



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

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3. Originating Office: Administration on Developmental Disabilities

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Assurances

5. P.L. 101-146

6.

7.

PROGRAM INSTRUCTION

TO: Directors, State Planning Councils
Directors, Designated State Agencies
Chairpersons, State Planning Councils

SUBJECT: New Requirements for State Participation in Part
B, the Basic State Grant Program --- Federal
Assistance for Planning Priority Area Activities
for Persons with Developmental Disabilities.

LEGAL AND RELATED
REFERENCES: Developmental Disabilities Assistance and Bill of
Rights Act of 1990, ("the Act") as amended by
Public Law 101-496

45 CFR 1386, Developmental Disabilities Final
Rules dated November 20, 1989

CONTENT: Public Law 101-496 was signed October 31, 1990.
Among the new requirements were provisions that
require immediate State attention.

This issuance provides instructions to States on
compliance with several of the additional
requirements imposed on States by Sections 102,
122 and 124 of the Act. It is being provided in
order to minimize any disruption in the Basic
State Grant Program. The requirements set forth in
this instruction are in addition to other
requirements of the Act.

Please note that new requirements and changes are highlighted in bold print.

These new requirements are:

Section 102(5)

The term "developmental disability" means a severe, chronic disability of a person five years of age or older which --

(E)... except that such term, when applied to infants and young children means an individual from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

The definition of "developmental disability" has been amended to more accurately include infants and young children with developmental disabilities. Infants and young children may have substantial and recognizable developmental delay from birth or conditions which place them at high risk for developmental disabilities which may not be manifested by functional limitation in three or more areas listed in the definition.

Of the seven major life areas, only three major life areas apply to infants and young children from birth to age five; receptive and expressive language, learning, and mobility. Four of the functional areas self care, self-direction, capacity for independent living and economic self-sufficiency do not apply, or are very limited in their application to infants and young children.

Section 122(b)(1)(B)

The plan must designate the State agency which, on behalf of the State, shall receive, account for, and disburse funds based on the State plan required in section 122, and shall provide required assurances and other administrative support services.

The mandated role and responsibilities of the designated State agency with respect to basic State grant funds has been delineated to clarify the relationship between the Planning Council and the designated State agency. The responsibilities of the designated State agency are

expressly limited to ensuring that expenditures are made in a manner consistent with the State law regarding grants and contracts, proper accounting, bookkeeping, and other fiscal controls, the provision of assurances, and the provision of administrative support services for the program. With the exception of "administrative funds" designated under Section 122 (d)(1), the designated State agency is to implement the Planning Council's decisions regarding the operation of the Council and its staff, implementation of the approved State plan, planning, coordination, advocacy, and administration of priority area activities. The State Planning Council must maintain the right to direct the expenditures of the Basic State Grant funds to the priorities and the intended activities designated in the State plan so long as it is consistent with State law.

Section 124(a)

Each State which receives assistance under this part shall establish a State Planning Council to serve as an advocate for all persons with developmental disabilities by carrying out priority area activities.

Section 122(b)(2)(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, supports and other assistance being provided, or to be provided, to persons with developmental disabilities under such other State plans, or policies affecting, federally assisted State programs that the State conducts and in which persons with developmental disabilities are or may be eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, child welfare, maternal and child health, aging, programs for children with special health care needs, housing, transportation, technology, comprehensive health and mental health, and such other programs as the Secretary may specify, (ii) the extent to which such federally assisted State programs develop and pursue interagency initiatives aimed at improving and enhancing services, supports and other assistance, which result in increased independence, productivity, and integration

into the community for persons with developmental disabilities, and (iii) 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 and their families who are eligible for Federal assistance under such other State programs;...

