OPERATIONS MANUAL
Of the
Behavioral Health Planning Council

Published October 2009
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By Laws
BYLAWS
OF THE
BEHAVIORAL HEALTH PLANNING COUNCIL
OF NEW MEXICO

ARTICLE I.
ORGANIZATION

A. Name. The organization referred to in this document shall be known as the BEHAVIORAL HEALTH PLANNING COUNCIL of NEW MEXICO, hereinafter referred to as the "Council."

B. Statutory Authority. The Council is authorized in accordance with HB 271 and Public Law 102-321 and is organized pursuant to NMSA 24-1-28 of the New Mexico Health and Safety Code ("the Act"). It is intended to have an ongoing role and is advisory to the Interagency Behavioral Health Purchasing Collaborative, hereinafter referred to as the "Collaborative," and to the Governor.

C. Purpose. Pursuant to its statutory authority, the purpose of the Council is to serve as the single statewide advisory structure for behavioral health in New Mexico in the following manner:

(i) advocate for adults, children and adolescents with serious mental illness or severe emotional, neurobiological and behavioral disorders, as well as those with mental illness or emotional problems, including substance abuse and co-occurring disorders;

(ii) report annually to the governor and the legislature on the adequacy and allocation of mental health services throughout the state;

(iii) encourage and support the development of a comprehensive, integrated, community-based behavioral health system of care, including mental health and substance abuse services, and services for persons with co-occurring disorders;

(iv) advise state agencies responsible for behavioral health services for children and adults, as those agencies are charged in Section 9-7-6.4 NMSA 1978;

(v) meet regularly and at the call of the chair, who shall be selected by the council membership from among its members;

(vi) establish subcommittees, to meet at least quarterly, as follows:
a Medicaid subcommittee, chaired by the secretary of human services or a designee, which may also serve as a subcommittee of the Medicaid advisory committee;

b. a child and adolescent subcommittee, chaired by the secretary of children, youth and families or a designee;

c. an adult subcommittee, chaired by the secretary of health or a designee;

d. a substance abuse subcommittee, chaired by the secretary of health or a designee, which shall include DWI issues and shall include representation from local DWI councils;

e. a Native American subcommittee, chaired by the secretary of Indian affairs or a designee; and

f. other subcommittees as may be established by the chair of the council to address specific issues. All subcommittees may include nonvoting members appointed by the chair for purposes of providing expertise necessary to the charge of the respective subcommittee.

(vii) review and make recommendations for the comprehensive mental health state block grant and the substance abuse block grant applications, the state plan for Medicaid services and any other plan or application for federal or foundation funding for behavioral health services; and

(viii) replace the governor's mental health planning council and act in accordance with Public Law 102-321 of the federal Public Health Service Act.

Pursuant to its statutory role as advisor, the Council also agrees to: (i) timely advise and make recommendations to the Collaborative in fulfillment of its duties as charged in Section 9-7-6.4 NMSA 1978; (ii) represent the local concerns and issues (“concerns”) that have been presented by Local Collaboratives (“LCs”) through their designees; (iii) timely report such "concerns" to the Collaborative, Legislature and Governor; (iv) relay Collaborative input to the LCs; and (v) review any and all policy correspondence from Council executive and subcommittees or Collaborative committees providing approval, recommendation or opposition when necessary.

D. Membership. The Council shall consist of the following Members, all of whom shall be appointed by and serve at the pleasure of the Governor:

(i) consumers of behavioral health services and consumers of substance abuse services, as follows: adults with serious mental illness; seniors; family members of adults; family members of adults with serious mental illness and of children with serious emotional or neurobiological disorders; and persons with co-occurring disorders.
(ii) Native American representatives from a pueblo, an Apache tribe, the Navajo Nation and an urban Native American population;

(iii) providers;

(iv) state agency representation from agencies responsible for: adult mental health and substance abuse; children's mental health and substance abuse; education; vocational rehabilitation; criminal justice; juvenile justice; housing; health policy planning; developmental disabilities planning; and disabilities issues and advocacy.

(v) such other members as the governor may appoint to ensure appropriate cultural and geographic representation; and

(vi) advocates.

Additionally, Providers and state agency representatives together may not constitute more than forty-nine (49%) percent of the Council Membership.

ARTICLE II.
COMPOSITION, TERMS, VACANCIES

A. Powers. This body shall have powers to the full extent allowed by law. All powers and activities of this Council shall be exercised and managed by Members of the Council, and, if delegated, to the Executive Committee, under the ultimate direction of the Council, in a manner consistent with its statutory duties.

B. Number and Qualifications of Members. Members shall be qualified by the Act, and appointed to serve at the pleasure of the Governor. The number of Members appointed to the Council shall be no more than eighty (80), and shall represent each classification set forth under the Act (NMSA 24-1-28) in appropriate proportion, i.e., Providers and state agency representatives together may not constitute more than forty-nine (49%) percent of the Council membership.

C. Terms. Each Member is appointed by the Governor and serves at his or her discretion. Accordingly, each Member shall hold office until he/she resigns or is removed with the Governor's consent. Any successor shall be qualified and appointed by the Governor.

D. Compensation. Members shall not receive compensation for their services as Members. The Council may authorize the advance or reimbursement to a Member of actual, reasonable expenses incurred in carrying out his or her duties as a
Member pursuant to the Council's Policies and Procedures.

E. **Resignation.** Any Member may submit in writing to the Governor with a copy to the Chair of the Council a written notice of resignation. Upon the Governor's acceptance of such resignation, it shall take effect as of the time specified or, if no time is specified, at the time of its acceptance by the Governor.

F. **Removal.** Members may be removed with or without cause by the Governor. Additionally, the Council, through its Executive Committee, may recommend to the Governor removal of a Member for cause. "Cause" includes but is not limited to: (i) conduct unbecoming a public official; (ii) neglect of assumed or assigned responsibilities; (iii) failure to attend 3/4 of required meetings in a single year unless excused by the Chair or Executive Committee; (iv) change in personal status, which alters the prescribed Membership composition of the Council (e.g., private citizen becomes a state employee).

Upon removal, the member's name shall be removed from the Council membership roster.

G. **Vacancies.** A vacancy shall be deemed to exist on the Council in the event that a Member has resigned or is removed, pursuant to this Article. Upon the occurrence of a vacancy, the Chair shall notify the Council and request recommendations for filling the vacancy; the vacating member shall be replaced by a person of the same category. At least two (2) recommendations shall be forwarded to the Governor for his/her consideration. A vacancy occurring on the Council shall be filled by the Governor and the appointee shall serve at the Governor's pleasure.

H. **Conflict of Interest.** The Council shall adopt a conflict of interest policy applicable to Members. This policy shall be reviewed annually.

I. **Confidentiality.** The Council shall adopt a confidentiality policy applicable to Members. This policy shall be reviewed annually.

**ARTICLE III. MEETINGS**

A. **Regular Meetings.** Regular meetings of the Council shall be held at least quarterly at the time and place fixed at the request of the Chair, or the Executive Committee of the Council, in consultation with representatives of the Collaborative. Ten (10) working days' notice of such meetings may be made by telephone, including use of a voice messaging system or other system or technology designed to record and communicate messages, electronic mail, telegraph, facsimile transmission, or other electronic means, and shall state the date, place and time of the meeting. Additionally, Notice of the date, time, place and general subject matter to be discussed at a Regular
Meeting will be given to at least two major newspapers most frequently read by the constituency represented by the Council.

B. **Special Meetings.** Special meetings of the Council may be called by or at the request of any two Members of the Executive Committee, or at the request of at least ten (10) percent of the Council members, or by any two Co-Chairs of the Statutory Subcommittees of the Council at the time and place fixed by the persons calling the meeting and upon not less than three (3) working days notice by telephone, including use of a voice messaging system or other system or technology designed to record and communicate messages, electronic mail, telegraph, facsimile transmission, or other electronic means, and shall state the date, place and time of the meeting.

