

Section 718b, Pub. L. 93-112, §21, as added Pub. L. 102-569, title I, §111(a), Oct. 29, 1992, 106 Stat. 4363; amended Pub. L. 103-73, title I, §106, Aug. 11, 1993, 107 Stat. 719, related to traditionally underserved populations.

AMENDMENTS

1998—Pub. L. 105-277, §101(f) [title VIII, §402(b)(6)], made technical amendment in original to section designation and catchline.

Subsec. (a)(3). Pub. L. 105-277, §101(f) [title VIII, §402(c)(3)], substituted “is denied” for “are denied” and “is closed” for “are closed”.

SUBCHAPTER I—VOCATIONAL REHABILITATION SERVICES

CODIFICATION

Title I of the Rehabilitation Act of 1973, comprising this subchapter, was originally enacted by Pub. L. 93-112, title I, Sept. 26, 1973, 87 Stat. 363, and amended by Pub. L. 93-516, Dec. 7, 1974, 88 Stat. 1617; Pub. L. 93-651, Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, Mar. 15, 1976, 90 Stat. 211; Pub. L. 95-602, Nov. 6, 1978, 92 Stat. 2955; Pub. L. 97-375, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-221, Feb. 22, 1984, 98 Stat. 17; Pub. L. 98-524, Oct. 19, 1984, 98 Stat. 2435; Pub. L. 99-506, Oct. 21, 1986, 100 Stat. 1807; Pub. L. 100-630, Nov. 7, 1988, 102 Stat. 3289; Pub. L. 102-52, June 6, 1991, 105 Stat. 260; Pub. L. 102-54, June 13, 1991, 105 Stat. 267; Pub. L. 102-119, Oct. 7, 1991, 105 Stat. 587; Pub. L. 102-569, Oct. 29, 1992, 106 Stat. 4344; Pub. L. 103-73, Aug. 11, 1993, 107 Stat. 718; Pub. L. 104-66, Dec. 21, 1995, 109 Stat. 707; Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 186. Title I is shown herein, however, as having been added by Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1116, without reference to those intervening amendments because of the extensive revision of title I by Pub. L. 105-220.

PART A—GENERAL PROVISIONS

§ 720. Declaration of policy; authorization of appropriations

(a) Findings; purpose; policy

(1) Findings

Congress finds that—

(A) work—

(i) is a valued activity, both for individuals and society; and

(ii) fulfills the need of an individual to be productive, promotes independence, enhances self-esteem, and allows for participation in the mainstream of life in the United States;

(B) as a group, individuals with disabilities experience staggering levels of unemployment and poverty;

(C) individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided;

(D) reasons for significant numbers of individuals with disabilities not working, or working at levels not commensurate with their abilities and capabilities, include—

(i) discrimination;

(ii) lack of accessible and available transportation;

(iii) fear of losing health coverage under the medicare and medicaid programs carried out under titles XVIII and XIX of the

Social Security Act (42 U.S.C. 1395 et seq. and 1396 et seq.) or fear of losing private health insurance; and

(iv) lack of education, training, and supports to meet job qualification standards necessary to secure, retain, regain, or advance in employment;

(E) enforcement of subchapter V of this chapter and of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) holds the promise of ending discrimination for individuals with disabilities;

(F) the provision of workforce investment activities and vocational rehabilitation services can enable individuals with disabilities, including individuals with the most significant disabilities, to pursue meaningful careers by securing gainful employment commensurate with their abilities and capabilities; and

(G) linkages between the vocational rehabilitation programs established under this subchapter and other components of the statewide workforce investment systems are critical to ensure effective and meaningful participation by individuals with disabilities in workforce investment activities.

(2) Purpose

The purpose of this subchapter is to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable programs of vocational rehabilitation, each of which is—

(A) an integral part of a statewide workforce investment system; and

(B) designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment.

(3) Policy

It is the policy of the United States that such a program shall be carried out in a manner consistent with the following principles:

(A) Individuals with disabilities, including individuals with the most significant disabilities, are generally presumed to be capable of engaging in gainful employment and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

(B) Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.

(C) Individuals who are applicants for such programs or eligible to participate in such programs must be active and full partners in the vocational rehabilitation process, making meaningful and informed choices—

(i) during assessments for determining eligibility and vocational rehabilitation needs; and

(ii) in the selection of employment outcomes for the individuals, services needed to achieve the outcomes, entities providing such services, and the methods used to secure such services.

(D) Families and other natural supports can play important roles in the success of a vocational rehabilitation program, if the individual with a disability involved requests, desires, or needs such supports.

(E) Vocational rehabilitation counselors that are trained and prepared in accordance with State policies and procedures as described in section 721(a)(7)(B) of this title (referred to individually in this subchapter as a “qualified vocational rehabilitation counselor”), other qualified rehabilitation personnel, and other qualified personnel facilitate the accomplishment of the employment outcomes and objectives of an individual.

(F) Individuals with disabilities and the individuals’ representatives are full partners in a vocational rehabilitation program and must be involved on a regular basis and in a meaningful manner with respect to policy development and implementation.

(G) Accountability measures must facilitate the accomplishment of the goals and objectives of the program, including providing vocational rehabilitation services to, among others, individuals with the most significant disabilities.

(b) Authorization of appropriations

(1) In general

For the purpose of making grants to States under part B of this subchapter to assist States in meeting the costs of vocational rehabilitation services provided in accordance with State plans under section 721 of this title, there are authorized to be appropriated such sums as may be necessary for fiscal years 1999 through 2003, except that the amount to be appropriated for a fiscal year shall not be less than the amount of the appropriation under this paragraph for the immediately preceding fiscal year, increased by the percentage change in the Consumer Price Index determined under subsection (c) of this section for the immediately preceding fiscal year.

(2) Reference

The reference in paragraph (1) to grants to States under part B of this subchapter shall not be considered to refer to grants under section 732 of this title.

(c) Consumer Price Index

(1) Percentage change

No later than November 15 of each fiscal year (beginning with fiscal year 1979), the Secretary of Labor shall publish in the Federal Register the percentage change in the Consumer Price Index published for October of the preceding fiscal year and October of the fiscal year in which such publication is made.

(2) Application

(A) Increase

If in any fiscal year the percentage change published under paragraph (1) indicates an increase in the Consumer Price Index, then the amount to be appropriated under subsection (b)(1) of this section for the subsequent fiscal year shall be at least the

amount appropriated under subsection (b)(1) of this section for the fiscal year in which the publication is made under paragraph (1) increased by such percentage change.

(B) No increase or decrease

If in any fiscal year the percentage change published under paragraph (1) does not indicate an increase in the Consumer Price Index, then the amount to be appropriated under subsection (b)(1) of this section for the subsequent fiscal year shall be at least the amount appropriated under subsection (b)(1) of this section for the fiscal year in which the publication is made under paragraph (1).

(3) Definition

For purposes of this section, the term “Consumer Price Index” means the Consumer Price Index for All Urban Consumers, published monthly by the Bureau of Labor Statistics.

(d) Extension

(1) In general

(A) Authorization or duration of program

Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(i) of the authorization of appropriations for the program authorized by the State grant program under part B of this subchapter; or

(ii) of the duration of the program authorized by the State grant program under part B of this subchapter;

has passed legislation which would have the effect of extending the authorization or duration (as the case may be) of such program, such authorization or duration is automatically extended for 1 additional year for the program authorized by this subchapter.

(B) Calculation

The amount authorized to be appropriated for the additional fiscal year described in subparagraph (A) shall be an amount equal to the amount appropriated for such program for fiscal year 2003, increased by the percentage change in the Consumer Price Index determined under subsection (c) of this section for the immediately preceding fiscal year, if the percentage change indicates an increase.

(2) Construction

(A) Passage of legislation

For the purposes of paragraph (1)(A), Congress shall not be deemed to have passed legislation unless such legislation becomes law.

(B) Acts or determinations of Commissioner

In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of the program authorized by this subchapter, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which the extension described in that part of paragraph (1) that follows clause (ii) of paragraph (1)(A) is in effect.

(Pub. L. 93-112, title I, §100, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1116.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(D)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (a)(1)(E), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 720, Pub. L. 93-112, title I, §100, Sept. 26, 1973, 87 Stat. 363; Pub. L. 93-516, title I, §102(a), Dec. 7, 1974, 88 Stat. 1618; Pub. L. 93-651, title I, §102(a), Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, §§2(a), 11(b)(2), (3), Mar. 15, 1976, 90 Stat. 211, 213; Pub. L. 95-602, title I, §101(a), (b), Nov. 6, 1978, 92 Stat. 2955; Pub. L. 98-221, title I, §111(a)-(d), Feb. 22, 1984, 98 Stat. 19; Pub. L. 99-506, title I, §103(d)(2)(C), title II, §201, Oct. 21, 1986, 100 Stat. 1810, 1813; Pub. L. 100-630, title II, §202(a), Nov. 7, 1988, 102 Stat. 3304; Pub. L. 102-52, §2(a), (b)(1), June 6, 1991, 105 Stat. 260; Pub. L. 102-569, title I, §121(a), (b), Oct. 29, 1992, 106 Stat. 4365, 4367, related to congressional findings, purpose, policy, authorization of appropriations, change in Consumer Price Index, and extension of program, prior to the general amendment of this subchapter by Pub. L. 105-220.

§ 721. State plans

(a) Plan requirements

(1) In general

(A) Submission

To be eligible to participate in programs under this subchapter, a State shall submit to the Commissioner a State plan for vocational rehabilitation services that meets the requirements of this section, on the same date that the State submits a State plan under section 112 of the Workforce Investment Act of 1998 [29 U.S.C. 2822].

(B) Nonduplication

The State shall not be required to submit, in the State plan for vocational rehabilitation services, policies, procedures, or descriptions required under this subchapter that have been previously submitted to the Commissioner and that demonstrate that such State meets the requirements of this subchapter, including any policies, procedures, or descriptions submitted under this subchapter as in effect on the day before August 7, 1998.

(C) Duration

The State plan shall remain in effect subject to the submission of such modifications as the State determines to be necessary or as the Commissioner may require based on a change in State policy, a change in Federal law (including regulations), an interpretation of this chapter by a Federal court or the highest court of the State, or a finding by the Commissioner of State noncompliance

with the requirements of this chapter, until the State submits and receives approval of a new State plan.

(2) Designated State agency; designated State unit

(A) Designated State agency

The State plan shall designate a State agency as the sole State agency to administer the plan, or to supervise the administration of the plan by a local agency, except that—

(i) where, under State law, the State agency for individuals who are blind or another agency that provides assistance or services to adults who are blind is authorized to provide vocational rehabilitation services to individuals who are blind, that agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency to administer or supervise the administration of the rest of the State plan;

(ii) the Commissioner, on the request of a State, may authorize the designated State agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit the agencies to carry out a joint program to provide services to individuals with disabilities, and may waive compliance, with respect to vocational rehabilitation services furnished under the joint program, with the requirement of paragraph (4) that the plan be in effect in all political subdivisions of the State; and

(iii) in the case of American Samoa, the appropriate State agency shall be the Governor of American Samoa.

(B) Designated State unit

The State agency designated under subparagraph (A) shall be—

(i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; or

(ii) if not such an agency, the State agency (or each State agency if 2 are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit that—

(I) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and is responsible for the vocational rehabilitation program of the designated State agency;

(II) has a full-time director;

(III) has a staff employed on the rehabilitation work of the organizational unit all or substantially all of whom are employed full time on such work; and

(IV) is located at an organizational level and has an organizational status within the designated State agency com-

parable to that of other major organizational units of the designated State agency.

(C) Responsibility for services for the blind

If the State has designated only 1 State agency pursuant to subparagraph (A), the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided for individuals who are blind to an organizational unit of the designated State agency and assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of subparagraph (B) applying separately to each of the designated State units.

(3) Non-Federal share

The State plan shall provide for financial participation by the State, or if the State so elects, by the State and local agencies, to provide the amount of the non-Federal share of the cost of carrying out part B of this subchapter.

(4) Statewideness

The State plan shall provide that the plan shall be in effect in all political subdivisions of the State, except that—

(A) in the case of any activity that, in the judgment of the Commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with disabilities or groups of individuals with disabilities, the Commissioner may waive compliance with the requirement that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by the Commissioner, but only if the non-Federal share of the cost of the vocational rehabilitation services involved is met from funds made available by a local agency (including funds contributed to such agency by a private agency, organization, or individual); and

(B) in a case in which earmarked funds are used toward the non-Federal share and such funds are earmarked for particular geographic areas within the State, the earmarked funds may be used in such areas if the State notifies the Commissioner that the State cannot provide the full non-Federal share without such funds.

(5) Order of selection for vocational rehabilitation services

In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the State who apply for the services, the State plan shall—

(A) show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(B) provide the justification for the order of selection;

(C) include an assurance that, in accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be se-

lected first for the provision of vocational rehabilitation services; and

(D) provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system implemented under paragraph (20).

(6) Methods for administration

(A) In general

The State plan shall provide for such methods of administration as are found by the Commissioner to be necessary for the proper and efficient administration of the plan.

(B) Employment of individuals with disabilities

The State plan shall provide that the designated State agency, and entities carrying out community rehabilitation programs in the State, who are in receipt of assistance under this subchapter shall take affirmative action to employ and advance in employment qualified individuals with disabilities covered under, and on the same terms and conditions as set forth in, section 793 of this title.

(C) Facilities

The State plan shall provide that facilities used in connection with the delivery of services assisted under the State plan shall comply with the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved on August 12, 1968 (commonly known as the "Architectural Barriers Act of 1968") [42 U.S.C. 4151 et seq.], with section 794 of this title, and with the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.].

(7) Comprehensive system of personnel development

The State plan shall—

(A) include a description (consistent with the purposes of this chapter) of a comprehensive system of personnel development, which shall include—

(i) a description of the procedures and activities the designated State agency will undertake to ensure an adequate supply of qualified State rehabilitation professionals and paraprofessionals for the designated State unit, including the development and maintenance of a system for determining, on an annual basis—

(I) the number and type of personnel that are employed by the designated State unit in the provision of vocational rehabilitation services, including ratios of qualified vocational rehabilitation counselors to clients; and

(II) the number and type of personnel needed by the State, and a projection of the numbers of such personnel that will be needed in 5 years, based on projections of the number of individuals to be served, the number of such personnel who are expected to retire or leave the

vocational rehabilitation field, and other relevant factors;

(ii) where appropriate, a description of the manner in which activities will be undertaken under this section to coordinate the system of personnel development with personnel development activities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(iii) a description of the development and maintenance of a system of determining, on an annual basis, information on the programs of institutions of higher education within the State that are preparing rehabilitation professionals, including—

(I) the numbers of students enrolled in such programs; and

(II) the number of such students who graduated with certification or licensure, or with credentials to qualify for certification or licensure, as a rehabilitation professional during the past year;

(iv) a description of the development, updating, and implementation of a plan that—

(I) will address the current and projected vocational rehabilitation services personnel training needs for the designated State unit; and

(II) provides for the coordination and facilitation of efforts between the designated State unit, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel who are individuals with disabilities; and

(v) a description of the procedures and activities the designated State agency will undertake to ensure that all personnel employed by the designated State unit are appropriately and adequately trained and prepared, including—

(I) a system for the continuing education of rehabilitation professionals and paraprofessionals within the designated State unit, particularly with respect to rehabilitation technology; and

(II) procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to this chapter made by the Rehabilitation Act Amendments of 1998;

(B) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel, including rehabilitation professionals and paraprofessionals, needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) the establishment and maintenance of standards that are consistent with any national or State approved or recognized certification, licensing, registration, or other

comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services; and

(ii) to the extent that such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel within the designated State unit that meet appropriate professional requirements in the State; and

(C) contain provisions relating to the establishment and maintenance of minimum standards to ensure the availability of personnel within the designated State unit, to the maximum extent feasible, trained to communicate in the native language or mode of communication of an applicant or eligible individual.

(8) Comparable services and benefits

(A) Determination of availability

(i) In general

The State plan shall include an assurance that, prior to providing any vocational rehabilitation service to an eligible individual, except those services specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 723(a) of this title, the designated State unit will determine whether comparable services and benefits are available under any other program (other than a program carried out under this subchapter) unless such a determination would interrupt or delay—

(I) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment of the individual in accordance with section 722(b) of this title;

(II) an immediate job placement; or

(III) the provision of such service to any individual at extreme medical risk.

(ii) Awards and scholarships

For purposes of clause (i), comparable benefits do not include awards and scholarships based on merit.

(B) Interagency agreement

The State plan shall include an assurance that the Governor of the State, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, and the designated State unit, in order to ensure the provision of vocational rehabilitation services described in subparagraph (A) (other than those services specified in paragraph (5)(D), and in paragraphs (1) through (4) and (14) of section 723(a) of this title), that are included in the individualized plan for employment of an eligible individual, including

the provision of such vocational rehabilitation services during the pendency of any dispute described in clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a description of a method for defining, the financial responsibility of such public entity for providing such services, and a provision stating the financial responsibility of such public entity for providing such services.

(ii) Conditions, terms, and procedures of reimbursement

Information specifying the conditions, terms, and procedures under which a designated State unit shall be reimbursed by other public entities for providing such services, based on the provisions of such agreement or mechanism.

(iii) Interagency disputes

Information specifying procedures for resolving interagency disputes under the agreement or other mechanism (including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism).

(iv) Coordination of services procedures

Information specifying policies and procedures for public entities to determine and identify the interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services (except those services specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 723(a) of this title).

(C) Responsibilities of other public entities

(i) Responsibilities under other law

Notwithstanding subparagraph (B), if any public entity other than a designated State unit is obligated under Federal or State law, or assigned responsibility under State policy or under this paragraph, to provide or pay for any services that are also considered to be vocational rehabilitation services (other than those specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 723(a) of this title), such public entity shall fulfill that obligation or responsibility, either directly or by contract or other arrangement.

(ii) Reimbursement

If a public entity other than the designated State unit fails to provide or pay for the services described in clause (i) for an eligible individual, the designated State unit shall provide or pay for such services to the individual. Such designated State unit may claim reimbursement for the services from the public entity that failed to provide or pay for such services. Such public entity shall reimburse the designated State unit pursuant to the terms

of the interagency agreement or other mechanism described in this paragraph according to the procedures established in such agreement or mechanism pursuant to subparagraph (B)(ii).

(D) Methods

The Governor of a State may meet the requirements of subparagraph (B) through—

- (i) a State statute or regulation;
- (ii) a signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity relating to the provision of services; or
- (iii) another appropriate method, as determined by the designated State unit.

(9) Individualized plan for employment

(A) Development and implementation

The State plan shall include an assurance that an individualized plan for employment meeting the requirements of section 722(b) of this title will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services under this subchapter, except that in a State operating under an order of selection described in paragraph (5), the plan will be developed and implemented only for individuals meeting the order of selection criteria of the State.

(B) Provision of services

The State plan shall include an assurance that such services will be provided in accordance with the provisions of the individualized plan for employment.

(10) Reporting requirements

(A) In general

The State plan shall include an assurance that the designated State agency will submit reports in the form and level of detail and at the time required by the Commissioner regarding applicants for, and eligible individuals receiving, services under this subchapter.

(B) Annual reporting

In specifying the information to be submitted in the reports, the Commissioner shall require annual reporting on the eligible individuals receiving the services, on those specific data elements described in section 136(d)(2) of the Workforce Investment Act of 1998 [29 U.S.C. 2871(d)(2)] that are determined by the Secretary to be relevant in assessing the performance of designated State units in carrying out the vocational rehabilitation program established under this subchapter.

(C) Additional data

In specifying the information required to be submitted in the reports, the Commissioner shall require additional data with regard to applicants and eligible individuals related to—

- (i) the number of applicants and the number of individuals determined to be eligible or ineligible for the program carried out under this subchapter, including—

- (I) the number of individuals determined to be ineligible because they did not require vocational rehabilitation services, as provided in section 722(a) of this title; and
- (II) the number of individuals determined, on the basis of clear and convincing evidence, to be too severely disabled to benefit in terms of an employment outcome from vocational rehabilitation services;
- (ii) the number of individuals who received vocational rehabilitation services through the program, including—

- (I) the number who received services under paragraph (5)(D), but not assistance under an individualized plan for employment;
- (II) of those recipients who are individuals with significant disabilities, the number who received assistance under an individualized plan for employment consistent with section 722(b) of this title; and
- (III) of those recipients who are not individuals with significant disabilities, the number who received assistance under an individualized plan for employment consistent with section 722(b) of this title;
- (iii) of those applicants and eligible recipients who are individuals with significant disabilities—

- (I) the number who ended their participation in the program carried out under this subchapter and the number who achieved employment outcomes after receiving vocational rehabilitation services; and
- (II) the number who ended their participation in the program and who were employed 6 months and 12 months after securing or regaining employment, or, in the case of individuals whose employment outcome was to retain or advance in employment, who were employed 6 months and 12 months after achieving their employment outcome, including—
- (aa) the number who earned the minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or another wage level set by the Commissioner, during such employment; and
- (bb) the number who received employment benefits from an employer during such employment; and
- (iv) of those applicants and eligible recipients who are not individuals with significant disabilities—
- (I) the number who ended their participation in the program carried out under this subchapter and the number who achieved employment outcomes after receiving vocational rehabilitation services; and
- (II) the number who ended their participation in the program and who were employed 6 months and 12 months after securing or regaining employment, or, in

the case of individuals whose employment outcome was to retain or advance in employment, who were employed 6 months and 12 months after achieving their employment outcome, including—

- (aa) the number who earned the minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or another wage level set by the Commissioner, during such employment; and
- (bb) the number who received employment benefits from an employer during such employment.

(D) Costs and results

The Commissioner shall also require that the designated State agency include in the reports information on—

- (i) the costs under this subchapter of conducting administration, providing assessment services, counseling and guidance, and other direct services provided by designated State agency staff, providing services purchased under individualized plans for employment, supporting small business enterprises, establishing, developing, and improving community rehabilitation programs, providing other services to groups, and facilitating use of other programs under this chapter and title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] by eligible individuals; and
- (ii) the results of annual evaluation by the State of program effectiveness under paragraph (15)(E).

(E) Additional information

The Commissioner shall require that each designated State unit include in the reports additional information related to the applicants and eligible individuals, obtained either through a complete count or sampling, including—

- (i) information on—
- (I) age, gender, race, ethnicity, education, category of impairment, severity of disability, and whether the individuals are students with disabilities;
- (II) dates of application, determination of eligibility or ineligibility, initiation of the individualized plan for employment, and termination of participation in the program;
- (III) earnings at the time of application for the program and termination of participation in the program;
- (IV) work status and occupation;
- (V) types of services, including assistive technology services and assistive technology devices, provided under the program;
- (VI) types of public or private programs or agencies that furnished services under the program; and
- (VII) the reasons for individuals terminating participation in the program without achieving an employment outcome; and
- (ii) information necessary to determine the success of the State in meeting—

(I) the State performance measures established under section 136(b) of the Workforce Investment Act of 1998 [29 U.S.C. 2871(b)], to the extent the measures are applicable to individuals with disabilities; and

(II) the standards and indicators established pursuant to section 726 of this title.

(F) Completeness and confidentiality

The State plan shall include an assurance that the information submitted in the reports will include a complete count, except as provided in subparagraph (E), of the applicants and eligible individuals, in a manner permitting the greatest possible cross-classification of data and that the identity of each individual for which information is supplied under this paragraph will be kept confidential.

(11) Cooperation, collaboration, and coordination

(A) Cooperative agreements with other components of statewide workforce investment systems

The State plan shall provide that the designated State unit or designated State agency shall enter into a cooperative agreement with other entities that are components of the statewide workforce investment system of the State, regarding the system, which agreement may provide for—

(i) provision of intercomponent staff training and technical assistance with regard to—

(I) the availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and

(II) the promotion of equal, effective, and meaningful participation by individuals with disabilities in workforce investment activities in the State through the promotion of program accessibility, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology, for individuals with disabilities;

(ii) use of information and financial management systems that link all components of the statewide workforce investment system, that link the components to other electronic networks, including non-visual electronic networks, and that relate to such subjects as employment statistics, and information on job vacancies, career planning, and workforce investment activities;

(iii) use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

(iv) establishment of cooperative efforts with employers to—

(I) facilitate job placement; and

(II) carry out any other activities that the designated State unit and the employers determine to be appropriate;

(v) identification of staff roles, responsibilities, and available resources, and

specification of the financial responsibility of each component of the statewide workforce investment system with regard to paying for necessary services (consistent with State law and Federal requirements); and

(vi) specification of procedures for resolving disputes among such components.

(B) Replication of cooperative agreements

The State plan shall provide for the replication of such cooperative agreements at the local level between individual offices of the designated State unit and local entities carrying out activities through the statewide workforce investment system.

(C) Interagency cooperation with other agencies

The State plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs, to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system.

(D) Coordination with education officials

The State plan shall contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities, that are designed to facilitate the transition of the students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under this subchapter, including information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(ii) transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of their individualized education programs under section 614(d) of the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)];

(iii) the roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(iv) procedures for outreach to and identification of students with disabilities who need the transition services.

(E) Coordination with Statewide Independent Living Councils and independent living centers

The State plan shall include an assurance that the designated State unit, the State-

wide Independent Living Council established under section 796d of this title, and the independent living centers described in subpart 3¹ of part A of subchapter VII of this chapter within the State have developed working relationships and coordinate their activities.

(F) Cooperative agreement with recipients of grants for services to American Indians

In applicable cases, the State plan shall include an assurance that the State has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of this subchapter. The agreement shall describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

- (i) strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;
- (ii) procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and
- (iii) provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(12) Residency

The State plan shall include an assurance that the State will not impose a residence requirement that excludes from services provided under the plan any individual who is present in the State.

(13) Services to American Indians

The State plan shall include an assurance that, except as otherwise provided in part C of this subchapter, the designated State agency will provide vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides such services to other significant populations of individuals with disabilities residing in the State.

(14) Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act of 1938

The State plan shall provide for—

- (A) an annual review and reevaluation of the status of each individual with a disability served under this subchapter who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) for 2 years after the achievement of the outcome (and thereafter if requested by the individ-

ual or, if appropriate, the individual's representative), to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

- (B) input into the review and reevaluation, and a signed acknowledgment that such review and reevaluation have been conducted, by the individual with a disability, or, if appropriate, the individual's representative; and

- (C) maximum efforts, including the identification and provision of vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individuals described in subparagraph (A) in engaging in competitive employment.

(15) Annual State goals and reports of progress

(A) Assessments and estimates

The State plan shall—

- (i) include the results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State has such a Council) every 3 years, describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

- (I) individuals with the most significant disabilities, including their need for supported employment services;

- (II) individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this subchapter; and

- (III) individuals with disabilities served through other components of the statewide workforce investment system (other than the vocational rehabilitation program), as identified by such individuals and personnel assisting such individuals through the components;

- (ii) include an assessment of the need to establish, develop, or improve community rehabilitation programs within the State; and

- (iii) provide that the State shall submit to the Commissioner a report containing information regarding updates to the assessments, for any year in which the State updates the assessments.

(B) Annual estimates

The State plan shall include, and shall provide that the State shall annually submit a report to the Commissioner that includes, State estimates of—

- (i) the number of individuals in the State who are eligible for services under this subchapter;

- (ii) the number of such individuals who will receive services provided with funds provided under part B of this subchapter and under part B of subchapter VI of this chapter, including, if the designated State agency uses an order of selection in ac-

¹ See References in Text note below.

cordance with paragraph (5), estimates of the number of individuals to be served under each priority category within the order; and

(iii) the costs of the services described in clause (i), including, if the designated State agency uses an order of selection in accordance with paragraph (5), the service costs for each priority category within the order.

(C) Goals and priorities

(i) In general

The State plan shall identify the goals and priorities of the State in carrying out the program. The goals and priorities shall be jointly developed, agreed to, and reviewed annually by the designated State unit and the State Rehabilitation Council, if the State has such a Council. Any revisions to the goals and priorities shall be jointly agreed to by the designated State unit and the State Rehabilitation Council, if the State has such a Council. The State plan shall provide that the State shall submit to the Commissioner a report containing information regarding revisions in the goals and priorities, for any year in which the State revises the goals and priorities.

(ii) Basis

The State goals and priorities shall be based on an analysis of—

(I) the comprehensive assessment described in subparagraph (A), including any updates to the assessment;

(II) the performance of the State on the standards and indicators established under section 726 of this title; and

(III) other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council, under section 725(c) of this title and the findings and recommendations from monitoring activities conducted under section 727 of this title.

(iii) Service and outcome goals for categories in order of selection

If the designated State agency uses an order of selection in accordance with paragraph (5), the State shall also identify in the State plan service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(D) Strategies

The State plan shall contain a description of the strategies the State will use to address the needs identified in the assessment conducted under subparagraph (A) and achieve the goals and priorities identified in subparagraph (C), including—

(i) the methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to such individuals at each stage of the reha-

bilitation process and how such services and devices will be provided to such individuals on a statewide basis;

(ii) outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(iii) where necessary, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(iv) strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 726 of this title; and

(v) strategies for assisting entities carrying out other components of the statewide workforce investment system (other than the vocational rehabilitation program) in assisting individuals with disabilities.

(E) Evaluation and reports of progress

The State plan shall—

(i) include the results of an evaluation of the effectiveness of the vocational rehabilitation program, and a joint report by the designated State unit and the State Rehabilitation Council, if the State has such a Council, to the Commissioner on the progress made in improving the effectiveness from the previous year, which evaluation and report shall include—

(I) an evaluation of the extent to which the goals identified in subparagraph (C) were achieved;

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

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

(IV) an assessment of the performance of the State on the standards and indicators established pursuant to section 726 of this title; and

(ii) provide that the designated State unit and the State Rehabilitation Council, if the State has such a Council, shall jointly submit to the Commissioner an annual report that contains the information described in clause (i).

(16) Public comment

The State plan shall—

(A) provide that the designated State agency, prior to the adoption of any policies or procedures governing the provision of vocational rehabilitation services under the State plan (including making any amendment to such policies and procedures), shall conduct public meetings throughout the State, after providing adequate notice of the meetings, to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consult with the Director of the client assistance program carried out under section 732 of this title, and, as appropriate,

Indian tribes, tribal organizations, and Native Hawaiian organizations on the policies or procedures; and

(B) provide that the designated State agency (or each designated State agency if two agencies are designated) and any sole agency administering the plan in a political subdivision of the State, shall take into account, in connection with matters of general policy arising in the administration of the plan, the views of—

- (i) individuals and groups of individuals who are recipients of vocational rehabilitation services, or in appropriate cases, the individuals' representatives;
- (ii) personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;
- (iii) providers of vocational rehabilitation services to individuals with disabilities;
- (iv) the director of the client assistance program; and
- (v) the State Rehabilitation Council, if the State has such a Council.

(17) Use of funds for construction of facilities

The State plan shall provide that if, under special circumstances, the State plan includes provisions for the construction of facilities for community rehabilitation programs—

(A) the Federal share of the cost of construction for the facilities for a fiscal year will not exceed an amount equal to 10 percent of the State's allotment under section 730 of this title for such year;

(B) the provisions of section 776 of this title (as in effect on the day before August 7, 1998) shall be applicable to such construction and such provisions shall be deemed to apply to such construction; and

(C) there shall be compliance with regulations the Commissioner shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of facilities for community rehabilitation programs) because the plan includes such provisions for construction.

(18) Innovation and expansion activities

The State plan shall—

(A) include an assurance that the State will reserve and use a portion of the funds allotted to the State under section 730 of this title—

(i) for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under this subchapter, particularly individuals with the most significant disabilities, consistent with the findings of the statewide assessment and goals and priorities of the State as described in paragraph (15); and

(ii) to support the funding of—

(I) the State Rehabilitation Council, if the State has such a Council, consistent with the plan prepared under section 725(d)(1) of this title; and

(II) the Statewide Independent Living Council, consistent with the plan pre-

pared under section 796d(e)(1) of this title;

(B) include a description of how the reserved funds will be utilized; and

(C) provide that the State shall submit to the Commissioner an annual report containing a description of how the reserved funds were utilized during the preceding year.

(19) Choice

The State plan shall include an assurance that applicants and eligible individuals or, as appropriate, the applicants' representatives or individuals' representatives, will be provided information and support services to assist the applicants and individuals in exercising informed choice throughout the rehabilitation process, consistent with the provisions of section 722(d) of this title.

(20) Information and referral services

(A) In general

The State plan shall include an assurance that the designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities will be provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining, or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program carried out under this subchapter), including other components of the statewide workforce investment system in the State.

(B) Referrals

An appropriate referral made through the system shall—

(i) be to the Federal or State programs, including programs carried out by other components of the statewide workforce investment system in the State, best suited to address the specific employment needs of an individual with a disability; and

(ii) include, for each of these programs, provision to the individual of—

(I) a notice of the referral by the designated State agency to the agency carrying out the program;

(II) information identifying a specific point of contact within the agency carrying out the program; and

(III) information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(21) State independent consumer-controlled commission; State Rehabilitation Council

(A) Commission or Council

The State plan shall provide that either—

(i) the designated State agency is an independent commission that—

(I) is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State;

(II) is consumer-controlled by persons who—

(aa) are individuals with physical or mental impairments that substantially limit major life activities; and

(bb) represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

(III) includes family members, advocates, or other representatives, of individuals with mental impairments; and

(IV) undertakes the functions set forth in section 725(c)(4) of this title; or

(ii) the State has established a State Rehabilitation Council that meets the criteria set forth in section 725 of this title and the designated State unit—

(I) in accordance with paragraph (15), jointly develops, agrees to, and reviews annually State goals and priorities, and jointly submits annual reports of progress with the Council;

(II) regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

(III) includes in the State plan and in any revision to the State plan, a summary of input provided by the Council, including recommendations from the annual report of the Council described in section 725(c)(5) of this title, the review and analysis of consumer satisfaction described in section 725(c)(4) of this title, and other reports prepared by the Council, and the response of the designated State unit to such input and recommendations, including explanations for rejecting any input or recommendation; and

(IV) transmits to the Council—

(aa) all plans, reports, and other information required under this subchapter to be submitted to the Secretary;

(bb) all policies, and information on all practices and procedures, of general applicability provided to or used by rehabilitation personnel in carrying out this subchapter; and

(cc) copies of due process hearing decisions issued under this subchapter, which shall be transmitted in such a manner as to ensure that the identity of the participants in the hearings is kept confidential.

(B) More than one designated State agency

In the case of a State that, under subsection (a)(2) of this section, designates a State agency to administer the part of the State plan under which vocational rehabilitation services are provided for individuals who are blind (or to supervise the administration of such part by a local agency) and designates a separate State agency to administer the rest of the State plan, the State shall either establish a State Rehabilitation

Council for each of the two agencies that does not meet the requirements in subparagraph (A)(i), or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of subparagraph (A)(i).

(22) Supported employment State plan supplement

The State plan shall include an assurance that the State has an acceptable plan for carrying out part B of subchapter VI of this chapter, including the use of funds under that part to supplement funds made available under part B of this subchapter to pay for the cost of services leading to supported employment.

(23) Annual updates

The plan shall include an assurance that the State will submit to the Commissioner reports containing annual updates of the information required under paragraph (7) (relating to a comprehensive system of personnel development) and any other updates of the information required under this section that are requested by the Commissioner, and annual reports as provided in paragraphs (15) (relating to assessments, estimates, goals and priorities, and reports of progress) and (18) (relating to innovation and expansion), at such time and in such manner as the Secretary may determine to be appropriate.

(24) Certain contracts and cooperative agreements

(A) Contracts with for-profit organizations

The State plan shall provide that the designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under part A of subchapter VI of this chapter, upon a determination by such agency that such for-profit organizations are better qualified to provide such rehabilitation services than nonprofit agencies and organizations.

(B) Cooperative agreements with private nonprofit organizations

The State plan shall describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(b) Approval; disapproval of the State plan

(1) Approval

The Commissioner shall approve any plan that the Commissioner finds fulfills the conditions specified in this section, and shall disapprove any plan that does not fulfill such conditions.

(2) Disapproval

Prior to disapproval of the State plan, the Commissioner shall notify the State of the intention to disapprove the plan and shall afford the State reasonable notice and opportunity for a hearing.

(Pub. L. 93-112, title I, §101, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1119;

amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(c)(4)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-415; Pub. L. 108-446, title III, §305(h)(1), Dec. 3, 2004, 118 Stat. 2805.)

REFERENCES IN TEXT

The Architectural Barriers Act of 1968, referred to in subsec. (a)(6)(C), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§4151 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of Title 42 and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (a)(6)(C), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(7)(A)(ii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Rehabilitation Act Amendments of 1998, referred to in subsec. (a)(7)(A)(v)(II), is title IV of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 1092. For complete classification of this Act to the Code, see Short Title of 1998 Amendment note set out under section 701 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a)(10)(D)(i), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Subpart 3 of part A of subchapter VII of this chapter, referred to in subsec. (a)(11)(E), was in the original a reference to "part C of title VII", meaning part C of title VII of the Rehabilitation Act of 1973, and was translated as if it referred to part C of chapter I of title VII of the Act to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 721, Pub. L. 93-112, title I, §101, Sept. 26, 1973, 87 Stat. 363; Pub. L. 93-516, title I, §111(b)-(d), Dec. 7, 1974, 88 Stat. 1619, 1620; Pub. L. 93-651, title I, §111(b)-(d), Nov. 21, 1974, 89 Stat. 2-5; Pub. L. 95-602, title I, §§102, 122(b)(1), Nov. 6, 1978, 92 Stat. 2957, 2987; Pub. L. 98-221, title I, §104(a)(2), Feb. 22, 1984, 98 Stat. 18; Pub. L. 98-524, §4(f), Oct. 19, 1984, 98 Stat. 2489; Pub. L. 99-506, title I, §103(d)(2), title II, §202, title X, §1001(b)(1)-(4), Oct. 21, 1986, 100 Stat. 1810, 1814, 1841, 1842; Pub. L. 100-630, title II, §202(b), Nov. 7, 1988, 102 Stat. 3304; Pub. L. 102-54, §13(k)(1)(A), June 13, 1991, 105 Stat. 276; Pub. L. 102-119, §26(e), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102-569, title I, §§102(o), (p)(7), 122, Oct. 29, 1992, 106 Stat. 4355, 4356, 4367; Pub. L. 103-73, title I, §§102(2), 107(a), Aug. 11, 1993, 107 Stat. 718, 719; Pub. L. 104-106, div. D, title XLIII, §4321(i)(7), Feb. 10, 1996, 110 Stat. 676, related to State plans, prior to the general amendment of this subchapter by Pub. L. 105-220.

AMENDMENTS

2004—Subsec. (a)(11)(D)(ii). Pub. L. 108-446 struck out "(as added by section 101 of Public Law 105-17)" before semicolon at end.

1998—Subsec. (a)(18)(C). Pub. L. 105-277, §101(f) [title VIII, §402(c)(4)(A)], substituted "were utilized during the preceding year" for "will be utilized".

Subsec. (a)(21)(A)(i)(II)(bb). Pub. L. 105-277, §101(f) [title VIII, §402(c)(4)(B)], substituted "commission" for "Commission".

§ 722. Eligibility and individualized plan for employment

(a) Eligibility

(1) Criterion for eligibility

An individual is eligible for assistance under this subchapter if the individual—

(A) is an individual with a disability under section 705(20)(A) of this title; and

(B) requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

(2) Presumption of benefit

(A) Demonstration

For purposes of this section, an individual shall be presumed to be an individual that can benefit in terms of an employment outcome from vocational rehabilitation services under section 705(20)(A) of this title, unless the designated State unit involved can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

(B) Methods

In making the demonstration required under subparagraph (A), the designated State unit shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, as described in section 705(2)(D) of this title, with appropriate supports provided through the designated State unit, except under limited circumstances when an individual cannot take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

(3) Presumption of eligibility

(A) In general

For purposes of this section, an individual who has a disability or is blind as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401 et seq. and 1381 et seq.) shall be—

(i) considered to be an individual with a significant disability under section 705(21)(A) of this title; and

(ii) presumed to be eligible for vocational rehabilitation services under this subchapter (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless the designated State unit involved can demonstrate by clear and convincing evidence that such individual is incapable of bene-

fitting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual in accordance with paragraph (2).

(B) Construction

Nothing in this paragraph shall be construed to create an entitlement to any vocational rehabilitation service.

(4) Use of existing information

(A) In general

To the maximum extent appropriate and consistent with the requirements of this part, for purposes of determining the eligibility of an individual for vocational rehabilitation services under this subchapter and developing the individualized plan for employment described in subsection (b) of this section for the individual, the designated State unit shall use information that is existing and current (as of the date of the determination of eligibility or of the development of the individualized plan for employment), including information available from other programs and providers, particularly information used by education officials and the Social Security Administration, information provided by the individual and the family of the individual, and information obtained under the assessment for determining eligibility and vocational rehabilitation needs.

(B) Determinations by officials of other agencies

Determinations made by officials of other agencies, particularly education officials described in section 721(a)(11)(D) of this title, regarding whether an individual satisfies one or more factors relating to whether an individual is an individual with a disability under section 705(20)(A) of this title or an individual with a significant disability under section 705(21)(A) of this title shall be used, to the extent appropriate and consistent with the requirements of this part, in assisting the designated State unit in making such determinations.

(C) Basis

The determination of eligibility for vocational rehabilitation services shall be based on—

- (i) the review of existing data described in section 705(2)(A)(i) of this title; and
- (ii) to the extent that such data is unavailable or insufficient for determining eligibility, the provision of assessment activities described in section 705(2)(A)(ii) of this title.

(5) Determination of ineligibility

If an individual who applies for services under this subchapter is determined, based on the review of existing data and, to the extent necessary, the assessment activities described in section 705(2)(A)(ii) of this title, not to be eligible for the services, or if an eligible individual receiving services under an individualized plan for employment is determined to be no longer eligible for the services—

(A) the ineligibility determination involved shall be made only after providing an opportunity for full consultation with the individual or, as appropriate, the individual's representative;

(B) the individual or, as appropriate, the individual's representative, shall be informed in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of the ineligibility determination, including—

- (i) the reasons for the determination; and
- (ii) a description of the means by which the individual may express, and seek a remedy for, any dissatisfaction with the determination, including the procedures for review by an impartial hearing officer under subsection (c) of this section;

(C) the individual shall be provided with a description of services available from the client assistance program under section 732 of this title and information on how to contact that program; and

(D) any ineligibility determination that is based on a finding that the individual is incapable of benefiting in terms of an employment outcome shall be reviewed—

- (i) within 12 months; and
- (ii) thereafter, if such a review is requested by the individual or, if appropriate, by the individual's representative.

(6) Timeframe for making an eligibility determination

The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this subchapter within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless—

(A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(B) the designated State unit is exploring an individual's abilities, capabilities, and capacity to perform in work situations under paragraph (2)(B).

(b) Development of an individualized plan for employment

(1) Options for developing an individualized plan for employment

If an individual is determined to be eligible for vocational rehabilitation services as described in subsection (a) of this section, the designated State unit shall complete the assessment for determining eligibility and vocational rehabilitation needs, as appropriate, and shall provide the eligible individual or the individual's representative, in writing and in an appropriate mode of communication, with information on the individual's options for developing an individualized plan for employment, including—

(A) information on the availability of assistance, to the extent determined to be ap-

propriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the individualized plan for employment for the individual, and the availability of technical assistance in developing all or part of the individualized plan for employment for the individual;

(B) a description of the full range of components that shall be included in an individualized plan for employment;

(C) as appropriate—

(i) an explanation of agency guidelines and criteria associated with financial commitments concerning an individualized plan for employment;

(ii) additional information the eligible individual requests or the designated State unit determines to be necessary; and

(iii) information on the availability of assistance in completing designated State agency forms required in developing an individualized plan for employment; and

(D)(i) a description of the rights and remedies available to such an individual including, if appropriate, recourse to the processes set forth in subsection (c) of this section; and

(ii) a description of the availability of a client assistance program established pursuant to section 732 of this title and information about how to contact the client assistance program.

(2) Mandatory procedures

(A) Written document

An individualized plan for employment shall be a written document prepared on forms provided by the designated State unit.

(B) Informed choice

An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services, consistent with subsection (d) of this section.

(C) Signatories

An individualized plan for employment shall be—

(i) agreed to, and signed by, such eligible individual or, as appropriate, the individual's representative; and

(ii) approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit.

(D) Copy

A copy of the individualized plan for employment for an eligible individual shall be provided to the individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, of the individual's representative.

(E) Review and amendment

The individualized plan for employment shall be—

(i) reviewed at least annually by—

(I) a qualified vocational rehabilitation counselor; and

(II) the eligible individual or, as appropriate, the individual's representative; and

(ii) amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the designated State agency or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services (which amendments shall not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative, and by a qualified vocational rehabilitation counselor employed by the designated State unit).

(3) Mandatory components of an individualized plan for employment

Regardless of the approach selected by an eligible individual to develop an individualized plan for employment, an individualized plan for employment shall, at a minimum, contain mandatory components consisting of—

(A) a description of the specific employment outcome that is chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, and, to the maximum extent appropriate, results in employment in an integrated setting;

(B)(i) a description of the specific vocational rehabilitation services that are—

(I) needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and

(II) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the eligible individual; and

(ii) timelines for the achievement of the employment outcome and for the initiation of the services;

(C) a description of the entity chosen by the eligible individual or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;

(D) a description of criteria to evaluate progress toward achievement of the employment outcome;

(E) the terms and conditions of the individualized plan for employment, including, as appropriate, information describing—

(i) the responsibilities of the designated State unit;

(ii) the responsibilities of the eligible individual, including—

(I) the responsibilities the eligible individual will assume in relation to the employment outcome of the individual;

(II) if applicable, the participation of the eligible individual in paying for the costs of the plan; and

(III) the responsibility of the eligible individual with regard to applying for and securing comparable benefits as described in section 721(a)(8) of this title; and

(iii) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements as described in section 721(a)(8) of this title;

(F) for an eligible individual with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying—

(i) the extended services needed by the eligible individual; and

(ii) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and

(G) as determined to be necessary, a statement of projected need for post-employment services.

(c) Procedures

(1) In general

Each State shall establish procedures for mediation of, and procedures for review through an impartial due process hearing of, determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services to applicants or eligible individuals.

(2) Notification

(A) Rights and assistance

The procedures shall provide that an applicant or an eligible individual or, as appropriate, the applicant's representative or individual's representative shall be notified of—

(i) the right to obtain review of determinations described in paragraph (1) in an impartial due process hearing under paragraph (5);

(ii) the right to pursue mediation with respect to the determinations under paragraph (4); and

(iii) the availability of assistance from the client assistance program under section 732 of this title.

(B) Timing

Such notification shall be provided in writing—

(i) at the time an individual applies for vocational rehabilitation services provided under this subchapter;

(ii) at the time the individualized plan for employment for the individual is developed; and

(iii) upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

(3) Evidence and representation

The procedures required under this subsection shall, at a minimum—

(A) provide an opportunity for an applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative, to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual; and

(B) include provisions to allow an applicant or an eligible individual to be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

(4) Mediation

(A) Procedures

Each State shall ensure that procedures are established and implemented under this subsection to allow parties described in paragraph (1) to disputes involving any determination described in paragraph (1) to resolve such disputes through a mediation process that, at a minimum, shall be available whenever a hearing is requested under this subsection.

(B) Requirements

Such procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay the right of an individual to a hearing under this subsection, or to deny any other right afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(C) List of mediators

The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under this subchapter, from which the mediators described in subparagraph (B) shall be selected.

(D) Cost

The State shall bear the cost of the mediation process.

(E) Scheduling

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Agreement

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(G) Confidentiality

Discussions that occur during the mediation process shall be confidential and may

not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(H) Construction

Nothing in this subsection shall be construed to preclude the parties to such a dispute from informally resolving the dispute prior to proceedings under this paragraph or paragraph (5), if the informal process used is not used to deny or delay the right of the applicant or eligible individual to a hearing under this subsection or to deny any other right afforded under this subchapter.

(5) Hearings

(A) Officer

A due process hearing described in paragraph (2) shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved State plan, this chapter (including regulations implementing this chapter), and State regulations and policies that are consistent with the Federal requirements specified in this subchapter. The officer shall provide the decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the designated State unit.

(B) List

The designated State unit shall maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under this subchapter from which the officer described in subparagraph (A) shall be selected. For the purposes of maintaining such list, impartial hearing officers shall be identified jointly by—

- (i) the designated State unit; and
- (ii) members of the Council or commission, as appropriate, described in section 721(a)(21) of this title.

(C) Selection

Such an impartial hearing officer shall be selected to hear a particular case relating to a determination—

- (i) on a random basis; or
- (ii) by agreement between—
 - (I) the Director of the designated State unit and the individual with a disability; or
 - (II) in appropriate cases, the Director and the individual's representative.

(D) Procedures for seeking review

A State may establish procedures to enable a party involved in a hearing under this paragraph to seek an impartial review of the decision of the hearing officer under subparagraph (A) by—

- (i) the chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under section 721(a)(2) of this title; or

- (ii) an official from the office of the Governor.

(E) Review request

If the State establishes impartial review procedures under subparagraph (D), either party may request the review of the decision of the hearing officer within 20 days after the decision.

(F) Reviewing official

The reviewing official described in subparagraph (D) shall—

- (i) in conducting the review, provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review;
- (ii) not overturn or modify the decision of the hearing officer, or part of the decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, this chapter (including regulations implementing this chapter) or any State regulation or policy that is consistent with the Federal requirements specified in this subchapter;
- (iii) make a final decision with respect to the matter in a timely manner and provide such decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the designated State unit, including a full report of the findings and the grounds for such decision; and
- (iv) not delegate the responsibility for making the final decision to any officer or employee of the designated State unit.

(G) Finality of hearing decision

A decision made after a hearing under subparagraph (A) shall be final, except that a party may request an impartial review if the State has established procedures for such review under subparagraph (D) and a party involved in a hearing may bring a civil action under subparagraph (J).

(H) Finality of review

A decision made under subparagraph (F) shall be final unless such a party brings a civil action under subparagraph (J).

(I) Implementation

If a party brings a civil action under subparagraph (J) to challenge a final decision of a hearing officer under subparagraph (A) or to challenge a final decision of a State reviewing official under subparagraph (F), the final decision involved shall be implemented pending review by the court.

(J) Civil action

(i) In general

Any party aggrieved by a final decision described in subparagraph (I), may bring a civil action for review of such decision. The action may be brought in any State

court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(ii) Procedure

In any action brought under this subparagraph, the court—

(I) shall receive the records relating to the hearing under subparagraph (A) and the records relating to the State review under subparagraphs (D) through (F), if applicable;

(II) shall hear additional evidence at the request of a party to the action; and

(III) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

(6) Hearing board

(A) In general

A fair hearing board, established by a State before January 1, 1985, and authorized under State law to review determinations or decisions under this chapter, is authorized to carry out the responsibilities of the impartial hearing officer under this subsection.

(B) Application

The provisions of paragraphs (1), (2), and (3) that relate to due process hearings do not apply, and paragraph (5) (other than subparagraph (J)) does not apply, to any State to which subparagraph (A) applies.

(7) Impact on provision of services

Unless the individual with a disability so requests, or, in an appropriate case, the individual's representative, so requests, pending a decision by a mediator, hearing officer, or reviewing officer under this subsection, the designated State unit shall not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative.

(8) Information collection and report

(A) In general

The Director of the designated State unit shall collect information described in subparagraph (B) and prepare and submit to the Commissioner a report containing such information. The Commissioner shall prepare a summary of the information furnished under this paragraph and include the summary in the annual report submitted under section 710 of this title. The Commissioner shall also collect copies of the final decisions of impartial hearing officers conducting hearings under this subsection and State officials conducting reviews under this subsection.

