

## 42 USCS § 6022, n 1

Human Servs., Admin. on Dev. Disability (1993, CA9) 997 F2d 1290, 93 CDOS 4772, 93 Daily Journal DAR 8113.

### 2. Enforcement

Developmentally disabled plaintiffs may sue state officials under § 1983 for violations of 42 USCS §§ 6022(b)(5)(B) and 6023(a) and have implied right of action under §§ 6022 and 6023 against Secretary of Health and Human Services for limited purpose of compelling him to perform mandatory statutory duties, where plaintiffs alleged state officials failed to develop and implement required individual habilitation plans, because Congress clearly intended to create enforceable rights by mandatory conditions to receipt of fed-

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eral funds, Congress did not intend to foreclose § 1983 relief, and statute is clear that Secretary must limit or terminate funding if there is failure to substantially comply with statute. *Giesecking v Schafer* (1987, WD Mo) 672 F Supp 1249.

Patients state § 1983 claim against state officials heading departments of mental retardation and mental health, where complaint alleges that no individual habilitation plans were developed for them as required under 42 USCS § 6023(a), because Congress intended to create rights, enforceable under § 1983, in developmentally disabled individuals as to express conditions on receipt of federal funds in § 6023(a). *Mihalcik v Lensink* (1990, DC Conn) 732 F Supp 299.

## § 6023. [Repealed]

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 31, 1963, P. L. 88-164, Title I, Part B, § 123, as added Oct. 19, 1984, P. L. 98-527, § 2, 98 Stat. 2674; Oct. 29, 1987, P. L. 100-146, Title II, § 203, 101 Stat. 849) was repealed by Act April 6, 1994, P. L. 103-230, Title II, § 204, 108 Stat. 302. It provided for habilitation plans.

## § 6024. State Developmental Disabilities Councils and designated State agencies

(a) **In general.** Each State that receives assistance under this part [42 USCS §§ 6021 et seq.] shall establish and maintain a State Developmental Disabilities Council (hereafter in this section referred to as the "Council") to promote, through systemic change, capacity building, and advocacy activities (consistent with section 101(c)(2) [42 USCS § 6000(c)(2)]), the development of a consumer and family-centered comprehensive system and a coordinated array of culturally competent services, supports and other assistance designed to achieve independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities. The Council shall have the authority to fulfill its responsibilities described in subsection (c).

(b) **Council membership.** (1) **Council appointments.** The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor shall select members of the Council, at his or her discretion, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with devel-

developmental disabilities, including the non-State agency members of the Council. The Council may, at the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations. *(for members)* To the extent feasible, the membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

(2) Membership rotation. The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements, when vacancies remain unfilled for a significant period of time.

(3) Representation of agencies and organizations. Each Council shall at all times include representatives of the principal State agencies (including the State agencies that administer funds provided under the Rehabilitation Act of 1973 [29 USCS §§ 701 et seq.], the Individuals with Disabilities Education Act, the Older Americans Act, and title XIX of the Social Security Act [42 USCS §§ 1396 et seq.]), institutions of higher education, each university affiliated program in the State established under part D [42 USCS §§ 6061 et seq.], the State protection and advocacy system established under part C [42 USCS §§ 6041 et seq.], and local agencies, nongovernmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located. Such representatives shall—

(A) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and

(B) recuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees or applicants and comply with the conflict of interest policies required under section 122(c)(5)(C) [42 USCS § 6022(c)(5)(C)].

(4) Representation of individuals with developmental disabilities. Not less than 50 percent of the membership of each Council shall consist of individuals who are—

(A)(i) individuals with developmental disabilities;

(ii) parents or guardians of children with developmental disabilities;  
or

(iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves;  
and

(B) not employees of a State agency that receives funds or provides services under this part [42 USCS §§ 6021 et seq.], and who are not managing employees (as defined in section 1126(b) of the Social Secu-

rity Act [42 USCS § 1320a-5(b)] of any other entity that receives funds or provides services under this part [42 USCS §§ 6021 et seq.].

