



## **ADMINISTRATIVE COMMITTEE MEETING NOTICE/AGENDA**

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**DATE:** September 24, 2014

**TIME:** 1:00 - 3:00 p.m.

**LOCATION:** State Council on Developmental Disabilities  
1507 21<sup>st</sup> Street, Suite 210  
Sacramento, CA 95811  
(916) 322-8481

### **TELECONFERENCE SITE:**

**Area Board 4**  
236 Georgia Street, Suite 201  
Vallejo, CA 94590

*Pursuant to Government code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in this meeting should contact Robin Maitino at (916) 322-8481 or email [robin.maitino@scdd.ca.gov](mailto:robin.maitino@scdd.ca.gov). Requests must be received by 5:00 pm September 18, 2014.*

### **Page**

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|----|---|------------|---|
| 1. | <b>CALL TO ORDER</b>                            | M. KENNEDY |   |
| 2. | <b>ESTABLISHMENT OF QUORUM</b>                  | M. KENNEDY |   |
| 3. | <b>WELCOME/INTRODUCTIONS</b>                    | M. KENNEDY |   |
| 4. | <b>APPROVAL OF JUNE &amp; JULY 2014 MINUTES</b> | M. KENNEDY | 3 |

**5. PUBLIC COMMENTS**

This item is for members of the public only to provide an opportunity to comments and/or present information to the Committee on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Committee will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.

**6. DESIGNATED STATE AGENCY  
MEMORANDUM OF UNDERSTANDING**

N. BOCANEGRA

**7. MONTHLY BUDGET PROJECTION**

A. CARRUTHERS

**8. POLICY MANUAL**

A. CARRUTHERS

**9. FUTURE AGENDA ITEMS**

ALL

**10. ADJOURNMENT**

M. KENNEDY

For additional information regarding this agenda, please contact Robin Maitino,  
1507 21<sup>st</sup> Street, Suite 210, Sacramento, CA 95811, (916) 322-8481

DRAFT

**Administrative Committee Meeting Minutes  
June 18, 2014**

**Attending Members**

Eric Gelber  
Kris Kent  
Max Duley  
Molly Kennedy  
Ning Yang  
Ray Ceragioli

**Members Absent**

**Others Attending**

Aaron Carruthers  
Dee Anne Holloway  
Lynn Cach  
Mark Polit  
Nancy Dow  
Natalie Bocanegra  
Robin Maitino

1. **Call to Order**

Molly Kennedy called the meeting to order at 1:10 p.m.

2. **Establishment of Quorum**

A quorum was established.

3. **Welcome and Introductions**

Members and others introduced themselves.

Aaron Carruthers, Chief Deputy Director and Dee Anne Holloway, Personnel Officer, introduced themselves and provided brief backgrounds on their qualifications and work history. Although Natalie Bocanegra joined the Council for a short time ago, she also provided a brief background on her qualifications and work history.

4. **Approval of the May 27, 2014 Minutes**

It was moved/seconded (Ceragioli/Yang) and carried to approve the May 27, 2014 minutes as presented. (2 abstentions)

5. **Public Comments**

There were no public comments.

## 6. **MTARS Update**

Molly Kennedy and Mark Polit provided a summary of the June 2<sup>nd</sup> progress report. Mark and Molly remain positive on the progress the Council has made with implementing the Corrective Action Plan. Mark anticipates the release of April funds sometime in the next week.

The revised legislative language that incorporated AIDD's comments has been submitted and is going in front of the Senate next week.

AIDD will be in Sacramento on June 25 and 26, 2014. They will be attending the June 25<sup>th</sup> MTARS meeting. AIDD made sure to mention that this is a technical assistance visit and not a monitoring visit.

Molly concluded the report by stating that Mark Polit, Mike Clark, and she will be traveling to D.C. in July to attend a NACDD Conference and will meet with AIDD.

