

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE, BOSTON 02133

BY HER EXCELLECY
JANE M. SWIFT
GOVERNOR

EXECUTIVE ORDER NO. 439
IMPLEMENTATION OF THE DEVELOPMENTAL
DISABILITIES ACT OF 2000, P.L. 106-402
(REVOKING AND SUPERSEDING EXECUTIVE ORDER NO. 397)

WHEREAS, it is the responsibility and commitment of the Commonwealth acting through its branches, officers and departments to assure that individuals 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 individuals 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 2000, P.L. 106-402, 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 individuals with developmental disabilities, with priority to those individuals whose needs cannot be covered or otherwise met under The Americans with Disability 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, Jane M. Swift, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby revoke Executive Order No. 397, 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 (the "Council"). The Council shall assist the Commonwealth in carrying out its requirements for participation in P.L. 106-402 (The Developmental Disabilities Act of 2000), precursor and successor legislation, or in 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. 106-402 and precursor and successor legislation. The Council shall receive those funds made available to the Commonwealth under P.L. 106-402, precursor or successor legislation, or any federal grant program that would provide funds

for services for individuals with developmental disabilities.

A. Placement of the Massachusetts Developmental Disabilities Council
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 of 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. Purpose of the Council

The Council shall engage in advocacy, capacity building and systemic change on behalf of individuals with developmental disabilities and contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.

C. Mandates of the Council

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 individuals 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. Report to the Governor and the General Court at least annually on matters pertaining to the welfare and rights of individuals with developmental disabilities.

D. Structure of the Council

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.

1. Public Input and Review

The State Plan shall be based on public input. The Council shall make the State Plan available for public review and comment, after providing appropriate and sufficient notice in accessible formats of the opportunity for such review and comment. The Council shall revise the State Plan to take into account and respond to significant comments.

2. Meetings

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

E. Membership

The members of the Council shall be appointed by the Governor from among the residents of the Commonwealth. The members shall be geographically representative of the state and reflect the racial and ethnic diversity of the state. The Council shall at all times have a membership that shall consist of the following:

1. Not less than 60% shall be members who are (i) individuals with developmental disabilities, (ii) parents or guardians of children with developmental disabilities, or (iii) immediate relatives or guardians of adults with developmental disabilities who cannot advocate for themselves. Such members may not be employees of a state agency that receives funds or provides services pursuant to the Developmental Disabilities Act of 2000, P .L. 106-402 and may not be managers of employees of any other entity that receives such funds or provides such funds. Of these members of the Council, (a) 1/3 shall be individuals with developmental disabilities, (b) 1/3 shall be parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with developmental disabilities, and (c) 1/3 shall be a combination of the individuals described immediately above in clauses (a) and (b). At least one of these members must be an immediate relative or guardian of an individual with a developmental disability who resides or previously resided in an institution or an individual with a developmental disability who resides or previously resided in an institution.
2. Representatives from the following state agencies: the Department of Mental Retardation, the Massachusetts Rehabilitation Commission, the Division of Medical Assistance and the Department of Public Health. These representatives must have sufficient authority to engage in policy planning and implementation on behalf of the department, agency or program that they represent.
3. The Attorney General of the Commonwealth, or his representative, at his discretion.
4. Representatives from the Shriver Center, the Institute for Community Inclusion and the Disability Law Center.
5. Representatives, at all times, of local agencies, non-governmental agencies, and private non-profit groups concerned with services for individuals with developmental disabilities

The number of members of the Council shall not exceed 28. Nominees for Council membership in the categories of individuals with developmental disabilities; parents, immediate relatives and guardians of individuals with developmental disabilities; local and non-governmental agencies; and private non-profit groups concerned with services provided to individuals 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.

F. 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 of vacancies on the Council as they arise.

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 E.1. herein shall be appointed either chairperson or vice-chairperson.

G. Status of Council Members

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

H. Non-Voting Ex Officio Members

To further the coordination among all levels of government and to ensure that a diverse group of governmental agencies and representatives participate in and are aware of the Council's purpose and objectives, the following individuals shall be non-voting, ex officio members of the Council: a representative of the House of Representatives, who shall be appointed from among individuals recommended by the Speaker of the Houses; a representative of the State Senate, who shall be appointed from among individuals recommended by the President of the Senate; and a representative from each of the following governmental agencies: the Massachusetts Office on Disability, the Department of Education and the Executive Office of Elder Affairs.

I. 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.

J. Interagency Cooperation

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

K. 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 each 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 13th day of August in the
year two thousand two

Jane M. Swift
Governor

William Francis Galvin
Secretary of State

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS