

# ACF

## Administration for Children and Families

### U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families

1. Log No. ADD-PR-95-1

2. Issuance Date: 5/26/95

3. Originating Office: Administration on Developmental  
Disabilities

4. Key Word: NPRM

5. Key Word:

#### PROGRAM REGULATION

TO: Directors, Designated State Agencies  
Executive Directors, State Developmental  
Disabilities Councils  
Chairpersons, State Developmental Disabilities  
Councils  
Directors, State Protection and Advocacy Systems  
Directors, University Affiliated Programs

SUBJECT: Notice of Proposed Rulemaking (NPRM) for the  
Developmental Disabilities Program

#### LEGAL AND RELATED REFERENCES:

Public Law 101-496, Developmental Disabilities  
Assistance and Bill of Rights Act Amendments of  
1990 (42 U.S.C. 6000 et seq.) and

Public Law 103-230, Developmental Disabilities  
Assistance and Bill of Rights Act Amendments of  
1994 (42 U.S.C. 6000 et seq.)

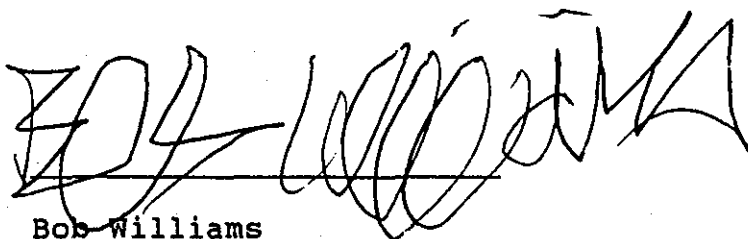
DISCUSSION: Attached is the NPRM for the Developmental  
Disabilities Program - 45 CFR Part 1385, 1386,  
1387 and 1388 published in the Federal Register on  
May 18, 1995.

This Notice of Proposed Rulemaking (NPRM) proposes to amend the current regulations to implement changes made by the Developmental Disabilities Assistance and Bill of rights Act Amendments of 1990 (Pub. L. 101-496) and by the 1994 Amendments (Pub. L. 103-230). The regulations propose to: provide guidance on redesignation of the Protection and Advocacy system and the appeal process; include requirements on the Protection and Advocacy annual statement of objectives; address State Developmental Disabilities Council responsibilities and those of the Designated State Agency; set new program standards for the University Affiliated Program; and make other clarifying, technical, and conforming changes.

Agencies, organizations, and interested individuals have a 60-day comment period to submit comments. The comment period ends July 17, 1995.

INQUIRIES: Administration on Developmental Disabilities  
Attn: John P. Doyle  
Hubert H. Humphrey Building, Room 309D  
200 Independence Avenue, S.W.  
Washington, D.C. 20201  
Telephone: (202) 690-5983

Regional Administrators, ACF, Regions I-X



Bob Williams  
Commissioner  
Administration on Developmental  
Disabilities

COPY TO: Regional Administrators, ACF, Regions I-X  
Director, Regional Operations Staff, ACF  
Executive Director, National Association on  
Developmental Disabilities Councils  
Interim Manager, Consortium of Developmental  
Disabilities Councils  
Executive Director, National Association of  
Protection and Advocacy Systems, Inc.  
Executive Director, American Association of  
University Affiliated Programs

ATTACHMENT: Notice of Proposed Rulemaking

# Federal Register

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Thursday  
May 18, 1995

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## Part II

### Department of Health and Human Services

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Administration for Children and Families

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45 CFR Part 1385 et al.  
Developmental Disabilities Program;  
Proposed Rule

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

45 CFR Parts 1385, 1386, 1387 and 1388

RIN 0970-AB11

## Developmental Disabilities Program

**AGENCY:** Administration on Developmental Disabilities, Administration for Children and Families, HHS.

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** This rule proposes clarifications and new requirements to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 and the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994.

**DATES:** To ensure consideration comments must be submitted on or before July 17, 1995.

**ADDRESSES:** Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 329-D (Regulations), Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

It would be helpful if agencies and organizations submitted copies in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 309-D, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, Monday through Friday, 8 a.m. to 4 p.m., telephone (202) 690-5841.

**FOR FURTHER INFORMATION CONTACT:** John P. Doyle, Director, Administration and Planning Staff, Administration on Developmental Disabilities, Telephone: (202) 690-5504 (Voice), (202) 690-6415 (TDD). These are not toll-free numbers. This document will be made available in accessible formats upon request.

### SUPPLEMENTARY INFORMATION:

#### I. Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub. L. 88-164) was enacted to plan activities and construct facilities to provide services to persons with mental retardation. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91-517) which constituted the first Congressional effort to address the needs of a group of persons with

disabilities designated as developmental disabilities. The 1970 Amendments defined developmental disabilities to include individuals with mental retardation, cerebral palsy, epilepsy and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial disability. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; and authorized grants for constructing, administering and operating University Affiliated Facilities. The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following:

(1) The 1975 Amendments (Pub. L. 94-103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System and added a section on "Rights of the Developmentally Disabled;"

(2) The 1978 Amendments (Pub. L. 95-602) included a functional definition of developmental disabilities;

(3) The Developmental Disabilities Amendments of 1984 (Pub. L. 98-527) added a new emphasis regarding the purpose of the program, to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community; and

(4) The 1987 Amendments (Pub. L. 100-146) established an annual report to Congress on the Developmental Disabilities program. The Administration on Developmental Disabilities (ADD) compiles this report using information received from the State Planning Councils, the Protection and Advocacy Systems, the University Affiliated Programs and grantees of the Projects of National Significance. Also included in the 1987 Amendments was a special 1990 Report to Congress on the scope and effectiveness of services provided to persons with developmental disabilities by State agencies and an analysis of consumer satisfaction. The State Planning Councils prepared the State Reports to ADD and this information was used as a basis for the Report to Congress.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990, Pub. L. 101-496, (the Act), extended authorization of appropriations for programs under the

Act through Fiscal Year 1993 and made revisions that:

(1) Add to the purpose of the Act the commitment toward enabling all people with developmental disabilities, including those with severe disabilities, to achieve interdependence and inclusion into society;

(2) Strengthen the independence of State Protection and Advocacy systems;

(3) Establish core awards for University Affiliated Programs training projects; and

(4) Broaden the purpose of Projects of National Significance to include supportive living and quality of life opportunities.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, Pub. L. 103-230, (the Act), extends authorization of appropriations for programs under the Act through Fiscal Year 1996 and made revisions that:

(1) Include findings that emphasize respect for individual dignity, personal preferences, and cultural differences in the provision of services, supports and other assistance, and recognize that individuals with developmental disabilities and their families are the primary decision-makers regarding services, supports, and other assistance they receive;

(2) Ensure that racial and ethnic individuals from diverse backgrounds are fully included at all levels and in all activities authorized under this Act. This includes language regarding unserved and underserved populations and "culturally competent" services, supports and other assistance;

(3) Require State Developmental Disabilities Council activities to promote systemic change, capacity building and advocacy;

(4) Clarify the responsibilities of the State Developmental Disabilities Council and the Designated State Agency;

(5) Require the Protection and Advocacy System (P&A) to hire and maintain sufficient numbers and types of qualified staff to carry out the P&A's function;

(6) Protect the confidentiality of client records;

(7) Require development of new program standards for University Affiliated Programs; and

(8) Direct the Secretary to support grants to conduct an investigation on the expansion of part B programs (State Developmental Disabilities Councils) to individuals with severe disabilities other than developmental disabilities.

## II. Developmental Disabilities Program

### *A. Federal Assistance to State Developmental Disabilities Councils*

Formula grants are made to each State to support State Developmental Disabilities Councils. The responsibilities of the Councils are to promote, through systemic change, capacity building and advocacy activities; the development of a consumer and family-centered, comprehensive system; and, a coordinated array of services, supports and other assistance. These activities are designed to achieve independence, productivity, integration and inclusion into the community for individuals with developmental disabilities.

### *B. Protection and Advocacy of the Rights of Individuals With Developmental Disabilities*

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of individuals with developmental disabilities. This system must have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities who are receiving, or who are eligible to receive, treatment or habilitation services.

### *C. University Affiliated Programs*

Grants are made to universities, or to public or nonprofit entities associated with a college or university, to establish University Affiliated Programs (UAPs). Activities of University Affiliated Programs are to be conducted in a culturally competent manner and include: Interdisciplinary pre-service preparation of students and fellows; community service activities which include community training and technical assistance; and the dissemination of subsequent information and research findings.

### *D. Projects of National Significance*

This program provides funding through grants and contracts to public or nonprofit private entities for projects which support national initiatives. Such initiatives include the collection of necessary data; provision of technical assistance to State Developmental Disabilities Councils, protection and advocacy systems and university affiliated programs; and support to other nationally significant activities, such as employment and housing.

## III. Discussion of Proposed Regulations

Overall, the proposed regulations have been developed to establish new

requirements based on the changes made by two reauthorizations: (1) The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101-496) and (2) the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994 (Pub. L. 103-230).

