

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
STATE HOUSE, BOSTON 02133  
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BY HIS EXCELLENCY

WILLIAM F. WELD  
GOVERNOR

EXECUTIVE ORDER NO. 397

IMPLEMENTATION OF THE DEVELOPMENTAL  
DISABILITIES ACT OF 1996. P.L. 104-183

(REVOKING AND SUPERSEDING EXECUTIVE ORDER NO. 315)

WHEREAS, it is the responsibility and commitment of the Commonwealth acting through its branches, officers and departments to assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through a system which coordinates, monitors, plans and evaluates those services and which ensures the protection of the legal and human rights of persons with developmental disabilities; and

WHEREAS, the fulfillment of these responsibilities is dependent upon the cooperation and coordination among all levels of government, among agencies of state government and between the public and private sectors of the Commonwealth, so as to assure maximum individual benefit from the full utilization of all available resources; and

WHEREAS, the Developmental Disabilities Act of 1996, P.L. 104-183, and precursor and successor legislation, offers the Commonwealth the opportunity to participate in a national program to assist the states in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs cannot be covered or otherwise met under The Americans with Disabilities Act, The Individuals with Disabilities Education Act (formerly Education for All Handicapped Children Act), The Rehabilitation Act of 1973, or other health, education or welfare programs; and

WHEREAS, the Governor, as the Supreme Executive Magistrate of the Commonwealth under the Constitution, has the authority to order and direct the affairs of the Commonwealth in accordance with the Constitution and laws of the land;

NOW, THEREFORE, I, William F. Weld, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby revoke Executive Order No. 315, and in place thereof, order the following:

## I. THE ESTABLISHMENT OF THE STATE PLANNING COUNCIL

There is hereby established a State Planning Council on Developmental Disabilities, called the Massachusetts Developmental Disabilities Council (hereinafter "Council"). The Council shall assist the Commonwealth in carrying out its requirements for participation in P.L. 104-183 (The Developmental Disabilities Act of 1996), precursor and successor legislation, or any federal grant program that would provide funds for services to developmentally disabled persons. The Council shall serve as the designated State Agency under P.L. 104-183 and precursor and successor legislation. The Council shall receive those funds made available to the Commonwealth under P.L. 104-183, precursor or successor legislation, or any federal grant program which would provide funds for services for persons with developmental disabilities.

### A. Placement of the Massachusetts Developmental Disabilities Council ("MDDC") Within State Government

The Council is established within the Executive Office for Administration and Finance.

The Council shall be responsible to the Secretary of the Executive Office for Administration and Finance, or his/her designee, and shall submit to him/her such periodic reports on its activities as he/she may request.

### B. Mandates of the MDDC

In accordance with Federal law and regulations, the Council shall:

1. Develop and submit the State Plan including the specifications of Federal and State priority area activities;
2. Monitor, review and evaluate, not less often than annually, the implementation of such State Plan;
3. To the maximum extent feasible, review and comment on state plans and agency budgets in the State which relate to programs affecting persons with developmental disabilities;
4. Submit to the u.s. Secretary of Health and Human Services, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary;
5. Serve as an advocate for persons with developmental disabilities;

6. Increase the capacity of the Commonwealth to respond to the social, economic and environmental needs of persons with developmental disabilities in the most humane, fair, individualized and effective manner possible;
7. Facilitate full access for persons with developmental disabilities to services, facilities, and benefits to which they may be eligible, and full opportunity to exercise the human and civil rights to which they may be entitled, through the removal of physical, social, legal, and administrative barriers to their full integration into the community; and
8. Report to the Governor and the General Court at least annually on matters pertaining to the welfare and rights of persons with developmental disabilities.

C. Structure of the MDDC

The Council shall develop by-laws identifying the structure and operating procedures and policies for the conduct of its business. Council by-laws and Administrative Guidelines consistent with this Order and Federal laws and regulations shall be developed by the Council. Council by-laws and Administrative Guidelines will conform to the requirements of Chapter 30A of the Massachusetts General Laws.

Public Hearings

Plans for services and facilities for persons with developmental disabilities developed pursuant to this Order shall be subject to public hearing(s) prior to submission to the Federal government.

Meetings

All meetings shall comply with the provisions of Sections 11A and 11A-1/2 of Chapter 30A of the Massachusetts General Laws and successor legislation popularly referred to as "The Open Meeting Law."

