The original documents are located in Box 30, folder "10/4/75 HR4005 Development Disabilities Amendments of 1975" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
OCT 4 - 1975

Signed 10/4/75

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: October 6

Posted 10/6

To Archives 10/6

October 3, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill H.R. 4005 - Developmental Disabilities Amendments of 1975

Attached for your consideration is H.R. 4005, sponsored by Representative Rogers and thirteen others, which extends through 1978 the Developmental Disabilities program for various services to the severely mentally retarded.

The enrolled bill contains provisions which, while not entirely in line with the Administration's recommendations, do reflect compromise positions deemed acceptable by both HEW and OMB. The authorization levels in the bill are above the Administration's recommendations but both OMB and HEW believe that past experience with these programs indicate that program level can be restrained through the appropriations process.

A detailed analysis of the bill is provided in OMB's enrolled bill report at Tab A.

HEW, OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 4005 at Tab B.

A

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 1 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4005 - Developmental Disabilities Amendments of 1975
Sponsor - Rep. Rogers (D) Florida and 13 others

Last Day for Action

October 6, 1975 - Monday

Purpose

Extends through fiscal year 1978 the appropriation authorizations under the Developmental Disabilities Services and Facilities Construction Act; revises the Act in various respects, including provision of new authority for special project grants, authorization of support for renovation and modernization of university-affiliated facilities and establishment of satellite centers, and provisions to establish and protect the rights of the developmentally disabled.

Agency Recommendations

Office of Management and Budget	Approval
Department of Health, Education, and Welfare	Approval
Department of the Interior	Defers to HEW

Discussion

The Developmental Disabilities (DD) program began as a program for the severely mentally retarded with the passage in 1963 of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. That Act authorized grants for (1) construction and initial staffing of community mental retardation facilities based on a State plan and (2) construction of university-affilated facilities (UAF's) for training personnel and developing service programs for the developmentally disabled.

The program was significantly broadened in 1970 with passage of the Developmental Disabilities Services and Facilities Construction Act of 1970. That Act:

-- expanded the program's coverage to include individuals suffering from cerebral palsy, epilepsy, and other neurological conditions closely related to mental retardation;

-- authorized formula grants to States for planning, administration, construction of facilities, and provision of services; and

-- expanded the UAF program beyond construction to include grants for operating support for interdisciplinary training and demonstrations in UAF's.

Authorizations under the Act expired on June 30, 1974, and the program has been operating under a continuing resolution since that time.

Toward the end of the 93rd Congress, the House and Senate each passed legislation to extend and amend the DD Act, but were unable to resolve their differences. The major disagreement centered around a proposed "Bill of Rights" for persons with DD included as Title II of the Senate bill. Title II had originally been introduced as a separate bill by Senator Javits as a response to widely-publicized poor conditions at the Willowbrook School in New York and in a number of other State institutions for the mentally retarded, and court decisions ensuring the rights of the developmentally disabled to obtain appropriate care and training. This Title would have established in law extremely detailed and rigorous standards for residential and community facilities and agencies serving the developmentally disabled, provided 75% Federal matching funds to assist the facilities in meeting the standards, and cut them off from all Federal funding if they did not do so in 5 years.

The Administration strongly opposed Title II, principally on the grounds that:

-- the standards proposed were too detailed to be placed in law and were unrealistic. Imposed on top of already demanding standards required under Medicaid regulations for all Intermediate Care Facilities for the mentally retarded, they would create confusion among the facilities and could result in disruption, and possibly termination, of services to the developmentally disabled.

-- requiring HEW to develop "performance criteria" for evaluating the progress of each individual receiving services would be infeasible, and the cost of applying such criteria to each person--even if they could be developed--would be prohibitive.

Title II of the enrolled bill is a highly modified compromise which eliminates most of the objectionable features of the original proposal. The final version includes:

-- congressional findings asserting the rights of persons with DD to appropriate treatment, services, and habilitation, and stating that the Federal Government and the States have an obligation to assure that public funds are not provided to programs not meeting certain standards.

-- a requirement that States provide assurances that a habilitation plan is in effect for each person receiving assistance, effective October 1, 1976.

-- a requirement that States establish systems to protect and advocate the rights of persons with DD, effective October 1, 1977.

In its attached views letter on the enrolled bill, HEW states that the provisions of Title II as finally agreed on by the conferees substantially eliminate its earlier concerns and are fully acceptable.

Other major features of the legislation

In both the 93rd and 94th Congresses, the Administration submitted legislation to extend the DD program with a few modifications. The Administration bill submitted on February 19, 1975, would:

-- authorize appropriations through fiscal year 1977 at the 1976 budget level,

-- add "autism" to the definition of DD,

-- provide a special project grant authority to supersede the present authority in the Public Health Service Act and the Rehabilitation Act for DD projects, with a 30% set-aside for projects of national significance.

-- reduce the Federal matching share of State and UAF grants from 70% in fiscal year 1975 to 50% in fiscal year 1977,

-- eliminate construction grants to UAF's, and

-- provide for a comprehensive evaluation of DD services.

A detailed description of the provisions of the enrolled bill is included with the HEW views letter. As it indicates, the bill reflects certain of the Administration proposals and not others.

For example, H.R. 4005 as enrolled incorporates the project grant authority as recommended by the Administration, but with a 25% set-aside for projects of national significance. It also would provide for a comprehensive evaluation system regarding services to the developmentally disabled. In addition, it would revise the definition of the term "developmental disability" to include autism and dyslexia resulting from one of the conditions (mental retardation, cerebral palsy, epilepsy, or related conditions) already covered under the Act.

The enrolled bill also reflects certain congressional concerns about the DD program by requiring studies and reports on:

-- which conditions should be considered as developmental disabilities for purposes of the Act;

-- the adequacy of services provided under other Federal programs for persons with disabilities determined not to be included under the Act;

-- the effectiveness of the standards and "quality assurance" mechanisms applicable under various other Federal programs, and recommendations for such standards and mechanisms for residential facilities and community agencies serving the developmentally disabled.

While the enrolled bill does reflect various compromises by the Congress, it contains certain features which are not consistent with the Administration's recommendations. These features, discussed below, are (1) authorization levels in excess of the budget request, (2) grants to UAF's for renovation, modernization, and administration and operating

costs for non-training activities, and for the establishment of UAF satellite centers, including construction, (3) a non-declining Federal matching share for State and UAF grants, and (4) earmarking of the State grants.

Authorization levels--The following table shows the authorization levels contained in H.R. 4005 for fiscal years 1976, 1977 and 1978, compared with the Administration's actual budget request for 1976 (and estimated for 1977 and 1978):

(Fiscal years, in millions of dollars)

	1976		1977		1978	
	H.R. 4005	Budget	H.R. 4005	Budget	H.R. 4005	Budget
University-affiliated facilities	18	4	21	4	24	4
State formula grants	40	31	50	31	60	31
Special project grants	18	19	22	19	25	19
State advocacy systems	3	--	3	--	3	--
Total	79	54	96	54	112	54

The Administration's bill included appropriation authorizations through fiscal year 1977 at the levels contained in the 1976 Budget. It has been the Administration's position that State and local governments should assume a progressively greater share of the support for the DD program since this program is designed primarily to assist States in coordinating other, much larger resources available to serve the developmentally disabled, and is not intended to become another major alternative source of funding on-going services. HEW believes that the authorizations in the bill represent the lowest possible compromise that could have been expected, since the Senate bill had authorizations almost double those finally agreed on.

We believe it is probable that the program level can be restrained through the appropriations process, in view of past experience. During the fiscal years 1971-73, the

Congress appropriated a total of $55 million for State formula grants and $8.5 million for UAF's, when the authorized levels totaled $295 million and $112 million, respectively.

UAF's and Satellite Centers--The enrolled bill would expand the existing UAF construction authority to encompass the renovation or modernization of buildings. It would also add a new program of construction, renovation, and modernization of facilities of UAF satellite centers to function as community or regional extensions of UAF's in delivering training (including clinical) services in areas not served by a UAF.

The Administration opposed the satellite center concept. The HEW bill proposed funding only demonstration and training grants for UAF's and would have eliminated the UAF construction authority. This proposal reflected the view that the need for additional UAF's for DD has greatly diminished and that continued or enlarged Federal construction authority is no longer justified.

No funds have been appropriated by the Congress for UAF construction since fiscal year 1969. Thus, extension of this funding authority may have no actual effect if the Administration continues to request no funds for construction. Moreover, the enrolled bill provides that funds are to be available for satellite centers only from that portion of any appropriation for UAF's which exceeds $5 million in fiscal years 1976 and 1977 and $8.5 million in 1978. HEW states that it is unlikely that any significant amount of funds will be made available for satellite centers, given anticipated appropriation levels, since the current appropriation for UAF's (demonstration and training grants) is only $4.25 million.

Federal matching share--H.R. 4005 would provide a Federal matching rate of 75% for UAF grants and State formula grants, with a rate of 90% for projects undertaken in rural and urban poverty areas. The Administration's bill would have scaled down the Federal share by 10% a year over the three-year period 1975-1977, from 70% to 50%, consistent with the position that State and local governments should have an increasingly greater responsibility for services to their citizens. It has been our position that the Federal role in the DD program should be to aid the States in planning and developing comprehensive programs for this target group, rather than to

finance expansion of this program into a full-blown provider of services, when much larger resources are available from other programs such as Medicaid.

Earmark for deinstitutionalization--The enrolled bill would provide that 10% of a State's formula allotment in fiscal year 1976, and 30% in each of the next two fiscal years, must be used to develop and implement plans designed to eliminate inappropriate institutionalization. No such provision was included in the Administration's proposal.

Imposition of an earmark on the purposes for which funds may be used hinders the flexibility of a State to utilize those funds most effectively in meeting the State's most serious problems, especially given the relatively small amount of funds involved. Furthermore, such Federal priority-setting is not consistent with the objective of maximizing State and local responsibility for service programs.

Deinstitutionalization and substitution of alternative means of care and supervision, however, are widely regarded as among the most promising avenues for improving the conditions of the developmentally disabled and reducing their maintenance costs. For the near term, at least, it is unlikely that this earmark will burden the States unduly, and HEW believes it is addressed toward a problem the States should appropriately be addressing.

Recommendations

HEW notes that the compromise which is embodied in the enrolled bill was shaped through work with the Congress and interested organizations for more than a year and a half. The Department believes the enrolled bill substantially achieves the goal of extending needed assistance to State and local programs for the developmentally disabled in a manner consistent with the appropriate Federal role.

The Department's letter concludes:

> "The bill does contain features with which we disagree, particularly the high authorization levels and the expanded role of UAF's, but it also conforms in many ways to what we had hoped to achieve in this legislation. Not only would the bill provide for the continuation of the capacity building role of the

Federal government in this field, but through the evaluation and special projects authorities it would provide specific mechanisms whereby we can work with the States to provide for this population the highest level of care and treatment that is attainable through existing technology and resources.

"We therefore recommend that the enrolled bill be approved."

We concur in HEW's recommendation that you approve H.R. 4005. While we continue to have the reservations about the bill which are described above, our concerns about the authorization levels are mitigated by a history of appropriations at about the level of the President's Budget and far below the authorized amounts. We do not believe the other undesirable features of the bill are sufficient to warrant disapproval.

James M. Frey

Assistant Director for
Legislative Reference

Enclosures

B

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SEP 30 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to Mr. Frey's request of September 25, 1975, for a report on H.R. 4005, an enrolled bill "To amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs authorized by that Act."

The enrolled bill would extend the Developmental Disabilities Services and Facilities Construction Act through fiscal year 1978 and would make a number of major substantive amendments to the program. Although, for reasons discussed below, some aspects of the enrolled bill are not consistent with recommendations we have made regarding this legislation, we strongly support the extension of the program and believe that the bill which was finally developed in conference is acceptable. A description of the major features of the bill is enclosed.

Prior to the Senate-House conference on H.R. 4005, the Department sent to all the conferees a letter discussing our concerns with both the House and Senate bills and urging the conference to report out a bill similar to that recommended by the Administration. As indicated in the following discussion of each of the concerns stated in that letter, the conference did take favorable action on a number of our recommendations:

1. Standards for residential and community facilities. Our primary objection to the Senate bill related to title II which would have established far-reaching standards for the provision of services to the developmentally disabled in residential and community facilities. These standards would

have been enforceable through Federal regulations and the sanction of withholding Federal financial assistance to any State program or facility which did not meet the standards. Because the standards would be beyond the present capability of many facilities, their imposition would have resulted in the severe disruption or termination of badly needed services to the intended beneficiaries of several major Federal programs, including Medicaid and Medicare.

The provision finally agreed upon by the conferees substantially eliminates our concerns. Instead of imposing Federally enforceable standards, the enrolled bill contains findings by the Congress as to the rights of persons with developmental disabilities to adequate care and treatment. The moral force of these findings will undoubtedly contribute to the efforts currently being made throughout the country to upgrade the programs and facilities providing care to such persons. The only standards which would be Federally enforceable under the enrolled bill are those requiring (1) the development and implementation by September 30, 1976, of individual habilitation plans and (2) the establishment by October 1, 1977, of State systems to protect and advocate the rights of persons with developmental disabilities. These are matters within the capability of programs assisted under the Act, especially in view of the delayed effective dates for the two provisions. We therefore believe that title II of the enrolled bill is now fully acceptable.

2. Authorization levels. The authorizations of appropriations in the enrolled bill are considerably above the level proposed by the Administration. Whereas we had proposed an annual level of $30,875,000 for the State grant program and $4,250,000 for university affiliated facilities (UAF's), the enrolled bill would authorize for State grants $40,000,000 for fiscal year 1976, increasing to $60,000,000 in fiscal year 1978, and for UAF's a total of $18,000,000 for fiscal year 1976, increasing to $24,000,000 for fiscal year 1978. For special projects the enrolled bill would match

our recommended authorization of $18,000,000 for 1976, but it would rise to $25,000,000 by 1978. While these authorizations are higher than the current budget, they represent the lowest possible compromise that could have been expected in view of the authorizations in the Senate bill, which were almost double those finally agreed upon.

3. University affiliated facilities. The Department had proposed the continuation of support for UAF's only in their role of training persons to work with the developmentally disabled. The enrolled bill would authorize support of service oriented satellite centers associated with UAF's, as well as renovation and construction grants for both UAF's and satellite centers. While we have opposed the satellite center concept, it should be noted that funds would be available for that purpose only from that portion of any appropriation for UAF's which exceeds $5,000,000 in fiscal years 1976 and 1977, and $8,500,000 in 1978. Since the current appropriation for UAF's is only $4,250,000, it is unlikely that any significant amount of funds will be made available for satellite centers given anticipated appropriation levels. With regard to construction, that authority currently exists in the Act, but it has not been funded for the past several years.

4. Evaluation of Services. The enrolled bill requires the Secretary to develop, and the States to implement, a comprehensive system for the evaluation of services provided to persons with developmental disabilities. The Department's bill had proposed such a system, but we objected to the unduly short time--two years--prescribed in the Senate bill for full implementation. We also objected to the extremely broad scope of the Senate provision which would have applied to all services provided to persons with developmental disabilities and would have required the evaluation of factors (such as living environments) which are beyond present technology. The conference was responsive to all of our concerns in this area. The enrolled bill would provide for a four and one-half year time-phased implementation of the evaluation system,

and the scope of the system is limited to the evaluation of services provided through programs assisted under this title. The bill also would provide sufficient flexibility to enable the Department to develop standards for an evaluation system that will be capable of being implemented by the States.

5. Promulgation of regulations. The Senate bill would have required the Department to promulgate regulations implementing these amendments within 90 days of enactment of the bill. The enrolled bill would provide that regulations must be promulgated within 180 days, which is the period of time suggested by the Department.

6. Special projects. The enrolled bill would provide authority for the Secretary to make grants for a broad range of special projects to assist persons with developmental disabilities. The purposes for which these funds could be used would include those contained in the Department's proposal, and, consistent with another recommendation of the Department, this authority would supersede the present authority in the Public Health Service Act and the Rehabilitation Act of 1973 for projects for the developmentally disabled. The enrolled bill would also contain a provision which we favored requiring at least 25 percent of the special project funds to be used for projects of national significance. We opposed the provision in the enrolled bill which requires a certain percentage of State allotment funds (10 percent in 1976 and 30 percent thereafter), to be used for projects designed to eliminate inappropriate institutionalization. Although we feel this provision unwisely restricts the flexibility of States in the administration of their programs, it is directed toward a problem which we believe is appropriate for the States to be addressing.

7. Federal matching rate. The conferees failed to act favorably on our suggestion for a declining Federal matching rate. Instead, the enrolled bill would continue the existing rate of 75 percent, with a rate of 90 percent being applied to projects in poverty areas.

8. Advisory and planning councils. We objected to provisions in the Senate bill which would have inappropriately expanded the role of advisory councils, especially the State planning councils, which under that bill would have been responsible for developing the State plan. The enrolled bill embodies a compromise which, while it would vest in those councils authority to approve, monitor, and evaluate the implementation of the plan, would at least be consistent with the effective administration of the plan by the responsible State agency.

Conclusion. The Department has been working with Congress and interested organizations for more than a year and a half to develop an acceptable bill to extend the Developmental Disabilities program. Through a candid exchange of views in the course of our Congressional testimony and conversations with Committee staff members, the compromise which is embodied in the enrolled bill gradually came into shape. Throughout that process our primary concern has been to have this very worthwhile program extended in a manner which would provide needed assistance to State and local programs for the developmentally disabled, but which would be consistent with what we believe to be the appropriate Federal role. We believe that goal has been substantially achieved in this enrolled bill.

The bill does contain features with which we disagree, particularly the high authorization levels and the expanded role of UAF's, but it also conforms in many ways to what we had hoped to achieve in this legislation. Not only would the bill provide for the continuation of the capacity building role of the Federal government in this field, but through the evaluation and special projects authorities it would provide specific mechanisms whereby we can work with the States to provide for this population the highest level of care and treatment that is attainable through existing technology and resources.

We therefore recommend that the enrolled bill be approved.

Sincerely,

Secretary

Enclosure

MAJOR FEATURES OF H.R. 4005--DEVELOPMENTALLY DISABLED ASSISTANCE AND BILL OF RIGHTS ACT

1. University Affiliated Facilities. Section 105 of the bill revises part B of the Act, relating to university affiliated facilities (UAF's), to authorize the establishment and support of satellite centers to provide services for persons with developmental disabilities in areas not served by a UAF. In addition, the construction authority in part B has been revised to authorize the support of renovation or modernization of buildings used by a UAF, and the construction, renovation, or modernization of buildings to be used as satellite centers. The authorization of appropriations for demonstration and training programs and satellite centers would be $15,000,000 for fiscal year 1976, $18,000,000 for 1977, and $25,000,000 for 1978. The authorization for UAF and satellite center construction under the enrolled bill would be $3,000,000 for each of those years.

2. State Allotments. Section 110 of the enrolled bill would extend the authorization of appropriations for grants to States for programs for persons with developmental disabilities at the level of $40,000,000 for fiscal year 1976, $50,000,000 for 1977, and $60,000,000 for 1978. The bill would also add a new requirement that 10 percent of each State's allotment for fiscal year 1976 must be used to develop and implement plans designed to eliminate inappropriate institutionalization of persons with developmental disabilities. For fiscal years 1977 and 1978 30 percent of the State's allotment must be used for that purpose.

3. State Plans and State Planning Councils. The State plan provision in the Act would be expanded under section 111 of the enrolled bill to require additional planning directed toward such goals as deinstitutionalization; early screening, diagnosis, and evaluation of infants and pre-school children with developmental disabilities; protection of human rights: a detailed design for implementation; and maximum utilization of all available community resources. The requirement for the Secretary to approve all construction projects under the Act

would be eliminated, and the State plan would be required to include provisions relating to adequate planning for any such construction and compliance with Federal construction standards. A separate provision would require the establishment of a State planning council which would supervise development of and approve the State plan, monitor and evaluate implementation thereof, and review and comment on related State plans affecting persons with developmental disabilities.

4. Special Project Grants. Section 120 of the enrolled bill would add a new provision authorizing grants for special projects for persons with developmental disabilities. At least 25 percent of the funds appropriated for this purpose would have to be used for projects of national significance, and the existing provision requiring 10 percent of State allotment funds to be set aside for that purpose would be repealed. A broad list of possible special projects would be specified, and the bill would make clear that this authority is to be in lieu of special projects for persons with developmental disabilities currently funded under the Public Health Service Act and section 304 of the Rehabilitation Act of 1973.

5. Definition of "Developmental Disability". The bill would revise the definition of the term "developmental disability" to include, in addition to disabilities attributable to mental retardation, cerebral palsy, epilepsy or related conditions which are covered under the present definition, those disabilities attributable to autism and dyslexia resulting from one of the above-mentioned conditions. The reference in the current definition to the neurological nature of the disabilities would be eliminated, since it is not clear that all the conditions now included in the definition have a neurological basis.

6. Federal Share. Under the enrolled bill the maximum Federal share for all projects under the Act (including construction) would be 75 percent, except that for projects in rural and urban poverty areas the Federal share could not exceed 90 percent.

7. Promulgation of Regulations. Section 127 of the enrolled bill would require the Secretary to promulgate any regulations necessitated by these amendments not later than 180 days after enactment of the bill.

8. Evaluation. Section 128 of the enrolled bill would add a new provision relating to the evaluation of services for persons with developmental disabilities. That provision would require the Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, to develop, within two years after enactment of the bill, a comprehensive system for the evaluation of services provided to persons with developmental disabilities through programs assisted under the Act. Within six months of that date, each State receiving assistance under the Act would be required to develop a time phased plan for the implementation of such a system. Within two years of that date (a total of 4-1/2 years after enactment) each State would be required to provide assurances to the Secretary that the State is using such a system. The evaluation system developed by the Secretary would have to:

-- provide objective measures of the developmental progress of persons with developmental disabilities using data obtained from individual habilitation plans;

-- provide a method of evaluating programs providing services to such persons, using those objective measures;

-- provide effective means to protect the confidentiality of data relating to such persons.

The Secretary would be required to submit a report to the Congress on the evaluation system, including estimates of costs to the Federal and State governments, not later than two years after enactment of the bill. The Secretary would be authorized to obtain assistance in developing such a system through grants to and contracts with public and nonprofit private entities.

9. Protection of the Rights of Persons with Developmental Disabilities. Title II of the enrolled bill contains three provisions designed to establish and protect the rights of the developmentally disabled:

(A) Section 201 contains Congressional findings respecting the rights of such persons including the right to appropriate treatment, services, and habilitation designed to maximize the developmental potential of the person, but which are provided in the least restrictive setting possible.

The Congress would further find that the Federal government and the States both have an obligation to assure that public funds are not provided to an institutional or other residential programs for persons with developmental disabilities which does not provide appropriate treatment, services and habilitation and which does not meet certain standards, including adequate diet, appropriate medical and dental treatment, prohibition of the use of unnecessary physical and chemical restraints, permission for visits by close relatives at reasonable hours without prior notice, and compliance with adequate fire and safety standards. The Congress would also find that programs for such persons should meet standards designed to assure the most favorable possible outcomes for the persons receiving treatment.

(B) Section 202 of the bill would amend the Act to provide that the Secretary shall require each State, as a condition to participation in the program after September 30, 1976, to provide satisfactory assurances that a habilitation plan is in effect for each person receiving assistance through a program supported under the Act. Such a plan must be written and must be jointly developed by the person receiving treatment (or his parent or guardian) and a representative of the program. The plan must include a statement of the long range and intermediate habilitation goals and objectives for the person and a statement of the services to be provided. Each such plan must be annually reviewed.

(C) Section 203 of the enrolled bill would amend the Act to provide that the Secretary shall require each State, as a condition to participation in the program after October 1, 1977,

to provide satisfactory assurances that the State as of that date will have in effect a system to protect and advocate the rights of persons with developmental disabilities. Such a system must have the authority to pursue legal, administrative, and other appropriate remedies to protect such rights; and it must be independent of the State agency responsible for providing treatment. The bill would authorize the appropriation of $3,000,000 for each of the fiscal years 1976, 1977, and 1978 to assist the States in meeting this requirement.

10. Studies and Reports. Section 204 of the bill would require the Secretary to arrange for the following, directly or through grant or contract:

(A) A review and evaluation of the effectiveness of the standards and quality assurance mechanisms applicable to residential facilities and community agencies under the Rehabilitation Act of 1973; titles I and VI of the Elementary and Secondary Education Act of 1965; titles XVIII, XIX, and XX of the Social Security Act; and any other Federal program administered by the Secretary.

(B) The development of recommendations for standards and quality assurance mechanisms for residential facilities and community agencies serving the developmentally disabled, which standards and mechanisms would be directed toward assuring the rights stated in the above-described Congressional findings.

(C) The development of recommendations for changes in Federal law and regulations, taking into account the above reviews and recommendations.

These studies and recommendations would be required to be reported to the appropriate Congressional committees within 18 months of enactment.

11. Study of the Conditions to be Included as Developmental Disabilities. Section 301 of the bill requires the Secretary, within six months of the enactment of the bill, to determine and report to Congress on which conditions should be considered as developmental disabilities for the purposes of the Act. That

determination would be subject to annual review. The Secretary would also be required to contract for an independent study as to the appropriateness of the determination made by the Secretary and the adequacy of services provided under other Federal programs for persons with disabilities determined not to be included within the scope of the Act. The results of that study would be required to be reported directly to the appropriate Congressional committees within 18 months of enactment of the bill.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 423

Date: October 1 Time: 300pm

FOR ACTION: Art Quern
David Lissy
Max Friedersdorf
Ken Lazarus

cc (for information): Jim Cavanaugh
Jack Marsh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 2 Time: 300pm

SUBJECT:

Enrolled Bill H.R. 4005 - Developmental Disabilities Amendments of 1975

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
____ For Your Comments
____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 26 1975

Dear Mr. Lynn:

This responds to your request for the views of this Department on the enrolled bill H.R. 4005, "To amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs authorized by that Act."

We defer to the views of the Department of Health, Education and Welfare as to whether the bill should be approved by the President.

H.R. 4005 is designed to improve the planning for services and the delivery of those services to persons who suffer from a developmental disability--a severely disabling condition that impedes normal development. The bill provides for cooperation with the States to establish an adequately planned and coordinated service system which is considered essential if such disabled persons are ever to achieve their maximum self-realization.

Sincerely yours,

Royston C. Hughes

Assistant Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C.

THE WHITE HOUSE

WASHINGTON

October 2, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF M.L.