Key proposed provisions are as follows:

A. Section 1386.20, Designated State Protection and Advocacy System, the current rule has been revised to address requirements concerning the redesignation of the Protection and Advocacy System (1990 Amendments);

B. Section 1386.21, Requirements of the Protection and Advocacy System, the regulations regarding confidentiality of client records has been revised pursuant to section 142(j) (1994 Amendments);

C. Section 1386.23, Periodic reports: Protection and Advocacy System, regulatory language is being proposed to address the statutory requirement for an annual statement of objectives and priorities and a statement of the rationale used to establish such objectives (1990 Amendments);

D. Section 1386.30, State plan requirements, the regulation regarding State Developmental Disabilities Council responsibilities has been revised to address new requirements regarding the development of the State plan and the hiring and supervision of staff (1994 Amendments);

E. The current regulatory language for part 1388 has been revised to include new program standards for University Affiliated Programs (UAPs) (1994 Amendments);

A section-by-section discussion of the changes we are proposing follows:

### **PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM**

In § 1385.1, General, the changes being proposed are to replace the reference to Basic State Grant with a reference to Federal Assistance to the State Developmental Disabilities Councils and to change the Protection and Advocacy System reference to "individuals" rather than "persons" with developmental disabilities.

In § 1385.3 Definitions, editorial changes are being proposed to incorporate the reference to the Administration for Children and Families rather than the Office of Human Development Services. This action is required because the Administration on Developmental Disabilities was made a part of the

Administration for Children and Families. A notice was published in the *Federal Register* on April 18, 1991 (See 56 FR 15885). We are also proposing to include a definition of "Protection and Advocacy System" to mean the organization or agency designated in a State to administer and operate a protection and advocacy program for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 103-230 (42 U.S.C. 6041, 6042); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act 1986 (PAIMI Act), as amended (42 U.S.C. 10801 et seq.); the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794e); and the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). Protection and Advocacy System also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy System may provide advocacy services under other Federally funded programs.

Section 1385.4 is amended to re-word "persons with developmental disabilities" to "individuals with developmental disabilities" in the title and paragraphs (a), (b), and (c). The statutory citation in paragraph's (b) and (c) have been updated to conform with the 1994 Amendments.

The regulations of § 1385.5 Recovery of Federal funds used for construction of facilities and § 1385.7 Waivers have been removed and those sections have been reserved. Such action has been done because section 105, Recovery, has been removed from the Act (1994 Amendments). As indicated in the Senate Report, number 103-120, pages 25 and 26, section 105, Recovery, has been deleted because the Committee understood that all facilities for which part B or part D funds had been used towards construction costs, have been completed for more than 20 years making this section no longer relevant.

We are proposing to revise § 1385.6 by using the term "individuals with disabilities" (1994 Amendments). This term is meant to be consistent with "handicapped person" as defined under 45 CFR 84.3(j). We are also proposing to include language which clarifies grantee responsibilities regarding affirmative action pursuant to section 109 of the Act (42 U.S.C. 6008) and to reference the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) with respect to

employment of individuals with disabilities.

In § 1385.8, Formula for determining allotments, editorial changes are being proposed, which includes the deletion of the concept of Basic State program which is no longer applicable under the Act. Paragraph (c) is being revised to update references (1994 amendments).

In § 1385.9 (a) and (b), Grants administration requirements, an editorial change is being proposed to update the term Special Project to Projects of National Significance (1987 Amendments). Paragraph (d) addresses the issue of the Department keeping information about individual clients confidential when making audits and examinations and taking excerpts and transcripts of records of grantees and subgrantees. This paragraph is being revised to include a reference to part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments for grants awarded to State Developmental Disabilities Councils, University Affiliated Programs and Projects of National Significance and to remove the reference to the Protection and Advocacy System. We are then proposing a new paragraph (e) to address the new requirement of section 142(j) and the language of Senate Report 120, 103rd Cong., 1st Sess., page 39 (1993). The Report indicated \* \* \* that for any audit, report or evaluation required under this Act, the Secretary shall not require the P&A system to "disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program." This requirement is consistent with the Rehabilitation Act Amendments of 1992 which contains similar language pertaining to the confidentiality of client records during Federal reviews of P&A systems. The Committee does not intend to limit the monitoring responsibilities of the Administration on Developmental Disabilities to assure that P&A systems are in compliance with the Act." In paragraph (e)(1) the regulation indicates that for any audit, report or evaluation required under the Act, the Secretary shall not require the Protection and Advocacy system to "disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program." In paragraph (e)(2) the proposed regulation indicates that if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving

its compliance. The System's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The eligible system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

ADD is particularly interested in receiving comments on the regulations being proposed in paragraph (e)(2).

#### **PART 1386—FORMULA GRANT PROGRAMS**

In part 1386, subpart A—Basic requirements, we are proposing in § 1386.1, General, that the reference to the Basic State grant program be deleted because there is no statutory basis for this language and the reference to the State Developmental Disabilities Councils be included in its place. We are proposing additional language in § 1386.2(b)(1), Obligation of funds, that would implement an expanded definition of obligation given in section 125(c) of the Act (42 U.S.C. 6025(c)), as amended (1994 Amendments), regarding State Interagency Agreements. We are proposing several technical changes to paragraphs (c)(1) and (2). In paragraph (1), we are proposing to replace the phrase Protection and Advocacy "office" to Protection and Advocacy "System" and reference "individuals" with developmental disabilities rather than "persons" with developmental disabilities. In paragraph (2), we are proposing to reword the phrase "developmentally disabled persons" to "individuals with developmental disabilities" (1994 Amendments); to replace the reference to Basic State Grants with the legislative language for Part B—Federal Assistance to State Developmental Disabilities Councils (1994 Amendments); and reword the last sentence for consistency with the regulatory language contained in § 1386.2(a) regarding the Federal fiscal year.

In part 1386, subpart B, the heading has been revised to read "State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities." This revision clarifies how this program is referenced. Accordingly, we are proposing editorial changes in the regulations to reflect this change.

We are proposing a new § 1386.19, Definitions, to include definitions for subpart B, § 1386.20 and § 1386.21. ADD is proposing a definition of "designating

official" to clarify who has the responsibility in the State to designate the Protection and Advocacy System under section 142 of the Act (§ 1386.20(a)). Addition of this definition will permit us to simplify the wording of several provisions relating to protection and advocacy agencies. We are then proposing the following definitions of terms used in the proposed regulations in § 1386.21(c)(1) and (3), (§ 142(a)(2)(B)) and (§ 142(a)(2)(I)): "full investigations" means the access to clients, public and private facilities and entities and their staff, and the records regarding the operation of the institution that is necessary for a reasonable person to make an informed decision about whether the alleged or suspected abuse is taking place or has taken place; "probable cause" means a reasonable ground for belief that an individual or group of individuals with developmental disabilities may now be subject to or have been subject to abuse or neglect; and "record of an individual with a developmental disability" includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

For reasons of consistency, we are proposing to revise the heading of § 1386.20 to read, Designated State Protection and Advocacy System rather than Designated State Protection and Advocacy Office.

We are proposing a change in § 1386.20(a) to include the proposed term "designating official" as defined in § 1386.19.

We also are proposing to revise § 1386.20(d) to address the procedure to be followed in order for a State to designate a new agency to administer and operate the Protection and Advocacy system pursuant to section 142(a)(4) of the Act, (42 U.S.C. 6042(a)(4)). State Protection and Advocacy agencies are responsible for administering and operating State advocacy systems. These systems must be independent of State public and private service systems, provide information and referral, and have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities and individuals with mental

illness. (See sections 102(2), 103 and 105 of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended (42 U.S.C. 10802(2), 10803 and 10805). "The term 'eligible system' means the system established in a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act." Therefore, the Protection and Advocacy System provides services to both individuals with developmental disabilities and to individuals with mental illness. The purpose of these proposed requirements is to ensure that a Protection and Advocacy System is only redesignated to a new agency for reasons which constitute good cause. The action giving rise to good cause should be of a substantial nature.

Redesignation for good cause may include, but is not limited to, eliminating longstanding or pervasive inefficiency. However, merely technical or minor shortcomings will not support such a finding. Further, in order to qualify as good cause, the allegation must be made in good faith, which means that it was not made for the purpose of frustrating the accomplishment of the goals of the Act. These regulations, the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e)), the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)), and any other Federal advocacy program that is administered by the State Protection and Advocacy System. The Administration on Developmental Disabilities encourages Governors and Protection and Advocacy agencies to consult with one another and seek resolution before involving the public. In § 1386.20(d)(1), we are proposing to provide current Protection and Advocacy agencies and the public a period of no less than 45 days concurrently to respond to notices given of the intention to redesignate the Protection and Advocacy agency. In developing the regulations we are proposing timeframes for notices which are considered timely and are similar to those used in other activities required by Federal regulations. We are also proposing to revise the requirements for contents of the public notice provided for in paragraph (d)(2) by requiring that it include the following new or revised requirements:

(1) The Federal requirements for the Protection and Advocacy System for individuals with developmental disabilities (section 142 of the Act); and,

where applicable, the requirements of the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended (42 U.S.C. 10805 and 10821); the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e)) and the Client Assistance Program (29 U.S.C. 732), of the Rehabilitation Act of 1973, as amended; the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended by Pub.L. 103-218 (Protection and Advocacy contracts and grants); or any other Federal advocacy program that is administered by the State Protection and Advocacy System;

(2) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(3) The name and address of the agency currently designated to administer and operate the Protection and Advocacy System; and an indication of whether the agency also operates other Federal advocacy programs;

(4) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(5) A clear and detailed explanation of the good cause for the proposed redesignation;

(6) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency to obtain a copy of its response to the notice initiating the redesignation. Copies shall be provided in accessible formats to individuals with disabilities upon request;

(7) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;

(8) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate; and

(9) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

We are proposing that the public notice must include information on the requirements for all other Federal Protection and Advocacy Programs which are currently administered by the P&A agency and are subject to redesignation as well as the Protection and Advocacy System for individuals with developmental disabilities. The

rationale for this requirement is that a redesignation of the Protection and Advocacy agency for individuals with developmental disabilities under section 142 of the Act also has an impact on other Federal Protection and Advocacy Programs. Federal legislation makes the State's designated Protection and Advocacy agency for individuals with developmental disabilities eligible to receive funding for operating the other Federal advocacy programs listed above. Redesignation of the Developmental Disabilities agency may result in the redesignation of the other programs. Therefore, the regulation seeks to insure that individuals with other disabilities, their families and representatives have an opportunity to make informed comments on the proposed redesignation. The other new requirements for the notice are being included so that members of the public can become fully informed about the reasons for and consequences of the redesignation.

In paragraph (d)(3) we are requiring that copies of the notice of proposed redesignation must be made generally available to individuals with developmental disabilities and individuals with mental illness who live in residential institutions through posting or some other means. The need for notice is to ensure that individuals who reside in institutional settings also are informed of the reasons for and the consequences of the proposed redesignation. The notice could be accomplished by mailing a copy of the original notice to such facilities and requesting that it be made available to residents through posting. This notice also could be sent to other advocacy groups for individuals with disabilities in the State. This new requirement is based on the intimate connection between the Protection and Advocacy program serving individuals with developmental disabilities and the Protection and Advocacy program serving individuals with mental illness. Also, we are proposing in paragraph (d)(3) that the public notice must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette (section 142(a)(4)(B) of the Act).

In paragraph (d)(4), we are proposing that after the expiration of the 45-day public comment period required by paragraph (d)(1), the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used

under paragraph (d)(3). If the notice to the currently designated agency states that the redesignation will take place, it must also inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

We are proposing new requirements in § 1386.20(e) to address the procedures by which a Protection and Advocacy agency which has been redesignated may appeal the designation to the Assistant Secretary. The Assistant Secretary will consult with administrators of Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal, including the Center for Mental Health Services, the Rehabilitation Services Administration, the National Institute on Disability and Research, and any other Federal agencies which administer advocacy programs that will be directly affected by the proposed redesignation.

The Administration on Developmental Disabilities is particularly interested in receiving comments on this area.

In § 1386.21(a) we are proposing to update the reference from the Basic Support Program to the State Developmental Disabilities Council. In paragraphs (b) (1) and (2) we are proposing to revise the regulations to incorporate the prohibition of compelled disclosure of information in client records pursuant to section 142(j) of the Act, as amended (1994 Amendments). This includes a reference to Federal law in the final sentence of paragraph (b)(1) that is consistent with the intent of the existing regulation, which is to allow parents or legal guardians access to a client's record except when such access is legally prohibited.

We are proposing regulations in a new paragraph (c)(1) to indicate that the Protection and Advocacy System must have access to records of an individual with a developmental disability as provided by section 142(a)(2)(i) of the Act and the authority necessary to conduct full investigations of abuse and neglect on the Protection and Advocacy System's determination of probable cause or if the incidents are reported to the System as provided by section 142(a)(2)(B).

Questions have arisen over whether P&As are required to have authority to obtain records of individuals who are no longer living. The required authority for

access to records of persons with developmental disabilities is described in section 142(a)(2)(I). This provision includes a requirement for authority to access records of persons who, by reason of mental or physical condition, are unable to authorize the System's access to such records, and are without a legal guardian or conservator, or for whom the legal representative is the State; and about whom the System has had a report of abuse or neglect or as the result of monitoring or other activities has probable cause to believe such individual has been subject to abuse or neglect. Section 142(f) defines "record" to include reports of deaths occurring in a facility prepared by an agency or staff person charged with investigating the event. Based on these provisions, ADD is proposing to reference, in paragraph (c)(1) the P&A's authority to access records of persons with developmental disabilities who are no longer living.

ADD understands that P&As undertake investigations of incidents of abuse and neglect based on media reports, general investigations, inspection reports or other credible information regarding abuse and neglect. P&As also may use information gained through telephone calls or informal complaints by residents, staff, relatives or friends. The proposed regulations are intended to confirm the authority of P&As to rely on such information as grounds for investigations of incidents of abuse and neglect either because they are reports of incidents, or because they constitute "probable cause." Some facilities have claimed that P&As must make individual-specific findings of probable cause before they may investigate. The definition of probable cause includes "the reported existence of conditions or problems that are usually associated with abuse and neglect."

In paragraph (c)(2) we are proposing Protection and Advocacy Systems must have trained staff to conduct full investigations of suspected instances of abuse and neglect or if the incidents are reported to the System. In paragraph (c)(3) we are proposing to require that Protection and Advocacy Systems have authority to have access at reasonable times and locations to residents of any private or public facility that is providing services, support, and other assistance to such residents. This requirement is based on section 142(a)(2)(H) of the statute. In addition, the proposed paragraph (c)(3) requires that Protection and Advocacy Systems have authority to access at reasonable times and locations staff of private or public facilities when investigating incidents of abuse and neglect. This

requirement is based upon section 142(a)(2)(B). ADD views the authority for access to staff of facilities as a necessary part of the authority to investigate incidents of abuse and neglect.

Also, the Administration on Developmental Disabilities wants to address the concerns raised by P&As that their authority continues to be challenged in the areas of access to records and determining probable cause tied to abuse and neglect cases. The statutory definition of "record," which appears at section 142(f) and is reiterated in the proposed § 1386.19, encompasses the records a facility would have on an individual with a developmental disability, and reports which were prepared by investigators in connection with incidents of abuse or neglect. We believe this definition must be interpreted liberally in order to ensure proper exercise of the authority to investigate incidents of abuse and neglect which P&As must have under section 142(a)(2)(B). ADD also believes that it is critical to this investigative function that Systems be given access to records promptly. Undue delay can prevent a System from intervening to prevent further abuse or neglect.

The Act and the proposed regulations refer to the authority of P&As to determine probable cause in connection with investigation of incidents of abuse and neglect. The Agency is concerned that in the exercise of their required authority under section 142(a)(2)(B) to investigate incidents based on probable cause that P&As not be unduly hampered. The Act does not require a judicial or other third party determination of whether probable cause exists. In the ordinary situation, a belief by P&A staff that an individual may be subject to or has been subject to abuse or neglect should be sufficient to establish probable cause. In order to clarify the meaning of probable cause, we have proposed a definition in § 1396.19.

In paragraph (c)(4), we are proposing that the Protection and Advocacy Systems must be authorized to keep confidential the names and identity of individuals who furnish information that forms the basis for a determination that probable cause exists. We believe that disclosure of this information would compromise the effectiveness and integrity of the investigation and could expose sources and already vulnerable clients to retaliation. Moreover, such disclosure would likely provide a disincentive to other potential informants to come forward in the future.



The Administration on Developmental Disabilities recognizes that the requirement in the proposed regulation for access to private institutions may be problematic, especially relating to existing State law and rights of access to records and privacy issues. Therefore, we are particularly interested in receiving comments on the possible impact of these provisions on Protection and Advocacy Systems, State Governments and private institutions.

A new paragraph (d) is being added which addresses the issue of a Protection and Advocacy System restricting the use of appropriate remedies on behalf of individuals with developmental disabilities through litigation or legal action pursuant to section 142(a)(2)(A)(i) and (h)(1) of the Act (1994 Amendments). We are adding a new paragraph (e) to address section 142(a)(2)(j) of the Act regarding hiring freezes, reductions in force, or prohibitions on staff travel. For paragraph (f) we are proposing that a Protection and Advocacy System may exercise their authority under State law where the authority exceeds the authority required by the Developmental Disabilities Act. However, the Protection and Advocacy System must have at least the authority required under the Act, and may have additional authority granted by the State.

Section 1386.22 is being added to establish a new section for the Protection and Advocacy Systems regarding Public Notice of Federal Onsite Review pursuant to section 142(k) of the 1994 Amendments. Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. As this activity is an ongoing administrative function, such notice will not be given through the Federal Register.

In § 1386.23, Periodic reports: Protection and Advocacy System, we are proposing to revise the title from "system" to "agency". Also, we are deleting the current language contained in paragraph (a) regarding assurances of compliance as such records are on file. Paragraph (a) now proposes regulations regarding the submission of the Protection and Advocacy annual report. We are proposing that the report submitted by the Protection and Advocacy agency be submitted by January 1 of each year in a format designated by the Secretary to ensure uniform reporting on the activities and accomplishments carried out under the system during the previous year for the Report to Congress. An Information

Collection Request for Reinstatement will be submitted to OMB. In § 1386.23(b) editorial changes are being proposed regarding the financial report to incorporate a reference to the Administration for Children and Families rather than the Office of Human Development Services. This Information Collection is an approved OMB document. We are proposing to include new requirements in paragraphs (c) and (d) to address the annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)) and section 107(b) of the Act (42 U.S.C. 6006(b)). ADD will be submitting an Information Collection Request to OMB. ADD is particularly interested in receiving comments on the public review and comment process for this report because we want to make sure that individuals with developmental disabilities and their families influence the development and are aware of the Protection and Advocacy priorities so they know what they can expect from the Protection and Advocacy System.

In § 1386.24 Non-allowable costs for the Protection and Advocacy System, we are revising paragraph (a) to replace "persons" with developmental disabilities to "individuals" with developmental disabilities in (a)(1) and renumbering current paragraph (b) as (a)(2). We are proposing a new paragraph (b) on attorneys fees being considered as program income and as such, must be used to further the objectives of the program pursuant to section 142(h)(2) of the Act (1990 and 1994 Amendments).

The Administration on Developmental Disabilities encourages a Protection and Advocacy System to use program standards for self-evaluations and peer consultations to identify the need for technical assistance or other quality enhancement intervention. Performance standards include all applicable statutory and regulatory requirements as well as standards of quality developed in collaboration with a committee of representatives of State Protection and Advocacy Systems.

In part 1386, subpart C will read—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals with Developmental Disabilities. We are proposing to revise the title to more accurately reflect how the provision of service related activities and supports are tied to the State Plan (1994 Amendments).

In § 1386.30, State plan requirements, we are proposing to revise and include new regulatory language to clarify the

respective roles and responsibilities of the State Developmental Disabilities Council and the Designated State Agency. Pursuant to section 124(c)(3) of the Act (42 U.S.C. 6024(c)(3)), we are proposing language in § 1386.30(a) to require that the development and submission of the State plan is the responsibility of the State Developmental Disabilities Council and that the State Developmental Disabilities Council will consult with the Designated State Agency before submitting the State plan to ensure that the State plan is not in conflict with applicable State laws. Paragraph (a) also indicates that the designated State agency shall provide assurances and support services to the Council pursuant to section 124(d)(3)(A) (42 U.S.C. 6024(c)(3)) of the Act.

We are proposing to revise paragraph (c)(1) to delete the language "administration of the plan" and indicate that the State plan must identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services. We are then proposing in paragraph (c)(3) to include language that the State Plan must address how the Developmental Disabilities network in the State (i.e., Developmental Disabilities Councils; Protection and Advocacy System and University Affiliated Program(s)) is working with the disabilities community to bring about broad systems change to benefit individuals with developmental disabilities, and, where applicable, the ways in which individuals with other disabilities may benefit as well. The current State Plan guideline has OMB approval. ADD will prepare an Information Collection Request to OMB based on the new requirements of the 1994 Amendments. We are proposing to include new regulatory language in § 1386.30(e) to address section 124(c)(4)(A)—Demonstration of New Approaches (1994 Amendments). The State Plan may provide for funding of projects to demonstrate new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Such projects are not to exceed three years in duration and may include assistance in developing strategies for securing funds for continuation of the project from sources other than funds received under the Act. This requirement is based on our experience in administering the Developmental Disabilities Program. We are then proposing to rename current paragraphs (e) to (f) in § 1386.30. We are

removing the regulation on individual habilitation plan pursuant to the 1994 Amendments and moving human rights (current (e)(3) to the new (f)(2)). We are proposing a new paragraph (3) to address the accessibility of buildings used in connection with activities assisted under the Plan to ensure that individuals with disabilities are able to participate in the work of the Council. In § 1386.30(f)(4) we are proposing new language to address the responsibility of the State Developmental Disabilities Council regarding budgeting, staff hiring and supervision and staff assignment pursuant to section 124(c) (8), (9), and (10) of the Act (42 U.S.C. 6024(c) (8), (9), and (10)). Of particular note, we are clarifying that the intended meaning of the phrase in the statute, "consistent with state law" means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures, except that a State shall not apply hiring freezes, reduction in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

In § 1386.31, Plan submittal and approval, we are proposing to add a new paragraph (a) in response to section 122(d)(1) of the Act (1994 Amendments) on a public review and comment process on the State Plan. We subsequently renumbered the current paragraphs and revised paragraph (b) to reference a "final State Plan" or "amendment(s)" to incorporate the public comment process.

In § 1386.32, Periodic Reports: Basic State grants, we are proposing to revise the title to read § 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils (1994 Amendments). In § 1386.32(a) an editorial change is being made to reference the Administration for Children and Families. ADD will submit an Information Collection Reinstatement Request to OMB for this requirement. In § 1386.32(b) we are proposing to revise the regulatory language to reference the Annual Program Performance Report (annual report requirements pursuant to section 107(a) of the Act (42 U.S.C. 6006(a)), thus requiring a format designated by the Secretary. Use of a uniform format will facilitate Council reporting, ADD data collection and analysis, and preparation of the Secretary's Annual Report to Congress. ADD will prepare an Information Collection Reinstatement Request to OMB for this requirement.

In § 1386.33, Protection of employee's interests, we are revising paragraph (a) to update the statutory references to section 122(c)(5)(K) of the Act (1994 Amendments) and to replace the phrase "alternative community living arrangements" to "community living activities." In a new § 1386.34, entitled "Designated State Agency", we propose regulations in response to section 124(d)(2)(D) of the Act (1994 Amendments) on the redesignation of the Designated State Agency and the right to appeal by non-State agency members of the State Developmental Disabilities Council to the Assistant Secretary. (The Secretary has delegated the authority to hear such appeals to the Assistant Secretary for Children and Families.) We are proposing an editorial change to the heading of § 1386.35 to read, "Allowable and non-allowable costs for Federal assistance to State Developmental Disabilities Councils" and an editorial change to paragraph (b)(1) to change the word "persons" to "individuals". We are then proposing to add a new paragraph (d) to clarify implementation of the non-Federal share requirements. We are also proposing an editorial change to the heading of § 1386.36 to read, "Final disapproval of the State plan or plan amendments" and in paragraph (e) an editorial change is being proposed to incorporate the reference to the Assistant Secretary for Children and Families rather than the Assistant Secretary for Human Development Services. Finally, we are proposing a new § 1386.37, Public Notice of Federal Onsite Review for the State Developmental Disabilities Councils. This requirement complements § 1386.22, Public Notice of Federal Onsite Review for the Protection and Advocacy Systems. ADD wants to ensure that individuals with developmental disabilities are aware and have an opportunity to comment on the actions of the Council. Prior to a Federal review of the State program a 30 day notice and an opportunity for public comment must be provided. As this activity is an on-going administrative function, the notice is not being given through the Federal Register.

The Administration on Developmental Disabilities encourages State Developmental Disabilities Councils to use program standards in self-evaluations and peer consultations to identify the need for technical assistance or other quality enhancement intervention. Performance standards include all applicable statutory and regulatory requirements as well as

standards of quality developed in collaboration with a committee of representatives of State Developmental Disabilities Councils.

In part 1386, subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance with Developmental Disabilities State Plans, Reports and Federal Requirements, we are proposing an editorial change in § 1386.80 Definitions, to incorporate the reference to the Administration for Children and Families rather than the Office of Human Development Services; clarify that the term "Presiding officer" means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart; and include a definition of the term "payment or allotment" for subpart D. The term "payment or allotment" is being introduced into the regulations in order to ensure uniformity in the terminology used in subpart D to refer to assistance provided to States under Part B or C of the Act. In § 1386.85, Filing and service of papers, in paragraph (a) the phrase "HDS Hearing Clerk" is being replaced with "designated individual" to incorporate Administration for Children and Families procedures. As part of the notice of hearing, the Assistant Secretary will designate an individual to receive all papers filed in connection with a proceeding under subpart D.

In § 1386.90, Notice of hearing or opportunity for hearing, we are making editorial changes which include: the full reference to the State Developmental Disabilities Council; changing the Protection and Advocacy Office to the Protection and Advocacy System; and reference the designated official rather than official for the Protection and Advocacy System. In § 1386.92, Place, we are including language on accessibility regarding the place of the hearing. In § 1386.93, Issues at hearing, we are making an editorial change to paragraph (c)(2)(i) by deleting the (i). Also, the reference to "the report of the description of the State protection and advocacy system" in paragraphs (c)(2) and (d) are being deleted because the Act no longer requires such a report. In paragraph (c)(2), we are substituting references to "the activities of the State's protection and advocacy system" and providing that a "document explaining changes in the activities of the State's Protection and Advocacy System on which the State and the Assistant Secretary have settled must be sent to the parties." In paragraph (d), we are clarifying the reference to the State plan under part B of the Act and adding a reference to the activities of the State's Protection and Advocacy System.

In § 1386.94, Request to participate in hearing, the following changes are being proposed in paragraphs (a), (b)(2) and (c)(1). The full reference of the State Developmental Disabilities Council is being included along with updating the language to reference the Protection and Advocacy program as a "System" rather than an "Office." The wording "HDS Hearing Clerk" is being replaced with "designated individual." We are proposing editorial changes in § 1386.101, Authority of presiding officer, in paragraphs (a)(11) and (c). Also, we are updating the references in § 1386.111 Decisions following hearing, paragraphs (c) and (d) and § 1386.112 Effective date of decision by the Assistant Secretary, paragraphs (a) and (b) to reflect amendments to the Act and to make other editorial changes. The references to "report for the State Protection and Advocacy system" are being deleted because the Act no longer requires such a report. In its place we are substituting references to "the activities of the State's Protection and Advocacy System" in §§ 1386.111(c)(1) and 1386.112(b). The terms "Federal financial participation," "the State's total allotment," "further payments," "payments," "allotment" and "Federal funds" in § 1386.111(c) and § 1386.112 (a) and (b) are being replaced by the term "payment or allotment" which will be defined in the proposed revision of § 1386.80. In § 1386.111(c)(1), we are changing the reference to "sections 122, 127 and 142" to "sections 122, 127 or 142." This change is necessary because the provision applies to hearings held under any of the three provisions and not only to hearings held under all three provisions. In § 1386.111(c)(2), we are substituting a reference to section 127 for the current reference to section 135, which has been removed from the Act. We are also substituting a reference to section 129 for the current reference in § 1386.111(d) to section 138.

In § 1386.112(a), we are substituting a reference to section 122 for the reference to section 135, which has been removed from the Act. Section 122 is the correct reference because the provision covers hearings relating to the conformity of State plans with Federal requirements. In § 1386.112(b), we are substituting references to sections 127 and 142 for the current references to sections 113 and 133, which have been removed from the Act. Section 127 is the correct reference because the provision covers hearings relating to the State's compliance with the requirements of the State plan.

## **PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE**

We are proposing to revise regulatory language in Part 1387—Projects of National Significance, § 1387.1, General requirements. In paragraph (a), we propose to change the phrase "the developmentally disabled," to "individuals with developmental disabilities" as indicated in the 1994 Amendments. Regarding the announcement on proposed priorities, paragraph (b) requires a statutory update (1994 Amendments). In paragraph (d), we are proposing language to more clearly define the type of project ADD would consider for funding with this limited amount of discretionary money. We are proposing that Projects of National Significance, other than technical assistance and data collection, must be exemplary and innovative models and have potential for replication at the local level as well as nationally, or otherwise meet the goals of Part E of the Act.

## **PART 1388—UNIVERSITY AFFILIATED PROGRAMS**

We are proposing to revise regulatory language in Part 1388—The University Affiliated Programs by updating the standards (section 153(b) of the Act—1994 Amendments). The current standards for UAPs were published in the Federal Register on November 20, 1987. As stated in the Conference Report on S. 1284, the description of the purpose and scope of UAPs has been revised to incorporate updated concepts about these university-based programs. "The description of UAPs recognizes the fact that UAPs are located in, or affiliated with universities, and, as such, provide an important foundation for higher education's response to the needs of individuals with developmental disabilities and their families. UAPs contribute to and reflect the overall mission of their host universities, and seek to ensure that the activities, resources, and expertise of the university are responsive to individuals with developmental disabilities and their families, advocacy organizations, and service systems and providers." Therefore, ADD is proposing to revise the standards to reflect this new description of UAPs (section 151 of the Act—Purpose and Scope of Activities, 1994 Amendments). The standards will continue to "reflect the special needs of all individuals with developmental disabilities who are of various ages" as required in section 153(b).

The proposed program criteria are the basic requirements that a UAP must

meet if it is to receive a grant under this program. They relate to: (1) The mission of the UAP; (2) the governance and administration of the program; (3) preparation of personnel; (4) services and supports regarding community training and technical assistance (direct services-optional); and (5) dissemination of information and research findings. For each area, there is an introductory statement found at paragraph (a) and the program criteria begin with paragraph (b). Compliance with the program criteria is a prerequisite for the minimum funding level of a university affiliated program. However, compliance with the program criteria does not, by itself, constitute an assurance of funding. The Administration on Developmental Disabilities is particularly interested in receiving comments on the proposed program criteria.

Also, the Administration on Developmental Disabilities will be issuing draft Guidelines, at a later date, to provide examples of Indicators of Conformance with the Program Criteria. These indicators would illustrate the types of measures which could be used to demonstrate that the program criteria have been achieved. The Administration on Developmental Disabilities plans to use the indicators of conformance as a technical assistance/partnership model with University Affiliated Programs to further program outcomes.

We are proposing to revise § 1388.1 Definitions, to indicate what is now meant by "program criteria" and are deleting the definitions for "qualitative criteria" and "measurements of program outcome". In addition, we are defining other terms as used in part 1388. For example, "accessible", "capacity building" and "collaboration". Section 1388.2 Program criteria—purpose remains unchanged. We are deleting all the current regulatory language of § 1388.3 Program criteria—administration, § 1388.5 Program criteria—training, § 1388.6 Program criteria—technical assistance, and § 1388.7 Program criteria—information dissemination. Of particular note, regarding the dissemination of information, we are proposing that materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, e.g., audiotape and computer disk. We are proposing changes to the current regulations found in § 1388.4 Program criteria—services. Section 1388.6 Program criteria—services and supports, paragraph (c), will now cover Direct Services. These regulations are optional because the requirement that UAPs provide direct

services is now optional pursuant to section 151 of the Act (1994 Amendments). As the 1994 Amendments deleted the authority for Satellite Centers, § 1388.8 Use of program criteria for Satellite Centers is being deleted and reserved. Finally, we are revising the current regulations, § 1388.9 Peer Review to incorporate changes from the 1994 Amendments (section 153(f)(2)). Paragraph (a) describes the purpose of the peer review. The reference to Satellite Centers has been deleted and the provision of including on-site visits or inspection as necessary has been included. Paragraph (b) has been revised to simply state that applications for funding opportunities under part D, Section 152 of the Act, must be evaluated through the peer review process. In paragraph (c), language is being revised regarding the composition of the panel which is to be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

#### Impact Analysis

##### Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least

burdensome while still achieving the regulatory objectives.

The NPRM proposes to amend current regulation to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101-496 and by the 1994 Amendments (Pub. L. 103-230). The regulations propose to provide guidance on redesignation of the Protection and Advocacy System and the appeal process; include regulations on the Protection and Advocacy annual statement of objectives; address State Developmental Disabilities Council responsibilities and those of the Designated State Agency; set new program standards for the University Affiliated Program; and make other clarifying, technical, and conforming changes.

We estimate that these regulations will not result in additional costs to the Federal government, the States, universities and any other organizations to which they may apply.

##### Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch.6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. However, they will affect small private institutions providing services to individuals with developmental disabilities. This impact will be

minimal in that the institutions will simply be subject to review at no cost when a complaint is made against them. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

##### Paperwork Reduction Act

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

This proposed rule contains a new information collection requirement at § 1386.23(c), an annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)). As required, ADD will submit this new information collection requirement to OMB for review. The other sections (listed below) which are being amended in this proposed rule contain information collection requirements, some are already approved by OMB, while others will require reinstatement to OMB due to requirements from the 1994 Amendments. Organizations and individuals desiring to submit comments on the new information collection requirement should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3002), Washington, DC 20503. ATTN: Desk Officer for HHS/ACF.

#### REPORTING AND RECORDKEEPING REQUIREMENTS IN PART 1386 OF THE NPRM

Sec. No.	Impact	OMB No.	Annual number of respondents	Annual burden hours
1386.23(a) ..	Existing (OMB approval expired, re-approval to be requested) .....	0980-0160	56	2,240
1386.23(b) ..	Existing .....	0348-0039	56	112
1386.23(c) ..	New .....	N/A	56	2,800
1386.30(c) ..	Existing .....	0980-0162	56	5,600
1386.32(a) ..	Existing (OMB approval expired, re-approval to be requested) .....	0980-0212	672	2,912
1386.32(b) ..	Existing (OMB approval expired, re-approval to be requested) .....	0980-0172	55	4,400

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

Recordkeeping and Reporting requirements for Part 1387 and part 1388 will be satisfied with the submission of an acceptable grant application. The discretionary

programs, Projects of National Significance (part 1387) and University Affiliated Programs (part 1388) use the OMB approved Standard Form 424 series, Application for Federal Assistance and Budget Information.

#### List of Subjects

##### 45 CFR Part 1385

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

##### 45 CFR Part 1386

Disabled, Administrative practice and procedure, Grant programs/education.

Grant programs/social programs, Reporting and recordkeeping requirements.

**45 CFR Part 1387**

Disabled, Grant programs/education, Grant programs/social programs.

**45 CFR Part 1388**

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

(Catalog of Federal Domestic Assistance Program, Nos. 93.630 Developmental Disabilities Basic Support and 93.631 Developmental Disabilities—Projects of National Significance, and 93.632 Developmental Disabilities—University Affiliated Program)

Approved: April 25, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, subchapter I, chapter XIII, of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

**SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM**

**PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM**

1. The authority citation for part 1385 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

2. Section 1385.1 is amended by revising paragraphs (a) and (b) and republishing the introductory text to read as follows:

**§ 1385.1 General.**

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

- (a) Federal Assistance to State Developmental Disabilities Councils;
- (b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;

3. Section 1385.3 is amended by revising the definitions of ADD and Commissioner and adding alphabetically a definition for ACF, and Protection and Advocacy System, to read as follows:

**§ 1385.3 Definitions.**

ACF means the Administration for Children and Families within the

Department of Health and Human Services.

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

Protection and Advocacy System means the organization or agency designated in a State to administer and operate a protection and advocacy program for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 103-230 (42 U.S.C. 6041, 6042); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 et seq.) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). Protection and Advocacy System also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy System may provide advocacy services under other Federal programs.

4. Section 1385.4 is revised to read as follows:

**§ 1385.4 Rights of individuals with developmental disabilities.**

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(e)(3).

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

**§ 1385.5 [Removed and reserved]**

5. Section 1385.5, *Recovery of Federal funds used for construction of facilities* is removed and reserved.

6. Section 1385.6 is revised to read as follows:

**§ 1385.6 Employment of individuals with disabilities.**

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101-336, 42 U.S.C. 12101 et seq.) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in subpart D of 45 CFR part 1386.

**§ 1385.7 [Removed and reserved]**

7. Section 1385.7 *Waivers*, is removed and reserved.

8. Section 1385.8 is amended by revising the introductory text to read as follows:

**§ 1385.8 Formula for determining allotments.**

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

9. Section 1385.9 is amended by revising the first sentence of paragraph (a); revising paragraphs (b), (c), and (d) and adding a new paragraph (e) to read as follows:

**§ 1385.9 Grants administration requirements.**

(a) The following parts of title 45 CFR apply to grants funded under parts 1386

and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

\* \* \* \* \*

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—part B of the Act—Federal Assistance to State Developmental Disabilities Councils and part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits, examinations, excerpts and transcripts of records for the State Developmental Disabilities Councils, the University Affiliated programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

(e) (1) In making any periodic audit, report, or evaluation of the performance of the Protection and Advocacy System, the Secretary does not require the Protection and Advocacy System to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the program.