C. **Emergency Meetings.** Emergency meetings of the Council may be called by or at the request of any two Members of the Executive Committee, or at the request of at least ten (10) percent of the Council members, or by any two Co-Chairs of the Statutory Subcommittees of the Council, at the time and place fixed by the persons calling the meeting and upon not less than twenty-four (24) hours’ notice by telephone, including use of a voice messaging system or other system or technology designed to record and communicate messages, electronic mail, telegraph, facsimile transmission, or other electronic means, and shall state the date, place and time of the meeting.

D. **Waiver of Notice.** Any Member may waive notice of any meeting. Notice of a meeting shall be deemed given to any Member who attends the meeting without protesting the lack of adequate notice before the meeting or at its commencement.

E. **Quorum and Voting.** A majority of the Members (51%) shall constitute a Quorum. Those Members with an excused absence will not be counted for purposes of determining Quorum.

   Each Council Member shall have one vote. The act of a majority of Members present at a meeting at which a Quorum is present shall be the act of the Council, except as otherwise explicitly provided herein. The act of a majority of Members present at a meeting will have validity as long as quorum was present at the beginning of the meeting. Voting by proxy is not permitted except by represented State agencies and only then if the Chair of the Council has received advance written notice of such proxy from either the Secretary or Director of the designating State agency. Any State Agency proxy, written and timely received by the Chair, shall have one vote.

F. **Action without a Meeting** Any action required or permitted to be taken at any meeting of the Council may be taken without a meeting if all Members then in office shall individually or collectively consent in writing to such action. A writing generated via electronic mail or facsimile shall be deemed a sufficient “writing” for purposes of this section. Such written consents shall be filed with the minutes of the proceedings of the Council. Such written consents shall have the same force and effect as the unanimous
vote of such Members.

G. Telephone, Electronic and Video-conferencing Meetings. At the Chair's sole discretion, Members may participate in Council meetings or committee meetings by means of a video-conference, conference telephone, electronic video screen communication, or other similar communications equipment so long as all of the following apply:

(i) Members participating in the meeting, sufficient in number to constitute a Quorum, can communicate with all the other Members concurrently;
(ii) Members participating in the meeting, sufficient in number to constitute a Quorum, are provided with the means of participating in all matters before the Council, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Council; and
(iii) the Executive Committee verifies that: (a) a person communicating by telephone, electronic video screen, or other communications equipment is entitled to participate in the Council meeting as a Member, or by invitation to the Council or otherwise, and (b) all motions, votes, or other actions required to be made by a Member were actually made by a Member and not by someone not entitled to participate as a Member.

H. Minutes. Historical documents and minutes of all proceedings will be maintained by the Behavioral Health Systems Division Staff.

ARTICLE IV.
OFFICERS

A. Officers. The officers of the Council shall be nominated each Spring either verbally at a regular Council meeting or by electronic mail at the discretion of the Chair. Election of Council officers will occur at every May regular Council Meeting as needed and shall hold office for a term of two (2) years with each term beginning July 1st and shall serve until his or her successor shall have been elected or qualified. No officer may serve more than two consecutive terms.

The officers of the Council shall be President/chair ("Chair") and Vice-president/chair ("Vice-chair"). Additionally, members of the Executive Committee shall include elected representatives of the Council: a consumer, a family member, an advocate, a provider, and a Native American representative. Election of these representatives shall be held at the same meeting as the election of the Officers.

B. Vacancies in Office. If any office becomes vacant for any reason, the vacancy shall be filled for the remainder of its term by the Council at its next regular or special meeting.

C. Chair. The Chair shall be the chief executive officer of the Council,
preside over all regular, special and emergency meetings of the Council, and shall
direct and supervise all of the activities and affairs of the Council in a manner
prescribed by the Members and in accordance with these Bylaws. In addition, when
authorized, the president/chair shall execute and deliver all documents in the name of
the Council and establish ad hoc subcommittees as needed. The Chair will be an ex-
officio member of all ad hoc committees and standing statutory subcommittees of the
Council. He/she shall not assume chairmanship of any ad hoc or statutory sub-
committee.

If the elected Chair is unwilling or unable to perform his/her duties for a period
exceeding three (3) consecutive months, the Chair may be removed from office at the
discretion of the Executive Committee. If removed, a new president/chair shall be
elected by the Membership.

