

CHANGES

**Developmental Disabilities Assistance and Bill of Rights
Act Amendments of 1994
(42 U.S.C. 6000 et seq.)**

KEY WORD CHANGES:

- o **individuals** with developmental disabilities
- o State Developmental Disabilities Council
- o systemic change, capacity building, and advocacy activities
- o geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity
- o culturally competent services, supports and other assistance

Requirement Changes:

O § 121. PURPOSE

"The purpose of this part is to provide for allotments to support State Developmental Disabilities Councils in each State to promote, through systemic change, capacity building, and advocacy activities that are consistent with the policy under §101(c)(2), the development of a consumer and family-centered, comprehensive system and a coordinated array of culturally competent services, supports, and other assistance designed to achieve independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities."

o § 122(c)(1) The plan shall provide for the establishment and maintenance of a State Developmental Disabilities Council in accordance with § 124 and describe the membership of such council.

o (c)(3)(C)(iii) ...an analysis of the barriers that impede full participation of members of unserved and underserved groups...

o (c)(3)(C)(vi) ...an analysis of services, assistive technology, or knowledge that may be unavailable to assist individuals with dd...

o (c)(3)(C)(ix) ...the formulation of objectives in systemic changes, capacity building, and advocacy to address the issues described in ...for all subpopulations of individuals with dd that may be identified by State DD Councils...

(c)(5)(A-N) Assurances

- (c)(5)(A)(iii) ...such funds will be used to complement and augment rather than duplicate or replace services for individuals with dd and their families who are eligible for Federal assistance under other state programs...
- (c)(5)(A)(v) ...not more than 25 percent of such funds will be allocated to the agency designated under § 124(d) for service demonstration by such agency and that such funds and demonstration services have been explicitly authorized by the State DD Council...
- (c)(5)(A)(vii) ...the remainder of the amount available to the State from allotments under § 125 (after making expenditures required by clause (vi) shall be used for the planning, coordination, administration, **and implementation of priority area activities, and other activities relating to systemic change, capacity building, and advocacy to implement the responsibilities of the State DD Council pursuant to § 124(c)**...
- (c)(5)(C) ...The plan shall provide assurances that the State DD council has approved conflict of interest policies as of October 1, 1994, to ensure that no member of such Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest...
- (c)(5)(E) ...The plan shall provide assurances that programs , projects, and activities assisted under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulation and all applicable Federal and State accessibility standards...
- (c)(5)(F) ...The plan shall provide assurances that any direct services provided to individuals with dd and funded under this plan will be provided in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities, and capabilities of an individual...
- (c)(5)(H) ...The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs under this **part is geographically representative of the state, and reflects the diversity of the State with respect to race and ethnicity**...
- (c)(5)(M) ...The plan shall provide assurances that the designated State agency or other office of the

State will not interfere with systemic change, capacity building, and advocacy activities, budget, personnel. State plan development, or plan implementation of the State DD Council, shall have the authority necessary to carry out the responsibilities described in § 124(d)(3)___

(d)(1) ...The plan shall be made available for public review and comment with appropriate and sufficient notice in accessible formats and take into account and respond to significant suggestions, as prescribed by the Secretary in regulation..

(d)(2) ...Before the plan is submitted to the secretary, the State DD Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances...

Section 124 STATE DD COUNCILS AND DESIGNATED STATE AGENCIES

(a) **In General.** - Each State that receives assistance under this part shall establish and maintain a State DD Council to promote, through systemic change, capacity building, and advocacy activities (consistent with § 101(c)(2), the development of a consumer and family-centered comprehensive system and a coordinated array of culturally competent services, supports and other assistance designed to achieve independence, productivity, and integration and inclusion into the community for individuals with dd. The Council shall have the authority to fulfill its responsibilities described in subsection (c).