(2) However, notwithstanding paragraph (e)(1) of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the System has violated the Act or the regulations, the System will bear the burden of proving its compliance. The System's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The eligible system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

## PART 1386—FORMULA GRANT PROGRAMS

10. The authority citation for part 1386 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

### Subpart A—Basic Requirements

11. Section 1386.1 is revised to read as follows:

#### § 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy System.

12. Section 1386.2 is amended by revising paragraphs (b)(1) and (c) to read as follows:

#### § 1386.2 Obligation of funds.

\* \* \* \* \*

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

\* \* \* \* \*

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs means expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy System. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

#### § 1386.4 [Removed and reserved]

13. Section 1386.4, *Eligibility for services* is removed and reserved.

14. The heading of subpart B is revised to read as follows:

### Subpart B—State System for Protection and Advocacy of the Rights of Individuals With Developmental Disabilities

15. A new § 1386.19 is added to include definitions as follows:

#### § 1386.19 Definitions.

As used in §§ 1386.20 and 1386.21 of this part the following definitions apply:

*Designating official* means the Governor, or other State official, who is empowered by the Governor or State legislature to designate the State official or public or private agency to be accountable for the proper use of funds by the State Protection and Advocacy System.

*Full investigations* means the access to clients, public and private facilities and entities and their staff, and the records regarding the operation of the institution that is necessary for a reasonable person to make an informed decision about whether the alleged or suspected abuse is taking place or has taken place.

*Probable cause* means a reasonable ground for belief that an individual or group of individuals with developmental disabilities may now be subject to or have been subject to abuse or neglect. The reported existence of conditions or problems that are usually associated with abuse and neglect will be Probable Cause.

*Record of an individual with a developmental disability* includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

16. Section 1386.20 is amended by revising the heading; revising paragraphs (a), (d), and (e); and adding a new paragraph (f) to read as follows:

#### § 1386.20 Designated State Protection and Advocacy System.

(a) The designating official must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy System.

\* \* \* \* \*



(d)(1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy System, the designating official must give notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended, (42 U.S.C. 10805 and 10821); the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e) and the Client Assistance Program (29 U.S.C. 732), of the Rehabilitation Act of 1973, as amended; the Technology-Related Assistance for Individuals Act of 1988, as amended by Pub.L. 103-218 (Protection and Advocacy contracts and grants); or any other Federal advocacy program that is administered by the State Protection and Advocacy System.

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy System; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1) of this section. Copies shall be provided in accessible formats to individuals with disabilities upon request.

(vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program.

This agency will be eligible to administer other Federal advocacy programs.

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate; and

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

(3) The public notice, as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official or entity must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means:

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official or entity must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e)(1) Following notification pursuant to paragraph (d)(4) of this section, the Protection and Advocacy agency which is the subject of such action may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 10 working days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official or entity which made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official or entity must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this section.

(3) The designating official or entity within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in response to the public notice concerning the proposed redesignation under paragraph (d)(2) of this section, the results of the hearing provided for under paragraph (d)(4) of this section, and may provide any additional relevant information.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (e)(3) of this section, either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official or entity under paragraph (e)(2) of this section. The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Assistant Secretary will issue to the parties a final written decision on whether the redesignation was for good cause. Redesignation for good cause may include, but is not limited to, eliminating longstanding or pervasive inefficiency and correcting unacceptable performance. The Assistant Secretary will consult with

Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f)(1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 142 of the Act, these regulations or any other Federal advocacy program's legislation or regulations.

17. Section 1386.21 is revised to read as follows:

**§ 1386.21 Requirements of the Protection and Advocacy System.**

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

(b) The client's record is the property of the Protection and Advocacy agency which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy agency must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. For purposes of any periodic audit, report, or evaluation required under the Act, the Secretary shall not require a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and

release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

(c) (1) A Protection and Advocacy System must have access to records of an individual with a developmental disability, including a person who is no longer living, as provided by section 142(a)(2)(I) of the Act and the authority necessary to conduct full investigations of abuse and neglect on the Protection and Advocacy System's determination of probable cause or if the incidents are reported to the System.

(2) A Protection and Advocacy System must have trained staff to conduct full investigations of abuse and neglect upon the System's determination of probable cause or if the incidents are reported to the System.

(3) Protection and Advocacy Systems must have authority to have access at reasonable times and locations to residents of any private or public facility that is providing services, supports, and other assistance to such residents as provided in section 142(a)(2)(H) of the Act. Systems must also have authority to have access at reasonable times and locations to staff of private or public facilities when investigating incidents of abuse and neglect under the authority required in section 142(a)(2)(B).

(4) Protection and Advocacy systems must be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuals who furnish information that forms the basis for a determination that probable cause exists.

(d) A Protection and Advocacy System shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the Protection and Advocacy System to pursue such remedies through litigation, legal action or other forms of advocacy.

(e) A State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act.

(f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance

and Bill of Rights Act, as amended. However, State law must not diminish the required authority of the Protection and Advocacy System.

18. Section 1386.22 is added to read as follows:

**§ 1386.22 Public notice of Federal onsite review.**

Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. Reasonable effort shall be made by the appropriate Regional Office to seek comments through notification to major disability advocacy groups, the State Bar, other disability law resources, the State Developmental Disabilities Council and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

19. Section 1386.23 is revised to read as follows:

**§ 1386.23 Periodic reports: Protection and Advocacy System.**

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By August 15 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities for the coming fiscal year as required under section 142(a)(2)(C) of the Act. It shall include:

(1) The rationale for the Statement;

(2) A budget for the System's operations for the next fiscal year;

(3) Documentation of the process and outcome of soliciting public input as described in paragraph (d) of this section;

(4) An explanation of how public comments were reflected either in the Statement of Objectives and Priorities or were not reflected, and if not, why;

(5) A description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with the following Federal Advocacy programs: Protection and Advocacy of Individual Rights program



(PAIR) and Client Assistance Program, (CAP), (Rehabilitation Act), the Long Term Care Ombudsman program (Older Americans Act), the Protection and Advocacy System for Mentally Ill Individuals program (PAIMI), (Protection and Advocacy for the Mentally Ill Act), Assistive Technology Protection and Advocacy Projects (Technology-Related Assistance for Individuals with Disabilities Technical Assistance Act) and State Developmental Disabilities Council and UAP advocacy activities. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs; and

(6) A description of the procedures used for informing individuals with developmental disabilities, their families, disability organizations, the State Bar Association, other disability law resources and the public of the Protection and Advocacy's priorities and services including use of referrals to other sources of legal advocacy.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

- (1) Obtain formal public input on its Statement of Objectives and Priorities;
- (2) At a minimum, publish a proposed Statement of Objectives and Priorities for the next fiscal year in a publication of general distribution and make it accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of publication for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the State developmental disabilities network (the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program) will collaborate with each other and with public and private entities outside the developmental disabilities network.

(Information collection requirements regarding the report referenced in paragraph

(a) will require an Information Collection Re-approval Request to be prepared by ADD. Previous Office of Management and Budget control number was 0980-0160. The requirements under paragraph (b) are approved under control number 0348-0039 by the Office of Management and Budget. Information collection requirements contained in paragraph (c) are new requirements pursuant to section 142(a)(2)(C) and section 107(b) of the Act. This information will require Office of Management and Budget approval).

20. Section 1386.24 is amended by revising paragraph (a), redesignating paragraph (b) as (a)(2); and adding a new paragraph (b) to read as follows:

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

(a) Federal financial participation is not allowable for:

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

(2) \* \* \*

(b) Attorneys fees are considered program income pursuant to Part 74—Administration of Grants and Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those received after the project period in which they were earned.

21. The heading of subpart C is revised to read as follows:

**Subpart C—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals With Developmental Disabilities**

22. Section 1386.30 is amended by revising paragraphs (a) and (c)(1); redesignating paragraph (e) as (f); revising newly redesignated paragraphs (f) (2), (3), and (4); and adding new paragraphs (c)(3) and (e) to read as follows:

**§ 1386.30 State Plan requirements.**

(a) In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and must submit to the Secretary and have in effect a State Plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations. The development of the State Plan and applicable annual amendments, is the responsibility of the

State Developmental Disabilities Council. The State Developmental Disabilities Council will provide opportunities for public input during planning and development of the State Plan. In addition, the State Developmental Disabilities Council will consult with the Designated State Agency before the State Plan is submitted to the Secretary to ensure that the State Plan is not in conflict with applicable State laws. The Designated State Agency shall provide support services as requested by and negotiated with the Council.

\* \* \* \* \*

(c) \* \* \*

(1) Identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services.

\* \* \* \* \*

(3) Describe how the Developmental Disabilities network in the State (i.e., Developmental Disabilities Council, Protection and Advocacy System, and University Affiliated programs(s)) is working with the disabilities community to bring about broad systems change to benefit individuals with developmental disabilities, and, where applicable, the ways in which individuals with other disabilities may benefit as well.

\* \* \* \* \*

(e) The State Plan may provide for funding of projects to demonstrate new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Such projects are not to exceed three years in duration and may include assistance in developing strategies for securing funds for continuation of the project from sources other than funds received under the Act.

(f) The State Plan must contain assurances that:

\* \* \* \* \*

(2) The human rights of individuals with developmental disabilities will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(3) Buildings used in connection with activities assisted under the Plan must meet all applicable provisions of Federal and State laws pertaining to accessibility, fire, health and safety standards.