The mandated review of State programs has been clarified and broadened. Three new program areas are included in the list for required review. Not all federally assisted State programs that provide services which benefit persons with developmental disabilities are required to develop a State plan. In those instances where an agency does not publish a State plan, the Council must review relevant policy documents, reports, and programs which pertain to that agency and take into consideration the findings and conclusions in the development of goals, objectives and strategies. Councils should specify in their State plans which federal assisted programs without State plans they will review, based on which State plan objectives, and describe how such review is seen as a component of a larger strategy of investigation into the operation of the service delivery system on behalf of all persons with developmental disabilities.

Section 122(b) (2) (D)

assess, and if appropriate, update the findings of the report conducted pursuant to subsection (f), and report on any progress achieved concerning issues identified in the report conducted pursuant to such subsection in the previous fiscal year,.....

Councils should as a part of their planning process, review their findings and report on the current status with respect to those findings and use these findings to address issues of concern which were identified by their analysis. Councils do not have to conduct a comprehensive review, analysis and written report, similar to the "1990 Report" each year, but should consider their findings as they develop their State plans and to report on progress made in reaching the recommendations in their annual report.

Section 122(b)(5)(B)(iii)

an analysis of the special and common needs of all subpopulations of persons with developmental disabilities;...

Section 122(b)(5)(B)(iv)

consideration of the report conducted pursuant to subsection (f);....

During the development of the State plan, the Councils should, as a part of their planning process, review the findings of the "1990 Report" on the current status with respect to those findings and use these findings to address issues of concern which were identified by their analysis. This review should consider all subpopulations of persons with developmental disabilities including the unserved and underserved.

Section 122(b)(5)(D)(i)

The plan must provide that not less than 65 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) the implementation of paragraph (3) and subsection (f) and activities which address the implementation of recommendations made in the report described in subsection (f), including recommendations which address unserved and underserved populations;...

Section 122(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 exercise of the functions of the State designated agency 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 the

(iii) (c) except as indicated

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in doing so, it is important to note that

Section 124(c)(2)

Each State Planning Council shall, consistent with State law, hire a Director of the State Planning Council who shall be supervised and evaluated by the State Planning Council and who shall hire and supervise the staff of the State Planning Council.

The State Planning Council is now required to prepare and approve its own budget for Part B funds. Councils now have the authority to hire staff or fill staff vacancies when such staff are paid from funds allotted under Part B, even when the State has invoked a freeze on State hiring. Adequate staff must be available to the Councils in order to carry out the responsibilities of the Councils in a timely and effective manner. The Director of the State Planning Council is responsible for informing the designated State agency of Council practices and ensuring that they are consistent with State law and administrative code.

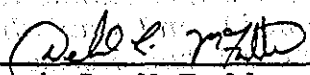
Section 124(d)(1)

Each State Planning Council shall --
(1) develop and submit after consultation with the State agency designated under section 122(b)(1)(B) the State Plan required by this part, including the specification of Federal and State priority area activities under section 122(b)(5)(D)(i); ...

INSTRUCTION: The designated State agency is responsible for providing the assurances required by the Act pursuant to Section 122(b)(1)(B). The Governor or designated State official is to sign the acknowledgement of the new requirements for the Developmental Disabilities Basic State Grant Program. States are advised that all requirements are in effect as of October 1, 1990. No later than June 15, 1991, each State must submit to the appropriate Regional Office the attached acknowledgement that it will implement the new requirements. The requirements must be addressed through either amendments to the current State Plan, the new Three Year State Plan for Fiscal Years 1992 through 1994, or other appropriate action by the State.

EFFECTIVE DATE: Date of Issuance

INQUIRIES TO: **Regional Administrators, HDS, Regions I-X**


Deborah L. McFadden
Commissioner

**Administration on Developmental
Disabilities**

cc: **Regional Administrators, Regions I-X**
Regional Directors, Office of State Programs
Regions I-X
Executive Director, National Association of
Developmental Disabilities Councils

ATTACHMENTS: 1. **List of HDS Regional Offices Administrators**
2. **P.L. 101-496, Developmental Disabilities**
Assistance and Bill of Rights Act of 1990
3. **Suggested format for acknowledgement of new**
requirements

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Region I

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