

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

Developmental Disabilities Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing final rules for the Developmental Disabilities program. This final regulation implements the Developmental Disabilities Assistance and Bill of Rights Act of 1984 as amended, (Pub. L. 98-527). The regulations reflect statutory changes in reporting and paperwork requirements and include new program criteria for the University Affiliated Facilities program in 45 CFR Part 1388.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: James J. Colarusso, Director, Management Services Staff, Administration on Developmental Disabilities Hubert H. Humphrey Building, Room 351-D, 200 Independence Avenue, SW., Washington, DC 20201, Telephone: (202) 245-2904.

SUPPLEMENTARY INFORMATION:

Description of Program

The Developmental Disabilities Assistance and Bill of Rights Act (the Act), 42 U.S.C. 6000, has traditionally served a target population who, by virtue of their severe handicapping conditions, have been underserved or inappropriately served through existing programs.

Legislation originally enacted in 1963 as the Mental Retardation Facilities and Construction Act (Pub. L. 88-164) authorized planning activities and construction of facilities in which services were to be provided to the mentally retarded. This legislation was subsequently amended by the Developmental Disabilities and Facilities Construction Act of 1970 (Pub. L. 91-517) which further expanded the target population to include individuals with cerebral palsy epilepsy and other neurological disorders. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for the developmentally disabled and it authorized grants for constructing, administering and operating university affiliated facilities.

Public Law 91-517 and successive amendments to the Act emphasized that the purpose of the Developmental

Disabilities Program was to strengthen, rather than supplant, existing services, and to fill gaps in the human service delivery system. Section 101(a)(5) of the Findings and Purpose section of the Act (42 U.S.C. 6000(a)(5)) explicitly states that "it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care * * *".

Public Law 94-103, the 1975 Amendments, deleted the construction authority, authorized studies of the feasibility of having university affiliated facilities establish satellite centers, emphasized advocacy, and added a new requirement that States establish a Protection and Advocate system (42 U.S.C. 6012). It also added section 111, "Rights of the Developmentally Disabled" which stated Congress' findings with respect to the rights of persons with developmental disabilities.

The 1978 amendments (Pub. L. 95-602) required the provision of priority services to assist States in focusing their energies on specific areas needing remediation (42 U.S.C. 6001(8)). In addition, these amendments added a new definition of developmental disabilities (42 U.S.C. 6001(7)). The term "developmental disability" was defined in the 1978 amendments as " * * * a severe chronic disability of a person which:

A. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

B. Is manifested before the person attains age twenty-two;

C. Is likely to continue indefinitely;

D. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

E. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

The definitional change was arrived at following an extensive study and emphasizes functional deficits rather than clinical conditions. It is estimated that over two million people in the United States now meet the functional definition of developmental disability.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) extended the Developmental Disabilities Program through September 30, 1984. It authorized appropriations for the four major programs in the Act: (1) The basic State grant program (42 U.S.C. 6000-

6068); (2) a system for protection and advocacy of individual rights (42 U.S.C. 6012) (3) the university affiliated facilities programs for administration and operation of interdisciplinary training, research and service programs (42 U.S.C. 6031-6033); and (4) special project grants for projects of national significance (42 U.S.C. 6081).

In addition, section 912 of Pub. L. 97-35 repealed the requirement formerly contained in section 110 of the Act (42 U.S.C. 6009) for a specific evaluation system for services furnished to persons assisted under the Developmental Disabilities Program.

The 1984 Amendments (Pub. L. 98-527) revised and extended the Act through September 30, 1987. Section 101(b)(1) of the Findings and Purposes section of Pub. L. 98-527, (42 U.S.C. 6000(b)(1)) added a new emphasis to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

In addition, the 1984 Amendments required increased accountability of State program and fiscal management which included the introduction of new and revised reporting requirements in section 107 (a) and (b) (42 U.S.C. 6006).

The regulations for the Developmental Disabilities Program are found at 45 CFR parts 1385, 1386, 1387 and 1388. The most recent revision applicable to the Basic State Grant program, the Protection and Advocacy System and Special Projects, was published on March 27, 1984 (49 FR 11779). Rules for the University Affiliated Facilities program were last published on August 8, 1979 (44 FR 45949). These programs are administered at the Federal level by the Administration on Developmental Disabilities (ADD).

The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on July 17, 1986, (51 FR 28904-28914). Interested persons were given sixty days in which to send written comments, suggestions or objections regarding the proposed regulations. During the sixty (60) day comment period eleven (11) letters containing approximately sixty-five (65) comments were received.

All written comments, including requests for editorial changes, were analyzed and form the basis for changes which the Department has made in these final rules.

Part 1385 contains provisions which apply to all of the Developmental Disabilities programs. Part 1386

regulates the two formula grant programs: the Basic State Grant program authorized by Part B of the Act, and the Protection Advocacy (P&A) program authorized by Part C of the Act. Part 1387 applies to Special Projects—Projects of National Significance; Part 1388 applies to the University Affiliated Facilities program authorized by Part D of the Act.

Summary of Comments and the Departmental Response

The discussion which follows includes a summary of major comments, our responses to those comments, and a description of all changes that we have made in the NPRM.

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Section 1385.5 Recovery of Federal funds used for construction of facilities

Section 1385.5 of the NPRM proposed requirements which reaffirmed the Department's commitment to recover funds spent for the construction of facilities pursuant to section 105 of the Act. The NPRM required the State Councils and the University Affiliated Facilities to report to the Commissioner if such facilities will be sold or transferred to a non-public entity or if it will cease to serve persons with developmental disabilities.

Comment: One commenter recommended that regulations should be promulgated under this section which would release the owner from the obligation to repay construction funds for good cause.

Response: The Department believed that the waiver authority in § 1385.7 already establishes the authority to release an owner from the obligation to repay construction funds for good cause. Therefore, no change to § 1385.5 is necessary.

Section 1385.7 Waivers

The only change proposed in § 1385.7 of the NPRM regarding a waiver request on construction recovery was a correction of the statutory citation. The regulatory language of the March 27, 1987, final rule was unchanged. Generally, if comments addressed a section of the regulations we had not proposed to revise, we do not discuss them here. However, as there appears to be considerable confusion over the relationship between § 1385.5 and § 1385.7, we are taking this opportunity to respond to the comments on the construction recovery and the waiver provision.

Comment: A commenter addressed the requirement of § 1385.5(b) regarding submission of documentation by State Councils and University Affiliated Facilities regarding facilities built with funds furnished under the Act. The commenter was concerned that the regulation did not describe in detail how the Commissioner would release an owner from obligation for good cause and recommended that the language in § 1385.7 be revised to reference a policy issuance which details the process of recovery of Federal funds used for construction of such facilities. The commenter indicated that information on this process was mandated by the statute to be included in regulation.

Another commenter recommended that State Councils and University Affiliated Facilities eligible for a waiver be absolved of the documentation requirements in § 1385.5(b).

Response: The Department believes that §§ 1385.5 and 1385.7 as currently written cover all statutory requirements with respect to providing information through regulations, and it is not necessary to include references to specific policy issuances in regulations. The current policy issuance, ADE-PI-85-1, provides the administrative procedures for construction recovery.

We do not concur that State Councils and University Affiliated Facilities eligible for a waiver be absolved of the documentation requirements as outlined in § 1385.5(b). The Commissioner must have such information to base the decision on whether to accept a waiver request with respect to alternative use of facilities constructed with funds under the Act. Therefore, no changes have been made in the final rule.

PART 1386—FORMULA GRANT PROGRAMS

Subpart B—State System for Protection and Advocacy of Individual Rights

Section 1386.20 Designated State Protection and Advocacy Office

Paragraph (d) of § 1386.20 proposed new requirements a State must follow in order to redesignate the Protection and Advocacy Agency.

Comment: Two commenters supported the proposed language in § 1386.20(d) regarding the requirement for public notice of the intent to redesignate and the provisions regarding public comment.

One commenter requested the view that the regulation should be revised to require that any intention of a redesignation may be made by notice which can include but not be limited to a public hearing.

Three commenters requested that the regulation be modified to require an opportunity for a public hearing and comment to ensure that there is meaningful public input on redesignation.

In addition, three commenters provided suggestions for additional information to be required through the public notice provision.