(B) Information

The information required to be collected under this subsection includes—

(i) a copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this subsection;

(ii) information on the number of hearings and reviews sought from the impartial hearing officers and the State reviewing officials, including the type of complaints and the issues involved;

(iii) information on the number of hearing decisions made under this subsection that were not reviewed by the State reviewing officials; and

(iv) information on the number of the hearing decisions that were reviewed by the State reviewing officials, and, based on such reviews, the number of hearing decisions that were—

(I) sustained in favor of an applicant or eligible individual;

(II) sustained in favor of the designated State unit;

(III) reversed in whole or in part in favor of the applicant or eligible individual; and

(IV) reversed in whole or in part in favor of the designated State unit.

(C) Confidentiality

The confidentiality of records of applicants and eligible individuals maintained by the designated State unit shall not preclude the access of the Commissioner to those records for the purposes described in subparagraph (A).

(d) Policies and procedures

Each designated State agency, in consultation with the State Rehabilitation Council, if the State has such a council, shall, consistent with section 720(a)(3)(C) of this title, develop and implement written policies and procedures that enable each individual who is an applicant for or eligible to receive vocational rehabilitation services under this subchapter to exercise informed choice throughout the vocational rehabilitation process carried out under this subchapter, including policies and procedures that require the designated State agency—

(1) to inform each such applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) to assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services under this subchapter;

(3) to develop and implement flexible procurement policies and methods that facilitate the provision of services, and that afford eligible individuals meaningful choices among the methods used to procure services, under this subchapter;

(4) to provide or assist eligible individuals in acquiring information that enables those individuals to exercise informed choice under this subchapter in the selection of—

- (A) the employment outcome;
- (B) the specific vocational rehabilitation services needed to achieve the employment outcome;
- (C) the entity that will provide the services;
- (D) the employment setting and the settings in which the services will be provided; and
- (E) the methods available for procuring the services; and

(5) to ensure that the availability and scope of informed choice provided under this section is consistent with the obligations of the designated State agency under this subchapter.

(Pub. L. 93-112, title I, §102, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1138; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(c)(5)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-415.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 722, Pub. L. 93-112, title I, §102, Sept. 26, 1973, 87 Stat. 368; Pub. L. 93-516, title I, §111(e), Dec. 7, 1974, 88 Stat. 1620; Pub. L. 93-651, title I, §111(e), Nov. 21, 1974, 89 Stat. 2-5; Pub. L. 95-602, title I, §§103, 122(b)(1), Nov. 6, 1978, 92 Stat. 2959, 2987; Pub. L. 98-221, title I, §§104(a)(3), 112, Feb. 22, 1984, 98 Stat. 18, 20; Pub. L. 99-506, title I, §103(d)(2)(A), (B), title II, §203, title X, §1001(b)(5), Oct. 21, 1986, 100 Stat. 1810, 1815, 1842; Pub. L. 100-630, title II, §202(c), Nov. 7, 1988, 102 Stat. 3305; Pub. L. 102-569, title I, §§102(p)(8), 123, Oct. 29, 1992, 106 Stat. 4357, 4375; Pub. L. 103-73, title I, §107(b), Aug. 11, 1993, 107 Stat. 720, related to individualized written rehabilitation program, prior to the general amendment of this subchapter by Pub. L. 105-220.

AMENDMENTS

1998—Subsec. (c)(5)(F)(iv). Pub. L. 105-277 added cl. (iv).

§ 723. Vocational rehabilitation services

(a) Vocational rehabilitation services for individuals

Vocational rehabilitation services provided under this subchapter are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including—

- (1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 722(d) of this title;

(3) referral and other services to secure needed services from other agencies through agreements developed under section 721(a)(11) of this title, if such services are not available under this subchapter;

(4) job-related services, including job search and placement assistance, job retention services, followup services, and follow-along services;

(5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this subchapter unless maximum efforts have been made by the designated State unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;

(6) to the extent that financial support is not readily available from a source (such as through health insurance of the individual or through comparable services and benefits consistent with section 721(a)(8)(A) of this title), other than the designated State unit, diagnosis and treatment of physical and mental impairments, including—

(A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that such correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

(B) necessary hospitalization in connection with surgery or treatment;

(C) prosthetic and orthotic devices;

(D) eyeglasses and visual services as prescribed by qualified personnel who meet State licensure laws and who are selected by the individual;

(E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and

(F) diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State licensure laws;

(7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;

(8) transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State licensure laws;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the individualized plan for employment;

(16) supported employment services;

(17) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(18) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(b) Vocational rehabilitation services for groups of individuals

Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following:

(1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.

(2)(A) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility. Such programs shall be used to provide services that promote integration and competitive employment.

(B) The provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any 1 individual with a disability.

(3) The use of telecommunications systems (including telephone, television, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities.

(4)(A) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media.

(B) Captioned television, films, or video cassettes for individuals who are deaf or hard of hearing.

(C) Tactile materials for individuals who are deaf-blind.

(D) Other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) Technical assistance and support services to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and that are seeking to employ individuals with disabilities.

(6) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(Pub. L. 93-112, title I, §103, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1148.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(5), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 723, Pub. L. 93-112, title I, §103, Sept. 26, 1973, 87 Stat. 368; Pub. L. 95-602, title I, §104, Nov. 6, 1978, 92 Stat. 2960; Pub. L. 99-506, title I, §103(d)(2), title II, §204, Oct. 21, 1986, 100 Stat. 1810, 1817; Pub. L. 100-630, title II, §202(d), Nov. 7, 1988, 102 Stat. 3305; Pub. L. 102-569, title I, §§102(p)(9), 124, Oct. 29, 1992, 106 Stat. 4357, 4379; Pub. L. 103-73, title I, §107(c), Aug. 11, 1993, 107 Stat. 721, related to scope of vocational rehabilitation services, prior to the general amendment of this subchapter by Pub. L. 105-220.

§ 724. Non-Federal share for establishment of program or construction

For the purpose of determining the amount of payments to States for carrying out part B of this subchapter (or to an Indian tribe under part C of this subchapter), the non-Federal share, subject to such limitations and conditions as may be prescribed in regulations by the Commissioner, shall include contributions of funds made by any private agency, organization, or individual to a State or local agency to assist in meeting the costs of establishment of a community rehabilitation program or construction, under special circumstances, of a facility for such a program, which would be regarded as State or local funds except for the condition, imposed by the contributor, limiting use of such funds to establishment of such a program or construction of such a facility.

(Pub. L. 93-112, title I, §104, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1151.)

PRIOR PROVISIONS

A prior section 724, Pub. L. 93-112, title I, §104, Sept. 26, 1973, 87 Stat. 370; Pub. L. 95-602, title I, §122(b)(1),

Nov. 6, 1978, 92 Stat. 2987; Pub. L. 99-506, title II, §205, Oct. 21, 1986, 100 Stat. 1817; Pub. L. 102-569, title I, §125, Oct. 29, 1992, 106 Stat. 4381, related to non-Federal share for construction, prior to the general amendment of this subchapter by Pub. L. 105-220.

§ 725. State Rehabilitation Council

(a) Establishment

(1) In general

Except as provided in section 721(a)(21)(A)(i) of this title, to be eligible to receive financial assistance under this subchapter a State shall establish a State Rehabilitation Council (referred to in this section as the "Council") in accordance with this section.

(2) Separate agency for individuals who are blind

A State that designates a State agency to administer the part of the State plan under which vocational rehabilitation services are provided for individuals who are blind under section 721(a)(2)(A)(i) of this title may establish a separate Council in accordance with this section to perform the duties of such a Council with respect to such State agency.

(b) Composition and appointment

(1) Composition

(A) In general

Except in the case of a separate Council established under subsection (a)(2) of this section, the Council shall be composed of—

(i) at least one representative of the Statewide Independent Living Council established under section 796d of this title, which representative may be the chairperson or other designee of the Council;

(ii) at least one representative of a parent training and information center established pursuant to section 671 of the Individuals with Disabilities Education Act [20 U.S.C. 1471];

(iii) at least one representative of the client assistance program established under section 732 of this title;

(iv) at least one qualified vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member of the Council if the counselor is an employee of the designated State agency;

(v) at least one representative of community rehabilitation program service providers;

(vi) four representatives of business, industry, and labor;

(vii) representatives of disability advocacy groups representing a cross section of—

(I) individuals with physical, cognitive, sensory, and mental disabilities; and

(II) individuals' representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves;

(viii) current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) in a State in which one or more projects are carried out under section 741 of this title, at least one representative of the directors of the projects;

(x) at least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this subchapter and part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.]; and

(xi) at least one representative of the State workforce investment board.

(B) Separate Council

In the case of a separate Council established under subsection (a)(2) of this section, the Council shall be composed of—

(i) at least one representative described in subparagraph (A)(i);

(ii) at least one representative described in subparagraph (A)(ii);

(iii) at least one representative described in subparagraph (A)(iii);

(iv) at least one vocational rehabilitation counselor described in subparagraph (A)(iv), who shall serve as described in such subparagraph;

(v) at least one representative described in subparagraph (A)(v);

(vi) four representatives described in subparagraph (A)(vi);

(vii) at least one representative of a disability advocacy group representing individuals who are blind;

(viii) at least one individual's representative, of an individual who—

(I) is an individual who is blind and has multiple disabilities; and

(II) has difficulty in representing himself or herself or is unable due to disabilities to represent himself or herself;

(ix) applicants or recipients described in subparagraph (A)(viii);

(x) in a State described in subparagraph (A)(ix), at least one representative described in such subparagraph;

(xi) at least one representative described in subparagraph (A)(x); and

(xii) at least one representative described in subparagraph (A)(xi).

(C) Exception

In the case of a separate Council established under subsection (a)(2) of this section, any Council that is required by State law, as in effect on October 29, 1992, to have fewer than 15 members shall be deemed to be in compliance with subparagraph (B) if the Council—

(i) meets the requirements of subparagraph (B), other than the requirements of clauses (vi) and (ix) of such subparagraph; and

(ii) includes at least—

(I) one representative described in subparagraph (B)(vi); and

(II) one applicant or recipient described in subparagraph (B)(ix).

(2) Ex officio member

The Director of the designated State unit shall be an ex officio, nonvoting member of the Council.

(3) Appointment

Members of the Council shall be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this chapter in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity. The appointing authority shall select members after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(4) Qualifications**(A) In general**

A majority of Council members shall be persons who are—

- (i) individuals with disabilities described in section 705(20)(B) of this title; and
- (ii) not employed by the designated State unit.

(B) Separate Council

In the case of a separate Council established under subsection (a)(2) of this section, a majority of Council members shall be persons who are—

- (i) blind; and
- (ii) not employed by the designated State unit.

(5) Chairperson**(A) In general**

Except as provided in subparagraph (B), the Council shall select a chairperson from among the membership of the Council.

(B) Designation by chief executive officer

In States in which the chief executive officer does not have veto power pursuant to State law, the appointing authority described in paragraph (3) shall designate a member of the Council to serve as the chairperson of the Council or shall require the Council to so designate such a member.

(6) Terms of appointment**(A) Length of term**

Each member of the Council shall serve for a term of not more than 3 years, except that—

- (i) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of such term; and
- (ii) the terms of service of the members initially appointed shall be (as specified by the appointing authority described in paragraph (3)) for such fewer number of years as will provide for the expiration of terms on a staggered basis.

(B) Number of terms

No member of the Council, other than a representative described in clause (iii) or (ix)

of paragraph (1)(A), or clause (iii) or (x) of paragraph (1)(B), may serve more than two consecutive full terms.

(7) Vacancies**(A) In general**

Except as provided in subparagraph (B), any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(B) Delegation

The appointing authority described in paragraph (3) may delegate the authority to fill such a vacancy to the remaining members of the Council after making the original appointment.

(c) Functions of Council

The Council shall, after consulting with the State workforce investment board—

(1) review, analyze, and advise the designated State unit regarding the performance of the responsibilities of the unit under this subchapter, particularly responsibilities relating to—

- (A) eligibility (including order of selection);
- (B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by State agencies that affect or that potentially affect the ability of individuals with disabilities in achieving employment outcomes under this subchapter;

(2) in partnership with the designated State unit—

(A) develop, agree to, and review State goals and priorities in accordance with section 721(a)(15)(C) of this title; and

(B) evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Commissioner in accordance with section 721(a)(15)(E) of this title;

(3) advise the designated State agency and the designated State unit regarding activities authorized to be carried out under this subchapter, and assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this subchapter;

(4) to the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(A) the functions performed by the designated State agency;

(B) vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under this chapter; and

(C) employment outcomes achieved by eligible individuals receiving services under this subchapter, including the availability of health and other employment benefits in connection with such employment outcomes;

(5) prepare and submit an annual report to the Governor and the Commissioner on the status of vocational rehabilitation programs operated within the State, and make the report available to the public;

(6) to avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under section 796d of this title, the advisory panel established under section 612(a)(20) of the Individuals with Disabilities Education Act [20 U.S.C. 1412(a)(20)], the State Council on Developmental Disabilities established under section 15025 of title 42, the State mental health planning council established under section 300x-3(a) of title 42, and the State workforce investment board;

(7) provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(8) perform such other functions, consistent with the purpose of this subchapter, as the State Rehabilitation Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(d) Resources

(1) Plan

The Council shall prepare, in conjunction with the designated State unit, a plan for the provision of such resources, including such staff and other personnel, as may be necessary and sufficient to carry out the functions of the Council under this section. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(2) Resolution of disagreements

To the extent that there is a disagreement between the Council and the designated State unit in regard to the resources necessary to carry out the functions of the Council as set forth in this section, the disagreement shall be resolved by the Governor consistent with paragraph (1).

(3) Supervision and evaluation

Each Council shall, consistent with State law, supervise and evaluate such staff and other personnel as may be necessary to carry out its functions under this section.

(4) Personnel conflict of interest

While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the designated State unit or any other agency or office of the State, that would create a conflict of interest.

(e) Conflict of interest

No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law.

(f) Meetings

The Council shall convene at least four meetings a year in such places as it determines to be

necessary to conduct Council business and conduct such forums or hearings as the Council considers appropriate. The meetings, hearings, and forums shall be publicly announced. The meetings shall be open and accessible to the general public unless there is a valid reason for an executive session.

(g) Compensation and expenses

The Council may use funds allocated to the Council by the designated State unit under this subchapter (except for funds appropriated to carry out the client assistance program under section 732 of this title and funds reserved pursuant to section 730(c) of this title to carry out part C of this subchapter) to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing the duties of the Council.

(h) Hearings and forums

The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

(Pub. L. 93-112, title I, §105, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1151; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(c)(6)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-415; Pub. L. 106-402, title IV, §401(b)(3)(A), Oct. 30, 2000, 114 Stat. 1737; Pub. L. 108-446, title III, §305(h)(2), (3), Dec. 3, 2004, 118 Stat. 2805.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(1)(A)(x), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§1411 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 725, Pub. L. 93-112, title I, §105, as added Pub. L. 102-569, title I, §126(a), Oct. 29, 1992, 106 Stat. 4381; amended Pub. L. 103-73, title I, §107(d)(1), Aug. 11, 1993, 107 Stat. 721, related to State Rehabilitation Advisory Council, prior to the general amendment of this subchapter by Pub. L. 105-220.

AMENDMENTS

2004—Subsec. (b)(1)(A)(ii). Pub. L. 108-446, §305(h)(2), substituted “671 of the Individuals with Disabilities Education Act” for “682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17)”.

Subsec. (c)(6). Pub. L. 108-446, §305(h)(3), substituted “section 612(a)(20)” for “section 612(a)(21)” and “Individuals with” for “Individual with” and struck out “(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17)” before “, the State Council”.

2000—Subsec. (c)(6). Pub. L. 106-402 substituted “the State Council on Developmental Disabilities established under section 15025 of title 42” for “the State Developmental Disabilities Council described in section 6024 of title 42”.

1998—Subsec. (b)(3). Pub. L. 105-277, §101(f) [title VIII, §402(c)(6)(A)], substituted “Governor or, in the case of

a State that, under State law, vests authority for the administration of the activities carried out under this chapter in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity” for “Governor” in first sentence and “appointing authority” for “Governor” in second and third sentences.

Subsec. (b)(4)(A)(i). Pub. L. 105-277, §101(f) [title VIII, §402(c)(6)(B)], substituted “section 705(20)(B)” for “section 705(20)(A)”.

Subsec. (b)(5)(B). Pub. L. 105-277, §101(f) [title VIII, §402(c)(6)(C)], substituted “chief executive officer” for “Governor” in heading and “appointing authority described in paragraph (3) shall” for “Governor shall” in text.

Subsec. (b)(6)(A)(ii), (7)(B). Pub. L. 105-277, §101(f) [title VIII, §402(c)(6)(D)], substituted “appointing authority described in paragraph (3)” for “Governor”.

§ 726. Evaluation standards and performance indicators

(a) Establishment

(1) In general

(A) Establishment of standards and indicators

The Commissioner shall, not later than July 1, 1999, establish and publish evaluation standards and performance indicators for the vocational rehabilitation program carried out under this subchapter.

(B) Review and revision

Effective July 1, 1999, the Commissioner shall review and, if necessary, revise the evaluation standards and performance indicators every 3 years. Any revisions of the standards and indicators shall be developed with input from State vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. Any revisions of the standards and indicators shall be subject to the publication, review, and comment provisions of paragraph (3).

(C) Bases

Effective July 1, 1999, to the maximum extent practicable, the standards and indicators shall be consistent with the core indicators of performance established under section 2871(b) of this title.

(2) Measures

The standards and indicators shall include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of this subchapter.

(3) Comment

The standards and indicators shall be developed with input from State vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. The Commissioner shall publish in the Federal Register a notice of intent to regulate regarding the development of proposed standards and indicators. Proposed standards and indicators shall be published in the Federal Register for review and comment. Final standards and indicators shall be published in the Federal Register.

(b) Compliance

(1) State reports

In accordance with regulations established by the Secretary, each State shall report to the Commissioner after the end of each fiscal year the extent to which the State is in compliance with the standards and indicators.

(2) Program improvement

(A) Plan

If the Commissioner determines that the performance of any State is below established standards, the Commissioner shall provide technical assistance to the State, and the State and the Commissioner shall jointly develop a program improvement plan outlining the specific actions to be taken by the State to improve program performance.

(B) Review

The Commissioner shall—

(i) review the program improvement efforts of the State on a biannual basis and, if necessary, request the State to make further revisions to the plan to improve performance; and

(ii) continue to conduct such reviews and request such revisions until the State sustains satisfactory performance over a period of more than 1 year.

(c) Withholding

If the Commissioner determines that a State whose performance falls below the established standards has failed to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Commissioner shall, consistent with subsections (c) and (d) of section 727 of this title, reduce or make no further payments to the State under this program, until the State has entered into an approved program improvement plan, or satisfies the Commissioner that the State is complying substantially with the terms and conditions of such a program improvement plan, as appropriate.

(d) Report to Congress

Beginning in fiscal year 1999, the Commissioner shall include in each annual report to the Congress under section 710 of this title an analysis of program performance, including relative State performance, based on the standards and indicators.

(Pub. L. 93-112, title I, §106, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1156.)

PRIOR PROVISIONS

A prior section 726, Pub. L. 93-112, title I, §106, as added Pub. L. 102-569, title I, §127(a), Oct. 29, 1992, 106 Stat. 4385, related to evaluation standards and performance indicators, prior to the general amendment of this subchapter by Pub. L. 105-220.

§ 727. Monitoring and review

(a) In general

(1) Duties

In carrying out the duties of the Commissioner under this subchapter, the Commissioner shall—

(A) provide for the annual review and periodic onsite monitoring of programs under this subchapter; and

(B) determine whether, in the administration of the State plan, a State is complying substantially with the provisions of such plan and with evaluation standards and performance indicators established under section 726 of this title.

(2) Procedures for reviews

In conducting reviews under this section the Commissioner shall consider, at a minimum—

(A) State policies and procedures;

(B) guidance materials;

(C) decisions resulting from hearings conducted in accordance with due process;

(D) State goals established under section 721(a)(15) of this title and the extent to which the State has achieved such goals;

(E) plans and reports prepared under section 726(b) of this title;

(F) consumer satisfaction reviews and analyses described in section 725(c)(4) of this title;

(G) information provided by the State Rehabilitation Council established under section 725 of this title, if the State has such a Council, or by the commission described in section 721(a)(21)(A)(i) of this title, if the State has such a commission;

(H) reports; and

(I) budget and financial management data.

(3) Procedures for monitoring

In conducting monitoring under this section the Commissioner shall conduct—

(A) onsite visits, including onsite reviews of records to verify that the State is following requirements regarding the order of selection set forth in section 721(a)(5)(A) of this title;

(B) public hearings and other strategies for collecting information from the public;

(C) meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 721(a)(21)(A)(i) of this title, if the State has such a commission;

(D) reviews of individual case files, including individualized plans for employment and ineligibility determinations; and

(E) meetings with qualified vocational rehabilitation counselors and other personnel.

(4) Areas of inquiry

In conducting the review and monitoring, the Commissioner shall examine—

(A) the eligibility process;

(B) the provision of services, including, if applicable, the order of selection;

(C) such other areas as may be identified by the public or through meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 721(a)(21)(A)(i) of this title, if the State has such a commission; and

(D) such other areas of inquiry as the Commissioner may consider appropriate.

(5) Reports

If the Commissioner issues a report detailing the findings of an annual review or onsite

monitoring conducted under this section, the report shall be made available to the State Rehabilitation Council, if the State has such a Council, for use in the development and modification of the State plan described in section 721 of this title.

(b) Technical assistance

The Commissioner shall—

(1) provide technical assistance to programs under this subchapter regarding improving the quality of vocational rehabilitation services provided; and

(2) provide technical assistance and establish a corrective action plan for a program under this subchapter if the Commissioner finds that the program fails to comply substantially with the provisions of the State plan, or with evaluation standards or performance indicators established under section 726 of this title, in order to ensure that such failure is corrected as soon as practicable.

(c) Failure to comply with plan

(1) Withholding payments

Whenever the Commissioner, after providing reasonable notice and an opportunity for a hearing to the State agency administering or supervising the administration of the State plan approved under section 721 of this title, finds that—

(A) the plan has been so changed that it no longer complies with the requirements of section 721(a) of this title; or

(B) in the administration of the plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 726 of this title,

the Commissioner shall notify such State agency that no further payments will be made to the State under this subchapter (or, in the discretion of the Commissioner, that such further payments will be reduced, in accordance with regulations the Commissioner shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until the Commissioner is satisfied there is no longer any such failure.

(2) Period

Until the Commissioner is so satisfied, the Commissioner shall make no further payments to such State under this subchapter (or shall reduce payments or limit payments to projects under those parts of the State plan in which there is no such failure).

(3) Disbursal of withheld funds

The Commissioner may, in accordance with regulations the Secretary shall prescribe, disburse any funds withheld from a State under paragraph (1) to any public or nonprofit private organization or agency within such State or to any political subdivision of such State submitting a plan meeting the requirements of section 721(a) of this title. The Commissioner may not make any payment under this paragraph unless the entity to which such payment is made has provided assurances to the Commissioner that such entity will contrib-

ute, for purposes of carrying out such plan, the same amount as the State would have been obligated to contribute if the State received such payment.

(d) Review

(1) Petition

Any State that is dissatisfied with a final determination of the Commissioner under section 721(b) of this title or subsection (c) of this section may file a petition for judicial review of such determination in the United States Court of Appeals for the circuit in which the State is located. Such a petition may be filed only within the 30-day period beginning on the date that notice of such final determination was received by the State. The clerk of the court shall transmit a copy of the petition to the Commissioner or to any officer designated by the Commissioner for that purpose. In accordance with section 2112 of title 28, the Commissioner shall file with the court a record of the proceeding on which the Commissioner based the determination being appealed by the State. Until a record is so filed, the Commissioner may modify or set aside any determination made under such proceedings.

(2) Submissions and determinations

If, in an action under this subsection to review a final determination of the Commissioner under section 721(b) of this title or subsection (c) of this section, the petitioner or the Commissioner applies to the court for leave to have additional oral submissions or written presentations made respecting such determination, the court may, for good cause shown, order the Commissioner to provide within 30 days an additional opportunity to make such submissions and presentations. Within such period, the Commissioner may revise any findings of fact, modify or set aside the determination being reviewed, or make a new determination by reason of the additional submissions and presentations, and shall file such modified or new determination, and any revised findings of fact, with the return of such submissions and presentations. The court shall thereafter review such new or modified determination.

(3) Standards of review

(A) In general

Upon the filing of a petition under paragraph (1) for judicial review of a determination, the court shall have jurisdiction—

(i) to grant appropriate relief as provided in chapter 7 of title 5, except for interim relief with respect to a determination under subsection (c) of this section; and

(ii) except as otherwise provided in subparagraph (B), to review such determination in accordance with chapter 7 of title 5.

(B) Substantial evidence

Section 706 of title 5 shall apply to the review of any determination under this subsection, except that the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such determination if the court finds that the determina-

tion is not supported by substantial evidence in the record of the proceeding submitted pursuant to paragraph (1), as supplemented by any additional submissions and presentations filed under paragraph (2).

(Pub. L. 93-112, title I, §107, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1157.)

PRIOR PROVISIONS

A prior section 727, Pub. L. 93-112, title I, §107, as added Pub. L. 102-569, title I, §128(a), Oct. 29, 1992, 106 Stat. 4386, related to monitoring and review, prior to the general amendment of this subchapter by Pub. L. 105-220.

§ 728. Expenditure of certain amounts

(a) Expenditure

Amounts described in subsection (b) of this section may not be expended by a State for any purpose other than carrying out programs for which the State receives financial assistance under this subchapter, under part B of subchapter VI of this chapter, or under subchapter VII of this chapter.