D. Membership

The members of the Council shall be appointed by the Governor from among the residents of the Commonwealth. The Council shall at all times have a membership which shall consist of the following:

1. State agency representatives responsible for planning, administering, providing or regulating programs and plans affecting the quality, extent and scope of services to persons with developmental disabilities,

including but not limited to representatives of the Department of Transitional Assistance, the Department of Mental Retardation, the Massachusetts Rehabilitation Commission, the Department of Education, and the Executive Office of Elder Affairs;

2. The Attorney General of the Commonwealth, or his representative, at his discretion;
3. A representative of the House of Representatives, who may be appointed from among persons recommended by the Speaker of the House;
4. A representative of the State Senate, who may be appointed from among persons recommended by the President of the Senate;
5. The chief executive officer, or his representative, of each university affiliated facility in Massachusetts;
6. Representatives from local agencies, non-governmental agencies, private non-profit organizations, and groups concerned with services to persons with developmental disabilities;
7. A representative from the State Protection and Advocacy System;
8. Members-at-large, who shall be persons who have clearly demonstrated an outstanding measure of leadership and knowledge in the field of developmental disabilities;
9. At least one-half of the membership of the Council shall consist of persons who:
  - a. are
    - (i) persons with developmental disabilities or parents or guardians of such persons, or
    - (ii) immediate relatives or guardians of persons with mentally impairing developmental disabilities; and
  - b. are not employees of a State agency which receives funds or provides services through this program, who are not managing employees of any other entity which receives funds or provides services through this program, and who are not persons with an ownership or control interest in such an entity.
10. Of the members of the Council described in paragraph 9, at least one-third shall be persons with developmental disabilities, and at least one-third shall be immediate

relatives or guardians of persons with developmental disabilities, and at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

11. The number of members of the Council shall not exceed 28.

Nominees for Council membership in the categories of local agencies, non-governmental agencies, groups concerned with services to persons with developmental disabilities and parents and guardians of persons with developmental disabilities shall be obtained on the basis of open and public solicitation of applications from interested persons eligible to serve on the Council pursuant to the Developmental Disabilities Act.

#### Terms of Membership

Members representing principal State agencies shall be appointed for a term of one year each and shall serve at the pleasure of the Governor. Excepting the chairperson and vice-chairperson, other members of the Council shall be appointed for a term of three years each. The Governor shall make appropriate provisions to rotate membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements, when vacancies remain unfilled for a significant period of time.

There shall be a chairperson and vice-chairperson appointed by the Governor to serve concurrently with the term of the Governor. A council member described in paragraph 9 shall be appointed either chairperson or vice-chairperson.

#### Status of Council Members

The Council members shall be considered "special state employees" as defined by Massachusetts General Laws, Chapter 268A, Section (o), the so-called Conflict of Interest Law, as well as other legislation pertaining to the employment of such persons.

#### Reimbursement of Expenses

The reasonable and necessary expenses incurred by Council members in the performance of their official responsibilities shall be reimbursed, to the extent of available Federal funds and consistent with Federal and State laws, regulations and guidelines.

#### Interagency Cooperation

The Council shall be entitled to the cooperation of every department, agency, and office in the Commonwealth, in furtherance of Council functions.

E. Powers and Duties of the Council as the Designated Agency

The Council shall:

1. Receive, account for, and disburse funds based on the State Plan as required under the Developmental Disabilities Act and administer and supervise the fiscal administration of the State Plan;
2. Provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds for developmental disabilities allotted to the Commonwealth;
3. Have the final authority in making grants under the State Plan. The process for reviewing and awarding grants shall be conducted in accordance with federal program standards; and
4. Prepare and submit all required State and Federal reports/assurances pertaining to financial, administrative, and compliance issues.

## II. COUNCIL STAFF

The Council shall have adequate staff to consist of an Executive Director and such subordinate personnel as the Council deems necessary to fulfill its responsibilities under Federal law and this Executive Order.

The Council shall hire the Executive Director of the Council. The Executive Director of the Council shall report to the Council, shall be supervised and evaluated by the Council, and shall be responsible for the recruitment, recommendation for appointment by the Secretary of Administration and Finance, and for the supervision of such staff as are required to fulfill Council mandates and responsibilities under Federal law and this Executive Order.

## III. FEDERAL COST SHARING

Implementation of the Order is contingent upon the annual appropriation and allocation of Federal funds, in conjunction with a reasonable annual contribution by the Commonwealth to be determined by the Secretary of the Executive Office for Administration and Finance.

No provision herein is intended to bar the Commonwealth from

participating in Federal cost sharing and any provision having the effect of inhibiting such participation is void.

Given at the Executive Chamber  
in Boston this 19th day of  
June in the year one thousand  
nine hundred and ninety-seven.

William F. Weld  
Governor

William Francis Galvin  
Secretary of State

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS