



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Developmental Disabilities

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INFORMATION MEMORANDUM

TO : Chairpersons, State Planning Councils
 Executive Directors, State Planning Councils
 Directors, State Administering Agencies
 Directors, State Protection and Advocacy Agencies
 Directors, University Affiliated Programs and
 Satellite Centers

SUBJECT : Implementation of Public Law 100-146: The
 Developmental Disabilities Assistance and Bill of
 Rights Act Amendments of 1987

LEGAL AND
 RELATED

REFERENCES: Public Law 100-146 Developmental Disabilities
 Assistance and Bill of Rights Act Amendments of 1987
 45 CFR Parts 1385, 1386, 1387, and 1388, Developmental
 Disabilities Final Rules

CONTENT : Information memorandum on planned FY 1988 activities
 to implement P.L. 100-146: The Developmental
 Disabilities Assistance and Bill of Rights Act
 Amendments of 1987

DISCUSSION : The purpose of this memorandum is to provide
 information on funds appropriated for FY 1988 for
 programs authorized under the Act, a copy of the 1987
 amendments to the Act, and to highlight the major
 goals established by the 1987 Amendments.

The approved budget for the Developmental
 Disabilities Program is as follows:

	<u>1987</u>	<u>1988</u>
Basic State Grant Programs	\$56.5M	\$58.4M
Protection & Advocacy Systems	\$15.5M	\$19.1M
University Affiliated Programs	\$ 9.2M	\$12.4M
Projects of National Significance	\$ 2.5M	\$ 2.9M
TOTAL	\$83.7M	\$92.8M

The increased amounts appropriated for the Basic State Grant and Protection and Advocacy Systems programs will be reflected in grant awards to be issued for the remainder of FY 1988. In accordance with Section 142(b)(2) of the Act, amounts awarded to States receiving the minimum level of funding for the Protection and Advocacy System program will be increased by 23%.

Approval of final budget amounts for FY 1988 provides an opportunity for States to assess and evaluate funding priorities in relation to the national policy goals and initiatives established in the reauthorization of the Developmental Disabilities Act.

The recent amendments to the Act provide more than a statement of financial and programmatic requirements. The Act contains the basic policy foundation for planning, managing, and evaluating service delivery systems for the developmentally disabled. It is important for all of us, including individuals with developmental disabilities, to undertake a variety of activities through cooperation and mutual support which will help to insure that the goals and objectives of the legislation are fully implemented.

One of the primary and overriding goals embodied in the legislation is the identification of barriers that prevent persons with developmental disabilities from achieving their full potential in their communities, and the development of policies and programs at the national, state, and local levels which will help to remove those barriers. I believe that it is extremely important that all segments of the developmental disabilities research, training, planning and service delivery systems work cooperatively to carry out activities to achieve this goal. Important leadership roles are given to State Planning Councils, Protection and Advocacy Agencies and University Affiliated Programs in assuring that such activities occur. We must encourage and support programs which build community capacity to effectively respond to the needs of persons with developmental disabilities.

This focus on the community will be our theme during the year, and I urge each of you to join with us in giving priority to activities which will support this theme. Through this approach, we can encourage our state agency and local service delivery contacts to join with family, friends, neighbors and other members of local communities in assisting persons with developmental disabilities access the support services necessary to enhance their independence, productivity and integration.

In support of this theme, our Regional Offices have begun to undertake specific activities designed, in part, to establish a national information base of "Best Practices" which can be used to further the goals of the Act. For example, we will shortly have available results of a national survey of state "Employment Initiative Campaign" marketing and media resources.

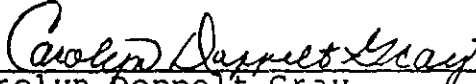
In addition, I will begin to issue quarterly reports on national efforts to implement our new Act. Please continue to keep your Regional Office contacts advised of those statewide and local events and activities that contribute to the realization of our mutual goals and objectives.

I am delighted to have this opportunity to work with you to strengthen the national response to the needs of persons with developmental disabilities.

- ATTACHMENTS :
- (1) Compilation of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by the Developmental Disabilities Assistance and Bill of Rights Act of 1987 P.L. 100-146.
 - (2) List of HDS Regional Offices for the Developmental Disabilities Program.

EFFECTIVE DATE: Date of Issuance

INQUIRIES TO : Regional Administrators, HDS,
Regions III, VI, VII, IX.