Response: We agree with several of the comments regarding additional informational requirements for the public notice and amended the final rule to include information on the name of the currently designated agency and the effective date of the proposed redesignation. Also, the regulation does not preclude a public hearing or use of additional notice requirements if a State deems such action appropriate. In addition, the language of the final rule regarding the designating official or entity for the Protection and Advocacy Program has been included to conform with the changes made in § 1386.23(a).

Paragraph (e) of § 1386.20 sets forth the information requirements that must be submitted to the Commissioner.

Comment: Three commenters suggested that § 1386.20(e)(1) be revised to provide a definition or standard of what constitutes good cause in relation to redesignating the Protection and Advocacy agency and recommended definitions.

Response: We do not concur and have not provided a definition of good cause because it is up to each individual State to ascertain, document and provide assurance that good cause exists within that State to warrant a Protection and Advocacy redesignation.

However, we have amended § 1386.20(e)(1) to make clear that justification for the redesignation of a Protection and Advocacy agency can not be based on the fact that the agency was carrying out the requirements of the statute.

Comment: One commenter wanted the language revised to include a requirement that ADE provide notice to the presently designated Protection and Advocacy agency of the appointment of another agency as the Protection and Advocacy agency and the availability of the Department's Grant Appeals Board for appealing the redesignation determination.

Response: There is no authority for an appeal to the Department's Grant Appeals Board in this instance. Part of CFR Part 1201. However, if there is evidence that the redesignation by the State was not done for good cause, the State did not follow the process required in these regulations, or both,

such evidence should be submitted to the Commissioner for review.

Section 1386.23 Periodic Reports: Protection and Advocacy System

Paragraph (a) of § 1386.23(a) sets forth the establishment of a new requirement that States submit, on a one time basis, written assurances of compliance with section 142 of the Act. This provision was established because the triennial report which previously included these assurances was deleted in the statute.

Comment: One commenter stated that the current regulations did not adequately specify who must sign written assurances for the Protection and Advocacy program.

Also, one commenter suggested that the Governor or appropriate State official sign the assurances in some instances and the Director of the Protection and Advocacy agency be authorized by the Governor to provide assurance with compliance with section 142 of the Act will occur.

In addition, one commenter wanted Section 1386.23 (a) deleted as assurances to comply with the Act had already been obtained through a program instruction and that such a requirement did not need to be included in the regulation.

Response: We agree with the first two comments and have amended the final rule to allow the Governor or a state official empowered by the Governor or State legislature to provide assurance of compliance with section 142 of the Act. This designation will be a matter for each State to determine. We wish to make clear that whoever signs the required assurances, the State, as the recipient of the funds, is legally obligated to abide by them.

Finally, the Department believes that State submission requirements must be included in regulation. We often provide policy assurances to States to clarify, interpret or reaffirm regulatory language.

Paragraph (b) of § 1386.23 establishes a requirement for an annual report by each Protection and Advocacy agency in support of section 107(b) of the Act. This report was approved by OMB control number 0980-0180.

Comment: One commenter supported without any reservations the proposed language in § 1386.23(b) regarding the annual report from Protection and Advocacy agencies.

Another commenter expressed the opinion that the regulation should be revised to include language on expenditures.

Response: Expenditure data will be obtained through the State submission

of the required quarterly financial status reports (§ 1386.23(c)).

Paragraph (c) of § 1386.23 proposed to establish requirements for submitting financial reports to comport with the two-year liquidation period on obligations as required in § 1386.3. This report was approved by OMB control number 0980-0180.

Comment: One commenter expressed the view that § 1386.23(c) should be revised to eliminate the requirement that a final financial report be submitted two (2) years and ninety (90) days after the end of the Federal fiscal year as such financial information will be included in the annual report.

Response: The submission of financial reports is a fiscal requirement for any State receiving funds. (See 45 CFR Part 74, Subpart I—Financial Reporting Requirements; ADD-PI-87-1, Revisions and Clarification of Instructions for Preparation and Submission of Financial Status Reports for Formula Grants under the Developmental Disabilities Program—Basic Support and Protection and Advocacy.) In addition, the fiscal information required is different from the information required for the Annual Report to Congress. Therefore, the language of the final rule will remain as proposed in the NPRM.

Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities

Section 1386.30 State Plan Requirements

This section of the NPRM regarding State plan requirements proposed only technical changes to comport with the new statutory citations. Therefore, we will not address any comments received which recommended other changes in § 1386.30.

Section 1386.32 Periodic reports: Basic State grants

Paragraph (a) of § 1386.32 of the NPRM provided clarifying language in regard to the submission of financial reports which included the submission of quarterly reports as well as a final report for each fiscal year. This report has been approved by Office of Management and Budget (OMB) under control number 0980-0180.

Comment: Two commenters expressed the view that the regulations should require timely Council review of quarterly and final financial reports prior to gubernatorial or administering agency submission to the Commissioner.

Response: Section 122(b)(1)(C) of the Act states: "The plan must provide that each State agency designated under subparagraph (B) will keep both records

and afford such access thereto as the Secretary or the State Planning Council finds necessary." The State Councils have the authority to review financial reports. If the Council wants to review financial plans prior to submission to ADD, it has the authority under section 122(b)(1)(C) to do so. This is a matter for State Council decision. It is incumbent upon the State Administering Agency to include the Council in its process for review of such forms prior to submission to the Administration on Developmental Disabilities if the Council so desires and assure that these reports are submitted on a timely basis.

Paragraph (b) of § 1386.32 proposed a new requirement for the submission of an annual report on Basic State activities pursuant to section 107(a) of the Act. This report was approved by OMB control number 0980-0172.

Comment: Two commenters recommended that the Secretary, by regulation, should develop a proposed format for the annual report on the Basic State Grant activities.

Response: We have developed a reporting format whose use is required of all State Planning Councils. The report format was transmitted to the States in Program Instruction ADD-PI-86-2 (revising previously issued ADD-PI-85-4) on October 30, 1986.

Section 1386.33 Protection of Employee's interests

Section 1386.33 of the NPRM regarding protection of employee's interests was amended by adding a new statutory citation. There was no proposal to change substantively the current regulation. Therefore, the comment received regarding employee protection provisions and phase-down or closure of State institutions will not be addressed and no changes will be made.

Section 1386.34 Provision of Priority Services

This section of the NPRM proposed to delete and reserve § 1386.34 concerning the provision of priority services.

Comment: Three commenters expressed the opinion that the current regulation contained clarifying language defining the use of 65% of the Basic State Grant program funds for priority services, and therefore this section should be retained.

Response: Section 1386.34 will not be retained as it merely reiterated the language of the statute.

PART 1387—SPECIAL PROJECTS—PROJECTS OF NATIONAL SIGNIFICANCE

The NPRM proposed to delete and reserve Part 1387—Special Projects—Projects—of National Significance.

Comment: One commenter agreed that the regulations need not duplicate statutory language and Part 1387 could be deleted and reserved under these circumstances. Three commenters strongly opposed deletion of Part 1387 based on the language contained in section 182(b) of the Act which indicates that a grant application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe.

Response: The Department concurs with the comments opposing deletion of this part; therefore, Part 1387 is retained.

PART 1388—THE UNIVERSITY AFFILIATED FACILITIES PROGRAM

Part 1388 establishes program criteria for UAF programs pursuant to section 153(a) of the Act.

Section 1388.1 Definitions

This section of the NPRM proposed a definition of "program criteria."

Comment: One comment indicated that qualitative criteria, indicators for qualitative criteria, and quantitative criteria (described as measurements of program criteria) were blended together in a confusing manner.

Response: The Department concurs. We have defined qualitative criteria and measurements of program outcome in the final rule. This revision clarifies that both qualitative and quantitative criteria will be used for program evaluation.

Section 1388.3 Program Criteria—Administration

This section sets forth the program criteria to assure that a UAF will adequately administer the program.

Comment: In § 1388.3(a), one commenter indicated that the phrase "state-of-the-art" be deleted.

Response: The Department concurs and revised the final rule accordingly.

Comment: In § 1388.3(b)(3), one commenter requested a change in the wording regarding the UAF providing support for the University.

Response: The Department concurs and revised the language in § 1388.3(b)(3).

