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DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT OF 1970

April 6, 1970.—Ordered to be printed

Mr. Kennedy, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 2846]

The Committee on Labor and Public Welfare, to which was referred the bill, S. 2846, to assist the States in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the States in the provision of such services in accordance with such plan, to assist in the construction of facilities to provide the services needed to carry out such plan, and for other purposes, reports favorably on S. 2846 with amendments and recommends that the bill as amended do pass.

Summary of S. 2846

As recommended by the committee, S. 2846 would provide, for the first time in the field of mental retardation and other developmental disabilities, the basis for a State-Federal partnership comparable to those already developed in such fields as health, mental health, and vocational rehabilitation. Inasmuch as disabled persons may also benefit from certain other federally assisted programs in health, education, and welfare, S. 2846 would direct the benefits of the proposed legislation to areas of need not now covered by existing programs.

The committee bill would extend and modify parts B and C of the Mental Retardation Facilities Construction Act of 1963, as amended. The present act expires on June 30, 1970.

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NARC Governmental Affairs Office
20 E Street, N.W. 8th Floor
Washington, D.C. 20001

Part B of the 1963 act, which now authorizes project grants for the construction of university-affiliated facilities for the mentally retarded, would be extended for 3 years, and a provision would be added authorizing the expenditure of funds for operational support for programs in facilities of this type. The authorization for construction would be continued at its present level—$20 million—for each of the fiscal years 1971, 1972, and 1973. The levels of authorization for operational support would be $7 million for fiscal year 1971, $11 million for fiscal year 1972, and $15 million for fiscal year 1973.

Part C of the 1963 act, which now authorizes formula grants to States for the construction of community facilities for the mentally retarded, would also be extended for 3 years. The present part C would be replaced by a combined formula grant and project grant program covering both construction and services. In addition, the scope of part C would be broadened to include not only the mentally retarded, but also persons suffering from certain other closely related developmental disabilities, such as cerebral palsy, epilepsy, and related neurological handicaps. Of the funds appropriated for part C, not more than 20 percent could be reserved for project grants to be administered by the Secretary of Health, Education, and Welfare, and the remainder would be allotted by formula among the States for planning, administration, services, and construction, in accordance with an approved State plan. The levels of authorization for the new part C would be $100 million for fiscal year 1971, $135 million for fiscal year 1972, and $170 million for fiscal year 1973.

The existing authority under part D of the 1963 act, which now provides support for professional and technical personnel in facilities for the retarded, would not be extended. Part D would not be repealed, however, since it authorizes the continuation beyond June 30, 1970, of grants initiated prior to that date. In the future, the purposes of part D would be carried out under the broadened authority of the new part C.

The Need for New Legislation

Despite bipartisan support in both Houses of Congress, Federal assistance to States and communities in developing and maintaining appropriate services and facilities for the mentally retarded and their families has been uneven, inadequate, and inequitable. Citation of composite figures indicating an increasing overall investment by the Department of Health, Education, and Welfare in research, prevention, training of personnel, construction, services, and income maintenance programs conceals the fact that the increases are highly selective. They fall primarily in the areas of (1) income maintenance under social security and public assistance—a measure of the severe financial dependence caused by mental retardation—and (2) vocational training for young people—a laudable objective but by no means the only area in which Federal aid should be emphasized.

Today, there are many areas of need for the retarded and disabled in which too little Federal leverage has been applied. These areas include the improvement and diversification of out-of-home residential services; comprehensive diagnosis and evaluation of handicapped adults; day care tailored to the needs of the developmentally disabled, both children and adults; extended sheltered employment; itinerant

services in sparsely populated areas; counseling of parents; information, referral, and follow-on services; and protective services. Resources are lacking to the disabled in every stratum of society, especially in areas of urban and rural poverty.

The developmentally disabled are the children and adults in our society whose handicaps originate in childhood and continue in some measure throughout life. They number in the millions. Although the mentally retarded form the largest group of the developmentally disabled, similar disabilities are also attributable to other neurological impairments, of which cerebral palsy and epilepsy are prime examples. Often, severe disability results from such conditions, even when the victim enjoys normal intelligence. As is the case in mental retardation, these chronic handicaps have been neglected for too long. Heretofore, the emphasis of society has been on short-term success—the cure, the closure—to the detriment of those whose disabilities are long term but whose well being and social contribution can be enhanced by appropriate early and continuing services. The goal of the committee bill is to foster such services.

Hearings

The committee held 2 days of hearings on S. 2846, during which it heard testimony from administration witnesses and from numerous interested groups representing consumers, providers of services, both public and private, and universities which have undertaken to establish interdisciplinary training programs in this field.

Background

1. Early Federal aid

The first substantial program of Federal financial assistance to States and communities in developing services for the handicapped was inaugurated shortly after World War I, with the enactment of the Vocational Rehabilitation Act of 1920. The purpose of the program, which is now celebrating its 50th anniversary, was to enable civilians to take advantage of the use of prosthetic techniques that had proved successful in rehabilitating many of those who had been wounded in the war.

At the outset, and for some two decades thereafter, the focus of the vocational rehabilitation program was on persons physically disabled as adults. In 1943, the act was modified to broaden its range of physical medicine and extend its counseling and selective job placement coverage to the mentally disabled. It is only in the past decade, however, that persons whose mental and physical disabilities originate in childhood have begun to represent a significant part of the vocational rehabilitation caseload. Even those who now receive assistance do so for only a relatively brief period. Moreover, the most seriously handicapped—those incapable of vocational success—are by definition excluded from the program.

The first substantial Federal program to provide assistance in developing services for handicapped children came with the Social Security Act of 1935. A series of provisions in the act created the so-called crippled children's program within the Children's Bureau, which is now located in the Maternal and Child Health Service of HEW. Although this program has existed for 35 years, it is only in very recent

times that all the States have removed the limitations which barred mentally handicapped crippled children from participating in the benefits of the program. Moreover, the program is limited in application, because its services terminate when the child reaches 21, even though his physical handicap continues.

More recent is the program of Federal aid for educational services for handicapped children, which had its origin in the Elementary and Secondary Education Act of 1965. Although the States have been active in this field for many years, it is estimated that even now, less than half of the eligible children of school age are receiving special education services.

2. President Kennedy's program

In 1961, in his first year in office, President Kennedy recognized the long neglect of both the mentally retarded and the mentally ill, and he directed that new approaches should be developed in both of these areas. In early 1963, he again emphasized the urgent need and recommended major new programs to Congress in these fields, in spite of the serious fiscal crisis—then, as today—facing the Nation. As he stated:

> In an effort to hold domestic expenditures down in a period of tax reduction, I have postponed new programs and reduced added expenditures in all areas when that could be done. But we cannot afford to postpone any longer a reversal in our approach to mental affliction. * * * We can procrastinate no more. The national mental health program and the national program to combat mental retardation herein proposed warrant prompt congressional attention. (Message to Congress, Feb. 5, 1963.)

President Kennedy's program to combat mental retardation was based in large part on the report of the President's Panel on Mental Retardation, which he appointed in 1961. As a result of the recommendations in that report, two significant pieces of Federal legislation for the retarded were enacted by Congress in 1963:

a. Public Law 88–156 launched a special Federal program of comprehensive maternity and infant care projects aimed at high-risk mothers. In subsequent years, this program has demonstrated spectacular success in reducing infant mortality, and has achieved a presumptive reduction in the incidence of mental retardation and cerebral palsy. At the same time, in another important series of provisions, Public Law 88–156 also authorized grants to the States for comprehensive planning in the field of mental retardation.

b. Public Law 88–164—the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963—launched the first major Federal program for the construction of facilities for the mentally retarded and the mentally ill. Title II of the 1963 act, the Community Mental Health Centers Act, dealt with mental health, and established the basic ongoing Federal program in this area. Title I of the 1963 act, the Mental Retardation Facilities Construction Act, dealt with mental retardation.

On March 16, 1970, President Nixon signed legislation (Public Law 91–211) extending the mental health program. The committee

bill (S. 2846) would carry forward the parallel effort for the mentally retarded.

Title I of the 1963 act originally contained three major parts, and it generated a three-pronged attack on mental retardation in the areas of research, training, and facilities for service:

Part A authorized a program of grants for the construction of centers for research on mental retardation and related aspects of human development. The authorization for this program was allowed to lapse in 1967. In all, 12 research centers were constructed with Federal aid under part A, and a number of these centers are now fully operational. However, their full impact will not be felt for several years.

Part B authorized a program of project grants for the construction of so-called "university-affiliated facilities" for the mentally retarded—clinical facilities affiliated with universities in a position to develop programs for training professional personnel in the field of mental retardation.

Part C authorized a program of formula grants to the States for the construction of facilities for the mentally retarded.

In 1967, title I was amended to add a new part D, which authorized a program of project grants to pay part of the cost of compensation of professional and technical personnel in community facilities for the mentally retarded for periods up to 51 months.

The heart of the 1963 act was part C, and the essence of part C was its call to conform construction of facilities for the retarded with State-determined priorities. President Kennedy's Panel on Mental Retardation had reported special needs for construction in the areas of day care and residential care, for which the Panel also strongly advocated innovation, modernization, and decentralization.

As the studies carried out under President Kennedy in the early 1960's substantiated, the development of facilities for the retarded could not be successfully promoted under existing Federal health programs such as the Hill-Burton Act.

Subsequently, the President's Committee on Mental Retardation, which was created by President Johnson in 1966 and has been continued by President Nixon, confirmed the need for massive Federal assistance for both the construction and the operation of such facilities, with special emphasis on adapting them to modern program concepts.

Although the 1963 act fell short of these goals—only $72 million has been appropriated for the entire six years of the part C program, for example, instead of the $50 million a year recommended by the President's Panel on Mental Retardation in 1962—the act has provided a beginning. The annual levels of funding are indicated in the accompanying table. Today, some 300 facilities have been or are being constructed with Federal assistance provided under part C. They are to be found in every State.

The hearings held by the committee brought out a number of the constraints under which the act has been operating since 1963. In addition to the serious underfunding, it was noted that certain arbitrary restrictions on matching, on transfer of funds in accordance with priorities, and on eligibility for staffing grants have deterred rather than stimulated the most effective use of the limited Federal funds. The committee bill addresses itself to these problems.

MENTAL RETARDATION FACILITIES CONSTRUCTION ACT—PUBLIC LAW 88-164, TITLE I

HISTORY OF FUNDING, FISCAL YEARS 1964-1970

[Millions of dollars]

	1964	1965	1966	1967	1968	1969	1970	Total 1964-1970
Part A—Research centers								
Authorization	$6.0	$8.0	$6.0	$6.0				$26.0
Appropriation	6.0	8.0	6.0	6.0				26.0
Part B—University-affiliated facilities								
Authorization	5.0	7.5	10.0	10.0	10.0	20.0	20.0	82.5
Appropriation	5.0	7.5	10.0	10.0	0.0	9.1	0.0	41.6
Part C—Community facilities								
Authorization		10.0	12.5	15.0	30.0	30.0	50.0	147.5
Appropriation as enacted		10.0	12.5	15.0	18.0	6.0	12.0	73.5
Appropriation as administered		10.0	12.5	15.0	12.0	12.0	10.2	71.7
Part D—Staffing								
Initial grants								
Authorization					7.0	10.0	14.0	31.0
Appropriation					0.0	8.4	7.4	15.8
Continuing grants								
Authorization					(1)	(1)	(1)	(1)
Appropriation						0.0	3.6	3.6
Total appropriation	11.0	25.5	28.5	31.0	12.0	29.5	21.2	158.7

[1] Such sums as may be necessary.

3. *State planning for the retarded under Public Law 88-156*

Although the amount of money made available for State planning under Public Law 88-156 was small—$7.7 million over 5 years—every State participated in a cross-disciplinary, interagency effort that focused broad attention on the full range of social and legal needs of the mentally retarded, including the areas of health, education, welfare, rehabilitation, employment, and recreation. Seldom has the Federal Government engendered so much productive activity for so small an investment. As a result, the States have reached a condition of readiness to act on a much broader front, and with much more precision and expectation of effectiveness than could have been foreseen a decade ago.

One of the most significant characteristics of State plans for the retarded is their individuality. The 50 States have their own priorities, based on historical, geographical, or other differences. Each State plan has its strengths and its weaknesses, but all the States are ready to move forward. To nurture this potential and realize its fulfillment, the Nation needs evidence of a continuing Federal commitment to the idea of State-Federal partnership in this area. That commitment must be at least as strong as has been manifested in other major areas of Federal involvement, such as health, education, and rehabilitation.

4. *Other related programs*

Each of the currently authorized programs in parts B, C, and D of the Mental Retardation Facilities Construction Act of 1963, as amended, is administered by the Division of Mental Retardation in HEW. Since 1967, the Division has been located in the Rehabilitation Services Administration, which in turn is part of the Social and Rehabilitation Service in HEW.

The Division of Mental Retardation also administers several other small but successful programs that are related to its role of fostering the delivery of improved services for the retarded. The principal programs are:

The hospital improvement program (HIP), a program of special project grants to State residential facilities for the retarded to demonstrate improvements in patient care;

The hospital inservice training program (HIST), a program of special project grants to provide inservice training; and

Rehabilitation service project grants under section 4(a)(1) of the Vocational Rehabilitation Act (the "section 4" authority), under which demonstrations can be funded for the delivery of services to retarded children and adults who are not eligible for vocational rehabilitation. This authority also covers project grants for training personnel.

The HIP and HIST programs together are funded at the level of $8,390,000 for fiscal year 1970, before the recent budget reduction. The administration's budget request for these programs for fiscal year 1971 is $9,300,000. The rehabilitation service project grants program is being funded at the level of $4,100,000 for 1970, and the budget request for 1971 is $4,500,000.

Testimony in the hearings before the committee suggested that the usefulness of the funds currently appropriated for the HIP and HIST programs could be enhanced by incorporating them in the general formula grants to States under part C of the 1963 act.

The "section 4" authority, which will expire in 1971, represents the type of flexible project grant program that can effectively supplement a formula grant authority, as has already been demonstrated in the fields of vocational rehabilitation, health services, education, child welfare services, crippled children's services, and maternal and child health services. The committee notes that the scope of the "section 4" program already covers most of the areas incorporated in the new project grant authority requested by the administration and included as part of the committee bill.

Authorization of Appropriations for Part C

The authorizations for all aspects of part C of the committee bill—for formula grants and project grants, for planning, administration, services, and construction—begin at $100,000,000 for fiscal year 1971, and rise to $135,000,000 for fiscal year 1972, and $170,000,000 for fiscal year 1973.

These authorizations are modest, considering the need and intended scope of the act. As long ago as 1962, the President's Panel on Mental Retardation estimated that a minimum amount of $50 million a year should be made available in Federal aid for at least 10 years to stimulate the construction of modern facilities for the residential care and day care of mentally retarded persons who are so handicapped as to need specialized facilities. The original 1963 act authorized less than this amount for a broader range of facilities, including diagnostic and evaluation units and sheltered workshops. In the 6-year period 1965–70, a total of $71.7 million was appropriated, or only slightly more than the President's Panel had recommended should be spent each year.

At least $100 million in Federal aid will be needed within the next 2 years alone for urgent construction projects which have been conceptualized in the States but not yet submitted because of the

growing disillusionment as to the Federal commitment to this program. When the committee adds (1) the need for new services apart from construction, as revealed by State planning, and (2) the real need to revolutionize residential care in accordance with "MR 68" (the 1968 Report of the President's Committee on Mental Retardation), $100 million for fiscal year 1971 seems modest indeed as an authorization for the program. Substantially increased funds will be needed in subsequent years for the retarded alone. It will eventually be necessary to augment the funds even more in order to bring adequate help to other developmentally disabled persons.

The committee recognizes that the administration is pledged to increasing the Federal commitment to solving domestic problems. The problem of serious mental retardation, cerebral palsy, and similar developmental disabilities should share in this commitment. The committee is convinced that the administration can, if it will, find enough funds to support a Federal grant program for the developmentally disabled at a level that will have a significant impact and that will apply significant leverage in all States, large as well as small.

Formula Grants to States and Special Project Grants

It was emphasized during the hearings that the program under the 1963 act was still only in its infancy, and had by no means been fully primed at the time the current fiscal restrictions began to be imposed on the Federal budget. Had the program matured as expected, obligations for construction under part C and for staffing under part D might reasonably have totaled some $75 million for fiscal year 1970. As things stand, only $21 million has been appropriated for 1970, and the administration has requested only $19 million for 1971.

Notwithstanding the fact that the program has never reached equilibrium with the need, the Assistant Secretary for Legislation of HEW advised the committee that the administration intended to level off the Federal contribution for construction and staffing of facilities for the retarded at the 1970 level of about $20 million a year. Therefore, in the hearings, the administration proposed the substitution of a simple project grant authority in place of the State formula grant authority, either as now contained in part C or as expanded in S. 2846.

By contrast, the public witnesses in the hearing gave strong support to the State formula grant approach of S. 2846 as originally introduced, which would have provided a single allotment for State planning, administration, services, and construction. Their testimony called attention to the very significant response by every State in the past 6 years to the formula grants of part C of the 1963 act, with its emphasis on Federal initiatives and incentives to strengthen State planning and responsibility for the retarded. The committee believes that regression in the Federal commitment and repudiation of confidence in the States and support for the States as they move aggressively toward reform in this long-neglected area would have a severely demoralizing effect, not only on State leadership in the field, but also on voluntary efforts now underway in all the States. In fact, the demoralizing effect of using only the project grant approach at this time would be greater than if there had been no evidence whatever of Federal leadership in recent years.

The committee recognizes the merit of project grants, but believes they should continue to be subsidiary to formula grants, which have worked well in stimulating new State effort. The committee bill therefore recommends a combined formula grant and project grant approach, with authorizations commensurate with the need.

The committee believes that the States are ready to assume greater responsibility for carrying forward a planned program to expand and improve services to the retarded and others with developmental disabilities by a combination of direct action and cooperative assistance to other agencies, public and private. Accordingly, the bill provides that part C of the present act, which authorizes formula grants for construction only, would be replaced by an expanded program of comprehensive formula grants to the States. The bill would enable the States to develop and maintain new or improved resources and services. It would give the States authority to use Federal funds to construct facilities and to plan, administer, develop, deliver, purchase or otherwise foster the services that are needed.

In addition, the committee bill incorporates the project grant authority recommended by the administration. The bill would authorize the Secretary of HEW to reserve up to 20 percent of the total appropriation under part C for grants for projects of special or national significance. The committee expects that this project grant authority will eventually replace the essentially similar authority now exercised by HEW under section 4(a)(1) of the Vocational Rehabilitation Act. The committee urges, however, that during the transition, the "section 4" authority, and especially the successful student work experience and training program, should be maintained in a continuing active status.

The committee intends that special attention will be given under the bill to the improvement of residential services through the development of new patterns of care and a major redistribution of facilities. In addition, the committee urges improvements in existing facilities by eliminating the overcrowding, oversize, and inadequate or inappropriate staffing and environment that now exist. For example, the committee believes there is a need to develop appropriately staffed, community-based, nonmedical day care and residential care facilities under both public and private auspices. These facilities will complement the long-term medical care facilities that can and should be made available to certain of the developmentally disabled under other Federal programs, such as the health facilities provisions of the Hill-Burton Act.

Special Need in Areas of Urban and Rural Poverty

A principal defect of the present act is that it does not give the States more than a passive role in implementing the priorities in the State plan for construction. As a result, many high priority areas are still without facilities for the retarded.

The major portion of funds under Public Law 88–164 has tended to flow to communities with the greatest resources in terms of matching funds, community initiative and know-how, or professional and technical competence. Too often, the unfavorable matching ratio for construction funds available under part C of the 1963 act has meant that urgently needed facilities could not be built in poverty areas.

Too often, the States, with fiscal problems of their own, have had to depend on local private initiative, with the result that facilities for the retarded have tended to be concentrated in the more privileged geographic areas, to the neglect of poverty areas.

To offset this tendency for the poor to get poorer, the bill would require the States to give special consideration to the needs of urban and rural poverty areas, as well as require technical and financial assistance to such areas. The committee believes this approach will be more effective than requiring a specified portion of the funds for services and construction to be earmarked for "model cities." The latter type of requirement was superimposed by administrative order in fiscal 1969. The provisions in the committee bill are designed to meet the recognized need in a more efficient and effective way.

The problem of maldistribution of new facilities also exists in the mental health field. The newly enacted Community Mental Health Centers Amendments of 1970 (Public Law 91–211) seek to meet this problem, in part, in an additional way by giving the States greater latitude in determining the Federal share in accordance with local needs. The Federal share provisions of Public Law 88–164 apply equally to mental health and mental retardation. As a result of the recent enactment of Public Law 91–211, therefore, a Federal share of up to 90 percent is now permitted for construction of facilities for the retarded under part C in areas of urban and rural poverty. In other geographic areas, a maximum Federal share of 66⅔ percent or the so-called Federal percentage, whichever is lower, would be permitted for the construction of facilities.

It should be noted that these ratios for the Federal share do not affect the total amount of Federal funds that will be available to a State. What they do accomplish, however, is to encourage the States to use discretion in assigning favorable matching ratios to areas most in need.