(b) Amounts

The amounts referred to in subsection (a) of this section are amounts provided to a State under the Social Security Act (42 U.S.C. 301 et seq.) as reimbursement for the expenditure of payments received by the State from allotments under section 730 of this title.

(Pub. L. 93-112, title I, §108, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1160.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 728, Pub. L. 93-112, title I, §108, as added Pub. L. 102-569, title I, §129(a), Oct. 29, 1992, 106 Stat. 4389, related to expenditure of certain amounts, prior to the general amendment of this subchapter by Pub. L. 105-220.

§ 728a. Training of employers with respect to Americans with Disabilities Act of 1990

A State may expend payments received under section 731 of this title—

(1) to carry out a program to train employers with respect to compliance with the requirements of title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.); and

(2) to inform employers of the existence of the program and the availability of the services of the program.

(Pub. L. 93-112, title I, §109, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1160.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in par. (1), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of Title 42, The Public Health and Welfare. For complete

classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 728a, Pub. L. 93-112, title I, §109, as added Pub. L. 102-569, title I, §130(a), Oct. 29, 1992, 106 Stat. 4389, related to training of employers with respect to Americans with Disabilities Act of 1990, prior to the general amendment of this subchapter by Pub. L. 105-220.

PART B—BASIC VOCATIONAL REHABILITATION SERVICES

§ 730. State allotments

(a) Computation; additional amount; minimum amount; adjustments

(1) Subject to the provisions of subsection (c) of this section, for each fiscal year beginning before October 1, 1978, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under section 720(b)(1) of this title for allotment under this section as the product of—

- (A) the population of the State; and
- (B) the square of its allotment percentage,

bears to the sum of the corresponding products for all the States.

(2)(A) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment in an amount equal to the amount such State received under paragraph (1) for the fiscal year ending September 30, 1978, and an additional amount determined pursuant to subparagraph (B) of this paragraph.

(B) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment, from any amount authorized to be appropriated for such fiscal year under section 720(b)(1) of this title for allotment under this section in excess of the amount appropriated under section 720(b)(1)(A)¹ of this title for the fiscal year ending September 30, 1978, in an amount equal to the sum of—

- (i) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and the square of its allotment percentage bears to the sum of the corresponding products for all the States; and
- (ii) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and its allotment percentage bears to the sum of the corresponding products for all the States.

(3) The sum of the payment to any State (other than Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands) under this subsection for any fiscal year which is less than $\frac{1}{3}$ of 1 percent of the amount appropriated under section 720(b)(1) of this title, or \$3,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment to each of the remaining such States under this subsection, but with such adjustments as may be necessary to prevent the sum of the allotments

made under this subsection to any such remaining State from being thereby reduced to less than that amount.

(b) Unused funds; redistribution; increase in amount

(1) Not later than 45 days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this subchapter, that any payment of an allotment to a State under section 731(a) of this title for any fiscal year will not be utilized by such State in carrying out the purposes of this subchapter.

(2) As soon as practicable but not later than the end of the fiscal year, the Commissioner shall make such amount available for carrying out the purposes of this subchapter to one or more other States to the extent the Commissioner determines such other State will be able to use such additional amount during that fiscal year or the subsequent fiscal year for carrying out such purposes. The Commissioner shall make such amount available only if such other State will be able to make sufficient payments from non-Federal sources to pay for the non-Federal share of the cost of vocational rehabilitation services under the State plan for the fiscal year for which the amount was appropriated.

(3) For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

(c) Funds for American Indian vocational rehabilitation services

(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 720(b)(1) of this title for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part C of this subchapter.

(2) The sum referred to in paragraph (1) shall be, as determined by the Secretary—

(A) not less than three-quarters of 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for fiscal year 1999; and

(B) not less than 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for each of fiscal years 2000 through 2003.

(Pub. L. 93-112, title I, §110, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1160; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(b)(7)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-413.)

REFERENCES IN TEXT

Section 720(b)(1)(A) of this title, referred to in subsec. (a)(2)(B), means section 720(b)(1)(A) prior to the general amendment of section 720(b) by Pub. L. 102-569, title I, §121(b)(1), Oct. 29, 1992, 106 Stat. 4367, which restated subsec. (b)(1) without a subpar. (A). Section 720 was subsequently omitted, and a new section 720 added, in the general amendment of this subchapter by Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1116.

¹ See References in Text note below.

PRIOR PROVISIONS

A prior section 730, Pub. L. 93-112, title I, §110, Sept. 26, 1973, 87 Stat. 370; Pub. L. 95-602, title I, §§101(c), (d), 122(b)(1), Nov. 6, 1978, 92 Stat. 2956, 2957, 2987; Pub. L. 98-221, title I, §111(e), Feb. 22, 1984, 98 Stat. 20; Pub. L. 99-506, title I, §103(c)(2), title II, §§206, 207, Oct. 21, 1986, 100 Stat. 1810, 1817, 1818; Pub. L. 102-569, title I, §131, Oct. 29, 1992, 106 Stat. 4389; Pub. L. 103-73, title I, §107(e), Aug. 11, 1993, 107 Stat. 723, related to State allotments, prior to the general amendment of this subchapter by Pub. L. 105-220.

AMENDMENTS

1998—Pub. L. 105-277 made technical amendment to section designation and catchline in original.

§ 731. Payments to States**(a) Amount**

(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year, the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 721 of this title, including expenditures for the administration of the State plan.

(2)(A) The total of payments under paragraph (1) to a State for a fiscal year may not exceed its allotment under subsection (a) of section 730 of this title for such year.

(B) For fiscal year 1994 and each fiscal year thereafter, the amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State plan under this subchapter for the previous fiscal year are less than the total of such expenditures for the second fiscal year preceding the previous fiscal year.

(C) The Commissioner may waive or modify any requirement or limitation under subparagraph (B) or section 721(a)(17) of this title if the Commissioner determines that a waiver or modification is an equitable response to exceptional or uncontrollable circumstances affecting the State.

(3)(A) Except as provided in subparagraph (B), the amount of a payment under this section with respect to any construction project in any State shall be equal to the same percentage of the cost of such project as the Federal share that is applicable in the case of rehabilitation facilities (as defined in section 2910(g) of title 42), in such State.

(B) If the Federal share with respect to rehabilitation facilities in such State is determined pursuant to section 2910(b)(2) of title 42, the percentage of the cost for purposes of this section shall be determined in accordance with regulations prescribed by the Commissioner designed to achieve as nearly as practicable results comparable to the results obtained under such section.

(b) Method of computation and payment

The method of computing and paying amounts pursuant to subsection (a) of this section shall be as follows:

(1) The Commissioner shall, prior to the beginning of each calendar quarter or other period prescribed by the Commissioner, estimate the amount to be paid to each State under the

provisions of such subsection for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation as the Commissioner may find necessary.

(2) The Commissioner shall pay, from the allotment available therefor, the amount so estimated by the Commissioner for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which the Commissioner finds that the estimate of the amount to be paid the State for any prior period under such subsection was greater or less than the amount which should have been paid to the State for such prior period under such subsection. Such payment shall be made prior to audit or settlement by the Government Accountability Office, shall be made through the disbursing facilities of the Treasury Department, and shall be made in such installments as the Commissioner may determine.

(Pub. L. 93-112, title I, §111, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1162; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(b)(8)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-413; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 731, Pub. L. 93-112, title I, §111, Sept. 26, 1973, 87 Stat. 371; Pub. L. 95-602, title I, §122(b)(1), Nov. 6, 1978, 92 Stat. 2987; Pub. L. 99-506, title II, §208, title X, §1001(b)(6), Oct. 21, 1986, 100 Stat. 1818, 1842; Pub. L. 100-630, title II, §202(e)(1), (2)(A), (3), Nov. 7, 1988, 102 Stat. 3306; Pub. L. 102-569, title I, §132, Oct. 29, 1992, 106 Stat. 4390; Pub. L. 103-73, title I, §107(f), Aug. 11, 1993, 107 Stat. 723, related to payments to States, prior to the general amendment of this subchapter by Pub. L. 105-220.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1998—Pub. L. 105-277 made technical amendment to section designation and catchline in original.

§ 732. Client assistance program**(a) Establishment of grant program**

From funds appropriated under subsection (h) of this section, the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this chapter, and, upon request of such clients or client applicants, to assist and advocate for such clients or applicants in their relationships with projects, programs, and services provided under this chapter, including assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this chapter and to facilitate access to the services funded under this chapter through individual and systemic advocacy. The client assistance program shall provide information on the available services and benefits under this chapter and title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) to individuals with disabili-

ities in the State, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. In providing assistance and advocacy under this subsection with respect to services under this subchapter, a client assistance program may provide the assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual.

(b) Existence of State program as requisite to receiving payments

No State may receive payments from its allotment under this chapter in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program which—

(1) has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under this chapter within the State; and

(2) meets the requirements of designation under subsection (c) of this section.

(c) Designation of agency to conduct program

(1)(A) The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this subparagraph, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this chapter. If there is an agency in the State which has, or had, prior to February 22, 1984, served as a client assistance agency under this section and which received Federal financial assistance under this chapter, the Governor may, in the initial designation, designate an agency which provides treatment, services, or rehabilitation to individuals with disabilities under this chapter.

(B)(i) The Governor may not redesignate the agency designated under subparagraph (A) without good cause and unless—

(I) the Governor has given the agency 30 days notice of the intention to make such redesignation, including specification of the good cause for such redesignation and an opportunity to respond to the assertion that good cause has been shown;

(II) individuals with disabilities or the individuals' representatives have timely notice of the redesignation and opportunity for public comment; and

(III) the agency has the opportunity to appeal to the Commissioner on the basis that the redesignation was not for good cause.

(ii) If, after August 7, 1998—

(I) a designated State agency undergoes any change in the organizational structure of the agency that results in the creation of one or more new State agencies or departments or results in the merger of the designated State agency with one or more other State agencies or departments; and

(II) an agency (including an office or other unit) within the designated State agency was conducting a client assistance program before the change under the last sentence of subparagraph (A),

the Governor shall redesignate the agency conducting the program. In conducting the redesignation, the Governor shall designate to conduct the program an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals with disabilities under this chapter.

(2) In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental disability protection and advocacy agency, and with representatives of professional and consumer organizations serving individuals with disabilities in the State.

(3) The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

(d) Class action by designated agency prohibited

The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

(e) Allotment and reallocation of funds

(1)(A) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than \$50,000.

(B) The Secretary shall allot \$30,000 each to American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(C) For the purpose of this paragraph, the term "State" does not include American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(D)(i) In any fiscal year that the funds appropriated for such fiscal year exceed \$7,500,000, the minimum allotment shall be \$100,000 for States and \$45,000 for territories.

(ii) For any fiscal year in which the total amount appropriated under subsection (h) of this section exceeds the total amount appropriated under such subsection for the preceding fiscal year, the Secretary shall increase each of the minimum allotments under clause (i) by a percentage that shall not exceed the percentage increase in the total amount appropriated under such subsection between the preceding fiscal year and the fiscal year involved.

(2) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary at appropriate times to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period, and the total of such reduction shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any such amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

(3) Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) of this section the amount specified in the application approved under subsection (f) of this section.

(f) Application by State for grant funds

No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

(g) Regulations; minimum requirements

The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

(1) No employees of such programs shall, while so employed, serve as staff or consultants of any rehabilitation project, program, or facility receiving assistance under this chapter in the State.

(2) Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

(3)(A) Each program shall contain provisions designed to assure that to the maximum extent possible alternative means of dispute resolution are available for use at the discretion of an applicant or client of the program prior to resorting to litigation or formal adjudication to resolve a dispute arising under this section.

(B) In subparagraph (A), the term “alternative means of dispute resolution” means any procedure, including good faith negotiation, conciliation, facilitation, mediation, factfinding, and arbitration, and any combination of procedures, that is used in lieu of litigation in a court or formal adjudication in an administrative forum, to resolve a dispute arising under this section.

(4) For purposes of any periodic audit, report, or evaluation of the performance of a client assistance program under this section, the Secretary shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1999 through 2003 to carry out the provisions of this section.

(Pub. L. 93-112, title I, §112, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1163; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(b)(9)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-413.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (a), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short

Title note set out under section 12101 of Title 42 and Tables.

PRIOR PROVISIONS

Prior sections 732 and 740 were omitted in the general amendment of this subchapter by Pub. L. 105-220.

Section 732, Pub. L. 93-112, title I, §112, Sept. 26, 1973, 87 Stat. 371; Pub. L. 93-516, title I, §§102(b), 111(f), Dec. 7, 1974, 88 Stat. 1618, 1620; Pub. L. 93-651, title I, §§102(b), 111(f), Nov. 21, 1974, 89 Stat. 2-3, 2-5; Pub. L. 94-230, §§2(b), 11(b)(4), Mar. 15, 1976, 90 Stat. 211, 213; Pub. L. 95-602, title I, §§105, 122(b)(1), Nov. 6, 1978, 92 Stat. 2960, 2987; Pub. L. 97-375, title I, §105, Dec. 21, 1982, 96 Stat. 1820; Pub. L. 98-221, title I, §113(a), Feb. 22, 1984, 98 Stat. 20; Pub. L. 99-506, title I, §103(d)(2)(C), title II, §209, title X, §1001(b)(7), Oct. 21, 1986, 100 Stat. 1810, 1818, 1842; Pub. L. 100-630, title II, §202(f), Nov. 7, 1988, 102 Stat. 3306; Pub. L. 102-52, §2(c), June 6, 1991, 105 Stat. 260; Pub. L. 102-569, title I, §§102(p)(10), 133, Oct. 29, 1992, 106 Stat. 4357, 4391; Pub. L. 103-73, title I, §107(g), Aug. 11, 1993, 107 Stat. 723; Pub. L. 104-66, title I, §104(c), Dec. 21, 1995, 109 Stat. 714, related to client assistance program.