D. Vice-chair. In the absence of the president/chair, or in the event of his/her
inability or refusal to act, the Vice-chair shall perform the duties of the Chair, and when
so acting, shall have all the powers of and be subject to all the restrictions upon the
president/chair. Additionally, the Vice-chair shall perform such other duties as from
time to time may be assigned to him/her by the president/chair or by the Council.

If the elected Vice-chair is unwilling or unable to perform his/her duties for a
period exceeding three (3) consecutive months, the Vice-chair shall be removed from
office, and a new Vice-chair elected by the Membership.

ARTICLE V.
COMMITTEES

A. Executive Committee.

(i) Qualifications. The Executive Committee shall be a committee
composed of the following individuals: Chair and Vice-chair of the Council; Chairs or
Co-Chairs of all statutory subcommittees of the Council; and the following
representatives elected by a majority vote of the Council: a consumer, a family member,
an advocate, a provider, and a Native American representative.

(ii) Terms. Each term shall be two (2) years. No Executive Committee
member may serve more than two consecutive terms.

(iii) Duties. The Council shall delegate to the executive committee such
authority, powers and duties, as the Council deems necessary and appropriate to carry
out the activities and purposes of the Council including but not limited to: (a) reviewing
all information and developing the agenda for any Council meeting, including
information pertaining to policy, proposed action items, letters of support and any
necessary recommendations; and (b) requesting the presence of any statutory
subcommittee representative or any other persons relevant to decisions being made at
Council meetings.
(iv) **Quorum and Voting.** Fifty-one percent (51%) of the Executive Committee Membership shall constitute a Quorum. Those members with an excused absence will not be counted for purposes of determining Quorum. Those executive committee members with an excused absence will not be counted for purposes of determining Quorum.

Each executive committee members shall have one vote. The act of a majority of executive committee members present at a meeting at which a Quorum is present shall be the act of the Council, except as otherwise explicitly provided herein. The act of a majority of executive committee members present at a meeting will have validity as long as quorum was present at the beginning of the meeting. Voting by proxy is not permitted.

(v) **Removal.** Members of the executive committee may be removed for cause. "Cause" includes but is not limited to: (i) conduct unbecoming a public official; (ii) neglect of assumed or assigned responsibilities; (iii) failure to attend 3/4 of required meetings in a single year unless excused by the Chair; (iv) change in personal status, which alters the prescribed executive committee composition of the executive committee; or (v) a lack of active leadership.

(vi.) **Resignation.** Any Member may submit in writing to the Chair a written notice of resignation. Upon the Chair's acceptance of such resignation, it shall take effect as of the time specified or, if no time is specified, at the time of its acceptance by the Chair.

(vii.) **Meetings.** Any meeting of the executive committee shall be conducted in accordance with Article III excluding notice requirements in public newspapers.

B. **Statutory Sub-Committees.** Pursuant to the Act, the Council shall establish the following subcommittees: Medicaid (which may also serve as a subcommittee of the Medicaid Advisory Committee ("MAC"); child and adolescent; adult; substance abuse (which shall include DWI issues and shall include representation from local DWI councils); Native American; and any other subcommittee as may be deemed necessary by the Chair to address specific issues.

(i) **Qualifications.** Each of the respective statutory sub-committees shall be comprised of twenty-five (25) voting members (excluding the Chair). Non-voting members may also serve upon formal approval by the Chair. Non-Voting Members may consist of interested parties, technical advisors, and State agency staff members.

Of the voting membership, each must be formally approved by the Chair (membership roster to be approved by the Chair in writing at the regular August meeting of the Council) and reflect the diversity of Council Membership. Non-Council members may become voting members if formally approved by the Chair and recommended by the chair or co-chair of the respective statutory sub-committee. None may be a representative of a statewide entity; or a state agency employee (unless
appointed as a state agency proxy to the Council. Additionally, of the twenty-five available voting seats on each sub-committee, one seat shall be set aside for each Local Collaborative.