## 7. **Fiscal and Budget Issues**

Molly led a discussion on the 2014-15 budget and assumptions. Although the Council approved the proposed 2014-15 budget and assumptions at the May Council meeting, members seemed confused with how the budget assumptions were determined and wanted more detail. It was suggested that perhaps the Committee could bring the proposed budget to the Council earlier next year and perhaps simplify the assumptions for the Council members.

Molly also led a discussion on the nearly \$1,000,000 deficit the Council faces. After some brainstorming some idea's that came out of the discussion were:

- Establishing a workgroup made up of both staff and Councilmembers to identify possible cost savings; or
- Holding an interested person's meeting that staff would put together which would also identify possible cost savings

Whatever kind of working group is established, they would bring the ideas they identify back to the Administrative Committee to review before bringing them to the Executive Committee.

8. **Contract Manual**

Natalie presented the revised manual to the Committee based on input received at the May Council meeting. Natalie pointed out that this Committee still needs to establish dollar amount thresholds for items that can be approved by the Executive Director of the Council and for items that must go to the Administrative Committee and the Council. This item will be placed on the July Administrative Committee agenda for further discussion.

9. **DSA MOU Update**

Natalie provided both a presentation and a flowchart which explained the difference between a MOU (Memorandum of Understanding) and IA (Interagency Agreement). Staff will work towards establishing the MOU first, followed by the development of an IA. The draft MOU will be presented to the Committee at the July meeting. Molly requested that today's presentation be handed out at the July Council meeting.

10. **Facilitation Policy Update**

Natalie is working with Mary Agnes to put the policy into plain language. She will bring the policy back to the Committee once it goes in front of SAAC for input.

Natalie is also working on a separate driver policy.

11. **Future Agenda Items**

The next meeting is scheduled for July 23<sup>rd</sup> from 1-3 p.m. Molly asked for the following items to be included in the July Admin agenda:

- MTARS Update
- Fiscal/budget Issues
- Fiscal/budget Subcommittee
- DSA MOU's Development Update
- Facilitation Policy Update

12. **Adjournment**

The meeting was adjourned at 2:35 p.m.

D R A F T

**Administrative Committee Meeting Minutes  
July 23, 2014**

**Attending Members**

Eric Gelber  
Ning Yang

**Members Absent**

Kris Kent  
Molly Kennedy  
Max Duley

**Others Attending**

Aaron Carruthers  
Lynn Cach  
Mark Polit  
Natalie Bocanegra  
Robin Maitino

1. **Call to Order**

Ning Yang called the meeting to order at 1:15 p.m.

2. **Establishment of Quorum**

A quorum was not present.

3. **Welcome and Introductions**

Members and others introduced themselves.

4. **Approval of the June 18, 2014 Minutes**

No action taken due to lack of quorum.

5. **Public Comments**

There were no public comments.

6. **MTARS Update**

Mark Polit provided an update on the progress the Council has made with implementing the Corrective Action Plan. Some highlights over the last month include:

- Completion of the technical amendments to the bill language, which will be moving forward to the Appropriations Committee on August 4<sup>th</sup>;
- The first meeting of the Membership Committee;
- The first meeting of the State Plan Committee (this Committee replaces the Program Development Committee). The next meeting is scheduled for August 25<sup>th</sup>;
- Continued progress on the MOU development; and

- Job offer extended to individual to track the implementation of the State Plan.

7. **Fiscal and Budget Issues**

Aaron Carruthers presented a handout detailing the monthly budget projections for fiscal year 2013-14. This handout included expenditures through June 2014.

8. **DSA MOU Development Update**

Natalie presented the draft Memorandum of Understanding (MOU) to the Committee members present and stated she would send out an electronic copy to all Committee members to allow for input and further discussion at the next Committee meeting.

9. **Facilitation Policy Update**

Ning Yang reported that due to the loss of the presenter, this item was passed over at the July 15<sup>th</sup> SAAC meeting. Therefore, this item is planned for discussion at the September meeting.

10. **Contract Manual**

Natalie presented the revised manual to the Committee as well as providing members with a brief recap of the conclusions reached at the June Committee meeting. The Committee is referring the establishment of dollar amount thresholds to the Executive Committee for consideration and discussion at their August 12<sup>th</sup> meeting.

11. **Future Agenda Items**

The next meeting is scheduled for August 27<sup>th</sup> from 1-3 p.m. The following items will be included in the August agenda:

- MTARS Update
- DSA MOU's Development Update
- Contract Manual

12. **Adjournment**

The meeting was adjourned at 1:50 p.m.

DESIGNATED STATE AGENCY  
MEMORANDUM OF UNDERSTANDING

- I. Purpose
  - a. Identify respective roles and responsibilities under DD Act and Lanterman Act
    - i. Discrete/Concurrent: Responsibilities, functions, tasks
- II. DD Act Provisions
  - a. Sections 124, 125, 126 (see excerpts)
- III. Structure
  - a. Background and Purpose
  - b. Statement of Agreement
    - i. General Responsibilities
    - ii. Budget, Fiscal, Accounting, Contract Administration
    - iii. Personnel
    - iv. General Administrative Support
    - v. Legal Assistance
    - vi. Delegation
    - vii. Council Authority
- IV. Process
  - a. Review, approval, AIDD

# DRAFT

## MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA STATE COUNCIL ON DEVELOPMENTAL DISABILITIES AND THE CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY

### 1. BACKGROUND AND PURPOSE

The California State Council on Developmental Disabilities (hereafter referred to as the COUNCIL) is established consistent with the federal Developmental Disabilities Assistance and Bill of Rights Act as amended (PL 106-402, hereafter referred to as the DD Act), and by the California Lanterman Act (W&I Code Sec. 4520 et seq.). Consistent with the DD Act, the Legislature has designated the California Health and Human Services Agency (hereafter referred to as AGENCY) as the designated state agency to provide fiscal, administrative and other support services to the Council as authorized by the DD Act [Sec.125 (d)]<sup>1</sup>. Pursuant to Section 125(d)(3)(G), the purpose of this memorandum, requested by the Council, is to clarify the respective roles and responsibilities of the designated state agency and the Council as authorized by the DD Act and the California Lanterman Act. [See Sec. 125(d)(3)(G); W&I Code Sec. 4520 et seq.].

#### 1.1 The State Council on Developmental Disabilities

The Council is established pursuant to federal law to engage in advocacy, capacity building and systemic change activities 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 to individuals with disabilities. [Sec. 125(a)]

#### 1.2 The Designated State Agency: California Health and Human Services Agency

The designated state agency has the responsibility of providing fiscal, administrative and other support services to the Council. The California Health and Human Services Agency is the designated state agency and adheres to the criteria in the DD Act that such agency shall not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State Plan development or plan implementation of the Council. [Sec.124(c)(5)(L)]

As permitted by federal law, contributions by the designated state agency to provide support services to the Council may be counted as part of the State of California's non-Federal share of the cost of projects supported by the DD Act. [Sec. 126(c)(2)(B)].

### 2. STATEMENT OF AGREEMENT

#### 2.1 GENERAL RESPONSIBILITIES

##### 2.11 The State Council on Developmental Disabilities

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<sup>1</sup> All statutory references, unless otherwise noted, are to the Public Law 106-402 (42 USC 15001 et seq.).