SUBJECT: Enrolled Bill H. R. 4005 - Developmental Disabilities Amendments of 1975

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

THE WHITE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 1 Time: 300pm

FOR ACTION: Art Quern
David Lissy
Max Friedersdorf
Ken Lazarus

cc (for information): Jim Cavanaugh
Jack Marsh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: ~~October 2~~ Time: 500pm ~~300pm~~

SUBJECT:

Enrolled Bill H.R. 4005 - Developmental Disabilities Amendments of 1975

ACTION REQUESTED:

_____ For Necessary Action _____ For Your Recommendations

_____ Prepare Agenda and Brief _____ Draft Reply

_____ For Your Comments _____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend approval. -- Ken Lazarus 10/3/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

To - J. Cavanaugh 10-1-75 11:45 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 1 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4005 - Developmental Disabilities Amendments of 1975
Sponsor - Rep. Rogers (D) Florida and 13 others

Last Day for Action

October 6, 1975 - Monday

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Extends through fiscal year 1978 the appropriation authorizations under the Developmental Disabilities Services and Facilities Construction Act; revises the Act in various respects, including provision of new authority for special project grants, authorization of support for renovation and modernization of university-affiliated facilities and establishment of satellite centers, and provisions to establish and protect the rights of the developmentally disabled.

Agency Recommendations

Office of Management and Budget	Approval
Department of Health, Education, and Welfare	Approval
Department of the Interior	Defers to HEW

Discussion

The Developmental Disabilities (DD) program began as a program for the severely mentally retarded with the passage in 1963 of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. That Act authorized grants for (1) construction and initial staffing of community mental retardation facilities based on a State plan and (2) construction of university-affilated facilities (UAF's) for training personnel and developing service programs for the developmentally disabled.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-473

DEVELOPMENTALLY DISABLED ASSISTANCE AND BILL OF RIGHTS ACT

SEPTEMBER 11, 1975—Ordered to be printed

Mr. STAGGERS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4005]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4005) to amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs authorized by that Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Developmentally Disabled Assistance and Bill of Rights Act".

TITLE I

EXTENSION AND REVISION OF THE DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT

PART A—ONE-YEAR EXTENSION OF EXISTING AUTHORITIES

Extension of Existing Authorities Through Fiscal Year 1975

SEC. 101. (a) Section 122(b) and 131 of the Developmental Disabilities Services and Facilities Construction Act (hereinafter in this Act referred to as the "Act") are each amended by striking out "for the fiscal year ending June 30, 1974" and inserting in lieu thereof "each for the fiscal years ending June 30, 1974, and June 30, 1975".

(b) Section 137(b)(1) of the Act is amended by striking out "and June 30, 1974" and inserting in lieu thereof ", June 30, 1974, and June 30, 1975".

PART B—REVISION OF ASSISTANCE FOR UNIVERSITY AFFILIATED FACILITIES

University Affiliated Facilities

SEC. 105. Part B of the Act is amended to read as follows:

"PART B—UNIVERSITY AFFILIATED FACILITIES

"SUBPART 1—DEMONSTRATION AND TRAINING GRANTS

"Grant Authority

"SEC. 121. (a)(1) From appropriations under section 123, the Secretary shall make grants to university affiliated facilities to assist them in meeting the cost of administering and operating—

"(A) demonstration facilities for the provision of services for persons with developmental disabilities, and

"(B) interdisciplinary training programs for personnel needed to render specialized services for persons with developmental disabilities.

"(2) A university affiliated facility which has received a grant under paragraph (1) may apply to the Secretary for an increase in the amount of its grant under such paragraph to assist it in meeting the cost of conducting a feasibility study of the ways in which it, singly or jointly with other university affiliated facilities which have received a grant under paragraph (1), can establish and operate one or more satellite centers which would be located in areas not served by a university affiliated facility and which would provide, in coordination with demonstration facilities and training programs for which a grant was made under paragraph (1), services for persons with developmental disabilities. If the Secretary approves an application of a university affiliated facility under this paragraph for such a study, the Secretary may for such study increase the amount of the facility's grant under paragraph (1) by an amount not to exceed $25,000. Such a study shall be carried out in consultation with the State Planning Council for the State in which the facility is located and where the satellite center would be established.

"(b) 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. The Secretary may approve an application for a grant under this subsection only if the feasibility of establishing or operating the satellite center for which the grant is applied for has been established by a study assisted under subsection (a)(2).

"Applications

"SEC. 122. (a) No grant may be made under section 121 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 may be approved by the Secretary only if the application contains or is supported by reasonable assurances that the making of the grant applied for will not result in any decrease in the level of State, local, and other non-Federal funds for services for persons with developmental disabilities and training of persons to provide such services which funds would (except for such grant) be available to the applicant, but that such grant will be used to supplement, and, to the extent practicable, to increase the level of such funds.

"(b) The Secretary shall give special consideration to applications for grants under section 121(a) for programs which demonstrate an ability and commitment to provide within a community rather than in an institution services for persons with developmental disabilities.

"Authorization of Appropriations

"SEC. 123. (a) For the purpose of making grants under section 121 there are authorized to be appropriated $15,000,000 for fiscal year 1976, $18,000,000 for fiscal year 1977, and $25,000,000 for fiscal year 1978.

"(b)(1) Of the sums appropriated under subsection (a) for fiscal years 1976 and 1977, not less than $5,000,000 shall be made available for grants in each such fiscal year under section 121(a)(1). The remainder of the sums appropriated for such fiscal years shall be made available as follows:

"(A) First, $750,000 shall be made available in each such fiscal year for studies described in section 121(a)(2). The portion of such $750,000 not required for such studies shall be made available for grants under section 121(a)(1).

"(B) Second, any remaining sums shall be made available as the Secretary determines except that at least 40 per centum of such sums shall be made available for grants under section 121(b).

"(2) Of the sums appropriated under subsection (a) for fiscal year 1978, not less than $5,500,000 shall be made available for grants in such fiscal year under section 121(a)(1). The remainder of the sums appropriated for such fiscal year shall be made available as the Secretary determines except that at least 40 per centum of the remainder shall be made available for grants under section 121(b).

"SUBPART 2—CONSTRUCTION

"Projects Authorized

"SEC. 125. The Secretary may make grants—

"(1) to university-affiliated facilities to assist them in meeting the costs of the renovation or modernization of buildings which are being used in connection with an activity assisted by a grant under section 121(a); and

"(2) to university-affiliated facilities for the construction, renovation, or modernization of buildings to be used as satellite centers.

"Applications

"SEC. 126. No grant may be made under section 125 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 may be approved by the Secretary only if it contains or is supported by reasonable assurances that—

"(1) the plans and specifications for the project to be assisted by the grant applied for are in accord with regulations prescribed by the Secretary under section 109;

"(2) title to the site for such project is or will be vested in the applicant or in the case of a grant for a satellite center, in a public or other nonprofit entity which is to operate the center;

"(3) adequate financial support will be available for completion of the construction, renovation, or modernization of the project and for its maintenance and operation when completed;

"(4) all laborers and mechanics employed by contractors or subcontractors in the performance of work on the project will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 267c); and

"(5) the building which will be constructed, renovated, or modernized with the grant applied for will meet standards adopted pursuant to the Act of August 12, 1968 (42 U.S.C. 4151–4156) (known as the Architectural Barriers Act of 1968).

"Authorization of Appropriations

"SEC. 127. For the purpose of making payments under grants under section 125, there are authorized to be appropriated $3,000,000 for fiscal year 1976, $3,000,000 for fiscal year 1977, and $3,000,000 for fiscal year 1978."

PART C—REVISION OF ALLOTMENT PROGRAM

State Allotments

SEC. 110. (a) Section 131 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS FOR ALLOTMENTS

"SEC. 131. For allotments under section 132, there are authorized to be appropriated $40,000,000 for fiscal year 1976, $50,000,000 for fiscal year 1977, and $60,000,000 for fiscal year 1978."

(b) Subsection (a) of section 132 of the Act is amended to read as follows:

"(a)(1)(A) In each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 131 among the States on the basis of—

"(i) the population,

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

"(iii) 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 134 for the provision under such plans of services and facilities for persons with developmental disabilities.

"(B)(i) Except as provided by clause (ii)—

"(I) the allotment of the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands under subparagraph (A) of this paragraph in any fiscal year shall not be less than $50,000; and

"(II) the allotment of each other State in any fiscal year shall not be less than the greater of $150,000, or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending June 30, 1974.

"(ii) If the amount appropriated under section 131 for any fiscal year exceeds $50,000,000, the minimum allotment of a State for such fiscal year shall be increased by an amount which bears the same ratio to the amount determined for such State under clause (i) as the difference between the amount so appropriated and the amount authorized to be appropriated for such fiscal year bears to $50,000,000.

"(2) In determining, for purposes of paragraph (1)(A)(ii), the extent of need in any State for services and facilities for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services specified, pursuant to section 134(b)(5), in the State plan of such State approved under section 134.

"(3) Sums allotted to a State in a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose in the next fiscal year (and in such year only), in addition to the sums allotted to such State in such next fiscal year; except that if the maximum amount which may be specified for construction (pursuant to section 134(b)(15)) for a year plus any part of the amount so specified pursuant to such section for the preceding fiscal year and remaining unobligated at the end of such fiscal year is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State developed pursuant to section 134(b)(13), the amount specified pursuant to section 134(b)(15) for such preceding year shall remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of such facility.

"(4) Of the amount allotted to any State under paragraph (1) for fiscal year 1976, not less than 10 per centum of that allotment shall be used by such State, in accordance with the plan submitted pursuant to section 134(b)(20), for the purpose of assisting it in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities; and of the amount allotted to any State under paragraph (1) for each succeeding fiscal year, not less than 30 per centum of that allotment shall be used by such State for such purpose."

(c) Subsection (d) of section 132 of the Act is amended by inserting after "as he may fix" the following: "(but not earlier than thirty days after he has published notice of his intention to make such reallotment in the Federal Register)".

(d) Section 132(e) of the Act is repealed.

(e) (1) Subsection (b) of section 132 of the Act is amended by striking out "this part" each place it occurs and inserting in lieu thereof "the State plan".

(2) Section 134(b)(4) of the Act is amended by striking out "under this part" and inserting in lieu thereof "under section 132".

(3) Section 138 of the Act is amended by striking out "under this part" each place it occurs and inserting in lieu thereof "under section 132".

State Plans

SEC. 111. (a) Subsection (b) of section 134 is amended as follows:

(1) Paragraph (1) of such subsection is amended by striking out "a State planning and advisory council" and inserting in lieu thereof "a State Planning Council as prescribed by section 141".

(2) Paragraph (3) of such subsection is amended by striking out "policies and procedures" and inserting in lieu thereof "priorities, policies, and procedures".

(3) Paragraph (5) of such subsection is amended to read as follows:

"(5) describe the quality, extent, and scope of treatment, services, and habilitation being provided or to be provided in implementing the State plan to persons with developmental disabilities;".

(4) Paragraph (7) of such subsection is amended to read as follows:

"(7) include provisions, meeting such requirements as the United States Civil Service Commission may prescribe, relating to the establishment and maintenance of personnel standards on a merit basis;".

(5) Paragraph (8) of such subsection is amended to read as follows:

"(8) provide that the State Planning Council be adequately staffed and identify the staff assigned to the Council;".

(6) Paragraph (9) of such subsection is amended by striking out "State planning and advisory council" and inserting in lieu thereof "State Planning Council".

(7) Paragraph (15) of such subsection is amended by striking out "50 per centum" and inserting in lieu thereof "10 per centum".

(8) Paragraph (14) of such subsection is amended by striking out "and assign" and inserting in lieu thereof "assign", and by inserting before the semicolon a comma and the following: "and require that construction of projects be done in accordance with standards prescribed by the Secretary pursuant to the Act of August 12, 1968 (42 U.S.C. 4151–4156) (known as the Architectural Barriers Act of 1968)".

(9) Such subsection is amended by striking out "and" after the semicolon at the end of paragraph (17), by redesignating paragraph (18) as paragraph (30), and by inserting the following new paragraphs after paragraph (17):

"(18) provide reasonable assurance that adequate financial support will be available to complete the construction of, and to maintain and operate when such construction is completed, any facility, the construction of which is assisted with sums allotted under section 132;

"(19) provide reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project assisted with sums allotted under section 132 will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in acccordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c);

"(20) contain a plan designed (A) to eliminate inappropriate placement in institutions of persons with developmental disabilities, and (B) to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate;

"(21) provide for the early screening, diagnosis, and evaluation (including maternal care, developmental screening, home care, infant and preschool stimulation programs, and parent counseling and training) of developmentally disabled infants and preschool children, particularly those with multiple handicaps;

"(22) provide for counseling, program coordination, follow-along services, protective services, and personal advocacy on behalf of developmentally disabled adults;

"(23) support the establishment of community programs as alternatives to institutionalization and support such programs which are designed to provide services for the care and habilitation of persons with developmental disabilities, and which utilize, to the maximum extent feasible, the resources and personnel in related community programs to assure full coordination with such programs and to assure the provision of appropriate supplemental health, educational, or social services for persons with developmental disabilities;

"(24) contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this title will be protected;

"(25) provide for a design for implementation which shall include details on the methodology of implementation of the State plan, priorities for spending of funds provided under this part, a detailed plan for the use of such funds, specific objectives to be achieved under the State plan, a listing of the programs and resources to be used to meet such objectives, and a method for periodic evaluation of the desgin's effectiveness in meeting such objectives;

"(26) provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 (Public Law 93–113) and other appropriate voluntary organizations except that volunteer services shall supplement, but shall not be in lieu of, services of paid employees;

"(27) provide for the implementation of an evaluation system in accordance with the system developed under section 110;

"(28) provide, to the maximum extent feasible, an opportunity for prior review and comment by the State Planning Council of all State plans of the State which relate to programs affecting persons with developmental disabilities;

"(29) 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 actions to carry out the plan described in paragraph (20)(A), 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; and".

(b) Section 134 of the Act is amended by adding after subsection (c) the following new subsection:

"(d)(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 $50,000, whichever is less, shall be available for such purpose. 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 fiscal year ending June 30, 1975."

Approval of Construction Projects

SEC. 112. Sections 135 and 136 of the Act are repealed.

Payments to States

SEC. 113. Section 137 of the Act is amended as follows:

(1) The heading for such section is amended by inserting "Construction," after "Planning,".

(2) Subsection (a) of such section is amended by striking out "(1)" and by striking out paragraph (2).

(3) Subsection (b) is amended to read as follows:

"(b)(1) Upon certification to the Secretary by the State agency, designated pursuant to section 134(b)(1), based upon inspection by it, that work has been performed upon a construction project, or purchases have been made for such project, in accordance with the approved plans and specifications and that payment of an installment is due to the applicant, such installment shall be paid to the State with respect to such project, from the applicable allotment of such State, except that (A) if the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant, (B) if the Secretary, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 136, payment may, after he has given the State agency so designated notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (C) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

"(2) In case the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such revision is approved."

Withholding of Payments

SEC. 114. Section 138 of the Act is amended as follows:

(1) The heading for such section is amended by inserting "Construction," after "Planning,".

(2) Such section is amended by striking out "State planning and advisory council" and inserting in lieu thereof "State Planning Council", and by striking out "State council" and inserting in lieu thereof "State Council".

(3) Such section is amended by inserting "(a)" after "138.", by redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively, and by adding at the end the following new subsection:

"(b) The State Planning Council of a State shall review the State's plan (including the design for implementation of such plan) under section 134 and the actions of the State under such plan for the purpose of determining if the State is complying with the requirements of the plan (and its design for implementation). For the purpose of assisting the Secretary in the implementation of this section, a State Planning Council may notify the Secretary of the results of any review carried out under this subsection."

Nonduplication

SEC. 115. Section 140 of the Act is amended to read as follows:

"NONDUPLICATION

"SEC. 140. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 134, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 132, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds."

State Planning Councils

SEC. 116. Part C of the Act is amended by inserting after section 140 the following new section:

"State Planning Councils

"SEC. 141. (a) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advo-

cate for persons with developmental disabilities. The members of a State's State Planning Council shall be appointed by the governor of such State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies, local agencies, and nongovernmental agencies, and groups concerned with services to persons with developmental disabilities. At least one-third of the membership of such a Council shall consist of persons with developmental disabilities, or their parents or guardians, who are not officers of any entity, or employees of any State agency or of any other entity, which receives funds or provides services under this part.

"(b) The State Planning Council shall—

"(1) supervise the development of and approve the State plan, required by this part;

"(2) monitor and evaluate 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

"(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request.

"(c) Each State receiving assistance under this part shall provide for the assignment to its State Planning Council of personnel adequate to insure that the Council has the capacity to fulfill its responsibilities under subsection (b)."

SEC. 117. Part C of the Act is amended by inserting after section 141 (added by section 116 of this Act) the following new section:

"Judicial Review

"SEC. 142. If any State is dissatisfied with the Secretary's action under section 134(c) or section 136, 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 within 60 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 him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which he based his 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 his order. 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 and may modify his previous action, and shall file in the court the record of the further proceedings. Such 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 section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action."

PART D—REVISION OF SPECIAL PROJECTS ASSISTANCE

Special Project Grants

SEC. 120. Part D of the Act is amended to read as follows:

"PART D—SPECIAL PROJECT GRANTS

"Grant Authority

"SEC. 145. (a) The Secretary, after consultation with the National Advisory Council on Services and Facilities to the Developmentally Disabled, may make project grants to public or nonprofit private entities for—

"(1) demonstrations (and research and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are disadvantaged or multi-handicapped), including programs for parent counseling and training, early screening and intervention, infant and preschool children, seizure control systems, legal advocacy, and community based counseling, care, housing, and other services or systems necessary to maintain a person with developmental disabilities in the community;

"(2) public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers confronted by persons with developmental disabilities;

"(3) coordinating and using all available community resources in meeting the needs of persons with developmental disabilities (especially those from disadvantaged backgrounds);

"(4) demonstrations of the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status;

"(5) technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities;

"(6) training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training;

"(7) developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities (including model integrtaed service projects);

"(8) gathering and disseminating information relating to developmental disabilities; and

"(9) improving the quality of services provided in and the administration of programs for such persons.

"(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 the State in which the applicant's project will be conducted has a State plan approved under part C. The Secretary shall provide to the State Planning Council for the State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments thereon.

"(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. In determining the amount of any grant under subsection (a) for the costs of any project, there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

"(d) For the purpose of making payments under grants under subsection (a), there are authorized to be appropriated $18,000,000 for fiscal year 1976, $22,000,000 for fiscal year 1977, and $25,000,000 for fiscal year 1978.

"(e) Of the funds appropriated under subsection (d) for any fiscal year, not less than 25 per centum of such funds shall be used for projects which the Secretary determines (after consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled) are of national significance.

"(f) No funds appropriated under the Public Health Service Act, under this Act (other than under subsection (d) of this section), or under section 304 of the Rehabilitation Act of 1973 may be used to make grants under subsection (a).

PART E—REVISION OF GENERAL PROVISIONS

General Provisions

SEC. 125. Part A of the Act is amended to read as follows:

"PART A—GENERAL PROVISIONS

"Short Title

"SEC. 101. This title may be cited as the 'Developmental Disabilities Services and Facilities Construction Act'.

"Definitions

"SEC. 102. For purposes of this title:

"(1) The term 'State' includes Puerto Rico, Guam, 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 inures, or may lawfully inure, to the benefit of any private shareholder or individual; and 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 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 disability of a person which—

"(A)(i) is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

"(ii) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or

"(iii) is attributable to dyslexia resulting from a disability described in clause (i) or (ii) of this subparagraph;

"(B) originates before such person attains age 18;

"(C) has continued or can be expected to continue indefinitely; and

"(D) constitutes a substantial handicap to such person's ability to function normally in society.

"(8) The term 'services for persons with developmental disabilities' means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability; and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

"(9) The term 'satellite center' means an entity which is associated with one or more university affiliated facilities and which functions as a community or regional extension of such university affiliated facilities in the delivery of training, services, and programs to the developmentally disabled and their families, to personnel of State agencies concerned with developmental disabilities, and to others responsible for the care of persons with developmental disabilities.

"(10) The term 'university affiliated facility' means a public or nonprofit facility which is associated with, or in an integral part of, a college or university and which aids in demonstrating the provision of specialized services for the diagnosis and treatment of persons with developmental disabilities and which provides education and training (including interdisciplinary training) of personnel needed to render services to persons with developmental disabilities.

"(11) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"Federal Share

"SEC. 103. (a) The Federal share of any project to be provided through grants under part B and allotments under part C may not exceed 75 per centum of the necessary cost thereof 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 per centum of the project's necessary costs as so determined.

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

"(c) 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 the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under part C or by a university-affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part B.

"State Control of Operations

"SEC. 104. 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.

"Records and Audit

"SEC. 105. (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 that 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.

"Employment of Handicapped Individuals

"SEC. 106. As a condition of providing assistance under this tite, 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.

"Recovery

"SEC. 107. If any facility with respect to which funds have been paid under part B or C shall, at any time within twenty years after the completion of construction—

"(1) be sold or transferred 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 transferor or the transferee (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 him, may, upon finding good cause therefor, 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."

National Advisory Council

SEC. 126. (a) Section 133 of the Act is transferred to part A of the Act (as amended by section 125), is redesignated as section 108, and is amended as follows:

(1) Subsection (a) of such section is amended to read as follows:

"(a)(1) There is established a National Advisory Council on Services and Facilities for the Developmentally Disabled (hereinafter in this section referred to as the 'Council') which shall consist of 9 ex officio members and 16 members appointed by the Secretary. The ex officio members of the Council are the Deputy

Commissioner of the Bureau of Education for the Handicapped, the Commissioner of Rehabilitation Services Administration, the Administrator of the Social and Rehabilitation Service, the Director of the National Institute of Child Health and Human Development, the Director of the National Institute of Neurological Disease and Stroke, the Director of the National Institute of Mental Health, and three other representatives of the Department of Health, Education, and Welfare selected by the Secretary. The appointed members of the Council shall be selected from persons who are not full-time employees of the United States and shall be selected without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall be selected from advocates in the field of services to persons with developmental disabilities, including leaders in State or local government, in institutions of higher education, and in organizations which have demonstrated advocacy on behalf of such persons. At least five such members shall be representatives of State or local public or nonprofit private agencies responsible for services to persons with developmental disabilities, and at least five other such members shall be persons with developmental disabilities or the parents or guardians of such persons.

"(2) The Secretary shall from time to time designate one of the appointed members to serve as Chariman of the Council.

"(3) The Council shall meet at least twice a year.

"(4) The Federal Advisory Committee Act shall not apply with respect to the duration of the Council."

(2) Subsection (b) of such section is amended—

(A) by inserting "appointed" after "Each", and

(B) by striking out ", and except that" and all that follows in that subsection and inserting in lieu thereof a period and the following: "An individual who has served as a member of the Council may not be reappointed to the Council before two years has expired since the expiration of his last term of office as a member."

(3) Subsection (c) of such section is amended to read as follows:

"(c) It shall be the duty and function of the Council to—

"(1) advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by the Secretary in the implementation of the provisions of this title;

"(2) study and evaluate programs authorized by this title to determine their effectiveness in carrying out the purposes for which they were established;

"(3) monitor the development and execution of this title and report directly to the Secretary any delay in the rapid execution of this title;

"(4) review grants made under this title and advise the Secretary with respect thereto; and

"(5) submit to the Congress annually an evaluation of the efficiency of the administration of the provisions of this title."

(4) Subsection (e) of such section is amended (A) by striking out "Members" and inserting in lieu thereof "Appointed members", and (B) by striking out "they" and inserting in lieu thereof "all of the members".

(b) The amendments made by subsection (a) do not affect the term of office of persons who on the date of the enactment of this Act are members of the National Advisory Council on Services and Facilities for the Developmentally Disabled. The Secretary of Health, Education, and Welfare shall make appointments to such Council in accordance with section 108 of the Act as vacancies occur in the membership of such Council on and after the date of the enactment of this Act. The ex officio members prescribed by section 108 of the Act shall take office as of the date of the enactment of this Act.

Regulations

SEC. 127. Section 139 of the Act is transferred to part A of the Act (as amended by sections 125 and 126), is redesignated as section 109, and is amended as follows:

(1) Paragraphs (a), (b), and (c) are each amended by striking out "this part" and inserting in lieu thereof "part C".

(2) Paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (1), (2), (3), and (4), respectively.

(3) The last sentence is repealed and the following new sentences are inserted in lieu thereof: "Regulations of the Secretary shall provide for approval of an application submitted by a State for a project to be completed by two or more political subdivisions, by two or more public or nonprofit private entities, or by any combination of such subdivisions and entities. Within 180 days of the date of the enactment of any amendments to this title, the Secretary shall promulgate such regulations as may be required for implementation of such amendments."

Evaluation

SEC. 128. Part A of the Act (as amended by sections 125, 126, and 127) is amended by adding after section 109 the following new section:

"Evaluation System

"SEC. 110. (a) The Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, shall within two years of the date of the enactment of the Developmentally Disabled Assistance and Bill of Rights Act develop a comprehensive system for the evaluation of services provided to persons with developmental disabilities through programs (including residential and nonresidential programs) assisted under this title. Within six months after the development of such a system, the Secretary shall require, as a condition to the receipt of assistance under this title, that each State submit to the Secretary, in such form and manner as he shall prescribe, a time-phased plan for the implementation of such a system. Within two years after the date of the development of such a system, the Secretary shall require, as a condition to the receipt of assistance under this title, that each State provide assurances satisfactory to the Secretary that the State is using such a system.

"(b) The evaluation system to be developed under subsection (a) shall—

"(1) provide objective measures of the developmental progress of persons with developmental disabilities using data obtained from individualized habilitation plans as required under section 112 or other comparable individual data;

"(2) provide a method of evaluating programs providing services for persons with developmental disabilities which method uses the measures referred to in paragraph (1); and

"(3) provide effective measures to protect the confidentiality of records of, and information describing, persons with developmental disabilities.

"(c) Not less than 2 years after the date of the Developmentally Disabled Assistance and Bill of Rights Act, the Secretary shall submit to the Congress a report on the evaluation system developed pursuant to subsection (a). Such report shall include an estimate of the costs to the Federal Government and the States of developing and implementing such a system.

"(d) The Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, may make grants to public and private nonprofit entities and may enter into contracts with individuals and public and nonprofit private entities to assist in developing the evaluation to be developed under subsection (a), except that such a grant or contract may not be entered into with entities or individuals who have any financial or other direct interest in any of the programs to be evaluated under such a system. Contracts may be entered into under this subsection without regard to section 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)."