Carolyn Doppelt Gray
Acting Commissioner
Administration on Developmental Disabilities

The Developmental Disabilities Assistance and Bill of Rights Act,
as amended by the Developmental Disabilities Assistance and Bill
of Rights Act of 1987, P.L. 100-146

**"TITLE I-PROGRAMS FOR PERSONS WITH
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) persons whose disabilities occur during their developmental period frequently have severe disabilities which are likely to continue indefinitely;

"(3) notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences;

"(4) family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with necessary support services;

"(5) persons with developmental disabilities and their families often require specialized lifelong assistance to be provided in a coordinated manner by many agencies and others in order to eliminate barriers for such persons and to meet the needs of such persons;

"(6) generic service agencies and agencies providing specialized services to persons with disabilities sometimes overlook, inappropriately address the needs of, or exclude persons with developmental disabilities in their planning and delivery of services;

"(7) public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and

"(8) it is in the national interest to offer persons with developmental disabilities the opportunity, to the maximum extent feasible, to make decisions for themselves and to live in typical homes and communities where they can exercise their full rights and responsibilities as citizens.

"(b) The purposes of this title are-

"(1) to provide assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity, and integration into the community;

Developmental Disabilities Assistance and Bill of Rights Act

"(2) to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential; and

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

"DEFINITIONS

"SEC. 102. For purposes of this title:

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

"(2) The term 'nonprofit' means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private share holder or individual.

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

"(4) 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 percentum 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.

"(5) 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 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.

Developmental Disabilities Assistance and Bill of Rights Act

"(6) The term 'independence' means the extent to which persons with developmental disabilities exert control and choice over their own lives.

"(7) The term 'productivity' means-

"(A) engagement in income-producing work by a person with developmental disabilities which is measured through improvements in income level, employment status, or job advancement, or

"(B) engagement by a person with developmental disabilities in work which contributes to a household or community.

"(8) The term 'integration' means-

"(A) the-

"(i) use by persons with developmental disabilities of the same community resources that are used by and available to other citizens, and

"(ii) participation by persons with developmental disabilities in the same community activities in which nondisabled citizens participate, together with regular contact with nondisabled citizens, and

"(B) the residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nondisabled citizens in their communities.

"(9) The term 'priority area activities' includes, with respect to Federal priority areas or a State priority area-

"(A) activities to increase the capacities and resources of public and private nonprofit entities and others to develop a system for providing specialized services or special adaptations of generic services or other assistance which responds to the needs and capabilities of persons with developmental disabilities and their families and to enhance coordination among entities;

"(B) the-

"(i) conduct of studies and analyses;

"(ii) gathering of information;

"(iii) development of model policies, and procedures; and

"(iv) presentation of information, models, findings, conclusions, and recommendations to policymakers, in order to enhance opportunities for persons with developmental disabilities, including the enhancement of a system for providing or making available specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

"(C) the demonstration of new ways to enhance the independence, productivity, and integration into the community of persons with developmental disabilities, such as model demonstrations which, if successful, will be made

Developmental Disabilities Assistance and Bill of Rights Act

generally applicable through sources of funding other than funding under this title, including new ways to enhance specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

"(D) outreach activities for persons with developmental disabilities to enable such persons to obtain assistance in Federal priority areas or a State priority area, including access to specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

"(E) the training of persons with developmental disabilities, family members of such persons, and personnel, including professionals, paraprofessionals, students, and volunteers, to obtain access to, or to provide, services and other assistance in the area, including specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons; and

"(F) similar activities designed to prevent developmental disabilities from occurring or to expand and enhance the independence, productivity and integration into the community of persons with developmental disabilities through the State on a comprehensive basis.

"(10) The term 'Federal priority areas' means community living activities, employment activities, child development activities, and case management activities.

"(11) The term 'State priority area' means priority area activities in an area considered essential by the State Planning Council.

"(12) The term 'community living activities' means such priority area activities as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements and supports in the community (including nonfinancial supports and family support services).

"(13) The term 'employment activities' means such priority area activities as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings.

"(14) The term 'supported employment' means competitive work in integrated work settings-

"(A) for persons with developmental disabilities for whom competitive employment has not traditionally occurred; or

"(B) for persons for whom competitive employment has been interrupted or intermittent as a result of a developmental disability, and who because of their disability need on-going support services to perform such work.

Developmental Disabilities Assistance and Bill of Rights Act

"(15) The term 'child development activities' means such priority area activities as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services.

"(16) The term 'case management activities' means priority area activities to establish a potentially life-long, goal-oriented process for coordinating the range of assistance needed by persons with developmental disabilities and their families, which is designed to ensure accessibility, continuity of supports and services, and accountability and to ensure that the maximum potential of persons with developmental disabilities for independence, productivity, and integration into the community is attained.

"(17) The term 'satellite center' means a public or private nonprofit entity which-

"(A)(i) is affiliated with one or more university affiliated programs;

"(ii) functions as a community or regional extension of such university affiliated program or programs 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; and

"(iii) may engage in the activities described in subparagraph (A), (B), or (C) of paragraph (18); or

"(B) is affiliated with one or more university affiliated programs and which provides for at least-

"(i) interdisciplinary training for personnel concerned with the provision of direct or indirect services to persons with developmental disabilities; and

"(ii) dissemination of findings relating to the provision of services to persons with developmental disabilities.

"(18) The term 'university affiliated program' means a program operated by a public or nonprofit private entity, including parents of persons with developmental disabilities, professionals, paraprofessionals, students, and volunteers, 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 which is conducted at a facility and through outreach activities.

"(B) Demonstration of-

"(i) exemplary services relating to persons with developmental disabilities in settings which are integrated in the community; and

Developmental Disabilities Assistance and Bill of Rights Act

"(ii) technical assistance to generic and specialized agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.

"(C) (i) Dissemination of findings relating to the provision of services under subparagraph (B) of this paragraph, and (ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

"(19) The term 'Secretary' means the Secretary of Health and Human Services.

"(20) The term 'State Planning Council' means a State Planning Council established under section 124.

"(21) The term 'family support services' means services designed to-

"(A) strengthen the family's role as primary caregivers;

"(B) prevent inappropriate out-of-the-home placement and maintain family unity; and

"(C) reunite families with members who have been placed out of the home.

Such term includes respite care, personal care, parent training and counseling, support for elderly parents, and other individualized services.

"(22) The term 'assistive technology' means the systematic application of technology, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, persons with developmental disabilities in areas including education, employment, supported employment, transportation, and independent living and other community living arrangements.

"(23) The term 'early intervention services' means services provided to infants, toddlers, young children, and the families of such to-

"(A) identify, assess, and treat developmental disabilities at the earliest possible time to prevent more serious disability;

"(B) ensure the maximum growth and development of a person within the above classes who has a developmental disability; and

"(C) assist families in raising a child with a developmental disability.

Developmental Disabilities Assistance and Bill of Rights Act

"FEDERAL SHARE

"SEC. 103. (a) The Federal share of all projects in a State supported by an allotment to the State under part B may not exceed 75 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, except that in the case of projects located in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects, as determined by the Secretary.

"(b) The Federal share of any project to be provided through grants under part D may not exceed 75 percent of the necessary cost of such project, 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 percent of the project's necessary costs as so determined.

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

"(d) 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 as the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under part B or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part D.

"RECORDS AND AUDIT

"SEC. 104. (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.

Developmental Disabilities Assistance and Bill of Rights Act

"RECOVERY

"SEC. 105. If any facility with respect to which funds have been paid under part B or D 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 the Secretary, 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.

"STATE CONTROL OF OPERATIONS

"SEC 106. 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.

"REPORTS

"SEC. 107. (a) by January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain-

"(1) a description of such activities and the accomplishments resulting from such activities;

"(2) a comparison of such accomplishments with the goals, objectives, and proposed activities specified by the State in the State plan submitted under section 122 for such fiscal year;

Developmental Disabilities Assistance and Bill of Rights Act

"(3) an accounting of the manner in which funds paid a State under part B for a fiscal year were expended;

"(4) a description of the State Planning Council's response to significant actions taken by the State with respect to each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State; and

"(5) a description of the progress made in the State in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, and advocacy for, persons with developmental disabilities which are attributable to physical impairment, mental impairment, or a combination of physical and mental impairments, including any other subpopulation of persons with developmental disabilities (including minorities) that the State Planning Council may identify under sections 122(b)(3) and 122(f).

"(b) By January 1 of each year, each protection and advocacy system established in a State pursuant to part C shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year.

"(c)(1) By April 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on the Handicapped a report which describes-

"(A) the activities and accomplishments of programs supported under parts B, C, D, and E of this title;

"(B) the progress made in States in improving the independence, productivity, and integration into the community of persons with developmental disabilities and any activities or services needed to improve such independence, productivity, and integration;

"(C) the progress made by States in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, and advocacy for, persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments, including any other subpopulation of persons with developmental disabilities (including minorities) that the State Planning Council may identify under sections 122(b)(3) and 122(f);

"(D) the significant Federal policies that impact on the ability of States to address the needs of persons with developmental disabilities attributable to physical impairments, mental impairments, or a combination of mental and physical impairments; and

"(E) the number of meetings held by the interagency committee established under section 108(b) during the period for which the report is made, which agencies were represented at each such meeting, and the accomplishments of the interagency committee in comparison to the goals and objectives of such committee.

Developmental Disabilities Assistance and Bill of Rights Act

"(2) In preparing the report required by this subsection, the Secretary shall use and include information submitted to the Secretary in the reports required under subsections (a) and (b) of this section.

"RESPONSIBILITIES OF THE SECRETARY

"SEC. 108. (a) The Secretary, not later than one hundred eighty 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.

"(b) Within ninety days after the date of enactment of the Developmental Disabilities Act of 1984, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the Administration for Developmental Disabilities of the Department of Health and Human Services, the Office of Special Education and Rehabilitative Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for persons with developmental disabilities.

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"SEC. 109. 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.

"RIGHTS OF THE DEVELOPMENTALLY DISABLED

"SEC. 110. 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.

Developmental Disabilities Assistance and Bill of Rights Act

"(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

Developmental Disabilities Assistance and Bill of Rights Act

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.