(4) The State Developmental Disabilities Council shall follow the requirements of section 124(c)(8), (9) and (10) regarding budgeting, staff hiring and supervision and staff assignment. Budget expenditures must be consistent with applicable State laws

and policies regarding grants and contracts and proper accounting and bookkeeping practices and procedures. In relation to staff hiring, the clause "consistent with State law" means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures, except that a State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

(Information collection requirements contained in paragraph (a) are approved by the Office of Management and Budget under control number 0980-0162. ADD will prepare an Information Collection Request to OMB based on the new requirements of the 1994 Amendments.)

23. Section 1386.31 is amended by redesignating the current paragraphs (a), (b), (c), and (d) as (b), (c), (d) and (e); adding a new paragraph (a); and revising the newly redesignated paragraph (b) as follows:

**§ 1386.31 State Plan submittal and approval.**

(a) The public review process for the State Plan required by Section 122(d)(1) of the Act shall include at least:

(1) Issuance of a public notice, announcing from the Governor or the Governor's designee, the availability of the proposed State Plan or State Plan amendment. The notice shall be published in formats accessible to individuals with disabilities (e.g., tape, diskette) and the general public, and shall provide a 45 day period for public review and comment.

(2) Provisions for addressing and incorporating significant comments or suggestions about the proposed State Plan. Councils will consider and respond to suggestions which call for elimination, substitution, or addition of a Plan goal or objective. Councils will also respond to questions or comments about the use of Federal funds or other resources.

(3) Upon completion of the tasks required by paragraphs (a) (1) and (2) of this section and submission of a State Plan to the Regional Office, issuance of a second public notice, also in formats accessible to individuals with disabilities (e.g., tape, diskette) and the general public, on the availability of the State Plan or Plan amendments. Councils may use the second public notice as the vehicle for responding to questions or comments referred to in paragraph (a)(2) of this section.

(b) The final State Plan and, where applicable, State Plan amendments, must be submitted to the appropriate Regional office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State Plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuance.

24. Section 1386.32 is revised to read as follows:

**§ 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.**

(a) The Governor or the appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(b) By January 1 of each year an Annual Program Performance Report must be submitted, as required in section 107(a) of the Act (42 U.S.C. 6006a), in a format designated by the Secretary.

(Information collection requirements contained in paragraphs (a) and (b) have expired and will require an Information Collection Re-approval Request to be prepared by ADD. Previous Office of Management and Budget control number for paragraph (a) was 0980-0212 and for paragraph (b) was 0980-0172. The Information Collection Request for Re-approval concerning the reports will be modified pursuant to the 1994 Amendments).

25. Section 1386.33 is amended by revising paragraph (a) as follows:

**§ 1386.33 Protection of employee's interests.**

(a) Based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022(c)(5)(K)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the

State's decision to provide for community living activities.

26. Section 1386.34 is added to read as follows:

**§ 1386.34 Designated State Agency.**

(a) If the State Developmental Disabilities Council requests a review by the Governor (or legislature) of the Designated State Agency, the Council must provide documentation of the reason for change and recommend a preferred Designated State Agency.

(b) After the review is completed, a majority of the non-State agency members of the Council may appeal to the Assistant Secretary for a review of the designation of the designated State agency if the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(c) The following steps apply to the appeal of the Governor's (or legislature's) determination of the Designated State Agency.

(1) Prior to an appeal to the Assistant Secretary, Administration for Children and Families, the State Developmental Disabilities Council, at the request of the non-State Agency members, must give a 30 day written notice, by certified mail, to the Governor (or legislature) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) Upon receipt of the appeal from the State Developmental Disabilities Council, the Assistant Secretary will notify the State Developmental Disabilities Council and the Governor (or legislature), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or legislature) shall within 10 working days from the receipt of the Assistant Secretary's notification provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or legislature). The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(4) The Assistant Secretary will review the issue(s) and provide a final written decision within 60 days following receipt of the State Developmental Disabilities Council's appeal. If the determination is made that the Designated State Agency should be redesignated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

27. Section 1386.35 is amended by revising the heading and paragraph (b)(1) and adding new paragraphs (d), (e), and (f) to read as follows:

**§ 1386.35 Allowable and non-allowable costs for Federal assistance to State Developmental Disabilities Councils.**

\* \* \*

(b) \* \* \*

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

\* \* \*

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for priority area projects carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, requiring no non-Federal aggregate participation;

(2) Expenditures for priority area projects in poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(1) of the Act, requiring a minimum of 10 percent non-Federal aggregate participation; and

(3) All other expenditures, requiring a minimum of 25 percent non-Federal aggregate participation.

(e) As a consequence of paragraph (d) of this section, the minimum aggregate non-Federal expenditure required under the Act is calculated as the sum of:

(1) One-ninth of Federal expenditures for projects in poverty areas, such projects not being directly carried out by the Council and Council staff; and

(2) Plus one-third of all other Federal expenditures except those supporting

priority area activities directly carried out by the Council and Council staff.

(f) The non-Federal expenditures must support activities authorized by the Act and approved by the Council, but may include non-Federal support for implementation activities pursuant to section 125A(a)(2) of the Act, as well as functions of the designated State agency.

28. Section 1386.36 is amended by revising the section heading and paragraph (e) to read as follows:

**§ 1386.36 Final disapproval of the State plan or plan amendments.**

\* \* \*

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

29. Section 1386.37 is added to read as follows:

**§ 1387.37 Public notice of Federal onsite review.**

Prior to any Federal review of the State Developmental Disabilities Council, a 30 day notice and an opportunity for comment will be provided. Reasonable effort will be made by the appropriate Regional Office to seek comments through notification to major disability groups, the State Protection and Advocacy agency and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they will be included in the report of the onsite visit.

**Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements**

30. Section 1386.80 is revised to read as follows:

**§ 1386.80 Definitions.**

For purposes of this subpart:

*Assistant Secretary* means the Assistant Secretary for Children and Families (ACF) or a presiding officer.

*ADD* means Administration on Developmental Disabilities, Administration for Children and Families.

*Presiding officer* means anyone designated by the Assistant Secretary to

conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

*Payment or Allotment* means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms "Federal financial participation," "the State's total allotment," "further payments," "payments," "allotment" and "Federal funds."

31. Section 1386.85 is amended by revising paragraph (a) to read as follows:

**§ 1386.85 Filing and service of papers.**

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

\* \* \*

32. Section 1386.90 is revised to read as follows:

**§ 1386.90 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council and the Designated State Agency, or to the State Protection and Advocacy System or designated official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the Federal Register.

33. Section 1386.92 is revised to read as follows:

**§ 1386.92 Place.**

The hearing must be held on a date and at a time and place determined by the Assistant Secretary with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

34. Section 1386.93 is amended by revising paragraphs (c)(2) and (d) to read as follows:

**§ 1386.93 Issues at hearing.**

\* \* \*

(c) \* \* \*

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under Part B of the Act, of the State plan or the activities of the State's Protection

and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

35. Section 1386.94 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

**§ 1386.94 Request to participate in hearing.**

(a) The Department, the State, the State Developmental Disabilities Council, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b) \* \* \*

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the *Federal Register*, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state:

- (i) Petitioner's interest in the proceeding;
- (ii) Who will appear for petitioner;
- (iii) The issues the petitioner wishes to address; and
- (iv) Whether the petitioner intends to present witnesses.

(c)(1) Any interested person or organization wishing to participate as *amicus curiae* must file a petition with the designated individual before the

commencement of the hearing. The petition must concisely state:

- (i) The petitioner's interest in the hearing;
- (ii) Who will represent the petitioner, and
- (iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An *amicus curiae* may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

36. Section 1386.101 is amended by revising paragraphs (a)(11) and (c) to read as follows:

**§ 1386.101 Authority of presiding officer.**

(a) \* \* \*

(11) If the presiding officer is a person other than the Assistant Secretary, he or she shall certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

\* \* \* \* \*

(c) If the presiding officer is a person other than the Assistant Secretary, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

37. Section 1386.111 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 1386.111 Decisions following hearing.**

\* \* \* \* \*

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing pursuant to sections 122, 127, or 142 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also

specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she must also specify whether the State's payment or allotment will not be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 129 of the Act (42 U.S.C. 6029). The Assistant Secretary's decision must be promptly served on all parties and amici.

38. Section 1386.112 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1386.112 Effective date of decision by the Assistant Secretary.**

(a) If, in the case of a hearing pursuant to section 122 of the Act, the Assistant Secretary concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 142 of the Act, if the Assistant Secretary concludes that the State is not complying with the requirements of the State plan or the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State's Protection and Advocacy System not affected, must specify the effective date for withholding payments of allotments.

\* \* \* \* \*

## PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

39. The authority citation for part 1387 continues to read as follows:

Authority: 42 U.S.C. 6000 *et seq.*

40. Section 1387.1 is being amended by revising paragraphs (a), (b), and (d) to read as follows:

### § 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with section 162 of the Act.

(b) Based on section 162(d), proposed priorities for grants and contracts will be published in the *Federal Register* and a 60 day period for public comments will be allowed.

(d) Projects of National Significance, other than technical assistance and data collection grants, must be exemplary and innovative models and have potential for replication at the local level as well as nationally or otherwise meet the goals of part E of the Act.

41. Part 1388 is revised to read as follows:

## PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.

1388.1 Definitions.

1388.2 Program criteria—purpose.

1388.3 Program criteria—mission.

1388.4 Program criteria—governance and administration.

1388.5 Program criteria—preparation of personnel.

1388.6 Program criteria—services and supports.

1388.7 Program criteria—dissemination.

1388.8 [Reserved].

1388.9 Peer review.

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

### § 1388.1 Definitions.

For purposes of this part:

*Accessible* means UAPs are characterized by their program and physical accommodation and their demonstrated commitment to the goals of the Americans with Disabilities Act.