TITLE II

ESTABLISHMENT AND PROTECTION OF THE RIGHTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES

RIGHTS OF THE DEVELOPMENTALLY DISABLED

SEC. 201. Part A of the Act (as amended by title I) is amended by inserting after section 110 the following new section:

"RIGHTS OF THE DEVELOPMENTALLY DISABLED

"SEC. 111. 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) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

"(B) does 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.

"(iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.

"(iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

"(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

"(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

"(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and—

"(A) in the case of residential programs serving persons in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 Fed. Reg. pt. II), as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

"(B) in the case of other residential programs for persons with developmental disabilities, which assure that care is appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

"(C) in the case of non-residential programs, which assure the care provided by such programs is appropriate to the persons served by the programs."

HABILITATION PLANS

SEC. 202. Part A of the Act is amended by inserting after section 111 (added by section 201) the following new section:

"HABILITATION PLANS

"SEC. 112. (a) The Secretary shall require as a condition to a State's receiving an allotment under part C after September 30, 1976, 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 such 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 or representatives 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) Such plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. 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 the plan.

"(4) The plan shall contain a statement (in 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.

"(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

"(c) Each habilitation plan shall be reviewed at least annually by the agency primarily 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 representatives shall be given an opportunity to review such plan and to participate in its revision."

PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SEC. 203. Part A of the Act is amended by inserting after section 112 (added by section 202) the following new section:

"PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

"SEC. 113. (a) The Secretary shall require as a condition to a State receiving an allotment under part C for a fiscal year ending before October 1, 1977, that the State provide the Secretary satisfactory assurances that not later than such date (1) the State will have in effect a system to protect and advocate the rights of persons with developmental disabilities, and (2) such system will (A) have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State, and (B) be independent of any State agency which provides treatment, services, or habilitation to persons with developmental disabilities. The Secretary may not make an allotment under part C to a State for a fiscal year beginning after September 30, 1977, unless the State has in effect a system described in the preceding sentence.

"(b) (1) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the sums appropriated under paragraph (2). Such allotments shall be made in accordance with subsections (a) (1) (A) and (d) of section 132.

"(2) For allotments under paragraph (1), there are authorized to be appropriated $3,000,000 for fiscal year 1976, $3,000,000 for fiscal year 1977, and $3,000,000 for fiscal year 1978."

STUDIES AND RECOMMENDATIONS

SEC. 204. (a) The Secretary of Health, Education and Welfare (hereinafter in this section referred to as the "Secretary") shall conduct or arrange for the conduct of the following:

(1) A review and evaluation of the standards and quality assurance mechanisms applicable to residential facilities and community agencies under the Rehabilitation Act of 1973, titles I and VI of the Elementary and Secondary Education Act of 1965, titles XVIII, XIX, and XX of the Social Security Act, and any other Federal law administered by the Secretary. Such standards and mechanisms shall be reviewed and evaluated (A) for their effectiveness in assuring the rights, described in section 111 of the Act, of persons with developmental disabilities, (B) for their effectiveness in insuring that services rendered by such facilities and agencies to persons with developmental disabilities are consistent with current concepts of quality care concerning treatment, services, and habilitation of such persons, (C) for conflicting requirements, and (D) for the relative effectiveness of their enforcement and the degree and extent of their effectiveness.

(2) The development of recommendations for standards and quality assurance mechanisms (including enforcement mechanisms) for residential facilities and community agencies providing treatment, services, or habilitation for persons with developmental disabilities which standards and mechanisms will assure the rights stated in section 111 of the Act. Such recommendations shall be based upon performance criteria for measuring and eval-

uating the developmental progress of persons with developmental disabilities which criteria are consistent with criteria used in the evaluation system developed under section 110 of the Act.

(3) The development of recommendations for changes in Federal law and regulations administered by the Secretary after taking into account the review and evaluation under paragraph (1) and the recommended standards or mechanisms developed under paragraph (2).

(b) (1) The Secretary may in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, obtain (through grants or contracts) the assistance of public and private entities in carrying out subsection (a).

(2) In carrying out subsection (a), the Secretary shall consult with appropriate public and private entities and individuals for the purpose of receiving their expert assistance, advice, and recommendations. Such agencies and individuals shall include persons with developmental disabilities, representative of such individuals, the appropriate councils of the Joint Commission on Accreditation of Hospitals, providers of health care, and State agencies. Persons to be consulted shall include the following officers of the Department of Health, Education, and Welfare: The Commissioner of the Medical Services Administration, the Commissioner of the Rehabilitation Services Administration, the Deputy Commissioner of the Bureau of Education for the Handicapped, the Assistant Secretary for Human Development, the Commissioner of the Community Services Administration, and the Commissioner of the Social Security Administration.

(c) The Secretary shall within 18 months after the date of enactment of this Act complete the review and evaluation and development of recommendations prescribed by subsection (a) and shall make a report to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives on such review and evaluation and recommendations.

TITLE III

MISCELLANEOUS

REPORT AND STUDY

SEC. 301. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall, in accordance with section 101(7) of the Act (defining the term "developmental disability") (as amended by title I of this Act), determine the conditions of persons which should be included as developmental disabilities for purposes of the programs authorized by title I of the Act. Within six months of the date of enactment of this Act the Secretary shall make such determination and shall make a report thereon to the Congress specifying the conditions which he determined should be so included, the conditions which he determined should not be so included, and the reasons for each such determination. After making such report, the Secretary shall periodically, but not less often than annually, review the conditions not so included as developmental disabilities to determine if they should be so included. The Secretary shall report to the Congress the results of each such review.

(b) (1) The Secretary shall contract for the conduct of an independent objective study to determine (A) if the basis of the definition of the developmental disabilities (as amended by title I of this Act) with respect to which assistance is authorized under such title is appropriate and, to the extent that it is not, to determine an appropriate basis for determining which disabilities should be included and which disabilities should be excluded from the definition, and (B) the nature and adequacy of services provided under other Federal programs for persons with disabilities not included in such definition.

(2) A final report giving the results of the study required by paragraph (1) and providing specifications for the definition of developmental disabilities for purposes of title I of the Act shall be submitted by the organization conducting the study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate not later than eighteen months after the date of enactment of this Act.

CONFORMING AMENDMENTS

SEC. 302. (a) Sections 134, 137, 138, 140, 141, and 142 of the Act are redesignated as sections 133, 134, 135, 136, 137, and 138, respectively.

(b) (1) Section 132 of the Act is amended by striking out "134" each place it occurs and inserting in lieu thereof "133".

(2) Section 133(b)(1) is amended by striking out "141" and inserting in lieu thereof "137".

(3) Section 135 of the Act (as so redesignated) is amended (A) by striking out "134" each place it occurs and inserting in lieu thereof "133", and (B) by striking out "136" in subsection (b) and inserting in lieu thereof "135".

(4) Section 136 of the Act (as so redesignated) is amended by striking out "134" each place it occurs and inserting in lieu thereof "133".

(5) Section 138 of the Act (as so redesignated) is amended (A) by striking out "134" and inserting in lieu thereof "133", and (B) by striking out "136" and inserting in lieu thereof "135".

(c) Sections 100 and 130 of the Act and title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 are repealed.

Effective Date

SEC. 303. The amendments made by this Act shall take effect with respect to appropriations under the Act for final years beginning after June 3, 1975.

And the Senate agree to the same.

HARLEY O. STAGGERS,
PAUL G. ROGERS,
DAVID SATTERFIELD,
RICHARD PREYER,
J. W. SYMINGTON,
JAMES SCHEUER,
HENRY A. WAXMAN,
TIM LEE CARTER,
JAMES T. BROYHILL,
J. F. HASTINGS,
Managers on the Part of the House.

JENNINGS RANDOLPH,
ALAN CRANSTON,
HARRISON WILLIAMS,
CLAIBORNE PELL,
EDWARD M. KENNEDY,
WALTER F. MONDALE,
WILLIAM D. HATHAWAY,
ROBERT T. STAFFORD,
BOB TAFT, JR.,
RICHARD S. SCHWEIKER,
J. GLENN BEALL, JR.,
J. JAVITS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4005) to amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs authorized by that Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

The House bill provides that the Act may be cited as the "Developmental Disabilities Amendments of 1975".

The Senate amendment provides that the Act may be cited as the "Developmentally Disabled Assistance and Bill of Rights Act".

The conference substitute conforms to the Senate amendment.

LENGTH OF EXTENSION

The House bill provides a one-year simple extension of existing authorities through fiscal 1975 and a two-year revision and extension through fiscal 1977.

The Senate amendment provides a five-year revision and extension from fiscal 1975 through fiscal 1979.

The conference substitute provides a one-year simple extension through fiscal 1975 and a three-year revision and extension through fiscal 1978.

AUTHORIZATIONS OF APPROPRIATIONS

The authorizations of appropriations for the House bill, Senate amendment and the conference substitute are all shown in Table 1.

The conferees did not authorize appropriations for either the National Advisory Council on Developmental Disabilities or the development of the evaluation system because both are the direct administrative responsibility of the Secretary of HEW and it is not usual practice to authorize appropriations for such responsibilities. This has the effect of authorizing appropriations of such sums as may be necessary and the conferees noted their view that the amounts included in the Senate amendment were reasonable.

TABLE 1.—AUTHORIZATIONS OF APPROPRIATIONS IN THE HOUSE BILL, SENATE AMENDMENT, AND CONFERENCE SUBSTITUTE ON DEVELOPMENTAL DISABILITIES

[In millions of dollars; fiscal years]

	1975			1976			1977			1978			1979			Total		
	H	S	C	H	S	C	H	S	C	H	S	C	H	S	C	H	S	C
University affiliated facilities	(1)	25.0	(1)	12	25.0	15	15	25.0	18	(2)	25.0	21	(2)	25.0	(2)	27	125.0	54
Construction of university affiliated facilities	(1)	6.5	(1)	----	6.5	3	----	6.5	3	(2)	6.5	3	(2)	6.5	(2)	----	32.5	9
Special project grants	(1)	17.5	(1)	15	20.0	18	15	22.5	22	(2)	25.0	25	(2)	27.5	(2)	30	112.5	65
State formula grants	(1)	50.0	(1)	40	85.0	40	50	95.0	50	(2)	100.0	60	(2)	110.0	(2)	90	440.0	150
National Council on Developmental Disabilities	(2)	.1	(2)	----	.1	----	----	.1	----	(2)	.1	----	(2)	.1	(2)	----	.5	----
Evaluation system	(2)	----	(2)	----	1.0	----	----	1.0	----	(2)	----	----	(2)	----	(2)	----	2.0	----
Personal advocacy system	----	³NS	(2)	----	NS	3	----	NS	3	----	NS	3	----	NS	----	----	NS	9
Bill of Rights	----	NS	(2)	----	NS	----	----	NS	----	----	NS	----	----	----	----	----	NS	----
Total		99.1		67	137.6	79	80	150.1	96		156.6	112		169.1		147	712.5	287

[1] Simple 1 yr extension of existing authorities.
[2] No authorizations.
[3] NS—Such sums as may be necessary.

DEFINITIONS

Development Disability

The House bill defines a "developmental disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, *dyslexia, or a neurological condition of an individual found by the Secretary to be closely related to mental retardation* or to require treatment similar to that required for mentally retarded individuals, which disability originates before the disabled individual attains age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap to such individual.

The Senate amendment defines a "developmental disability" as a disability which is attributable to (i) mental retardation, cerebral epilepsy, autism, or *to a severe specific learning disability; or attributable to any other condition of an individual found to be closely related to mental retardation as it refers to general intellectual functioning or impairment and adaptive behavior* or to require treatment similar to that required for mentally retarded individuals, which disability originates before the disabled individual attains age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap to such individual's *ability to function normally in society.*

The conference substitute defines a "developmental disability" as a disability which is attributable to (i) mental retardation, cerebral palsy, epilepsy, or autism; (ii) any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or (iii) dyslexia resulting from a disability described in clause (i) or (ii), and originates before such person attains age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap to such person's ability to function normally in society.

In recognition of the fact that serious reading difficulties may accompany mental retardation, cerebral palsy, epilepsy, autism, or other conditions closely related to mental retardation, the Conference Committee has included dyslexia which is due to at least one of the conditions in the definition of the term developmental disability. It should be clearly understood that benefits under this Act are intended to apply only to those individuals whose dyslexia can be clearly shown to be attributable to mental retardation, cerebral palsy, epilepsy and autism. In addition, the disabling condition of the dyslexic person who qualifies under the above definition must originate before that individual reaches age 18, be expected to continue indefinitely, and constitute a substantial hardship to that individual's ability to function normally in society.

Specific Learning Disability

The Senate amendment, but not the House bill, defines a "specific learning disability" as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorder may include such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, or devel-

opmental aphasia, but such term does not include learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.

The conference substitute conforms to the House bill.

University-Affiliated Facility

The Senate amendment, but not the House bill, defines a "university-affiliated facility" as a public or non-profit private facility which is associated with, or is an integral part of a college or university and which aids in demonstrating the provision of specialized services for the diagnosis and treatment of persons with developmental disabilities and education and training (including interdisciplinary training) of personnel needed to render specialized services to persons with developmental disabilities.

The conference substitute conforms to the Senate amendment with technical changes.

Satellite Center

The Senate amendment, but not the House bill, defines a "satellite center" as a facility of an agency or agencies associated with a university-affiliated facility that functions as a community or regional extension of such university-affiliated facility in the delivery of training services and programs to the consumers or their representatives, the designated state delivery system agency, and other service or program delivery units.

The conference substitute conforms to the Senate amendment with technical changes.

Design for Implementation

The Senate amendment, but not the House bill, defines a "design for implementation" as a document prepared by the appropriate State agency or agencies, outlining the implementation of the State plan as developed by the State Planning Council. The design for implementation is to include details on the methodology of implementation, priorities for spending, a detailed plan for the use of funds provided under the Act, specific objectives to be achieved, a listing of the programs and resources to be used, and a method of periodic evaluation of its effectiveness in meeting State plan objectives.

The conference substitute conforms to the House bill. Note that the requirement for a design for implementation is incorporated into the requirements for the State plan.

Poverty Area

The Senate amendment, but not the House bill, defines a "poverty area" as having the meaning given it in regulations of the Secretary.

The House bill does provide in its general provisions that, in determining whether an area is a poverty area, the Secretary must find that the area contains one or more subareas of poverty, the population of such subarea(s) constitutes a substantial portion of the population of the area, and the project will serve the needs of the residents of the subarea(s).

The conference substitute conforms to the Senate amendment. The conferees noted their intent that the regulations define poverty areas in the manner required by P.L. 93–641.

SPECIAL PROJECT GRANTS

The House bill authorizes the Secretary to make grants for special projects for seven listed purposes. No grant is to be made in any State which does not have a State plan approved under section 134.

The Senate amendment authorizes the Secretary to make grants for special projects and demonstrations (and research and evaluation connected therewith) for six listed purposes which differ from those in the House bill. In making project grants, the Secretary is required to consult with the National Advisory Council for Developmental Disabilities, section 119. The Secretary is required to get the approval or disapproval of the appropriate State planning council for each proposed project within 30 days after application is submitted for it.

The House bill requires funding of projects for the listed purposes from the given special project authority and from no other authority in the Public Health Service or Developmental Disabilities Act, section 130.

The Senate amendment specifies that projects funded under the special project authority are not to be eligible for funding under section 304 of the Rehabilitation Act of 1973.

The House bill specifies that, of the funds appropriated for special project grants, not less than 30 percent are to be used for projects of national significance.

The Senate amendment, in addition to the special project authorizations described above, authorizes the Secretary to continue the provision in existing law for making grants after consultation with the National Advisory Council on Developmental Disabilities, using no more than 10 percent of the sums appropriated for allotments to the States for projects of special national significance, of which four examples are listed (differing from the purposes for special projects listed in either the House or Senate provisions).

The conference substitute combines the two provisions to authorize project grants for a list of purposes which includes all of those in either bill. It also requires consultation with the National Advisory Council, a State plan in any State receiving a project grant, review and comment on applications for project grants by State planning councils, and contains barriers to funding special projects under other parts of the Public Health Service Act, of section 304 of the Vocational Rehabilitation Act, and an earmark of not less than 25% of special project funds for projects of national significance.

With regard to the status of special projects for the developmentally disabled currently funded under section 304 of the Rehabilitation Act of 1973, the conferees intend as smooth as possible a transition in the creation of this special project authority for the developmentally disabled as discussed in the Senate Report on S. 4194, the Rehabilitation Act Amendments of 1974 (S. Rept. 93–1139) and reiterated in the Senate report on its developmental disabilities bill.

The two Acts (Rehabilitation and Developmentally Disabilities) serve different functions, and clearly persons who are developmentally disabled who are eligible under the provisions of the Rehabilitation Act are entitled to receive services and to have special projects focused on their needs under it.

It is the expectation of the Conference committee that the National Advisory Council will advise and assist the Secretary in the develop-

ment of and review and comment on projects of national significance and the development of policies, procedures and priorities for the awarding of other special project grants; however, the National Advisory Council will not be expected to review intra-State projects. This responsibility will rest with the State Planning Councils.

Finally, section 117(b) of the Senate amendment provided that the Secretary may waive regulations in order to approve applications by two or more political subdivisions or public or nonprofit private agencies to combine funds from other Federal, State or local programs in order to deliver improved comprehensive services to persons with developmental disabilities if such regulations would impede the implementation of such projects. The intent of the provision of the Senate amendment was to demonstrate new methods of service delivery and to provide enough flexibility under Federal law, on a demonstration basis, so that the funds could be combined from available resources for this demonstration. The Senate recedes and agrees with the House that such comprehensive service demonstration projects shall be carried out under the special projects authority.

UNIVERSITY-AFFILIATED FACILITIES

Basic Grant Authority

The existing law, extended by the House bill without amendment, authorizes demonstration and training grants for institutions of higher education to assist with the costs of demonstration and training projects for personnel who will serve the developmentally disabled. In recent years this provision has been used solely to support university-affiliated facilities for the developmentally disabled, section 122 of existing law.

The Senate amendment replaces the provision of existing law with a new authority for grants to university-affiliated facilities (now a defined term, see definitions, above). The university-affiliated facilities are to provide demonstration and training programs for personnel needed to render services to people with developmental disabilities, with emphasis on the ability and commitment of the programs to provide services not otherwise available to the developmentally disabled, section 102.

The conference substitute conforms to the Senate amendment with technical changes.

Need and Feasibility Studies

The Senate amendment, but not the House bill, requires each university-affiliated facility receiving a grant under this provision to conduct a study and submit to the Secretary within six months of receipt of the grant a report on:

(a) an assessment of the need for the provision of alternative community care services for the developmentally disabled in each State not served by the grant recipient in the area in which the institution is located, and

(b) a feasibility study of ways in which grant recipients can establish and operate satellite centers (a defined term, see definitions, above) in the areas described in subparagraph (a) to provide demonstration and training programs in those areas.

Studies are to be carried out in consultation with the State planning council for each State in which the study is conducted. The Secretary, subject to the availability of funds, is required to include in a grant to a university-affiliated facility an additional amount (not in excess of $25,000) to pay for the costs of such assessments and studies, section 102(a) (2) and (3).

The conference substitute contains a compromise authorizing but not requiring each university-affiliated facility to do a feasibility study of ways in which grant recipients can establish and operate satellite centers in areas not otherwise served by university-affiliated facilities. It requires such studies to be carried out in consultation with the appropriate State planning councils and authorizes the Secretary to make additional grants of $25,000 to the university-affiliated facilities which do such a study.

Grants for Satellite Centers

The Senate amendment, but not the House bill, authorizes the Secretary to make grants to university-affiliated facilities to assist in the costs of establishing and operating satellite centers (a defined term, see definitions above). Recipents of satellite center grants are authorized to contract for the operation of the centers to other qualified agencies. The non-Federal share for a satellite center grant is to be provided by the State in which the center is to be located, section 102(b).

The conference substitute contains a compromise authorizing the Secretary to make grants directly to satellite centers on terms otherwise similar to those of the Senate amendment.

The provision in the Senate amendment stating that the non-Federal share of a grant to pay part of the costs of establishing, administering, and operating a satellite center would be provided by the State in which the satellite center will be located, was deleted to remove the possibility of an incorrect assumption that the State would necessarily bear the burden of the matching costs, and to clarify that matching costs may be borne by an appropriate community entity in the area which would derive benefit from the satellite center.

Earmarking of Appropriations for University-Affiliated Facilities

The Senate amendment, but not the House bill, requires amount appropriated in fiscal year 1975 in excess of $4.25 million, but not in excess of $4.975 million, to be made available for the purpose of carrying out studies and assessments required of university-affiliated facilities by section 102(a), see above. Further requires for fiscal years after 1975 that the first $4.25 million appropriated be used only for grants to university-affiliated facilities, and that one-half of any amount appropriated in excess of $4.25 million be used for grants for satellite centers, section 102(c).

The conference substitute contains a compromise requiring, in fiscal years 1976 and 1977 that the first $5 million appropriated be available for grants to university-affiliated facilities, the next $750,000 appropriated be available for grants for feasibility studies for satellite centers, and that 40 percent of any amount appropriated in excess of $5.75 million be available for grants for satellite center operation. In 1978, it requires that 40 percent of amounts appropriated in excess of $5.5 million be available for satellite center operation. The conference substitute also provides that any portion of the $750,000 set aside for grants for feasibility studies which is not required for carrying out such studies shall be made available for making grants for the administration and operation of university-affiliated facilities.

Assistance for construction of university affiliated facilities

Existing law contains provisions, which were not extended by the House bill, authorizing construction assistance for facilities which will aid in demonstrating provision of specialized care to the developmentally disabled and specifies various requirements with respect to such construction assistance, sections 121 and 123 of existing law.

The Senate amendment replaces the provisions of existing law with authority for project grants for renovation or modernization of university-affiliated facilities or their satellite centers being assisted under the Act. Such assistance is to be used only with respect to facilities which, after renovation and modernization, meet standards adopted pursuant to the Architectural Barriers Act of 1968. Priority in making grants is to be given to applicants using existing facilities. The construction grants are subject to various conditions which differ from those in existing law that:

(a) the application for assistance is to be consistent with the appropriate State development disabilities plan;

(b) the application is to be reviewed and commented on by the State Planning Council, except the Secretary may only approve an application for assistance if he finds that failure by the appropriate State planning council to comment is arbitrary, capricious, or unwarranted, sections 101 and 103.

The conference substitute conforms to the Senate amendment with technical changes.

ALLOTMENTS TO STATES

Minimum Allotments

The House bill requires a minimum allotment to each State, except for the territories, of $100,000. It eliminates from existing law requirements for pro rata increases in the minimum allotment, when appropriations exceed $60 million, in amounts proportional to the amount by which appropriations exceed $60 million, and contains no hold harmless provisions, section 132.

The Senate amendment requires a minimum allotment for each State, except for the territories, of $200,000. It amends the existing law to require a pro rata increase in the minimum allotment, when appropriations exceed $50 million in an amount proportional to the amount by which appropriations exceed $50 million, and provides that, despite the minimum allotment requirements, no State is to receive less in allotments than it did in fiscal 1974, section 112.

The conference substitute compromises by requiring a minimum allotment of $150,000, accepting the pro rata increase in minimum allotments when appropriations exceed $50 million, and including a hold harmless provision.

Earmark for Deinstitutionalization

The House bill, but not the Senate amendment, requires each State in fiscal 1976 to use not less than 10 percent of its allotment for developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities, and further requires each State to use 30 percent of its allotment for such purpose in years subsequent to 1976, section 132.

The conference substitute conforms to the House bill.

In earmarking 10 percent of the State's allotment in fiscal year 1976 and 30 percent in succeeding fiscal years to assist the State in developing and implementing plans (submitted pursuant to section 134(b)(20)) designed to eliminate inappropriate placement in institutions of persons with developmental disabilities, the conferees are in agreement that the development of community resources to serve previously institutionalized individuals would be an appropriate purpose for which such funds could be expended, and, where proposed, would be an integral part of any such plan and its implementation.

Administration of Grants

The Senate amendment, but not the House bill, requires the Secretary to administer grants (from allotments) in accordance with policies used generally to administer grants throughout HEW, section 112(f).

The conference substitute conforms to the House bill.

STATE PLANS

Preparation and Approval of State Plan

The House bill requires each State to prepare and submit to the Secretary a State plan for developmental disabilities. The State plan is to provide for a State planning and advisory council which is to review and evaluate the plan at least annually and submit appropriate revision and modifications of the plan, and reports to the Secretary, section 134.

The Senate amendment contains similar requirements except that the State plan is to be initially submitted within 180 days after the date of enactment of the Act, the Secretary cannot approve a State plan until the appropriate State planning council has approved the design for implementation for that plan (see design for implementation, below), and the separate requirements respecting State planning councils in the Senate amendment require that the State plan be developed and prepared by the State planning council, sections 114 and 115.

The conference substitute compromises by requiring the State planning council to supervise the development of, and approve, the State plan, which is to be prepared by the State agency.

REQUIREMENTS RESPECTING STATE PLANS

Deinstitutionalization

The House bill requires that the State plan contain a plan designed to eliminate in appropriate placement in institutions of persons with developmental disabilities, and to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate.

The Senate amendment requires the State plan to be a specific goal oriented plan, to describe how the goals are to be met, and lists, as two of the goals to be included, the reduction and eventual elimination of inappropriate institutional placement of persons with developmental disabilities and improving the quality of care, habilitation and rehabilitation of persons with developmental disabilities for whom institutional care is appropriate.

The conference substitute conforms to the House bill.

Payment of Construction Workers (Davis-Bacon)

The House bill removes from existing law requirements that the Secretary approve each individual construction project for which

State allotment funds are used and amends the State plan to require reasonable assurances that labor and mechanics employed on construction projects assisted from State allotments will be paid at prevailing rates (Davis Bacon requirements).

The Senate amendment contains similar provisions but *without* the requirements respecting payment of construction workers.

The conference substitute conforms to the House bill.

Services to Persons Unable to Pay Therefor

Existing law contains, and the House bill preserves, a requirement that facilities for the developmentally disabled constructed using State allotments meet requirements of the Secretary for furnishing needed services to persons unable to pay therefor.

The Senate amendment contains no comparable provision.

The conference substitute conforms to the House bill.

