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TITLE 34--EDUCATION

CHAPTER III--OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

PART 365--STATE INDEPENDENT LIVING SERVICES

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Authority: 29 U.S.C. 796e-796e-2, unless otherwise noted.

Source: 59 FR 41897, Aug. 15, 1994, unless otherwise noted.

Subpart A--General

- Sec. 365.1 What is the State Independent Living Services (SILS) program?

The Secretary provides financial assistance to States under the SILS program authorized by part B of chapter 1 of title VII of the Act to--

- (a) Provide the resources described in the resource plan required by section 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide IL Council (SILC);
 (b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;
 (c) Demonstrate ways to expand and improve IL services;

(d) Support the operation of centers for independent living (centers) that are in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(e) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(f) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(g) Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

(h) Provide outreach to populations that are unserved or underserved by programs under title VII of the Act, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796e)

Sec. 365.2 Who is eligible for an award?

Any designated State unit (DSU) identified by the State pursuant to 34 CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

Sec. 365.3 What regulations apply?

The following regulations apply to this part:

- (a) The regulations in 34 CFR part 364.
- (b) The regulations in this part 365.

(Authority: 29 U.S.C. 711(c) and 796e)

Subpart B--How Does the Secretary Make a Grant to a State?

Sec. 365.10 How does a State apply for a grant?

To receive a grant under this part, a State shall submit to the Secretary and obtain approval of a State plan that meets the requirements of part A of title VII of the Act and subparts B and C of 34 CFR part 364.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

Sec. 365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) The allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau is computed in accordance with section 711(a)(2) of the Act.

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(c) If the State plan designates, pursuant to Sec. 364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State's allotment between these two units is a matter for State determination.

(Authority: 29 U.S.C. 711(c) and 796e(a))

Sec. 365.12 How are payments from allotments for IL services made?

(a) From the allotment of a State for a fiscal year under Sec. 365.11, the Secretary pays to the State the Federal share of the expenditures incurred by the State during the year in accordance with the State plan approved under section 706 of the Act. After any necessary adjustments resulting from previously made overpayments or underpayments, the payments may be made in advance or by reimbursement, in installments, and on conditions that the Secretary may determine.

(b) (1) The Federal share with respect to any State for any fiscal year is 90 percent of the expenditures incurred by the State during that fiscal year under its State plan approved under section 706 of the Act.

(2) The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: U.S.C. 796e-1)

Sec. 365.13 What requirements apply if the State's non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 34 CFR 80.24(a) through (b)(6) may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if--

(1) The expenditures are made with funds made available by appropriation directly to the designated State agency or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the designated State agency in accordance with State law for expenditure by, and at the sole discretion of, the DSU for activities identified or described in the State plan and authorized by Sec. 365.20; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for--

(i) Providing particular services (e.g., personal assistance services);

(ii) Serving individuals with certain types of disabilities (e.g., older individuals who are blind);

(iii) Providing services to specific groups that State or Federal law permits to be targeted for services (e.g., children of migrant laborers); or

(iv) Carrying out particular types of administrative activities permissible under State law.

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a

profit-making or nonprofit organization, or an individual.

(Authority: 29 U.S.C. 711(c) and 796e-1(b))

Sec. 365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

(a) A State may not condition the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on the requirement that the applicant for the grant

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or subgrant make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

(Authority: 29 U.S.C. 711(c) and 796e-1(b))

Sec. 365.15 What requirements apply if the State's non-Federal share is in kind?

Subject to Sec. 365.14, in-kind contributions may be--

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 34 CFR 80.24 (b) (7) through (g) and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles made applicable by either subpart Q of 34 CFR part 74 or 34 CFR 80.22, as appropriate; and

(b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a grantee, subgrantee, or contractor that is receiving or will receive assistance under section 713 or 723 of the Act.

(Authority: 29 U.S.C. 711(c) and 796e-1(b))

Sec. 365.16 What requirements apply to refunds and rebates?

The following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under this part and may not be used for meeting the State's matching requirement under section 712(b) of the Act:

(a) Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services.

(b) Premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

(Authority: 29 U.S.C. 711(c), 796e-1(b), and OMB Circulars A-87 and A-122)

Subpart C--For What Purpose Are Funds Authorized or Required To Be Used?

Sec. 365.20 What are the authorized uses of funds?

The State may use funds received under this part to support the activities listed in Sec. 365.1 and to meet its obligation under section 704(e) of the Act and 34 CFR 364.43(b).

(Authority: 29 U.S.C. 796e-2)

Sec. 365.21 What funds may the State use to provide the IL core services?

(a) In providing IL services as required under section 704(e) of the Act and 34 CFR 364.43(b), a State may use funds provided under this part to provide directly, or through grants or contracts, the following IL core services:

- (1) Information and referral services.
- (2) IL skills training.
- (3) Peer counseling, including cross-disability peer counseling.
- (4) Individual and systems advocacy.

(b) Information and referral services may be provided independently of the other services described in paragraph (a) of this section and without regard to subpart G of 34 CFR part 366.

(Authority: 29 U.S.C. 711(c) and 796c(e))

Sec. 365.22 What additional IL services may the State provide?

In addition to the IL core services that the State may provide pursuant to Sec. 365.21(a) with funds received under part B of chapter 1 of title VII of the Act, the State also may use funds received under part B of chapter 1 of title VII of the Act to provide other IL services defined in 34 CFR 364.4 (Independent living services).

(Authority: 29 U.S.C. 796e-2(1))

Sec. 365.23 How does a State make a subgrant or enter into a contract?

If a State makes a subgrant or enters into a contract to provide IL services to meet its obligation under section 704(e) of the Act--

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(a) The provisions of this part apply to both the State and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 80 apply to the State.

(c) Cross-reference: See 34 CFR parts 74, 76, and 80.

(Authority: 29 U.S.C. 711(c), 796c(f), and 796e-2)

Subpart D--What Conditions Must Be Met After an Award?

Sec. 365.30 What are the standards for processing referrals and applications?

The DSU shall develop, establish, and maintain written standards and procedures to be applied by service providers to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 711(c) and 796e)

Sec. 365.31 What are the standards for service providers?

(a) The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of--

- (1) IL services to be met by service providers that are not centers;
- and

(2) Specialized IL services to individuals with significant disabilities by centers under a contract with the DSU.

(b) The minimum standards developed pursuant to paragraph (a) (2) of this section may differ from the standards and assurances in section 725 of the Act and subparts F and G of 34 CFR part 366.

(c) The DSU shall assure that participating service providers meet all applicable State licensure or certification requirements.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 711(c))