**"PART B-FEDERAL ASSISTANCE FOR PLANNING PRIORITY AREA
ACTIVITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**

"PURPOSE

"SEC. 121. The purpose of this part is to provide payments to States to assist in the development of a comprehensive system and a coordinated array of services and other assistance for persons with developmental disabilities through the conduct of, and appropriate planning and coordination of, administrative activities, Federal priority activities, and a State priority activity, in order to support persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community.

"STATE PLANS

"SEC. 122. (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 must meet the following requirements:

"(1)(A) The plan must provide for the establishment of a State Planning Council in accordance with section 124.

"(B) The plan must designate the State agency which shall administer or supervise the administration of the State plan (hereafter in this part referred to as the 'designated State agency'). Except as provided in subsection (e), the designated State agency may be-

"(i) the State Planning Council required under subparagraph (A) if such Council may be the designated State agency under the laws of the State;

"(ii) a State agency that does not provide or pay for services made available to persons with developmental disabilities; or

Developmental Disabilities Assistance and Bill of Rights Act

"(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

"(C) The plan must provide that the State agency designated under subparagraph (B) will keep such records and afford such access thereto as the Secretary or the State Planning Council finds necessary.

"(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.

"(2) The plan must-

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

"(B) set forth the non-Federal share that will be required in carrying out each such objective and program;

"(C) 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 or federally assisted State programs that the State conducts and in which persons with developmental disabilities are eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, aging, programs for children with special health care needs, housing, comprehensive health and mental health, and such other plans as the Secretary may specify, and

(ii) how funds allotted to the State in accordance with section 125 will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities who are eligible for Federal assistance under such other State programs;

"(D) for each fiscal year, assess and describe the extent and scope of the Federal and State priority areas which are addressed or which will be addressed under the plan in the fiscal year; and

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

Developmental Disabilities Assistance and Bill of Rights Act

"(3) The plan must describe a process and timetable for the completion, by January 1, 1990, by the State Planning Council in the State, of the reviews, analyses, and final report described in subsection (f).

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

"(A) the funds paid to the State under section 125 will be used to make a significant contribution toward enhancing the independence, productivity, and integration into the community of 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) not more than 25 percent of such funds will be allocated to the agency designated under section 122(b)(1)(B) for the provision of services by such agency;

"(D) such funds paid to the State under section 125 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

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

"(5)(A) The plan must 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 Federal priority areas and the State priority area. Such examination shall be made consistent with subparagraph (B).

"(B) The plan must provide for the review and revision, not less often than once every three years, of the comprehensive Statewide plan to ensure the existence of appropriate planning, financial support and coordination, and to otherwise appropriately address, on a Statewide and comprehensive basis, urgent needs in the State for the provision of services for persons with developmental disabilities and the families of such persons. Such review and revision, and examination under subparagraph (A), shall take into account the reviews and analyses conducted, and the report prepared, under subsection (f), and shall, at a minimum, include-

"(i) an analysis of such priority areas in relation to limited support or lack of support for persons with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

Developmental Disabilities Assistance and Bill of Rights Act

"(ii) an analysis of criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may be causing persons with developmental disabilities to be excluded from receiving such services;

"(iii) an analysis of services, assistive technology, or knowledge which may be unavailable to assist persons with developmental disabilities;

"(iv) an analysis of existing and projected fiscal resources;

"(v) an analysis of any other issues identified by the State Planning Council; and

"(vi) the formulation of objectives in both policy reform and service demonstration to address the issues described in clauses (i) through (v) for all subpopulations of persons with developmental disabilities which may be identified by the State Planning Council.

"(C) The plan must be developed after consideration of the data collected by the State education agency under section 618(b)(3) of the Education of the Handicapped Act.

"(D)(i) The plan must provide that not less than 6/5 percent of the amount available to the State under section 125 will be expended for activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and a State priority area, the conduct of the analyses specified in clauses (i) through (v) of subparagraph (B), and the implementation of paragraph (3) and subsection (f).

"(ii) The plan must provide that the remainder of the amount available to the State from allotments under section 125 (after making the expenditures required by clause (i) of this paragraph) shall be used for the planning, coordination, and administration of priority area activities for, and the advocacy for, persons with developmental disabilities.

"(E) 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.

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

Developmental Disabilities Assistance and Bill of Rights Act

"(ii) The plan must provide satisfactory assurances that buildings used in connection with the programs assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (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 123 (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 part will be protected consistent with section 110 (relating to the rights of the developmentally disabled).

"(D) The plan must provide assurances that the State has undertaken affirmative steps to assure that 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.

"(E) The plan must provide assurances that the State will provide the State Planning Council with a copy of each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State within 30 days after the completion of each such report or plan.

"(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 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 community living activities, 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.

"(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.

Developmental Disabilities Assistance and Bill of Rights Act

"(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 allotments 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.

