Public Law 98–527
98th Congress

An Act

To revise and extend programs for persons with developmental disabilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Developmental Disabilities Act of 1984".

Sec. 2. Title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 is amended to read as follows:

"TITLE I—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

"PART A—GENERAL PROVISIONS

"SHORT TITLE

"Sec. 100. This title may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act'.

"FINDINGS AND PURPOSES

"Sec. 101. (a) The Congress finds that—

"(1) there are more than two million persons with developmental disabilities in the United States;

"(2) individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than other handicapped individuals who generally have had a normal developmental period on which to draw during the rehabilitation process;

"(3) persons with developmental disabilities often require specialized lifelong services to be provided by many agencies in a coordinated manner in order to meet the persons' needs;

"(4) generic service agencies and agencies providing specialized services to disabled persons tend to overlook or exclude persons with developmental disabilities in their planning and delivery of services; and

"(5) it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care, to meet the needs of persons with developmental disabilities.

"(b)(1) It is the overall purpose of this title to assist States to (A) assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community, and (B) establish and operate a system which coordinates, monitors, plans, and evaluates services which ensures the protection of the legal and human rights of persons with developmental disabilities.

"(2) The specific purposes of this title are—
"(A) to assist in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs are not otherwise met under the Rehabilitation Act of 1973 or other health, education, or welfare programs;

(B) to assist States in appropriate planning activities;

(C) to make grants to States and public and private, nonprofit agencies to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel with respect to providing services to persons with developmental disabilities;

(D) to make grants to university affiliated facilities to assist them in administering and operating demonstration facilities for the provision of services to persons with developmental disabilities and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

(E) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities.

"DEFINITIONS"

"Sec. 102. For purposes of this title:

(1) The term 'State' includes Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

(2) The term 'facility for persons with developmental disabilities' means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities.

(3) The terms 'nonprofit facility for persons with developmental disabilities' and 'nonprofit private institution of higher learning' mean, respectively, a facility for persons with developmental disabilities and an institution of higher learning which are owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual. The term 'nonprofit private agency or organization' means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations.

(4) The term 'construction' includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical, transportation, and recreation facilities); including architect's fees, but excluding the cost of offsite improvements and the cost of the acquisition of land.

(5) The term 'cost of construction' means the amount found by the Secretary to be necessary for the construction of a project.

(6) The term 'title', when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project."
"(7) The term 'developmental disability' means a severe, chronic disability of a person which—
(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
(B) is manifested before the person attains age twenty-
(C) is likely to continue indefinitely;
(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-
care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"(8) The term 'independence' means the extent to which persons with developmental disabilities exert control and choice over their own lives.

"(9) The term 'productivity' means—
(A) engagement in income-producing work by a person with developmental disabilities which is measured through improvements in income level, employment status, or job advancement, or
(B) engagement by a person with developmental disabilities in work which contributes to a household or community.

"(10) The term 'integration' means—
(A) the—
(i) use by persons with developmental disabilities of the same community resources that are used by and available to other citizens, and
(ii) participation by persons with developmental disabilities in the same community activities in which nonhandicapped citizens participate, together with regular contact with nonhandicapped citizens, and
(B) the residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nonhandicapped citizens in their communities.

"(11A) The term 'services for persons with developmental disabilities' means—
(I) priority services; and
(II) any other specialized services or special adaptations of generic services for persons with developmental disabilities, including diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the person with such disability and the family of such person, protective and other social and societal services, information and referral services, follow-along services, nonvocational social-development services, transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities.

"(B) The term 'service activities' includes, with respect to a priority service or a service described in subparagraph (A)(ii)—
(I) the provision of specialized services in the area which respond to unmet needs of persons with developmental disabilities;
(II) model service programs in the area;
(III) activities to increase the capacity of agencies to provide services in the area;
(IV) the coordination of the provision of services in the area with the provision of other services;
(V) outreach to individuals for the provision of services in the area;
(VI) the training of personnel, including parents of persons with developmental disabilities, professionals, and volunteers, to provide services in the area; and
(VII) similar activities designed to expand the use and availability of services in the area.

"(C) The term 'priority services' means alternative community living arrangement services, employment related activities, child development services, and case management services.

"(D) The term 'alternative community living arrangement services' means such services as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements in the community, including in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, recreation and socialization services, and staff training, placement, and maintenance services.

"(E) The term 'employment related activities' means such services as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings, including such services as employment preparation and vocational training leading to supported employment, incentive programs for employers who hire persons with developmental disabilities, services to assist transition from special education to employment, and services to assist persons with developmental disabilities to enter the labor force.

"(F) The term 'supported employment' means paid employment which—
(I) is for persons with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;
(II) is conducted in a variety of settings, particularly settings in which persons without disabilities are employed; and
(III) is supported by any activity needed to sustain paid work by persons with disabilities, including supervision, training, and transportation.

"(G) The term 'child development services' means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services, counseling and training of parents, early identification of developmental disabilities, and diagnosis and evaluation of such developmental disabilities.
“(H) The term ‘case management services’ means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services. Such term includes—

(i) follow-up services which ensure, through a continuing relationship, lifelong, if necessary, between an agency or provider and a person with a developmental disability and the person’s immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the person’s progress.

(12) The term ‘satellite center’ means a public or private nonprofit entity which—

(A)i is affiliated with one or more university affiliated facilities;

(B) functions as a community or regional extension of such university affiliated facility or facilities in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available; and

(C) may engage in the activities described in subparagraphe (A), (B), or (C) of paragraph (13); or

(13) The term ‘university affiliated facility’ means a public or nonprofit facility which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

(A) Interdisciplinary training for personnel concerned with developmental disabilities which is conducted at the facility and through outreach activities.

(B) Demonstration of—

(i) exemplary services relating to persons with developmental disabilities in settings which are integrated in the community; and

(ii) technical assistance to generic and specialized agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.

(C) Dissemination of findings relating to the provision of services under subparagraph (B) of this paragraph, and

(ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

(14) The term ‘Secretary’ means the Secretary of Health and Human Services.

(15) The term ‘State Planning Council’ means a State Planning Council established under section 124.

“FEDERAL SHARE

“Sec. 103. (a) The Federal share of all projects in a State supported by an allotment to the State under part B may not exceed 75 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, except that in the cases of projects located in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects, as determined by the Secretary.

(b) The Federal share of any project to be provided through grants under part D may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, except that if the project is located in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project’s necessary cost as so determined.

(c) The non-Federal share of the cost of any project assisted by a grant or allotment under this title may be provided in kind.

(d) For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of a State or by a nonprofit private entity shall, subject to such limitations and conditions as the Secretary may prescribe, be deemed to be expenditures by such State in the case of a project under part B or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part D.

“RECORDS AND AUDIT

“Sec. 104. (a) Each recipient of assistance under this title shall keep such records as the Secretary shall prescribe, including (1) records which fully disclose (A) the amount and disposition by such recipient of the proceeds of such assistance, (B) the total cost of the project or undertaking in connection with which such assistance is given or used, and (C) the amount of such portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this title that are pertinent to such assistance.

“RECOVERY

“Sec. 105. If any facility with respect to which funds have been paid under part B or D shall, at any time within twenty years after the completion of construction—

(1) sell or transfer to any person, agency, or organization which is not a public or nonprofit private entity, or

(2) cease to be a public or other nonprofit facility for persons with developmental disabilities,
the United States shall be entitled to recover from either the transferee or the transferor (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment. The Secretary, in accordance with regulations prescribed by the Secretary, may, upon finding good cause thereof, release the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities.

"STATE CONTROL OF OPERATIONS"

"Sec. 106. Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under this title."