Comment: In § 1388.3(d), one commenter suggested that since the Act uses the term "various ages", not "all ages", we change this language in § 1388.3(d)(2).

Response: We agree and have substituted the term "various ages" for "all ages" throughout the final rule.

keeping with the wording in the Act. The Department believes that, regardless of the word choice, Congress and the regulations have made clear that UAFs and Satellite Centers have an important responsibility to extend their research, training and service efforts to serve adult and elderly developmentally disabled individuals as well as children.

Comment: Four comments were received relating to the UAF development of a plan § 1388.3(d)(3) containing the goals, objectives and timelines for UAF mandated activities. One set of comments offered a number of minor editorial changes to clarify the focus or intent of the section. Two comments were received recommending that the UAF plan be written to fill gaps in the State DD plan and should be reviewed by and coordinated with the State DD Council. One comment was received asking that the UAF seek the advice of the State's mental retardation/developmental disabilities program agency in the development of its plan.

Response: We reviewed the recommended editorial changes and found that these changes did not significantly improve the language of the regulation. The Department agrees that the UAF plan should be developed and implemented with consideration for the needs and resources existing in the community and State. We have made no change in the final rule to require this; however, the Department urges the UAFs to coordinate the development of their plans and activities with the State Developmental Disabilities Councils as well as the State Protection and Advocacy agency.

Comment: In § 1388.3(f), one comment requested that the UAF specifically be required to have a cooperative relationship with the State's mental retardation-developmental disabilities program agency.

Response: The Department agrees that it is important that UAF's work in close collaboration with the State's MR/DD agency. However, in the absence of a statutory mandate that formal cooperative relationships be established, these working relationships are left to State and local determination.

Comment: In § 1388.3(g), one comment suggested that the UAF draw its consultants from the State's mental retardation/developmental disabilities program agency.

Response: The Department believes that it would be neither proper nor advantageous to specify by regulation where or from whom UAF's may seek consultant expertise. The interdisciplinary nature of UAF activities requires expertise from the full spectrum of professional disciplines,

training, and experience. In addition, UAF's differ widely in programs, services, and staff. The Department sees no benefit in limiting the UAF repertoire of consultants nor any advantage in prescribing consultation from any category of agency. Therefore, § 1388.3(f) will be retained as proposed in the NPRM.

Comment: In § 1388.3(h) one comment was received requesting that the statement pertaining to space constructed with Federal funds be a separate paragraph in the rule.

Response: The Department concurs and has revised the final rule to add a new paragraph (h)(3).

Section 1388.4 Program Criteria—Services

Comment: In § 1388.4(a), one commenter requested the addition of the phrase "university setting" specifically including it as part of the community. Also, it was requested that the requirement to include adult and elderly services should not be mandated for all UAFs.

Response: The Department agrees that a university is certainly part of the community and has revised the language of paragraph (a) to say "within the community including the university." The statute requires UAF's to provide exemplary services in community based settings. While many services are appropriately provided by the UAF within the university setting, many services are and should continue to be provided beyond the boundaries of the university.

We do not concur that UAF's should not be required to provide services for adult and elderly developmentally disabled persons and have made no change in the final rule. The Congress has made its intent clear with respect to the UAF's responsibility to serve adults and elderly person with developmental disabilities by emphasizing that UAFs and Satellite Centers have an important responsibility to extend their research, training and service efforts to include adult and elderly developmentally disabled persons whose numbers are increasing and whose needs are largely unmet today (H.R. Report No. 1074, 98th Congress, Page 35, 1984).

Comment: In § 1388.4(d), one commenter requested the substitution of the word "should" for "must" in § 1388.4(d)(1) thru (3). This change would have the effect of not requiring that the principles set forth in these paragraphs be implemented. One commenter requested that the word "evaluation" be substituted for the term "scientific investigation" as the latter suggests

control subjects and human investigation committee review. One commenter requested the substitution of 'evaluated' for 'tested.'

Response: A service quality criterion for a UAF is that UAF services are based on state-of-the-art and innovative practices. UAFs are situated in environments that provide unique resources and opportunities. They are expected to use those opportunities to demonstrate the best available techniques in their practices. In addition, a function of UAFs is to disseminate information that will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities. The requested changes from 'must' to 'should' would dilute that expectation. Therefore, we have made no change in the language of the NPRM.

The Department agrees with the two editorial comments and has substituted the word 'evaluation' for scientific investigation in paragraph (d)(3) and substituted the word 'evaluate' for 'tested' in § 1388.4(d)(5).

Comment: In § 1388.4(e), one commenter requested deletion of the word "must" and the term "news articles" and indicated that news articles may not be appropriate vehicles for dissemination of information to State Councils and others.

Response: The Department concurs and has deleted the term "news article." The word "must" was not deleted because it would diminish the strength of this requirement.

Comment: Section 1388.4(f) proposed that measurements of program criteria include the total number of clients served in relation to a list of exemplary services. Two comments indicated that it would not be possible to comply with this section since the categories of exemplary services listed were not consistent with the database used by the UAFs.

Response: We have revised this section by deleting paragraph (f) that contained the restrictive reporting categories of services and inserted a new paragraph (f)(1) to read as follows: "(1) The total number of clients served by category of service." This change also will permit the measures of program outcome to reflect new initiatives.

Section 1388.5 Program Criteria Training

Comment: In §§ 1388.5 (b)(6) and (b)(7) one commenter noted that the word "may" rather than "must" should be used as these paragraphs pertain to optional training.

Response: The intent of paragraphs (b)(6) and (b)(7) dealing with the outcome of optional interdisciplinary training is to require that the UAFs offer such training as an opportunity for trainees. Trainees may elect, in keeping with their career goals, training in research, evaluation and leadership development. The optional nature of the training refers to trainee discretion, not that of the UAFs to offer such training. Therefore, paragraphs (b)(6) and (b)(7) will be retained in the final rule as proposed in the NPRM.

Comment: In § 1388.5(c), referring to the designation of long-term training as 300 or more hours during an academic year, one commenter recommended deletion of the phrase "during an academic year" as not necessarily relevant, e.g. interns, post-doctoral candidates, and residents.

Response: The Department has deleted "during an academic year" in response to the comment, however, to avoid misinterpretation that 300 hours is cumulative, the Department has added the phrase "in a one-year reporting period" to maintain consistency with the standard definition of long-term training.

Comment: In § 1388.5(c)(2) two commenters addressed didactic instruction and clinical practicum under long-term and intermediate training. The first stated that the focus should be on clinical experience not didactic instruction and that the term "training activities" would cover both didactic instruction and clinical practicum while allowing the UAF to select the most appropriate training method. The second suggested that the focus should be on practical experience rather than didactic instruction especially for trainees in administration, health planning, research, and other areas.

Response: The Department agrees with the comments and has revised paragraphs (c)(2) and other paragraphs accordingly.

Comment: In §§ 1388.5(c)(3) and (4), one commenter suggested substitution of "should" for "must."

Response: The Department does not concur. Future leaders in the field of developmental disabilities will serve clients in a variety of settings and exposure to more than one setting is an essential training aspect. The final rule will contain "must" as proposed in the NPRM.

Comment: In §§ 1388.5 (c)(6) and (c)(7), one commenter stated that interns and post doctoral students, among others, may not receive academic credit for all training. The request was made to add, as appropriate, to the relevant sections. The point was made that training including practicum as a team

member and leader would more accurately be 'experiences as team member and leader.'

Response: The Department concurs with the comments concerning 'credit, as appropriate' and usage of 'experiences as a team member and leader' and has revised the final rule accordingly in § 1388.5 (c)(6) and (c)(7).

Comment: In § 1388.5(d), one commenter corrected the designation of intermediate interdisciplinary training as up to 299 hours, not 300 hours.

Response: The Department concurs and has made the change in paragraph (d).

Comment: In § 1388.5(f), two commenters requested that training priorities be established "in cooperation with" rather than "with the assistance of" State Developmental Disabilities Planning Councils and other relevant agencies; one commenter requested clarification that "other relevant agencies" include national agencies that have particular priorities in relation to funding training, especially as it pertains to pre-service training. A third commenter expressed concern that the regulatory language does not call for the UAFs to develop relationships with the State's mental retardation/developmental disabilities program agency.