#### A. Advocacy, Capacity Building and Systemic Change Activities

The Council is the State of California entity responsible for carrying out all responsibilities specified in PL 106-402, and shall conduct or support programs, projects, and activities that carry out the purpose of the DD Act, including advocacy, capacity building and systemic change activities. [Sec.125(c)(2)]

#### B. State Plan Development, Implementation and Monitoring

The Council shall submit to the Secretary of U.S. Health and Human Services the State Plan required under the DD Act. The Council is responsible for development, implementation, and monitoring of the State Plan. [Sec.125(c)(3) and (4)]

#### C. Reports

The Council shall develop and submit to the Secretary of the U.S. Department of Health and Human Services all required reports on Council activities. [Sec.125(c)(7)]

#### D. Review of Designated State Agency

As required by the DD Act, the Council shall periodically review the designated state agency with respect to the activities carried out under the DD Act and make any recommendations for change to the Governor. [Sec.125(c)(6)]

#### E. Timeliness

The Council shall perform all responsibilities in a timely manner that meets the requirements of the Administration on Intellectual and Developmental Disabilities and/or the DSA.

### **2.12 The Designated State Agency: California Health and Human Services Agency**

#### A. Support Services

AGENCY as the designated state agency, is responsible for providing required assurances, fiscal, administrative and other support services as requested by and negotiated with the Council pursuant to Sections 125 (d)(1) and 125(d)(3)(A) of the DD Act.

#### B. Records, Access and Financial Reports

AGENCY shall ensure that access to records and such records are kept as the Administration on Intellectual and Developmental Disabilities and the Council determine necessary, and shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, liquidation, and the Federal and non-Federal share pursuant to the DD Act. [Sec.125 (d)(3)(D)]

### C. Communication

AGENCY shall ensure that all administrative communications and instructions it receives on behalf of the Council from any State of California office or other entity are routed directly to the Council.

### D. Requests for Information

AGENCY shall route any requests for information or reports concerning the Council's activities, budget and contracts directly to the Council in a timely manner.

AGENCY will not develop and submit information and reports concerning the Council that are requested by a State of California agency, the Legislature, or other entity without the Council's knowledge and approval.

### E. Assurances

AGENCY shall assist the Council in obtaining the assurances required by the DD Act and in ensuring that the Council's fiscal and administrative processes are conducted in a manner consistent with state law. [Sec.125 (d)(3)(F)]

AGENCY shall assist in ensuring that the State Plan is consistent with State Law. [Sec. 125(d)(3)(F).]

### F. Timeliness

AGENCY will provide services pursuant to this memorandum and respond to requests in a timely manner.

### G. Confidentiality

AGENCY, including any entity delegated a responsibility pursuant to this memorandum, will maintain confidentiality and will not disclose any confidential information of the Council except as necessary to carry out its duties and with prior written consent.

## **2.2 BUDGET, FISCAL, ACCOUNTING, AND CONTRACT ADMINISTRATION**

### **2.21 The State Council on Developmental Disabilities**

A. The Council shall prepare, approve, and implement a budget using amounts paid to the State of California under the DD Act to fund and implement all programs, projects, and activities. The Council will develop and forward budget information on State of California budget forms for inclusion in the State of California budget process. [Sec.125(c)(8)]

B. The Council shall direct the expenditure of funds for grants, contracts, interagency agreements, and other activities consistent with federal and State administrative procedures. [Sec.125(c)(8)(C)]

C. The Council shall conduct all contract preparation, oversee processing of Council contracts and maintain a tracking system for all Council contract information, consistent with requirements of the State of California contracting rules.

D. The Council shall complete supporting documentation for, track and approve all invoices and reimbursement requests for Council funds.

E. The Council shall develop and submit all Council budgetary requests in accordance with State of California procedures.

F. The Council shall submit all necessary budget, fiscal, accounting and contract documents in accordance with State of California procedures.

G. The Council shall facilitate the payment of funds to the State of California under the DD Act for functions of AGENCY on behalf of the Council, but not to exceed \$50,000 per fiscal year. [Sec. 124(c)(5)(B)(vi)]

## **2.22 The Designated State Agency: California Health and Human Services Agency**

A. AGENCY shall route to the Council any communications and information concerning fiscal and contract procedures relating to the Council.