(ii) **Sub-Committee Chairmanship.** The respective statutory sub-committees shall be chaired as follows:

(a) medicaid subcommittee – chaired by the secretary of human services or a designee, with a non-state agency Council member, elected by the sub-committee membership, as co-chair.
(b) child and adolescent subcommittee - chaired by the secretary of children, youth and families or a designee, with a non-state agency Council member, elected by the sub-committee membership, as co-chair;
(c) adult subcommittee - chaired by the secretary of health or a designee, with a non-state agency Council member, elected by the sub-committee membership, as co-chair;
(d) substance abuse subcommittee - chaired by the secretary of health or a designee, with a non-state agency Council member, elected by the sub-committee membership, as co-chair; and
(e) Native American subcommittee - chaired by the secretary of Indian affairs or a designee, with a non-state agency Council member, elected by the sub-committee membership, as co-chair.

Any vice-chair of a sub-committee shall be elected by a majority of the voting members of the sub-committee.

(iii) **Terms.** There are no term limits for the secretary chairs or their designees. Each term of the elected co-chairs shall be for one (1) year. No elected co-chair shall serve more than two consecutive terms.

(iv) **Duties.** All statutory sub-committees shall meet at least quarterly. Additionally, the Council shall delegate to the statutory sub-committees such authority, powers and duties, as the Council deems necessary and appropriate to carry out the activities and purposes of the Council.

(v) **Quorum and Voting.** Forty percent (40%) of voting members of any sub-committee shall constitute a Quorum. Those sub-committee members with an excused absence will not be counted for purposes of determining Quorum. If a slot for a local collaborative is not filled, it does not count for determining a Quorum. In the absence of a Quorum the sub-committee can meet and make a recommendation to the full sub-committee for action, or report to the full council without a recommendation.

Each sub-committee voting member shall have one vote. The act of a majority of voting sub-committee members present at a meeting at which a Quorum is present shall be the act of the Sub-Committee, except as otherwise explicitly provided
herein. The act of a majority of voting sub-committee members present at a meeting will have validity as long as Quorum was present at the beginning of the meeting. Voting by proxy is not permitted.

(vi) Removal. Aside from the chair, any member of a statutory sub-committee may be removed for cause. “Cause” includes but is not limited to: (a) conduct unbecoming a public official; (b) neglect of assumed or assigned responsibilities; (c) failure to attend 3/4 of required meetings in a single year unless excused by the Chair of the Council; or (d) a lack of active leadership. Chairs or co-chairs may be removed with or without cause by the Governor.

(vii.) Resignation. Any Member may submit in writing to the Chair a written notice of resignation. Upon the Chair’s acceptance of such resignation, it shall take effect as of the time specified or, if no time is specified, at the time of its acceptance by the Chair.

(viii) Meetings. Any meeting of the statutory sub-committees shall be conducted in accordance with Article III.

C. Other Committees. Other sub-committees as may be established by the Chair of the Council to address specific issues. All sub-committees may include nonvoting members appointed by the Chair for purposes of providing expertise necessary to the charge of the respective sub-committee. All members must be formally approved by the Chair, either verbally or through writing, including but not limited to electronic mail or facsimile.

Either the Council chair shall appoint or, members of ad hoc sub-committees may elect, a chair of the ad hoc sub-committee and all meetings shall be conducted at the discretion of the chair of the ad-hoc sub-committee.

D. Compensation. Members of the Executive or sub-committee shall not receive compensation for their services as Members. The Council may authorize the advance or reimbursement to committee members of actual, reasonable expenses incurred in carrying out his or her duties as committee members pursuant to the Council’s Policies and Procedures.

ARTICLE VI
AMENDMENTS

A. Amendments. The Council shall have the power to make, amend, and repeal the bylaws of the Council by vote of two-thirds of the Members at any meeting of the Council, provided that written notice of the intent to make, amend, or repeal the bylaws, according to the meeting and notice provisions of Article III, shall have been given. Proposed amendments to these Bylaws shall be submitted in writing, including electronic mail or facsimile, to the Members two-weeks in advance of any Council meeting at which they will be considered for adoption.
B. **Validity.** Any legal defect in any part of these Bylaws does not render the balance of the Bylaws invalid.