One commenter suggested the deletion of "with particular attention to those serving adult and elderly persons with developmental disabilities" explaining that "Priorities may change. Criteria should focus more generally on national manpower needs."

Response: We agree with the comments pertaining to community relevancy and have revised paragraph (f)(2) accordingly. However, we do not concur that UAF training priorities should be exempt from the requirement to focus on the needs of adult and elderly persons with developmental disabilities; therefore, we have made no change in (f)(3) of the final rule.

Paragraph (g) of § 1388.5 proposed that the interdisciplinary training program must be evaluated and research should be conducted.

Comment: One commenter was received recommending the use of the term 'evaluation' rather than 'research' with respect to assessing interdisciplinary strategies and procedures.

Response: The Department concurs and has revised paragraph (g)(3) accordingly.

Comment: In § 1388.5(h), one commenter noted that the number of hours of special training is not collected by UAFs and that it would have limited meaning.

Response: The Department agrees with the comment and has deleted this proposed requirement.

Section 1388.6 Program Criteria—Technical Assistance

Comment: In § 1388.6(b)(3), one comment requested rewording of the item concerning personnel providing technical assistance, stating that as written the paragraph was too restrictive.

Response: The Department concurs and has revised paragraph (b) to define more broadly who may provide technical assistance.

Section 1388.7 Program Criteria—Information Dissemination

Comment: In § 1388.7, two comments were received requesting that primary consumers be included as potential target audiences.

Response: The Department believes that primary consumers were included in the term "target audience" but will substitute the phrase "persons with developmental disabilities, their families * * *" under paragraphs (a) and (c) to clarify this concept.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. These regulations primarily affect State agencies and University Affiliated Facilities. The basic requirements of the program are established by the statute, not these regulations. Therefore, the Department concludes that these regulations are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of \$100 million or more or meet the other threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch. 61), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule.

There will be no specified format for the submittal of the State plans and assurances required in §§ 1386.30-1386.31 and 1386.33. States may select any format they wish as long as they meet the requirements in the Act and in these regulations.

These regulations reflect the aims of Executive Order 12372 to allow for State Plan simplification.

Section 1388 proposes program criteria for the UAF program. The program criteria were developed through consultation with the American Association of University Affiliated Programs. Although certain sections of part 1388 contain recordkeeping and reporting requirements, it should be understood that these criteria have been developed by the field to help define good professional standards and are not new practices. Most of the requirements will be satisfied with the submission of an acceptable grant application.

List of Subjects

45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, university affiliated facility, satellite center.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.850 Developmental Disabilities Basic Support and 13.851 Developmental Disabilities—Special Projects)

Dated: August 21, 1987.
Philip H. Hawkes,
Acting Assistant Secretary for Human Development Services.
Approved: September 18, 1987.
Doris E. Harwood,
Secretary.

For those reasons set forth in the preamble, Chapter XIII of title 45 of the Code of Federal Regulations is amended

SUBCHAPTER 1—THE ADMINISTRATIVE ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

1. The heading for Part 1385 is revised to read as follows:

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

2. The authority citation for Part 1 is revised to read as follows:

Authority: Pub. L. 88-164, 77 Stat. 282, as amended by Pub. L. 90-170, 81 Stat. 527, Pub. L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89 Stat. 486; Pub. L. 95-602, 92 Stat. 2955; Pub. L. 97-35, 95 Stat. 563; Pub. L. 98-527 98 Stat. (42 U.S.C. 6000 et seq.).

3. Section 1385.1 is revised to read as follows:

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this Part are applicable to the following programs and projects:

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;

(b) State Basic Program for Planning, Administration and Services on Behalf of Persons with Developmental Disabilities;

(c) Special Projects—Projects of National Significance; and

(d) University Affiliated Programs.

4. Section 1385.3 is amended by revising the definition of "Act" to read as follows. The introductory text is republished for the convenience of the reader.

§ 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the statutory authority for the developmental disabilities programs as enacted in Pub. L. 88-164 and amended by Pub. L. 90-170; Pub. L. 91-517, Pub. L. 94-103, Pub. L. 95-602, Pub. L. 97-35, and Pub. L. 98-527. It may be cited as the Developmental Disabilities Assistance and Bill of Rights Act.

5. Section 1385.4 is revised to read as follows:

§ 1385.4 Rights of persons with developmental disabilities.

(a) Section 110 of the Act, *Rights of the Developmentally Disabled* (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with section 122(b)(5)(C) of the Act (42 U.S.C. 6022

(b)(5)(C), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated facilities or for special project grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

6. A new § 1385.5 is added as follows:

§ 1385.5 Recovery of Federal funds used for construction of facilities.

(a) The State Council or the appropriate university affiliated facility official must notify the Commissioner in advance in writing if a facility described in section 106 of the act:

(1) Will be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity; or

(2) Will cease to be a public or other nonprofit facility for persons with developmental disabilities.

(b) The State Council or the appropriate UAF official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

(c) Recovery of funds will include the charging of interest in accordance with HHS claims collection regulations in 45 CFR Part 96 and the Departmental Debt Collection Procedures (45 FR 61792, September 17, 1986) available from the Administration on Developmental Disabilities, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

7. Section 1385.6 is revised to read as follows:

§ 1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under this Act must meet the requirements of section 109 of the Act (42 U.S.C. 6006) regarding affirmative action. Failure to comply with section 109 may result in loss of Federal funds under the Act. If a compliance effort is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of Part 1386.

8. Section 1385.7 is amended by revising the introductory text to read as follows:

§ 1385.7 Waivers.

Applications for a waiver of the provisions of sections 106 of the Act (42 U.S.C. 6004) with respect to alternative use of facilities constructed with funds under the Act may be granted by the

Commissioner if the following criteria are met:

9. Section 1385.9 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to special project grants under section 162 of the Act (42 U.S.C. 6062).

PART 1386—FORMULA GRANT PROGRAMS

10. The authority citation for Part 1386 is revised to read as follows:

Authority: Pub. L. 86-164, 77 Stat. 282, as amended by Pub. L. 90-170, 81 Stat. 527; Pub. L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89 Stat. 486; Pub. L. 95-602, 92 Stat. 2955; Pub. L. 97-35, 95 Stat. 563; Pub. L. 99-527, 96 Stat. 2662 (42 U.S.C. 6000 et seq.)

11. New paragraphs (d), and (e) are added to § 1386.20 to read as follows:

Subpart B—State System for Protection and Advocacy of Individual Rights

§ 1386.20 Designated State Protection and Advocacy Office.

(d) Prior to any redesignation of the agency which administers the State Protection and Advocacy system, the Governor or a State official empowered by the Governor or State legislature must give public notice of the intent to redesignate and provide an opportunity for public comment on the proposed redesignation. The public notice must include:

(1) The Federal requirements for the Protection and Advocacy program (section 142 of the Act);

(2) The goals and function of the State's Protection and Advocacy program;

(3) Name of current designated agency;

(4) A description of the current Protection and Advocacy agency and the system it administers;

(5) The reason(s) for proposed redesignation;

(6) Effective date of proposed redesignation;

(7) The name of the agency proposed to administer the State Protection and Advocacy program; and

(8) A description of the system which the new Protection and Advocacy agency would administer.

(e) Following receipt of comments from the public, the Governor or a State

official empowered by the Governor or State legislature must submit the following information to the Commissioner:

(1) Documentation that the system was redesignated for good cause; Such documentation must clearly demonstrate that the existing Protection and Advocacy agency was not redesignated for any actions or activities undertaken which were consistent with section 142 of the Act, these regulations and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99-379.

(2) Assurance that the designated Protection and Advocacy system meets the requirements of the statute and the regulations.

12. Section 1386.21 is amended by revising paragraphs (a) to read as follows:

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of section 142 of the Act (42 U.S.C. 6042 and that system must be operational.

§ 1386.22 [Removed and Reserved]

13. Section 1386.22 is removed and reserved.

14. Section 1386.23 is revised to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

The State Protection and Advocacy Agency must submit:

(a) Written assurance of compliance with section 142 of the Act will be required on a one time only basis. These assurances to the Commissioner must be signed by the Governor or a State official or entity empowered by the Governor or State legislature to provide such assurance. These assurances will remain in effect unless changes occur within the State which will affect the functioning of the Protection and Advocacy system in which case an amendment is required 60 days prior to the effective date of the change. All assurances and/or amendments may be provided in advance of the State's choice and will remain in effect as long as the State receives funds under the Act.

(b) An annual report to the Commissioner describing the activities and accomplishments carried out under the system during the previous year.

(c) Quarterly financial status reports from the Protection and Advocacy Agency are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year. These quarterly reports must be submitted until the final report is submitted for each fiscal year.

(Information collection requirements contained in paragraph (b) under control number 0980-0160 and paragraph (c) under control number 0980-0180 are approved by the Office of Management and Budget.)

15. Section 1386.24 is revised to read as follows:

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

Federal financial participation is not allowable for:

(a) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(b) Costs not allowed under other applicable statutes, Departmental regulations and issuances of the Office of Management and Budget.

Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

16. Section 1386.30 is amended by revising paragraphs (a), (b), (c)(2), (c)(3) and the parenthetical containing the OMB control number to read as follows:

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements of sections 122 and 124(a) of the Act (42 U.S.C. 6022 and 6024(a)(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

(c) [2] The State shall... regarding individual... as set forth in... U.S.C. 6027) and

(3) The... developmentally disabled... be protected... of the Act (42 U.S.C. 6027)

(Information collection requirements contained in paragraph... number 0980-0160 and paragraph...)

control number 0980-0139 are approved by the Office of Management and Budget.

17. Section 1386.32 is revised to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial official must submit quarterly financial status reports on the programs funded under this part. These reports are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year. The quarterly reports must be submitted until the final report is submitted for each fiscal year.

(b) By January 1 of each year an annual report shall be submitted pursuant to section 107(a) of the Act. The report may be in a format of the State's choice.

(Information collection requirements contained in paragraph (a) under control number 0980-0139 and paragraph (b) under control number 0980-0172 are approved by the Office of Management and Budget.)

18. Section 1386.33 is amended by revising paragraph (a) and adding an OMB control number to the end of the section to read as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(6)(B) of the Act (42 U.S.C. 6022(6)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's intention to provide alternative community living arrangements.

(Approved by the Office of Management and Budget under control number 0980-0139)

(Information collection requirements contained in paragraph (a) under control number 0980-0139 and paragraph (b) under control number 0980-0172 are approved by the Office of Management and Budget.)

(Information collection requirements contained in paragraph (a) under control number 0980-0139 and paragraph (b) under control number 0980-0172 are approved by the Office of Management and Budget.)

§ 1386.35 Allowable and non-allowable costs for basic State grants.

(b) . . .

(1) Cost incurred by institutions other residential or non-residential programs which do not comply with Congressional findings with respect persons with developmental disat in section 110 of the Act (42 U.S.C. . . .)

21. Section 1386.81 is amended by revising paragraph (a) to read as follows:

§ 1386.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearing afforded by the Department to State pursuant to sections 122, 127 and 1 the Act. (42 U.S.C. 6022, 6027 and . . .)

22. Section 1386.111 is amended revising paragraph (c)(1) to read as follows. The introductory text of (republished for the convenience of reader.

§ 1386.111 Decisions following hearing.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under sections 122, 127 and 142 of the Act a State plan or report on the State protection and advocacy system not comply with Federal requirement he or she shall also specify what State's total allotment for the fiscal will not be authorized for the State whether in the exercise of his or discretion, the allotment will be (a part of the State plan or the not affected by the noncompliance

23. The heading for Part 1386 is revised to read as follows:

PART 1387—SPECIAL PROJECTS OF NATIONAL SIGNIFICANCE

24. The authority citation for it continues to read as follows:

Authority: 42 U.S.C. 6022, 6027, 6028, 6029, 6030, 6031, 6032, 6033, 6034, 6035, 6036, 6037, 6038, 6039, 6040, 6041, 6042, 6043, 6044, 6045, 6046, 6047, 6048, 6049, 6050, 6051, 6052, 6053, 6054, 6055, 6056, 6057, 6058, 6059, 6060, 6061, 6062, 6063, 6064, 6065, 6066, 6067, 6068, 6069, 6070, 6071, 6072, 6073, 6074, 6075, 6076, 6077, 6078, 6079, 6080, 6081, 6082, 6083, 6084, 6085, 6086, 6087, 6088, 6089, 6090, 6091, 6092, 6093, 6094, 6095, 6096, 6097, 6098, 6099, 6100, 6101, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6109, 6110, 6111, 6112, 6113, 6114, 6115, 6116, 6117, 6118, 6119, 6120, 6121, 6122, 6123, 6124, 6125, 6126, 6127, 6128, 6129, 6130, 6131, 6132, 6133, 6134, 6135, 6136, 6137, 6138, 6139, 6140, 6141, 6142, 6143, 6144, 6145, 6146, 6147, 6148, 6149, 6150, 6151, 6152, 6153, 6154, 6155, 6156, 6157, 6158, 6159, 6160, 6161, 6162, 6163, 6164, 6165, 6166, 6167, 6168, 6169, 6170, 6171, 6172, 6173, 6174, 6175, 6176, 6177, 6178, 6179, 6180, 6181, 6182, 6183, 6184, 6185, 6186, 6187, 6188, 6189, 6190, 6191, 6192, 6193, 6194, 6195, 6196, 6197, 6198, 6199, 6200, 6201, 6202, 6203, 6204, 6205, 6206, 6207, 6208, 6209, 6210, 6211, 6212, 6213, 6214, 6215, 6216, 6217, 6218, 6219, 6220, 6221, 6222, 6223, 6224, 6225, 6226, 6227, 6228, 6229, 6230, 6231, 6232, 6233, 6234, 6235, 6236, 6237, 6238, 6239, 6240, 6241, 6242, 6243, 6244, 6245, 6246, 6247, 6248, 6249, 6250, 6251, 6252, 6253, 6254, 6255, 6256, 6257, 6258, 6259, 6260, 6261, 6262, 6263, 6264, 6265, 6266, 6267, 6268, 6269, 6270, 6271, 6272, 6273, 6274, 6275, 6276, 6277, 6278, 6279, 6280, 6281, 6282, 6283, 6284, 6285, 6286, 6287, 6288, 6289, 6290, 6291, 6292, 6293, 6294, 6295, 6296, 6297, 6298, 6299, 6300, 6301, 6302, 6303, 6304, 6305, 6306, 6307, 6308, 6309, 6310, 6311, 6312, 6313, 6314, 6315, 6316, 6317, 6318, 6319, 6320, 6321, 6322, 6323, 6324, 6325, 6326, 6327, 6328, 6329, 6330, 6331, 6332, 6333, 6334, 6335, 6336, 6337, 6338, 6339, 6340, 6341, 6342, 6343, 6344, 6345, 6346, 6347, 6348, 6349, 6350, 6351, 6352, 6353, 6354, 6355, 6356, 6357, 6358, 6359, 6360, 6361, 6362, 6363, 6364, 6365, 6366, 6367, 6368, 6369, 6370, 6371, 6372, 6373, 6374, 6375, 6376, 6377, 6378, 6379, 6380, 6381, 6382, 6383, 6384, 6385, 6386, 6387, 6388, 6389, 6390, 6391, 6392, 6393, 6394, 6395, 6396, 6397, 6398, 6399, 6400, 6401, 6402, 6403, 6404, 6405, 6406, 6407, 6408, 6409, 6410, 6411, 6412, 6413, 6414, 6415, 6416, 6417, 6418, 6419, 6420, 6421, 6422, 6423, 6424, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, 6433, 6434, 6435, 6436, 6437, 6438, 6439, 6440, 6441, 6442, 6443, 6444, 6445, 6446, 6447, 6448, 6449, 6450, 6451, 6452, 6453, 6454, 6455, 6456, 6457, 6458, 6459, 6460, 6461, 6462, 6463, 6464, 6465, 6466, 6467, 6468, 6469, 6470, 6471, 6472, 6473, 6474, 6475, 6476, 6477, 6478, 6479, 6480, 6481, 6482, 6483, 6484, 6485, 6486, 6487, 6488, 6489, 6490, 6491, 6492, 6493, 6494, 6495, 6496, 6497, 6498, 6499, 6500, 6501, 6502, 6503, 6504, 6505, 6506, 6507, 6508, 6509, 6510, 6511, 6512, 6513, 6514, 6515, 6516, 6517, 6518, 6519, 6520, 6521, 6522, 6523, 6524, 6525, 6526, 6527, 6528, 6529, 6530, 6531, 6532, 6533, 6534, 6535, 6536, 6537, 6538, 6539, 6540, 6541, 6542, 6543, 6544, 6545, 6546, 6547, 6548, 6549, 6550, 6551, 6552, 6553, 6554, 6555, 6556, 6557, 6558, 6559, 6560, 6561, 6562, 6563, 6564, 6565, 6566, 6567, 6568, 6569, 6570, 6571, 6572, 6573, 6574, 6575, 6576, 6577, 6578, 6579, 6580, 6581, 6582, 6583, 6584, 6585, 6586, 6587, 6588, 6589, 6590, 6591, 6592, 6593, 6594, 6595, 6596, 6597, 6598, 6599, 6600, 6601, 6602, 6603, 6604, 6605, 6606, 6607, 6608, 6609, 6610, 6611, 6612, 6613, 6614, 6615, 6616, 6617, 6618, 6619, 6620, 6621, 6622, 6623, 6624, 6625, 6626, 6627, 6628, 6629, 6630, 6631, 6632, 6633, 6634, 6635, 6636, 6637, 6638, 6639, 6640, 6641, 6642, 6643, 6644, 6645, 6646, 6647, 6648, 6649, 6650, 6651, 6652, 6653, 6654, 6655, 6656, 6657, 6658, 6659, 6660, 6661, 6662, 6663, 6664, 6665, 6666, 6667, 6668, 6669, 6670, 6671, 6672, 6673, 6674, 6675, 6676, 6677, 6678, 6679, 6680, 6681, 6682, 6683, 6684, 6685, 6686, 6687, 6688, 6689, 6690, 6691, 6692, 6693, 6694, 6695, 6696, 6697, 6698, 6699, 6700, 6701, 6702, 6703, 6704, 6705, 6706, 6707, 6708, 6709, 6710, 6711, 6712, 6713, 6714, 6715, 6716, 6717, 6718, 6719, 6720, 6721, 6722, 6723, 6724, 6725, 6726, 6727, 6728, 6729, 6730, 6731, 6732, 6733, 6734, 6735, 6736, 6737, 6738, 6739, 6740, 6741, 6742, 6743, 6744, 6745, 6746, 6747, 6748, 6749, 6750, 6751, 6752, 6753, 6754, 6755, 6756, 6757, 6758, 6759, 6760, 6761, 6762, 6763, 6764, 6765, 6766, 6767, 6768, 6769, 6770, 6771, 6772, 6773, 6774, 6775, 6776, 6777, 6778, 6779, 6780, 6781, 6782, 6783, 6784, 6785, 6786, 6787, 6788, 6789, 6790, 6791, 6792, 6793, 6794, 6795, 6796, 6797, 6798, 6799, 6800, 6801, 6802, 6803, 6804, 6805, 6806, 6807, 6808, 6809, 6810, 6811, 6812, 6813, 6814, 6815, 6816, 6817, 6818, 6819, 6820, 6821, 6822, 6823, 6824, 6825, 6826, 6827, 6828, 6829, 6830, 6831, 6832, 6833, 6834, 6835, 6836, 6837, 6838, 6839, 6840, 6841, 6842, 6843, 6844, 6845, 6846, 6847, 6848, 6849, 6850, 6851, 6852, 6853, 6854, 6855, 6856, 6857, 6858, 6859, 6860, 6861, 6862, 6863, 6864, 6865, 6866, 6867, 6868, 6869, 6870, 6871, 6872, 6873, 6874, 6875, 6876, 6877, 6878, 6879, 6880, 6881, 6882, 6883, 6884, 6885, 6886, 6887, 6888, 6889, 6890, 6891, 6892, 6893, 6894, 6895, 6896, 6897, 6898, 6899, 6900, 6901, 6902, 6903, 6904, 6905, 6906, 6907, 6908, 6909, 6910, 6911, 6912, 6913, 6914, 6915, 6916, 6917, 6918, 6919, 6920, 6921, 6922, 6923, 6924, 6925, 6926, 6927, 6928, 6929, 6930, 6931, 6932, 6933, 6934, 6935, 6936, 6937, 6938, 6939, 6940, 6941, 6942, 6943, 6944, 6945, 6946, 6947, 6948, 6949, 6950, 6951, 6952, 6953, 6954, 6955, 6956, 6957, 6958, 6959, 6960, 6961, 6962, 6963, 6964, 6965, 6966, 6967, 6968, 6969, 6970, 6971, 6972, 6973, 6974, 6975, 6976, 6977, 6978, 6979, 6980, 6981, 6982, 6983, 6984, 6985, 6986, 6987, 6988, 6989, 6990, 6991, 6992, 6993, 6994, 6995, 6996, 6997, 6998, 6999, 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007, 7008, 7009, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7020, 7021, 7022, 7023, 7024, 7025, 7026, 7027, 7028, 7029, 7030, 7031, 7032, 7033, 7034, 7035, 7036, 7037, 7038, 7039, 7040, 7041, 7042, 7043, 7044, 7045, 7046, 7047, 7048, 7049, 7050, 7051, 7052, 7053, 7054, 7055, 7056, 7057, 7058, 7059, 7060, 7061, 7062, 7063, 7064, 7065, 7066, 7067, 7068, 7069, 7070, 7071, 7072, 7073, 7074, 7075, 7076, 7077, 7078, 7079, 7080, 7081, 7082, 7083, 7084, 7085, 7086, 7087, 7088, 7089, 7090, 7091, 7092, 7093, 7094, 7095, 7096, 7097, 7098, 7099, 7100, 7101, 7102, 7103, 7104, 7105, 7106, 7107, 7108, 7109, 7110, 7111, 7112, 7113, 7114, 7115, 7116, 7117, 7118, 7119, 7120, 7121, 7122, 7123, 7124, 7125, 7126, 7127, 7128, 7129, 7130, 7131, 7132, 7133, 7134, 7135, 7136, 7137, 7138, 7139, 7140, 7141, 7142, 7143, 7144, 7145, 7146, 7147, 7148, 7149, 7150, 7151, 7152, 7153, 7154, 7155, 7156, 7157, 7158, 7159, 7160, 7161, 7162, 7163, 7164, 7165, 7166, 7167, 7168, 7169, 7170, 7171, 7172, 7173, 7174, 7175, 7176, 7177, 7178, 7179, 7180, 7181, 7182, 7183, 7184, 7185, 7186, 7187, 7188, 7189, 7190, 7191, 7192, 7193, 7194, 7195, 7196, 7197, 7198, 7199, 7200, 7201, 7202, 7203, 7204, 7205, 7206, 7207, 7208, 7209, 7210, 7211, 7212, 7213, 7214, 7215, 7216, 7217, 7218, 7219, 7220, 7221, 7222, 7223, 7224, 7225, 7226, 7227, 7228, 7229, 7230, 7231, 7232, 7233, 7234, 7235, 7236, 7237, 7238, 7239, 7240, 7241, 7242, 7243, 7244, 7245, 7246, 7247, 7248, 7249, 7250, 7251, 7252, 7253, 7254, 7255, 7256, 7257, 7258, 7259, 7260, 7261, 7262, 7263, 7264, 7265, 7266, 7267, 7268, 7269, 7270, 7271, 7272, 7273, 7274, 7275, 7276, 7277, 7278, 7279, 7280, 7281, 7282, 7283, 7284, 7285, 7286, 7287, 7288, 7289, 7290, 7291, 7292, 7293, 7294, 7295, 7296, 7297, 7298, 7299, 7300, 7301, 7302, 7303, 7304, 7305, 7306, 7307, 7308, 7309, 7310, 7311, 7312, 7313, 7314, 7315, 7316, 7317, 7318, 7319, 7320, 7321, 7322, 7323, 7324, 7325, 7326, 7327, 7328, 7329, 7330, 7331, 7332, 7333, 7334, 7335, 7336, 7337, 7338, 7339, 7340, 7341, 7342, 7343, 7344, 7345, 7346, 7347, 7348, 7349, 7350, 7351, 7352, 7353, 7354, 7355, 7356, 7357, 7358, 7359, 7360, 7361, 7362, 7363, 7364, 7365, 7366, 7367, 7368, 7369, 7370, 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, 7379, 7380, 7381, 7382, 7383, 7384, 7385, 7386, 7387, 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7395, 7396, 7397, 7398, 7399, 7400, 7401, 7402, 7403, 7404, 7405, 7406, 7407, 7408, 7409, 7410, 7411, 7412, 7413, 7414, 7415, 7416, 7417, 7418, 7419, 7420, 7421, 7422, 7423, 7424, 7425, 7426, 7427, 7428, 7429, 7430, 7431, 7432, 7433, 7434, 7435, 7436, 7437, 7438, 7439, 7440, 7441, 7442, 7443, 7444, 7445, 7446, 7447, 7448, 7449, 7450, 7451, 7452, 7453, 7454, 7455, 7456, 7457, 7458, 7459, 7460, 7461, 7462, 7463, 7464, 7465, 7466, 7467, 7468, 7469, 7470, 7471, 7472, 7473, 7474, 7475, 7476, 7477, 7478, 7479, 7480, 7481, 7482, 7483, 7484, 7485, 7486, 7487, 7488, 7489, 7490, 7491, 7492, 7493, 7494, 7495, 7496, 7497, 7498, 7499, 7500, 7501, 7502, 7503, 7504, 7505, 7506, 7507, 7508, 7509, 7510, 7511, 7512, 7513, 7514, 7515, 7516, 7517, 7518, 7519, 7520, 7521, 7522, 7523, 7524, 7525, 7526, 7527, 7528, 7529, 7530, 7531, 7532, 7533, 7534, 7535, 7536, 7537, 7538, 7539, 7540, 7541, 7542, 7543, 7544, 7545, 7546, 7547, 7548, 7549, 7550, 7551, 7552, 7553, 7554, 7555, 7556, 7557, 7558, 7559, 7560, 7561, 7562, 7563, 7564, 7565, 7566, 7567, 7568, 7569, 7570, 7571, 7572, 7573, 7574, 7575, 7576, 7577, 7578, 7579, 7580, 7581, 7582, 7583, 7584, 7585, 7586, 7587, 7588, 7589, 7590, 7591, 7592, 7593, 7594, 7595, 7596, 7597, 7598, 7599, 7600, 7601, 7602, 7603,

