

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 fulfill the DD Act mandate that a Council periodically review the DSA and activities carried out under Subtitle B of the DD Act and make any recommendations for change to the Governor.

To assist in the development a memorandum of understanding (MOU) 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.** The DD Council staff and membership should determine who will conduct an objective review of the DSA regarding their responsibilities as outlined in the DD Act 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) and regulations found in 45 CFR 1386; §1386.34

Designated State Agency (DSA) Criteria, Review, and Appeal

Note: 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, the 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 by the Governor, and if no change is made, a majority of the non-State agency members of the Council may appeal to the Secretary* or his or her designee for a review 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.

Prior to an appeal to the Secretary of his or her designee, the Council must follow these steps:

- Provide the Governor with a 30-day written notice (by certified mail) of the majority of non-State agency members' intention to appeal the designation of the DSA.
- The appeal must clearly identify the grounds for the claim that the Council's ability to act as an independent advocate is not assured because of the actions or inactions of the DSA.

Procedures the Secretary or his or her designee must follow after the written notice is received can be found in 45 CFR 1326.34 (3-4).

- The Council can withdraw an appeal request anytime during the appeals process if a resolution has been reached with the Governor on the Designated State Agency. The Governor must notify the Secretary or his or her designee in writing about the decision.

Designated State Agency Review – Purpose, Process, and Guiding Questions

PURPOSE:

The purpose of a review is to assess the way a designated State agency fulfills their support activities to the Council. The review should include designated State agency responsibilities as directed in the DD Act and any additional support services requested by and negotiated with the Council (typically the items found in a formal Memorandum of Understanding with the DSA).

PROCESS:

The process is designed to review the DSA and DD Council operations relationship and not personalities of the people performing the tasks. Guiding questions are provided below to help guide the review. In addition to the required responsibilities as outlined in Section 125(d) (3-4)

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? If so, is the Council free to act as an independent advocate for people with developmental disabilities?
- 2) Is there a Memorandum of Understanding in place? If yes, when was the last time it was reviewed with the current DSA representative?
- 3) If the Council has an existing MOU, has each item in the current MOU been objectively evaluated to determine whether 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) 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 a Departmental level?
- 6) Does the DSA receive, account for, and disburse Council funds? Items to be considered may include prompt processing of fiscal requests; authorization at

the Council Director level; are the number of levels of consent to expend Council funds equal to that of other departments within the DSA; does the DSA apply procedures that are only used for the Council and not for other departments/offices within the DSA.

- 7) Since the last review have there been any instances where the DSA withheld or delayed consent to contract and/or expend dollars that the Council had authorized? Was the action justified based on applicable state and federal laws?
- 8) Has there been any instances of the State attempting to assign Council staff to other duties; interfering with Council hiring or dismissal of staff (other than the application of pertinent State personnel procedures and laws)?
- 9) Is the DSA fulfilling its responsibilities in record keeping and filing of required federal fiscal reports?
- 10) Has the DSA provided appropriate fiscal services and requested reimbursement for no more than allowed in the DD Act?
- 11) Has the DSA supported the Council in obtaining "reasonable state financial participation in the cost of carrying out the plan?"

Once the information has been gathered and assessed, the Council will decide next steps. The following represent general options:

- 1) Determine the DSA is supporting the Council adequately and no change will be requested.
- 2) Determine the DSA could improve their support to the Council and pursue the development of a MOU with the DSA to address specific areas, or address areas for improvement within an existing MOU.
- 3) Determine the DSA is not providing the required supports and there has been limited or no efforts by the DSA to improve.

If a Council decides to pursue a change in DSA with the Governor, the Council must follow the required procedures (see pages 2-3).