Goal Orientation of the State Plan

The Senate amendment, but not the House bill, requires that the State plan be a specific goal oriented plan including provisions designed to accomplish seven listed goals: deinstitutionalization; improvement of the quality of institutional care; screening, diagnosis and evaluation of developmentally disabled infants and children; services for developmentally disabled adults; establishment of community alternatives to institutionalization; protection of the human rights of the developmentally disabled; and interdisciplinary intervention and training programs for multi-handicapped individuals.

The conference substitute compromises by including, in the State plan requirements, requirements for provisions designed to accomplish the listed goals not already included in the State plan.

Quality, Extent and Scope of Services

Existing law contains, and the House bill preserves, a requirement that the State plan provide for furnishing of services, and facilities to persons with developmental disabilities associated with mental retardation, specify the other categories of developmental disabilities included in the State plan, and describe the quality, extent and scope of services to be provided to eligible persons.

The Senate amendment requires that the State plan describe the quality, extent and scope of services being provided or to be provided to meet the goals of the State plan (described above).

The conference substitute conforms to the Senate amendment with technical changes.

Use of Volunteers

The Senate amendment, but not the House bill, requires the State plan to provide for the maximum use of available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973.

The conference substitute conforms to the Senate amendment.

Requirement Respecting the State Planning Council

The Senate amendment, but not the House bill, requires the State plan to:

(1) provide adequate personnel for the State Planning Council to insure it has the capacity to fulfill its responsibilities;

(2) provide, to the maximum extent feasible, an opportunity for prior review and comment by the Council of all State plans in the State which relate to programs affecting the developmentally disabled;

(3) provide that personnel assigned to the Council will be solely responsible to it; and

(4) provide that all relevant information concerning any programs which may affect the developmentally disabled shall be made available by project and State agencies to the Council.

The conference substitute conforms to the Senate amendment.

Amount Available for Construction

Existing law contains a requirement, not affected by the House bill, that the State plan specify the amount of the allotment to be used for construction and that that amount may not exceed 50 percent of the State's allotment.

The Senate amendment contains similar provisions, except that the amount to be used for construction is not to exceed 10 percent of the State's allotment.

The conference substitute conforms to the Senate amendment.

Architectural Barriers

The Senate amendment, but not the House bill, requires construction projects assisted from the State allotment to comply with any standards prescribed pursuant to the Architectural Barriers Act of 1968.

The conference substitute conforms to the Senate amendment.

Evaluation System

The Senate amendment, but not the House bill, requires the State plan to provide for implementation of an evaluation system compatible with that developed by the Secretary (see evaluation system requirements, below).

The conference substitute conforms to the Senate amendment.

Protection of Employee Interests

The Senate amendment, but not the House bill, requires the State plan to provide for fair and equitable arrangements determined by the Secretary in consultation with the Secretary of Labor to protect the interests of employees affected by the State plan.

The conference substitute conforms to the Senate amendment with changes in the language to conform it to that on protection of employee interests included in P.L. 94–63.

STATE PLANNING COUNCILS

Existing law, unaffected by the House bill, requires the State plan to provide for designation of a State planning and advisory council responsible for submitting revisions of the State plan and reports required by the Secretary. The council is to review and evaluate the State plan and submit modifications of it at least annually. Existing law also requires that the council be adequately staffed and specifies requirements respecting its membership.

The Senate amendment requires, in a provision separate from the State plan requirements, that each State establish a State Planning Council to serve as an advocate for persons with developmental disa-

bilities; to develop and prepare the State plan; approve, monitor and evaluate the implementation of the plan and submit to the Governor and the State legislature an annual report on its implementation; establish priorities for the distribution of funds for programs for the developmentally disabled; review and comment on all State plans relating to programs affecting the developmentally disabled; and submit to the Secretary, through the Governor, periodic reports on its activities. The amendment contains different requirements from existing law respecting council staffing and membership.

The conference substitute contains a compromise which requires, in a provision separate from the State planning requirements, that each State have a State planning council which serves as an advocate for persons with developmental disabilities. Members of the council are to be appointed by the Governor and the membership is to include representatives of the principal State agencies, local agencies, and non-governmental agencies and groups concerned with the developmentally disabled. At least one-third of the membership of each council is to consist of persons with developmental disabilities or their parents or guardians. The State planning councils are to:

(1) Supervise the development and implementation of the State plan required by law;

(2) Monitor and evaluate the implementation of the State plan;

(3) Review and comment on all State plans in a State which relate to programs affecting persons with developmental disabilities; and

(4) Submit to the Secretary, through the Governor, such periodic reports on their activities as the Secretary may reasonably request.

Conferees deleted provisions relating to minimum and maximum percentage of the State allotment required to be expended on staff to the State councils because this provision would have been difficult to implement across all States because they vary greatly population and State allotments. The conferees intend, however, that adequate funds from the State allotments shall be expended to provide qualified staff solely for purposes of assisting the State councils in carrying out their responsibilities and that such staff shall not have joint responsibilities to the State council and to any State agencies, but shall be responsible only to the State council.

Persons with developmental disabilities or their parents or guardians who are officers of any entity, or employees of any State agency or of any other entity which receives funds or provides services under this part may not serve on State planning councils as consumer representatives. In order to assure the minimum of disruption of ongoing functions of the State councils, the conferees expect that individuals presently serving on Councils will serve for a reasonable interim period of time after enactment until new members can be located and appointed.

Section 115(b)(2) of the Senate amendment provided that the State planning councils shall approve, monitor and implement the state plan and submit to the governors and state legislatures an annual report on the implementation of the plan. The intent of this provision of the Senate amendments was that, since the council will be appointed by the Chief Executive Officer of the State or the State legislatures, an

annual report of the implementation of the responsibilities delegated to the councils should be provided to the governor and State legislatures. The Senate receded on this provision; however, it is the intent of the conferees that all reports on the activities of State councils shall be available to the Governor; State Legislature; State agencies and organizations participating in programs for the developmentally disabled and other interested groups.

DESIGN FOR IMPLEMENTATION

The Senate amendment, but not the House bill, apparently requires each State to prepare a design for implementation of the State plan (a defined term, see above). The design for implementation is to be a document prepared by the appropriate State agency outlining the implementation of the State plan as developed by the State planning council. The design for implementation is to be approved by the State planning council and the Secretary may not approve a State plan until the Council has approved the design for implementation, sections 2, 114, and 115.

The conference substitute contains a compromise requiring that the State plan include a design for implementation with the characteristics included in the definition in the Senate amendment.

EVALUATION SYSTEM

The Senate amendment, but not the House bill, requires the Secretary, in consultation with the National Advisory Council, to develop a design for a comprehensive system for the evaluation of services provided to the developmentally disabled, and a time phased plan for the implementation by the States of such system.

The system is to provide models for the development of state evaluation systems for services delivered within each State to the developmentally disabled in order to evaluate the effect of the services on the lives of the disabled. It is further to be designed to provide objective measures of the progress of the developmentally disabled; objective measures of the value of living environments and associated services in promoting developmental progress in the disabled; and specific criteria which are effective and practical to use as compliance levels for operating residential and community facilities and agencies.

The Secretary is to report by February 1, 1977, to the Congress on the development of the system, is authorized to make grants and enter into contracts with outside organizations and individuals to assist in its development, and is authorized to seek appropriations for its development in 1976 and 1977 of not more than $1 million a year.

The conference substitute contains a compromise requiring the Secretary, in consultation with the National Advisory Council, to develop a comprehensive system for the evaluation of services provided to persons with developmental disabilities through programs assisted under the Act. The system is to be developed within two years after the date of enactment and then within six months after it is developed the Secretary is to obtain from each State a time-phased plan for that State's implementation of the system within two years after it is developed.

The evaluation system to be developed is to provide objective measures of the developmental progress of persons with developmental disabilities using data obtained from individualized habilitation plans; provide a method for evaluating programs providing services for persons with developmental disabilities which method uses the measures of individual progress; and provide effective measures to protect the confidentiality of records and information describing persons with developmental disabilities.

The Secretary is to report to the Congress on the system developed and the cost of its implementation within two years after the date of enactment. The Secretary is authorized to obtain by grant or contract assistance in the development of the evaluation system.

The conferees intend that the Secretary will make the evaluation system available to the States and require the States to provide within 30 months a plan demonstrating how each State will put the evaluation system into place. It is expected that the time-phased plan will be specific and specify a partial evaluation system to be implemented by the States within 30 months from date of enactment, and that the plan provided to the Secretary by each State will specify how it intends to accomplish this.

The conferees have directed the Secretary to carry out his responsibilities in developing this evaluation system in consultation with the National Council on Developmental Disabilities. It is expected that consultation will also include the State Councils since their role will be substantial in assuring the implementation of the evaluation system. In carrying out the implementation of this system within the States, it is expected that the State Councils will work with those individuals involved and knowledgeable about training of personnel, child development and the delivery of services to persons with developmental disabilities.

The Senate bill, but not the House, authorized $2 million for carrying out this provision.

The conference substitute conforms to the House bill. The conferees have directed the Secretary to carry out the development and implementation of this evaluation system, and expect him to use such funds to carry out the provision as are otherwise available to him for his overall responsibilities for evaluation and administration, and to request appropriations for such additional funds as he may find necessary.

NATIONAL ADVISORY COUNCIL

Existing law, which is unchanged by the House bill, contains a requirement that the Secretary establish a National Advisory Council on Services and Facilities for the Developmentally Disabled. The requirement specifies the functions and membership of the Council.

The Senate amendment contains similar provisions except that:

(1) The council is named the National Council on Services and Facilities for the Developmentally Disabled.

(2) The membership is to include 16 non-Federal employees and the Deputy Commissioner of the Bureau of Education for the Handicapped, the Commissioner of the Rehabilitation Services Administration, the Administrator of the Social and Rehabilitation Service, the Director of the National Institutes of Child Health and Human Development, the Director of the National Institute of Mental Health, and 3 other representatives of the Department of HEW.

(3) The non-Federal members are to be selected from advocates in the developmental disabilities field.

(4) The Secretary is to fill vacancies on the Council within 10 days after their occurrence and is not to reappoint a member unless a year has elapsed since the end of that member's term.

(5) The council is to meet at least twice a year.

(6) The functions of the council are expanded to include monitoring the development and execution of the program and reporting to the Secretary any delay in its rapid execution; reviewing grants for special projects and projects of national significance and advising the Secretary with respect to them; reviewing the evaluation system and advising the Secretary with respect to them; reviewing the evaluation system and advising the Secretary with respect to it; and submitting to the Congress an annual evaluation of the efficiency of the administration of the program.

(7) Authorizations of appropriations in the amount of $100,000 per year are given for the council.

The conference substitute conforms to the Senate amendment except that the requirement that vacancies be filled within ten days and the authorizations of appropriations are omitted.

DECLARATION OF PURPOSE

The Senate amendment, but not the House bill, contains a declaration of purpose providing generally that it is the purpose of the Act to improve and coordinate the provision of services to persons with developmental disabilities and listing seven specific methods for achieving the purpose.

The conference substitute conforms to the House bill. The conferees noted that they felt that the declaration of purpose included in the Senate amendment was appropriate and accurately described the purposes of the Developmental Disabilities Act but did not need to be incorporated into the text of the law itself. These purposes include improving and coordinating the provision of services to persons with developmental disabilities through:

(a) Grants to assist the States in developing and implementing a comprehensive and continuing plan for meeting the needs of the developmentally disabled;

(b) Renovation and modernization of university-affiliated facilities which demonstrate the provision of services for the developmentally disabled and support demonstration and training programs in institutions of higher education;

(c) Development of regional community programs for the developmentally disabled;

(d) Support of activities which contribute to improving the condition of persons with developmental disabilities;

(e) Providing technical assistance in the establishment of services and facilities for the developmentally disabled;

(f) Training specialized personnel needed for providing such services; and

(g) Developing and demonstrating new and improved techniques for providing such services.

FEDERAL SHARE

The House bill sets a Federal share for projects assisted from State allotments of 75 percent.

The Senate amendment limits the Federal share of expenditures for construction and operation of university-affiliated facilities to 70 percent of their costs. It sets a Federal share for projects assisted from State allotments of 70 percent, unless the project serves a poverty area in which case the limit is 90 percent.

The conference substitute compromises by setting a limit on the Federal share of expenditures on projects assisted under the Act of 75 percent in all cases except for projects in poverty areas, in which case it set a limit of 90 percent.

The Senate amendment, but not the House bill, provides that the non-Federal share of a project's cost may be in kind, rather than solely in cash, and may include expenditures by organizations other than the State government receiving the State allotment.

The conference substitute conforms to the Senate amendment with respect to in-kind services and expenditures by organizations other than State governments with technical changes.

ADVANCED FUNDING

The Senate amendment, but not the House bill, authorizes appropriations authorized by the Act to be made in the fiscal year preceding the fiscal year for which they would be available for obligation. In order to effect the transition to advanced funding, it authorizes appropriations in a single year for two years.

The conference substitute conforms to the House bill.

EMPLOYMENT OF THE HANDICAPPED

The Senate amendment, but not the House bill, requires the Secretary to insure that each recipient of assistance under the Act will take affirmative action to employ, and advance in employment, qualified handicapped individuals covered under and on the same terms and conditions as set forth in the applicable provisions of the Rehabilitation Act of 1973.

The conference substitute conforms to the Senate amendment with technical changes.

WITHHOLDING OF PAYMENTS

The Senate amendment, but not the House bill, authorizes State planning councils, which find that a State agency administering funds under a design for implementation is failing to comply with the design to notify the Governor and the Secretary. Authorizes the Secretary upon receipt of such notice and after conducting a hearing to withhold payments under State allotments to that State.

The conference substitute conforms to the Senate amendment with redrafting and technical amendments.

REGULATIONS

The Senate amendment, but not the House bill, requires the Secretary to prescribe general regulations in final form applicable to all States within 90 days after the date of enactment. Requires that the regulations promulgated may be waived upon approval of an application submitted by a State for a project to be completed by two or more political subdivisions or public or nonprofit private agencies or by a combination of such. The waiver is to be given in a manner which is consistent with applicable law, to be reviewed annually, and to be published in the Federal Register.

The conference substitute requires the Secretary to prescribe regulations within 180 days of the date of enactment. It requires that the regulations provide for joint projects by two or more political subdivisions or public or nonprofit private agencies.

STUDIES BY THE SECRETARY

The House bill, but not the Senate amendment, requires the Secretary to determine, and report to Congress in six months, the conditions which should be covered as developmental disabilities, and to conduct an independent study of the appropriateness of the definition of developmental disabilities.

The conference substitute conforms to the House bill with conforming amendments to the change in the definition of developmental disabilities made by the conference substitute.

BILL OF RIGHTS FOR THE MENTALLY RETARDED AND OTHER PERSONS WITH DEVELOPMENTAL DISABILITIES

The Senate amendment, but not the House bill, contains a second title providing, in general, detailed standards for the operation of programs serving the mentally retarded and other persons with developmental disabilities, including both ambulatory or community programs, and residential programs.

The conference substitute contains a compromise which specifies rights of the developmentally disabled, requires programs assisted under the Act to have individual habilitation plans for those they serve, requires the States to develop programs for protection and efficacy of the rights of the developmentally disabled, and requires the Secretary of HEW to undertake studies and make recommendations respecting appropriate standards and quality assurance mechanisms for programs serving the developmentally disabled. The compromise is drafted as a second title in the conference substitute which amends the Developmental Disabilities Act.

Statement of Purpose

The Senate amendment, but not the House bill, states the purpose of the bill of rights to be establishing standards to assure the humane care, treatment, habilitation and protection of mentally retarded and other developmentally disabled individuals who are served by residential and community facilities and agencies.

The conference substitute contains a compromise which enumerates Congressional findings respecting the rights of persons with develop-

mental disabilities. These include findings that the developmentally disabled have a right to appropriate treatment, services and habilitation; that such treatment, services and habilitation should be designed to maximize the developmental potential of the person and be provided in the setting that is least restrictive to his personal liberty; that the Federal government and the States have an obligation to assure that public funds are not provided in programs which do not provide appropriate treatment, services and habilitation or do not meet minimum standards respecting diet, medical and dental services, use of restraints, visiting hours and compliance with fire and safety codes; and that programs for the developmentally disabled should meet appropriate standards including standards adjusted for the size of the institutions which are at least comparable to those promulgated under title 19 of the Social Security Act.

These rights are generally included in the conference substitute in recognition by the conferees that the developmentally disabled, particularly those who have the misfortune to require institutionalization, have a right to receive appropriate treatment for the conditions for which they are institutionalized, and that this right should be protected and assured by the Congress and the courts.

General Provisions

The Senate amendment but not the House bill:

(1) defines 48 different terms used in the title;

(2) requires establishment of a National Advisory Council on Standards for Residential and Community Facilities for Mentally Retarded and Other Persons with Developmental Disabilities;

(3) requires each State to provide a plan to the Secretary for assuring compliance of each program serving the developmentally disabled within the State with the standards established by the title within five years after the date of enactment;

(4) requires the Secretary to determine whether or not programs are in compliance with the statute and to report annually to the Congress on the program;

(5) authorizes appropriations of such sums as may be necessary for grants by the Secretary to the States to assist publicly operated programs in meeting the requirements of the statute;

(6) requires maintenance of effort by the States and authorizes withholding of any Federal assistance under any Act from any program which does not meet the standards after 1980; and

(7) requires the Secretary to develop and transmit to the Congress an evaluation system which will assess the adequacy of all education and training, habilitation, rehabilitation, early childhood, diagnostic and evaluation services, or any other services or assistance under all laws administered by the Secretary.

The conference substitute conforms to the House bill but includes a requirement that the Secretary of HEW make studies and recommendations to the Congress respecting appropriate standards and quality assurance programs for programs serving the developmentally disabled.

ALTERNATIVE CRITERIA FOR COMPLIANCE IN LIEU OF STANDARDS FOR RESIDENTIAL AND COMMUNITY FACILITIES AND AGENCIES

The Senate amendment, but not the House bill:

(1) requires the Secretary to specify detailed performance criteria for measuring the progress of persons with developmental disabilities;

(2) requires the Secretary to insure that every individual served by any program assisted by the Secretary has an individualized written habilitation plan and specifies characteristics of such plans;

(3) requires each agency serving any developmentally disabled individual to assign to each such individual a program coordinator and specifies requirements respecting program coordination;

(4) requires the Secretary to insure that each State establishes a system of protective and personal advocacy for the developmentally disabled and specifies requirements with respect to such systems;

(5) requires each program serving the developmentally disabled to keep such records as the Secretary may require; and

(6) specifies minimum standards which agencies meeting the performance criteria specified above must meet in addition to the criteria.

The conference substitute conforms to the House bill except that it incorporates the requirements for individual habilitation plans; a set of six specified minimum standards dealing with health safety and rights of developmentally disabled persons; and a State system of protection and advocacy of the individual rights of the developmental disabled with redrafting and technical changes.

The intention of the conference committee is that the habilitation plan be required only when the Federal assistance under this Act contributes a portion of the cost of the habilitation services to the developmentally disabled person. If, for example, the only Federal assistance received by a program is used solely to purchase a bus to transport developmentally disabled persons, then a written habilitation plan would not be required. If, on the other hand, a program to provide habilitation services to developmentally disabled individuals is supported in whole or in part by Federal funds under this Act, a written habilitation plan would be required for each program participant.

The conference committee recognizes that the six minimum standards are designed to protect the basic human needs of developmentally disabled individuals and will not in themselves ensure quality habilitation and adequate treatment programs. The committee therefore does not intend these standards to preempt or supplant any existing Federal or State standards currently in force (e.g. standards applicable to Intermediate Care Facilities for the Mentally Retarded under Medicaid), which may require more detailed or higher standards of care.

STANDARDS FOR RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED AND OTHER PERSONS WITH DEVELOPMENTAL DISABILITIES

The Senate amendment, but not the House bill, specifies detailed standards for the operation of residential facilities including a chapter

enumerating standards respecting each of the following: administrative policies and practices of such facilities, living arrangements for persons served by such facilities, professional and special programs and services of such facilities, records, research, safety and sanitation, and administrative support services.

The conference substitute conforms to the House bill.

STANDARDS FOR COMMUNITY FACILITIES AND AGENCIES SERVING THE DEVELOPMENTALLY DISABLED

The Senate amendment, but not the House bill, provides detailed standards for community, non-residential programs serving the developmentally disabled including a section enumerating standards respecting each of the following: case finding, entry into the service delivery system, follow-along services, individual program plans, program coordination, protective services, personal advocacy services, guardianship services, individual assessment, attention to health needs, attention to developmental needs, sensorimotor development, communicative development, social development, effective development, cognitive development, services to support employment and work, recreation and leisure services, family related services, home training services, homemaker services, respite care, sitter services, attention to needs for mobility, resource information and data documentation services, coordination, agency advocacy, community education and involvement, prevention services, manpower development, volunteer services, program evaluation, research, records, and philosophy policies and practices.

The conference substitute conforms to the House bill.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-58

DEVELOPMENTAL DISABILITIES AMENDMENTS OF 1975

MARCH 13, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 4005]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 4005) to amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs authorized by that act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF LEGISLATION

H.R. 4005, as reported, provides a one year simple extension through fiscal 1975 of authority for programs for the developmentally disabled which expired June 30, 1974, and are presently being carried on the continuing resolution for 1975. It also provides a two-year substantive revision of the existing authority for 1976 and 1977 with a total authorization of $147 million. The substantive revision makes the following changes in existing law:

1. Continues with minor modifications existing authority for grants for operating university-affiliated facilities for the developmentally disabled;
2. Creates a new special project authority and substitutes for the existing ten per centum earmark of state allotments for projects of special national significance a new thirty per centum earmark of the new special project authority for such projects;
3. Requires that States spend a specified percentage of their allotments for programs for deinstitutionalization of persons

with developmental disabilities inappropriately placed in institutions;

4. Eliminates requirements for Federal approval of individual construction projects funded with state grant funds;

5. Adds autism and dyslexia specifically to the list of diseases for which the special project and State allotment programs are to provide services; and

6. Requires studies by the Secretary of HEW to determine the neurological diseases which should and should not be considered as developmental disabilities, and the adequacy of services for persons with diseases not included.

Background

The present developmental disabilities program began as title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164, October 31, 1963). Minor amendments were made by Public Laws 89–105, 89–333, and 90–31. Substantial amendments with a three-year extension through June, 1970, were made by Public Law 90–170, the Mental Retardation Amendments of 1967. The Act was then substantially rewritten, broadened to cover all developmental disabilities as defined, rather than simply mental retardation, and extended through June, 1973, by the Developmental Disabilities Services and Facilities Construction Act of 1970, Public Law 91–517. The law was subsequently extended without change through June, 1974, by Public Law 93–45.

The proposed legislation is similar to H.R. 14215 which passed the House late in the last Congress, but on which a conference was never completed. H.R. 14215 was reintroduced in the present Congress as H.R. 2955 and hearings held on February 28, 1975. It was subsequently considered in open make-up by the Subcommittee on Health and the Environment, amended, reported by unanimous voice vote, and reintroduced as a clean bill, H.R. 4005, H.R. 4005 was then reported from the full Committee on Interstate and Foreign Commerce by voice vote.

Similar legislation has been introduced in, but not yet passed, the Senate.

Cost of Legislation

As reported by the Committee, H.R. 4005 provides for authorizations of appropriations for two fiscal years for the developmental disabilities program as shown in the following table.

TABLE I.—NEW OBLIGATIONAL AUTHORITY FOR FISCAL YEARS 1975–77 UNDER H.R. 4005

[In millions of dollars]

	Fiscal year			Total
	1975	1976	1977	
University affiliated facilities, sec. 122	(1)	12	15	27
Special project grants, sec. 130	(1)	15	15	30
State formula grants, sec. 131	(1)	40	50	90
Total	(1)	67	80	147

[1] Simple 1-year extension of existing authority.

The authorizations may be compared to the following recent program budgetary experience. The comparable total authorizations were $170 million in 1973 and $41.75 million in 1974.

TABLE II.—DEVELOPMENTAL DISABILITIES BUDGET HISTORY

[In millions of dollars]

Fiscal year and grant program	Authorization	Budget request	Appropriation	Obligation	Outlays
1971:					
Construction of demonstration facilities, sec. 121	20.000	0	0	1.592	0.450
Demonstration and training, sec. 122	15.000	0	0	0	0
State formula grants, sec. 131	60.000	8.000	11.215	5.918	0
Total	95.000	8.000	11.215	7.510	0.450
1972:					
Construction of demonstration facilities, sec. 121	20.000	0	0	0	4.512
Demonstration and training, sec. 122	17.000	0	4.250	3.983	0
State formula grants, sec. 131	105.000	11.215	21.715	14.410	10.723
Total	142.000	11.215	25.965	18.393	15.235
1973:					
Construction of demonstration facilities, sec. 121	20.000	0	0	0	3.058
Demonstration and training, sec. 122	20.000	4.250	4.250	4.464	5.131
State formula grants, sec. 131	130.000	21.715	21.715	28.258	19.932
Total	170.000	25.965	25.965	32.722	28.121
1974:					
Construction of demonstration facilities, sec. 121	0	0	0	0	0
Demonstration and training, sec. 122	9.250	4.250	4.250	[1] 4.335	[1] 7.488
State formula grants, sec. 131	32.500	21.715	32.500	[1] 34.748	[1] 34.654
Total	41.750	25.965	36.750	[1] 39.083	[1] 42.142
Total existing law	448.750	71.145	99.895	[1] 101.708	[1] 85.928
1975:					
Construction of demonstration facilities, sec. 121	0	0	([2])	([2])	([2])
Demonstration and training, sec. 122	9.250	4.250	([2])	([2])	([2])
State formula grants, sec. 131	32.500	30.875	([2])	([2])	([2])
Total	41.750	35.125			
1976:					
Demonstration and training, sec. 122	12.000	4.250			
Special projects, sec. 130	15.000	([3])			
State allotments, sec. 131	40.000	32.875			
Total	67.000	37.125			
1977:					
Demonstration and training, sec. 122	15.000				
Special projects, sec. 130	15.000				
State allotments, sec. 131	50.000				
Total	80.000				

[1] Estimates.
[2] Continuing resolution at 1974 level.
[3] $18,500,000 requested for similar special projects under standing general authorities.

Need for Legislation

Developmental disabilities are disabilities, such as mental retardation, cerebral palsy, epilepsy, autism dyslexia and neurological conditions, which originate in childhood, continue indefinitely, and constitute a substantial handicap to the affected individual. There are over 6 million people in the United States suffering from mental retardation and, depending on who is counted, an additional several million people

suffering from other developmental disabilities. Citizens with developmental disabilities need support and assistance with learning and living so that they may function in our society as the citizens that they are with maximum effectiveness.

