be retained by OBM until state and federal audits are conducted, audit reports are released, and all discrepancies are resolved. The records must then be destroyed according to the applicable retention schedules.

--All other general administrative and information technology records must be retained by OBM according to the applicable retention schedules.

The act requires all equipment and assets of OLRs, as well as any employment positions designated for transfer by OBM, to be transferred to the System pursuant to an agreement between OLRs and the System.

OLRS and Ohio Protection and Advocacy System class action lawsuits

(R.C. 5123.60 and 5123.602)

The act requires that the compensation that may be awarded in a class action lawsuit pursued by OLRs for the work of OLRs attorneys or attorneys employed by another agency or political subdivision of the state be limited to the actual hourly rate of pay for that legal work. The act extends this requirement to the Ohio Protection and Advocacy System on October 1, 2012.

