§ 1386.1

Subpart A—Basic Requirements

§ 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy Agencies.


§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Inter-agency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy agency. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.


§ 1386.3 Liquidation of obligations.

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

§ 1386.4 [Reserved]

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

§ 1386.19 Definitions.

As used in §§1386.20, 1386.21, 1386.22 and 1386.25 of this part the following definitions apply:

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State
Office of Human Development Services, HHS

§ 1386.20 Designated State Protection and Advocacy agency.

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy agency.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the