B. AGENCY shall assist the Council by processing fiscal and contract transactions, provided that AGENCY shall not encumber any funds available to the Council, transfer any funds between Council budget categories or from the Council to any other entity, or otherwise initiate charges or expenses against funds available to the Council without specific authorization in advance by the Council.

C. AGENCY shall process Council contracts, as necessary.

D. AGENCY shall process or ensure processing of all Council-approved reimbursement requests.

E. AGENCY shall track or ensure tracking of matching funds on Council-approved reimbursement requests for federal reports.

F. AGENCY shall process or ensure processing of the federal draw, receive, account for, and disperse funds on behalf of the Council. [Sec. 125(d)(3)(C)(i)]

G. AGENCY shall provide or assist the Council in securing the non-federal share of the cost of projects as required by federal law.

H. AGENCY shall prepare or ensure the preparation of the federal ADD-02B expenditure report for the Council's review and approval.

I. AGENCY shall provide or ensure the provision of 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 of California under the DD Act [Sec.125(d)(3)(C)(ii)].

J. AGENCY shall provide or ensure provision of cost centers, accounts, encumbrances and reports on costs and other support documentation for Council budget preparation and for other Council fiscal management needs.

K. AGENCY shall provide contract, reimbursement and accounting services in a timely manner.

## **2.3 PERSONNEL ADMINISTRATION**

### **2.31 The State Council on Developmental Disabilities**

A. The Council shall develop its personnel requests consistent with California Department of Human Resources, State Personnel Board and State of California merit system laws, regulations and procedures. Council recruitment and hiring of staff shall be consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be consistent with State of California law and personnel policies.

B. The Council is responsible, consistent with State of California government employment laws, for recruiting and hiring an Executive Director of the Council, and supervising and annually evaluating the Executive Director.

C. The Council Executive Director is responsible for developing personnel requests for Council staff positions, hiring, supervising, and annually evaluating the staff of the Council in accordance with State of California civil service and merit system rules [Sec.125(c)(9)].

D. The Council staff are responsible for assisting the Council in carrying out its duties under the DD Act and shall not be assigned other duties by AGENCY or any other State of California agency or office unless pursuant to an agreement or other authorization approved by the Council and consistent with the DD Act and applicable law. [Sec.125(c)(10)]

E. The Council shall complete all personnel functions in a timely manner.

### **2.32 The Designated State Agency: California Health and Human Services Agency**

A. AGENCY shall route communications and information concerning State personnel procedures to the Council.

B. AGENCY shall assist the Council by processing personnel transactions in accordance with State of California civil service, merit system, and other government employment rules and procedures.

C. AGENCY shall ensure that records regarding Council personnel, insurance information, benefits tracking, and longevity are maintained.

D. AGENCY shall perform payroll functions for the Council, processing payroll deductions and transactions, consistent with state and federal requirements.

E. AGENCY shall complete all personnel functions in a timely manner.

## **2.4 GENERAL ADMINISTRATIVE SUPPORT**

### **2.41 The State Council on Developmental Disabilities**

A. The Council shall follow State of California policies and procedures for purchase of supplies and equipment.

B. The Council shall approve and submit Council travel reimbursement requests.

C. The Council shall determine its acquisitions or other purchases according to its needs.

D. The Council shall determine its information technology services and support according to its needs.

E. The Council shall request data and/or other information as needed to complete the State Plan and state and federal reports or carry out its work.

F. The Council shall complete all general administrative functions in a timely manner.

### **2.42 The Designated State Agency: California Health and Human Services Agency**

A. AGENCY shall route communications and information concerning State of California purchasing procedures to the Council.

B. AGENCY shall process requests for purchase of equipment and supplies deemed necessary by the Council for the operation of its office.

C. AGENCY shall process travel authorizations and reimbursement requests for the Council, as necessary.

D. AGENCY shall provide or ensure the provision of data requests and information requests necessary for the Council to carry out its work.