*Capacity Building* means that UAPs utilize a variety of approaches to strengthen their university and their local, State, regional and National communities. These approaches include, but are not limited to such activities as: (1) Enriching program depth and breadth, for example, recruiting the dental school to participate in the UAP; (2) acquiring additional resources, for example, grants, space, and volunteer manpower; and (3) carrying out systems changes,

for example, promoting community-based programming for persons with developmental disabilities across all ages.

*Collaboration* means that the UAP cooperates with a wide range of persons, systems, and agencies, whether they utilize services of the UAP or are involved in UAP planning and programs. These entities include individuals with developmental disabilities and family members, as well as the Developmental Disabilities Network, advocacy and other disability groups, university components, generic and specialized human service agencies, State agencies and citizen and community groups. An example of this cooperation is the Consumer Advisory Committee, a required element in each UAP.

*Culturally competent manner* means provision of services, supports, or other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and that has the greatest likelihood of ensuring their maximum participation in the program.

*Diverse network* means that although each UAP has the same mandates under the Act, the expression of these common mandates differs across programs. Each UAP must implement these mandates within the context of their host university, their location within the university, the needs of the local and State community, the cultural composition of their State, their resources and funding sources, and their institutional history. These factors converge to create a network of unique and distinct programs, bound together by common mandates but enriched by diverse composition.

*Interdisciplinary training* means the use of individuals from different professional specialties for UAP training and service delivery.

*Lifespan approach* means that UAP activities address the needs of individuals with disabilities who are of various ages.

*Mandated core functions* means the UAP must perform: (1) Interdisciplinary preservice preparation; (2) community service activities (community training and technical assistance); and (3) activities related to dissemination of information and research findings.

*Program criteria* means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Program's operation.

*State-of-the-art* means that UAP activities are of high quality (using the latest technology), worthy of replication

(consistent with available resources), and systemically evaluated.

### § 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). The overall purpose of the program criteria is to assure the promotion of independence, productivity, integration and inclusion of individuals with developmental disabilities. Compliance with the program criteria is a prerequisite for a UAP to receive the minimum funding level of a UAP. However, compliance with the program criteria does not, by itself, assure funding.

### § 1388.3 Program criteria—mission.

(a) *Introduction to mission:* The purpose and scope of UAP activities must be consistent with the Act as amended and include the provision of training, service, technical assistance and dissemination of information in a culturally competent manner. UAPs must include in their activities the underserved, and provide for meaningful participation of individuals from diverse racial and ethnic backgrounds. UAP principles and operations must be consistent with the UAP's mission statement. (The concept of "diverse network" as defined in § 1388.1 of this part applies to paragraphs (b), (f), (g), and (h) of this section.)

(b) The UAP must develop a written mission statement that reflects its values and the goals of the university in which it is located. The UAP's goals, objectives and activities must be consistent with the mission statement.

(c) The UAP's mission and programs must reflect a life span approach, incorporate an interdisciplinary approach and include the active participation of individuals with developmental disabilities and their families.

(d) The UAP programs must address the needs of individuals with developmental disabilities, including individuals with developmental disabilities who are unserved or underserved, in institutions, and on waiting lists.

(e) The UAP's goals, objectives, and activities must incorporate and demonstrate culturally competent services and practices, which are in response to local culture and needs.

(f) The UAP's mission must reflect its unique role as a bridge between university programs, individuals with developmental disabilities and their families, service agencies and the larger community.

(g) The UAP's goals, objectives, and activities must use capacity building strategies to address State needs.

(h) The UAP's goals, objectives, and activities must reflect interagency collaborations and strategies to effect systemic change within the university and in State and local communities and service systems.

**§ 1388.4 Program criteria—governance and administration.**

(a) Introduction to governance and administration: The UAP must be associated with, or an integral part of, a university. (The concept of "diverse network" as defined in § 1388.1 of this part applies to paragraphs (b), (c), (d), (i), and (l) of this section.)

(b) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university.

(c) Within the university, the UAP must maintain the autonomy and organizational structure required to carry out the UAP mission and provide for the mandated activities.

(d) The UAP must be responsible to report directly to a University administrator who will represent the interests of the UAP within the University.

(e) The University must demonstrate its support for the UAP through the commitment of financial and other resources.

(f) UAP senior professional staff must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy.

(g) UAP faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act, (ADA).

(h) The UAP must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The UAP must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

(i) The management practices of the UAP, as well as the organizational structure, must promote the role of the UAP as a bridge between the University and the community. The UAP must

actively participate in community networks and include a range of collaborating partners.

(j) The UAP's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UAP is located. The deliberations of the Consumer Advisory Committee must be reflected in UAP policies and programs.

(k) The UAP must maintain collaborative relationships with the State Developmental Disabilities Council and the Protection and Advocacy System. In addition, the UAP must be a member of the State Developmental Disabilities Council and participate in Council meetings and activities, as prescribed by the Act.

(l) The UAP must maintain collaborative relationships and be an active participant with the UAP network and individuals, organizations, State agencies and Universities.

(m) The UAP must demonstrate the ability to leverage resources.

(n) The UAP must have adequate space to carry out the mandated activities.

(o) The UAP physical facility and all program initiatives conducted by the UAP must be accessible to individuals with disabilities as provided for by Section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(p) The UAP must integrate the mandated core functions into its activities and programs and must have a written plan for each core function area.

(q) The UAP must have in place a long range strategic planning capability to enable the UAP to respond to emergent and future developments in the field.

(r) The UAP must utilize state-of-the-art methods, including the active participation of individuals, families and other consumers of programs and services to evaluate programs. The UAP must refine and strengthen its programs based on evaluation findings.

**§ 1388.5 Program criteria—preparation of personnel.**

(a) Introduction to preparation of personnel: UAP interdisciplinary training programs at the preservice level prepare personnel concerned with developmental disabilities.

(b) Interdisciplinary training programs must be based on identified personnel preparation needs centered around a conceptual framework with identified outcomes.

(c) The interdisciplinary training process, as defined by the UAP, must

reflect a mix of students from diverse academic disciplines/academic programs and cultures that reflect the diversity of the community. Faculty represent a variety of backgrounds and specialties, including individuals with disabilities and family members, and a variety of learning experiences, as well as reflecting the cultural diversity of the community. Trainees must receive credit as appropriate for participation in UAP training programs.

(d) Preservice training must be integrated into all aspects of the UAP, including community training and technical assistance, direct services (if provided), and dissemination.

(e) Trainees must be prepared to serve in a variety of roles, including advocacy and systems change. The UAP must encourage graduates to work in varied situations, settings, or jobs.

(f) The UAP must influence University curricula to prepare personnel who, in their future career in a broad range of social and community roles, will contribute to the accommodation and inclusion of individuals with developmental disabilities, as mandated in the Americans with Disabilities Act.

(g) The UAP core curriculum must incorporate cultural diversity and demonstrate cultural competence. Trainees must be prepared to address the needs of individuals with developmental disabilities and their families in a culturally competent manner.

**§ 1388.6 Program criteria—services and supports.**

(a) Introduction to services and supports: The UAP engages in a variety of system interventions and may also engage in a variety of individual interventions.

(b) UAP community training and technical assistance activities must use capacity building strategies to strengthen the capability of communities, systems and service providers.

**(c) Direct Services (Optional)**

(1) A UAP must integrate direct services and projects into community settings. These services may be provided in a service delivery site or training setting within the community including the university. Direct service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Direct services must be extended, as appropriate, to include adult and elderly individuals with developmental disabilities.



(2) Services and projects provided in community-integrated settings are to be:

(i) Scheduled at times and in places that are consistent with routine activities within the local community; and

(ii) Interact with and involve community members, agencies, and organizations.

(3) The bases for the services or project development must be:

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

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

(4) State-of-the-art and innovative practices include:

(i) Services and project concepts and practices that facilitate and demonstrate independence for the individual, community integration, productivity, and human rights;

(ii) Practices that are economical, accepted by various disciplines, and highly beneficial to individuals with developmental disabilities, and that are integrated within services and projects;

(iii) Innovative cost-effective concepts and practices that are evaluated according to accepted practices of scientific evaluation;

(iv) Research methods that are used to test hypotheses, validate procedures, and field test projects; and

(v) Direct service and project practices and models that are evaluated, packaged for replication and disseminated through the information dissemination component.

**§ 1388.7 Program criteria—dissemination.**

(a) Introduction to dissemination: The UAP disseminates information and research findings, including the empirical validation of activities related to training, services and supports, and contributes to the development of new knowledge.

(b) The UAP must be identified to the community as a resource for information, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

(c) Specific target audiences must be identified for dissemination activities and include individuals with developmental disabilities, family members, service providers, administrators, policy makers, university faculty, researchers, and the general public.

(d) UAP dissemination activities must be responsive to community requests for information and must utilize a variety of networks, including State Developmental Disabilities Councils, Protection and Advocacy Systems, other University Affiliated Programs, and State service systems to disseminate information to target audiences.

(e) The process of developing and evaluating materials must utilize the input of individuals with developmental disabilities and their families.

(f) The values of the UAP must be reflected in the language and images used in UAP products.

(g) Dissemination products must reflect the cultural diversity of the community.

(h) Materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, and appropriate target audiences.

**§ 1388.8 [Reserved]**

**§ 1388.9 Peer review.**

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP applications, including on-site visits or inspections as necessary.

(b) Applications for funding opportunities under Part D, section 152 of the Act, must be evaluated through the peer review process.

(c) Panels must be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

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