(b) Council Membership_____

(b)(1) Council Appointments. - The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor shall select members of the council, at his or her discretion, after soliciting recommendations from organizations representing a broad range of individuals with dd and individuals interested in individuals with dd, including the non-State agency members of the Council. The Council may, at the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations. To the extent feasible, the membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

- (b)(2) **Membership Rotation.**—The governor shall make appropriate provisions to rotate the membership of the Council. **Such provisions shall allow members to continue to serve on the Council until such members¹ successors are appointed. The Council shall notify the Governor regarding membership requirements, when vacancies remain unfilled for a significant period of time.**
- (b)3) **Representation of Agencies and Organizations**—
Each Council shall at all time include representatives of the principal State agencies...
Such representatives shall-
- (b)(3)(A) **have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and**
- (b)(3)(B) **recuse themselves from any discussion of grants and contracts for which such representatives' departments, agencies, or programs are grantees or applicants and comply with the conflict of interest policies required under § 122(c)(5)(C).**
- (c) **Council Responsibilities.**—**A Council through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (1) through (11).**
- (c)(1-11) **Systemic Change, Capacity Building, and Advocacy Activities**
- (c)(3) **State Plan Development.**—The Council shall develop and submit to the Secretary the State plan required under § 122 after consultation with the designated State agency under the State plan. **Such consultation shall be solely for the purposes of obtaining state assurances and ensuring consistency of the plan with State law.**
- (c)(4)(A-K) **State Plan Implementation.**—**The Council shall implement the State plan by conducting and supporting Federal priority area of employment, not less than one of the remaining three Federal priority areas, and an optional State priority area as defined in §102, through systemic change, capacity building, and advocacy activities such as those described in subparagraphs (A) through (K).**
- (c)(4) (A) **Demonstration of New Approaches.**—The Council may conduct, on a time-limited basis the demonstration

of new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with dd....

- (c)(4)(B) Outreach—The Council may conduct activities to reach out to assist and enable individuals with dd and their families who otherwise might not come to the attention of the council to obtain services, supports, and other assistance, including access to special adaptation of generic services or specialized services,
- (c)(4)(C) Training—The Council may conduct training for individuals with dd, their families, and personnel ...to enable such individuals to obtain access to , or to provided, services, supports and other assistance, including special adaptation of generic services or specialized services for individuals with dd and their families. To the extent that training activities are provided, such activities shall be designed to promote the empowerment of individuals with dd and their families.
- (c)(4)(D) Supporting Communities.—The Council may assist neighborhoods and communities to respond positively to individuals with dd and their families by encouraging local net works to provide informal and formal supports and enabling communities to offer such individuals and their families access, resources and opportunities.
- (c)(4)(E) Interagency Collaboration and coordination.—The Council may promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with dd and their families.
- (c)(4)(F) Coordination with Related Councils, Committees, and Programs.—The Council may conduct activities to enhance coordination with—
- (c)(4)(F)(i) other councils or committees, authorized by Federal or state law concerning individuals with disabilities (such as the State Interagency Coordinating council under part H of the Individuals with Disabilities Education Act, the State Rehabilitation Advisory Council and the Statewide Independent Living Council under the Rehabilitation Advisory Council and the Statewide Independent Living Council under the Rehabilitation Act of 1973, the State Mental Health Planning Council under part B of title XIX of the Public Health Service Act and other similar

councils or committees);

- (c)(4)(F) (ii) parent training and information centers under part D of the Individuals with Disabilities Education Act and other federally funded projects that assist parents of children with disabilities; and
- (c)(4)(F)(iii) other groups interested in systemic change, capacity building, and advocacy for individuals with disabilities.
- (c)(4)(G) Barrier Elimination, Systems Design, and Citizen Participation.—The Council may conduct activities to eliminate barriers, enhance systems design and redesign, and enhance citizen participation to address issues identified in the State plan.
- (c)(4)(H) Public Education and Coalition Development.—The Council may conduct activities to educate the public about the capabilities, preferences, and needs of individuals with dd and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, educating policymakers, and citizen leadership skills.
- (c)(4)(I) Informing Policymakers.—The Council may provide information to Federal, state, and local policymakers, including the congress, the Federal executive branch, the Governor, State legislature, and State agencies, in order to increase the ability of such policy makers to offer opportunities and to enhance or adapt generic services or provide specialized services to individuals with dd and their families by conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations.
- (c)(4)(J) Prevention.—The Council may conduct prevention activities as defined in § 102.
- (c)(4)(K) Other Activities.—The Council may conduct other systemic change, capacity building, and advocacy activities to promote the development of a consumer and family-centered comprehensive system and a coordinated array of culturally competent services, supports and other assistance designed to achieve independence, productivity, and integration and inclusion into the community of individuals with dd throughout the State on a

comprehensive basis.