Section 740, Pub. L. 93-112, title I, §120, as added Pub. L. 102-569, title I, §134(a), Oct. 29, 1992, 106 Stat. 4392, related to State eligibility for grants.

Another prior section 740, Pub. L. 93-112, title I, §120, Sept. 26, 1973, 87 Stat. 372; Pub. L. 95-602, title I, §§101(e)(1), 122(b)(1), Nov. 6, 1978, 92 Stat. 2957, 2987; Pub. L. 99-506, title X, §1001(b)(8), Oct. 21, 1986, 100 Stat. 1842; Pub. L. 100-630, title II, §202(g), Nov. 7, 1988, 102 Stat. 3306, provided for State allotments to assist in meeting the cost of vocational rehabilitation services, prior to the general amendment of part C of former subchapter I of this chapter by Pub. L. 102-569.

AMENDMENTS

1998—Pub. L. 105-277 made technical amendment to section designation and catchline in original.

PART C—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

§ 741. Vocational rehabilitation services grants

(a) Governing bodies of Indian tribes; amount; non-Federal share

The Commissioner, in accordance with the provisions of this part, may make grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for American Indians who are individuals with disabilities residing on or near such reservations. The non-Federal share of such costs may be in cash or in kind, fairly valued, and the Commissioner may waive such non-Federal share requirement in order to carry out the purposes of this chapter.

(b) Application; effective period; continuation of programs and services; separate service delivery systems

(1) No grant may be made under this part for any fiscal year unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application unless the application—

(A) is made at such time, in such manner, and contains such information as the Commissioner may require;

(B) contains assurances that the rehabilitation services provided under this part to American Indians who are individuals with disabilities residing on or near a reservation

in a State shall be, to the maximum extent feasible, comparable to rehabilitation services provided under this subchapter to other individuals with disabilities residing in the State and that, where appropriate, may include services traditionally used by Indian tribes; and

(C) contains assurances that the application was developed in consultation with the designated State unit of the State.

(2) The provisions of sections 450c, 450d, 450e, and 450f(a) of title 25 shall be applicable to any application submitted under this part. For purposes of this paragraph, any reference in any such provision to the Secretary of Education or to the Secretary of the Interior shall be considered to be a reference to the Commissioner.

(3) Any application approved under this part shall be effective for not more than 60 months, except as determined otherwise by the Commissioner pursuant to prescribed regulations. The State shall continue to provide vocational rehabilitation services under its State plan to American Indians residing on or near a reservation whenever such State includes any such American Indians in its State population under section 730(a)(1) of this title.

(4) In making grants under this part, the Secretary shall give priority consideration to applications for the continuation of programs which have been funded under this part.

(5) Nothing in this section may be construed to authorize a separate service delivery system for Indian residents of a State who reside in non-reservation areas.

(c) "Reservation" defined

The term "reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

(Pub. L. 93-112, title I, §121, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1166; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(b)(10)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-413.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

Prior sections 741 to 744 and 750 were omitted in the general amendment of this subchapter by Pub. L. 105-220.

Section 741, Pub. L. 93-112, title I, §121, as added Pub. L. 102-569, title I, §134(a), Oct. 29, 1992, 106 Stat. 4392, related to contents of strategic plans.

Another prior section 741, Pub. L. 93-112, title I, §121, Sept. 26, 1973, 87 Stat. 373; Pub. L. 93-516, title I, §102(c), Dec. 7, 1974, 88 Stat. 1618; Pub. L. 93-651, title I, §102(c), Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, §2(c), Mar. 15, 1976, 90 Stat. 211; Pub. L. 95-602, title I, §§101(e)(2), 122(b), Nov. 6, 1978, 92 Stat. 2957, 2987; Pub. L. 98-221, title I, §114, Feb. 22, 1984, 98 Stat. 23; Pub. L. 99-506, title I, §103(d)(2)(C), title II, §210, Oct. 21, 1986, 100 Stat.

1810, 1819; Pub. L. 100-630, title II, §202(h), Nov. 7, 1988, 102 Stat. 3306; Pub. L. 102-52, §2(b)(2), June 6, 1991, 105 Stat. 260, related to payments to States for planning, preparing, and initiating special programs under approved State plans and payments for the costs of constructing facilities to be used in providing services under such State plans, prior to the general amendment of part C of former subchapter I of this chapter by Pub. L. 102-569.

Section 742, Pub. L. 93-112, title I, §122, as added Pub. L. 102-569, title I, §134(a), Oct. 29, 1992, 106 Stat. 4393, related to process for developing strategic plans.

Section 743, Pub. L. 93-112, title I, §123, as added Pub. L. 102-569, title I, §134(a), Oct. 29, 1992, 106 Stat. 4393, related to use of funds.

Section 744, Pub. L. 93-112, title I, §124, as added Pub. L. 102-569, title I, §134(a), Oct. 29, 1992, 106 Stat. 4395; amended Pub. L. 103-73, title I, §107(h), Aug. 11, 1993, 107 Stat. 723, related to allotments among States.

Section 750, Pub. L. 93-112, title I, §130, Sept. 26, 1973, 87 Stat. 374; Pub. L. 93-516, title I, §111(g), Dec. 7, 1974, 88 Stat. 1621; Pub. L. 93-651, title I, §111(g), Nov. 21, 1974, 89 Stat. 2-6; Pub. L. 95-602, title I, §106, Nov. 6, 1978, 92 Stat. 2960; Pub. L. 99-506, title I, §103(d)(2)(C), title II, §211, title X, §1002(b)(1), Oct. 21, 1986, 100 Stat. 1810, 1819, 1844; Pub. L. 100-630, title II, §202(i), Nov. 7, 1988, 102 Stat. 3306; Pub. L. 102-569, title I, §102(p)(11), Oct. 29, 1992, 106 Stat. 4357, related to American Indian vocational rehabilitation services grants.

AMENDMENTS

1998—Pub. L. 105-277 made technical amendment to section designation and catchline in original.

PART D—VOCATIONAL REHABILITATION SERVICES
CLIENT INFORMATION

§ 751. Data sharing

(a) In general

(1) Memorandum of understanding

The Secretary of Education and the Secretary of Health and Human Services shall enter into a memorandum of understanding for the purposes of exchanging data of mutual importance—

(A) that concern clients of designated State agencies; and

(B) that are data maintained either by—

(i) the Rehabilitation Services Administration, as required by section 710 of this title; or

(ii) the Social Security Administration, from its Summary Earnings and Records and Master Beneficiary Records.

(2) Employment statistics

The Secretary of Labor shall provide the Commissioner with employment statistics specified in section 49f-2 of this title, that facilitate evaluation by the Commissioner of the program carried out under part B of this subchapter, and allow the Commissioner to compare the progress of individuals with disabilities who are assisted under the program in securing, retaining, regaining, and advancing in employment with the progress made by individuals who are assisted under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

(b) Treatment of information

For purposes of the exchange described in subsection (a)(1) of this section, the data described in subsection (a)(1)(B)(ii) of this section shall

not be considered return information (as defined in section 6103(b)(2) of title 26) and, as appropriate, the confidentiality of all client information shall be maintained by the Rehabilitation Services Administration and the Social Security Administration.

(Pub. L. 93-112, title I, §131, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1167.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 751, Pub. L. 93-112, title I, §131, as added Pub. L. 95-602, title I, §106, Nov. 6, 1978, 92 Stat. 2961, and amended Pub. L. 99-506, title I, §103(d)(2)(C), Oct. 21, 1986, 100 Stat. 1810, directed Secretary to submit to Congress, not less than thirty months after Nov. 6, 1978, an evaluation of programs conducted under part D of former subchapter I of this chapter, prior to repeal by Pub. L. 99-506, title X, §1002(b)(2)(A), Oct. 21, 1986, 100 Stat. 1844.

A prior section 752, Pub. L. 93-112, title I, §131, formerly §132, as added Pub. L. 99-506, title II, §212(a), Oct. 21, 1986, 100 Stat. 1820; renumbered §132, Pub. L. 100-630, title II, §202(j), Nov. 7, 1988, 102 Stat. 3307, provided for study on special problems and needs of Indians with handicaps both on and off the reservation, prior to repeal by Pub. L. 102-569, title I, §135(a), Oct. 29, 1992, 106 Stat. 4396.

Prior sections 753 and 753a were omitted in the general amendment of this subchapter by Pub. L. 105-220.

Section 753, Pub. L. 93-112, title I, §140, as added Pub. L. 103-73, title I, §108, Aug. 11, 1993, 107 Stat. 724, related to review of data collection and reporting system.

Section 753a, Pub. L. 93-112, title I, §141, as added Pub. L. 103-73, title I, §108, Aug. 11, 1993, 107 Stat. 725, related to exchange of data.

SUBCHAPTER II—RESEARCH AND TRAINING

CODIFICATION

Title II of the Rehabilitation Act of 1973, comprising this subchapter, was originally enacted by Pub. L. 93-112, title II, Sept. 26, 1973, 87 Stat. 374, and amended by Pub. L. 93-516, Dec. 7, 1974, 88 Stat. 1617; Pub. L. 93-651, Nov. 21, 1974, 89 Stat. 2-3; Pub. L. 94-230, Mar. 15, 1976, 90 Stat. 211; Pub. L. 95-602, Nov. 6, 1978, 92 Stat. 2955; Pub. L. 96-88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 98-221, Feb. 22, 1984, 98 Stat. 17; Pub. L. 99-506, Oct. 21, 1986, 100 Stat. 1807; Pub. L. 100-630, Nov. 7, 1988, 102 Stat. 3289; Pub. L. 102-52, June 6, 1991, 105 Stat. 260; Pub. L. 102-54, June 13, 1991, 105 Stat. 267; Pub. L. 102-569, Oct. 29, 1992, 106 Stat. 4344; Pub. L. 103-73, Aug. 11, 1993, 107 Stat. 718; Pub. L. 103-218, Mar. 9, 1994, 108 Stat. 50; Pub. L. 103-382, Oct. 20, 1994, 108 Stat. 3518. Title II is shown herein, however, as having been added by Pub. L. 105-220, title IV, §405, Aug. 7, 1998, 112 Stat. 1167, without reference to those intervening amendments because of the extensive revision of title II by Pub. L. 105-220.

§ 760. Declaration of purpose

The purpose of this subchapter is to—

(1) provide for research, demonstration projects, training, and related activities to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of

all ages, with particular emphasis on improving the effectiveness of services authorized under this chapter;

(2) provide for a comprehensive and coordinated approach to the support and conduct of such research, demonstration projects, training, and related activities and to ensure that the approach is in accordance with the 5-year plan developed under section 762(h) of this title;

(3) promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects relating to—

(A) the procurement process for the purchase of rehabilitation technology;

(B) the utilization of rehabilitation technology on a national basis;

(C) specific adaptations or customizations of products to enable individuals with disabilities to live more independently; and

(D) the development or transfer of assistive technology;

(4) ensure the widespread distribution, in usable formats, of practical scientific and technological information—

(A) generated by research, demonstration projects, training, and related activities; and

(B) regarding state-of-the-art practices, improvements in the services authorized under this chapter, rehabilitation technology, and new knowledge regarding disabilities,

to rehabilitation professionals, individuals with disabilities, and other interested parties, including the general public;

(5) identify effective strategies that enhance the opportunities of individuals with disabilities to engage in employment, including employment involving telecommuting and self-employment; and

(6) increase opportunities for researchers who are members of traditionally underserved populations, including researchers who are members of minority groups and researchers who are individuals with disabilities.

(Pub. L. 93-112, title II, §200, as added Pub. L. 105-220, title IV, §405, Aug. 7, 1998, 112 Stat. 1167; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §401(16)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-412.)

PRIOR PROVISIONS

A prior section 760, Pub. L. 93-112, title II, §200, Sept. 26, 1973, 87 Stat. 374; Pub. L. 95-602, title I, §107, Nov. 6, 1978, 92 Stat. 2962; Pub. L. 99-506, title I, §103(d)(2)(C), Oct. 21, 1986, 100 Stat. 1810; Pub. L. 102-569, title II, §201, Oct. 29, 1992, 106 Stat. 4398, contained congressional declaration of purpose, prior to the general amendment of this subchapter by Pub. L. 105-220.

AMENDMENTS

1998—Pub. L. 105-277 made technical amendment to directory language of Pub. L. 105-220, §405, which enacted this section.

§ 761. Authorization of appropriations

(a) There are authorized to be appropriated—

(1) for the purpose of providing for the expenses of the National Institute on Disability