

Review of the Designated State Agency (DSA)

Frequently Asked Questions (FAQ's)

Q. Why would a Council conduct a review of the designated State agency?

- A. To assist in the development a memorandum of understanding that further delineates roles and responsibilities; to identify areas of concern to Council operations or their ability to act as an independent advocate for people with developmental disabilities; to assist the Governor in preparing a new Executive Order where he/she needs to make a determination of continuation of DSA or consider a change of agency; to determine if the agency is providing the mandated supports and services to the Council.

Q. Who conducts the review?

- A. There is no prescribed method outlined in the DD Act (PL 106-402). Sometimes, the Council staff and a few selected Council members conduct an objective review of the responsibilities of the DSA and, if applicable, items from an existing memorandum of understanding and prepare a summary. Following the gathering of information, the non-State agency members of the Council review the information and make a recommendation to the Governor.

Q. Does the Governor have to do what the Council recommends?

- A. The determination of the DSA is at the discretion of the Governor.

Q. What if the Council disagrees with the Governor's determination of DSA?

- A. The majority of non-State agency Council members can appeal to the Secretary of the US Department of Health and Human Services, following the process outlined in the DD Act (PL 106-402).

Designated State Agency (DSA) and Review Process

If a State agency that provides or pays for services for individuals with developmental disabilities was designated as the Council's DSA prior to 1994, that agency can continue to be a DSA.

Criteria for Continued Designation

- The determination is at the discretion of the Governor (or the legislature, as the case may be) shall be made after:
 - The Governor has considered the comments and recommendations of the general public AND a majority of the non-State agency members of the Council with respect to the designation of such State agency
 - The Governor (or the legislature, as the case may be) has made an independent assessment that the designation of such agency will not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the Council to serve as an independent advocate for individuals with developmental disabilities.

Review of Designation

- The Council may request a review of and change in the designation of the designated State agency by the Governor (or the legislature, as the case may be).
- The Council shall provide documentation concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or the legislature, as the case may be) regarding a preferred designated State agency.

Appeal of Designation

- After the review is completed, a majority of the non-State agency members of the Council may appeal to the Secretary* for a review of and change in the designation of the designated State agency if the ability of the Council to serve as an independent advocate is not assured because of the actions or inaction of the designated State agency.

*Secretary of the Department of Health and Human Services in Washington DC. Best practice is to send appeal to the AIDD Commissioner and navigate the process in collaboration with AIDD.

DESIGNATED STATE AGENCY REVIEW - Guidance

The Developmental Disabilities and Bill of Rights Act, P.L. 106-402, Section 125 (c)(6) requires Councils to periodically review their designated state agency (DSA) and activities and recommend changes to the Governor, if appropriate.

PURPOSE:

The purpose of this review is to determine whether the Council is appropriately placed in state government and capable of carrying out its responsibilities with appropriate support and without undue influence from the DSA. The process looks at the structure of the DSA/Council relationship, not personalities. It is possible to be in a DSA with whom you are presently working well, but where safeguards to assure an independent Council are not in place.

The following questions provide guidance and direction for Council review:

- 1) Is the Council placed in a department that provides services or supports to individuals with developmental disabilities?
- 2) Is there a Memorandum of Understanding in place? If yes, when was the last time it has been reviewed with the present DSA representative?
- 3) Has each item in the current MOU been objectively evaluated to determine whether or not challenges have been experienced and improvements should be made?
- 4) Have there been efforts by the DSA to interfere directly or indirectly with the programmatic activities of the Council, such as advocacy, capacity building or systemic change activities, Council budget, personnel, state plan development or plan implementation?
- 5) Has the DSA supported the Council, directly or indirectly, in carrying out the Council's functions, even if these are in opposition to the position of the DSA? (Example: The Council has taken a position on closure of a state institution that is opposite of the DSA; the DSA understands that this is the decision of the Council and continues to provide the agreed upon supports in a timely manner).
- 6) Is the placement of the Council at an appropriate level? Since the DSA area(s) of responsibility are chiefly fiscal, is the Council placed at an administrative level or above, for instance in an Administrative services level or the department director level?

- 7) Does the DSA receive, account for and disburse Council funds? Items to be considered may include prompt processing of fiscal requests; authorization at the director's level, are the number of levels of consent to expend Council funds minimal and no more than a department level request; look for procedures that are only applied to the Council and not to other departments/offices within the DSA.
- 8) Since the last review have there been any instances where the DSA withheld or delayed consent to contract and expend dollars that the Council had authorized? Was the action justified based on applicable state and federal laws?
- 9) Has there been any instances of the State attempting to assign Council staff to other duties, interfering with Council hiring or firing (other than the application of pertinent State personnel procedures and laws)?
- 10) Has there been any interference or attempted interference with Council activities or budget?
- 11) Is the DSA fulfilling its responsibilities in the area of record keeping and filing of fiscal reports?
- 12) Review to see if the fiscal process i.e., purchase orders, contracting, etc., is at an appropriate level.
- 13) Has the DSA provided appropriate fiscal services and charged no more than allowed in the DD Act?
- 14) Has the DSA supported the Council in obtaining "reasonable state financial participation in the cost of carrying out the plan?"