E. AGENCY shall complete all general administrative functions in a timely manner.

**2.5 LEGAL ASSISTANCE**

**2.51 The State Council on Developmental Disabilities**

The Council shall request consultation with legal staff through the Agency or legal staff of other State of California departments or offices, or purchase private legal counsel as needed.

**2.52 The Designated State Agency: California Health and Human Services Agency**

AGENCY shall allow the Council to seek legal assistance when appropriate from the Agency or legal staff of other State of California departments or offices, or purchase private legal counsel as determined necessary by the Council's Executive Committee.

**3. PERFORMANCE OF RESPONSIBILITIES**

AGENCY may delegate one or more of its responsibilities to a department it oversees, provided AGENCY retains authority over, and responsibility for, the department's activities in carrying out the delegated responsibility or responsibilities.

The Council may use or contract with agencies other than AGENCY to perform the functions of AGENCY provided there is agreement between the Council and AGENCY. [Sec. 125(d)(4)(B)]

**4. COUNCIL AUTHORITY**

Nothing in this Memorandum of Understanding limits the Council's authority to engage in activities funded using moneys other than those amounts paid to the State of California under the DD Act provided such activities are consistent with applicable federal and state law.

**5. TERMINATION OR AMENDMENT OF THE MEMORANDUM OF UNDERSTANDING**

This memorandum shall become effective upon the signature of all parties and may be modified or terminated with a thirty-day notice and with written agreement by all parties.

\_\_\_\_\_  
Mike Clark  
Interim Executive Director  
State Council on Developmental Disabilities

Date\_\_\_\_\_

\_\_\_\_\_  
Molly Kennedy

Date\_\_\_\_\_

Chairperson  
State Council on Developmental Disabilities

\_\_\_\_\_  
Diana S. Dooley  
Secretary  
California Health and Human Services Agency

Date \_\_\_\_\_

(4) **REALLOTMENT OF REDUCTIONS.**—The Secretary shall similarly reallocate the total of the reductions among the States whose proportionate amounts were not so reduced.

(5) **TREATMENT.**—Any amount reallocated to a State under this subsection for a fiscal year shall be deemed to be a part of the allotment of the State under subsection (a) for such fiscal year.

42 USC 15023.

**SEC. 123. PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION, AND SERVICES.**

(a) **STATE PLAN EXPENDITURES.**—From each State's allotments for a fiscal year under section 122, the Secretary shall pay to the State the Federal share of the cost, other than the cost for construction, incurred during such year for activities carried out under the State plan approved under section 124. The Secretary shall make such payments from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend for the cost under the State plan. The Secretary shall make such adjustments as may be necessary to the payments on account of previously made underpayments or overpayments under this section.

(b) **DESIGNATED STATE AGENCY EXPENDITURES.**—The Secretary may make payments to a State for the portion described in section 124(c)(5)(B)(vi) in advance or by way of reimbursement, and in such installments as the Secretary may determine.

42 USC 15024.

**SEC. 124. STATE PLAN.**

(a) **IN GENERAL.**—Any State desiring to receive assistance under this subtitle shall submit to the Secretary, and obtain approval of, a 5-year strategic State plan under this section.

(b) **PLANNING CYCLE.**—The plan described in subsection (a) shall be updated as appropriate during the 5-year period.

(c) **STATE PLAN REQUIREMENTS.**—In order to be approved by the Secretary under this section, a State plan shall meet each of the following requirements:

(1) **STATE COUNCIL.**—The plan shall provide for the establishment and maintenance of a Council in accordance with section 125 and describe the membership of such Council.

(2) **DESIGNATED STATE AGENCY.**—The plan shall identify the agency or office within the State designated to support the Council in accordance with this section and section 125(d) (referred to in this subtitle as a "designated State agency").

