

2003 and apply to allotments beginning in fiscal year 2004.”

**§ 15023. Payments to the States for planning, administration, and services**

**(a) State plan expenditures**

From each State’s allotments for a fiscal year under section 15022 of this title, 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 15024 of this title. 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 15024(c)(5)(B)(vi) of this title in advance or by way of reimbursement, and in such installments as the Secretary may determine.

(Pub. L. 106-402, title I, §123, Oct. 30, 2000, 114 Stat. 1696.)

**§ 15024. State plan**

**(a) In general**

Any State desiring to receive assistance under this part 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) of this section 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 15025 of this title 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 15025(d) of this title (referred to in this part 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 3003 or 3004 of title 29, 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 1396a(a)(30)(C) of this title) 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 1396n(c) of this title) receive;

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

#### (4) Plan goals

The plan shall focus on Council efforts to bring about the purpose of this part, 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 15004(a)(3) of this title;

(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 15022 of this title, 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 part 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 15022 of this title 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 part 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 part; 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 794d of title 29, 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 part will be protected consistent with section 15009 of this title (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 part 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 part 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 15025(d)(3) of this title.

**(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 part.

**(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) of this section 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.

(Pub. L. 106-402, title I, §124, Oct. 30, 2000, 114 Stat. 1696; Pub. L. 108-364, §3(a)(1), Oct. 25, 2004, 118 Stat. 1736.)

## REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(5)(F), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Fair Housing Act, referred to in subsec. (c)(5)(F), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to sub-

chapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

2004—Subsec. (c)(3)(B). Pub. L. 108-364 substituted “section 3003 or 3004 of title 29” for “section 3011 or 3012 of title 29”.

**§ 15025. State Councils on Developmental Disabilities and designated State agencies**

**(a) In general**

Each State that receives assistance under this part shall establish and maintain a Council to undertake advocacy, capacity building, and systemic change activities (consistent with subsections (b) and (c) of section 15001 of this title) 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 part. The Council shall have the authority to fulfill the responsibilities described in subsection (c) of this section.

**(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 part, 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 part.

**(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 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.

**(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 15024(c)(5)(D) of this title.

**(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).