



**NATIONAL  
ASSOCIATION  
OF  
DEVELOPMENTAL  
DISABILITIES  
COUNCILS**

1234 Massachusetts Avenue, N.W. Suite 203 Washington, D.C. 20005 (202) 347-1234

TO: Governmental Affairs Committee Members

FROM: Howard Shapiro *HS*  
Susan Ames-Zierman *SM*

DATE: January 29, 1983

The Legislative Study Task Force would like your assistance in determining the issue areas to be addressed by our study regarding reauthorization of the Developmental Disabilities Act.

To delineate your issue areas and to facilitate discussion at the GAC meeting, the attached form was developed. Completed forms will be collected after the meeting.

We felt you may wish to begin thinking about this before the meeting so it is being provided to you in advance. It would be most helpful and speed our meeting along if you were to come prepared to indicate which issues you feel should be addressed by our study.

Copies of the DD Act and new amendments are included to assist you. Thank you.

Attachments

Should the following issues be included in the NADDC study?

Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
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2. Purposes (Sec. 101(b))	5	4	3	2	1
(1) Assist states (Basic State Grant)	5	4	3	2	1
(A) Assist in the provision of comprehensive services	5	4	3	2	1
(B) Assist in appropriate planning	5	4	3	2	1
(C) Make grants to states and public and private non-profit agencies	5	4	3	2	1
(D) Make grants to UAFs	5	4	4	4	4
(E) Make grants to P&As	5	4	3	2	1

Comments \_\_\_\_\_

3. Definitions (Sec. 102)	5	4	3	2	1
(1) "state"	5	4	3	2	1
(2) "facility for persons with DD"	5	4	3	2	1
(3) "non-profit facility and non-profit institution of higher learning"	5	4	3	2	1
(4) "construction"	5	4	3	2	1
(5) "cost of construction"	5	4	3	2	1
(6) "title"	5	4	3	2	1
(7) "developmental disabilities"	5	4	3	2	1
(8) A. "services" = "priority services"	5	4	3	2	1
B. priority services = casemanagement, child development, CLA or non-vocational social development	5	4	3	2	1

Please indicate your degree of agreement or disagreement with including the following issues in our survey by circling the number as follows:

- 5 = strongly feel it should be included
- 4 = some agreement
- 3 = no opinion or neutral
- 2 = some disagreement
- 1 = strongly feel it should not be included

Remember, you are not indicating agreement or disagreement with the issue, but agreement or disagreement with including the issue as a matter for further study. In each case you are expressing level of agreement regarding including the items listed in the survey.

#### DD ACT ISSUE IDENTIFICATION

Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included
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#### I. Findings (Sec. 101(a))

(1) number of people with DD	5	4	3	2	1
(2) abilities of people with DD	5	4	3	2	1
(3) need for specialized services	5	4	3	2	1
(4) generalized services overlook DD	5	4	3	2	1
(5) need to eliminate need for institutional care and to meet needs	5	4	3	2	1

Comments \_\_\_\_\_

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Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included
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3. (8) "Services" (continued)

C. "casemanagement services"	5	4	3	2	1
i. follow-along	5	4	3	2	1
ii. coordination	5	4	3	2	1
D. "child development services"	5	4	3	2	1
E. "alternative community living arrangement services"	5	4	3	2	1
F. "non-vocational social development services"	5	4	3	2	1
(9) "satellite center"	5	4	3	2	1
(10) "UAF"	5	4	3	2	1
provides at least for					
(A) interdisciplinary training	5	4	3	2	1
(B) demonstration of exemplary services	5	4	3	2	1
(C) i. dissemination of findings	5	4	3	2	1
ii. providing researchers and government agencies with informa- tion on needs for service-related research	5	4	3	2	1
(12) State Planning Council	5	4	3	2	1

Comments \_\_\_\_\_

4. Federal Share (Sec. 103)	5	4	3	2	1
(a) allotments 75% federal, 25% state	5	4	3	2	1
poverty areas 90% federal, 10% state	5	4	3	2	1
(b) non-federal share may be in-kind	5	4	3	2	1
(c) expenditures by sub-grantee deemed to be expenditures of the state	5	4	3	2	1

Comments (on top of next page)

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included
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5. State Control (Sec. 104)  
No federal officer or employee has the  
right to exercise supervision or control  
over the administration, personnel,  
maintenance or operation of any facility  
funded under this title

5	4	3	2	1
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Comments \_\_\_\_\_  
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6. Records and Audit (Sec. 105)
- |  |   |   |   |   |   |
|--|---|---|---|---|---|
|  | 5 | 4 | 3 | 2 | 1 |
| (a) record keeping   | 5 | 4 | 3 | 2 | 1 |
| (b) Secretary and Comptroller General<br>access to records for audit<br>purposes | 5 | 4 | 3 | 2 | 1 |

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Employment of Handicapped Individual  
Individuals (Sec. 106)  
requirement that recipients take  
affirmative action to employ and  
advance handicapped individuals

5	4	3	2	1
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Comments \_\_\_\_\_  
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Should the following issues be included in the NADDC study?

Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
5	4	3	2	1

8. Recovery (Sec. 107)

(1) and (2) construction funds recovery	5	4	3	2	1
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Comments \_\_\_\_\_

9. Regulations (Sec. 109)

promulgate within 180 days as may be required to implement amendments

5	4	3	2	1
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Comments \_\_\_\_\_

10. Rights (Sec. 111)

(1) appropriate treatment	5	4	3	2	1
(2) least restrictive environment	5	4	3	2	1
(3) provision of public funds only to programs which					
(A) provide appropriate rehabilitation	5	4	3	2	1
(B) meet minimum standards	5	4	3	2	1

Comments \_\_\_\_\_

11. Habilitation Plans (Sec. 112)

(a) condition of states' receiving allotment	5	4	3	2	1
(b) plan requirements	5	4	3	2	1
(c) plan review	5	4	3	2	1

Comments (on top of next page)

Comments \_\_\_\_\_

Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included

12. Authorizations of Appropriations for  
Part C Basic State Grants (Sec. 131)  
(43.180 million in FY '83)

5	4	3	2	1
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Comments \_\_\_\_\_

13. State Allotments (Sec. 132(a))

5	4	3	2	1
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(1) a basis for allotments

5	4	3	2	1
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(2) A. territories - not less than  
100,000

5	4	3	2	1
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B. others - not less than 250,000

5	4	3	2	1
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(3) extent of need shall take into  
account the scope and extent of  
services in the State Plan

5	4	3	2	1
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(b) multiple administering agencies  
and combining other federal and  
state funds

5	4	3	2	1
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(c) cooperative agreements between  
states or agencies

5	4	3	2	1
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(d) reallocation process

5	4	3	2	1
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Comments \_\_\_\_\_

Should the following issues be included in the NADDC study?

	Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
14. State Plans (Sec. 133)	5	4	3	2	1
(a) required to receive Part C funds	5	4	3	2	1
(b) requirements for approval					
(1)(A) establishment of State Planning Council with staff in numbers and qualifications as Secretary determines to be adequate	5	4	3	2	1
(B) designate state agency to administer or supervise the administration of Plan	5	4	3	2	1
(C) reports and records by state agency	5	4	3	2	1
(D) provide for fiscal control	5	4	3	2	1
(2)(A) specific objectives and resources to be used	5	4	3	2	1
(B) describe (and review)					
i. extent and scope of services	5	4	3	2	1
ii. funds used to complement and augment rather than duplicate	5	4	3	2	1
(3) use of funds					
(A) make a significant contribution throughout state	5	4	3	2	1
(B) available to public or non-profit private entities	5	4	3	2	1
(C) used to supplement and increase level of funds	5	4	3	2	1
(D) reasonable state financial participation in cost of carrying out the Plan	5	4	3	2	1
(4) (A) provision of Priority Services	5	4	3	2	1
i. examine at least every 3 years the need of 4 priority service areas	5	4	3	2	1



Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included
5	4	3	2	1

14. (b) (A) Provision of Priority Services (continued)

ii. address unmet needs in at least one priority service area (and at state's option, an additional area)	5	4	3	2	1
(B) not less than 100,000 or 65% expended in service activities	5	4	3	2	1
iv. service activities include					
- provision of services	5	4	3	2	1
- model service programs	5	4	3	2	1
- activities to increase the capacity of institutions and agencies to provide services	5	4	3	2	1
- coordinating services	5	4	3	2	1
- outreach to individuals	5	4	3	2	1
- training of personnel	5	4	3	2	1
- similar activities designed to expand the use and availability of services	5	4	3	2	1
(C) additional areas of services permitted if Secretary determines that initial area(s) have been met in comparison to the need for an additional area	5	4	3	2	1
additional areas shall, to maximum extent feasible, be within areas of priority services	5	4	3	2	1
(D) special financial and technical assistance be given to agencies in designated urban or rural poverty areas	5	4	3	2	1

Should the following issues be included in the NADDC study?

Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
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14. (b) (continued)

(5) Standards of Services and Protection of Rights	5	4	3	2	1
(A)(i) services and facilities in accordance with standards prescribed by Secretary in regulations	5	4	3	2	1
(ii) assurances of standards in Architectural Barriers Act	5	4	3	2	1
(B) services provided in individual manner (habilitation plans)	5	4	3	2	1
(C) persons with developmental disabilities protected consistent with rights section	5	4	3	2	1
(D) affirmative action for participation of minority groups	5	4	3	2	1
(6) Professional Assessment	5	4	3	2	1
(A) adequacy of skill level of professionals and para-professionals	5	4	3	2	1
- adequacy of training	5	4	3	2	1
(7)(A) VISTA Personnel maximum utilization of community resources including VISTA volunteers	5	4	3	2	1
(B) fair and equitable arrangements to protect the interests of employees affected by actions under the Plan to provide ACLA services including employee rights and benefits, training, retraining	5	4	3	2	1

Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included
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14. (b) (continued)

(8) Additional Information

(c) plan approval/disapproval -- reasonable notice and opportunity for hearing	5	4	3	2	1
(d) allotment may pay 1/2 or smaller share of cost to administer plan; not more than 5% or 50,000, whichever is less	5	4	3	2	1

Comments \_\_\_\_\_

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15. Payments to States (Sec. 134)  
payments made (except for construction)  
during the State Plan year

5	4	3	2	1
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Comments \_\_\_\_\_

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16. (a) Withholding of Payments (Sec. 135)

5	4	3	2	1
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(b) findings

(1) failure to comply with State Plan

5	4	3	2	1
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(2) failure to comply with  
regulations

5	4	3	2	1
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(Comments on top of next page)

Comments \_\_\_\_\_

	Strongly agree it should be included	Some agree- ment	Neutral or no opinion	Some dis- agree- ment	Strongly dis- agree it should be included
17. Nonduplication (Sec. 136)	5	4	3	2	1
states share disregarded					
(1) if financed by federal funds	5	4	3	2	1
(2) if non-federal funds are required to be expended as a condition of receipt of federal funds	5	4	3	2	1

Comments \_\_\_\_\_

18. (a) State Planning Councils (Sec. 137)					
(1) states receiving assistance must have Council that serves as advocate for persons with developmental disabilities	5	4	3	2	1
- members appointed by Governor from among state residents	5	4	3	2	1
- appropriate rotation	5	4	3	2	1
- members represent state agencies, higher education training facilities, local agencies and non-governmental agencies and groups	5	4	3	2	1
(2) at least 1/2 must be persons with with developmental disabilities of parents or guardians of persons with developmental disabilities or immediate relatives or guardians of persons with mentally impairing conditions	5	4	3	2	1

Should the following issues be included in the NADDC study?

Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
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18. (a) (2) (continued)

- not employees of state agency receiving Part C funds	5	4	3	2	1
- not managing employees of any other entity receiving funds or providing services	5	4	3	2	1
- not persons with ownership or control interest in such entities	5	4	3	2	1

(3) of these at least

(A) 1/3 shall be persons with dd	5	4	3	2	1
(B) 1/3 immediate relatives or guardians of persons with mentally impairing dd's	5	4	3	2	1
- one immediate relative of an institutionalized person	5	4	3	2	1

(b) Council Duties

(1) jointly with state agency develop State Plan	5	4	3	2	1
(2) monitor, review and evaluate yearly the implementation of Plan	5	4	3	2	1
(3) to maximum extent feasible, review and comment on all State Plans affecting persons with dd	5	4	3	2	1
(4) submit, through the Governor, periodic reports and keep records and afford access as Secretary finds necessary	5	4	3	2	1

Comments

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Should the following issues be included in the NADDC study?

Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
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19. Judicial Review (Sec. 138)

- appeals process of Secretary's action

5	4	3	2	1
5	4	3	2	1

Comments \_\_\_\_\_

20. Special Projects (Sec. 145)

(a) Secretary may make grants to public or non-profit entities for

(1) demonstration projects

5	4	3	2	1
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(A) conducted in more than one state

5	4	3	2	1
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(B) involving two or more federal departments

5	4	3	2	1
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(C) are otherwise of national significance and may expand/improve services to persons with dd, especially disadvantaged or multihandicapped

5	4	3	2	1
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(2) demonstration projects (including research, training and evaluation of such projects) to expand/improve P&A services

5	4	3	2	1
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- includes projects for evaluation and assessment of quality of services

5	4	3	2	1
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(b) application process

- form prescribed by Secretary by regulation

5	4	3	2	1
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- only projects in states with approved State Plans

5	4	3	2	1
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- State Planning Council has opportunity to review the application and submit comments

5	4	3	2	1
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Should the following issues be included in the NADDC study?

Strongly agree it should be included	Some agree-ment	Neutral or no opinion	Some dis-agree-ment	Strongly dis-agree it should be included
5	4	3	2	1

20. Special Projects (continued)

(c) payments may be made in advance or by reimbursement	5	4	3	2	1
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(d) authorization (2.5 million in FY '83)	5	4	3	2	1
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Comments \_\_\_\_\_

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In addition to the activities specified in the current Act, there could be additions to the Act. Some of the issues which might be addressed follow. You may think of others.

Amendments to the Act might address:

1. Service provision versus advocacy and planning function	5	4	3	2	1
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2. Increased statutory authority over non-dd funds	5	4	3	2	1
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3. Consolidation with other programs	5	4	3	2	1
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4. Other \_\_\_\_\_

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Please use attached sheet for additional comments.

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(Your name, please)

MENTAL RETARDATION FACILITIES AND COMMUNITY HEALTH  
CENTERS CONSTRUCTION ACT OF 1953

(As amended by Public Laws 90-170, 91-517, 94-103 and 95-602)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963".

TITLE I - SERVICES AND FACILITIES FOR THE MENTALLY RETARDED  
AND PERSONS WITH OTHER DEVELOPMENTAL DISABILITIES

PART A - GENERAL PROVISIONS

SHORT TITLE

SEC. 100. This title may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act'.

FINDINGS AND PURPOSES

SEC. 101. (a) The Congress finds that--

(1) there are more than two million persons with developmental disabilities in the United States;

(2) individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than other handicapped individuals who generally have had a normal developmental period on which to draw during the rehabilitation process;

(3) persons with developmental disabilities often require specialized lifelong services to be provided by many agencies in a coordinated manner in order to meet the persons' needs;

(4) general service agencies and agencies providing specialized services to disabled persons tend to overlook or exclude persons with developmental disabilities in their planning and delivery of services; and

(5) it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care, to meet the needs of persons with developmental disabilities.

(b)(1) It is the overall purpose of this title 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 a system which coordinates, monitors, plans, and evaluates those services and which ensures the protection of the legal and human rights of persons with developmental disabilities.

2) The specific purposes of this title are--

"(A) to assist in the provision of comprehensive services to persons with developmental disabilities, with



priority to those persons whose needs cannot be covered or otherwise met under the Education for All Handicapped Children Act, the Rehabilitation Act of 1973, or other health, education, or welfare programs;

(B) to assist States in appropriate planning activities;

(C) to make grants to States and public and private, non-profit agencies to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel with respect to providing services to persons with developmental disabilities;

(D) to make grants to university affiliated facilities to assist them in administering and operating demonstration facilities for the provision of services to persons with developmental disabilities, and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

(E) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities.

#### DEFINITIONS

SEC.102. For purposes of this title:

(1) The term "State" includes Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

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

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

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

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

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

(\*) (7) The term 'developmental disability' means 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 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.

