

§ 1329.1

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Subpart A—General Provisions

§ 1329.1 Programs covered.

This part includes general requirements applicable to the conduct of the following programs authorized under title VII, chapter 1 of the Rehabilitation Act of 1973, as amended:

(a) Independent Living Services (ILS), title VII, chapter 1, part B (29 U.S.C. 796e to 796e-3).

(b) The Centers for Independent Living (CIL), title VII, chapter 1, part C (29 U.S.C. 796f to 796f-6).

§ 1329.2 Purpose.

The purpose of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and to promote the integration and full inclusion of individuals with disabilities into the mainstream of American society by:

(a) Providing financial assistance to States for providing, expanding, and improving the provision of IL services;

(b) Providing financial assistance to develop and support statewide networks of Centers for Independent Living (Centers or CILs);

(c) Providing financial assistance to States, with the goal of improving the independence of individuals with disabilities, for improving working relationships among—

(1) State Independent Living Services;

(2) Centers for Independent Living;

(3) Statewide Independent Living Councils (SILCs or Councils) established under section 705 of the Act (29 U.S.C. 796d);

(4) State vocational rehabilitation (VR) programs receiving assistance under Title 1 of the Act (29 U.S.C. 720 *et seq.*);

(5) State programs of supported employment services receiving assistance under Title VI of the Act (29 U.S.C. 795g *et seq.*);

(6) Client assistance programs (CAPs) receiving assistance under section 112 of the Act (29 U.S.C. 732);

(7) Programs funded under other titles of the Act;

(8) Programs funded under other Federal laws; and

(9) Programs funded through non-Federal sources with the goal of improving the independence of individuals with disabilities.

§ 1329.3 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR part 46—Protection of Human Subjects.

(c) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(d) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

(e) 45 CFR part 81—Practice and Procedure for Hearings under Part 80 of this Title.

(f) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs Activities Receiving Federal Financial Assistance.

(g) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

(h) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(i) 45 CFR part 93—New Restrictions on Lobbying.

(j) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(k) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

§ 1329.4 Definitions.

For the purposes of this part, the following definitions apply:

Act means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended. *Part B* refers to part B of chapter 1 of title VII of the Act (29 U.S.C. 796e to 796e-3). *Part C* refers to part C of chapter 1 of title VII, of the Act (29 U.S.C. 796f to 796f-6).

Administrative support services means services and supports provided by the designated State entity under Part B, and to Part C CILs administered by the State under section 723 of the Act in support of the goals, objectives and related activities under an approved State Plan for Independent Living (SPIL). Such support includes any costs associated with contracts and subgrants including fiscal and programmatic oversight, among other services.

Administrator means the Administrator of the Administration for Community Living (ACL) of the Department of Health and Human Services.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is individual advocacy;

(ii) A group or class of individuals, in which case it is *systems advocacy*; or

(iii) Oneself, in which case it is *self advocacy*.

Attendant care means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, home-making, toileting, and transportation.

Center for independent living (“Center”) means a consumer-controlled, community-based, cross-disability, nonresidential, private non-profit agency for individuals with significant disabilities (regardless of age or income) that—

(1) Is designed and operated within a local community by individuals with disabilities;

(2) Provides an array of IL services as defined in section 7(18) of the Act, including, at a minimum, independent living core services as defined in this section; and

(3) Complies with the standards set out in Section 725(b) and provides and complies with the assurances in section 725(c) of the Act and § 1329.5.

Completed their secondary education means, with respect to the Independent Living Core Services that facilitate the transition of youth who are individuals with significant disabilities in section 7(17)(e)(iii) of the Act, that an eligible youth has received a diploma; has received a certificate of completion for high school or other equivalent document marking the completion of participation in high school; or has exceeded the age of eligibility for services under IDEA.

Consumer control means, with respect to a Center or eligible agency, that the Center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services, in terms of the management, staffing, decision making, operation, and provision of services. Consumer control, with respect to an individual, means that the individual with a disability asserts control over his or her personal life choices, and in addition, has control over his or her independent living plan (ILP), making informed choices about content, goals and implementation.

Cross-disability means, with respect to services provided by a Center, that a Center provides services to individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of unserved or underserved populations by programs under Title VII. Eligibility for services shall be determined by the Center, and shall not be based on the presence of any one or more specific significant disabilities.

Designated State entity (DSE) is the State agency designated in the State Plan for Independent Living (SPIL) that acts on behalf of the State to provide the functions described in title VII, chapter 1 of the Act.

Eligible agency means a consumer-controlled, community-based, cross-disability, nonresidential, private, non-profit agency.

Independent living core services mean, for purposes of services that are supported under the ILS or CIL programs—

- (1) Information and referral services;
- (2) Independent Living skills training;
- (3) Peer counseling, including cross-disability peer counseling;
- (4) Individual and systems advocacy;
- (5) Services that:

- (i) Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services. This process may include providing services and supports that a consumer identifies are needed to move that person from an institutional set-

ting to community based setting, including systems advocacy required for the individual to move to a home of his or her choosing;

- (ii) Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community. A determination of who is at risk of entering an institution should include self-identification by the individual as part of the intake or goal-setting process; and

- (iii) Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life. Individuals who have reached the age of 18 and are still receiving services in accordance with an Individualized Education Program (IEP) under IDEA have not “completed their secondary education.”