The Congress of the United States began to respond to the needs of these millions of people many years ago with an assortment of social security and rehabilitation programs. This response received new impetus in 1963 with the enactment of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164, October 31, 1963). This Act provided for centers for research on the mentally retarded, construction of university-affiliated facilities for the mentally retarded, construction of other facilities for the mentally retarded, and training of teachers of mentally retarded and other handicapped children.

The legislation was continued with modest revisions by the Mental Retardation Amendments of 1967 (Public Law 90–170). This Act extended the authority for grants for the construction of facilities for the mentally retarded and university-affiliated facilities through June, 1970, added authority for grants for the costs of the professional and technical personnel of community mental retardation facilities, added authority for the training of physical educators and recreation personnel for such facilities, and broadened the definition of mental retardation to include neurological handicaps related to it.

The Act was subsequently substantially rewritten in 1970 by the Developmental Disabilities Services and Facilities Construction Amendments (Public Law 91–517). This Act changed the title of the program and its direction to a broader and more inclusive concern for the developmentally disabled generally. It authorized formula grants to states for planning, administration, construction, and services concerned with developmental disabilities, grants for interdisciplinary training programs in institutions of higher learning, grants for special projects of national significance, grants for the construction and operation of university-affiliated facilities for those with developmental disabilities, and provided for the establishment of a National Advisory Council on Services and Facilities for the Mentally Disabled.

STATE FORMULA GRANTS

The state formula grant program represented a new, innovative approach to the provision of services to a population such as that with developmental disabilities. The program included:

(1) Federal support for a wide range of diversified services for the lifetime human needs of the developmentally disabled. Thus, the Act listed a wide variety of services which could be provided as necessary to the disabled and provided for the combined use of funds under the program and other state programs in order to facilitate the development of comprehensive and integrated services.

(2) Development of new and innovative programs to fill gaps in existing services and to expand the reach of such services to new groups of individuals.

(3) Responsibility at the state level for developing strategies for the successful implementation of the program.

(4) Requiring a state developmental disabilities council to guide the program which was to be broadly representative of state and local agencies and consumers interested in developmental disabilities.

(5) Flexibility in allowing the states to distribute their funds under the program as appropriate among both several state agencies and several different functions including planning, administration, construction, and services.

This flexibility has permitted the states to place administration of the program in a variety of different types of agencies and in some cases in more than one agency. Thus, in some states administration of the construction part of the program is placed in the Hill-Burton agency or administration of the planning part of the program in executive planning offices.

There is similar variation among the states with respect to the amounts of money apportioned among the functions for which the funds can be used. This variation reflects the implementation of the statutory provision of the Act requiring that the funds supplement and not supplant those available from other sources. Since available funds vary from state to state this has meant that the states have used their funds in an appropriately variable mannner. The overall average distribution of funds by function is shown in tables III and IV. In connection with these tables it is worth emphasizing the high proportion of the funds used for the actual provision of services, the wide variety of different services which have been provided and the large number of individuals who have benefited.

TABLE III.—DISTRIBUTION BY STATES OF DEVELOPMENTAL DISABILITIES FUNDS ACCORDING TO FUNCTION

Function	Amount 1973	Percent	Amount 1974	Percent	Amount 1975 [1]	Percent
Planning	$2,141,159	7.9	$4,250,182	14.7	$4,847,144	17.5
Administration	2,958,485	7.5	1,824,794	6.3	2,257,421	8.1
Services	21,519,888	78.8	21,510,000	74.2	20,522,117	73.5
Construction	1,584,241	5.8	1,380,000	4.8	242,714	.9
Total	28,243,773	100.0	28,964,976	100.0	27,869,396	100.0

[1] Based on estimates included in current State plans.

TABLE IV.—DEVELOPMENTAL DISABILITIES SUMMARY OF EXPENDITURES OF FEDERAL AND STATE FUNDS FOR SERVICES (EXPENDED IN FISCAL YEAR 1973 AGAINST FISCAL YEAR 1971, 1972, AND 1973 APPROPRIATIONS)

	Amount	Percent	Number of services provided to individuals
Disagnosis	$2,415,000	5.2	31,566
Evaluation	2,132,000	4.6	30,476
Treatment	3,409,000	7.4	48,504
Personal care	2,391,000	5.2	2,262
Day care	3,717,000	7.9	14,929
Domiciliary care	6,179,000	13.4	806
Special living arrangements	3,942,000	8.5	3,168
Training	4,716,000	10.2	16,353
Education	2,638,000	5.6	25,554
Sheltered employment	3,281,000	7.0	3,682
Recreation	2,092,000	4.2	14,663
Counseling	2,845,000	6.1	16,016
Protective sociolegal	1,085,000	2.3	4,085
Information and referral	2,490,000	5.4	54,968
Follow-along	1,852,000	4.0	8,588
Transportation	1,400,000	3.0	6,687
Total	46,584,000		[1] 282,327

[1] Many individuals received multiple services.

The new state developmental disabilities councils have, after some initial confusion as they became organized, played an increasingly important role in the program. The councils have concerned themselves with a variety of activities including:

(1) Assisting in identifying and developing alternative and additional sources of funding and resources for the developmentally disabled.

(2) Development of strategies and procedures for determining and documenting the needs of the developmentally disabled including population and program surveys, case registries, and local need assessment programs.

(3) Improving systems for grant review, project evaluation, and for determining their own effectiveness and impact.

(4) Focusing on the legal issues inherent in providing services to the developmentally disabled.

(5) Re-enforcing the trend toward community placement and deinstitutionalization of the disabled.

(6) Building statewide understanding and acceptance of those with developmental disabilities.

The developmental disabilities program itself provides only approximately 1 percent of all the funds available from Federal, state, and local sources for services of various kinds to the developmentally disabled. The intent of the state formula grant provisions of the 1970 Act was to provide for more effective planning by the states of their programs, initiation of new, needed programs, and filling of gaps among existing efforts. The Committee feels that these goals have been reasonably achieved in the first three years of the program. A program which provides only 1 percent of available funds must have its impact through improving the effectiveness and efficiency of the use of the rest of available funds. This has been achieved by the program to date.

PROJECTS OF NATIONAL SIGNIFICANCE

The Developmental Disabilities Act of 1970 provided for earmarking of up to 10 percent of state formula grant funds for special projects of national significance. With the advice of the National Advisory Council on Services and Facilities for the Mentally Disabled, the Federal Division of Developmental Disabilities has elected three major areas of emphasis for such projects:

Technical assistance to the states.

Legal and personal advocacy for the disabled.

Development of community alternatives for the care of the disabled, and methods for institutional reform.

In the first area two projects are of special note. At the University of North Carolina a developmental disabilities technical assistance system has been developed and is engaged in a wide variety of outreach efforts to state councils and programs. This program assists the states with development of evaluation technologies, appropriate use of the media, grant review procedures, and priority setting strategies. A project at the University of California at Los Angeles to develop an individualized data base is important since it will help answer the question of what kinds of individuals at what ages should be placed in home care, specialized foster care, or residential treatment.

This will be done by establishing a tracking system for developmentally disabled individuals which will make it possible to track their progress through various different care settings and allow an assessment of the effectiveness of these settings. The Committee is pleased by the progress made by the first project and looks forward to the results of the second.

In the area of legal and personal advocacy for the developmentally disabled, the program has assisted in funding the National Center for Law and the Handicapped (NCLH). This Center is devoted to protecting the rights of handicapped persons and particularly to establishing their right to:

Education and training.

Quality care and treatment in residential facilities and the right to live under considitions least restrictive to personal liberty.

Equal access to buildings, public transportation, and public accommodations, and equal opportunity to engage in employment.

Medical care and developmental services from birth through life consistent with the highest standards of service available to the community at large.

The Committee is well aware that our disabled and handicapped citizens are often unreasonably and unnecessarily deprived of their rights and relegated to second class status. As such, it applauds this effort on the part of the developmental disabilities program to establish, assure, and preserve the rights of the disabled including all of those enumerated above.

In the area of deinstitutionalization and development of community alternatives to institutionalization the program has funded special projects designed to assist the states in identifying substandard aspects of their institutions and programs, identifying resources presently and potentially available for improving conditions within the institutions, devising plans to achieve accreditation standards within specified time periods, and incorporating the plans into state developmental disabilities plans to provide a combined effort giving high priority to deinstitutionalization. These projects have provided assistance to all of the states except Puerto Rico, Tennessee, and Arizona and have allowed them to begin the necessary background work to achieving deinstitutionalization. In addition projects have been devoted to the funding of 14 demonstrations of methods of reducing the populations of state institutions, and the improvement of standards and accreditation tools for both inpatient and outpatient services.

UNIVERSITY-AFFILIATED FACILITIES

The original Mental Retardation Facilities Construction Act of 1963 provided authority for the construction of facilities for training personnel and developing service programs for the developmentally disabled in institutions affiliated with universities. In 1970 the Act was amended to provide non-categorical, operational support for interdisciplinary training and demonstrations in university-affiliated facilities, in addition to the existing construction authority. It should be noted that the construction authority was used in the early years of the program but has not been employed since 1968. It did provide for the original construction of 18 university-affiliated facilities, a number which has grown to the present 41 (counting some facilities which use multiple locations in affiliation with a single university).

These facilities received $4.135 million from the developmental disabilities program in 1973. This money was supplemented with additional Federal funding in the amount of $18.329 million from the Maternal and Child Health programs and $0.455 million from the Bureau of Education for the Handicapped, for a total funding of $32.919 million. The Committee is pleased to note that this modest amount of funding from the developmental disabilities program has been able to attract such a large amount of additional Federal funds. In addition it has been pleasing that since 1970, in funding new facilities, the program has taken into account the uneven geographic distribution of the programs originally supported and has begun to correct this distribution.

The magnitude of the contribution of the university-affiliated facilities is suggested by the fact that in 1973 over 50,000 trainees from more than 60 disciplines received training in some form from them. Of these 2,436 received over 160 hours of experience in the centers while others took advantage of short-term training either as a part of on-the-job training, or general professional or technical preparation. In addition, the facilities provided service to almost 20,000 patients in almost 39,000 visits. While the Committee is aware of these facts and knows of some studies which show that the individuals trained by these facilities continue in service to the developmentally disabled, the Committee would be pleased to see more definitive evaluations of the impact and effectiveness of the facilities.

PROPOSED LEGISLATION

As is suggested by the preceding discussion, the Committee is impressed that the developmental disabilities program as it has operated since the revision of the Act in 1970 has been a success and has made important contributions to the quality of the lives of those suffering from these disabilities. As such, the Committee has joined with the administration in proposing an extension of the program and its preservation as a separate, specific legislative authority for fiscal years 1975 through 1977.

The authorizations of appropriations chosen for the coming years can be seen by an examination of table II to represent modest increases over those for 1974 but some decrease from the level reached in 1973. The latter level has proven to be excessive in an era of fiscal restraint and inflation but the Committee is convinced that more money could be spent effectively on these programs than is presently the case and is hopeful that the proposed authorizations will be fully funded. This is particularly important in light of the new requirements for an emphasis on deinstitutionalization, discussed below, which is it realized may prove expensive.

The general success and growing efficiency of the program does not mean that there are no problems or needs for change and the Committee has in fact identified several areas in which it is felt that some alteration in program emphasis is needed. Some of these can be corrected without changes in legislation including: a need for increased coordination among federal, State, and local programs at the State level; a need for some improvement in the functioning of state developmental disabilities councils; a lack of adequate data on the services provided by the program, the target populations receiving these services and

the effect that the services have on the population; and a lack of adequate evaluations of the effectiveness and efficiency of various parts of the program.

Without change in the legislation, the first two problems should be dealt with through increased support for and use of the state developmental disabilities councils. Both State formula grant and project grant monies can be used to educate the councils and increase their understanding of their role and ability to perform it. With such support the councils in turn can improve the direction of the program and coordination of federal, State, and local programs. The authors of the legislation are hopeful that the existing authorities will be used more effectively to achieve these goals.

The lack of data about the programs and evaluations of them are both remedial through use of existing authorities including particularly the requirement of section 134(b) that State plans submitted to the Secretary contain such information as he finds necessary to carry out the program, and the existing earmark of 1 percent of appropriated funds for purposes of evaluation. The problem in these areas is not a lack of legislative authority, but a lack of aggressive and appropriate use of that authority, and the Committee is hopeful that this will improve.

In several other areas it has been necessary to amke changes in the statute itself in order to achieve needed changes in the program. These are described generally in the subsequent paragraphs, and specifically in the section-by-section analysis which follows.

SPECIAL PROJECT GRANT AUTHORITY

The 1970 revision of the Act gave the Secretary authority to earmark up to ten per centum of the State monies for use for projects of special national significance. As described in the preceding section, this authority has been well used for a variety of innovative activities. For this reason the Committee has decided in amending the legislation at this time to separate this authority from the State grant authority and provide specific authorizations of appropriations for it. This increases the available funding, the specificity of the authority, and the Secretary's accountability for its use.

Projects supporting developmental disabilities have been funded to date under a variety of available legislative authorities because of the limited amount available under the earmark for projects of special national significance. Knowing this, a provision has been included requiring that the new special project authority be used as the only authority for such projects with a concomitant increase in the authorizations to assure their adequacy. This requirement reflects the Committee's general preference that the Secretary use a single, specific authority for its stated purpose.

The types of projects to be funded under this authority include, but are not limited to, (1) integration of services for the developmentally disabled, (2) coordination and utilization of available community resources, (3) improvements in the administration of, and quality of care provided under, programs for developmentally disabled persons, and (4) demonstrating new or improved techniques for the provision of services.

DEINSTITUTIONALIZATION

As noted in the previous section in the discussion of special projects, the Secretary has already assisted all but three of the States in the initial assessment of the need and possibilities for deinstitutionalization of individuals inappropriately placed in inpatient facilities. Since the Committee is well aware that current theory with regard to the treatment and support of the developmentally disabled, emphasizes that this treatment should be conducted in the individual's community without unnecessarily institutionalizing him, the Committee has chosen to include a specific requirement that state programs plan for as much deinstitutionalization as is feasible, and earmark monies for this purpose. Knowing that this may require some increase in expenditures, the Committee has also increased the authorizations of appropriations.

It is anticipated that these requirements will prompt some movement of patients from State institutions back into their communities. It is hoped that corresponding amounts of State and other funds currently being spent on institutional care will be re-budgeted for community care, an obvious rebudgeting which has not always occurred in conjunction with deinstitutionalization efforts.

STATE APPROVAL OF CONSTRUCTION PROJECTS

The present Act requires the Federal Government to give specific approval to each individual construction project undertaken by the States and localities using State formula grant funds. The administration has proposed, and the Committee agrees, that this requirement for individual federal approval of projects should be eliminated. The federal government would retain its authority to approve or disapprove State plans for expenditure of program monies and these plans would be required to include State plans for construction along with plans for other uses of the funds. Thus, the federal government would retain an appropriate right to review the general outlines of construction programs but be relieved of the onerous and unnecessary burden of reviewing and approving every individual construction project.

AUTISM AND DYSLEXIA

The definition of developmental disabilities included in the 1970 Act is a flexible, functional definition which was intended to allow the Secretary and the States to include in the program services to individuals afflicted with any neurological condition having its onset before age 18, likely to be permanent and severely disabling. It was the intent of the Committee in 1970 that the Secretary would move within this definition to specify those conditions for which services should and should not be provided. This has never been done. Generally the Secretary has failed to publish any listing of those conditions which will be considered as developmental disabilities or to give to the States any adequate guidance in making such decisions for themselves. Specifically because of continued uncertainty as to whether or not autism is a neurological condition, the Secretary has not extended the services of the program to those afflicted with this often severe and tragic disease. However, in its legislative proposal and testimony on the legislation the Administration did urge addition of autism to the

legislative authority without taking a position on its etiology. Dyslexia should be included in this same category.

Since individuals suffering from autism and dyslexia often manifest many of the same symptoms as those with other developmental disabilities and usually require similar forms of therapy, the Committee has elected to include specific reference to autism and dyslexia in the definition of developmental disabilities so as to assure that victims of those conditions will no longer be excluded from receiving the benefits of the program. Knowing that there remains some controversy as to whether or not the diseases are of neurological origin, the definition is worded in such a way as to take no stand on this question. It is hoped that in seeking for an understanding of the cause of the diseases, the question itself will be answered in the near future.

SPECIAL STUDIES

In addition to the specific inclusion of autism and dyslexia in the definition of developmental disabilities, the proposed legislation directs the Secretary to undertake several special studies. The first of these, for which a six-month deadline is set, will require the Secretary to report to the Congress the neurological conditions which he determines should and should not be included as developmental disabilities. The Secretary would also subsequently be required to annually review his determination and make any appropriate modifications. This requirement has been included because of the original, unfulfilled Congressional intent that such determinations be made within the context of the definition given in the Act.

In addition, the Secretary will be required to contract for an independent, objective study of the definition of developmental disabilities used in the legislation to determine whether or not is is appropriate and the extent to which, if it is not, a more appropriate basis for determining what disabilities should be included in the program can be developed. This requirement is included because the Committee has been charged by those representing individuals suffering from diseases which are not included in the definition with using an inappropriate definition which unreasonably excludes needy individuals. These include those suffering from learning disabilities. The Committee is concerned that such people may be inappropriately excluded or inadequately served but has been unwilling at this time to include them in the definition because it is unaware of the adequacy of services for them and the extent to which their inclusion would dilute the availability of services for those presently being served. Thus, the study of the definition is to review the adequacy of services being provided under other federal programs for those not included in the developmental disabilities program at the present time and should also give some indication of what impact using a different definition would have on the availability of services for those who presently are being served.

SECTION-BY-SECTION ANALYSIS OF H.R. 4005, THE DEVELOPMENTAL DISABILITIES AMENDMENTS OF 1975

Section 1: Provides that the Act may be cited as the "Developmental Disabilities Amendments of 1975".

Section 2(a): Extends the existing authority under section 122(b) and section 131 of the Developmental Disabilities Services and Facilities Construction Act through the end of fiscal year 1975.

Section 122 authorizes Demonstration and Training Grants under the University Affiliated Facilities program. Section 131 authorizes appropriations for allotments to the States for the developmental disabilities program.

The Developmental Disabilities Services and Facilities Construction Act is title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164). It will be referred to in the rest of this analysis as the "Act".

Section 2(b): Extends the current "Federal share" provision through fiscal year 1975. That share is now 70 percent for nonconstruction expenditures.

EXTENSION OF DEMONSTRATION AND TRAINING GRANTS

Section 3(a): Amends section 122(b) of the Act by authorizing the appropriation of $12 million for the fiscal year ending June 30, 1976, and $15 million for fiscal year 1977.

The authorizations of appropriations for 1975 through 1977 can be compared with an authorization of $20 million for 1973, and $9.25 million for 1974. No authorization of appropriations is given for section 121 which provides for assistance with the construction of facilities for demonstration and training because this authority has not been used since 1968. Funds appropriated under section 122 have been used primarily for the support of university-affiliated facilities for the developmentally disabled. These facilities provide multi-disciplinary, multifaceted services, research, and training on developmental disabilities.. The Committee has been increasingly impressed with the functioning of these centers and for this reason has recommended a modest increase in the authorization for their funding.

Section 3(b): Amends section 124 of the Act to read as follows:

PAYMENTS

> Section 124. Payments of grants under section 122 shall be made in advance or by way of reimbursement, and on such conditions as the Secretary may determine.

This amendment to section 124 has the effect of deleting a requirement in the existing law that the total of grants with respect to any project for demonstration or training under section 122 may not exceed 75 percentum of the necessary cost of the project as determined by the Secretary. This requirement was originally intended to apply primarily to construction grants made under section 121. Its application to demonstration and training grants under section 122 is inappropriate since the level of funding for such grants should be determined on an individual basis. Since the construction provision is no longer being used and the application of this requirement to demonstration and training grants is inappropriate the Committee has chosen at this time to delete the requirement.

SPECIAL PROJECT GRANTS

Section 4. Amends section 130 of the Act with a new text. The present text of section 130 contains a statement of purposes for part C of the Act. These purposes were to be carried out through formula grants to the States and through project grants by the Secretary for

projects of national significance which would achieve the purposes listed. Funds for the project grants were to be made available from appropriations for the formula grants in an amount up to 10 percent of that appropriation. Rather than this somewhat cumbersome approach the Committee has chosen to separate the project grant and formula grant authorities and to include separate authorizations of appropriations for the two authorities. The purpose of part C of the Act is now reflected in the list of activities for which the new project grant authority can be used and in the requirements for a State plan for the use of the formula grant monies. The new text of section 130 provides as follows:

New section 130(a).—Authorizes the Secretary to make grants to public or nonprofit private entities for:

(1) Demonstration projects for the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status or the location of their residences;

(2) Technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in state and local planning or administration;

(3) Training of specialized personnel needed for the provision of services for persons with developmental disabilities, or for research directly related to such training;

(4) Developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities;

(5) Gathering and disseminating information relating to developmental disabilities;

(6) Coordinating, integrating, and using all available community resources for services to persons with developmental disabilities; and

(7) improving the administration of, and the quality of services provided in, programs for such persons.

New section 130(b).—Provides that no grant may be made under section 130(a) unless an application has been submitted to and approved by the Secretary. Such application is to be in such form, submitted in such manner, and contain such information as the Secretary prescribed by regulation. The Secretary is not to approve such application unless the State in which the applicant's project will be conducted has a State plan for the expenditure of formula grant monies approved under section 134 of the Act.

New section 130(c).—Provides that the amount of any grant under section 130(a) is to be determined by the Secretary; and that payments under such grants may be made in advance or by way of reimbursement, and at such intervals and on such conditions as the Secretary finds necessary. Further requires that in determining the amount of any grant under section 130(a) for the cost of any project, there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other federal grant which the applicant has obtained, or is assured of obtaining, with respect to the project, and (2) the amount of any non-federal funds required to be expended as a condition of such other federal grant.

New section 130(d).—Authorizes appropriations for the purpose of making payments under section 130(a) in the amounts of $15 million

for each fiscal year, 1976 and 1977. Requires that of the funds appropriated under this subsection in any fiscal year not less than 30 per centum must be used for projects of national significance, as determined by the Secretary.

The requirement for earmarking 30 per centum of the funds for projects of national significance is similar to a requirement in existing section 132(e) of the Act that the Secretary use up to 10 per centum of the formula grant funds authorized by existing section 131 for projects which are of national significance because they will assist in meeting the needs of the disadvantaged with developmental disabilities, or will demonstrate new or improved techniques for provision of services of such persons, or are otherwise especially significant for carrying out the purposes of the title. Since the authorizations for project and formula grants have been separated in the new amendments this provision is deleted from the existing section 132(e) but is carried in this new subsection in order to underline the Committee's continued commitment to the use of some of the available funds for such projects. It should be noted that 30 per centum of the $15 million authorized would be more than 10 per centum of the recent authorizations and appropriations under the existing provisions of the Act.

New Section 130(e).—Provides that no funds appropriated under the Public Health Service Act or under this Act (other than under section 130(d)) may be used to make grants under section 130(a).

This provision is intended to assure that the new section 130, and only the new section, is used for the making of grants for the purposes listed in section 130(a), rather than other more general authorities included in this and the Public Health Service Acts.

STATE ALLOTMENTS

Section 5(a)—Amends section 131 of the Act which authorizes appropriations presently for both formula and project grants by authorizing appropriations of $40 million for 1976 and $50 million for 1977 for the purpose of making allotments or formula grants under section 132.

These authorizations may be compared with authorizations of $130 million in 1973 and $32.5 million in 1974 and 1975.

Section 5(b)—Amends section 132(a) of the Act with a new text which provides that in each fiscal year the Secretary shall allot the sums appropriated for that year under section 131 among the States on the basis of:

(1) Their populations.

(2) The extent of need for services and facilities for persons with developmental disabilities, and

(3) The financial need of the respective States.

Sums allotted to the States are to be used in accordance with approved State plans under section 134 for the provisions under such plans of services and facilities for persons with developmental disabilities. The Secretary is given authority for making regulations for the allotment process.

The new subsection 132(a) further provides for minimum allotments as follows. For the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands the minimum allotment is to be $500,000. For the remaining States the minimum allotment in any fiscal year is not to be less than $100,000.

A provision in H.R. 14215 as passed by the House and in existing law last year and in existing law required a pro rata increase in the minimum allotment whenever the appropriation exceeded the amount authorized to be appropriated for fiscal year 1971—$60,000,000. Since the authorization for the years covered by this bill, 1975 through 1977, never exceeds $60,000,000, this provision is not contained in this bill.

The new section 132(a) further provides that in determining the extent of need in each State for services and facilities for persons with developmental disabilities (for the purposes of determining State allotments), the Secretary is to take into account the scope and extent of the services specified, pursuant to section 134(b)(5), in the State plan of each State approved under section 134. These requirements are taken from the existing law.

The new section 132(a) further provides, as does existing law, that sums allotted to a State in a fiscal year and designated by it for construction and remaining unobligated at the end of the year shall remain available to the State for construction purposes in the next fiscal year (and in such year only), in addition to the sums allotted to the State in the next fiscal year. An exception to this is provided that, if the maximum amount which may be specified for construction under section 134(b)(15) for a yaer plus any part of the amount so specified for the preceding fiscal year and remaining unobligated at the end of the year is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State (developed pursuant to section 134(b)(15)), than funds for the preceding year are to remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of the facility.

New 132(a) further provides that of the monies allotted to any State in fiscal year 1976 at least 10 percent must be used (in accordance with the plan submitted under section 134(b)(20)) for the purpose of assisting the State in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities. In fiscal years after the fiscal year ending June 30, 1975, the States are required to use at least 30 percentum of the monies allotted for these purposes.

The Committee agrees with national authorities on developmental disabilities, and particularly on mental retardation, that for the vast majority of individuals institutional care is inappropriate and inhumane. Because of these findings the Committee has chosen to require that the States provide plans for the deinstitutionalization of as many of their citizens with developmental disabilities as possible and to require that the States use first at least 10 percent and then at least 30 percent of their monies available under this Act for the purpose of deinstitutionalizing as many of those with developmental disabilities as is possible. Deinstitutionalization can be achieved in a variety of ways. First, the State should attempt to find ways of assuring that no individual is admitted unnecessarily or inappropriately to an inpatient facility in the first place. Second, programs can be developed within institutions for identifying all those who could live outside of the institution; identifying support needed and the setting in which this would be possible; and preparing them for discharge.