C. **Governing Law.** In all matters specified in these Bylaws, New Mexico law shall apply.

**ARTICLE VII**

**PARLIAMENTARY AUTHORITY**

A. **Governing Procedure.** The bylaws of the Council are always superior to and supersede the policy and procedures and parliamentary authority of Council. The Chair, Executive Committee, Sub-committees and membership shall always look to the Council bylaws for a ruling on any question, then to the policies and procedures, and finally in *Robert's Rules of Order Newly Revised.*

B. **Parliamentarian.** Either the Chair or Vice-Chair of the Council or any Sub-committee may appoint a Parliamentarian to rule/advise on matters of Parliamentary procedure. The Parliamentarian shall serve at the pleasure of the Chair of the Council or the Chair/co-chair of any sub-committee.

**ARTICLE VIII**

**POLICIES AND PROCEDURES**

The policy and procedures manual contains business and financial policies that apply to the Council and is specifically incorporated by reference herein.

**ARTICLE IX**

**EFFECTIVE DATE**

These Bylaws became effective upon their approval by the Council on February 25, 2009.

[Signature]

Council Chair
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Policies and Procedures
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Policies, Procedures, and By-Laws
For the
New Mexico Behavioral Health Planning Council

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Policies and Procedures
Behavioral Health Planning Council

I. **Introduction.** In 2004, the New Mexico Legislature passed House Bill 271 creating an Act (24-1-27 to 24-1-28 NMSA 1978) (the "Act") relating to Collaborative ("Collaborative") and a Behavioral Health Planning Council ("Council") that was passed and enacted into law. The Council members are appointed by and serve at the discretion of the Governor. Council members are charged with advocating for adults, children and adolescents with serious mental illness or severe emotional neurological and behavioral disorders, including substance abuse and co-occurring disorders; and encouraging and supporting the development of a comprehensive, integrated, community-based behavioral health system of care.

II. **Scope.** The Behavioral Health Planning Council’s Operating procedures encompass and regulate the responsibilities and activities of the Council. It is through this manual that the Council establishes the guidelines within which bylaws, the general Council and committees act to implement policy, advocacy and oversight.

While the Bylaws form the ultimate governing rules for the organization, day-to-day decisions and operations are governed by this set of policies and procedures. The policies reflect the Council’s interpretations of the By-laws (or in many cases, the interpretations by individual committees); procedures define the implementation of those policies. In contrast to the Bylaws, which rarely change and require a Council vote, policies and procedures are living, fluid documents that change fairly often in response to new circumstances, needs or concepts.

III. **Vision.** "To be a potent voice for children, adults and families and the providers that serve them in New Mexico’s customer-centered recovery and resiliency focused, coordinated and quality behavioral health care system.” The BHPC speaks for infants, children, youth, young adults transitioning to adulthood, adults, the elderly and their families, in the on-going implementation of a consumer-driven, fully integrated, outcome-based, state-wide comprehensive system of wrap around behavioral health services.

IV. **Purpose.** The purpose of the Council is to serve as the statewide advisory structure for behavioral health in New Mexico. Specifically, but not limited to, the Council shall advocate, advise, report to, recommend and represent on behavioral health matters of interest to the Governor, the Legislature, the Collaborative, State agencies, and Local Collaboratives. In addition, the BHPC focuses its efforts on system of care development,
implementation and assessment and actively collaborates with all system stakeholders and the general public.

V. **Code of Conduct.** All Members of the Behavioral Health Planning Council shall abide by the terms of the New Mexico Governmental Conduct Act (Chapter 10, Article 16, Section 10-16-1 et seq., NMSA 1978) (See Appendix A, page 20), and to that end shall maintain appropriate and professional internal and external relationships. Members found to be in violation of the New Mexico Governmental Conduct Act or any provision of the Council By-laws may be subject to removal pursuant to Article II, Paragraph F of the Council By-laws.