Independent living service includes the independent living core services and such other services as described in section 7(18) of the Act.

Individual with a disability means an individual who—

- (1) Has a physical or mental impairment that substantially limits one or more major life activities of such individual;

- (2) Has a record of such an impairment; or

- (3) Is regarded as having such an impairment, as described in section 3(3) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(3)).

Individual with a significant disability means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

Majority means more than 50 percent.

Minority group means American Indian, Alaskan Native, Asian American, Black or African American (not of Hispanic origin), Hispanic or Latino (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), and Native Hawaiian or other Pacific Islander.

Nonresidential means, with respect to a Center, that the Center does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—

- (1) Incidental to the overall operation of the Center;
- (2) Necessary so that the individual may receive an IL service; and
- (3) Limited to a period not to exceed eight weeks during any six-month period.

Peer relationships mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

Peer role models mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

Personal assistance services mean a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities and include but are not limited to: Getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands, engaging in social relationships including parenting.

Service provider means a Center for Independent Living that receives financial assistance under Part B or C of chapter 1 of title VII of the Act, or any other entity or individual that provides IL services under a grant or contract from the DSE pursuant to Section 704(f) of the Act. A designated State entity (DSE) may directly provide IL services to individuals with significant

disabilities only as specifically authorized in the SPIL.

State includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State plan means the State Plan for Independent Living (SPIL) required under Section 704 of the Act.

Unserved and underserved groups or populations include populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

Youth with a significant disability means an individual with a significant disability who—

- (1) Is not younger than 14 years of age; and
- (2) Is not older than 24 years of age.

§ 1329.5 Indicators of minimum compliance.

To be eligible to receive funds under this part, a Center must comply with the standards in section 725(b) and assurances in section 725(c) of the Act, with the indicators of minimum compliance, and the requirements contained in the terms and conditions of the grant award.

§ 1329.6 Reporting.

(a) A Center must submit a performance report in a manner and at a time described by the Administrator, consistent with section 704(m)(4)(D) of the Act, 29 U.S.C. 796c(m)(4)(D).

(b) The DSE must submit a report in a manner and at a time described by the Administrator, consistent with section 704(c)(4) of the Act, 29 U.S.C. 796c(c)(4).

(c) The Administrator may require such other reports as deemed necessary to carry out the responsibilities set forth in section 706 of the Act, 29 U.S.C. 796d-1.

§ 1329.7

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§ 1329.7 Enforcement and appeals procedures.

(a) *Process for Centers for Independent Living.* (1) If the Director of the Independent Living Administration (Director) determines that, as the result of the Onsite Compliance Review process defined in section 706(c)(2), or other review activities, any Center receiving funds under this part, other than a Center that is provided Part C funding by the State under section 723 of the Act, is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and of this part, the Director must provide notice to the Center pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the Center to develop a corrective action plan or to take such other steps as are necessary to come into compliance with the standards and assurances.

(3) The Center may request a preliminary appeal to the Director in a form and manner determined by the Administrator. The Director shall review the appeal request and provide written notice of the determination within a timely manner.

(4) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), the Center may appeal an unfavorable decision by the Director to the Administrator within a time and manner established by the Administrator. The Administrator shall review the appeal request and provide written notice of the determination within a timely manner.

(5) The Administrator may take steps to enforce a corrective action plan or to terminate funding if the Administrator determines that the Center remains out of compliance.

(6) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16. A Center that receives such notice of a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

(7) A Center that is administered by the State under Section 723 of the Act must first exhaust any State process before going through the process de-

scribed in paragraphs (a)(1) through (6) of this section.

(b) *Process for States.* (1) If the Director of the Independent Living Administration determines that a State is out of compliance with sections 704, 705, 713 or other pertinent sections of the Act, the Director must provide notice to the State pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the State to develop a corrective action plan or to take such other steps as are necessary to ensure that the State comes in to compliance.

(3) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), the State may seek an appeal consistent with the steps set forth in paragraphs (a)(3) and (4) of this section.

(4) The Administrator may take steps to enforce statutory or regulatory requirements or to terminate funding if the Administrator determines that the State remains out of compliance.

(5) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16 with regard to the types of determinations set forth in 45 CFR part 16, appendix A, C.a.(1)–(4). A State that receives such notice may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

Subpart B—Independent Living Services

§ 1329.10 Authorized use of funds for Independent Living Services.

(a) The State:

(1) May use funds received under this part to support the SILC resource plan described in section 705(e) of the Act but may not use more than 30 percent of the funds unless an approved SPIL so specifies pursuant to § 1329.15(c);

(2) May retain funds under section 704(c)(5) of the Act; and

(3) Shall distribute the remainder of the funds received under this part in a manner consistent with the approved State plan for the activities described in paragraph (b) of this section.

(b) The State may use the remainder of the funds described in paragraph (a)(3) of this section to—