"(e)(1) If a State agency that provides or pays for services for persons with developmental disabilities was a designated State agency for purposes of this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 and the Governor of the State determines, before June 30, 1988, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

"(2) The determination of the Governor of a State under paragraph (1) shall be at the discretion of the Governor and shall be made by the Governor after the Governor has considered the comments of the general public and the non-State agency members of the State Planning Council with respect to the designation of such State agency, and after the Governor has made an independent assessment of the impact that the designation of such agency has on the ability of the State Planning Council to serve as an advocate for persons with developmental disabilities.

"(3) If the Governor of a State determines not to retain the designation of a State agency in effect on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Governor shall, by October 1, 1990, designate another agency as the State agency in accordance with the requirements of subsection (b)(1)(B).

Developmental Disabilities Assistance and Bill of Rights Act

"(4) After the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, any designation of a State agency shall be made in accordance with the requirements of subsection (b)(1)(B)."

"(f)(1) Each State Planning Council shall conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all State agencies (including agencies which provide public assistance) which affect or which potentially affect the ability of persons with developmental disabilities to achieve the goals of independence, productivity, and integration into the community, including persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

"(2) Each State Planning Council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from Federal and State funds by each of the State agencies (including agencies providing public assistance) responsible for performing functions for, and providing services to, all persons with developmental disabilities in the State. Such review and analysis shall be based upon a survey of a representative sample of persons with developmental disabilities receiving services from each such agency, and if appropriate, shall include their families.

"(3) Each State Planning Council shall convene public forums, after the provision of notice within the State, in order to-

"(A) present the findings of the reviews and analyses prepared under paragraphs (1) and (2);

"(B) obtain comments from all interested persons in the State regarding the unserved and underserved populations of persons with developmental disabilities which result from physical impairment, mental impairment, or a combination of physical and mental impairments; and

"(C) obtain comments on any proposed recommendations concerning the removal of barriers to services for persons with developmental disabilities and to connect such services to existing State agencies by recommending the designation of one or more State agencies, as appropriate, to be responsible for the provision and coordination of such services.

"(4) By January 1, 1990, each State Planning Council shall prepare and transmit to the Governor of the State and the legislature of the State a final written report concerning the review and analyses conducted under paragraphs (1) and (2).

Developmental Disabilities Assistance and Bill of Rights Act

The report shall contain recommendations by the State Planning Council concerning-

"(A) the most appropriate agency or agencies of the State to be designated as responsible for the provision and coordination of services for persons with developmental disabilities who are traditionally underserved, such as persons with developmental disabilities attributable to physical impairment, persons with developmental disabilities attributable to dual mental impairments, and persons with developmental disabilities attributable to a combination of physical and mental impairments, and such other subpopulations of persons with developmental disabilities (including minorities) as the State Planning Council may identify; and

"(B) the steps to be taken to include the data and recommendations obtained through the conduct of the reviews and analyses under paragraphs (1) and (2) in the State Planning Council's ongoing advocacy, public policy, and model service demonstration activities.

"(5) By January 15, 1990, the Governor of each State shall submit to the Secretary a copy of the report required by paragraph (4). By April 1, 1990, the Secretary shall transmit a summary of such reports to the appropriate committees of the Congress.

"HABILITATION PLANS

"SEC. 123. (a) The Secretary shall require as a condition to a State's receiving an allotment under this part 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 this 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) the person for whom the plan is established, (B) where appropriate, such person's parent or guardian or other representative, and (C) 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.

Developmental Disabilities Assistance and Bill of Rights Act

"(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 goals should include the increase or support of independence, productivity, and integration into the community for the person. 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 an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a case manager who will be responsible for coordinating 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.

"STATE PLANNING COUNCILS

"SEC 124. (a) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advocate for all persons with developmental disabilities.

"(b)(1) 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.

"(2) The Governor of each State shall make appropriate provisions for the rotation of membership on the State Planning Council.

Developmental Disabilities Assistance and Bill of Rights Act

"(3) Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Education of the Handicapped Act, the State agency that administers funds provided under the Older Americans Act of 1965, and the State agency that administers funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in that State.

"(4)" At least one-half of the membership of each State Planning Council shall consist of persons who-

"(A) are persons with developmental disabilities;

"(B) are parents or guardians of such persons; or

"(C) are immediate relatives or guardians of persons with mentally impairing developmental disabilities, and 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.

"(5) Of the members of the State Planning Council described in paragraph (4)-

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

"(B)(i) at least one-third shall be individuals described in subparagraph (C) of paragraph (4), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

(c)(1) Each State Planning Council may prepare and approve a budget using amounts paid to the State under this part to hire such staff and obtain the services of such professional, technical, and clerical personnel consistent with State law as the State Planning Council determines to be necessary to carry out its functions under this part.

