

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”.

Statutory Notes and Related Subsidiaries

DEFINITIONS OF TERMS IN PUB. L. 113-128

Except as otherwise provided, definitions in section 3 of Pub. L. 113-128, which is classified to section 3102 of this title, apply to this section.

§ 726. Evaluation standards and performance indicators

(a) In general

(1) Standards and indicators

The evaluation standards and performance indicators for the vocational rehabilitation program carried out under this subchapter shall be subject to the performance accountability provisions described in section 3141(b) of this title.

(2) Additional performance accountability indicators

A State may establish and provide information on additional performance accountability indicators, which shall be identified in the State plan submitted under section 721 of this title.

(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) on a biannual basis, review the program improvement efforts of the State and, if the State has not improved its performance to acceptable levels, as determined by the Commissioner, direct 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 im-

provement 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; amended Pub. L. 113-128, title IV, §416, July 22, 2014, 128 Stat. 1654.)

Editorial Notes

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.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-128, §416(1), added subsec. (a) and struck out former subsec. (a) which provided for the establishment, review, and revision of evaluation standards and performance indicators.

Subsec. (b)(2)(B)(i). Pub. L. 113-128, §416(2), substituted “on a biannual basis, review the program improvement efforts of the State and, if the State has not improved its performance to acceptable levels, as determined by the Commissioner, direct the State” for “review the program improvement efforts of the State on a biannual basis and, if necessary, request the State”.

Statutory Notes and Related Subsidiaries

DEFINITIONS OF TERMS IN PUB. L. 113-128

Except as otherwise provided, definitions in section 3 of Pub. L. 113-128, which is classified to section 3102 of this title, apply to this section.

§ 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, including personnel of a client assistance program under section 732 of this title, and past or current recipients of vocational rehabilitation services.

(4) Areas of inquiry

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

- (A) the eligibility process, including the process related to the determination of ineligibility under section 722(a)(5) of this title;
- (B) the provision of services, including supported employment services and pre-employment transition services, and, 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;
- (D) data reported under section 721(a)(10)(C)(i) of this title; and
- (E) 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 Re-

habilitation 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;
- (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; and
- (3) provide technical assistance to programs under this subchapter to—

- (A) promote high-quality employment outcomes for individuals with disabilities;
- (B) integrate veterans who are individuals with disabilities into their communities and to support the veterans to obtain and retain competitive integrated employment;
- (C) develop, improve, and disseminate information on procedures, practices, and strategies, including for the preparation of personnel, to better enable individuals with intellectual disabilities and other individuals with disabilities to participate in post-secondary educational experiences and to obtain and retain competitive integrated employment; and
- (D) apply evidence-based findings to facilitate systemic improvements in the transition of youth with disabilities to postsecondary life.

(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 contribute, 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) 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), 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); 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 determination 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; amended Pub. L. 113-128, title IV, §417(a), July 22, 2014, 128 Stat. 1654.)

Editorial Notes

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.

AMENDMENTS

2014—Subsec. (a)(3)(E). Pub. L. 113-128, §417(a)(1)(A), inserted “, including personnel of a client assistance program under section 732 of this title, and past or current recipients of vocational rehabilitation services” before period at end.

Subsec. (a)(4)(A), (B). Pub. L. 113-128, §417(a)(1)(B)(i), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) the eligibility process;

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

Subsec. (a)(4)(D), (E). Pub. L. 113-128, §417(a)(1)(B)(ii)-(iv), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(3). Pub. L. 113-128, §417(a)(2), added par. (3).

Statutory Notes and Related Subsidiaries

DEFINITIONS OF TERMS IN PUB. L. 113-128

Except as otherwise provided, definitions in section 3 of Pub. L. 113-128, which is classified to section 3102 of this title, apply to this section.

§ 728. Expenditure of certain amounts

(a) Expenditure

Amounts described in subsection (b) 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 subchapter VI, or under subchapter VII.

(b) Amounts

The amounts referred to in subsection (a) are amounts provided to a State under the Social Security Act (42 U.S.C. 301 et seq.) as reimburse-