VI. **Goals.**

A. To develop and maintain an effective partnership with Local Collaboratives;
B. To develop and maintain an effective partnership with Purchasing Collaborative;
C. To develop and maintain an effective partnership with the Statewide Entity;
D. To collaborate with and make recommendations to the Statewide Entity on quality assurance and quality improvement issues, including consumer & family satisfaction and analysis of complaints & grievances;
E. To develop, maintain, review and update annually an Operating Procedures Manual;
F. To operate within the scope of the matrix definitions as provided by the Secretary of Human Services. See Appendix C, VII. Roles and Responsibilities of Membership.

VII. **Roles and Responsibilities of Membership.**

A. **Duties:** The Council shall have all the statutory duties prescribed and proscribed under the Act, including replacing the Governor’s Mental Health Planning Council and acts in accordance with Public Law 102-321 of the Federal Public Health Service Act.

B. **Membership:** Membership to the Council shall be qualified pursuant to Articles I and II of the By-laws, thereby conforming to Public Law 102-321 of the Federal Public Health Service Act. All members shall be appointed by and serve at the pleasure of the Governor. Providers and state agency representatives together may not constitute more than forty-nine percent of the Council membership.

C. **Officers:** Officers of the Council shall be elected pursuant to Article IV of the By-laws, thereby conforming to Public Law 102-321 of the Federal Health Service Act.

July 2009
VIII. Meetings.

A. Types

1. Council
   Members of the Council are expected to attend every, regularly scheduled meeting, special emergency meetings whenever possible. Failure to do so, and in absence of a written excusal by the Chair, may result in a written recommendation to the Governor that the Member be removed from the Council and a new member be appointed. At a minimum, Council Members must attend seventy-five percent of all regular Council meetings (e.g. 3 out of 4 annually) and are expected to actively participate in at least one statutory subcommittee. Attendance at scheduled Council meetings will be monitored quarterly by the Vice-chair.

2. Subcommittees
   a) Executive Committee
   The qualification, composition, terms, duties and voting procedures of the Executive Committee are set forth in Article V, Paragraph A of the Bylaws. The governance and mission of the Executive Committee is as follows:

   The Executive Committee shall be presided by the Chair and Vice-Chair of the BHPC and will manage the operations of the Council and be authorized to act and make decisions on behalf of the Council at the Council’s discretion. The Chair of the Executive Committee shall also preside over all Council meetings.

   Policies that apply across multiple committees or have widespread impact will typically be discussed by the full Council before a policy decision is reached. All issues that need an immediate vote will provide the BHPC an opportunity to vote electronically. An electronic return receipt will be utilized to ensure that members received the electronic ballot.

   It is the responsibility of the Executive Committee to develop and distribute the Agenda to the full Membership at least three days prior to any regular council meeting for Member additions, corrections and/or comments. The Executive Committee will convene at least one week
prior to any regular Council meeting to develop the agenda. The following must be submitted to the Executive Committee forty-eight hours prior to its meeting to insure inclusion and appropriate representation on a Council agenda:

i. Any agenda item requests from the Membership;
ii. All subcommittee reports and agenda item requests; and
iii. Draft Minutes from the prior regular Meeting of the Council.

Finance Committee
The Finance Subcommittee, which reports to the Executive Committee of the BHPC, will:
Develop an annual budget for the BHPC and its statutory subcommittees one month prior to the beginning of every fiscal year. Submit an Income Statement for the BHPC and its statutory subcommittees one month following the first six months, as well as the end of every fiscal year. That Income Statement shall also track against the proposed Budget. Based on the availability of funds, the Finance Committee shall also make quarterly recommendations regarding when, and if, reimbursements to members for stipends, mileage and per diem shall be awarded. The Finance Committee shall be comprised of the Chair of the Finance Committee, the Chair of the BHPC, a representative of the State’s fiscal agent and one representative from each of the Statutory Subcommittees.

Council members, who are not state employees, or otherwise compensated, such as some providers, shall submit a BHPC Reimbursement Form to be reimbursed for verifiable travel and per diem expenses for participation in regularly scheduled Council meetings and one statutory subcommittee meeting.
Allowable reimbursements for meetings are as follows:
Round trip mileage (from home to meeting location);
Stipend – for time spent attending meeting;
Per Diem – for hotel and meals if traveling greater than 100 miles one way from home to meeting location.