Third, deinstitutionalized people with developmental disabilities will need programs of support and assistance in their own communities and the States can engage in planning, developing, and supporting such programs.

Section 5(c)—Repeals section 132(e) of the present Act. Section 132(e) earmarks not more than 10 percentum of the monies appropriated under the present Act for allotment to the States for the purpose of funding projects of special national significance for the carrying out of the purposes of the existing section 130. This provision is repealed because it is replaced by the new special project authority contained in the new section 130 of the Act created by these amendments which contains an earmark of not less than 30 percent of the funds appropriated for such special projects for projects of national significance.

Section 5(d)—Makes technical and conforming amendments to sections 132(b), 134(b)(4), and 138 of the Act to reflect the amendments made in the State allotments provisions.

CONSTRUCTION PROJECTS

Section 6(a)—Repeals sections 135 and 136 of the present Act.

Section 6 of the Act is generally intended to remove from the existing Act various provisions which require the Department of Health, Education, and Welfare to approve each individual construction project funded by each State. In place of these provisions new requirements are placed upon the States for their planning, monitoring, and funding of construction projects. The Department would still retain a general approval of the use of monies under the Act for construction since the State plans which must be approved by the Department must include plans for any construction for which developmental disabilities monies are to be used. Section 135 of the Act, repealed by this section, provides for approval of projects for construction, and specifically provides that for each project for construction an application must be filed with the Secretary and approved by him. Section 136 of the Act, also repealed by this section, provides for withholding of payments for construction by the Secretary in specified situations.

Section 6(b)—Amends section 134(b) of the Act, which contains requirements for the State plans for the provisions of developmental disabilities services and facilities, by adding three new requirements. These require the States to:

(1) Provide reasonable assurance that adequate financial support will be available to complete the construction of, and to maintain and operate when such construction is completed, any facility, the construction of which is assisted with sums allotted under section 132;

(2) Provide reasonable assurances that all laborers and mechanics employed in construction paid for with sums allotted under section 132 will be paid at rates not less than those prevailing on similar construction in the locality (the provisions known as Davis-Bacon provisions); and

(3) Contain a plan designed to eliminate inappropriate placement in institutions of persons with developmental disabilities, and to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate.

The first two new requirements of the States were previously responsibilities of the Department of Health, Education, and Welfare contained in the repealed section 135 of the Act and are essentially identical to the existing requirements except that they are now placed upon the States. The third requirement for a plan for the deinstitutionalization of persons with developmental disabilities is a new requirement which reflects the Committee's belief that persons with developmental disabilities should not generally be cared for as inpatients of institutions, and when this is necessary should receive care of the highest possible quality, humanity, and dignity. Plans for the elimination of inappropriate placement in institutions of persons with developmental disabilities should generally include plans for preventing such inappropriate placement in the first place, plans for identifying persons who are presently resident in institutions and could be discharged to the community if properly prepared for such discharge and supported after it, and plans for the development of suitable programs of support for persons with developmental disabilities in their own communities. Plans for improving the quality of care and state of surroundings of persons for whom institutional care is appropriate should generally include plans for the setting of appropriate standards for care by the state and enforcement of such standards, and identification and correction of deficiencies in all institutions which make them incapable of complying with appropriate standards.

Section 6(c)—Amends the headings of sections 137 and 138 of the Act by adding to them reference to construction. These sections presently contain a requirement for payments, and withholding of payments, by the Secretary to the States for activities conducted under the State plan using monies allotted under section 132. The reference to construction is added to the headings for these sections since activities conducted under the plan will now include construction in addition to planning, administration, and services (the functions presently referred to in the headings).

Section 6(d)(1)—Amends section 137 of the Act by striking out a specific exception made for expenditures for construction, since the amendments made by the earlier parts of section 5 make such an exception inappropriate. In addition amends the text of section 137(b) to provide that for the purposes of section 137(a) the Federal share for fiscal years 1976 and 1977 shall be 75 percentum of the expenditures incurred by the State in each such year under its plan approved under section 134. Section 137(b) presently specifies a general federal share of 75 percentum with an exception for construction projects, rendered inappropriate by the earlier amendments in section 6 of the bill, and an exception for projects located in areas within the State determined by the Secretary to be urban or rural poverty areas.

Section 6(d)(2)—Amends the definition of the term "Federal share" in the general provisions to eliminate the applicability of that definition to construction projects under the State allotment provisions of this Act. The Federal share for such projects will therefore be the same as for other projects under part C—75 percent.

Subsection 6(e)—Amends section 140 of the Act to provide that in determining the amount of any State's federal share of the expenditures incurred by it under a plan approved under section 134, there shall be disregarded (1) any portion of such expenditures which are financed by federal funds provided under any provision of law other

than section 132, and (2) the amount of any non-federal funds required to be expended as a condition of receipt of such federal funds. The present section 140 includes requirements for determining the amount of payments by the Secretary for construction projects which are rendered inappropriate by the earlier amendments made by section 6 of the bill since construction projects are now to be funded by the States from their allotments under section 132. Except for the deletion of the provisions concerned with construction, the new provisions of section 140 are essentially identical with the existing provisions of that section.

GENERAL PROVISIONS AND CONFORMING AMENDMENTS

Section 7(a)—Amends section 134 of the Act by adding a new subsection (d) which provides in any determination by the Secretary for the purposes of section 134(b)(11) as to whether any urban or rural area is a poverty area, the Secretary may not determine that such area is a poverty area unless:

(1) It contains one or more subareas which are characterized as subareas of poverty;

(2) The population of such subarea or subareas constitutes a substantial portion of the population of the area; and

(3) The project, facility, or activity, in connection with which such determination is made, does, or (when completed or put into operation) will, serve the needs of the residents of such subarea or subareas.

This provision is similar to that contained in section 410, title IV, of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. Such title IV contains general provisions applicable to the Development Disabilities Act which was title I of such Act.

Section 7(b)—Amends part C of the Developmental Disabilities Act by adding after section 140 a new section 141 entitled "Recovery". This section which contains provisions concerning situations in which the United States shall be entitled to recover its share of the costs of construction of facilities for persons with developmental disabilities, is identical to existing section 405 of title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963. Such section 405 previously applied to the developmental disabilities program and its addition to part C of the Act has no substantive effect on its intent or applicability.

Section 7(c)—Amends part A of the Developmental Disabilities Act with a new text containing general provisions applicable to all of the Act. Part A is a presently vacant part which originally added a new part D to title VII of the Public Health Service Act and presently contains no substantive provisions of law. The general provisions added to the new part A are taken from the existing title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 which has until this time applied to the developmental disabilities program.

The new section 101 contains definitions taken from the existing section 401 including definitions of the terms:

(1) "state", identical to its definition in existing section 401(a);

(2) "facility for persons with developmental disabilities", identical to existing section 401(b);

(3) "non-profit facility for persons with developmental disabilities", and "non-profit private institution of higher learning", identical to existing section 401(d);

(4) "construction", identical to existing section 401(e);

(5) "cost of construction", identical to existing section 401(f);

(6) "title", identical to existing section 401(g);

(7) "developmental disability", identical to existing section 401(l) with the exception noted below; and

(8) "services for persons with developmental disabilities", identical to existing section 401(m).

The definition of developmental disabilities has been modified, as urged by the administration and the witnesses from the existing definition contained in section 401(l) by addition of autism to the list of specifically named diseases which are to be considered as constituting a developmental disability and by changing the phrase "or another neurological condition" to read "or a neurological condition". This latter change is made so that the definition is neutral on the question of whether or not autism constitutes a neurological condition, a point on which the Committee is aware of some controversy. The definition has also been changed to include dyslexia in the list of named diseases. The definition of "developmental disability" is otherwise unchanged and the Committee would not have felt it necessary to add specific reference to autism and dyslexia, since it considers those conditions clearly to constitute a developmental disability. However, in order to clear up any ambiguity which may exist as to the status of individuals suffering from these diseases, the definition has been so amended.

The new section 102 contains provisions concerning state control of the operations of developmental disabilities programs which are identical to those contained in existing section 406 of title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

The new section 103 contains provisions concerning records and audits which are identical to the existing section 408 of title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

The new section 104 provides that title I of the Mental Retardation and Community Mental Health Centers Construction Act of 1963 may be cited as the Developmental Disabilities Services and Facilities Construction Act and is identical to existing section 100 of such Act.

Finally, existing section 100, part D of title I, and title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 are repealed since the amendments which have been described above make them redundant and unnecessary.

Section 7(d)—Redesignates sections 137–141 of part C of the Act as section 135–139, respectively. This is done because the existing sections 135 and 136 are repealed by section 6(a) of the bill.

Section 8—Provides that the amendments made by sections 3, 4, 5, 6, and 7 of the bill shall be effective with respect to fiscal years beginning after June 30, 1975.

STUDY

Section 9(a)—Requires the Secretary of HEW to determine, in accordance with section 101(7) of the Developmental Disabilities Act (which defines the term "developmental disability"), the neurological conditions of individuals which should be included as developmental disabilities for purposes of the programs authorized by parts B and C of the Developmental Disabilities Act. This determination is to be made within six months of the date of enactment of this bill and the Secretary is to make a report on it to the Congress specifying the neurological conditions which he has determined should be so included, the neurological conditions which he has determined should not be included, and the reasons for each such determinations. After making his report, the Secretary is to review the neurological conditions not included on a periodic basis, at least annually, to determine if they should be included. The Secretary is to report to the Congress on the results of each such review.

This study requirement is included in the bill because the Committee had intended in its original writing of the Developmental Disabilities Act to allow the Secretary flexibility to determine which conditions should and should not be considered as developmental disabilities by writing a generic definition of the term rather than including in the law a specific list of the diseases which should be included. It had been anticipated that the Secretary would undertake an activity similar to that required by this study requirement and publish lists of diseases which would and would not be considered as developmental disabilities. Since this has in fact never been done the present provision is designed to assure that it is.

Section 9(b)—Requires the Secretary to contract for the conduct of an independent and objective study to determine—

(1) If the basis of the definition of developmental disabilities with respect to which assistance is authorized under parts B and C of the Act is appropriate and, to the extent that it is not, to determine an appropriate basis for determining which disabilities should be included and which should be excluded from the definition; and

(2) The nature and adequacy of services provided under other Federal programs for persons with disabilities not included in the definition. A final report giving the results of the study required by the bill and providing specifications for an appropriate definition of developmental disabilities for the purposes of parts B and C of the Act is to be submitted by the organization conducting the study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate not later than 18 months after the date of enactment of the first appropriations act providing funds for the study.

This study is required because the Committee is aware that there has been some controversy over the definition of developmental disabilities included in the law and some claim that the Federal government is not presently providing adequate services for persons suffering from diseases which are not included within the terms of the definition. Thus, the Committee has felt it wise to require a suitable exploration of the possible need to revise the definition or to provide services to people with diseases which are not included.

AGENCY REPORTS

Agency reports were requested on H.R. 2955, a similar predecessor to H.R. 4004, when it was introduced, but have not yet been received. The Department of Health, Education, and Welfare has, however, transmitted a legislative proposal for extension of the Developmental Disabilities Act which is similar in many respects to H.R. 4004. The Department's letter of transmittal for that proposal is reproduced below for the information of the Members.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., February 19, 1975.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed for the consideration of the Congress is a draft bill "To revise and extend the program authorized by the Developmental Disabilities Services and Construction Act."

The most important purpose of this draft bill is to extend for three years the Developmental Disabilities program which, since its inception, has made a significant contribution in meeting the needs of the developmentally disabled.

One of the primary products of the Developmental Disabilities program has been to increase the planning capacity of State and local governments to utilize effectively all available resources to meet the needs of this population. The enclosed draft bill would continue that strategy and would increase the emphasis on developing effective means to reduce the dependency of the developmentally disabled. Under the program as it is currently operated and as we hope it would be continued under this legislation, Federal funds will serve as a catalyst to stimulate the growth of programs serving the developmentally disabled.

As you know, the Department submitted legislation during the last Congress—introduced as S. 3011 and H.R. 12892—to extend this program. Other bills were also introduced in both Houses and were finally passed, in differing form, by both the House and the Senate as H.R. 14215. However, that bill was never enacted, and the program is still operating under a continuing resolution. Both the House and Senate bills have been reintroduced as H.R. 2955 and S. 462, respectively.

The draft bill that we are proposing follows the format of title I of S. 462. However, as indicted in a letter which we sent to the conferees on December 11, 1974, on H.R. 14215 (a copy of which is enclosed), there are a number of features of the Senate bill which cause us serious concern. The following list indicates the major changes we are proposing for the program, as well as the major differences between our draft bill and the House and Senate bills:

1. Our bill would not include a requirement that an office of developmental disabilities be established in the Office of the Secretary. We agree with the Senate that the Developmental Disabilities program is more appropriately placed in the Office of the Assistant Secretary for Human Development, and, indeed, we have already placed it there and intend in the near future to establish a separate Office for Developmental Disabilities, with its Director reporting directly to

the Assistant Secretary. Nonetheless, we continue to object strongly to the inflexibility of organizational mandates set in law, and we urge that the Congress refrain from including such a mandate in this bill.

2. Our draft bill would amend the current definition of "developmental disability" to include autism, as provided in the House bill, but not to include specific learning disabilities as the Senate bill would do. There is no clear category of persons who would be included within that term, and we object to broadening the coverage of this program to include such an unclearly defined category without being aware of the full implications of that action. Moreover, we feel that most persons who would fall within this category are already served by other Federally-aided programs such as the Education of the Handicapped Act.

3. Our bill would not include an authorization for grants for renovation and construction of university-affiliated facilities. These grants were needed in the original Act to foster the initial construction of these facilities. However, since many such facilities now exist, this Federal assistance is no longer needed. Moreover, this authorization has not been funded for the last few years. Therefore, we see no justification for continuing that authorization. Instead, we recommend that funds available for university-affiliated facilities be used for demonstration and training grants for such facilities.

4. The authority for grants to university-affiliated facilities would be similar to that contained in current law, except that the emphasis of such projects would be focused on interdisciplinary training programs and other demonstration training projects.

5. The authorization of appropriations contained in our draft bill would correspond to the amounts set forth for these programs in the President's budget for fiscal year 1976.

6. We are proposing that the Federal matching share for State grants under the Developmental Disabilities program be gradually reduced from seventy percent in 1975 to sixty percent in 1976 and fifty percent in 1977. We believe it is appropriate for State and local governments to assume an increasingly greater degree of responsibility for service programs that affect their citizens, and that they should progressively increase their share of support for these programs.

7. The provisions relating to the National Council on Services and Facilities for the developmentally disabled and the State planning and advisory councils would embody current law rather than the expanded provisions contained in the Senate bill.

8. The enclosed draft bill is similar to the House bill with respect to elimination of the requirement for Federal approval of construction projects under the State grant program. The deletion of this requirement is in accord with our objective of returning responsibility to State and local governments whenever it is appropriate to do so.

9. The draft bill would require the Secretary to issue regulations for the Developmental Disabilities program; however, because of the need to consult with interested parties and to issue a notice of proposed rulemaking before those regulations can be put into effect, no time limitation is specified for that process.

10. With regard to evaluation of services for the developmentally disabled, our draft bill would require the Secretary to develop not later than February 1, 1977, a design for a comprehensive evaluation

system to be implemented by the States in phases. Each State receiving funds under this Act would be required to implement the first phase of that system not later than October 1, 1977. We believe that such an approach to evaluation is more realistic and effective than the unworkable requirement in the Senate bill for the development by the Secretary within eighteen months of an evaluation system and plan for implementation thereof which would be a model for State evaluation systems for all services delivered to persons with developmental disabilities.

11. Our bill would provide a special projects authority which would include authority for the Secretary to fund projects of special national significance. The ten percent set-aside for this purpose in the State grant portion of the Act would therefore be deleted. Consonant with the aim of inducing greater State and local involvement, the Administration bill proposes terminating Federal support for individual special projects after three years of initial assistance. This provision will give States and localities greater incentives to scrutinize these programs and evaluate their effectiveness.

As we indicated last year in our letter to the conferees on the subject of H.R. 14215, we have very serious concerns about the provisions contained in title II of the Senate version of that bill—the "bill of rights" for mentally retarded and other persons with developmental disabilities—which would establish very stringent standards for all residential and community facilities providing services to developmentally disabled persons. While we are in basic agreement with the thrust of that title, as indicated in the enclosed letter, we do not believe that the standards set forth in title II are achievable at the present time; nor are they the best means of improving the quality of care provided to persons in these facilities.

A more detailed analysis of our concerns with title II is contained in the paper which is annexed to our letter to the conferees. Although our bill does not incorporate a provision corresponding to title II, we are very concerned about the quality of care provided to developmentally disabled persons. Indeed, we believe that we have developed a basic approach to this problem which is not only more feasible than the approach in the Senate bill, but also comes closer to accomplishing the goals of the Senate bill.

We are advised by the Office of Management and Budget that enactment of this proposal would be in accord with the program of the President.

Sincerely,

CASPAR W. WEINBERGER, *Secretary.*

INFLATION IMPACT STATEMENT

The reported bill continues existing programs during fiscal 1975 at existing authorization levels. Since appropriations are presently at the authorization level, there can, therefore, be no increase in spending on these programs in 1975. Because the economy generally is experiencing inflation at a rate of 5–10 percent, holding the expenditures under the developmental disabilities program constant should have a deflationary effect, if in fact the continuation of the program has any impact on inflation in 1975. It should be noted that both in 1975, and 1976–7 as discussed below, the expenditures in question ($34–40

million) represent less than 0.015 percent of all Federal expenditures.

The reported bill also contains a revision and extension of the existing authority for fiscal years 1976 and 1977. The authorizations for these years are increased over existing amounts by a total of $26 million in 1976 and an additional $13 million in 1977. $15 million of this increase is already being spent under other legislative authorities which would be superceded by the proposed bill and thus represents no real increase in Federal spending. The remaining fraction of the increase, if appropriated, would increase program expenditures by approximately the amount necessary to offset the negative effects of inflation on the program. Thus, if appropriated, the increases in the expenditures should have no effect on inflation, and, if not appropriated, the constant level of program expenditures should have a deflationary effect.

Program Oversight

The Committee's principal oversight activities with respect to this program have been conducted by the Subcommittee on Health and the Environment in connection with its consideration of the legislative authority. Its findings are discussed in the report under Need for and Proposed Legislation since the proposed legislation is designed to respond to the Subcommittee's findings.

The Committee has not received oversight reports from either its own recently organized Subcommittee on Investigations and Oversight or the Committee on Government Operations.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT [1]

TITLE I—SERVICES AND FACILITIES FOR THE MENTALLY RETARDED AND PERSONS WITH OTHER DEVELOPMENTAL DISABILITIES

* * * * * * *

Part B—Construction, Demonstration, and Training Grants for University-Affiliated Facilities for Persons With Developmental Disabilities

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[1] The following text reflects changes in existing law made by Sections 1 and 2 of the bill, and which are effective upon enactment of the bill.

DEMONSTRATION AND TRAINING GRANTS

SEC. 122. (a) For the purposes of assisting institutions of higher education to contribute more effectively to the solution of complex health, education, and social problems of children and adults suffering from developmental disabilities, the Secretary may, in accordance with the provisions of this part, make grants to cover costs of administering and operating demonstration facilities and interdisciplinary training programs for personnel needed to render specialized services to persons with developmental disabilities, including established disciplines as well as new kinds of training to meet critical shortages in the care of persons with developmental disabilities.

(b) For the purpose of making grants under this section, there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1971; $17,000,000 for the fiscal year ending June 30, 1972; $20,000,000 for the fiscal year ending June 30, 1973; and $9,250,000 [for the fiscal year ending June 30, 1974] *each for the fiscal years ending June 30, 1974, and June 30, 1975.*

Part C—Grants for Planning, Provision of Services, and Construction and Operation of Facilities for Persons With Developmental Disabilities

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AUTHORIZATION OF APPROPRIATIONS

SEC. 131. In order to make the grants to carry out the purposes of section 130, there are authorized to be appropriated $60,000,000 for the fiscal year ending June 30, 1971, $105,000,000 for the fiscal year ending June 30, 1972, $130,000,000 for the fiscal year ending June 30, 1973, and $32,500,000 *each* for the fiscal [year] *years* ending June 30, 1974, *and June 30, 1975.*

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PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES

SEC. 137. (a)(1) * * *

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(b)(1) Except as provided in paragraph (2), the "Federal share" with respect to any State for purposes of this section for any fiscal year shall be 75 per centum of the expenditures, other than expenditures for construction, incurred by the State during such year under its State plan approved under this part during each of the fiscal years ending June 30, 1971, and June 30, 1972, and 70 per centum of such nonconstruction expenditures during each of the fiscal years ending June 30, 1973, [and] June 30, 1974, *and June 30, 1975.*

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DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT [2]

TITLE I—SERVICES AND FACILITIES FOR THE MENTALLY RETARDED AND PERSONS WITH OTHER DEVELOPMENTAL DISABILITIES

[SHORT TITLE

[SEC. 100. This title may be cited as the "Developmental Disabilities Services and Facilities Construction Act."]

[PART A [3]—GRANTS FOR CONSTRUCTION OF CENTERS FOR RESEARCH ON MENTAL RETARDATION AND RELATED ASPECTS OF HUMAN DEVELOPMENT]

Part A—General Provisions

DEFINITIONS

SEC. 101. For purposes of this title:

(1) The term "State" includes Puerto Rico, Guam, 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 inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term "nonprofit 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 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.

[2] The following text reflects changes in existing law (as amended by Sections 1 and 2 of the bill) which shall take effect with respect to appropriations under the Act for fiscal years beginning after June 30, 1975.

[3] This part amended title VII of the Public Health Service Act to add sections 761 through 766 (grants for construction of centers for research on mental retardation and related aspects of human development), the authorizations for which expired in fiscal year 1967.

(7) The term "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, dyslexia, or a neurological condition of an individual found by the Secretary to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

(8) The term "services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability; and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

STATE CONTROL OF OPERATIONS

SEC. 102. 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.

RECORDS AND AUDIT

SEC. 103. (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 that 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.

SHORT TITLE

SEC. 104. This title may be cited as the Developmental Disabilities Services and Facilities Construction Act.

DEMONSTRATION AND TRAINING GRANTS

SEC. 122. (a) For the purposes of assisting institutions of higher education to contribute more effectively to the solution of complex health, education, and social problems of children and adults suffering from developmental disabilities, the Secretary may, in accordance with the provisions of this part, make grants to cover costs of administering and operating demonstration facilities and interdisciplinary

training programs for personnel needed to render specialized services to persons with developmental disabilities, including established disciplines as well as new kinds of training to meet critical shortages in the care of persons with developmental disabilities.

(b) For the purpose of making grants under this section, there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1971; $17,000,000 for the fiscal year ending June 30, 1972; $20,000,000 for the fiscal year ending June 30, 1973 [and] ;$9,250,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; *$12,000,000 for fiscal year 1976; and $15,000,000 for fiscal year 1977.*

AMOUNT OF GRANTS; PAYMENTS

[SEC. 124. (a) The total of the grants with respect to any project under this part may not exceed 75 per centum of the necessary cost thereof as determined by the Secretary.

[(b) Payments of grants under this part shall be made in advance or by way of reimbursement, and on such conditions as the Secretary may determine.]

PAYMENTS

SEC. 124. Payments of grants under section 122 shall be made in advance or by way of reimbursement, and on such conditions, as the Secretary may determine.

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PART C—GRANTS FOR PLANNING, PROVISION OF SERVICES, AND CONSTRUCTION AND OPERATION OF FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

[DECLARATION OF PURPOSE

[SEC. 130. The purpose of this part is to authorize—

[(a) grants to assist the several States in developing and implementing a comprehensive and continuing plan for meeting the current and future needs for services to persons with developmental disabilities;

[(b) grants to assist public or nonprofit private agencies in the construction of facilities for the provision of services to persons with developmental disabilities, including facilities for any of the purposes stated in this section;

[(c) grants for provision of services to persons with developmental disabilities, including costs of operation, staffing, and maintenance of facilities for persons with developmental disabilities;

[(d) grants for State or local planning, administration, or technical assistance relating to services and facilities for persons with developmental disabilities;

[(e) grants for training of specialized personnel needed for the provision of services for persons with developmental disabilities, or research related thereto; and

[(f) grants for developing or demonstrating new or improved techniques for the provisions of services for persons with developmental disabilities.]

SPECIAL PROJECT GRANTS

SEC. 130. (a) The Secretary may make grants to public or nonprofit private entities for—

(1) demonstration projects for the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status or the location of their residences,

(2) technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities,

(3) training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training,

(4) developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities,

(5) gathering and disseminating information relating to developmental disabilities

(6) coordinating, integrating, and using all available community resources for services to persons with developmental disabilities, and

(7) improving the administration of, and the quality of services provided in, programs for such persons.

(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 the State in which the applicant's project will be conducted has a State plan approved under section 134.

(c) The amount of any grant under subsection (a) shall be determined by the Secretary; and payments under such grants may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. In determining the amount of any grant under subsection (a) for the costs of any project there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(d) For the purpose of making payments under grants under subsection (a), there are authorized to be appropriated $15,000,000 for fiscal year 1976 and $15,000,000 for fiscal year 1977. Of the funds appropriated under this subsection for any such fiscal year, not less than 30 per centum of such funds shall be used for projects of national significance, as determined by the Secretary.

(e) No funds appropriated under the Public Health Service Act or under this Act (other than under subsection (d) of this section) may be used to make grants under subsection (a).

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 131. In order to make the grants to carry out the purposes of section 130, there are authorized to be appropriated $60,000,000 for the fiscal year ending June 30, 1971, $105,000,000 for the fiscal year

ending June 30, 1972, $130,000,000 for the fiscal year ending June 30, 1973, and $32,500,000 each for the fiscal years ending June 30, 1974, and June 30, 1975.]

AUTHORIZATION OF APPROPRIATIONS FOR ALLOTMENTS

SEC. 131. For allotments under section 132, there are authorized to be appropriated $40,000,000 for fiscal year 1976 and $50,000,000 for fiscal year 1977.

STATE ALLOTMENTS

[SEC. 132. (a)(1) From the sums appropriated to carry out the purposes of section 130 for each fiscal year, other than amounts reserved by the Secretary for projects under subsection (e), the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of (A) the population, (B) the extent of need for services and facilities for persons with developmental disabilities, and (C) the financial need, of the respective States; except that the allotment of any State (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) for any such fiscal year shall not be less than $100,000 plus, if such fiscal year is later than the fiscal year ending June 30, 1971, and if the sums so appropriated for such fiscal year exceed the amount authorized to be appropriated to carry out such purposes for the fiscal year ending June 30, 1971, an amount which bears the same ratio to $100,000 as the difference between the amount so appropriated and the amount authorized to be appropriated for the fiscal year ending June 30, 1971, bears to the amount authorized to be appropriated for fiscal year ending June 30, 1971.