- (c)(5) **State Plan Monitoring.**—Not less than once each year, the Council shall monitor, review, and evaluate the implementation and effectiveness of the State plan **in meeting such plan's objectives.**
- (c)(6) **Review of Designated State Agency.**—The Council shall periodically review the designated State agency with respect to the activities carried out under this Act and make any recommendations for change to the Governor.
- (c)(8) Each Council shall prepare, approve, and **implement** a budget using amounts paid to the State under this part to fund and **implement all programs, projects,** and activities under this part, including—
- (c)(8)(A) conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council, reimbursing Council members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care and personal assistance services), paying compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day such member is engaged in performing the duties of the Council, supporting Council member and staff travel to authorized training and technical assistance activities including inservice training and leadership development and appropriate subcontracting activities;
- (c)(8)(B) **hiring and maintaining sufficient numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical personnel** (qualified by training and experience), consistent with State law, as the Council determines necessary to carry out its functions under this part, **except that such state shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under this Act;** and
- (C)(8)(C) directing the expenditure of funds for grants,

contracts, interagency agreements that are binding contracts, and other activities authorized by the approved State plan.

- (c)(9) Staff Hiring and Supervision.—A Council shall, consistent with State law, recruit and hire a Director of the Council, should the Director become vacant, and supervise and annually evaluate the Director. **The Director shall hire, supervise, and annually evaluate the staff of the Council.** Council recruitment and hiring of staff shall be consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be consistent with State law and personnel policies.
- (c)(11)(A) Activities of the Council.—**Nothing in this part shall be construed to preclude a Council from engaging in systemic change, capacity building, and advocacy activities for individuals with disabilities other than developmental disabilities, where appropriate.**
- (c)(11)(B) Authority of the Council.—**Nothing in this Act shall be construed to authorize a Council to direct, control, or exercise any policy making authority or administrative authority over an programs assisted under the Rehabilitation Act of X973 (29 U.S.C 1400 et seq.) and the Individuals with Disabilities Education Act)20 U.S.C. 1400 et seq.)**
- (d)(2)(B)(ii) Criteria For Continued Designation.—The determination at the is discretion of the Governor **(or legislature as the case may be)** shall be made after the Governor has considered the comments and **recommendations** of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency, and after the Governor **(or legislature as the case may be)** has made an independent assessment that the designation of such agency shall not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the to serve as an advocate for individuals with developmental disabilities.
- (d) (2) (C) Review Of Designation.—After October 1, 1993 , the Council may request a review of the designation of the designated State agency by the Governor **(or legislature as the case may be)**. **The Council shall provide documentation concerning the reason the council desires a change to be made and make a**

recommendation to the Governor (or legislature as the case may be) regarding a preferred designated State agency.

- (d)(2)(D) Appeal Of Designation.—After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of the designation of the designated State agency if Council independence as an advocate is not assured because of the actions or inactions of the designated State agency.
- (d)(2)(3) Responsibilities.—The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (A) through (F).
- (d)(2)(3)(A) Support Services.—**The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.**
- (d)(3)(C) Records, Access, and Financial Reports.—The designated State agency shall keep such records and afford access there to as the Secretary and the Council determine necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, liquidation, and the Federal and non-Federal share.
- (d)(3)(D) Non-Federal Share.—**The designated state agency, if other than the Council, shall provide the required non-Federal share defined in § 125A(C).**
- (d)(3)(E) Assurances.—**The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with state law.**
- (d)(3)(F) Memorandum of Understanding.—**On the request of the council, the designated State agency shall enter into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency.**
- (d) (4) Use of Funds for Designated State Agency Responsibilities.—
- (d)(4) (A) Necessary Expenditures of State Designated Agency.—At the request of any State, a portion of any allotment or allotments of such State under

this part for any fiscal year shall be available to pay up to one-half (or the entire amount if the Council is the designated State agency) of the expenditures found necessary by the Secretary for the proper and efficient exercise of the functions of the State designated agency, except that not more than 5 percent of the total of the allotments of such State for any fiscal year, or \$50,000, whichever is less, shall be made available for the total expenditure for such purpose by the State agency designated under this subsection.