(3) **COMPREHENSIVE REVIEW AND ANALYSIS.**—The plan shall describe the results of a comprehensive review and analysis of the extent to which services, supports, and other assistance are available to individuals with developmental disabilities and their families, and the extent of unmet needs for services, supports, and other assistance for those individuals and their families, in the State. The results of the comprehensive review and analysis shall include—

(A) a description of the services, supports, and other assistance being provided to individuals with developmental disabilities and their families under other federally assisted State programs, plans, and policies under which the State operates and in which individuals with developmental disabilities are or may be eligible to participate, including particularly programs relating to the areas of emphasis, including—

(i) medical assistance, maternal and child health care, services for children with special health care needs, children's mental health services, comprehensive health and mental health services, and institutional care options;

(ii) job training, job placement, worksite accommodation, and vocational rehabilitation, and other work assistance programs; and

(iii) social, child welfare, aging, independent living, and rehabilitation and assistive technology services, and such other services as the Secretary may specify;

(B) a description of the extent to which agencies operating such other federally assisted State programs, including activities authorized under section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012), pursue interagency initiatives to improve and enhance community services, individualized supports, and other forms of assistance for individuals with developmental disabilities;

(C) an analysis of the extent to which community services and opportunities related to the areas of emphasis directly benefit individuals with developmental disabilities, especially with regard to their ability to access and use services provided in their communities, to participate in opportunities, activities, and events offered in their communities, and to contribute to community life, identifying particularly—

(i) the degree of support for individuals with developmental disabilities that are attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may exclude individuals with developmental disabilities from receiving services described in this clause;

(iii) the barriers that impede full participation of members of unserved and underserved groups of individuals with developmental disabilities and their families;

(iv) the availability of assistive technology, assistive technology services, or rehabilitation technology, or information about assistive technology, assistive technology services, or rehabilitation technology to individuals with developmental disabilities;

(v) the numbers of individuals with developmental disabilities on waiting lists for services described in this subparagraph;

(vi) a description of the adequacy of current resources and projected availability of future resources to fund services described in this subparagraph;

(vii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are in facilities receive (based in part on each independent review (pursuant to section 1902(a)(30)(C) of the Social

Security Act (42 U.S.C. 1396a(a)(30)(C))) of an Intermediate Care Facility (Mental Retardation) within the State, which the State shall provide to the Council not later than 30 days after the availability of the review); and

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

(D) a description of how entities funded under subtitles C and D, through interagency agreements or other mechanisms, collaborated with the entity funded under this subtitle in the State, each other, and other entities to contribute to the achievement of the purpose of this subtitle; and

(E) the rationale for the goals related to advocacy, capacity building, and systemic change to be undertaken by the Council to contribute to the achievement of the purpose of this subtitle.

(4) **PLAN GOALS.**—The plan shall focus on Council efforts to bring about the purpose of this subtitle, by—

(A) specifying 5-year goals, as developed through data driven strategic planning, for advocacy, capacity building, and systemic change related to the areas of emphasis, to be undertaken by the Council, that—

(i) are derived from the unmet needs of individuals with developmental disabilities and their families identified under paragraph (3); and

(ii) include a goal, for each year of the grant, to—

(I) establish or strengthen a program for the direct funding of a State self-advocacy organization led by individuals with developmental disabilities;

(II) support opportunities for individuals with developmental disabilities who are considered leaders to provide leadership training to individuals with developmental disabilities who may become leaders; and

(III) support and expand participation of individuals with developmental disabilities in cross-disability and culturally diverse leadership coalitions; and

(B) for each year of the grant, describing—

(i) the goals to be achieved through the grant, which, beginning in fiscal year 2002, shall be consistent with applicable indicators of progress described in section 104(a)(3);

(ii) the strategies to be used in achieving each goal; and

(iii) the method to be used to determine if each goal has been achieved.

(5) **ASSURANCES.**—

(A) **IN GENERAL.**—The plan shall contain or be supported by assurances and information described in subparagraphs (B) through (N) that are satisfactory to the Secretary.