[(2) In determining, for purposes of paragraph (1), the extent of need in any State for services and facilities for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services specified, pursuant to section 134(b)(5), in the State plan of such State approved under this part.

[(3) Sums allotted to a State for a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose for the next fiscal year (and for such year only), in addition to the sums allotted to such State for such next fiscal year: *Provided*, That if the maximum amount which may be specified pursuant to section 134(b)(15) for a year plus any part of the amount so specified pursuant thereto for the preceding fiscal year and remaining unobligated at the end thereof is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State developed pursuant to section 134(b)(13), the amount specified pursuant to such section for such preceding year shall remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of such facility.]

SEC. 132.(a)(1)(A) In each fiscal year, the Secretary shall, in accordance with regulations and subparagraph (B) of this paragraph, allot the sums appropriated for such year under section 131 among the States on the basis of—

(i) the population,

(ii) the extent of need for services and facilities for persons with developmental disabilities, and

(iii) 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 134 for the provision under such plans of services and facilities for persons with developmental disabilities.

(B) The allotment of the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands under subparagraph (A) of this paragraph in any fiscal year shall not be less than $50,000. The allotment of each other State in any fiscal year shall not be less than $100,000.

(2) In determining, for purposes of paragraph (1)(A)(ii), the extent of need in any State for services and facilities for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services specified, pursuant to section 134(b)(5), in the State plan of such State approved under section 134.

(3) Sums allotted to a State in a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose in the next fiscal year (and in such year only), in addition to the sums allotted to such State in such next fiscal year; except that if the maximum amount which may be specified for construction (pursuant to section 134(b)(15)) for a year plus any part of the amount so specified pursuant to such section for the preceding fiscal year and remaining unobligated at the end of such fiscal year is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State developed pursuant to section 134(b)(13), the amount specified pursuant to section 134(b)(15) for such preceding year shall remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of such facility.

(4) Of the amount allotted to any State under paragraph (1) for fiscal year 1976, not less than 10 per centum of that allotment shall be used by such State, in accordance with the plan submitted pursuant to section 134(b)(20), for the purpose of assisting it in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities; and of the amount allotted to any State under paragraph (1) for each succeeding fiscal year, not less than 30 per centum of that allotment shall be used by such State for such purpose.

(b) Whenever the State plan approved in accordance with section 134 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 [this part] *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 [this part] *the State plan* will receive proportionate benefit from the combination.

* * * * * * *

[(e) Of the sums appropriated pursuant to section 131, such amount as the Secretary may determine, but not more than 10 per centum thereof, shall be available for grants by the Secretary to public

or nonprofit private agencies to pay up to 90 per centum of the cost of projects for carrying out the purposes of section 130 which in his judgment are of special national significance because they will assist in meeting the needs of the disadvantaged with developmental disabilities, or will demonstrate new or improved techniques for provision of services for such persons, or are otherwise specially significant for carrying out the purposes of this title.]

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STATE PLANS

SEC. 134. (a) Any State desiring to take advantage of this part must have a State plan submitted to and approved by the Secretary under this section.

(b) In order to be approved by the Secretary under this section, a State plan for the provision of services and facilities for persons with developmental disabilities must—

(1) designate (A) a State planning and advisory council, to be responsible for submitting revisions of the State plan and transmitting such reports as may be required by the Secretary; (B) except as provided in clause (C), the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise); and (C) a single State agency as the sole agency for administering or supervising the administration of grants for construction under the State plan, except that during fiscal year 1971, the Secretary may waive, in whole or in part, the requirements of this paragraph;

(2) describe (A) the quality, extent, and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for Federally assisted State programs as may be specified by the Secretary, but in any case including education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health plans, and (B) how funds allotted to the State in accordance with section 132 will be used to complement and augment rather than duplicate or replace services and facilities for persons with developmental disabilities which are eligible for Federal assistance under such other State programs;

(3) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to assure effective continuing State planning, evaluation, and delivery of services (both public and private) for persons with developmental disabilities;

(4) contain or be supported by assurances satisfactory to the Secretary that (A) the funds paid to the State under [this part] *section 132* will be used to make a significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State in order to improve the quality, scope, and extent of such services; (B) part of such funds will be made available to other public or nonprofit

private agencies, institutions, and organizations; (C) such funds will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided and not to supplant such non-Federal funds; and (D) there will be reasonable State financial participation in the cost of carrying out the State plan;

(5)(A) provide for the furnishing of services and facilities for persons with developmental disabilities associated with mental retardation, (B) specify the other categories of developmental disabilities (approved by the Secretary) which will be included in the State plan, and (C) describe the quality, extent, and scope of such services as will be provided to eligible persons;

(6) provide that services and facilities furnished under the plan for persons with developmental disabilities will be in accordance with standards prescribed by regulations, including standards as to the scope and quality of such services and the maintenance and operation of such facilities, except that during fiscal year 1971, the Secretary may waive, in whole or in part, the requirements of this paragraph;

(7) provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods), as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(8) provide that the State planning and advisory council shall be adequately staffed, and shall include representatives of each of the principal State agencies and representatives of local agencies and non-governmental organizations and groups concerned with services for persons with developmental disabilities: *Provided*, That at least one-third of the membership of such council shall consist of representatives of consumers of such services;

(9) provide that the State planning and advisory council will from time to time, but not less often than annually, review and evaluate its State plan approved under this section and submit appropriate modifications to the Secretary;

(10) provide that the State agencies designated pursuant to paragraph (1) will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(11) provide that special financial and technical assistance shall be given to areas of urban or rural poverty in providing services and facilities for persons with developmental disabilities who are residents of such areas;

(12) describe the methods to be used to assess the effectiveness and accomplishments of the State in meeting the needs of persons with developmental disabilities in the State;

(13) provide for the development of a program of construction of facilities for the provision of services for persons with developmental disabilities which (A) is based on a statewide inventory of

existing facilities and survey of need; and (B) meets the requirements prescribed by the Secretary for furnishing needed services to persons unable to pay therefor;

(14) set forth the relative need, determined in accordance with regulations prescribed by the Secretary, for the several projects included in the construction program referred to in paragraph (13), and assign priority to the construction of projects, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(15) specify the per centum of the State's allotment (under section 132) for any year which is to be devoted to construction of facilities, which per centum shall be not more than 50 per centum of the State's allotment or such lesser per centum as the Secretary may from time to time prescribe;

(16) provide for affording to every applicant for a construction project an opportunity for hearing before the State agency;

(17) 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 part; [and]

(18) provide reasonable assurance that adequate financial support will be available to complete the construction of, and to maintain and operate when such construction is completed, any facility, the construction of which is assisted with sums allotted under section 132;

(19) provide reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project assisted with sums allotted under section 132 will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c);

(20) contain a plan designed to eliminate inappropriate placement in institutions of persons with developmental disabilities, and to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate; and

[(18)] *(21)* contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

(c) 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.

(d) For purposes of any determination by the Secretary for purposes of subsection (b)(11) as to whether any urban or rural area is a poverty area, the Secretary may not determine that an area is an urban or rural poverty area unless—

(1) such area contains one or more subareas which are characterized as subareas of poverty;

(2) the population of such subarea or subareas constitutes a substantial portion of the population of such rural or urban area; and

(3) the project, facility, or activity, in connection with which such

determination is made, does, or (when completed or put into operation) will, serve the needs of the residents of such subarea or subareas.

[APPROVAL OF PROJECTS FOR CONSTRUCTION

[SEC. 135. (a) For each project for construction pursuant to a State plan approved under this part, there shall be submitted to the Secretary, through the State agency designated pursuant to section 134(b)(1)(C), an application by the State or a political subdivision thereof or by a public or nonprofit private agency. If two or more agencies join in the construction of the project, the application may be filed by one or more of such agencies. Such application shall set forth—

[(1) a description of the site for such project;

[(2) plans and specifications thereof, in accordance with regulations prescribed by the Secretary;

[(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or nonprofit private agency which is to operate the facility;

[(4) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when completed;

[(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c); and

[(6) a certification by the State agency of the Federal share for the project.

[(b) The Secretary shall approve such application if sufficient funds to pay the Federal share of the cost of construction of such project are available from the allotment to the State, and if the Secretary finds (1) that the application contains such reasonable assurances as to title, financial support, and payment of prevailing rates of wages and overtime pay, (2) that the plans and specifications are in accord with regulations prescribed by the Secretary, (3) that the application is in conformity with the State plan approved under this part, and (4) that the application has been approved and recommended by the State agency and is entitled to priority over other projects within the State in accordance with the State's plan for persons with developmental disabilities and in accordance with regulations prescribed by the Secretary.

[(c) No application shall be disapproved until the Secretary has afforded the State agency an opportunity for a hearing.

[(d) Amendment of any approved application shall be subject to approval in the same manner as the original application.

[WITHHOLDING OF PAYMENTS FOR CONSTRUCTION

[SEC. 136. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State planning and advisory council designated pursuant to section 134(b)(1)(A) and the State agency designated pursuant to section 134(b)(1)(C), finds—

[(a) that the State agency is not complying substantially with the provisions required by section 134(b) to be included in the State plan, or with regulations of the Secretary;

[(b) that any assurance required to be given in an application filed under section 135 is not being or cannot be carried out;

[(c) that there is a substantial failure to carry out plans and specifications related to construction approved by the Secretary under section 135; or

[(d) that adequate funds are not being provided annually for the direct administration of the State plan,

the Secretary may forthwith notify such State council and agency that—

[(e) no further payments will be made to the State for construction from allotments under this part; or

[(f) no further payments will be made from allotments under this part for any project or projects designated by the Secretary as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section;

as the Secretary may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments for construction projects may be withheld, in whole or in part, until there is no longer any failure to comply (or to carry out the assurance or plans and specifications or to provide adequate funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.]

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

SEC. [137] *135*. (a) (1) From each State's allotments for a fiscal year under section 132, the State shall be paid the Federal share of the expenditures[, other than expenditures for construction,] incurred during such 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.

(2) For the purpose of determining the Federal share with respect to any State, expenditures by a political subdivision thereof or by nonprofit private agencies, organizations, and groups shall, subject to such limitations and conditions as may be prescribed by regulations, be regarded as expenditures by such State.

[(b)(1) Except as provided in paragraph (2), the "Federal share" with respect to any State for purposes of this section for any fiscal

year shall be 75 per centum of the expenditures, other than expenditures for construction, incurred by the State during such year under its State plan approved under this part during each of the fiscal years ending June 30, 1971, and June 30, 1972, and 70 per centum of such nonconstruction expenditures during each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975.

[(2) In the case of any project located in an area within a State determined by the Secretary to be an urban or rural poverty area, the "Federal share" with respect to such project for purposes of this section for any fiscal year may be up to 90 per centum of the expenditures, other than expenditures for construction, incurred by the State during such year under its State plan approved under this part with respect to such project for the first twenty-four months of such project, and 80 per centum of such nonconstruction expenditures for the next twelve months.]

(b) For purposes of subsection (a), the Federal share with respect to any State for fiscal year 1976 and for the next fiscal year shall be 75 per centum of the expenditures incurred by the State during such year under its State plan approved under section 134.

WITHHOLDING OF PAYMENTS FOR PLANNING, *CONSTRUCTION*, ADMINISTRATION, AND SERVICES

SEC. [138] *136*. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State planning and advisory council and the appropriate State agency, designated pursuant to section 134(b)(1) finds that—

(a) there is a failure to comply substantially with any of the provisions required by section 134 to be included in the State plan; or

(b) 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 [this part] *section 132* (or, in his discretion, that further payments will not be made to the State under [this part] *section 132* for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment to the State under [this part] *section 132*, or shall limit further payment under [this part] *section 132* to such State to activities in which there is no such failure.

* * * * * * *

REGULATIONS

SEC. [139] *137*. The Secretary, as soon as practicable, by general regulations applicable uniformly to all the States, shall prescribe—

(a) the kinds of services which are needed to provide adequate programs for persons with developmental disabilities, the kinds of services which may be provided under a State plan approved under this part, and the categories of persons for whom such services may be provided;

(b) standards as to the scope and quality of services provided for persons with developmental disabilities under a State plan approved under this part;

(c) the general manner in which a State, in carrying out its State plan approved under this part, shall determine priorities for services and facilities based on type of service, categories of persons to be served, and type of disability, with special consideration being given to the needs for such services and facilities in areas of urban and rural poverty; and

(d) general standards of construction and equipment for facilities of different classes and in different types of location.

After appointment of the Council, regulations and revisions therein shall be promulgated by the Secretary only after consultation with Council.

NONDUPLICATION

SEC. [140] *138.* (a) In determining the amount of any [payment for the construction of any facility] *State's Federal share of the expenditures incurred by it* under a State plan approved under [this part] *section 134*, there shall be disregarded (1) any portion of [the costs of such construction] *such expenditures* which are financed by Federal funds provided under any provision of law other than [this part] *section 132*, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

[(b) In determining the amount of any State's Federal share of expenditures for planning, administration, and services incurred by it under a State plan approved under this part, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than this part, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.]

RECOVERY

SEC. 139. If any facility with respect to which funds have been paid under section 132 shall, at any time within twenty years after the completion of construction—

(1) be sold or transferred to any person, agency, or organization (A) which is not a public or nonprofit private entity, or (B) which is not approved as a transferee by the State agency designated pursuant to section 134 or its successor; or

(2) cease to be a public or other nonprofit facility for the mentally retarded or persons with other developmental disabilities, unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for the mentally retarded or persons with other developmental disabilities,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for the mentally retarded or persons with other 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.

[PART D—GRANTS FOR THE COST OF PROFESSIONAL AND TECHNICAL PERSONNEL OF COMMUNITY MENTAL RETARDATION FACILITIES

[AUTHORIZATION OF GRANTS

[SEC. 141. (a) For the purpose of assisting in the establishment and initial operation of facilities for the mentally retarded providing all or part of a program of comprehensive services for the mentally retarded principally designed to serve the needs of the particular community or communities in or near which the facility is situated, the Secretary may, in accordance with the provisions of this part, make grants to meet, for the temporary periods specified in this section, a portion of the costs (determined pursuant to regulations under section 144) of compensation of professional and technical personnel for the initial operation of new facilities for the mentally retarded or of new services in facilities for the mentally retarded.

[(b) Grants for such costs for any facility for the mentally retarded under this part may be made only for the period beginning with the first day of the first month for which such a grant is made and ending with the close of four years and three months after such first day; and such grants with respect to any such facility may not exceed 75 per centum of such costs for the period ending with the close of the fifteenth month following such first day, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

[(c) In making such grants, the Secretary shall take into account the relative needs of the several States for services for the mentally retarded, their relative financial needs, and their populations.

[APPLICATIONS AND CONDITIONS FOR APPROVAL

[SEC. 142. (a) Grants under this part with respect to any facility for the mentally retarded may be made only upon application, and only if—

[(1) the applicant is a public or nonprofit private agency or organization which owns or operates the facility;

[(2)(A) a grant was made under part C of this title to assist in financing the construction of the facility or (B) the type of service to be provided as part of such program with the aid of a grant under this part was not previously being provided by the facility with respect to which such application is made;

[(3) the Secretary determines that there is satisfactory assurance that Federal funds made available under this part for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds for mental retardation services that would in the absence of such Federal funds be made available for (or under) the program described in paragraph (2) of this subsection, and will in no event supplant such State, local, and other non-Federal funds; and

[(4) in the case of an applicant in a State which has in existence a State plan relating to the provision of services for the mentally retarded, the services to be provided by the facility are consistent with the plan.

[(b) No grant may be made under this part after June 30, 1972, with respect to any facility for the mentally retarded or with respect to any type of service provided by such a facility unless a grant with respect thereto was made under this part prior to July 1, 1970.

[PAYMENTS

[SEC. 143. Payment of grants under this part may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

[REGULATIONS

[SEC. 144. The Secretary shall prescribe general regulations concerning the eligibility of facilities under this part, determination of eligible costs with respect to which grants may be made, and the terms and conditions (including those specified in section 142) for approving applications under this part.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 145. There are authorized to be appropriated $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, and $14,000,000 for the fiscal year ending June 30, 1970, to enable the Secretary to make initial grants to facilities for the mentally retarded under the provisions of this part. For the fiscal year ending June 30, 1969, and each of the next five years, there are authorized to be appropriated such sums as may be necessary to make grants to such facilities which have previously received a grant under this part and are eligible for such a grant for the year for which sums are being appropriated under this sentence.]

SECTION 401 OF THE MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT OF 1963

TITLE IV—GENERAL

DEFINITIONS

SEC. 401. For purposes of this Act—

(a) The term "State" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

[(b) 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.]

(c) The term "community mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.

(d) The terms "nonprofit facility for persons with developmental disabilities", "nonprofit community mental health center", and "nonprofit private institution of higher learning" mean, respectively, a facility for persons with developmental disabilities, a community mental health center, and an institution of higher learning which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and 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.

(e) 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 facilities); including architect's fees, but excluding the cost of off-site improvements and the cost of the acquisition of land.

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

(g) 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.

(h)(1) The term "Federal share" with respect to any project means the portion of the cost of construction of such project to be paid by the Federal Government under [part C of title I or] part A of title II.

(2) The Federal share with respect to any project in the State shall be the amount determined by the appropriate State agency designated in the State plan, but, except as provided in paragraph (3), the Federal share [(A) for any project under part C of title I may not exceed 66⅔ per centum of the costs of construction of such project; and (B)] for any project under part A of title II may not exceed 66⅔ per centum of the costs of construction of such project or the State's Federal percentage, whichever is the lower. Prior to the approval of the first such project in the State during any fiscal year, such State agency shall give the Secretary written notification of the maximum Federal share established pursuant to this paragraph for such projects in such State to be approved by the Secretary during such fiscal year and the method for determining the actual Federal share to be paid with respect to such projects; and such maximum Federal share and such method of determination for such projects in such State approved during such fiscal year shall not be changed after the approval of the first such project in the State during such fiscal year.

(3) In the case of any facility or center which provides or will, upon completion of the project for which application has been made under [part C of title I or under] part A of title II, provide services for persons in an area designated by the Secretary as an urban or rural poverty area, the maximum Federal share determined under paragraph (2) may not exceed 90 per centum of the costs of construction of the project.

(i) The Federal percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that the Federal percentage for Puerto Rico, Guam, American Samoa, and the Virgin Islands shall be 66⅔ per centum.

(j)(1) The Federal percentages shall be promulgated by the Secretary between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation; except that the Secretary shall promulgate such percentages as soon as possible after the enactment of this Act, which promulgation shall be conclusive for the fiscal year ending June 30, 1965.

(2) The term "United States" means (but only for purposes of this subsection and subsection (i)) the fifty States and the District of Columbia.

(k) The term "Secretary" means the Secretary of Health, Education, and Welfare.

[(1) The term "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

[(m) The term "services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.]

(n) The term "regulations" means (unless the text otherwise indicates) regulations promulgated by the Secretary.

MINORITY VIEWS ON H.R. 4005 OF THE HONORABLE SAMUEL L. DEVINE AND THE HONORABLE JAMES M. COLLINS

As with most legislation creating or extending health programs, there is little disagreement on the desirability of attacking the problem. In the case of Developmental Disabilities there is little disagreement as to the appropriate way to attack the problem. The administration has put substantial sums into the program during the last two fiscal years. Most people would feel that $49,375,000 is a substantial sum, and when we consider the tremendous competition for the health dollar, it is most substantial. That is the amount which has been allocated to Developmental Disabilities by the administration in the past two years and is the amount proposed to be allocated to the effort again in fiscal 1976. H.R. 4005 would inflate that amount to $67,000,000. This is almost $18 million more than has been used previously for this effort.

Probably this amount is considered insignificant by those who favor the bill. Laid alongside a possible $100 billion dollar deficit, it may be, but it is a 36% increase. When we continue to inflate the price tag of each program, however worthy, and at the same time refuse to accept judgments of the executive branch as to expenditures which can be either deferred or rescinded, we are endangering the very efforts we are seeking to promote. Somewhere it all reaches the precipice, and then all of the good intention and worthwhile effort of these noble programs is for naught.

If we cannot even steel ourselves to keep programs at present levels under these conditions, what chance do we possibly have of avoiding the ultimate disaster? H.R. 4005 should not be approved by the House of Representatives unless it is at least cut back to the level of spending approved for fiscal 1975.

SAMUEL L. DEVINE,
JAMES M. COLLINS.

○

H. R. 4005

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To amend the Developmental Disabilities Services and Facilities Construction Act to revise and extend the programs authorized by that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Developmentally Disabled Assistance and Bill of Rights Act".

TITLE I—EXTENSION AND REVISION OF THE DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT

PART A—ONE-YEAR EXTENSION OF EXISTING AUTHORITIES

EXTENSION OF EXISTING AUTHORITIES THROUGH FISCAL YEAR 1975

SEC. 101. (a) Section 122(b) and 131 of the Developmental Disabilities Services and Facilities Construction Act (hereinafter in this Act referred to as the "Act") are each amended by striking out "for the fiscal year ending June 30, 1974" and inserting in lieu thereof "each for the fiscal years ending June 30, 1974, and June 30, 1975".

(b) Section 137(b)(1) of the Act is amended by striking out "and June 30, 1974" and inserting in lieu thereof ", June 30, 1974, and June 30, 1975".

PART B—REVISION OF ASSISTANCE FOR UNIVERSITY AFFILIATED FACILITIES

UNIVERSITY AFFILIATED FACILITIES

SEC. 105. Part B of the Act is amended to read as follows:

"PART B—UNIVERSITY AFFILIATED FACILITIES

"Subpart 1—Demonstration and Training Grants

"GRANT AUTHORITY

"SEC. 121. (a)(1) From appropriations under section 123, the Secretary shall make grants to university affiliated facilities to assist them in meeting the cost of administering and operating—

"(A) demonstration facilities for the provision of services for persons with developmental disabilities, and

"(B) interdisciplinary training programs for personnel needed to render specialized services for persons with developmental disabilities.

"(2) A university affiliated facility which has received a grant under paragraph (1) may apply to the Secretary for an increase in the amount of its grant under such paragraph to assist it in meeting the cost of conducting a feasibility study of the ways in which it, singly or jointly with other university affiliated facilities which have received a grant under paragraph (1), can establish and operate one or more satellite centers which would be located in areas not served by a university affiliated facility and which would provide, in coordination with demonstration facilities and training programs for which a

grant was made under paragraph (1), services for persons with developmental disabilities. If the Secretary approves an application of a university affiliated facility under this paragraph for such a study, the Secretary may for such study increase the amount of the facility's grant under paragraph (1) by an amount not to exceed $25,000. Such a study shall be carried out in consultation with the State Planning Council for the State in which the facility is located and where the satellite center would be established.

"(b) 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. The Secretary may approve an application for a grant under this subsection only if the feasibility of establishing or operating the satellite center for which the grant is applied for has been established by a study assisted under subsection (a)(2).

"APPLICATIONS

"SEC. 122. (a) No grant may be made under section 121 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 may be approved by the Secretary only if the application contains or is supported by reasonable assurances that the making of the grant applied for will not result in any decrease in the level of State, local, and other non-Federal funds for services for persons with developmental disabilities and training of persons to provide such services which funds would (except for such grant) be available to the applicant, but that such grant will be used to supplement, and, to the extent practicable, to increase the level of such funds.

"(b) The Secretary shall give special consideration to applications for grants under section 121(a) for programs which demonstrate an ability and commitment to provide within a community rather than in an institution services for persons with developmental disabilities.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 123. (a) For the purpose of making grants under section 121 there are authorized to be appropriated $15,000,000 for fiscal year 1976, $18,000,000 for fiscal year 1977, and $21,000,000 for fiscal year 1978.

"(b)(1) Of the sums appropriated under subsection (a) for fiscal years 1976 and 1977, not less than $5,000,000 shall be made available for grants in each such fiscal year under section 121(a)(1). The remainder of the sums appropriated for such fiscal years shall be made available as follows:

"(A) First, $750,000 shall be made available in each such fiscal year for studies described in section 121(a)(2). The portion of such $750,000 not required for such studies shall be made available for grants under section 121(a)(1).

"(B) Second, any remaining sums shall be made available as the Secretary determines except that at least 40 per centum of such sums shall be made available for grants under section 121(b).

"(2) Of the sums appropriated under subsection (a) for fiscal year 1978, not less than $5,500,000 shall be made available for grants in such

fiscal year under section 121(a)(1). The remainder of the sums appropriated for such fiscal year shall be made available as the Secretary determines except that at least 40 per centum of the remainder shall be made available for grants under section 121(b).

"Subpart 2—Construction

"PROJECTS AUTHORIZED

"SEC. 125. The Secretary may make grants—

"(1) to university-affiliated facilities to assist them in meeting the costs of the renovation or modernization of buildings which are being used in connection with an activity assisted by a grant under section 121(a); and

"(2) to university-affiliated facilities for the construction, renovation, or modernization of buildings to be used as satellite centers.

"APPLICATIONS

"SEC. 126. No grant may be made under section 125 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 may be approved by the Secretary only if it contains or is supported by reasonable assurances that—

"(1) the plans and specifications for the project to be assisted by the grant applied for are in accord with regulations prescribed by the Secretary under section 109;

"(2) title to the site for such project is or will be vested in the applicant or in the case of a grant for a satellite center, in a public or other nonprofit entity which is to operate the center;

"(3) adequate financial support will be available for completion of the construction, renovation, or modernization of the project and for its maintenance and operation when completed;

"(4) all laborers and mechanics employed by contractors or subcontractors in the performance of work on the project will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 267c); and

"(5) the building which will be constructed, renovated, or modernized with the grant applied for will meet standards adopted pursuant to the Act of August 12, 1968 (42 U.S.C. 4151–4156) (known as the Architectural Barriers Act of 1968).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 127. For the purpose of making payments under grants under section 125, there are authorized to be appropriated $3,000,000 for fiscal year 1976, $3,000,000 for fiscal year 1977, and $3,000,000 for fiscal year 1978."

PART C—REVISION OF ALLOTMENT PROGRAM

STATE ALLOTMENTS

SEC. 110. (a) Section 131 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS FOR ALLOTMENTS

"SEC. 131. For allotments under section 132, there are authorized to be appropriated $40,000,000 for fiscal year 1976, $50,000,000 for fiscal year 1977, and $60,000,000 for fiscal year 1978.