"REPORTS"

"Sec. 107. (a) By January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain—

(1) a description of such activities and the accomplishments resulting from such activities;

(2) a comparison of such accomplishments with the goals, objectives, and proposed activities specified by the State in the State plan submitted under section 122 for such fiscal year;

(3) an accounting of the manner in which funds paid to a State under part B for a fiscal year were expended.

(b) By January 1 of each year, each protection and advocacy system established in a State pursuant to part C shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year.

(c)(1) By April 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on the Handicapped a report which describes—

(A) the activities and accomplishments of programs supported under parts B, C, D, and E of this title; and

(B) the progress made in States in improving the independence, productivity, and integration into the community of persons with developmental disabilities and any activities or services needed to improve such independence, productivity, and integration.

(2) In preparing the report required by this subsection, the Secretary shall use and include information submitted to the Secret-

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"RESPONSIBILITIES OF THE SECRETARY"

"Sec. 108. (a) The Secretary, not later than one hundred eighty days after the date of enactment of this title, shall promulgate such regulations as may be required for the implementation of such amendments.

(b) Within ninety days after the date of enactment of the Developmental Disabilities Act of 1964, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the Administration for Developmental Disabilities of the Department of Health and Human Services, the Office of Special Education and Rehabilitation Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for persons with developmental disabilities.

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS"

"Sec. 109. As a condition of providing assistance under this title, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation Act of 1973 which govern employment (1) by State rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.

"RIGHTS OF THE DEVELOPMENTALLY DISABLED"

"Sec. 110. Congress makes the following findings respecting the rights of persons with developmental disabilities:

(1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

(3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—

(A) do not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

(B) do not meet the following minimum standards:

(i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.

(ii) Provision to such persons of appropriate and sufficient medical and dental services.

(4) These rights are in addition to any other rights provided for in this title or other Federal laws.
The purpose of this part is to provide payments to States to plan for, and to conduct activities which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

"STATE PLANS"

42 USC 6022.

"Sec. 122. (a) Any State desiring to take advantage of this part must submit a State plan to the Secretary under this section."
disabilities, and the planning, coordination, and administration of, and the advocacy for, the provision of such services.

"(b) The plan must provide that such federal financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural areas.

"(c) The plan must provide that such services furnished, and the facilities in which they are furnished, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

"(ii) The plan must provide satisfactory assurances that buildings used in connection with the delivery of services assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (known as the Architectural Barriers Act of 1968).

"(D) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 123 (relating to habilitation plans).

"(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this part will be protected consistent with section 110 (relating to rights of the developmentally disabled).

"(D) The plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this title of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

"(E) The plan must provide assurances that the State will provide the State Planning Council with a copy of each annual carryover report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State within 30 days after the completion of each such report or plan.

"(F) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

"(D) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by action under the plan to provide alternative community arrangements, including arrangements designed to preserve employee rights and benefits and to 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.

"(E) The plan must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

"(b) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b). The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

"(e)(1) At the request of any State, a portion of any allotment or allotments of such State under this part for any fiscal year shall be
available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under this section; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or $400,000, whichever is less, shall be available for the total expenditures for such purpose by all of the State agencies designated under subsection (a)(2)(B) for the administration or supervision of the administration of the State plan. Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from the State sources for such year for administration of the State plan approved under this section not less than the total amount expended for such purposes from such sources during the previous fiscal year.

"HABILITATION PLANS"

"Sec. 123. (a) The Secretary shall require as a condition to a State's receiving an allotment under this part that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this part (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b), and (2) provides for an annual review, in accordance with subsection (c), of each such plan.

(b) A habilitation plan for a person with developmental disabilities shall meet the following requirements:

(1) The plan shall be in writing.

(2) The plan shall be developed jointly by (A) a representative of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (B) such person, and (C) where appropriate, such person's parents or guardian or other representative.

(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainment of such goals. Such goals should include the increase or support of independence, productivity, and integration into the community for the person. Such objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a program coordinator who will be responsible for the implementation of such program.

(4) The plan shall contain a statement (in a readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

(c) Each habilitation plan shall be reviewed at least annually by the primary responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

"STATE PLANNING COUNCIL"

"Sec. 124. (a) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advocate for persons with developmental disabilities. The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of that State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Education of the Handicapped Act, and the State agency that administers funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated facility or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services to persons with developmental disabilities in that State.

(2) At least one-half of the membership of each such Council shall consist of persons who—

(A) are persons with developmental disabilities or parents or guardians of such persons, or

(B) are immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1126(a)(8) of the Social Security Act) with respect to such an entity.

(3) Of the members of the Council described in paragraph (2)—

(A) at least one-third shall be persons with developmental disabilities, and

(B)(i) at least one-third shall be individuals described in subparagraph (A) of paragraph (3), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

(b) Each State Planning Council shall—

(1) develop jointly with the State agency or agencies designated under section 122(b)(1)(B) the State plan required by this Act, p. 2670.
part, including the specification of services under section 122(b)(4)(A);

"(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

"(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

Reports. The Secretary, through the Governor, shall submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

"STATE ALLOTMENTS"

42 USC 6025.

"Sec. 125. (a)(1) For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for each year under section 130 among the States on the basis of—

"(A) the population,

"(B) the extent of need for services for persons with developmental disabilities, and

"(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 122 for the provision under such plans of services for persons with developmental disabilities.

"(2) Adjustments in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) may be made not more than once each fiscal year. The Secretary shall notify States of any adjustment made not less than 6 months before the beginning of the fiscal year in which such adjustment is to take effect.

"(OA) Except as provided in paragraph (4), for any fiscal year the allocation under paragraph (1)—

"(i) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $100,000, and

"(ii) to any other State may not be less than the greater of $250,000, or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending September 30, 1981.

"(B) Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 130 for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 130 for such fiscal year bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.

"(4) In any case in which amounts appropriated under section 130 for a fiscal year exceed $47,000,000, the allotment under paragraph (1) for such fiscal year—

"(A) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $150,000; and

"(B) to each of the several States, Puerto Rico, or the District of Columbia, may not be less than $300,000.

"(5) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 122(b)(2)(C), in the State plan of the State.

"(b) Whenever the State plan approved in accordance with section 122 provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which, to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of the State plan. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purposes of the State plan will receive proportionate benefit from the combination.

"(c) Whenever the State plan approved in accordance with section 122 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

"(d) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which it allotted shall be available for reallocation by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than 30 days after the Secretary has published notice of such intention of the Secretary to make such reallocation in the Federal Register), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall not be so reduced. Any amount so reallocated to a State for a fiscal year shall be allotted to be a part of its allotment under subsection (a) for such fiscal year.

"PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES"

42 USC 6026.

"Sec. 126. From each State's allotments for a fiscal year under section 125, the State shall be paid the Federal share of the expenses, other than expenditures for construction, incurred during such fiscal year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.
"WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION AND SERVICES

42 USC 6027.

"Sec. 127. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 125(b)(1) finds that—

(1) there is a failure to comply substantially with any of the provisions required by section 122 to be included in the State plan; or

(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this part, the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under section 125 or, in the discretion of the Secretary, that further payments will not be made to the State under section 125 for activities in 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 payment to the State under section 125, or shall limit further payment under section 125 to such State to activities in which there is no such failure.

"METHADONE TREATMENT PROGRAMS

42 USC 6028.

"Sec. 128. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 122, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds paid to the State under any provision of law other than section 125, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

"APPEALS BY STATES

42 USC 6029.

"Sec. 129. If any State believes that the Secretary's action under section 122(c) or section 127, such State may appeal to the United States court of appeals for the circuit in which its capital is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary thereupon shall file in 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. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside the action of the Secretary. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. 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

"AUTHORIZATION OF APPROPRIATIONS

42 USC 6030.

"Sec. 130. For allotments under section 125, there are authorized to be appropriated $50,250,000 for fiscal year 1986, $58,400,000 for fiscal year 1987, and $66,600,000 for fiscal year 1988.

"PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

"PURPOSE

"Sec. 141. It is the purpose of this part to provide for systems to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 142.

"SYSTEM REQUIRED

"Sec. 142. (a) In order for a State to receive an allotment under part B—

(1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities;

(2) such system must—

(A) have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State and to provide information and referral to programs and services addressing the needs of persons with developmental disabilities;

(B) not be administered by the State Planning Council;

(C) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

(D) except as provided in subsection (b), be able to obtain access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if—

(i) a complaint has been received by the system from or on behalf of such person; and

(ii) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person;

(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(1)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 90 days after the completion of such report or plan; and
"(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

"(b) Prior to October 1, 1985, the provisions of paragraph (2)(D) of subsection (a) shall not apply to any State in which the laws of the State prohibit the system required under such subsection from obtaining access to the records of a person with developmental disabilities under the conditions described in such paragraph.

"(c)(1) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the amounts appropriated under section 143. Allotments and reallocations of such sums shall be made on the same basis as the allotments and reallocations made under the first sentence of subsection (a)(1) and subsection (d) of section 126, except that in any case in which—

"(A) the total amount appropriated under section 143 for a fiscal year is at least $11,000,000,

"(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000; and

"(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than $150,000; or

"(B) the total amount appropriated under section 143 for a fiscal year is less than $11,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than $50,000.

"(2) A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

"(3) Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 143, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 143. For allotments under section 142, there are authorized to be appropriated $13,750,000 for fiscal year 1985, $14,500,000 for fiscal year 1986, and $15,500,000 for fiscal year 1987. The provisions of section 1913 of title 18, United States Code, shall be applicable to all moneys authorized under the provisions of this section.

"PART D—UNIVERSITY AFFILIATED FACILITIES

"PURPOSE

"Sec. 151. The purpose of this part is to provide for grants to university affiliated facilities to assist in the provision of interdisciplinary training, the conduct of service demonstration programs, and the dissemination of information which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

"GRANT AUTHORITY

"Sec. 152. (a) From appropriations under section 154, the Secretary shall make grants to university affiliated facilities to assist in the administration and operation of the activities described in section 102(13).

"(b) The Secretary may make one or more grants to a university affiliated facility receiving a grant under subsection (a) to support one or more of the following activities:

"(1) Conducting—

"(A) a study of the feasibility of establishing a university affiliated facility or a satellite center in an area not served by a university affiliated facility, including an assessment of the needs of the area for such a facility or center; or

"(B) a study of the ways in which such university affiliated facility, singly or jointly with other university affiliated facilities which have received a grant under subsection (a), can assist in establishing one or more satellite centers which would be located in areas not served by a university affiliated facility.

A study under subparagraph (A) or subparagraph (B) shall be carried out in consultation with the State Planning Council for the State in which the university affiliated facility conducting the study is located and the State Planning Council for the State in which the university affiliated facility or satellite center would be established.

"(2) Provision of service-related training to parents of persons with developmental disabilities, professionals, volunteers, or other personnel to enable such parents, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and integration into the community of persons with developmental disabilities.

"(3) Conducting an applied research program designed to produce more efficient and effective methods (A) for the delivery of services to persons with developmental disabilities, and (B) for the training of professionals, paraprofessionals, and parents who provide these services.

The amount of a grant under paragraph (1) may not exceed $25,000.

"(c) The Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. A satellite center which receives a grant under this section may engage in the activities described in subparagraph (A), (B), or (C) of section 102(13).

"(d)(1) The Secretary may not make a grant under subsection (c) for the fiscal year ending on September 30, 1985, to a satellite center
which has not received a grant under such subsection or section 152(1) as such section was in effect prior to October 1, 1984 unless—

(A) a study assisted under subsection (b)(1)(A) of this section has established the feasibility of establishing or operating such center, except that such study shall not be required to contain an assessment of the need for such center in the area in which such center will be located; or

(B) a study assisted under section 121(b)(1) (as in effect prior to October 1, 1984) has established the feasibility of establishing or operating such center.

(2) The Secretary may not make a grant under subsection (a) or subsection (c) for a fiscal year beginning after September 30, 1985, to an university affiliated facility or a satellite center which has not received a grant under this section or section 121 as such section was in effect prior to October 1, 1984 unless—

(A) a study assisted under subsection (b)(1)(A) has been conducted with respect to such facility or center by a university affiliated facility; and

(B) such study has established the feasibility of establishing or operating such facility or center.

**APPLICATIONS**

**Sec. 153.** (a) Not later than six months after the date of the enactment of the Developmental Disabilities Act of 1984, the Secretary shall establish by regulation standards for university affiliated facilities. Such standards shall reflect the special needs of persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 102(13).

(b) No grants may be made under section 152 unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

(i) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds;

(ii) (2A) the applicant's facility is in full compliance with the standards established under subsection (a), or

(B) the applicant is making substantial progress, toward bringing the facility into compliance with such standards, and

(ii) the facility will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a), whichever is later, fully comply with such standards; and

(iii) the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this part will be protected consistent with section 110 (relating to rights of the developmentally disabled).

**AUTHORIZATION OF APPROPRIATIONS**

**Sec. 154.** For the purpose of making grants under section 152, there are authorized to be appropriated $9,000,000 for fiscal year 1985, $9,600,000 for fiscal year 1986, and $10,200,000 for fiscal year 1987.

**PART E—SPECIAL PROJECT GRANTS**

**PURPOSE**

**Sec. 161.** The purpose of this part is to provide for grants for demonstration projects to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

**GRANT AUTHORITY**

**Sec. 162.** (a) The Secretary may make grants to public or nonprofit private entities for—

(1) demonstration projects—

(A) which are conducted in more than one State,

(B) which involve the participation of two or more Federal department or agencies,

(C) which are of national significance, and

which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are multihandicapped or disadvantaged), including Native Americans, Native Hawaiians, and other underserved groups;

(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving protection and advocacy services relating to the State protection and advocacy system described in section 142.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.

(b) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary.
Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 122, and unless the application provides assurances that the human rights of all persons with developmental disabilities (including those persons without familial protection) who are receiving treatment, services, or habilitation under projects assisted under this part will be protected consistent with section 110 (relating to the rights of the developmentally disabled). The Secretary shall provide to the State Planning Council for each State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments on the application.

"(c) Payments under grants under subsection (a) may be made in advance or by way of reimbursement and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) shall be determined by the Secretary.

"AUTHORIZATION OF APPROPRIATIONS"

"Sec. 163. To carry out this part, there are authorized to be appropriated $2,700,000 for fiscal year 1988, $2,800,000 for fiscal year 1989, and $3,100,000 for fiscal year 1990."

STUDY ON INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Sec. 3. (a) Within six months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report containing—

1. recommendations for improving services for mentally retarded persons and persons with developmental disabilities provided under an approved State plan under title XIX of the Social Security Act so that the manner in which such services are provided will increase the independence, productivity, and integration into the community of mentally retarded persons and persons with developmental disabilities;

2. recommendations for services provided for mentally retarded persons and persons with developmental disabilities under waivers granted under section 1915(c) of the Social Security Act so that the manner in which such services are provided can be improved to increase the independence, productivity, and integration into the community of mentally retarded persons and persons with developmental disabilities; and

3. comments by each of the officials specified in clauses (2) through (4) of subsection (b) on the recommendations included in the report pursuant to paragraph (1), including comments concerning the effect of such recommendations, if implemented, on programs carried out by such officials.

(b) The Secretary, in preparing the report required by subsection (a), shall consult with—

1. the Administrator of the Health Care Financing Administration of the Department of Health and Human Services (or the designee of the Administrator);