(2) The Secretary of Health, Education, and Welfare shall submit to Congress, not later than January 15, 1981, a special report concerning the impact of the amendment of the definition of "developmentally disabled" made by paragraph (1). This report shall include--

(A) an analysis of the impact of the amendment on each of the categories of persons with developmental disabilities receiving services under the Developmental Disabilities Assistance and Bill of Rights Act before the date of enactment of this Act, and for the fiscal year ending on September 30, 1979 and for the succeeding fiscal year, including--

(i) the number of persons with developmental disabilities in each category served before and after such date of enactment; and

(ii) the amounts expended under such Act for each such category of persons with developmental disabilities before and after such date of enactment; and

(B) an assessment, evaluation and comparison of services provided to persons with developmental disabilities provided before the date of enactment of this Act and for the fiscal year ending September 30, 1979 and for the succeeding fiscal year.

(\*) (8) (A) The term 'services for persons with developmental disabilities' means priority services (as defined in subparagraph (B)), and any other specialized services or special adaptations of generic services for persons with developmental disabilities, including in these services the diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

(B) The term 'priority services' means case management services (as defined in subparagraph (C)), child development services (as defined in subparagraph (D)), alternative community living arrangement services (as defined in subparagraph (E)), and nonvocational social-developmental services (as defined in subparagraph (F)).

(C) The term 'case management services' means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services; and such term includes--

(i) follow-along services which ensure, through a continuing relationship, lifelong if necessary, between an agency or provider and a person with a developmental disability and the person's immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the persons' progress.

(D) The term 'child development services' means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, and includes (i) early intervention services, (ii) counseling and training of parents, (iii) early identification of developmental disabilities, and (iv) diagnosis and evaluation of such developmental disabilities.

(E) The term 'alternative community living arrangement services' means such services as will assist persons with developmental disabilities in maintaining suitable residential arrangements in the community, and includes in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, and staff training, placement, and maintenance services.

(F) The term 'nonvocational social-developmental services' means such services as will assist persons with developmental disabilities in performing daily living and work activities.

(9) The term 'satellite center' means an entity which is affiliated with one or more university affiliated facilities and which functions as a community or regional extension of such university affiliated facility or facilities in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available.

(10) The term 'university affiliated facility' means a public or nonprofit facility which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

(A) Interdisciplinary training for personnel concerned with developmental disabilities.

(B) Demonstration of the provision of exemplary services relating to persons with developmental disabilities.

(C) (i) Dissemination of findings relating to the provision of services to persons with developmental disabilities, and (ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research.

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

(12) The term 'State Planning Council' means a State Planning Council established under section 137.

#### FEDERAL SHARE

SEC.103.(a) The Federal share of any project to be provided through grants under part B and allotments under part C may not exceed 75 per centum of the necessary cost thereof as determined by the Secretary, except that if the project is located in an urban or rural poverty area, the Federal share may not exceed 90 per centum of the project's necessary costs as so determined.

(b) The non-Federal share of the cost of any project assisted by a grant or allotment under this title may be provided in kind.

(c) For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of a State or by a nonprofit private entity shall, subject to such limitations and conditions the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under part C or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part B.

## STATE CONTROL OF OPERATIONS

SEC.104. Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under this title.

## RECORDS AND AUDIT

SEC.105.(a) Each recipient of assistance under this title shall keep such records as the Secretary shall prescribe, including (1) records which fully disclose (A) the amount and disposition by such recipient of the proceeds of such assistance, (B) the total cost of the project or undertaking in connection with which such assistance is given or used, and (C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

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

## EMPLOYMENT OF HANDICAPPED INDIVIDUALS

SEC.106. As a condition of providing assistance under this title, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation Act of 1973 which govern employment (1) by State rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.

## RECOVERY

SEC.107. If any facility with respect to which funds have been paid under part B or C shall, at any time within twenty years after the completion of construction--

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

(2) cease to be a public or other nonprofit facility for persons with developmental disabilities, the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit

facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment. The Secretary, in accordance with regulations prescribed by him, may, upon finding good cause therefor, release the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities.

#### REGULATIONS

SEC. 109. The Secretary, not later than 180 days after the date of enactment of any Act amending the provisions of this title, shall promulgate such regulations as may be required for the implementation of such amendments.

#### EVALUATION SYSTEM

SEC. 110. (a) The Secretary shall develop, not later than October 1, 1979, a comprehensive system for the evaluation of services provided to persons with developmental disabilities through programs (including residential and nonresidential programs) assisted under this title. The Secretary shall require, as a condition to a State's receipt of assistance on and after October 1, 1980, under this title, that the State submit to the Secretary, in such form and manner as he shall prescribe, a time-phased plan for the implementation of such a system. The Secretary shall require, as a condition to a State's receipt of assistance on and after October 1, 1982, under this title, that the State provide assurances satisfactory to the Secretary that the State is using such a system.

(b) The evaluation system to be developed under subsection (a) shall--

- (1) provide objective measures of the developmental progress of persons with developmental disabilities using data obtained from individualized habilitation plans as required under section 112 or other comparable individual data;
- (2) provide a method of evaluating programs providing services for persons with developmental disabilities which method uses the measures referred to in paragraph (1); and
- (3) provide effective measures to protect the confidentiality of records of, and information describing, persons with developmental disabilities.

(c) Upon development of the evaluation system described in subsection (b), the Secretary shall submit to Congress a report on the system, which report shall include an estimate of the costs to the Federal Government and the States of developing and implementing such a system.

#### RIGHTS OF THE DEVELOPMENTALLY DISABLED

SEC.111. Congress makes the following findings respecting the rights of persons with developmental disabilities:

(1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

(3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that--

(A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

(B) does not meet the following minimum standards;

(i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.

(ii) Provision to such persons of appropriate and sufficient medical and dental services.

(iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.

(iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and--

(A) in the case of residential programs serving persons in need of comprehensive health-related,

habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 Fed.Reg. pt.II) as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(B) in the case of other residential programs for persons with developmental disabilities, which assure that care is appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(C) in the case of nonresidential programs, which assure the care provided by such programs is appropriate to the persons served by the programs.

*The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.*

#### HABILITATION PLANS

SEC.112.(a) The Secretary shall require as a condition to a State's receiving an allotment under part C that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under such part (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b), and (2) provides for an annual review, in accordance with subsection (c), of each such plan.

(b) A habilitation plan for a person with developmental disabilities shall meet the following requirements:

(1) The plan shall be in writing.

(2) The plan shall be developed jointly by (A) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (B) such person, and (C) where appropriate, such person's parents or guardian or other representative.

(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such objectives shall be stated specifically and in sequence and



shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a program coordinator who will be responsible for the implementation of the plan.

(4) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

(c) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

#### PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SEC. 113 (a) In order for a State to receive an allotment under part C, (1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities, (2) such system must (A), have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State; and (B) not be administered by the State Planning Council; and (C), be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and (3) the State must submit to the Secretary in a form prescribed by the Secretary in regulations (A) a report not less often than once every three years, describing the system, and (B) an annual report describing the activities carried out under the system and any changes made in the system during the previous year.

(b) (1) (A) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the sums appropriated under paragraph (2). Allotments and reallootments of such sums shall be made on the same basis as the allotments and reallootments are made under the first sentence of subsections (a) (1)

and (d) of section 132, except that no State (other than Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) in any fiscal year shall be allotted an amount under this subparagraph which is less than the greater of \$50,000 or the amount of the allotment to the State under this paragraph for the previous fiscal year; and

(B) Notwithstanding subparagraph (A), if the aggregate of the amounts of the allotments for grants to be made in accordance with such subparagraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under paragraph (2), the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such subparagraph as the total of the amounts appropriated for that year under paragraph (2) bears to the aggregate amount required to make an allotment to each of the States in accordance with subparagraph (A).

(2) For allotments under paragraph (1), there are authorized to be appropriated \$3,000,000 for fiscal year 1976, \$3,000,000 for fiscal year 1977, and \$3,000,000 for fiscal year 1978, \$9,000,000 for the fiscal year ending September 30, 1979, \$12,000,000 for the fiscal year ending September 30, 1980, and \$15,000,000 for the fiscal year ending September 30, 1981. The provisions of section 1913 of title 18, United States Code, shall be applicable to all moneys authorized under the provisions of this section.

## PART 8 - UNIVERSITY AFFILIATED FACILITIES

### GRANT AUTHORITY

SEC. 121 (a) From appropriations under section 123, the Secretary shall make grants to university affiliated facilities to assist in the administration and operation of the activities described in section 102(10).

(b) The Secretary may make one or more grants to a university affiliated facility receiving a grant under subsection (a) to support one or more of the following activities:

(1) Conducting a feasibility study of the ways in which it, singly or jointly with other university affiliated facilities which have received a grant under subsection (a), can establish and operate one or more satellite centers which would be located in areas not served by a university affiliated facility. Such a study shall be carried out in consultation with the State Planning Council for the State in which the facility is located and where the satellite center would be established.

(2) Assessing the need for trained personnel in providing assistance to persons with developmental disabilities.

(3) Provision of service-related training to practitioners providing services to persons with developmental disabilities.

(4) Conducting an applied research program designed to produce more efficient and effective methods (A) for the delivery of service to persons with developmental disabilities, and (B) for the training of professionals, para-professionals, and parents who provide these services.

The amount of a grant under paragraph (1) may not exceed \$25,000.

(c) The Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. The Secretary may approve an application for a grant under this subsection only if the feasibility of establishing or operating the satellite center for which the grant is applied for has been established by a study assisted under this section.

#### APPLICATIONS

SEC. 122. (a) Not later than six months after the date of the enactment of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, the Secretary shall establish by regulation standards for university affiliated facilities. These standards for facilities shall reflect the special needs of persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 102(10).

(b) No grant may be made under section 121 unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that--

(1) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds; and

(2) (A) the applicant's facility is in full compliance with the standards established under subsection (a), or

(B) (i) the applicant is making substantial progress toward bringing the facility into compliance with such standards, and (ii) the facility will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a), whichever is later, fully comply with such standards.

(c) The Secretary shall establish such a process for the review of applications for grants under section 121 as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's facility reviews the application.

(d)(1) The amount of any grant under section 121(a) to a university affiliated facility shall not be less than \$150,000 for any fiscal year.

(2) The amount of any grant under section 121(b) (as in effect before the date of the enactment of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978) for the fiscal year ending September 30, 1978, shall not be less than \$75,000 for any fiscal year.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 123. (a) For the purpose of making grants under section 121, there are authorized to be appropriated \$12,000,000 for the fiscal year ending September 30, 1979, \$14,000,000 for the fiscal year ending September 30, 1980, and \$16,000,000 for the fiscal year ending September 30, 1981.

(b) Of the sums appropriated under subsection (a), not less than--

(1) \$9,000,000 for the fiscal year ending September 30, 1979,

(2) \$10,000,000 for the fiscal year ending September 30, 1980,

and

(3) \$11,000,000 for the fiscal year ending September 30, 1981. shall be made available for grants under subsections (a) and (c) of section 121 to qualified applicants which received grants under section 121 during the fiscal year ending September 30, 1978. The remainder of the sums appropriated for such fiscal years shall be made available as the Secretary determines, except that not less than 40 percent of such remainder shall be made available for grants under subsections (b) and (c) of section 121.

#### PART C - GRANTS FOR PLANNING AND PROVISION OF SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

##### AUTHORIZATION OF APPROPRIATIONS FOR ALLOTMENTS

SEC. 131. For allotments under section 132, there are authorized to be appropriated \$40,000,000 for fiscal year 1976, \$50,000,000 for fiscal year 1977, \$60,000,000 for fiscal year 1978, \$55,000,000 for the fiscal year ending September 30, 1979, \$65,000,000 for the fiscal year ending September 30, 1980, and \$75,000,000 for the fiscal year ending September 30, 1981.

## STATE ALLOTMENTS

SEC. 132.(a)(1) In each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 131 among the States on the basis of--

- (i) the population,
- (ii) the extent of need for services and facilities for persons with developmental disabilities, and
- (iii) 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 133 for the provision under such plans of services for persons with developmental disabilities.

(2) For any fiscal year, the allotment under paragraph (1)--

(A) to each of American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than \$100,000, and

(B) to any other State may not be less than the greater of \$250,000 or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending September 30, 1978.

(3) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described pursuant to section 133(b)(2)(B), in the State plan of the State.

(b) Whenever the State plan approved in accordance with section 133 provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which, to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of the State plan. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purposes of the State plan will receive proportionate benefit from the combination.

(c) Whenever the State plan approved in accordance with section 133 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

(d) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for re-allotment by the Secretary from time to time, on such date or dates as he may fix (but not earlier than thirty days after he has published notice of his intention 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.

#### STATE PLANS FOR PROVISION OF SERVICES

SEC. 133. (a) Any State desiring to take advantage of this part must have a State plan submitted to and approved by the Secretary under this section.

(b) In order to be approved by the Secretary under this section, a State plan for the provision of services for persons with developmental disabilities must meet the following requirements:

##### STATE PLANNING COUNCIL AND ADMINISTRATION OF PLAN

(1)(A) The plan must provide for the establishment of a State Planning Council, in accordance with section 137, for the assignment to the Council of personnel in such numbers and with such qualifications as the Secretary determines to be adequate to enable the Council to carry out its duties under that section, and for the identification of the personnel so assigned.

(B) The plan must designate the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise).

(C) The plan must provide that each State agency designated under subparagraph (B) will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this part.

##### DESCRIPTION OF OBJECTIVES AND SERVICES

(2) The plan must--

(A) set out the specific objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

(B) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for Federally assisted State programs as the State conducts relating to education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health, and under such other plans as the Secretary may specify, and (ii) how funds allotted to the State in accordance with section 132 will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities which are eligible for Federal assistance under such other State programs;

(C) for each fiscal year, assess and describe the extent and scope of the priority services (as defined in section 102(3)(B)) being or to be provided under the plan in the fiscal year; and

(D) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

#### USE OF FUNDS

(3) The plan must contain or be supported by assurances satisfactory to the Secretary that--

(A) the funds paid to the State under section 132 will be used to make a significant contribution toward strengthening services for persons with developmental disabilities through agencies in the various political subdivisions of the State;

(B) part of such funds will be made available by the State to public or nonprofit private entities;

(C) such funds paid to the State under section 132 will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

(D) there will be reasonable State financial participation in the cost of carrying out the State plan.

#### PROVISION OF PRIORITY SERVICES

(4)(A) The plan must--

(i) provide for the examination not less often than once every three years of the provision, and the need for the provision, in the State of the four different areas of priority services (as defined in section 102(3)(B)); and

(ii) provide for the development, not later than the second year in which funds are provided under the plan after the date of the enactment of the Rehabilitation, Comprehensive Services, and Developmental

Disabilities Amendments of 1978, and the timely review and revision of a comprehensive statewide plan to plan, financially support, coordinate, and otherwise better address, on a statewide and comprehensive basis, unmet needs in the State for the provision of at least one of the areas of priority services, such area or areas to be specified in the plan, and (at the option of the State) for the provision of an additional area of services for the developmentally disabled, such area also to be specified in the plan.

(\*) (B)(i) Except as provided in clause (iii), the plan must provide that not less than \$100,000 or 65 percent of the amount available to the State under section 132, whichever is greater, will be expended, as provided in clause (ii), for service activities in the areas of services specified in the plan under subparagraph (A)(ii).

(ii) For any year in which the sums appropriated under section 131 do not exceed--

(I) \$60,000,000, not less than \$100,000 or 65 percent of the amount available to the State under section 132, whichever is greater, must be expended for service activities in no more than two of the areas of services specified in the plan under subparagraph (A)(ii), and

(II) \$90,000,000, not less than \$100,000 or 65 percent of the amount available to the State under section 132, whichever is greater, must be expended for service activities in no more than three of the areas of services specified in the plan under subparagraph (A)(ii).

(iii) A State, in order to comply with clause (i) for a fiscal year beginning before January 1, 1980, is not required to reduce the amount which is available to it under section 132 and which is expended for planning activities below the amount so expended for planning activities in the preceding fiscal year, if substantially the remainder of the amount available to the State which is expended for other than administration, is expended for service activities in the areas of services specified in the plan under subparagraph (A)(ii). For purposes of this clause, expenditures for planning activities do not include any expenditures for service activities (as defined in clause (iv)).

(iv) For purposes of this subparagraph, the term "service activities" includes, with respect to an area of services, provision of services in the area, model service programs in the area, activities to increase the capacity of institutions and agencies to provide services in the area, coordinating the provision of services in the area with the provision of other services, outreach to individuals for the provision of services in the area, the training of personnel to provide services in the area, and similar activities designed to expand the use and availability of services in the area.



(C) Notwithstanding subparagraph (B), upon the application of a State, the Secretary, pursuant to regulations which the Secretary shall prescribe, may permit the portion of the funds which must otherwise be expended under the State plan for service activities in a limited number of areas of services to be expended for service activities in additional areas of services if he determines that the expenditures of the State on service activities in the initially specified areas of services has reasonably met the need for those services in the State in comparison to the extent to which the need for such additional area or areas of services has been met in such State. Such additional areas shall, to the maximum extent feasible, be areas within the areas of priority services (as defined in section 102 (8)(B)).

(D) The plan must provide that special financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

#### STANDARDS FOR PROVISION OF SERVICES AND PROTECTION OF RIGHTS OF RECIPIENTS OF SERVICES

(5)(A)(i) The plan must provide that services furnished, and the facilities in which they are furnished, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

(ii) The plan must provide satisfactory assurances that buildings used in connection with the delivery of services assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (42 U.S.C. 4151-4157) (known as the Architectural Barriers Act of 1968).

(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 112 (relating to habilitation plans).

(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this title will be protected consistent with section 111 (relating to rights of the developmentally disabled).

(D) The plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this title of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

## PROFESSIONAL ASSESSMENT AND EVALUATION SYSTEMS

(6) The plan must provide for--

(A) an assessment of the adequacy of the skill level of professionals and paraprofessionals serving persons with developmental disabilities in the State and the adequacy of the State programs and plans supporting training of such professionals and paraprofessionals in maintaining the high quality of services provided to persons with developmental disabilities in the State; and

(B) the planning and implementation of an evaluation system (in accordance with section 110(a)).

### UTILIZATION OF VISTA PERSONNEL; EFFECT OF DEINSTITUTIONALIZATION

(7)(A) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 (Public Law 93-113) and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

(B) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide alternative community living arrangement services (as defined in section 102(8)(E)), including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

### ADDITIONAL INFORMATION AND ASSURANCES REQUIRED BY SECRETARY

(8) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

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

(d) (1) 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 one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under this section: except that not more than 5 per centum of the total of the allotment of such State for any fiscal year, or \$50,000, whichever is less, shall

be available for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) for the administration or supervision of the administration of the State plan. Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

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

#### PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES.

SEC. 134. From each State's allotments for a fiscal year under section 132, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

#### WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION, AND SERVICES

SEC. 135. (a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency, designated pursuant to section 133(b)(1) finds that--

(1) there is a failure to comply substantially with any of the provisions required by section 133 to be included in the State plan; or

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

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

#### NONDUPLICATION

SEC. 136. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan

approved under section 133, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 132, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

#### STATE PLANNING COUNCILS

SEC. 137. (a) (1) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advocate for persons with developmental disabilities (as defined in section 102(7)). The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of his respective State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies, higher education training facilities, local agencies, and nongovernmental agencies and groups concerned with services to persons with developmental disabilities in that State.

(2) At least one-half of the membership of each such Council shall consist of persons who--

(A) are persons with developmental disabilities or parents or guardians of such persons, or

(B) are immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.

(3) Of the members of the Council described in paragraph (2)--

(A) at least one-third shall be persons with developmental disabilities, and

(B) (i) at least one-third shall be individuals described in subparagraph (B) of paragraph (2), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

(b) Each State Planning Council shall--

(1) develop jointly with the State agency or agencies designated, under section 133(b)(1)(B) the State plan required by this part, including the specification of areas of services under section 133(b)(4)(A)(ii);

(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

#### JUDICIAL REVIEW

SEC. 138. If any State is dissatisfied with the Secretary's action under section 133(c) or section 135, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside his order. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of the fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

#### PART D - SPECIAL PROJECT GRANTS

##### GRANT AUTHORITY

SEC. 145.(a) The Secretary,.....may make project grants to public or nonprofit private entities for--

(1) demonstrations (and research and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving services (particularly priority services) to persons with developmental disabilities (especially those who are disadvantaged or multihandicapped); and;

(2) demonstrations (and research, training, and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving

protection and advocacy services related to the state protection and advocacy system (described in section 113).  
(b) Grants provided under subsection (a) shall include grants for:

- (1) public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers confronted by persons with developmental disabilities;
- (2) coordinating and using all available community resources in meeting the needs of persons with developmental disabilities (especially those from disadvantaged backgrounds);
- (3) demonstrations of the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status;
- (4) technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities;
- (5) training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training;
- (6) developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities (including model integrated service projects);
- (7) gathering and disseminating information relating to developmental disabilities;
- (8) improving the quality of services provided in and the administration of programs for such persons; and
- (9) developing or demonstrating innovative methods to attract and retain professionals to serve in rural areas in the habilitation of persons with developmental disabilities.

(c) The Secretary shall establish procedures to insure participation of persons with developmental disabilities and their parents or guardians in determining priorities to be utilized by the Secretary in making grants under this section.

(d) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless the State in which the applicant's project will be conducted has a State plan approved under part C. The Secretary shall provide to the State Planning Council for the State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments thereon.

(e) Payments under grants under subsection (a) may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) shall be determined by the Secretary. In determining the amount of any grant under subsection (a) for the costs of any project, there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(f) For the purpose of making payments under grants under subsection (a), there are authorized to be appropriated \$18,000,000 for fiscal year 1976, \$22,000,000 for fiscal year 1977, and \$25,000,000 for fiscal year 1978, \$20,000,000 for the fiscal year ending September 30, 1979, \$22,000,000 for the fiscal year ending September 30, 1980, and \$26,000,000 for the fiscal year ending September 30, 1981.

(g) Of the funds appropriated under subsection (f) for any fiscal year, not less than 25 per centum of such funds shall be used for projects which the Secretary determines..... are of national significance.

(h) No funds appropriated under the Public Health Service Act, under this Act (other than under subsection (f) of this section), or under section 304 of the Rehabilitation Act of 1973 may be used to make grants under subsection (a).

#### EFFECTIVE DATE

SEC. 515. The amendments made by this title shall apply to payments under title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act for fiscal years beginning on and after October 1, 1978.

And the Senate agree to the same.

That the Senate recede from its disagreement to the amendments of the House to the amendment of the Senate to the title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert:

An Act to amend the Rehabilitation Act of 1973 to extend certain programs established in such Act, to establish a community service employment program for handicapped individuals, and to provide comprehensive services for independent living for handicapped individuals, to amend the Developmental Disabilities Services and Facilities Construction Act to revise the extend the programs under that Act, and for other purposes.

And the Senate agree to the same.

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#### Document Preparation

*Script print* are the amendments from PL 95-602. Block print are the applicable law and amendments which remain from PL 91-517 and PL 94-103.

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## Subtitle B—Developmental Disabilities

### EXTENSION OF PROGRAMS

SEC. 911. (a) The first sentence of section 113(b)(2) of the Developmental Disabilities Assistance and Bill of Rights Act (hereinafter in this subtitle referred to as the "Act") (42 U.S.C. 6012(b)(2)) is amended by striking out "and" after "1980," and by inserting before the period a comma and the following: "\$8,000,000 for the fiscal year ending September 30, 1982, \$8,000,000 for the fiscal year ending September 30, 1983, and \$8,000,000 for the fiscal year ending September 30, 1984."

(b) Section 123(a) of the Act (42 U.S.C. 6033(a)) is amended by striking out "and" after "1980," and by inserting before the period a comma and the following: "\$7,500,000 for the fiscal year ending September 30, 1982, \$7,500,000 for the fiscal year ending September 30, 1983, and \$7,500,000 for the fiscal year ending September 30, 1984."

(c) Section 131 of the Act (42 U.S.C. 6061) is amended by striking out "and" after "1980," and by inserting before the period a comma and the following: "\$43,180,000 for the fiscal year ending September 30, 1982, \$43,180,000 for the fiscal year ending September 30, 1983, and \$43,180,000 for the fiscal year ending September 30, 1984."

### EVALUATION SYSTEM

SEC. 912. (a) Section 110 of the Act (42 U.S.C. 6009) is repealed.

### SPECIAL PROJECT GRANTS

SEC. 913. Section 145 of the Act (42 U.S.C. 6081) is amended to read as follows:

#### "GRANT AUTHORITY

"SEC. 145. (a) The Secretary may make grants to public or non-profit private entities for—

"(1) demonstration projects—

"(A) which are conducted in more than one State,

"(B) which involve the participation of two or more Federal departments or agencies, or

"(C) which are otherwise of national significance, and which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are disadvantaged or multihandicapped); and

"(2) demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving protection and advocacy services relating to the State protection and advocacy system described in section 113.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.

"(b) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 139. The Secretary shall provide to the State Planning Council (established under section 137) for each State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments on the application.

"(c) Payments under grants under subsection (a) may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) shall be determined by the Secretary.

"(d) For the purpose of grants under subsection (a), there are authorized to the appropriated \$2,500,000 for the fiscal year ending September 30, 1982, \$2,500,000 for the fiscal year ending September 30, 1983, and \$2,500,000 for the fiscal year ending September 30, 1984."



#### DEVELOPMENTAL DISABILITIES REPORT LANGUAGE

The House bill limited appropriations to \$51,000,000 for fiscal year 1982, \$55,000,000 for 1983 and \$59,000,000 for 1984. In contrast, the Senate authorized \$61,100,000 for each of the fiscal years of 1982 and 1983.

A Senate amendment authorized \$43,180,000 for State Grants, \$8,000,000 for Protection and Advocacy, \$7,500,000 for University Affiliated Facilities and \$2,500,000 for Special Projects. Funding was extended through 1984 at \$61,100,000.

The House receded to the Senate authorization levels and the Senate accepted the House language with an amendment to repeal the contract-grant authority section and the mandatory evaluation system with the following provisions:

Although a specific evaluation section has been deleted from current law, this should not imply that states receiving funds under the Act should not continue to develop standards and a system of evaluation that:

- (1) provides objective measures of the developmental progress of persons with developmental disabilities
- (2) provides a method of evaluating programs providing services for individuals with developmental disabilities
- (3) provides effective measures to protect the confidentiality of records of, and information describing, persons with developmental disabilities.

Such a system, although not mandated by law, should be of a design developed by the states. The Secretary of HHS shall not be responsible for designing the evaluation system.

#### *Special projects*

Every effort should be made to ensure that project goals truly be of national significance with emphasis on priority service areas. Projects which are funded should not be a duplication of activities already being conducted by another agency or organization under part C of the Act.

#### *Bill of rights*

With reference to the Supreme Court's decision in *Pennhurst State School and Hospital, et al. v. Halderman, et al.*, the Conferees re-emphasize that they believe that developmentally disabled persons have a right to habilitative services in a setting which is least restrictive of their personal liberty in accordance with section 111 of the Developmental Disabilities Assistance and Bill of Rights Act. The Congress will continue to examine this issue to ensure that developmentally disabled persons truly have a right to habilitative services in a setting least restrictive of their personal liberty and that Federal funds are expended in a manner which achieves the goals of section 111.

#### *Length of funding*

Although authorization levels were extended through 1984, this action does not preclude the possibility of considering a future consolidation of programs dealing with handicapped individuals.