(2) The staff and other personnel of a State Planning Council, while working for the State Planning Council, shall be responsible solely for assisting the State Planning Council in carrying out its duties under this part and shall not be assigned duties by the designated State agency or any other agency or office of the State.

Developmental Disabilities Assistance and Bill of Rights Act

"(d)(1) Each State Planning Council shall-

"(1) develop jointly with the State agency designated under section 122(b)(1)(B) the State plan required by this part, including the specifications of Federal and State priority area activities under section 122(b)(5)(D)(i);

"(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.

"STATE ALLOTMENTS

"SEC. 125. (a)(1) For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 130 among the States on the basis of-

"(A) the population,

"(B) the extent of need for services for persons with developmental disabilities, and

"(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 122 for the provision under such plans of services for persons with developmental disabilities.

"(2) Adjustments in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) may be made not more often than annually. The Secretary shall notify States of any adjustment made not less than six months before the beginning of the fiscal year in which such adjustment is to take effect.

"(3)(A) Except as provided in paragraph (4), for any fiscal year the allotment under paragraph (1)-

(i) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than \$160,000, and

(ii) to any other State may not be less than the greater of \$300,000, or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending September 30, 1984.

(B) Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 130 for such fiscal year, the amount

Developmental Disabilities Assistance and Bill of Rights Act

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

"(4) In any case in which amounts appropriated under section 130 for a fiscal year exceed \$60,000,000, the allotment under paragraph (1) for such fiscal year-

"(A) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than \$200,000; and

"(B) to each of the several States, Puerto Rico, or the District of Columbia, may not be less than \$350,000.

"(5) 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 122(b)(2)(C), in the State plan of the State.

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

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

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

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

"(c) Whenever the State plan approved in accordance with section 122 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

Developmental Disabilities Assistance and Bill of Rights Act

"(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 reallocation by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

"PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES

"SEC. 126. From each State's allotments for a fiscal year under section 125, 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. 127. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 122(b)(1) finds that-

"(1) there is a failure to comply substantially with any of the provisions required by section 122 to be included in the State plan, particularly sections 122(b)(3) and 122(f); 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 section 125 (or, in the discretion of the Secretary, that further payments will not be made to the

Developmental Disabilities Assistance and Bill of Rights Act

State under section 125 for activities in which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payment to the State under section 125, or shall limit further payment under section 125 to such State to activities in which there is no such failure.

"NONDUPLICATION

"SEC. 128. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 122, 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 125, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

"APPEALS BY STATES

"SEC. 129. If any State is dissatisfied with the Secretary's action under section 122(c) or section 127, 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 the Secretary for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the 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 the order of the Secretary. 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 the previous action of the Secretary, 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.

Developmental Disabilities Assistance and Bill of Rights Act

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 130. For allotments under section 125, there are authorized to be appropriated \$62,200,000 for fiscal year 1988, \$69,900,000 for fiscal year 1989, and \$77,400,000 for fiscal year 1990.

"PART C-PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

"PURPOSE

"SEC. 141. It is the purpose of this part to provide for allotments to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 142.

"SYSTEM REQUIRED

"SEC. 142. (a) In order for a State to receive an allotment under part B-

"(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-

"(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

"(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

"(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

"(C) on an annual basis, provide the public with an opportunity to comment on priorities established by, and activities of, the system;

"(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;

"(E) not be administered by the State Planning Council;

Developmental Disabilities Assistance and Bill of Rights Act

"(F) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

"(G) have access to all records of -

"(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

"(ii) any person with developmental disabilities-

"(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

"(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

"(III) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse or neglect;

"(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and 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;

"(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

"(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

"(b)(1) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the amounts appropriated under section 143. 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 subsection (a)(1) and subsection (d) of section 125, except that in any case in which-

Developmental Disabilities Assistance and Bill of Rights Act

"(A) the total amount appropriated under section 143 for a fiscal year is at least \$20,000,000-

"(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$107,000; and

"(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than \$200,000; or

"(B) the total amount appropriated under section 143 for fiscal year is less than \$20,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than \$150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$80,000.

"(2) In any case in which the total amount appropriated under section 143 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor, under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary may increase each of the minimum allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between-

"(A) the total amount appropriated under section 143 for the fiscal year for which the increase in minimum allotment is being made, minus

"(B) the total amount appropriated under section 143 for the immediately preceding fiscal year, bears to the total amount appropriated under section 143 for such preceding fiscal year.

"(3) A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

"(4) Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 143, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

Developmental Disabilities Assistance and Bill of Rights Act

"(c) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 143. For allotments under section 142, there are authorized to be appropriated \$20,000,000 for fiscal year 1988, \$22,000,000 for fiscal year 1989, and \$24,200,000 for fiscal year 1990.

"PART D-UNIVERSITY AFFILIATED PROGRAMS

"PURPOSE

"SEC. 151. The purpose of this part is to provide for grants to university affiliated programs to assist in the provision of interdisciplinary training, the demonstration of exemplary services and technical assistance, and the dissemination of information which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

"GRANT AUTHORITY

"SEC. 152. (a) From appropriations under section 154(a), the Secretary shall make grants to university affiliated programs to assist in the administration and operation of the activities described in section 102(18).

"(b)(1)(A) From amounts appropriated under section 154(b), the Secretary shall make grants of sufficient size and scope to university affiliated programs receiving grants under subsection (a) to support training projects to train personnel to address the needs of persons with developmental disabilities in areas of emerging national significance, particularly projects to train personnel in the areas of early intervention programs (as described in paragraph (2)), programs for elderly persons with developmental disabilities (as described in paragraph (3)), and community-based service programs (as described in paragraph (4)).

"(B) The Secretary shall make determinations with respect to grants under this subsection based on information relating to present and projected needs for the training of personnel based on identified State, regional, or national shortages of personnel, the capacity of the university affiliated programs to train personnel, and such other information as may be determined necessary and appropriate by the Secretary.

Developmental Disabilities Assistance and Bill of Rights Act

"(C) Grants under this subsection may be used by university affiliated programs to (i) assist in paying the costs of courses of training or study for personnel to provide services for persons with developmental disabilities and (ii) establish fellowships or traineeships providing such stipends and allowances as may be determined by the Secretary.

"(2) Grants under this subsection for training projects with respect to early intervention programs shall be for the purpose of assisting university affiliated programs in providing training to allied health personnel and other personnel who provide, or who will provide, interdisciplinary intervention to infants, toddlers, and preschool age children with developmental disabilities. Such training projects shall include instruction on methods of working and collaborating with professionals and families of persons with developmental disabilities.

"(3) Grants under this subsection for training projects with respect to programs for elderly persons with developmental disabilities shall be for the purpose of supporting the planning, design, and implementation of coordinated interdisciplinary training programs between existing aging or gerontological programs and university affiliated programs in order to prepare professional staff to provide services for elderly persons with developmental disabilities.

"(4) Grants under this subsection for training projects with respect to community-based programs shall be for the purpose of providing interdisciplinary training to personnel who will provide direct supports and services for persons with developmental disabilities, including paraprofessionals who are employed or are preparing to be employed in community-based day programs or residential programs for persons with developmental disabilities. The Secretary shall ensure that all grants under this paragraph are made only to university affiliated programs that involve local community-level direct care programs and paraprofessional training programs in the preparation of the application for such grant and shall assure that any training under the university affiliated program will be coordinated with local programs.

"(c) From amounts appropriated under section 154(b), the Secretary may make grants to university affiliated programs receiving grants under subsection (a) to support one or more of the following activities:

"(1) The provision of service-related training to persons with developmental disabilities, family members of such persons, professionals, volunteers, or other personnel to enable such persons, family members, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and integration into the community of persons with developmental disabilities.

Developmental Disabilities Assistance and Bill of Rights Act

"(2) The conduct of an applied research program designed to produce more efficient and effective methods for (A) the delivery of services to persons with developmental disabilities, and (B) the training of professionals, paraprofessionals, and parents who provide such services.

"(d) From amounts appropriated under section 154(a), 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. A satellite center which receives a grant under this section may engage in the activities described in subparagraph (A), (B), or (C) of section 102 (18) and may compete for grants under subsections (b) and (c).

"(e) From amounts appropriated under section 154(a), the Secretary may make a grant to a university or a public or nonprofit entity which is associated with, or is an integral part of, a college or university, to study the feasibility of establishing a university affiliated program or a satellite center. Such study shall include an assessment of the needs of the area in which the university is located for such a program or center. The amount of a grant under this subsection may not exceed \$35,000 for any fiscal year. A grant under this subsection may only be made in a State in which there is no university affiliated program or satellite center.

"APPLICATIONS

"SEC. 153. (a) Not later than six months after the date of the enactment of the Developmental Disabilities Act of 1984, the Secretary shall establish by regulation standards for university affiliated programs. Such standards shall reflect the special needs of all persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 102(18).

"(b) No grants may be made under section 152(a) 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;

Developmental Disabilities Assistance and Bill of Rights Act

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

"(B)(i) the applicant will make substantial progress toward bringing the program into compliance with such standards, and (ii) the program 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;

"(3) 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 part will be protected consistent with section 110 (relating to rights of the developmentally disabled);

"(4) the activities conducted under this part are consistent with, and to the extent feasible, complement and further, the objectives contained in the State plan required under section 122; and

"(5) before the submission of such application, an opportunity for comment has been provided to the general public and the State Planning Council of the State in which the program will be conducted or the satellite center is or will be located.

"(c) The Secretary shall establish such a process for the review of applications for grants under section 152(a) as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's program reviews the application.

"(d)(1) If the total amount appropriated under section 154(a) for a fiscal year is at least \$8,500,000 the amount of any grant under section 152(a) to a university affiliated program shall not be less than \$200,000 for such fiscal year and the amount of any grant under section 152(c) to a satellite center shall not be less than \$150,000 for such fiscal year.

"(2) If the total amount appropriated under section 154(a) is less than \$8,500,000, the amount of any grant under section 152(a) to a university affiliated program shall not be less than \$150,000 for such fiscal year and the amount of any grant under section 152(c) to a satellite center shall not be less than \$75,000 for such fiscal year.

"(3)(A) For purposes of making grants under section 152(a), the Secretary shall consider applications for grants for four university affiliated program or satellite centers for each of the fiscal years 1988, 1989, and 1990 which are in addition to the total number of university affiliated programs and satellite centers receiving grants under such section for the preceding fiscal year.

Developmental Disabilities Assistance and Bill of Rights Act

"(B) Such programs and centers shall, to the extent feasible, be geographically distributed for the purpose of serving States that are unserved by university affiliated programs and satellite centers under this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987.

"(C) The Secretary may not deny an application for a university affiliated program or satellite center solely because of the size of the population proposed to be served by the program or center, if such application proposes to serve the population of an entire State.

"(e)(1) The Secretary shall by regulation require appropriate technical and qualitative peer review of applications for assistance under this part by peer review groups established under paragraph (4).

"(2) Regulations promulgated under paragraph (1) shall provide that the review of the application required by such paragraph shall be conducted by groups established under paragraph (4) that are composed of non-Federal individuals who, by experience or training, are highly qualified to assess the comparative quality of applications for assistance.

"(3)(A) The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under paragraph (1).

"(B) This paragraph shall apply to the approval of grant applications received for fiscal year 1990 and succeeding fiscal years.

"(4) The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding-

"(A) the provisions of title 5, United States Code, concerning appointments to the competitive service;

"(B) the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, concerning classification and General Schedule pay rates; establish such peer review groups as are necessary to carry out this subsection, and appoint and set the rates of pay for members of such groups.

"(5) The Secretary may waive the provisions of paragraph (3) concerning approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 154. (a) For the purpose of grants under subsections (a), (d), and (e) of section 152, there are authorized to be appropriated \$9,400,000 for fiscal year 1988, \$10,200,000 for fiscal year 1989, and \$11,000,000 for fiscal year 1990. Amounts appropriated under this section for a fiscal year shall remain available for obligation and expenditure until the end of the succeeding fiscal year.

Developmental Disabilities Assistance and Bill of Rights Act

"(b) For the purpose of grants under sections 152(b) and 152(c), there are authorized to be appropriated \$4,500,000 for fiscal year 1988, \$5,000,000 for fiscal year 1989, and \$5,500,000 for fiscal year 1990.

"(c) The Secretary may use funds appropriated under subsection (a) for the purposes described in subsection (b).

"(d) Of the amounts appropriated under subsection (b), at least 75 percent shall be used for grants under section 152(b) and the remainder shall be used for grants under section 152(c).

"PART E-PROJECTS OF NATIONAL SIGNIFICANCE

"PURPOSE

"SEC. 161. The purpose of this part is to provide for grants for and contracts for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

"GRANT AUTHORITY

SEC. 162. (a) The Secretary may make grants to and enter into contracts with public or non-profit private entities for-

"(1) projects of national significance relating to persons with developmental disabilities, including projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, and pursue Federal interagency initiatives, and other projects of sufficient size and scope and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups); and

"(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving the advocacy functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under part D, and protection and advocacy services relating to the State protection and advocacy system described in section 142. 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.

Developmental Disabilities Assistance and Bill of Rights Act

"(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 122, and unless the application provides assurances that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under projects assisted under this part will be protected consistent with section 110 (relating to the rights of the developmentally disabled). The Secretary shall provide to the State Planning Council in such State an opportunity to review the application for such project and to submit its comments on the application.

"(c) Not later than January 1 of each year, the Secretary shall publish in the Federal Register proposed priorities for grants and contracts under this part and shall allow a period of 60 days for public comments and suggestions concerning such proposed priorities. After analyzing and considering such comments, the Secretary shall publish final priorities for such grants and contracts in the Federal Register.

"(d) 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.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 163. (a) To carry out this part, there are authorized to be appropriated \$3,650,000 for fiscal year 1988, \$3,650,000 for fiscal year 1989, and \$3,650,000 for fiscal year 1990.

"(b) Of the amounts appropriated under subsection (a), for any fiscal year, \$600,000 shall be available for grants and contracts under section 162(a)(1) for not more than three projects to determine the feasibility and desirability of developing a nationwide information and referral system for persons with developmental disabilities. The Secretary shall award grants and contracts under section 162(a)(1) for such projects within 6 months after the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987.

"EFFECTIVE DATE

"SEC. 601 (P.L. 100-146). This Act and the amendments made by this Act shall become effective on October 1, 1987.

NOTE - This compilation was cleared by the HHS Office of the General Counsel on December 15, 1987.