(B) **USE OF FUNDS.**—With respect to the funds paid to the State under section 122, the plan shall provide assurances that—

(i) not less than 70 percent of such funds will be expended for activities related to the goals described in paragraph (4);

(ii) such funds will contribute to the achievement of the purpose of this subtitle in various political subdivisions of the State;

(iii) such funds will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the funds paid under section 122 are provided;

(iv) such funds will be used to complement and augment rather than duplicate or replace services for individuals with developmental disabilities and their families who are eligible for Federal assistance under other State programs;

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

(vi) at the request of any State, a portion of such funds provided to such State under this subtitle for any fiscal year shall be available to pay up to ½ (or the entire amount if the Council is the designated State agency) of the expenditures found to be necessary by the Secretary for the proper and efficient exercise of the functions of the designated State agency, except that not more than 5 percent of such funds provided to such State for any fiscal year, or \$50,000, whichever is less, shall be made available for total expenditures for such purpose by the designated State agency; and

(vii) not more than 20 percent of such funds will be allocated to the designated State agency for service demonstrations by such agency that—

(I) contribute to the achievement of the purpose of this subtitle; and

(II) are explicitly authorized by the Council.

(C) **STATE FINANCIAL PARTICIPATION.**—The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the plan.

(D) **CONFLICT OF INTEREST.**—The plan shall provide an assurance that no member of such Council will cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(E) **URBAN AND RURAL POVERTY AREAS.**—The plan shall provide assurances that special financial and technical assistance will be given to organizations that provide community services, individualized supports, and other forms of assistance to individuals with developmental disabilities who live in areas designated as urban or rural poverty areas.

(F) PROGRAM ACCESSIBILITY STANDARDS.—The plan shall provide assurances that programs, projects, and activities funded under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulations and all applicable Federal and State accessibility standards, including accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and the Fair Housing Act (42 U.S.C. 3601 et seq.).

(G) INDIVIDUALIZED SERVICES.—The plan shall provide assurances that any direct services provided to individuals with developmental disabilities and funded under the plan will be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individual.

(H) HUMAN RIGHTS.—The plan shall provide assurances that the human rights of the individuals with developmental disabilities (especially individuals without familial protection) who are receiving services under programs assisted under this subtitle will be protected consistent with section 109 (relating to rights of individuals with developmental disabilities).

(I) MINORITY PARTICIPATION.—The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs funded under this subtitle is geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity.

(J) EMPLOYEE PROTECTIONS.—The plan shall provide assurances that fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) will be provided to protect the interests of employees affected by actions taken under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and provide training and retraining of such employees where necessary, and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

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

(L) NONINTERFERENCE.—The plan shall provide assurances that the designated State agency, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State plan development, or plan implementation of the Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 125(d)(3).

(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.** 42 USC 15025.

(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 non-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

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) recuse 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)  $\frac{1}{3}$  shall be individuals with developmental disabilities described in paragraph (3)(A)(i);

(B)  $\frac{1}{3}$  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)  $\frac{1}{3}$  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 community members) 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,

3012), and entities carrying out other similar councils, entities, or committees);

(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 contribute 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(b). 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

concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or the legislature, as the case may be) regarding a preferred 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 change 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(c).

(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.—

(i) IN GENERAL.—The Secretary shall provide amounts to a State under section 124(c)(5)(B)(vi) for a 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)

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

(ii) EXCEPTION.—Clause (i) shall not apply in a 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.

42 USC 15026.

**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's 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—

(1) any portion of such cost that is financed by Federal funds provided under any provision of law other than section 122; and

(2) 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.—

(1) IN-KIND CONTRIBUTIONS.—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, 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 Council under this subtitle may vary.

**SEC. 127. WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION, AND SERVICES.** 42 USC 15027.

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 (5)(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.**

42 USC 15028.

(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 on 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.