Support for Planning, Administration, and Services

As noted, the 1963 act was amended in 1967 to add limited-term project grant support to staff facilities for the retarded. Unfortunately, these staffing grants under part D—which were first awarded to mental health centers in 1966 under earlier companion legislation—did not, in fact, become available to community mental retardation facilities until the fiscal year 1969. Indeed, the first mental retardation staffing grants were not actually awarded until last July, less than 9 months ago. Thus the amounts which have been obligated reflect no more than the first step toward meeting the need for such assistance. Although the authority for staffing grants under part D expires in June 1970, the authority for continuing the grants approved prior to that time (expected to number nearly 500) remains, and is unaffected by the committee bill.

Under part D, support for services is limited to expenditures for professional and technical personnel in facilities specially designed for the retarded. In many instances, more efficient use of Federal funds will result if a broader range of services, including planning and administration, can be supported, and if personnel can be assigned to work in settings other than specialized facilities. The committee bill explicitly provides broad latitude in these areas, under both the formula grant and project grant provisions.

In the case of State expenditures for purposes other than construction, the overall Federal share is set at 80 percent in the formula grant program. This is the same Federal share available in the parallel vocational rehabilitation program in section 2 of the Vocational Rehabilitation Act, and is close to the 75 percent Federal share available for comparable social services in the welfare program, which is also administered by the Social and Rehabilitation Service in HEW. The 80 percent Federal share is also comparable to the range of 50 percent to 83 percent authorized in the medicaid program, and the 75 percent to 90 percent authorized for the development of children's mental health services in the recently enacted community mental health amendments, Public Law 91–211.

In evaluating the Federal share, it should be borne in mind that the States are already investing large amounts of their own revenues in services for the retarded—at least a billion dollars a year. The committee bill requires the States to maintain these expenditures at their current level in order to participate in the Federal program. At best, the Federal contribution to services for the retarded will remain small, compared to present State and community effort. However, the purpose of the committee bill is to give that small Federal contribution the maximum leverage and visibility.

Construction of University-Affiliated Facilities

Part B of the 1963 act spoke to the need to provide an environment for the interdisciplinary training of personnel to expand the resources for service to the retarded and persons with related neurological disorders. It also spoke to the need to bring students, trainees, and fellows into direct contact with the disabled in the sort of exemplary setting that can be established in a university atmosphere. Such centers can have an important impact on programs for the retarded in the surrounding communities.

Part B's authorization of project grants for the construction of service facilities affiliated with teaching institutions was extended in 1967, but the extension came so late in the fiscal year that it brought about an unfortunate lapse in funding. At the present time, some 18 projects have been funded under part B, and many more are awaiting funds:

> One additional project has been approved but remains unfunded. The committee is informed that if funds are not soon forthcoming, the medical school involved will have to redesign its proposed new children's hospital and substantially curtail the space that was to have housed the program for the retarded and handicapped.
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> Eight projects are in the final stages of application under part B, and most of these would have been in line for funding 2 years ago if the appropriations had not been interrupted. Several of the universities involved are already enrolling students, and are at a disadvantage in not obtaining their facilities.
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> Another 28 projects are in an intermediate stage of development.
>
> Twenty other universities have expressed an interest in the program when funds become available.

Of the 18 university-affiliated centers that have already been funded, only six have had sufficient time to complete construction,

and all of the projects are still being phased in. Under the circumstances, it is not yet possible to evaluate their full effectiveness. Moreover, several of the centers have been severely crippled by the cutbacks in anticipated training funds available to the universities from maternal and child health services, the Office of Education, and other Federal sources. The demand for the training these centers can provide is great, and the waiting lists for services are already far too long.

Three years of Federal budget stringency have come at a particularly critical time for these university centers. Nevertheless, the committee was impressed with the imagination, enthusiasm, and perseverance demonstrated by the directors of these pioneering projects, five of whom appeared before the committee. It was also clear that professional students and technical trainees are responding enthusiastically to the challenges posed in these centers.

During the hearings on S. 2846, several multiply handicapped children who had greatly benefited from the university-affiliated facility at Johns Hopkins University in Baltimore appeared before the committee with their parents. The committee was able to compare their prior condition, as recorded on film, with their present functioning. None of these children is expected to recover completely from his disability, but each is now living a happier, more nearly independent life than could possibly have been foreseen a few years ago. The appreciation of their parents for the help they received in the face of great and continuing tragedy brought vividly before the committee the direct human values at stake in this legislation.

The committee believes it is urgent that the existing university-affiliated facilities be brought to their point of maximum productivity, especially in terms of manpower delivered to the field. It is also urgent for areas of the country not now within reach of such centers to be given priority, once the existing applications in an advanced state of preparation have been funded. Today, there are only three university-affiliated centers in the entire area between the Mississippi River and the west coast. Accordingly, the committee bill would extend the authorization for construction of university-affiliated facilities under part B at the rate of $20 million a year through 1973.

The great hardship suffered by those half-dozen or so universities, which in good faith programed construction starts for 1969–71, deserves prompt assistance to bring their plans to fruition. In order to restore the confidence of prospective sponsors in a good program that has been unusually plagued by uncertainty, the committee recommends that $20 million for such construction should be included in the 1971 HEW appropriations bill, even though the actual funds might not in fact be obligated until early in fiscal year 1972.

Demonstration and Training Grants for University-Affiliated Facilities

The committee also finds that there is a need to assure Federal participation in the basic operational costs of the university-affiliated facilities. Such support should be administered by the same agency making the construction grants for the facilities and should permit

more effective use of funds from other appropriate sources, both Federal and non-Federal. Consonant with general current policy, the Federal agencies having service responsibilities in the various areas represented in the center should continue to take some part in funding the training activities there, as they do in other segments of the universities.

However, the costs of direct services to clients should, where practical, be derived from the same sources (including Federal) that pay for these services in other settings—for example, from State and local boards of education, from health insurance or medicaid, or from State agencies responsible for residential care, vocational rehabilitation, crippled children's services, or social services.

Basic Federal operational grants should be used primarily for administrative and overhead costs not attributable solely to delivery of service, for dissemination of information, for technical assistance to service agencies, for evaluation, and for startup costs on new ventures in keeping with the centers' mission to lead the field. Basic operating grants should be budgeted firmly, and should not be subject to subsequent adjustment on account of income from patient fees.

The committee also expects that the basic Federal support funds will be used to cover training of professional and other categories of workers for whom Federal support is not otherwise readily available. The committee was pleased to learn in the hearings that some centers are already involving attorneys, architects, sociologists, anthropologists, city planners, public administrators and others in their composite activity. Part of the basic Federal support under the committee bill should also be available for bringing students in these subjects into the orbit of the centers.

The provisions for extending the construction authority and adding the basic operating assistance for university-affiliated facilities are contained in title II of the committee bill, along with certain clarifying amendments designed to emphasize the interdisciplinary character of the training effort.

The committee intends that universities receiving support under the bill should contribute to the effective implementation of their respective State plans, and should be responsive to State and regional needs for personnel.

Because of the potential for positive interaction between the university-affiliated training program under part B and the State planning and programs under part C, the committee believes that efforts should be made to permit eventual establishment of at least one university-affiliated facility in every State with a receptive major university.

The committee bill is broad enough on its face to authorize support for the construction and operation of university-affiliated facilities under part C as well as part B. However, because of the present maldistribution of university-affiliated facilities and the relatively large costs involved in funding them, the committee believes that such facilities should not be placed in the position of competing for limited funds with service and training projects under part C. Therefore, the committee urges adequate funding for university-affiliated facilities under part B.

Section-By-Section Analysis

Section 1.—States the short title of the bill—"The Developmental Disabilities Services and Facilities Construction Act of 1970."

TITLE I.—GRANTS FOR PLANNING, PROVISION OF SERVICES, AND CONSTRUCTION AND OPERATION OF FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Section 101.—This section writes a completely new part C into the Mental Retardation Facilities Construction Act of 1963. Under the old part C, grants were available only for the construction of facilities for the mentally retarded. Under the new part C, grants will be available not only for construction, but also for comprehensive planning and for services. Those eligible for services include not only the mentally retarded but also children and adults with other developmental disabilities, such as cerebral palsy, epilepsy, and other closely related neurological handicaps.

The new part C consists of 11 sections, numbered 130–140. Each of these sections is described in the following paragraphs.

Section 130—Declaration of Purpose.—This section states that the purpose of the new part C is to authorize grants to assist the States in *both* developing *and* implementing a comprehensive and continuing plan for providing services to persons with developmental disabilities; to assist public or nonprofit private agencies in the construction of facilities and the provision of services; and to provide for demonstrations, technical assistance, local planning, specialized professional training, and related purposes. The purposes are intended to be comprehensive. They are the same for both the formula grant authority and the project grant authority established by section 132(a) to carry out the purposes under part C.

Section 131—Authorization of appropriations.—This section authorizes a total of $405 million to be appropriated for a 3-year program under part C. The authorizations for the respective fiscal years are:

1971—$100 million.
1972—$135 million.
1973—$170 million.

Section 132—State allotments.—Paragraph (1) of subsection (a) allocates funds among the States according to (A) population, (B) the need for facilities and services for the developmentally disabled, and (C) the financial need, of the respective States.

At the present time, the State allotments under part C are computed by the Department of HEW as follows: Two-thirds of the total appropriation is alloted on the basis of State population, weighted by State financial need as measured by State per capita income; and one-third is allotted on the basis of need for facilities for the mentally retarded, as measured by State population under age 21.

Paragraph (1) also continues the provision in current law that no allotment to a State may be less than $100,000 in any fiscal year.

However, the committee bill requires the minimum State allotment to be increased if the level of appropriations in future years rises above the level of authorization for fiscal year 1971. The percentage increase in the minimum allotment would be the same as the percent by which the appropriations in that year exceeded the fiscal year 1971 authorization. For example if the fiscal year 1971 authorization is $100 million and the fiscal year 1972 appropriation is $117 million, the minimum State allotment would be raised from $100,000 to $117,000 for fiscal year 1972. The provision would have no effect on the minimum State allotment for fiscal year 1971.

Paragraph (2) of subsection (a) authorizes the Secretary to adjust the "need" factor in section 132(a)(1)(B) in the future to reflect the extent to which a State provides facilities and services for categories of developmental disabilities other than mental retardation.

The formula for State allotments in the committee bill is essentially the same as in part C under the present law, except that paragraph (2) is added to permit a State which provides facilities and services for disabilities other than mental retardation to enjoy a proportionate increase in its allotment. This provision is included to avoid penalizing the retarded in States willing to broaden the coverage of their programs.

Paragraph (3) provides that construction funds allocated to a State during a fiscal year are to remain available to the State in the following fiscal year. If a State's plan calls for the construction of a facility whose Federal share will exceed the State's maximum allotment for the fiscal year, the funds may remain available for two additional years.

The provision making construction funds available to a State for 1 year following the year for which they are appropriated is similar to provisions in the Hill-Burton Act and in the present part C of Public Law 88–164.

It is necessitated by the time needed to process construction applications, especially in view of current delays in the enactment of appropriations bills. The provision permitting additional carryover of such allotments in exceptional circumstances is included in response to the experience with States and territories having low annual allotments. For example, a State could pool its allotments for 3 years in order to obtain funds to construct a single facility.

Under subsection (b), a State may apportion its allotments for services (but not for construction) among more than one State agency, in accord with the responsibilities assigned to each agency in carrying out the State plan. The purpose of this provision is also reflected in section 134(a)(1)(B).

The authority for a State to apportion its allotment among several State agencies reflects the fact that the provision of comprehensive services for mental retardation and other developmental disabilities calls for a combined effort by several State agencies, representing areas such as health, welfare, education, and rehabilitation. The States vary widely in the way they assign responsibility for the disabled among State agencies, and they should be permitted to adjust the use of Federal funds to carry out the purpose of the bill in the most efficient manner. For example:

In one State, the department of health provides a range of community services for the retarded, while the department of

mental hygiene handles the bulk of residential care. In addition some community services are also assigned to the department of social welfare in the State. Under the committee bill, the State plan could specify a reasonable division of funds between these three State agencies. In turn, each of these agencies could make funds available to local public and private agencies.

In many States, the department of welfare provides social services to disabled persons receiving public assistance. Similar services are needed by—but are often not available to—many mentally retarded persons and other disabled persons who are not on welfare. The most efficient method of supplying such services could be for the State to assign some of its allotted funds under the committee bill to the State welfare department, on condition that the department extend its social services to additional persons with developmental disabilities.

However, no State would be compelled to follow a pattern of multiple agency allotment if its plan calls for a single agency structure to accomplish the purpose of the bill.

In order to make further functional consolidation possible, subsection (b) also specifically authorizes funds to be combined with other State or Federal funds, so long as the benefits to the disabled are proportional and explicitly protected.

Subsection (c) authorizes States to pool their allotments to carry out cooperative interstate efforts. At the present time, for example, a pilot tristate consortium is already underway in Kentucky, Ohio, and Indiana as a result of a planning grant approved by the Division of Mental Retardation in 1966.

Subsection (d) provides a formula by which funds not used by one State may be allotted to other States. The present reallotment formula under Public Law 88–164 has proved to be cumbersome and artificial. The provision in the committee bill is patterned after section 314(a)(3)(B) of the Partnership for Health Act.

Subsection (e) establishes a project grant program to be administered by the Secretary. Under this program, the Secretary is authorized to reserve up to 20 percent of the total annual appropriation for part C to make grants for projects of special national significance, including those directed to the needs of the disadvantaged with developmental disabilities. The Federal share of such projects, including construction projects, may be up to 90 percent of their cost. Although no specific requirement is written into the bill, the committee intends that project grants under this subsection shall be consistent with the State plan required by the act.

Section 133. National Advisory Council on Services and Facilities for the Developmentally Disabled.—This section establishes a National Advisory Council on Services and Facilities for the Developmentally Disabled. The Council will consist of 20 members, to be appointed by the Secretary. The members may not be otherwise in the regular full-time employ of the Federal Government.

Members of the Council are to be chosen from leaders in the fields of service to the mentally retarded and other developmentally disabled persons, including leaders (1) in State or local government, (2) in institutions of higher education, and (3) in organizations representing consumers of these services. At least six members of the Council must represent State or local public or nonprofit private agencies, and at least six must represent consumers.

The Council will advise the Secretary on regulations and study and evaluate the effectiveness of programs under title I of the 1963 act. The Council may receive technical assistance, and the Secretary is required to make available such assistance and data as may be required for the Council to carry out its functions.

The committee intends the Council to assess the effectiveness of the act in accomplishing its objectives. The Council will replace the various ad hoc advisory groups now used to advise the Division of Mental Retardation in HEW. It should also take over the advisory functions with respect to the construction of facilities for the retarded. These functions are currently assigned to the Federal Hospital Council, a body primarily concerned with administering the Hill-Burton Act and only secondarily related to the purposes of Public Law 88-164.

The provisions establishing the National Advisory Council are comparable to those for similar bodies created for other HEW programs. The bill requires representation of the groups most directly affected by the act and by the actions of the Secretary, especially State and local agencies and consumers. These groups are not appropriately represented at present.

The number of 20 members for the Council was chosen to permit an appropriate diversity of membership among lay and professional personnel, public and private agencies, State and local agencies, and representatives of the various categories of developmental disabilities.

The Council is not intended to duplicate the functions of the President's Committee on Mental Retardation, which has both a nationwide and a governmentwide mission. Nor will it duplicate the functions of the Secretary's Committee on Mental Retardation, whose duties involve intradepartmental interagency coordination and the dissemination of information. Neither of these committees is associated with an operating program.

Section 134. State plans.—This section provides that, in order to receive its allocation under part C, a State must submit to the Secretary a State plan that meets a number of requirements.

Under paragraph (1) of subsection (b) the State plan must designate (A) a State planning and advisory council; (B) a State agency or agencies to administer the plan; and (C) a single State agency to administer grants for construction. The plan may designate either an existing council or agency, or a council or agency newly established for the purpose. Paragraph (10) requires the designated agencies to keep appropriate records and make periodic reports to the Secretary. Subparagraph (B) permits separate agencies to administer separate portions of the State plan.

Under paragraph (2), the State plan must describe the scope of activities under other State-Federal programs requiring State plans, such as vocational rehabilitation, maternal and child health, education of the handicapped, medicaid, title XVI (welfare) of the Social Security Act and the partnership for health. The plan must also show how the present act will supplement these other Federal programs and fill in the gaps which exist between them, so far as they affect the developmentally disabled.

Paragraphs (3) and (4) require the State plan to set forth effective procedures for the expenditure of funds under the plan, to contain assurances that the funds will be used to strengthen services for

persons with developmental disabilities on a statewide basis. It must also assure that part of the funds will be made available to other public or nonprofit private agencies, and that Federal funds will be used to supplement, rather than supplant, non-Federal funds that would otherwise be available. Paragraph (4) specifically requires that the State itself must bear a reasonable share of the non-Federal cost of implementing the plan.

Paragraph (5) requires that a State plan *must* provide services and facilities for the mentally retarded, and *may* provide services and facilities to persons with other types of developmental disabilities.

The committee intends that, at least at the beginning, the State plan will be an updated version of the comprehensive mental retardation plan developed by the State with Federal aid during the period 1965–67. To the extent a State chooses to cover other developmental disabilities in its plan, it will modify its plan accordingly. Because of the short time schedule, the committee anticipates that plans submitted as the basis for grants for fiscal year 1971 will be substantially those now operative for mental retardation alone, rather than for other forms of developmental disabilities.

Paragraphs (6) and (7) provide for the maintenance of standards with respect to the scope, quality and administration of facilities and services under the State plan.

Paragraphs (8) and (9) require the State plan to assure that the State planning and advisory council is adequately staffed. The council must include among its members representatives of each of the principal State agencies, as well as representatives of local agencies and other groups concerned with services for the disabled. At least one-third of the membership of the State council must consist of representatives of consumers of such services. The council must review the State plan annually.

It is expected that in defining adequate staffing in regulations the Secretary will take account of the differing needs of the States, depending on their population and size. The requirement should not impose a disproportionate burden on any State, but it should assure that the citizen body—the State planning and advisory council—is truly effective in influencing State policy. The committee feels that it is necessary to assure that the State planning and advisory councils are provided adequate clerical and technical staff assistance. However, the committee recognizes that, particularly in smaller States, such assistance may be provided by part-time or contracted personnel.

Under paragraph (11), the State plan must provide that special financial and technical assistance will be made available to provide services and facilities for persons with developmental disabilities in poverty areas. The correlation between mental retardation and poverty is highest in cases involving persons who are mildly retarded or moderately retarded. These persons need the help of special programs in their schools and community health centers.

There is also a correlation between poverty and certain forms of severe retardation. These persons need a wide range of services, including the sort of services best provided in specialized facilities. In addition, there is a strong responsibility to insure equal access for persons in poverty areas to high quality care and training.

The committee therefore believes that a special Federal and State effort is needed to bring adequate facilities and services for the retarded into areas of urban or rural poverty. The requirement of paragraph (11), together with the recently enacted higher Federal share—up to 90 percent—of the cost of constructing such facilities in urban or rural poverty areas, offers a major new incentive to alleviate the existing inequity.

Paragraph (12) requires the State plan to describe the methods that will be used to assess the effectiveness of State programs for the developmentally disabled.

Paragraphs (13), (14), (15), and (16) establish special planning requirements for construction projects. They continue the requirement that the State must survey its existing facilities and prepare a comprehensive program for the construction of facilities, including a determination of the priority for proposed projects.

Latitude is given to each State to apportion its allotment under part C between construction and services according to its own priorities. Thus, it might be reasonable for a smaller State to devote the major share of its allotment to the construction of a single facility. However, the Secretary is authorized to limit the proportion of any State's allotment that may be used for construction.

Paragraph (17) requires the State plan to contain appropriate accounting procedures to assure the proper disbursement of funds under the act. Paragraph (18) authorizes the Secretary to establish such additional planning requirements as he finds necessary. These paragraphs continue provisions of existing law.

In sum, the numerous State plan requirements are designed to assure that funds under the act are directed toward accomplishment of its purpose, which is to extend and improve programs for the developmentally disabled. The requirements give the States considerable discretion in pursuing this goal, within general guidelines for accountability. The requirement of a single comprehensive State plan for services and construction will avoid the anomaly in the present act, which encourages dual plans that are not necessarily fully coordinated. The committee emphasizes that the act is not intended to duplicate or supplant any existing continuing Federal program which significantly benefits the target group.

Section 135. Approval of projects for construction.—This section specifies that for each construction project to be carried out under the State plan, an application must be submitted to the Secretary. The application must include a description of the site and the plans and specifications for the project, and a reasonable assurance that adequate financial support will be available, not only for the construction of the facility, but also for its maintenance and operation. The application must also meet labor standards in conformance with the Davis-Bacon Act. These are requirements of existing law that remain essentially unchanged in the committee bill.

The Federal share of the cost of construction projects will be the same as for mental health centers. The provisions establishing the Federal share for such projects are contained in title IV of Public Law 88–164, as amended recently by Public Law 91–211, the "Community Mental Health Centers Amendments of 1970." In general, these

provisions will apply equally to the construction of facilities for the mentally ill and facilities for the developmentally disabled, and are not affected by the committee bill. Thus, the Federal share for the cost of constructing such facilities will be up to 66⅔ percent or the so-called Federal percentage, whichever is lower, except that the Federal share for construction projects in poverty areas may be up to 90 percent.

Section 136. Withholding of payments for construction.—This section permits the Secretary to withhold payments to a State agency for construction projects if there is inadequate compliance with regulations, or if any assurances required to be given under section 134 or 135 are not being carried out. Payments for construction projects may be withheld, in whole or in part, until the failure to comply is removed.

The provisions of sections 135 and 136 for administering funds for construction projects are essentially the same as for construction projects under part C of the present law, and for the construction of facilities in other areas, such as health, mental health, and vocational rehabilitation.

Section 137. Payments to the States for planning, administration, and services.—This section sets forth the procedures and basis for payment to the States of the State allotment for expenditures other than construction. This section also provides an 80 percent federal share for such expenditures incurred by the State during each year under its State plan. As determined by regulations, and subject to section 134(a)(4)(B), which requires reasonable financial participation at the State level, the non-Federal share may consist of State funds, local funds, or expenditures by nonprofit private groups. As already noted, the provision for a Federal share of 80 percent for services is comparable to the Federal share in the most nearly equivalent State-Federal programs.

Today, the States are already spending between $800 million and $1 billion annually on residential care services and specialized day care services for the retarded and multiply handicapped, exclusive of public school and welfare services. There is very modest Federal support for these services through project grants for day care and residential care, but there is no Federal participation on a formula grant basis for developing such services.

Continuation of the present basic expenditures by the State at this current level is required by the maintenance of effort provision in Section 134(b)(4)(C) of the committee bill. Therefore, even the proposed 80 percent Federal share for services will represent only a very small proportion of the overall State effort with respect to the large range of services not now significantly benefiting from Federal aid.

Section 138. Withholding of payments for planning, administration, and services.—This section incorporates provisions for withholding of payments for planning, administration, and services if there is substantial failure to comply with the act or with regulations under it. In general, the section parallels section 136, which provides for the withholding of payments for construction, and contains standard sanctions for noncompliance.

Section 139. Regulations.—This section requires the Secretary, after consultation with the National Advisory Council (established by section 133) to issue general regulations applicable to all the States no later than July 1, 1970. The regulations shall cover the kinds of services and categories of persons which may be included; standards as to the scope and quality of services; the general manner in which a State shall determine priorities for services and facilities, with special consideration for poverty areas; general standards of construction and equipment for facilities; and other necessary matters.

The committee does not intend that regulations promulgated under subsection (a) will be used to limit the definitions of "developmental disability" or "services," except to the extent required to avoid duplicating authorizations under other State or Federal programs, or to interpret definitions and plan requirements, such as the phrase "substantial handicap" in the definition of "developmental disability."

Section 140. Nonduplication.—This section, the final section of the new part C proposed by the committee bill, prohibits counting as State or local matching funds any portion of the costs of services or construction financed by Federal funds under any other law, or the amount of non-Federal funds required for matching such other Federal funds. This is a standard provision in Federal grant legislation.

Section 102. Definitions.—This section of the committee bill deals with definitions. Its principal provisions amend section 401 of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 by:

Defining "facility for persons with developmental disabilities" as a facility designed primarily for the delivery of one or more services to persons affected by one or more developmental disabilities;

Defining "developmental disability" as mental retardation, cerebral palsy, epilepsy, or other neurological handicapping condition of an individual which originates before the age of 18, which continues indefinitely into adult life, and which constitutes a substantial handicap; and

Defining "services for persons with developmental disabilities" to include diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual and his family, protective and other social and socio-legal services, information and referral services, follow-on services, and transportation of clients.

The new section 401(m) modifies the definition of "services" to include a number of services which are not now specifically covered under Public Law 88-164, such as specialized living arrangements, recreation, counseling of the individual and his family, protective and other social and socio-legal services, information and referral services, follow-on services, and transportation. Recent experience has shown that a number of such services are underrepresented in State planning for facilities for the retarded, due in part to the lack of a specific statutory authorization. All such services are types of services which might well be offered by general or multipurpose facilities,

or which might even be offered outside any facility. By contrast, the present "staffing" grants under part D of the act are available only for services in specialized facilities primarily designed for the retarded.

The revised definition of "facility" in section 401(b) does not require preference to be given to facilities which offer comprehensive services under one management. Such preference might well run counter to optimum community planning. For example, diagnostic services for the target group might be provided under the auspices of a community hospital, while specialized living arrangements would be better placed in a residential section of town under the direction of a social agency.

Section 103. Effective date.—This section sets appropriations for fiscal years beginning after June 30, 1970, as those to which the bill applies. As a result, funds appropriated prior to that date under part C of the existing act will remain available for obligation during fiscal year 1971, in accordance with present law. The effective date protects the carryover of funds for construction. Also, funds for the continuation of staffing grants awarded under part D before June 30, 1970, will not be affected by the committee bill.

Title II—Construction, Demonstration, and Training Grants for University-Affiliated Facilities for the Mentally Retarded

Section 201. Caption.—This section amends the caption of part B of the Mental Retardation Facilities Construction Act of 1963 to read: "Construction, Demonstration, and Training Grants for University-Affiliated Facilities for the Mentally Retarded." The present law applies only to construction of clinical facilities.

Section 202. Construction grants.—This section amends section 121(a) of part B of the Mental Retardation Facilities Construction Act by striking out the term "clinical training" and inserting "interdisciplinary training." The section also extends the authorization for appropriations for construction of university-affiliated facilities at its present level of $20 million per year through 1973. The term "mentally retarded" is defined, as in present law, to include mental retardation and other neurological handicapping conditions related to mental retardation.

Section 203. Demonstration and training grants.—This section adds a new section 122 to the present part B. The new section authorizes grants to cover costs of administering and operating demonstration facilities and interdisciplinary training programs for personnel needed to render specialized services to the mentally retarded. Such training programs are to include both established disciplines and new kinds of training to meet critical shortages in the care of the mentally retarded. The section authorizes appropriations of:

$7 million for the fiscal year ending June 30, 1971;
$11 million for the fiscal year ending June 30, 1972; and
$15 million for the fiscal year ending June 30, 1973.

The committee estimates that at full operational capacity, these grants should average from $300,000 to $500,000 annually per center. The committee does not intend grants under part B to preclude other Federal grants to the facilities for other purposes.

Section 204. Applications for demonstration or training grants.—This section specifies that demonstration and training grants under section 122 may be given only to colleges or universities operating a facility of the type described in section 121, or to a public or nonprofit private agency or organization operating such a facility.

The committee intends operating funds to be made available to universities which have organized and are operating eligible facilities, even though they did not receive construction grants for the facilities. Several such centers are already in existence and the amounts authorized in section 203 of the committee bill are conservative to carry out the important purposes of this provision.

Sections 205 and 206.—Conforming changes.

Section 207. Maintenance of effort.—This section adds a new "maintenance of effort" provision stipulating that grants to university-affiliated facilities may be approved only if there are reasonable assurances that the grants will not result in any decrease in the level of State, local, and other non-Federal funds for mental retardation services and training which would otherwise be available to the applicant. Grants under this part are to be used to supplement and increase the level of such funds.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT OF 1963

[PUBLIC LAW 88–164, APPROVED OCTOBER 31, 1963, AS AMENDED]

TITLE I—[FACILITIES FOR THE MENTALLY RETARDED] *SERVICES AND FACILITIES FOR THE MENTALLY RETARDED AND PERSONS WITH OTHER DEVELOPMENTAL DISABILITIES*

* * * * * * *

PART B—[PROJECT GRANTS FOR CONSTRUCTION OF UNIVERSITY-AFFILIATED FACILITIES FOR THE MENTALLY RETARDED] *CONSTRUCTION, DEMONSTRATION AND TRAINING GRANTS FOR UNIVERSITY-AFFILIATED FACILITIES FOR THE MENTALLY RETARDED*

AUTHORIZATION OF APPROPRIATIONS

SEC. 121. (a) For the purpose of assisting in the construction (and the planning for the construction) of [clinical facilities providing, as nearly as practicable, a full range of inpatient and outpatient services for the mentally retarded (which, for purposes of this part, includes other neurological handicapping conditions found by the Secretary to be sufficiently related to mental retardation to warrant inclusion in this part) and] facilities which will aid in demonstrating provision of specialized services for the diagnosis and treatment, education, training, or care of the mentally retarded or in the [clinical training] *interdisciplinary training* of physicians and other specialized personnel needed for research, diagnosis and treatment, education, training, or care of the mentally retarded, including research incidental or related to any of the foregoing activities, there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1964, $7,500,000 for the fiscal year ending June 30, 1965, $10,000,000 each for the fiscal year ending June 30, 1966, the fiscal year ending June 30, 1967, and the fiscal year ending June 30, 1968, and $20,000,000 [each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970] *for each of the next five fiscal years*. Except as provided in subsection (b), the sums so appropriated shall be used for project grants for construction of public and other nonprofit facilities for the mentally retarded which are associated with a college or university.

(b)(1) Of the sums appropriated pursuant to subsection (a) for any fiscal year, beginning with the fiscal year ending June 30, 1968, an amount equal to 2 per centum thereof (or such smaller amounts as the Secretary may determine to be appropriate) shall be available to the Secretary for the purpose of making grants to cover not to exceed 75 per centum of the costs of the planning of projects with respect to the construction of which applications for grants may be made under this part. Not more than $25,000 shall be granted under this subsection with respect to any project.

(2) Planning grants under this subsection shall be made by the Secretary to such applicants and upon such terms and conditions as he shall by regulations prescribe. Payment of grants under this subsection shall be made in advance or by way of reimbursement, as the Secretary may determine.

(3) Whenever, in the succeeding provisions of this part, the term "grant", "grants", or "funds" is employed, such term shall be deemed not to include any grant under this subsection or any of the funds of any such grant.

(c) For purposes of this part, the term "mentally retarded" shall include mental retardation and other neurological handicapping conditions found by the Secretary to be sufficiently related to mental retardation to warrant inclusion in this part.

DEMONSTRATION AND TRAINING GRANTS

SEC. 122. (a) For the purpose of assisting institutions of higher education to contribute more effectively to the solution of complex health, education, and social problems of children and adults suffering from mental retardation, the Secretary may, in accordance with the provisions of this part, make grants to cover costs of administering and operating demonstration facilities, and interdisciplinary training programs for personnel, needed to render specialized services to the mentally retarded, including established disciplines as well as new kinds of training to meet critical shortages in the care of the mentally retarded.

(b) For the purpose of making grants under this section, there is authorized to be appropriated $7,000,000 for the fiscal year ending June 30, 1971; $11,000,000 for the fiscal year ending June 30, 1972; and $15,000,000 for the fiscal year ending June 30, 1973.

APPLICATIONS

SEC. [122.] *123.* (*a*) Applications for grants under this part with respect to *the construction of* any facility may be approved by the Secretary only if the application contains or is supported by reasonable assurances that —

(1) the facility will be associated, to the extent prescribed in regulations of the Secretary, with a college or university hospital (including affiliated hospitals), or with such other part of a college or university as the Secretary may find appropriate in the light of the purposes of this part;

(2) the plans and specifications are in accord with regulations prescribed by the Secretary under section [133(3);] *139(d);*

(3) title to the site for the project is or will be vested in one or more of the agencies or institutions filing the application or in a

public or other nonprofit agency or institution which is to operate the facility;

(4) adequate financial support will be available for construction of the project and for its maintenance and operation when completed; and

(5) all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(b) Applications for demonstration or training grants under this part may be approved by the Secretary only if the applicant is a college or university operating a facility of the type described in section 121, or is a public or nonprofit private agency or organization operating such a facility.

AMOUNT OF GRANTS; PAYMENTS

SEC. [123.] *124.* (a) The total of the grants with respect to any project [for the construction of a facility] under this part may not exceed 75 per centum of the necessary cost [of construction] thereof as determined by the Secretary.

(b) Payments of grants under this part shall be made in advance or by way of reimbursement, [in such installments consistent with construction progress,] and on such conditions as the Secretary may determine.

RECOVERY

SEC. [124.] *125.* If any facility with respect to which *construction* funds have been paid under this part shall, at any time within twenty years after the completion of construction—

(1) be sold or transferred to any person, agency, or organization which is not qualified to file an application under this part, or

(2) cease to be a public or other nonprofit facility for the mentally retarded, unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for the mentally retarded,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for the mentally retarded, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects.

NONDUPLICATION OF GRANTS

SEC. [125.] *126.* No grant may be made after January 1, 1964, under any provision of the Public Health Service Act, for any of the fiscal years in the period beginning July 1, 1963, and ending June 30, 1970, for construction of any facility for the mentally retarded described in this part, unless the Secretary determines that funds are not available under this part to make a grant for the construction of such facility.

MAINTENANCE OF EFFORT

SEC. 127. Applications for grants under this part may be approved by the Secretary only if the application contains or is supported by reasonable assurances that the grants will not result in any decrease in the level of State, local, and other non-Federal funds for mental retardation facilities, services and training which would (except for such grant) be available to the applicant, but that such grants will be used to supplement, and, to the extent practicable, to increase the level of such funds.

[PART C—GRANTS FOR CONSTRUCTION OF FACILITIES FOR THE MENTALLY RETARDED

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 131. There are authorized to be appropriated, for grants for construction of public and other nonprofit facilities for the mentally retarded, $10,000,000 for the fiscal year ending June 30, 1965, $12,500,000 for the fiscal year ending June 30, 1966, $15,000,000 for the fiscal year ending June 30, 1967, $30,000,000 each for the fiscal year ending June 30, 1968, and the fiscal year ending June 30, 1969, and $50,000,000 for the fiscal year ending June 30, 1970.

[ALLOTMENTS TO STATES

[SEC. 132. (a) For each fiscal year, the Secretary shall, in accordance with regulations, make allotments from the sums appropriated under section 131 to the several States on the basis of (1) the population, (2) the extent of the need for facilities for the mentally retarded, and (3) the financial need of the respective States; except that no such allotment to any State, other than the Virgin Islands, American Samoa, and Guam, for any fiscal year may be less than $100,000. Sums so allotted to a State for a fiscal year for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose for the next fiscal year (and for such year only), in addition to the sums allotted, to such State for such next fiscal year.

[(b) In accordance with regulations of the Secretary, any State may file with him a request that a specified portion of its allotment under this part be added to the allotment of another State under this part for the purpose of meeting a portion of the Federal share of the cost of a project for the construction of a facility for the mentally retarded in such other State. If it is found by the Secretary that construction of the facility with respect to which the request is made would

meet needs of the State making the request and that use of the specified portion of such State's allotment, as requested by it, would assist in carrying out the purposes of this part, such portion of such State's allotment shall be added to the allotment of the other State under this part, to be used for the purpose referred to above.

[(c) Upon the request of any State that a specified portion of its allotment under this part be added to the allotment of such State under part A of title II, and upon (1) the simultaneous certification to the Secretary by the State agency designated as provided in the State plan approved under this part to the effect that it has afforded a reasonable opportunity to make applications for the portion so specified and there have been no approvable applications for such portion, or (2) a showing satisfactory to the Secretary that the need for the community mental health centers in such State is substantially greater than for the facilities for the mentally retarded, the Secretary shall, subject to such limitations as he may by regulations prescribe, promptly adjust the allotments of such State in accordance with such request and shall notify such State agency and the State agency designated under the State plan approved under part A of title II, and thereafter the allotments as so adjusted shall be deemed the State's allotments for purposes of this part and part A of title II.

[(d)(1) At the request of any State, a portion of any allotment or allotments of such State under this part shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration during such year of the State plan approved under this part; except that not more than 2 per centum of the total of the allotments of such State for a year, or $50,000, whichever is less, shall be available for such purpose for such year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

[(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under this part not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1967.

[REGULATIONS

[SEC. 133. Within six months after enactment of this Act, the secretary shall, after consultation with the Federal Hospital Council (established by section 633 of the Public Health Service Act and hereinafter in this part referred to as the "Council"), by general regulations applicable uniformly to all the States, prescribe—

[(1) the kinds of services needed to provide adequate services for mentally retarded persons residing in a State;

[(2) the general manner in which the State agency (designated as provided in the State plan approved under this part) shall determine the priority of projects based on the relative need of different areas, giving special consideration to facilities which will provide comprehensive services for a particular community or communities;

[(3) general standards of construction and equipment for facilities of different classes and in different types of location; and

[(4) that the State plan shall provide for adequate facilities for the mentally retarded for persons residing in the State, and shall provide for adequate facilities for the mentally retarded to furnish needed services for persons unable to pay therefor. Such regulations may require that before approval of any application for a facility or addition to a facility is recommended by a State agency, assurance shall be received by the State from the applicant that there will be made available in such facility or addition a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

[STATE PLANS

[SEC. 134. (a) After such regulations have been issued, any State desiring to take advantage of this part shall submit a State plan for carrying out its purposes. Such State plan must—

[(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

[(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) hereof will have authority to carry out such plan in conformity with this part;

[(3) provide for the designation of a State advisory council which shall include representatives of State agencies concerned with planning, operation, or utilization of facilities for the mentally retarded and of nongovernment organizations or groups concerned with education, employment, rehabilitation, welfare, and health, and including representatives of consumers of the services provided by such facilities;

[(4) set forth a program for construction of facilities for the mentally retarded (A) which is based on a statewide inventory of existing facilities and survey of need; (B) which conforms with the regulations prescribed under section 133(1); and (C) which meets the requirements for furnishing needed services to persons unable to pay therefor, included in regulations prescribed under section 133(4);

[(5) set forth the relative need, determined in accordance with the regulations prescribed under section 133(2), for the several projects included in such programs, and provide for the construction, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

[(6) provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

[(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities which receive Federal aid under this part and, effective July 1, 1969,

provide for enforcement of such standards with respect to projects approved by the Secretary under this part after June 30, 1967;

[(8) provide for affording to every applicant for a construction project an opportunity for hearing before the State agency;

[(9) provide that the State agency will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports; and

[10 provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Secretary any modifications thereof which it considers necessary.

[(b) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (a). The Secretary shall *not* finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

[APPROVAL OF PROJECTS

[SEC. 135. (a) For each project for construction pursuant to a State plan approved under this part, there shall be submitted to the Secretary through the State agency an application by the State or a political subdivision thereof or by a public or other nonprofit agency. If two or more such agencies join in the construction of the project, the application may be filed by one or more of such agencies. Such application shall set forth—

[(1) a description of the site for such project;

[(2) plans and specifications therefor in accordance with the regulations prescribed by the Secretary under section 133(3);

[(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the facility;

[(4) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when completed;

[(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c); and

[(6) a certification by the State agency of the Federal share for the project.

The Secretary shall approve such application if sufficient funds to pay the Federal share of the cost of construction of such project are available from the allotment to the State, and if the Secretary finds (A) that the application contains such reasonable assurance as to title, financial support, and payment of prevailing rates of wages and overtime pay; (B) that the plans and specifications are in accord with the regulations

prescribed pursuant to section 133; (C) that the application is in conformity with the State plan approved under section 134 and contains an assurance that in the operation of the facility there will be compliance with the applicable requirements of the State plan and of the regulations prescribed under section 133(4) for furnishing needed facilities for persons unable to pay therefor, and with State standards for operation and maintenance; and (D) that the application has been approved and recommended by the State agency and is entitled to priority over other projects within the State in accordance with the regulations prescribed pursuant to section 133(2). No application shall be disapproved by the Secretary until he has afforded the State agency an opportunity for a hearing.

[(b) Amendment of any approved application shall be subject to approval in the same manner as an original application.

[WITHHOLDING OF PAYMENTS

[SEC. 136. Whenever the Secretary after reasonable notice and opportunity for hearing to the State agency designated as provided in section 134(a)(1), finds—

[(1) that the State agency is not complying substantially with the provisions required by section 134 to be included in its State plan or with regulations under this part;

[(2) that any assurance required to be given in an application filed under section 135 is not being or cannot be carried out;

[(3) that there is a substantial failure to carry out plans and specifications approved by the Secretary under section 135; or

[(4) that adequate State funds are not being provided annually for the direct administration of the State plan,

the Secretary may forthwith notify the State agency that—

[(5) no further payments will be made to the State from allotments under this part; or

[(6) no further payments will be made from allotments under this part for any project or projects designated by the Secretary as being affected by the action or inaction referred to in paragraph (1), (2), (3), or (4) of this section,

as the Secretary may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments from such allotments may be withheld, in whole or in part, until there is no longer any failure to comply (or to carry out the assurance or plans and specifications or to provide adequate State funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

[NONDUPLICATION OF GRANTS

[SEC. 137. No grant may be made after January 1, 1964, under any provision of the Public Health Service Act, for any of the fiscal years in the period beginning July 1, 1964, and ending June 30, 1970, for construction of any facility for the mentally retarded described in this part, unless the Secretary determines that funds are not available under this part to make a grant for the construction of such facility.]

PART C—GRANTS FOR PLANNING, PROVISION OF SERVICES, AND CONSTRUCTION AND OPERATION OF FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

DECLARATION OF PURPOSE

SEC. 130. The purpose of this part is to authorize—

"(a) grants to assist the several States in developing and implementing a comprehensive and continuing plan for meeting the current and future needs for services to persons with developmental disabilities;

"(b) grants to assist public or nonprofit private agencies in the construction of facilities for the provision of services to persons with developmental disabilities, including facilities for any of the purposes stated in this section;

"(c) grants for provision of services to persons with developmental disabilities, including costs of operation, staffing, and maintenance of facilities for persons with developmental disabilities;

(d) grants for State or local planning, administration, or technical assistance relating to services and facilities for persons with developmental disabilities;

(e) grants for training of specialized personnel needed for the provision of services for persons with developmental disabilities, or research related thereto; and

(f) grants for developing or demonstrating new or improved techniques for the provision of services for persons with developmental disabilities.

AUTHORIZATION OF APPROPRIATIONS

SEC. 131. In order to make the grants to carry out the purposes of section 130, there are authorized to be appropriated $100,000,000 for the fiscal year ending June 30, 1971, $135,000,000 for the fiscal year ending June 30, 1972, and $170,000,000 for the fiscal year ending June 30 1973.

STATE ALLOTMENTS

SEC. 132. (a) (1) From the sums appropriated to carry out the purposes of section 130 for each fiscal year, other than amounts reserved by the Secretary for projects under subsection (e), the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of (A) the population, (B) the extent of need for services and facilities for persons with developmental disabilities, and (C) the financial need, of the respective States; except that the allotment of any State (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) for any such fiscal year shall not be less than $100,000 plus, if such fiscal year is later than the fiscal year ending June 30, 1971, and if the sums so appropriated for such fiscal year exceed the amount authorized to be appropriated to carry out such purposes for the fiscal year ending June 30, 1971, an amount which bears the same ratio to $100,000 as the difference between the amount so appropriated and the amount authorized to be appropriated for the fiscal year ending June 30, 1971, bears to the amount authorized to be appropriated for the fiscal year ending June 30, 1971.

(2) In determining, for purposes of paragraph (1), the extent of need in any State for services and facilities for persons with developmental

disabilities, the Secretary shall take into account the scope and extent of the services specified, pursuant to section 134(b)(5), in the State plan of such State approved under this part.

(3) Sums allotted to a State for a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose for the next fiscal year (and for such year only), in addition to the sums allotted to such State for such next fiscal year: Provided, That whenever the State plan calls for the construction of a specific facility the Federal share of which will exceed the maximum amount which may be specified pursuant to section 134(b)(15) for construction for the fiscal year, the Secretary may, on the request of the State, provide that funds allotted to the State shall remain available, to the extent necessary but not to exceed two additional years, to be combined with subsequent amounts specified for meeting the Federal share of the cost of construction of such facility.

(b) Whenever the State plan approved in accordance with section 134 provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of this part. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purposes of this part will receive proportionate benefit from the combination.

(c) Whenever the State plan approved in accordance with section 134 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

(d) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

(e) Of the sums appropriated pursuant to section 131, such amount as the Secretary may determine, but not more than 20 per centum thereof, shall be available for grants by the Secretary to public or nonprofit private agencies to pay up to 90 per centum of the cost of projects for carrying out the purposes of section 130 which in his judgment are of special national significance because they will assist in meeting the needs of the disadvantaged with developmental disabilities, or will demonstrate new or improved techniques for provision of services for such persons, or are otherwise specially significant for carrying out the purposes of this title.

NATIONAL ADVISORY COUNCIL ON SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED

SEC. 133. (a) (1) There is hereby established a National Advisory Council on Services and Facilities for the Developmentally Disabled (hereafter referred to as the "Council"), which shall consist of twenty members, not otherwise in the regular full-time employ of the United States, to be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service.

(2) The Secretary shall from time to time designate one of the members of the Council to serve as Chairman thereof.

(3) The members of the Council shall be selected from leaders in the fields of service to the mentally retarded and other persons with developmental disabilities, including leaders in State or local government, in institutions of higher education, and in organizations representing consumers of such services. At least six members shall be representative of State or local public or nonprofit private agencies responsible for services to persons with developmental disabilities, and at least six shall be representative of the interests of consumers of such services.

(b) Each member of the Council shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that, of the twenty members first appointed, five shall hold office for a term of three years, five shall hold office for a term of two years, and five shall hold office for a term of one year, as designated by the Secretary at the time of appointment.

(c) It shall be the duty and function of the Council to (1) advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by him in the implementation of this title, and (2) study and evaluate programs authorized by this title with a view to determining their effectiveness in carrying out the purposes for which they were established.

(d) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such statistical and other pertinent data prepared by or available to the Department of Health, Education, and Welfare as it may require to carry out such functions.

(e) Members of the Council, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the per diem equivalent for GS-18 of the General Schedule for each day of such service, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

STATE PLANS

SEC. 134. (a) Any State desiring to take advantage of this part must have a State plan submitted to and approved by the Secretary under this section.

(b) In order to be approved by the Secretary under this section, a State plan for the provision of services and facilities for persons with developmental disabilities must—

(1) designate (A) a State planning and advisory council, to be responsible for submitting revisions of the State plan and transmitting such reports as may be required by the Secretary; (B) the State agency or agencies which will administer or supervise the administration of all or designated portions of the State plan; and (C) a single State agency as the sole agency for administering or supervising the administration of grants for construction under the State plan;

(2) describe (A) the quality, extent, and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for federally assisted State programs as may be specified by the Secretary, but in any case including education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health plans, and (B) how funds allotted to the State in accordance with section 132 will be used to complement and augment rather than duplicate or replace services and facilities for persons with developmental disabilities which are eligible for Federal assistance under such other State programs;

(3) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to assure effective continuing State planning, evaluation, and delivery of services (both public and private) for persons with developmental disabilities;

(4) contain or be supported by assurances satisfactory to the Secretary that (A) the funds paid to the State under this part will be used to make a significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State in order to improve the quality, scope, and extent of such services; (B) part of such funds will be made available to other public or nonprofit private agencies, institutions, and organizations; (C) such funds will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided and not to supplant such non-Federal funds; and (D) there will be reasonable State financial participation in the cost of carrying out the State plan;

(5)(A) provide for the furnishing of services and facilities for persons with developmental disabilities associated with mental retardation, (B) specify which, if any, other categories of developmental disabilities (as approved by the Secretary) will be included in the State plan, and (C) describe the quality, extent, and scope of such services as will be provided to eligible persons;

(6) provide that services and facilities furnished under the plan for persons with developmental disabilities will be in accordance with standards prescribed by regulations, including standards as to the scope and quality of such services and the maintenance and operation of such facilities;

(7) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods), as are

found by the Secretary to be necessary for the proper and efficient operation of the plan;

(8) provide that the State planning and advisory council shall be adequately staffed, and shall include representatives of each of the principal State agencies and representatives of local agencies and nongovernmental organizations and groups concerned with services for persons with developmental disabilities: Provided: That at least one-third of the membership of such council shall consist of representatives of consumers of such services;

(9) provide that the State planning and advisory council will from time to time, but not less often than annually, review and evaluate its State plan approved under this section and submit appropriate modifications to the Secretary;

(10) provide that the State agencies designated in paragraph (1) will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(11) provide that special financial and technical assistance shall be given to areas of urban or rural poverty in securing services and facilities for persons with developmental disabilities who are residents of such areas;

(12) describe the methods to be used to assess the effectiveness and accomplishments of the State in meeting the needs of persons with developmental disabilities in the State;

(13) provide for the development of a program of construction of facilities for the provision of services for persons with developmental disabilities which (A) is based on a statewide inventory of existing facilities and survey of need; and (B) meets the requirements prescribed by the Secretary for furnishing needed services to persons unable to pay therefor;

(14) set forth the relative need, determined in accordance with regulations prescribed by the Secretary, for the several projects included in the construction program referred to in paragraph (13), and assign priority to the construction of projects, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(15) specify the per centum of the State's allotment (under section 132) for any year which is to be devoted to construction of facilities, which per centum shall be not more than such per centum as the Secretary may from time to time prescribe;

(16) provide for affording to every applicant for a construction project an opportunity for hearing before the State agency;

(17) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this part; and

(18) contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

(c) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b). The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

APPROVAL OF PROJECTS FOR CONSTRUCTION

SEC. 135. (a) For each project for construction pursuant to a State plan approved under this part, there shall be submitted to the Secretary, through the State agency designated in section 134(b)(1)(C), an application by the State or a political subdivision thereof or by a public or nonprofit private agency. If two or more agencies join in the construction of the project, the application may be filed by one or more of such agencies. Such application shall set forth—

(1) a description of the site for such project;

(2) plans and specifications thereof, in accordance with regulations prescribed by the Secretary;

(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or nonprofit private agency which is to operate the facility;

(4) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when completed;

(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c); and

(6) a certification by the State agency of the Federal share for the project.

(b) The Secretary shall approve such application if sufficient funds to pay the Federal share of the cost of construction of such project are available from the allotment to the State, and if the Secretary finds (1) that the application contains such reasonable assurances as to title, financial support, and payment of prevailing rates of wages and overtime pay, (2) that the plans and specifications are in accord with regulations prescribed by the Secretary, (3) that the application is in conformity with the State plan approved under this part, and (4) that the application has been approved and recommended by the State agency and is entitled to priority over other projects within the State in accordance with the State's plan for persons with developmental disabilities and in accordance with regulations prescribed by the Secretary.

(c) No application shall be disapproved until the Secretary has afforded the State agency an opportunity for a hearing.

(d) Amendment of any approved application shall be subject to approval in the same manner as the original application.

WITHHOLDING OF PAYMENTS FOR CONSTRUCTION

SEC. 136. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State planning and advisory council designated in section 134(b)(1)(A) and the State agency designated in section 134(b)(1)(C) finds—

(a) that the State agency is not complying substantially with the provisions required by section 134(b) to be included in the State plan, or with regulations of the Secretary;

(b) that any assurance required to be given in an application filed under section 135 is not being or cannot be carried out;

(c) that there is a substantial failure to carry out plans and specifications related to construction approved by the Secretary under section 134; or

(d) that adequate funds are not being provided annually for the direct administration of the State plan,

the Secretary may forthwith notify such State council and agency that—

(e) no further payments will be made to the State for construction from allotments under this part; or

(f) no further payments will be made from allotments under this part for any project or projects designated by the Secretary as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section;

as the Secretary may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments for construction projects may be withheld, in whole or in part, until there is no longer any failure to comply (or to carry out the assurance or plans and specifications or to provide adequate funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION, AND SERVICES

Sec. 137. (a) (1) From each State's allotments for a fiscal year under section 132, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(2) For the purpose of determining the Federal share of any State, expenditures by a political subdivision thereof or by nonprofit private agencies, organizations, and groups shall, subject to such limitations and conditions as may be prescribed by regulations, be regarded as expenditures by such State.

(b) The "Federal share" for any State for purposes of this section for any fiscal year shall be 80 per centum of the expenditures, other than expenditures for construction, incurred by the State during such year under its State plan approved under this part.

WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION, AND SERVICES

Sec. 138. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State planning and advisory council and the State agencies designated pursuant to section 134(b)(1) finds that—

(a) there is a failure to comply substantially with any of the provisions required by section 134 to be included in the State plan; or

(b) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this part,

the Secretary shall notify such State council and agencies that further payments will not be made to the State under this part (or, in his discretion, that further payments will not be made to the State under this part for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment to the State under this part, or shall limit further payment under this part to such State to activities in which there is no such failure.

REGULATIONS

SEC. 139. Not later than July 1, 1970, the Secretary, after consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled (established by section 133), by general regulations applicable uniformly to all the States, shall prescribe—

(a) the kinds of services which are needed to provide adequate programs for persons with developmental disabilities, the kinds of services which may be provided under a State plan approved under this part, and the categories of persons for whom such services may be provided;

(b) standards as to the scope and quality of services provided for persons with developmental disabilities under a State plan approved under this part;

(c) the general manner in which a State, in carrying out its State plan approved under this part, shall determine priorities for services and facilities based on type of service, categories of persons to be served, and type of disability, with special consideration being given to the needs for such services and facilities in areas of urban and rural poverty; and

(d) general standards of construction and equipment for facilities of different classes and in different types of location.

NONDUPLICATION

SEC. 140. (a) In determining the amount of any payment for the construction of any facility under a State plan approved under this part, there shall be disregarded (1) any portion of the costs of such construction which are financed by Federal funds provided under any provision of law other than this part, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

(b) In determining the amount of any State's Federal share of expenditures for planning, administration, and services incurred by it under a State plan approved under this part, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than this part, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

PART D—GRANTS FOR THE COST OF PROFESSIONAL AND TECHNICAL PERSONNEL OF COMMUNITY MENTAL RETARDATION FACILITIES

AUTHORIZATION OF GRANTS

SEC. 141. (a) For the purpose of assisting in the establishment and initial operation of facilities for the mentally retarded providing all

or part of a program of comprehensive services for the mentally retarded principally designed to serve the needs of the particular community or communities in or near which the facility is situated, the Secretary may, in accordance with the provisions of this part, make grants to meet, for the temporary periods specified in this section, a portion of the costs (determined pursuant to regulations under section 144) of compensation of professional and technical personnel for the initial operation of new facilities for the mentally retarded or of new services in facilities for the mentally retarded.

(b) Grants for such costs for any facility for the mentally retarded under this part may be made only for the period beginning with the first day of the first month for which such a grant is made and ending with the close of four years and three months after such first day; and such grants with respect to any such facility may not exceed 75 per centum of such costs for the period ending with the close of the fifteenth month following such first day, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

(c) In making such grants, the Secretary shall take into account the relative needs of the several States for services for the mentally retarded, their relative financial needs, and their populations.

SEC. 142. (a) Grants under this part with respect to any facility for the mentally retarded may be made only upon application, and only if—

(1) the applicant is a public or nonprofit private agency or organization which owns or operates the facility;

(2) (A) a grant was made under part C of this title to assist in financing the construction of the facility or (B) the type of service to be provided as part of such program with the aid of a grant under this part was not previously being provided by the facility with respect to which such application is made;

(3) the Secretary determines that there is satisfactory assurance that Federal funds made available under this part for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds for mental retardation services that would in the absence of such Federal funds be made available for (or under) the program described in paragraph (2) of this subsection, and will in no event supplant such State, local, and other non-Federal funds; and

(4) in the case of an applicant in a State which has in existence a State plan relating to the provision of services for the mentally retarded, the services to be provided by the facility are consistent with the plan.

(b) No grant may be made under this part after June 30, 1972, with respect to any facility for the mentally retarded or with respect to any type of service provided by such a facility unless a grant with respect thereto was made under this part prior to July 1, 1970.

PAYMENTS

SEC. 143. Payment of grants under this part may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

SEC. 144. The Secretary shall prescribe general regulations concerning the eligibility of facilities under this part, determination of eligible costs with respect to which grants may be made, and the terms and conditions (including those specified in section 142) for approving applications under this part.

AUTHORIZATION OF APPROPRIATIONS

SEC. 145. There are authorized to be appropriated $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, and $14,000,000 for the fiscal year ending June 30, 1970, to enable the Secretary to make initial grants to facilities for the mentally retarded under the provisions of this part. For the fiscal year ending June 30, 1969, and each of the next five years, there are authorized to be appropriated such sums as may be necessary to make grants to such facilities which have previously received a grant under this part and are eligible for such a grant for the year for which sums are being appropriated under this sentence.

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TITLE IV—GENERAL

DEFINITIONS

SEC. 401. For purposes of this Act—

(a) The term "State" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, *the Trust Territory of the Pacific Islands*, and the District of Columbia [; and, for the purposes of this title and title II only, includes the Trust Territory of the Pacific Islands].

[(b) The term "facility for the mentally retarded" means a facility specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded, but only if such workshops are part of facilities which provide or will provide comprehensive services for the mentally retarded.]

(b) The term "facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities.

(c) The term "community mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.

(d) The terms "nonprofit facility for [the mentally retarded"] *persons with developmental disabilities,*" "nonprofit community mental health center", and "nonprofit private institution of higher learning" mean, respectively, a facility for [the mentally retarded] *persons with developmental disabilities*, a community mental health center, and an institution of higher learning which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term "nonprofit private agency or organization" means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations.

(e) The term "construction" includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities); including architect's fees, but excluding the cost of off-site improvements and the cost of the acquisition of land.

(f) The term "cost of construction" means the amount found by the Secretary to be necessary for the construction of a project.

(g) The term "title", when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project.

(h)(1) The term "Federal share" with respect to any project means the portion of the cost of construction of such project to be paid by the Federal Government under part C of title I or part A of title II.

(2) The Federal share with respect to any project in the State shall be the amount determined by the State agency designated in the State plan, but except as provided in paragraph (3), the Federal share for any project may not exceed 66⅔ per centum of the cost of construction of such project or the State's Federal percentage, whichever is the lower. Prior to the approval of the first such project in the State during any fiscal year, such State agency shall give the Secretary written notification of the maximum Federal share established pursuant to this paragraph for such projects in such State to be approved by the Secretary during such fiscal year and the method for determining the actual Federal share to be paid with respect to such projects; and such maximum Federal share and such method of determination for such projects in such State approved during such fiscal year shall not be changed after the approval of the first such project in the State during such fiscal year.

(3) In the case of any facility or center which provides or will, upon completion of the project for which application has been made under part C of title I or under part A of title II, provide services for persons in an area designated by the Secretary as an urban or rural poverty area, the maximum Federal share determined under paragraph (2) may not exceed 90 per centum of the costs of construction of the project.

(i) The Federal percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that the Federal percentage for Puerto Rico, Guam, American Samoa, and the Virgin Islands shall be 66⅔ per centum.

(j) (1) The Federal percentages shall be promulgated by the Secretary between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such

promulgation: except that the Secretary shall promulgate such percentages as soon as possible after the enactment of this Act, which promulgation shall be conclusive for the fiscal year ending June 30, 1965.

(2) The term "United States" means (but only for purposes of this subsection and subsection (i)) the fifty States and the District of Columbia.

(k) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(l) The term "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or other neurological handicapping condition of an individual which originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

(m) The term "services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual affected by such a disability, and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-on services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

(n) The term "regulations" means (unless the text otherwise indicates) regulations promulgated by the Secretary.

SEC. 402. (Repealed by Public Law 91–211.)

PAYMENTS FOR CONSTRUCTION

SEC. 403. (a) Upon certification to the Secretary by the State agency, designated as provided in section 134 in the case of a facility for the mentally retarded[,] *or persons with other developmental disabilities*, or section 204 in the case of a community mental health center, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant, (2) if the Secretary, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 136 or section 206, as the case may be, payment may, after he has given the State agency so designated notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) In case an amendment to an approved application is approved as provided in section 135 or 205 or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c)(1) At the request of any State, a portion of any allotment or allotments of such State under part A of title II for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under such part; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or $50,000, whichever is less, shall be available for such purpose. Amounts made available to any State under this paragraph from its allotment or allotments under part A of title II for any fiscal year shall be available only for such expenditures (referred to in the preceding sentence) during such fiscal year or the following fiscal year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under such part A not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1968.

JUDICIAL REVIEW

SEC. 404. If the Secretary refuses to approve any application for a project submitted under section 135 or 205, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 134[(b)](c) or 204(b) or section 136 or 206, such State, may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside his order. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, mayremand the case to the Secretary to take further evicence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

RECOVERY

SEC. 405. If any facility or center with respect to which funds have been paid under section 403 shall, at any time within twenty years after the completion of construction—

(1) be sold or transferred to any person, agency, or organization (A) which is not qualified to file an application under section 135 or 205, or (B) which is not approved as a transferee by the State agency designated pursuant to section 134 (in the case of a facility for the mentally retarded[)] *or persons with other developmental disabilities*) or section 204 (in case of a community mental health center), or its successor; or

(2) cease to be a public or other nonprofit facility for the mentally retarded *or persons with other developmental disabilities* or community mental health center, as the case may be, unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for the mentally retarded *or persons with other developmental disabilities* or such center as a community mental health center,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility or center which has ceased to be public or other nonprofit facility for the mentally retarded *or persons with other developmental disabilities* or community mental health center, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.

STATE CONTROL OF OPERATIONS

SEC. 406. Except as otherwise specifically provided, nothing in this Act shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for the mentally retarded *or persons with other developmental disabilities* or community mental health center with respect to which any funds have been or may be expended under this Act.

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RECORDS AND AUDIT

SEC. 408. (a) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the assistance received under this Act.

NONDUPLICATION

SEC. 409. In determining the amount of any grant under this Act for the costs of any project there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

DETERMINATION OF POVERTY AREA

SEC. 410. For purposes of any determination by the Secretary under this Act as to whether any urban or rural area is a poverty area, any such area which would not otherwise be determined to be a poverty area shall, nevertheless, be deemed to be a poverty area if—

(1) such area contains one or more subareas which are characterized as subareas of poverty;

(2) the population of such subarea or subareas constitutes a significant portion of the population of such rural or urban area; and

(3) the project, facility, or activity, in connection with which such determination is made, does, or (when completed or put into operation) will, serve the needs of the residents of such subarea or subareas.

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