(b) Subsection (a) of section 132 of the Act is amended to read as follows:

"(a)(1)(A) In each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 131 among the States on the basis of—

"(i) the population,

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

"(iii) 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 134 for the provision under such plans of services and facilities for persons with developmental disabilities.

"(B)(i) Except as provided by clause (ii)—

"(I) the allotment of the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands under subparagraph (A) of this paragraph in any fiscal year shall not be less than $50,000; and

"(II) the allotment of each other State in any fiscal year shall not be less than the greater of $150,000, or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending June 30, 1974.

"(ii) If the amount appropriated under section 131 for any fiscal year exceeds $50,000,000, the minimum allotment of a State for such fiscal year shall be increased by an amount which bears the same ratio to the amount determined for such State under clause (i) as the difference between the amount so appropriated and the amount authorized to be appropriated for such fiscal year bears to $50,000,000.

"(2) In determining, for purposes of paragraph (1)(A)(ii), the extent of need in any State for services and facilities for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services specified, pursuant to section 134(b)(5), in the State plan of such State approved under section 134.

"(3) Sums allotted to a State in a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose in the next fiscal year (and in such year only), in addition to the sums allotted to such State in such next fiscal year; except that if the maximum amount which may be specified for construction (pursuant to section 134(b)(15)) for a year plus any part of the amount so specified pursuant to such section for the preceding fiscal year and remaining unobligated at the end of such fiscal year is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State developed pursuant to section 134(b)(13), the amount specified pursuant to section 134(b)(15) for such preceding year shall remain available for a second additional year for

the purpose of paying the Federal share of the cost of construction of such facility.

"(4) Of the amount allotted to any State under paragraph (1) for fiscal year 1976, not less than 10 per centum of that allotment shall be used by such State, in accordance with the plan submitted pursuant to section 134(b)(20), for the purpose of assisting it in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities; and of the amount allotted to any State under paragraph (1) for each succeeding fiscal year, not less than 30 per centum of that allotment shall be used by such State for such purpose."

(c) Subsection (d) of section 132 of the Act is amended by inserting after "as he may fix" the following: "(but not earlier than thirty days after he has published notice of his intention to make such reallotment in the Federal Register)".

(d) Section 132(e) of the Act is repealed.

(e)(1) Subsection (b) of section 132 of the Act is amended by striking out "this part" each place it occurs and inserting in lieu thereof "the State plan".

(2) Section 134(b)(4) of the Act is amended by striking out "under this part" and inserting in lieu thereof "under section 132".

(3) Section 138 of the Act is amended by striking out "under this part" each place it occurs and inserting in lieu thereof "under section 132".

STATE PLANS

SEC. 111. (a) Subsection (b) of section 134 is amended as follows:

(1) Paragraph (1) of such subsection is amended by striking out "a State planning and advisory council" and inserting in lieu thereof "a State Planning Council as prescribed by section 141".

(2) Paragraph (3) of such subsection is amended by striking out "policies and procedures" and inserting in lieu thereof "priorities, policies, and procedures".

(3) Paragraph (5) of such subsection is amended to read as follows:

"(5) describe the quality, extent, and scope of treatment, services, and habilitation being provided or to be provided in implementing the State plan to persons with developmental disabilities;".

(4) Paragraph (7) of such subsection is amended to read as follows:

"(7) include provisions, meeting such requirements as the United States Civil Service Commission may prescribe, relating to the establishment and maintenance of personnel standards on a merit basis;".

(5) Paragraph (8) of such subsection is amended to read as follows:

"(8) provide that the State Planning Council be adequately staffed and identify the staff assigned to the Council;".

(6) Paragraph (9) of such subsection is amended by striking out "State planning and advisory council" and inserting in lieu thereof "State Planning Council".

(7) Paragraph (15) of such subsection is amended by striking out "50 per centum" and inserting in lieu thereof "10 per centum".

(8) Paragraph (14) of such subsection is amended by striking out "and assign" and inserting in lieu thereof "assign", and by inserting before the semicolon a comma and the following: "and require that construction of projects be done in accordance with standards prescribed by the Secretary pursuant to the Act of August 12, 1968 (42 U.S.C. 4151–4156) (known as the Architectural Barriers Act of 1968)".

(9) Such subsection is amended by striking out "and" after the semicolon at the end of paragraph (17), by redesignating paragraph (18) as paragraph (30), and by inserting the following new paragraphs after paragraph (17):

"(18) provide reasonable assurance that adequate financial support will be available to complete the construction of, and to maintain and operate when such construction is completed, any facility, the construction of which is assisted with sums allotted under section 132;

"(19) provide reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project assisted with sums allotted under section 132 will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c);

"(20) contain a plan designed (A) to eliminate inappropriate placement in institutions of persons with developmental disabilities, and (B) to improve the quality of care and the state of surroundings of persons for whom institutional care is appropriate;

"(21) provide for the early screening, diagnosis, and evaluation (including maternal care, developmental screening, home care, infant and preschool stimulation programs, and parent counseling and training) of developmentally disabled infants and preschool children, particularly those with multiple handicaps;

"(22) provide for counseling, program coordination, follow-along services, protective services, and personal advocacy on behalf of developmentally disabled adults;

"(23) support the establishment of community programs as alternatives to institutionalization and support such programs which are designed to provide services for the care and habilitation of persons with developmental disabilities, and which utilize, to the maximum extent feasible, the resources and personnel in related community programs to assure full coordination with such programs and to assure the provision of appropriate supplemental health, educational, or social services for persons with developmental disabilities;

"(24) contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this title will be protected;

"(25) provide for a design for implementation which shall include details on the methodology of implementation of the State plan, priorities for spending of funds provided under this part, a detailed plan for the use of such funds, specific objectives to be achieved under the State plan, a listing of the programs and resources to be used to meet such objectives, and a method for periodic evaluation of the design's effectiveness in meeting such objectives;

"(26) provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 (Public Law 93–113) and

other appropriate voluntary organizations except that volunteer services shall supplement, but shall not be in lieu of, services of paid employees;

"(27) provide for the implementation of an evaluation system in accordance with the system developed under section 110;

"(28) provide, to the maximum extent feasible, an opportunity for prior review and comment by the State Planning Council of all State plans of the State which relate to programs affecting persons with developmental disabilities;

"(29) 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 actions to carry out the plan described in paragraph (20)(A), 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; and".

(b) Section 134 of the Act is amended by adding after subsection (c) the following new subsection:

"(d)(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 $50,000, whichever is less, shall be available for such purpose. 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 fiscal year ending June 30, 1975."

APPROVAL OF CONSTRUCTION PROJECTS

SEC. 112. Sections 135 and 136 of the Act are repealed.

PAYMENTS TO STATES

SEC. 113. Section 137 of the Act is amended as follows:

(1) The heading for such section is amended by inserting "CONSTRUCTION," after "PLANNING,".

(2) Subsection (a) of such section is amended by striking out "(1)" and by striking out paragraph (2).

(3) Subsection (b) is amended to read as follows:

"(b)(1) Upon certification to the Secretary by the State agency, designated pursuant to section 134(b)(1), based upon inspection by it, that work has been performed upon a construction project, or purchases have been made for such project, in accordance with the approved plans and specifications and that payment of an installment is due to the applicant, such installment shall be paid to the State with respect to such project, from the applicable allotment of such State, except that (A) if the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant, (B) if the Secretary, after investigation or otherwise, has reason to

believe that any act (or failure to act) has occurred requiring action pursuant to section 136, payment may, after he has given the State agency so designated notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (C) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

"(2) In case the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such revision is approved."

WITHHOLDING OF PAYMENTS

SEC. 114. Section 138 of the Act is amended as follows:

(1) The heading for such section is amended by inserting "CONSTRUCTION," after "PLANNING,".

(2) Such section is amended by striking out "State planning and advisory council" and inserting in lieu thereof "State Planning Council", and by striking out "State council" and inserting in lieu thereof "State Council".

(3) Such section is amended by inserting "(a)" after "138.", by redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively, and by adding at the end the following new subsection:

"(b) The State Planning Council of a State shall review the State's plan (including the design for implementation of such plan) under section 134 and the actions of the State under such plan for the purpose of determining if the State is complying with the requirements of the plan (and its design for implementation). For the purpose of assisting the Secretary in the implementation of this section, a State Planning Council may notify the Secretary of the results of any review carried out under this subsection."

NONDUPLICATION

SEC. 115. Section 140 of the Act is amended to read as follows:

"NONDUPLICATION

"SEC. 140. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 134, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 132, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds."

STATE PLANNING COUNCILS

SEC. 116. Part C of the Act is amended by inserting after section 140 the following new section:

"STATE PLANNING COUNCILS

"SEC. 141. (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 a State's State Planning Council shall be appointed by the

Governor of such State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies, local agencies, and nongovernmental agencies, and groups concerned with services to persons with developmental disabilities. At least one-third of the membership of such a Council shall consist of persons with developmental disabilities, or their parents or guardians, who are not officers of any entity, or employees of any State agency or of any other entity, which receives funds or provides services under this part.

"(b) The State Planning Council shall—

"(1) supervise the development of and approve the State plan required by this part;

"(2) monitor and evaluate 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

"(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request.

"(c) Each State receiving assistance under this part shall provide for the assignment to its State Planning Council of personnel adequate to insure that the Council has the capacity to fulfill its responsibilities under subsection (b)."

SEC. 117. Part C of the Act is amended by inserting after section 141 (added by section 116 of this Act) the following new section:

"JUDICIAL REVIEW

"SEC. 142. If any State is dissatisfied with the Secretary's action under section 134(c) or section 136, 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 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 him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which he based his 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 his order. 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 the fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such 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 section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action."

PART D—REVISION OF SPECIAL PROJECTS ASSISTANCE

SPECIAL PROJECT GRANTS

SEC. 120. Part D of the Act is amended to read as follows:

"PART D—SPECIAL PROJECT GRANTS

"GRANT AUTHORITY

"SEC. 145. (a) The Secretary, after consultation with the National Advisory Council on Services and Facilities to the Developmentally Disabled, may make project grants to public or nonprofit private entities for—

"(1) demonstrations (and research and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are disadvantaged or multihandicapped), including programs for parent counseling and training, early screening and intervention, infant and preschool children, seizure control systems, legal advocacy, and community based counseling, care, housing, and other services or systems necessary to maintain a person with developmental disabilities in the community;

"(2) public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers confronted by persons with developmental disabilities;

"(3) coordinating and using all available community resources in meeting the needs of persons with developmental disabilities (especially those from disadvantaged backgrounds);

"(4) demonstrations of the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status;

"(5) technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities;

"(6) training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training;

"(7) developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities (including model integrated service projects);

"(8) gathering and disseminating information relating to developmental disabilities; and

"(9) improving the quality of services provided in and the administration of programs for such persons.

"(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 the State in which the applicant's project will be conducted has a State plan approved under part C. The Secretary shall provide to the State Planning Council for the State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments thereon.

(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. In determining the amount of any grant under subsection (a) for the costs of any project, there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

"(d) For the purpose of making payments under grants under subsection (a), there are authorized to be appropriated $18,000,000 for fiscal year 1976, $22,000,000 for fiscal year 1977, and $25,000,000 for fiscal year 1978.

"(e) Of the funds appropriated under subsection (d) for any fiscal year, not less than 25 per centum of such funds shall be used for projects which the Secretary determines (after consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled) are of national significance.

"(f) No funds appropriated under the Public Health Service Act, under this Act (other than under subsection (d) of this section), or under section 304 of the Rehabilitation Act of 1973 may be used to make grants under subsection (a)."

PART E—REVISION OF GENERAL PROVISIONS

GENERAL PROVISIONS

SEC. 125. Part A of the Act is amended to read as follows:

"PART A—GENERAL PROVISIONS

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Developmental Disabilities Services and Facilities Construction Act'.

"DEFINITIONS

"SEC. 102. For purposes of this title:

"(1) The term 'State' includes Puerto Rico, Guam, 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 inures, or may lawfully inure, to the benefit of any private shareholder or individual; and 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 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 disability of a person which—

"(A) (i) is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

"(ii) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or

"(iii) is attributable to dyslexia resulting from a disability described in clause (i) or (ii) of this subparagraph;

"(B) originates before such person attains age eighteen;

"(C) has continued or can be expected to continue indefinitely; and

"(D) constitutes a substantial handicap to such person's ability to function normally in society.

"(8) The term 'services for persons with developmental disabilities' means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability; and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

"(9) The term 'satellite center' means an entity which is associated with one or more university affiliated facilities and which functions as a community or regional extension of such university affiliated facilities in the delivery of training, services, and programs to the developmentally disabled and their families, to personnel of State agencies concerned with developmental disabilities, and to others responsible for the care of persons with developmental disabilities.

"(10) 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 aids in demonstrating the provision of specialized services for the diagnosis and treatment of persons with developmental disabilities and which provides education and training

(including interdisciplinary training) of personnel needed to render services to persons with developmental disabilities.

"(11) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"FEDERAL SHARE

"SEC. 103. (a) The Federal share of any project to be provided through grants under part B and allotments under part C may not exceed 75 per centum of the necessary cost thereof 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 per centum of the project's necessary costs as so determined.

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

"(c) 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 the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under part C or by a university-affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part B.

"STATE CONTROL OF OPERATIONS

"SEC. 104. 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.

"RECORDS AND AUDIT

"SEC. 105. (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 that 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.

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"SEC. 106. 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.

"RECOVERY

"SEC. 107. If any facility with respect to which funds have been paid under part B or C shall, at any time within twenty years after the completion of construction—

"(1) be sold or transferred 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 transferor or the transferee (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 him, may, upon finding good cause therefor, 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."

NATIONAL ADVISORY COUNCIL

SEC. 126. (a) Section 133 of the Act is transferred to part A of the Act (as amended by section 125), is redesignated as section 108, and is amended as follows:

(1) Subsection (a) of such section is amended to read as follows:

"(a)(1) There is established a National Advisory Council on Services and Facilities for the Developmentally Disabled (hereinafter in this section referred to as the 'Council') which shall consist of nine ex officio members and sixteen members appointed by the Secretary. The ex officio members of the Council are the Deputy Commissioner of the Bureau of Education for the Handicapped, the Commissioner of Rehabilitation Services Administration, the Administrator of the Social and Rehabilitation Service, the Director of the National Institute of Child Health and Human Development, the Director of the National Institute of Neurological Disease and Stroke, the Director of the National Institute of Mental Health, and three other representatives of the Department of Health, Education, and Welfare selected by the Secretary. The appointed members of the Council shall be selected from persons who are not full-time employees of the United States and shall be selected without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall be selected from advocates in the field of services to persons with developmental disabilities, including leaders in State or local government, in institutions of higher education, and in organizations which have demonstrated advocacy on behalf of such persons. At least five such members shall be representatives of State or local public or nonprofit private agencies responsible for services to persons with developmental disabilities, and

at least five other such members shall be persons with developmental disabilities or the parents or guardians of such persons.

"(2) The Secretary shall from time to time designate one of the appointed members to serve as Chairman of the Council.

"(3) The Council shall meet at least twice a year.

"(4) The Federal Advisory Committee Act shall not apply with respect to the duration of the Council."

(2) Subsection (b) of such section is amended—

(A) by inserting "appointed" after "Each", and

(B) by striking out ", and except that" and all that follows in that subsection and inserting in lieu thereof a period and the following: "An individual who has served as a member of the Council may not be reappointed to the Council before two years has expired since the expiration of his last term of office as a member."

(3) Subsection (c) of such section is amended to read as follows:

"(c) It shall be the duty and function of the Council to—

"(1) advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by the Secretary in the implementation of the provisions of this title;

"(2) study and evaluate programs authorized by this title to determine their effectiveness in carrying out the purposes for which they were established;

"(3) monitor the development and execution of this title and report directly to the Secretary any delay in the rapid execution of this title;

"(4) review grants made under this title and advise the Secretary with respect thereto; and

"(5) submit to the Congress annually an evaluation of the efficiency of the administration of the provisions of this title."

(4) Subsection (e) of such section is amended (A) by striking out "Members" and inserting in lieu thereof "Appointed members", and (B) by striking out "they" and inserting in lieu thereof "all of the members".

(b) The amendments made by subsection (a) do not affect the term of office of persons who on the date of the enactment of this Act are members of the National Advisory Council on Services and Facilities for the Developmentally Disabled. The Secretary of Health, Education, and Welfare shall make appointments to such Council in accordance with section 108 of the Act as vacancies occur in the membership of such Council on and after the date of the enactment of this Act. The ex officio members prescribed by section 108 of the Act shall take office as of the date of the enactment of this Act.

REGULATIONS

SEC. 127. Section 139 of the Act is transferred to part A of the Act (as amended by sections 125 and 126), is redesignated as section 109, and is amended as follows:

(1) Paragraphs (a), (b), and (c) are each amended by striking out "this part" and inserting in lieu thereof "part C".

(2) Paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (1), (2), (3), and (4), respectively.

(3) The last sentence is repealed and the following new sentences are inserted in lieu thereof: "Regulations of the Secretary shall provide for approval of an application submitted by a State for a project to be completed by two or more political subdivisions, by two or more public or nonprofit private entities, or by any

combination of such subdivisions and entities. Within one hundred and eighty days of the date of the enactment of any amendments to this title, the Secretary shall promulgate such regulations as may be required for implementation of such amendments."

EVALUATION

SEC. 128. Part A of the Act (as amended by sections 125, 126, and 127) is amended by adding after section 109 the following new section:

"EVALUATION SYSTEM

"SEC. 110. (a) The Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, shall within two years of the date of the enactment of the Developmentally Disabled Assistance and Bill of Rights Act develop a comprehensive system for the evaluation of services provided to persons with developmental disabilities through programs (including residential and nonresidential programs) assisted under this title. Within six months after the development of such a system, the Secretary shall require, as a condition to the receipt of assistance under this title, that each State submit to the Secretary, in such form and manner as he shall prescribe, a time-phased plan for the implementation of such a system. Within two years after the date of the development of such a system, the Secretary shall require, as a condition to the receipt of assistance under this title, that each State provide assurances satisfactory to the Secretary that the State is using such a system.

"(b) The evaluation system to be developed under subsection (a) shall—

"(1) provide objective measures of the developmental progress of persons with developmental disabilities using data obtained from individualized habilitation plans as required under section 112 or other comparable individual data;

"(2) provide a method of evaluating programs providing services for persons with developmental disabilities which method uses the measures referred to in paragraph (1); and

"(3) provide effective measures to protect the confidentiality of records of, and information describing, persons with developmental disabilities.

"(c) Not later than two years after the date of the Developmentally Disabled Assistance and Bill of Rights Act, the Secretary shall submit to the Congress a report on the evaluation system developed pursuant to subsection (a). Such report shall include an estimate of the costs to the Federal Government and the States of developing and implementing such a system.

"(d) The Secretary, in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, may make grants to public and private nonprofit entities and may enter into contracts with individuals and public and nonprofit private entities to assist in developing the evaluation to be developed under subsection (a), except that such a grant or contract may not be entered into with entities or individuals who have any financial or other direct interest in any of the programs to be evaluated under such a system. Contracts may be entered into under this subsection without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)."

TITLE II—ESTABLISHMENT AND PROTECTION OF THE RIGHTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES

RIGHTS OF THE DEVELOPMENTALLY DISABLED

SEC. 201. Part A of the Act (as amended by title I) is amended by inserting after section 110 the following new section:

"RIGHTS OF THE DEVELOPMENTALLY DISABLED

"SEC. 111. 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) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

"(B) does 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.

"(iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibition of the use of such restraint as a punishment or as a substitute for a habilitation program.

"(iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

"(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

"(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

"(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and—

"(A) in the case of residential programs serving persons in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 Fed. Reg. pt. II), as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

"(B) in the case of other residential programs for persons with developmental disabilities, which assure that care is

appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

"(C) in the case of nonresidential programs, which assure the care provided by such programs is appropriate to the persons served by the programs."

HABILITATION PLANS

SEC. 202. Part A of the Act is amended by inserting after section 111 (added by section 201) the following new section:

"HABILITATION PLANS

"SEC. 112. (a) The Secretary shall require as a condition to a State's receiving an allotment under part C after September 30, 1976, 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 such 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 or representatives 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) Such plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. 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 the plan.

"(4) The plan shall contain a statement (in 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.

"(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

"(c) Each habilitation plan shall be reviewed at least annually by the agency primarily 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."

PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

SEC. 203. Part A of the Act is amended by inserting after section 112 (added by section 202) the following new section:

"PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

"SEC. 113. (a) The Secretary shall require as a condition to a State receiving an allotment under part C for a fiscal year ending before October 1, 1977, that the State provide the Secretary satisfactory assurances that not later than such date (1) the State will have in effect a system to protect and advocate the rights of persons with development disabilities, and (2) such system will (A) have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State, and (B) be independent of any State agency which provides treatment, services, or habilitation to persons with developmental disabilities. The Secretary may not make an allotment under part C to a State for a fiscal year beginning after September 30, 1977, unless the State has in effect a system described in the preceding sentence.

"(b)(1) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the sums appropriated under paragraph (2). Such allotments shall be made in accordance with subsections (a)(1)(A) and (d) of section 132.

"(2) For allotments under paragraph (1), there are authorized to be appropriated $3,000,000 for fiscal year 1976, $3,000,000 for fiscal year 1977, and $3,000,000 for fiscal year 1978."

STUDIES AND RECOMMENDATIONS

SEC. 204. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall conduct or arrange for the conduct of the following:

(1) A review and evaluation of the standards and quality assurance mechanisms applicable to residential facilities and community agencies under the Rehabilitation Act of 1973, titles I and VI of the Elementary and Secondary Education Act of 1965, titles XVIII, XIX, and XX of the Social Security Act, and any other Federal law administered by the Secretary. Such standards and mechanisms shall be reviewed and evaluated (A) for their effectiveness in assuring the rights, described in section 111 of the Act, of persons with developmental disabilities, (B) for their effectiveness in insuring that services rendered by such facilities and agencies to persons with developmental disabilities are consistent with current concepts of quality care concerning treatment, services, and habilitation of such persons, (C) for conflicting requirements, and (D) for the relative effectiveness of their enforcement and the degree and extent of their effectiveness.

(2) The development of recommendations for standards and quality assurance mechanisms (including enforcement mechanisms) for residential facilities and community agencies providing treatment, services, or habilitation for persons with developmental disabilities which standards and mechanisms will assure the rights stated in section 111 of the Act. Such recommendations shall be based upon performance criteria for measuring and evaluating the developmental progress of persons with developmental disabilities which criteria are consistent with criteria used in the evaluation system developed under section 110 of the Act.

(3) The development of recommendations for changes in Federal law and regulations administered by the Secretary after taking into account the review and evaluation under paragraph (1) and the recommended standards or mechanisms developed under paragraph (2).

(b)(1) The Secretary may in consultation with the National Advisory Council on Services and Facilities for the Developmentally Disabled, obtain (through grants or contracts) the assistance of public and private entities in carrying out subsection (a).

(2) In carrying out subsection (a), the Secretary shall consult with appropriate public and private entities and individuals for the purpose of receiving their expert assistance, advice, and recommendations. Such agencies and individuals shall include persons with developmental disabilities, representative of such individuals, the appropriate councils of the Joint Commission on Accreditation of Hospitals, providers of health care, and State agencies. Persons to be consulted shall include the following officers of the Department of Health, Education, and Welfare: The Commissioner of the Medical Services Administration, the Commissioner of the Rehabilitation Services Administration, the Deputy Commissioner of the Bureau of Education for the Handicapped, the Assistant Secretary for Human Development, the Commissioner of the Community Services Administration, and the Commissioner of the Social Security Administration.

(c) The Secretary shall within eighteen months after the date of enactment of this Act complete the review and evaluation and development of recommendations prescribed by subsection (a) and shall make a report to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives on such review and evaluation and recommendations.

TITLE III—MISCELLANEOUS

REPORT AND STUDY

SEC. 301. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall, in accordance with section 101(7) of the Act (defining the term "developmental disability") (as amended by title I of this Act), determine the conditions of persons which should be included as developmental

disabilities for purposes of the programs authorized by title I of the Act. Within six months of the date of enactment of this Act the Secretary shall make such determination and shall make a report thereon to the Congress specifying the conditions which he determined should be so included, the conditions which he determined should not be so included, and the reasons for each such determination. After making such report, the Secretary shall periodically, but not less often than annually, review the conditions not so included as developmental disabilities to determine if they should be so included. The Secretary shall report to the Congress the results of each such review.

(b) (1) The Secretary shall contract for the conduct of an independent objective study to determine (A) if the basis of the definition of the developmental disabilities (as amended by title I of this Act) with respect to which assistance is authorized under such title is appropriate and, to the extent that it is not, to determine an appropriate basis for determining which disabilities should be included and which disabilities should be excluded from the definition, and (B) the nature and adequacy of services provided under other Federal programs for persons with disabilities not included in such definition.

(2) A final report giving the results of the study required by paragraph (1) and providing specifications for the definition of developmental disabilities for purposes of title I of the Act shall be submitted by the organization conducting the study to the Committee on Inter-State and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate not later than eighteen months after the date of enactment of this Act.

CONFORMING AMENDMENTS

SEC. 302. (a) Sections 134, 137, 138, 140, 141, and 142 of the Act are redesignated as sections 133, 134, 135, 136, 137, and 138, respectively.

(b) (1) Section 132 of the Act is amended by striking out "134" each place it occurs and inserting in lieu thereof "133".

(2) Section 133(b) (1) is amended by striking out "141" and inserting in lieu thereof "137".

(3) Section 135 of the Act (as so redesignated) is amended (A) by striking out "134" each place it occurs and inserting in lieu thereof "133", and (B) by striking out "136" in subsection (b) and inserting in lieu thereof "135".

(4) Section 136 of the Act (as so redesignated) is amended by striking out "134" each place it occurs and inserting in lieu thereof "133".

(5) Section 138 of the Act (as so redesignated) is amended (A) by striking out "134" and inserting in lieu thereof "133", and (B) by striking out "136" and inserting in lieu thereof "135".

(c) Sections 100 and 130 of the Act and title IV of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 are repealed.

EFFECTIVE DATE

SEC. 303. The amendments made by this Act shall take effect with respect to appropriations under the Act for fiscal years beginning after June 30, 1975.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

September 24, 1975

Dear Mr. Director:

The following bill was received at the White House on September 24th:

H.R. 4005

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.