(d)(4)(B) Condition for Federal Funding.—Amounts shall be provided under subparagraph (A) to a **State for a fiscal year only on condition that there shall be expended from State sources** carrying out the responsibilities of the designated State agency under paragraph (3) not less than the total amount expended for carrying out such responsibilities from such sources during the previous fiscal year, except in such year as the Council may become the designated State agency.

(d)(4)(C) **Support Services Provided by Other Agencies—**
With the agreement of the designated State Agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

Section 125 State Allotments.

(a) Allotments.—

(a)(1) In General.—For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 130 among the States on the basis of —

(a)(1)(A) the population,

(a)(1)(B) the extent of need for services for individuals with developmental disabilities, and

(a)(1)(C) the financial need, of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 122 for the provision under such plans of services for individuals with developmental disabilities.

(a)(2) Adjustments.—Adjustments in the amounts of State allotments based on subparagraph (A), (B), and (C) of paragraph (1) **shall** be made not more often than

annually. The Secretary shall notify States of any adjustment made **and the percentage of the total appropriation for each State not less** than six months before the beginning of the fiscal year in which such adjustment is to take effect.

- (a)(3) Minimum Allotment For Appropriations Less Than Or Equal to \$75,000,000.
- (a)(3)(A) In General.—Except as provided in paragraph (4), for any fiscal year the allotment under this section—
- (a)(3)(A)(i) to each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, **or the Republic of Palau (until the Compact of Free Association with Palau takes effect) may not be less than** the greater of—

"(I) \$210,000; or

"(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection(d); and

(ii) to any State not described in clause (i), may not be less than the greater of—

(I) \$400,000; or

(II) the greater **of the** allotment **received by such State for fiscal year 1992**, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)."; and

- (a)(3)(B) Reduction of Allotment.—Notwithstanding subparagraph (A), if the aggregate of the amount to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 130 for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 130 for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to

the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 130 for such fiscal year bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.

- (a)(4) Minimum Allotment For Appropriations In Excess of \$75,000,000.
- (a)(4)(A) In General.—In any case in which amounts appropriated under section 130 for a fiscal year exceeds **\$75/000,000**, the allotment under this section for such fiscal year—
- (a)(4)(A)(i) to each of America Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands or the **Republic of Palau (until the compact of Free Association with Palau takes effect)** may not be less than the greater of
- (I) **\$220,000**, or
- (II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and
- (a)(4)(A)(ii) to any State not described in clause (i) may not be less than the greater of—
- (I) \$450,000; or
- (II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).
- (a)(4)(B) Reduction of Allotment.—**The requirements of paragraph (3)(B) shall apply with respect to amounts to allotted to States under subparagraph (A), in the same manner and to the same extent as such requirements apply with respect to amounts to be allotted to States under paragraph (3)(A).**
- (a)(5) State Supports, Services, And Other Activities.—In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for individuals with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to

section 122(c)(3)(A), in the State plan of the State.

Increase in Allotments.—In any case in which the total amount appropriated under section 130 for a fiscal year exceeds the total amount than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increase in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

the total amount appropriated under section 130 for the fiscal year for which the increase in minimum allotment is being made, minus

the total amount appropriated under section 130 for the immediately preceding year, bears to the total amount appropriated under section 130 for such preceding fiscal year.

Unobligated Funds.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

Obligation of Funds.—For the purposes of this part, state Interagency Agreements are considered valid obligations for the purpose of obligating Federal funds allotted to the State under this part.

Cooperative Efforts Between States.—Whenever the State plan approved in accordance with section 122 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.

Reallotment.—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 the Secretary may

fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register), 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 reallocated among the States whose proportionate amounts were not so reduced. Any amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

Section 125A. Federal and Non-Federal Share.