(5) Composition of membership with developmental disabilities. Of the members of the Council described in paragraph (4)—

(A) one-third shall be individuals with developmental disabilities as described in paragraph (4)(A)(i);

(B) one-third shall be parents of children with developmental disabilities as described in paragraph (4)(A)(ii), and immediate relatives or guardians of adults with mentally impairing developmental disabilities as described in paragraph (4)(A)(iii); and

(C) one-third shall be a combination of individuals described in paragraph (4)(A).

(6) Institutionalized individuals. Of the members of the Council described in paragraph (5), at least one shall be an immediate relative or guardian of an institutionalized or previously institutionalized individual with a developmental disability or an individual with a developmental disability who resides or previously resided in an institution. This paragraph shall not apply with respect to a State if such an individual does not reside in that State.

(c) **Council responsibilities.** A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (1) through (11).

(1) Systemic change, capacity building, and advocacy activities. The Council shall serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that carry out the purpose under section 121 [42 USCS § 6021].

(2) Examination of priority areas. Not less than once every 3 years, the Council shall examine the provision of and need for the four Federal priority areas and an optional State priority area to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families, pursuant to section 122 [42 USCS § 6022].

(3) State plan development. The Council shall develop and submit to the Secretary the State plan required under section 122 [42 USCS § 6022] after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

(4) State plan implementation. The Council shall implement the State plan by conducting and supporting the Federal priority area of employment, not less than one of the remaining three Federal priority areas, and an optional State priority area as defined in section 102 [42 USCS § 6001], through systemic change, capacity building, and advocacy activities such as those described in subparagraphs (A) through (K).

(A) Demonstration of new approaches. The Council may conduct, on a time-limited basis, the demonstration of new approaches to enhance the independence, productivity, and integration and inclusion into the

(M) STATE QUALITY ASSURANCE.—The plan shall provide assurances that the Council will participate in the planning, design, or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities. (N) OTHER ASSURANCES.—The plan shall contain such additional information and assurances as the Secretary may find necessary to carry out the provisions (including the purpose) of this subtitle.

(d) PUBLIC INPUT AND REVIEW, SUBMISSION, AND APPROVAL.— (1) PUBLIC INPUT AND REVIEW.—The plan shall be based on public input. The Council shall make the plan available for public review and comment, after providing appropriate and sufficient notice in accessible formats of the opportunity for such review and comment. The Council shall revise the plan to take into account and respond to significant comments.

(2) CONSULTATION WITH THE DESIGNATED STATE AGENCY.—Before the plan is submitted to the Secretary, the Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances.

(3) PLAN APPROVAL.—The Secretary shall approve any State plan and, as appropriate, amendments of such plan that comply with the provisions of subsections (a), (b), and (c) and this subsection. The Secretary may take final action to disapprove a State plan after providing reasonable notice and an opportunity for a hearing to the State.

SEC. 125. STATE COUNCILS ON DEVELOPMENTAL DISABILITIES AND DESIGNATED STATE AGENCIES.

(a) IN GENERAL.—Each State that receives assistance under this subtitle shall establish and maintain a Council to undertake advocacy, capacity building, and systemic change activities (consistent with subsections (b) and (c) of section 101) that contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this subtitle. The Council shall have the authority to fulfill the responsibilities described in subsection (c).

(b) COUNCIL MEMBERSHIP.— (1) COUNCIL APPOINTMENTS.—

(A) IN GENERAL.—The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State.

(B) RECOMMENDATIONS.—The Governor shall select members of the Council at the discretion of the Governor, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities, including the designated State agency members of the Council. The Council may, at the initiative of the Council, or on the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations.

(C) REPRESENTATION.—The membership of the Council shall be geographically representative of the State and

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and reflect the diversity of the State with respect to race and ethnicity.

(2) MEMBERSHIP ROTATION.—The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements of the Council, and shall notify the Governor when vacancies on the Council remain unfilled for a significant period of time.

(3) REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.—Not less than 60 percent of the membership of each Council shall consist of individuals who are

- (A) (i) individuals with developmental disabilities;
- (ii) parents or guardians of children with developmental disabilities; or
- (iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves; and

(B) not employees of a State agency that receives funds or provides services under this subtitle, and who are not managing employees (as defined in section 1126(b) of the Social Security Act (42 U.S.C. 1320a-5(b)) of any other entity that receives funds or provides services under this subtitle.

(4) REPRESENTATION OF AGENCIES AND ORGANIZATIONS.—

(A) IN GENERAL.—Each Council shall include—

- (i) representatives of relevant State entities, including—
  - (I) State entities that administer funds provided under Federal laws related to individuals with disabilities, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and titles V and XIX of the Social Security Act (42 U.S.C. 701 et seq. and 1396 et seq.);
  - (II) Centers in the State; and
  - (III) the State protection and advocacy system; and
- (ii) representatives, at all times, of local and non-governmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located;

(B) AUTHORITY AND LIMITATIONS.—The representatives described in subparagraph (A) shall—

- (i) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program (such representatives represent) and
- (ii) refuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees, contractors, or applicants and comply with the conflict

of interest assurance requirement under section 124(c)(5)(D).

**(5) COMPOSITION OF MEMBERSHIP WITH DEVELOPMENTAL DISABILITIES.**—Of the members of the Council described in paragraph (3)

(A) 1/3 shall be individuals with developmental disabilities described in paragraph (3)(A)(i);

(B) 1/3 shall be parents or guardians of children with developmental disabilities described in paragraph (3)(A)(ii), or immediate relatives or guardians of adults with developmental disabilities described in paragraph (3)(A)(iii); and

(C) 1/3 shall be a combination of individuals described in paragraph (3)(A).

**(6) INSTITUTIONALIZED INDIVIDUALS.**—

(A) **IN GENERAL.**—Of the members of the Council described in paragraph (5), at least 1 shall be an immediate relative or guardian of an individual with a developmental disability who resides or previously resided in an institution or shall be an individual with a developmental disability who resides or previously resided in an institution.

(B) **LIMITATION.**—Subparagraph (A) shall not apply with respect to a State if such an individual does not reside in that State.

**(c) COUNCIL RESPONSIBILITIES.**—

**(1) IN GENERAL.**—A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (2) through (10).

**(2) ADVOCACY, CAPACITY BUILDING, AND SYSTEMIC CHANGE ACTIVITIES.**—The Council shall serve as an advocate for individuals with developmental disabilities and conduct or support programs, projects, and activities that carry out the purpose of this subtitle.

**(3) EXAMINATION OF GOALS.**—At the end of each grant year, each Council shall

(A) determine the extent to which each goal of the Council was achieved for that year;

(B) determine to the extent that each goal was not achieved, the factors that impeded the achievement;

(C) determine needs that require amendment of the 5-year strategic State plan required under section 124;

(D) separately determine the information on the self-advocacy goal described in section 124(c)(4)(A)(ii); and

(E) determine customer satisfaction with Council supported or conducted activities.

**(4) STATE PLAN DEVELOPMENT.**—The Council shall develop the State plan and submit the State plan to the Secretary after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

**(5) STATE PLAN IMPLEMENTATION.**—

(A) **IN GENERAL.**—The Council shall implement the State plan by conducting and supporting advocacy, capacity building, and systemic change activities such as those described in subparagraphs (B) through (L).

(B) **OUTREACH.**—The Council may support and conduct outreach activities to identify individuals with developmental disabilities and their families who otherwise might not come to the attention of the Council and assist and enable the individuals and families to obtain services, individualized supports, and other forms of assistance, including access to special adaptation of generic community services or specialized services.

(C) **TRAINING.**—The Council may support and conduct training for persons who are individuals with developmental disabilities, their families, and personnel (including professionals, paraprofessionals, students, volunteers, and other persons) to enable such persons to obtain access to, or to provide, community services, individualized supports, and other forms of assistance, including special adaptation of generic community services or specialized services for individuals with developmental disabilities and their families. To the extent that the Council supports or conducts training activities under this subparagraph, such activities shall contribute to the achievement of the purpose of this subtitle.

(D) **TECHNICAL ASSISTANCE.**—The Council may support and conduct technical assistance activities to assist public and private entities to contribute to the achievement of the purpose of this subtitle.

(E) **SUPPORTING AND EDUCATING COMMUNITIES.**—The Council may support and conduct activities to assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families—

(i) by encouraging local networks to provide informal and formal supports;

(ii) through education, and

(iii) by enabling neighborhoods and communities to offer such individuals and their families access to and use of services, resources, and opportunities.

(F) **INTERAGENCY COLLABORATION AND COORDINATION.**—The Council may support and conduct activities to promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with developmental disabilities and their families.

(G) **COORDINATION WITH RELATED COUNCILS, COMMITTEES, AND PROGRAMS.**—The Council may support and conduct activities to enhance coordination of services with—

(i) other councils, entities, or committees, authorized by Federal or State law concerning individuals with disabilities (such as the State interagency coordinating council established under subtitle C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), the State Rehabilitation Council, and the Statewide Independent Living Council established under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.); the State mental health planning council established under subtitle B of title XIX of the Public Health Service Act (42 U.S.C. 300x-1 et seq.), and the activities authorized under section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011,



(ii) parent training and information centers under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.) and other entities carrying out federally funded projects that assist parents of children with disabilities; and

(iii) other groups interested in advocacy, capacity building, and systemic change activities to benefit individuals with disabilities.

(H) BARRIER ELIMINATION, SYSTEMS DESIGN, AND REDESIGN.—The Council may support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, enhance systems design and redesign, and enhance citizen participation to address issues identified in the State plan.

(I) COALITION DEVELOPMENT AND CITIZEN PARTICIPATION.—The Council may support and conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, education of policymakers, and citizen leadership skills.

(J) INFORMING POLICYMAKERS.—The Council may support and conduct activities to provide information to policymakers by supporting and conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations. The Council may provide the information directly to Federal, State, and local policymakers, including Congress, the Federal executive branch, the Governors, State legislatures, and State agencies in order to increase the ability of such policymakers to offer opportunities and to enhance or adapt generic services to meet the needs of, or provide specialized services to, individuals with developmental disabilities and their families.

(K) DEMONSTRATION OF NEW APPROACHES TO SERVICES AND SUPPORTS.

(i) IN GENERAL.—The Council may support and conduct, on a time-limited basis, activities to demonstrate new approaches to serving individuals with developmental disabilities that are a part of an overall strategy for systemic change. The strategy may involve the education of policymakers and the public about how to deliver effectively, to individuals with developmental disabilities and their families, services, supports and assistance that contributes to the achievement of the purpose of this subtitle.

(ii) SOURCES OF FUNDING.—The Council may carry out this subparagraph by supporting and conducting demonstration activities through sources of funding other than funding provided under this subtitle, and by assisting entities conducting demonstration activities to develop strategies for securing funding from other sources.



(L) OTHER ACTIVITIES.—The Council may support and conduct other advocacy, capacity building, and systemic change activities to promote the development of a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this subtitle.

(6) REVIEW OF DESIGNATED STATE AGENCY.—The Council shall periodically review the designated State agency and activities carried out under this subtitle by the designated State agency and make any recommendations for change to the Governor.

(7) REPORTS.—Beginning in fiscal year 2002, the Council shall annually prepare and transmit to the Secretary a report. Each report shall be in a form prescribed by the Secretary by regulation under section 104(h). Each report shall contain information about the progress made by the Council in achieving the goals of the Council (as specified in section 124(c)(4)), including—

(A) a description of the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement;

(D) separate information on the self-advocacy goal described in section 124(c)(4)(A)(ii);

(E)(i) as appropriate, an update on the results of the comprehensive review and analysis described in section 124(c)(3); and

(ii) information on consumer satisfaction with Council supported or conducted activities;

(F)(i) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities in Intermediate Care Facilities (Mental Retardation) receive; and

(ii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities served through home and community-based waivers (authorized under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) receive;

(G) an accounting of the manner in which funds paid to the State under this subtitle for a fiscal year were expended;

(H) a description of—

(i) resources made available to carry out activities to assist individuals with developmental disabilities that are directly attributable to Council actions; and

(ii) resources made available for such activities that are undertaken by the Council in collaboration with other entities; and

(I) a description of the method by which the Council will widely disseminate the annual report to affected constituencies and the general public and will assure that the report is available in accessible formats.

(8) BUDGET.—Each Council shall prepare, approve, and implement a budget using amounts paid to the State under this subtitle to fund and implement all programs, projects, and activities carried out under this subtitle, including

(A)(i) conducting such hearings and forums (as the Council may determine to be necessary to carry out the duties of the Council); and

(ii) as determined in Council policy;

(I) reimbursing members of the Council for reasonable and necessary expenses (including expenses for child care and personal assistance services) for attending Council meetings and performing Council duties;

(II) paying a stipend to a member of the Council, if such member is not employed or must forfeit wages from other employment, to attend Council meetings and perform other Council duties;

(III) supporting Council member and staff travel to authorized training and technical assistance activities including in-service training and leadership development activities; and

(IV) carrying out appropriate subcontracting activities.

(B) hiring and maintaining such numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical staff (qualified by training and experience), consistent with State law, as the Council determines to be necessary to carry out the functions of the Council under this subtitle, except that such State shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the Council, to the extent that such policies would impact the staff or functions funded with Federal funds, or would prevent the Council from carrying out the functions of the Council under this subtitle; and

(C) directing the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities authorized by the State plan approved under section 124.

(9) STAFF HIRING AND SUPERVISION.—The Council shall, consistent with State law, recruit and hire a Director of the Council, should the position of Director become vacant, and supervise and annually evaluate the Director. The Director shall hire, supervise, and annually evaluate the staff of the Council. Council recruitment, hiring, and dismissal of staff shall be conducted in a manner consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be conducted in a manner consistent with State law and personnel policies.

(10) STAFF ASSIGNMENTS.—The staff of the Council, while working for the Council, shall be responsible solely for assisting the Council in carrying out the duties of the Council under this subtitle and shall not be assigned duties by the designated State agency or any other agency or entity of the State.

(11) CONSTRUCTION.—Nothing in this title shall be construed to authorize a Council to direct, control, or exercise

any policymaking authority or administrative authority over any program assisted under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(d) DESIGNATED STATE AGENCY.—

(1) IN GENERAL.—Each State that receives assistance under this subtitle shall designate a State agency that shall, on behalf of the State, provide support to the Council. After the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994 (Public Law 103-230), any designation of a State agency under this paragraph shall be made in accordance with the requirements of this subsection.

(2) DESIGNATION.—

(A) TYPE OF AGENCY.—Except as provided in this subsection, the designated State agency shall be—

(i) the Council if such Council may be the designated State agency under the laws of the State;

(ii) a State agency that does not provide or pay for services for individuals with developmental disabilities; or

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

(B) CONDITIONS FOR CONTINUATION OF STATE SERVICE AGENCY DESIGNATION.—

(i) DESIGNATION BEFORE ENACTMENT.—If a State agency that provides or pays for services for individuals with developmental disabilities was a designated State agency for purposes of part B of the Developmental Disabilities Assistance and Bill of Rights Act on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, and the Governor of the State (or the legislature, where appropriate and in accordance with State law) determines prior to June 30, 1994, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this subtitle.

(ii) CRITERIA FOR CONTINUED DESIGNATION.—The determination, at the discretion of the Governor (or the legislature, as the case may be), shall be made after—

(I) the Governor has considered the comments and recommendations of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency; and

(II) the Governor (or the legislature, as the case may be) has made an independent assessment that the designation of such agency will not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the Council to serve as an independent advocate for individuals with developmental disabilities.

(C) REVIEW OF DESIGNATION.—The Council may request a review of and change in the designation of the designated State agency by the Governor (or the legislature, as the case may be). The Council shall provide documentation

injunctions concerning the reason the Council desires a change to be made and make a recommendation to the Governor for the legislature, as the case may be, regarding a previously referred designated State agency.

(D) APPEAL OF DESIGNATION.—After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of and changes in the designation of the designated State agency if the ability of the Council to serve as an independent advocate is not assured because of the actions or inactions of the designated State agency.

(3) RESPONSIBILITIES.

(A) IN GENERAL.—The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (B) through (G).

(B) SUPPORT SERVICES.—The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.

(C) FISCAL RESPONSIBILITIES.—The designated State agency shall—  
(i) receive, account for, and disburse funds under this subtitle based on the State plan required in section 124, and  
(ii) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under this subtitle.

(D) RECORDS, ACCESS, AND FINANCIAL REPORTS.—The designated State agency shall keep and provide access to such records as the Secretary and the Council may determine to be necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, and liquidation by the agency or the Council, and the use of the Federal and non-Federal shares described in section 126, by the agency or the Council.

(E) NON-FEDERAL SHARE.—The designated State agency, if other than the Council, shall provide the required non-Federal share described in section 126(e).

(F) ASSURANCES.—The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

(G) MEMORANDUM OF UNDERSTANDING.—On the request of the Council, the designated State agency shall enter into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency.

(4) USE OF FUNDS FOR DESIGNATED STATE AGENCY RESPONSIBILITIES.

(A) CONDITION FOR FEDERAL FUNDING.—If the designated State agency is involved in a project, the Secretary shall provide amounts to a State under section 124(c)(5)(B)(vi) for that fiscal year only if the State expends an amount from State sources for carrying out the responsibilities of the designated State agency under paragraph (3).

of 55 percent for the fiscal year that is not less than the total amount of the State expended from such sources for carrying out similar responsibilities for the previous fiscal year.

(ii) EXCEPTION.—Clause (G) shall not apply in a fiscal year in which the Council is the designated State agency.

(B) SUPPORT SERVICES PROVIDED BY OTHER AGENCIES.—With the agreement of the designated State agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

**SEC. 126. FEDERAL AND NON-FEDERAL SHARE.**

(a) AGGREGATE COST.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Federal share of the cost of all projects in a State supported by an allotment to the State under this subtitle may not be more than 75 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(2) URBAN OR RURAL POVERTY AREAS.—In the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, the Federal share of the cost of all such projects may not be more than 90 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(3) STATE PLAN ACTIVITIES.—In the case of projects undertaken by the Council or Council staff to implement State plan activities, the Federal share of the cost of all such projects may be not more than 100 percent of the aggregate necessary cost of such activities.

(b) NONDUPLICATION.—In determining the amount of any State or Federal share of the cost of such projects incurred by such State under a State plan approved under section 124, the Secretary shall not consider any portion of such cost that is financed by Federal funds provided under any provision of law other than section 122, and—

(1) the amount of any non-Federal funds required to be expended as a condition of receipt of the Federal funds described in paragraph (1);

(c) NON-FEDERAL SHARE.—The non-Federal share of the cost of any project supported by an allotment under this subtitle may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(2) CONTRIBUTIONS OF POLITICAL SUBDIVISIONS AND PUBLIC OR PRIVATE ENTITIES.—

(A) IN GENERAL.—Contributions to projects by a political subdivision of a State or by a public or private entity under an agreement with the State shall be subject to such limitations and conditions as the Secretary (may by regulation prescribe under section 104(b)) be considered to be contributions by such State, in the case of a project supported under this subtitle.

(B) STATE CONTRIBUTIONS.—State contributions, including contributions by the designated State agency to



provide support services to the Council pursuant to section 125(d)(4) may be counted as part of such State's non-Federal share of the cost of projects supported under this subtitle.

(3) VARIATIONS OF THE NON-FEDERAL SHARE.—The non-Federal share required of each recipient of a grant from a State Council under this subtitle may vary as follows:

**SEC. 127. WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION, AND SERVICES.**

Whenever the Secretary, after providing reasonable notice and an opportunity for a hearing to the Council and the designated State agency, finds that—

(1) the Council or agency has failed to comply substantially with any of the provisions required by section 124 to be included in the State plan, particularly provisions required by paragraphs (4)(A) and (6)(B)(vii) of section 124(c) or with any of the provisions required by section 125(b)(3); or

(2) the Council or agency has failed to comply substantially with any regulations of the Secretary that are applicable to this subtitle,

the Secretary shall notify such Council and agency that the Secretary will not make further payments to the State under section 122 (or, in the discretion of the Secretary, that further payments to the State under section 122 for activities for which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payments to the State under section 122, or shall limit further payments under section 122 to such State to activities for which there is no such failure.

**SEC. 128. APPEALS BY STATES.**

(a) APPEAL.—If any State is dissatisfied with the Secretary's action under section 124(d)(3) or 127, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court, not later than 60 days after such action.

(b) FILING.—The clerk of the court shall transmit promptly a copy of the petition to the Secretary or any officer designated by the Secretary for that purpose. The Secretary shall file promptly with the court the record of the proceedings in which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

(c) JURISDICTION.—Upon the filing of the petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part, temporarily or permanently. Until the filing of the record, the Secretary may modify or set aside the order of the Secretary relating to the action.

(d) FINDINGS AND REMAND.—The findings of the Secretary about the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case involved to the Secretary for further proceedings to take further evidence. On remand, the Secretary may make new or modified findings of fact and may modify the previous action of the Secretary, and shall file with the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(e) FINALITY.—The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(f) EFFECT.—The commencement of proceedings under this section shall not, unless so specifically ordered by a court, operate as a stay of the Secretary's action.

**SEC. 129. AUTHORIZATION OF APPROPRIATIONS.**

(a) FUNDING FOR STATE ALLOTMENTS.—Except as described in subsection (b), there are authorized to be appropriated for allotments under section 122 \$76,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) RESERVATION FOR TECHNICAL ASSISTANCE.—  
(1) LOWER APPROPRIATION YEARS.—For any fiscal year for which the amount appropriated under subsection (a) is less than \$76,000,000, the Secretary shall reserve funds in accordance with section 163(c) to provide technical assistance to entities funded under this subtitle.

(2) HIGHER APPROPRIATION YEARS.—For any fiscal year for which the amount appropriated under subsection (a) is not less than \$76,000,000, the Secretary shall reserve not less than \$300,000 and not more than 1 percent of the amount appropriated under subsection (a) to provide technical assistance to entities funded under this subtitle.

**Subtitle C—Protection and Advocacy of Individual Rights**

**SEC. 141. PURPOSE.**

The purpose of this subtitle is to provide for allotments to support a protection and advocacy system (referred to in this subtitle as a "system") in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with this subtitle.

**SEC. 142. ALLOTMENTS AND PAYMENTS.**

(a) ALLOTMENTS.—  
(1) IN GENERAL.—To assist States in meeting the requirements of section 143(a), the Secretary shall allot to the States the amounts appropriated under section 145 and not reserved under paragraph (6). Allotments and reallocations of such sums shall be made on the same basis as the allotments and reallocations are made under subsections (a)(1)(A) and (e) of section 122, except as provided in paragraph (2).

(2) MINIMUM ALLOTMENTS.—In any case in which—  
(A) the total amount appropriated under section 145 for a fiscal year is not less than \$20,000,000, the allotment under paragraph (1) for such fiscal year—  
(i) to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than \$107,000; and