- Sec.
 1388.3 Program criteria—administration.
 1388.4 Program criteria—services.
 1388.5 Program criteria—training.
 1388.6 Program criteria—technical assistance.
 1388.7 Program criteria—Information dissemination.
 1388.8 Use of program criteria for Satellite Centers.

Authority: 42 U.S.C. 6063 et. seq.

§ 1388.1 Definitions.

For purposes of this part:

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Facilities program operation. The program criteria will be used for qualitative evaluation, and also include measurements of program outcome.

Qualitative criteria means desired component and attributes which are UAF program requirements for prescribed areas.

Measurements of program outcome means a specific number of outcomes in a prescribed area. Measurements of program outcome can be aggregated and reported across all UAFs or used as management and evaluation tools in individual programs.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Facilities (UAF) program. Compliance with the program criteria is a prerequisite for the minimum funding level of a UAF. However, compliance with the program criteria, does not, by itself, constitute an assurance of funding.

§ 1388.3 Program criteria—administration.

(a) *Governance.* A UAF must be an integral component of a university but maintain the autonomy required to carry out the UAF mission and provide for the mandated activities as set forth in section 102(13) and section 151 of the Act [exemplary services, interdisciplinary training, technical assistance and information dissemination]. The UAF must use management practices that provide direction to professionals, and parents of persons with developmental disabilities, paraprofessionals and volunteers for the UAF. The UAF must also promote the visibility of the UAF, and the integration of the program components. Management practices must facilitate cooperative relationships both within and outside the university community that further the UAF mission, aid persons with developmental disabilities and improve the field of developmental disabilities.

(b) *University relationship.* (1) The UAF must have a written agreement or charter with the university that specifies the UAF designation as an official university component, the relationships between the UAF and other university components, the university commitment to the UAF, and the UAF commitment to the university. The written agreement or charter will be required on a one-time only basis and would remain in effect unless changes occur which affect the relationship of the UAF and the university.

(2) The UAF must be responsible to and report directly to a university administrator who will represent the interests of the UAF within the university. The administrator must support and represent the UAF in operation and planning and in the training of university students, professionals, parents and the community.

(3) The UAF must show evidence that it contributes to the university's mission in the form of public relations, university instruction, continuing education, and joint development of new programs and grants.

(c) *Administration.* (1) The UAF must be managed by a person who has adequate background in a discipline relevant to the goals of the UAF, evidence of commitment to the field of developmental disabilities, and functional competence to carry-out the mission of the UAF.

(2) Directors, administrators, and middle managers of the UAF must work with a variety of professionals and non-professionals within the university and across levels of the service system to carry-out the UAF mission.

(3) A UAF must maintain a mechanism to identify and successfully compete for funding opportunities other than those under the Act.

(d) *Organization.* (1) A UAF must be represented and fully participate in all meetings and activities of the State Planning Council that are prescribed by the Act.

(2) A UAF's mission must reflect legislative requirements, special needs of persons of various ages with developmental disabilities and the needs of those who work in the field and who are concerned about persons with developmental disabilities.

(3) A UAF must develop a plan which includes the goals, objectives and timelines for UAF services, special projects, training, technical assistance, information dissemination and research activities that include a continuous, ongoing assessment of the program and activities.

(e) *Funding.* A UAF must maintain an annual operational budget and use accepted accounting procedures to administer funds.

(f) *Cooperative relationships.* (1) A UAF must maintain cooperative relationships with the State Developmental Disability Council and the Protection and Advocacy system.

(2) A UAF must maintain cooperative relationships with the UAF network and individuals, organizations, and universities to enhance quality of life for persons with developmental disabilities and to improve the field of developmental disabilities.

(g) *Personnel policies.* (1) In order to promote the interdisciplinary nature of the UAF mission, a UAF must have on staff, or have available, adjunct professors, consultants, or experts in a broad range of disciplines, including education, health, psychology and social work.

(2) A UAF must inform staff of and implement university policies.

(3) A UAF must supplement university policies that enhance professional growth and support research.

(4) A UAF must take affirmative action to employ and advance in employment qualified individuals with developmental disabilities.

(h) *Physical facility.* (1) A UAF must be fully accessible to the handicapped in accordance with section 504 of the Rehabilitation Act.

(2) A UAF must have adequate space to carry out the mandated activities.

(3) Space that was constructed with Federal funds must be used for its intended UAF purpose pursuant to 45 CFR 1385.5 and 1385.7.

(i) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of UAF staff that operate the center identified by name, discipline, percentage of time working on UAF grant, and percentage of time working on other activities within the university.

(2) Amount of university financial and other resources that supplement the UAF.

(3) Total amount of UAF funds which include the amount of the ADD grant and funds from all other sources.

§ 1388.4 Program criteria—services.

(a) *Exemplary Services.* A UAF must integrate exemplary services and projects into community settings. Exemplary services are based on emerging or continuing needs and new, innovative concepts or practices. These services may be provided in a service delivery site or training setting within the community, including the university.

Exemplary service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Exemplary services must be extended, as appropriate, to include adult and elderly persons with developmental disabilities and also to support the independence, productivity, community integration and human rights of developmentally disabled individuals.

(b) *Community-integrated services.* The following are criteria for evaluating community-integrated services:

(1) Services and projects are scheduled at times and in places that are consistent with routine activities within the local community.

(2) Services or projects interact with and involve community members, agencies, and organizations.

(c) *Bases for services or project development.* The bases for the services or project development must be:

(1) A local or universal need that reflects critical problems in the field of developmental disabilities, or

(2) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(d) *State-of-the-art and innovative practices.* (1) Service and project concepts and practices must facilitate and demonstrate independence for the individual, community integration, productivity and human rights.

(2) Practices that are recognized, accepted by various disciplines, and highly beneficial to persons who are developmentally disabled, must be integrated within services and projects.

(3) The design of innovative cost-effective concepts and practices must be evaluated according to accepted practices of scientific evaluation.

(4) Research methods must be used to test hypotheses, validate procedures, and field test products.

(5) Exemplary service and project practices and models must be prepared, packaged for replication, and disseminated through the national dissemination centers.

(e) *Demonstration projects.* UAFs must disseminate information (brochures and posters) to the State Developmental Disabilities Councils, the State Interdisciplinary Agencies, the State Parent Advocacy Agencies, and other private agencies serving developmentally disabled citizens. This information on exemplary services and projects made available for dissemination training.

(2) A variety of individuals must

trained within exemplary services and projects. They include long-term and intermediate interdisciplinary trainees and inservice trainees. The latter group could include service providers, families, and administrators.

(f) *Measurements of program outcome.* Measures of program outcome include:

(1) The total number of clients served by category of service; and

(2) The amount of related research evaluation and dissemination conducted.

§ 1388.5 Program criteria—training.

(a) *Organization.* (1) To ensure quality comprehensive interdisciplinary training, professional staff representing the major disciplines of education, health, psychology and, social work, and holding appropriate university appointments, must direct the interdisciplinary training program.

(2) The focus of training must be interdisciplinary service and treatment of persons of various ages with developmental disabilities and their families.

(3) Training must be integrated with exemplary services provided by or affiliated with the UAF.

(b) *Outcome of interdisciplinary training.* (1) Training must develop competencies related to developmental characteristics and assessment of persons with developmental disabilities of various ages.

(2) Training must develop an understanding of various disciplines, roles, diagnostic and evaluation practices, and treatment procedures.

(3) Training must promote understanding and use of the values, knowledge, methods, and skills of the major professions of education, health, psychology and social work and other appropriate disciplines.

(4) Training must include training and practicum in the interdisciplinary team process.

(5) Training must address services and treatment for various groups.

(6) *Optional training.* (i) Training must include program evaluation and research methods applicable to developmental disability programs.

(ii) *Optional training.* (a) Training must include knowledge of developmental issues such as policy analysis and management.

(b) *Short-term interdisciplinary training.* (1) To develop leaders in training individuals with developmental disabilities, short-term interdisciplinary training must be undertaken. The training must be undertaken

in a one-year reporting period, in experience with an interdisciplinary team.

(3) Training activities must cover nature and assessment of developmental disabilities and at three of the following services: prevention and detection, individual program planning and case management, developmental services and individual and family support services.

(4) Training activities must cover at least two of the following settings: natural home, supervised living arrangements, residential treatment centers, nonresidential treatment settings, educational and employment settings.

(5) Training activities must cover range of disabilities and impairment.

(6) Trainees must receive credit, appropriate, for training completed the UAF that is performed as part program of course work administered the university or any of its divisions.

(7) Training activities must include (i) instruction in the interdisciplinary team process.

(ii) Experiences as a team member and

(iii) Experiences as a team leader.

(d) *Intermediate interdisciplinary training.* (1) Students who receive intermediate interdisciplinary training (100 to 200 hours) must be recruited various disciplines to provide services to persons with developmental disabilities as a part of generic or special services.

(2) Each trainee must have planned instruction and practical experience including experience with an interdisciplinary team.

(3) Training activities must cover nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services and individual and family support services.

(4) Training activities must cover nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services and individual and family support services.

(5) Trainees must receive credit appropriate for training completed the UAF that is performed as part of a program of course work administered by university or any of its divisions.

(e) *Short-term special purpose interdisciplinary training.* A variety of training experiences designed to improve or expand services to persons with developmental disabilities and their families including workshops, courses, lectures, and other training experiences, must be provided to a variety of individuals who must serve individuals of various ages with developmental disabilities.

(f) *Training provided by the UAF shall be relevant to community needs.* (1) A UAF must determine and set priorities for training based on the needs of the community.

(2) Training priorities must be established in cooperation with State Developmental Disabilities councils, State manpower councils, the State Mental Retardation/Developmental Disability Agency and other relevant local, State and Federal agencies.

(3) Training priorities must consider national manpower needs, with particular attention to those serving adult and elderly persons with developmental disabilities.

(8) *The interdisciplinary training program must be evaluated to improve it.* (1) Student achievement of program goals must be evaluated.

(2) The degree to which the program is achieving its stated goals must be evaluated.

(3) Evaluation must be conducted to develop and assess effective interdisciplinary strategies and procedures.

(4) The extent to which training is satisfactorily addressing the needs of the community must be systematically evaluated.

(h) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of long-term interdisciplinary trainees; number of intermediate interdisciplinary trainees; and number of special trainees completing training.

(2) Number of workshops or training sessions provided; and

(3) Number and type of disciplines of participants involved in each category of training.

§ 1388.6 Program criteria—technical assistance.

(a) *Technical assistance.* A UAF must provide technical assistance to individuals and organizations responsible for the independence, productivity, community integration, and human rights of individuals with developmental disabilities. Technical assistance must be based on state-of-the-art practices and new, innovative practices and models found within exemplary services. Technical assistance must also be based on special needs or emerging problems that are identified by the UAF, organizations or individuals concerned with persons with developmental disabilities.

(b) *Established and planned technical assistance.* (1) Technical assistance must be an integral part of a UAF.

(2) Adequate resources and personnel must be assigned.

(3) Personnel assigned must be specified and be either UAF staff who solely develop technical assistance products and provide technical assistance; or a roster of experts that could be used through consultation.

(4) The UAF must identify potential target audiences and needs.

(5) The UAF must have a system (electronic mail, mailing list) to inform target audiences about technical assistance availability.

(6) The UAF must evaluate and improve technical assistance on an ongoing basis.

(c) *Technical assistance training.* (1) Technical assistance activities must be used as a training opportunity for UAF trainees.

(2) The experience, observations, and testing of the technical assistance provision must be used to refine UAF training.

(d) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of government agencies, service providers and professional organizations to whom the UAF provides technical assistance.

(2) Total hours of technical assistance provided by type (e.g., workshops, consultation, inservice training) and topic.

(3) Number of trainee hours involved in technical assistance activities.

§ 1388.7 Program criteria—information dissemination.

(a) *Information and dissemination.* A UAF must disseminate information products that enhance the quality of life of persons with developmental disabilities. The UAF must disseminate information that is based on exemplary services and projects, interdisciplinary training, UAF products and current developments related to the field of developmental disabilities. Information shall be disseminated to target audiences within the field of developmental disabilities, to persons with developmental disabilities and their families, and to other concerned persons within the general public.

(b) *Information and Dissemination Plan.* (1) An information component or activities must be an integral part of a UAF.

(2) Adequate resources and personnel must be assigned to information dissemination objectives.

(c) *Target audiences for information dissemination.* (1) Specific target audiences must be identified for information dissemination. Target audiences may include persons with developmental disabilities and their families, service providers,

administrators, policymakers, peers, researchers, and the general public.

(2) UAFs must have a system (mailing lists, electronic mail, etc.) to disseminate information to target audiences.

(3) A UAF must use existing systems (the UAF network, professional journals, publishers) to disseminate information.

(d) *Information products.* (1) Information products must be developed and packaged (articles, procedures manuals newsletters) for specific target audiences.

(2) Information products must be based on innovative ideas and practices identified or developed within exemplary services, interdisciplinary training, research, evaluation and technical assistance activities.

(3) Information products must be based on current developments in the field of developmental disabilities and must facilitate independence, productivity and integration into the community for persons of various ages with developmental disabilities.

(e) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of individuals or organizations receiving information about the UAF's exemplary services, demonstrations, training, technical assistance, product and information availability;

(2) Number of individuals or organizations receiving information on current research and new, innovative practices by other individuals and organizations;

(3) Number of researchers and government agencies to whom information was presented about current service, training, and research needs;

(4) Number of individuals and agencies receiving information related to the UAF mission; and

(5) Number of individuals (professionals, consumers, administrators, policymakers, the general public) presented information as part of symposia or special program presentations.

§ 1388.8 Use of program criteria by Satellite Centers.

A Satellite Center must specify which activities, as defined in section 102(12) of the Act, it chooses to perform. The satellite center must comply with the program criteria in § 1388.3 of this part and will be subject to the program criteria which correspond to the activities it has selected under section 102(12) of the Act.

[FR Doc. 87-2015 Filed 11-19-87; GPO
 OFFICIAL CODE 0100-0100]