The Council will use the New Mexico Department of Finance and Administration (DFA) regulations and the New Mexico Per Diem and Mileage Act as a guideline, as long as funds
are available. All other reimbursements must have written approval of the Executive Committee (examples; block).

b) Statutory Subcommittees
Pursuant to the Act, the Council shall establish the following Subcommittees:

- Medicaid (which may also serve as subcommittee of the Medical Advisory Committee);
- Child and Adolescent;
- Adult;
- Substance Abuse (which shall include DWI issues and shall include representation from local DWI councils);
- Native American;
- Other Subcommittees as may be deemed necessary by the Chair of the Council to address specific issues. (To date, one additional Subcommittee has been created which is the Executive Committee).

1. The number, qualification, composition, terms, duties and voting procedures of the Statutory Subcommittees are set forth in Article V, Paragraph B of the Bylaws. The Subcommittees shall establish a standardized membership roster that identifies members by Council representation (e.g., consumer, family member, etc.), local collaborative and/or other representations. The Subcommittees shall be composed of no more that 25 members of which there will be one voting member for each of the Local Collaboratives. A designated proxy will be permitted when the appointed Local Collaborative representative is unable to attend. Attendance for voting members will be tracked. Missing more that 3 meetings can result in a dismissal as a voting member. (Bylaws, Article 5 A.4 Executive Committee members: "Voting by proxy is not permitted").

2. The governance and mission of each statutory subcommittee is as follows:

- Adult Subcommittee: Chaired by the Secretary of Health (or his/her designee) and Co-Chaired by a non-state agency, who is a member of the Council (elected to that position by the
Subcommittee membership), the Adult Subcommittee shall make recommendations to the Council regarding services for all citizens of New Mexico with behavioral health issues; Medicaid Subcommittee: Chaired by the Secretary of Human Services who is a member of the Council (or his/her designee) and Co-Chaired by a non-state agency who is a member of the Council (elected to that position by the Subcommittee membership), the Medicaid Subcommittee shall educate advise the Council and the Medicaid Advisory Committee on matters relating to behavioral health in New Mexico’s Medicaid program; Children and Adolescent Subcommittee: Chaired by the Secretary of Children, Youth and Families (or his/her designee) and Co-Chaired by a non-state agency, who is a member of the Council (elected to that position by the Subcommittee membership), the Children and Adolescent Subcommittee shall advocate for families/caretakers, infants, children, youth, adolescents and young adults transitioning to adult services with or at-risk emotional, neurobiological and behavioral disorders, including substance abuse and co-occurring disorders. Additionally, the subcommittee intends to:

a. Encourage and support the development of a comprehensive, integrated, culturally competent, high quality and timely statewide children’s system of care founded upon consumer-driven principles of Wraparound, that includes statewide local collaboratives; and

b. Advise and make recommendations for increased and improved behavioral health service for families/caretakers, infants, children, youth, adolescents and young adults transitioning to adult services.
Native American Subcommittee. Chaired by the Secretary of Indian Affairs Department (or his/her designee) and Co-Chaired by a non-state agency, who is a member of the Council (elected to that position by the Subcommittee membership), the Native American Subcommittee shall assure excellence in behavioral health services to all Native American people in New Mexico.

Substance Abuse Subcommittee. Chaired by the Secretary of Health (or his/her designee) and Co-Chaired by a non-state agency, who is a member of the Council (elected to that position by the Subcommittee membership), the Substance Abuse Subcommittee shall:
1. Provide guidance and recommendations in regard to substance abuse/dependence and prevention and treatment services for communities, families and individuals as well as DWI issues;
2. Represent statewide local DWI councils;
3. Assist in the ongoing development of a system that recognizes substance abuse/dependence as a preventable and treatable illness for which high quality services are available.

c) Ad Hoc Subcommittees. An ad hoc committee can be formed by the Chair of the Council or Chair of a statutory subcommittee for a special purpose. An ad hoc committee automatically dissolves upon completion of the specific task. The Chair of any ad hoc subcommittee shall be chaired by a Council member.

B. Format

1. Open Meetings
The State of New Mexico Behavioral Health Planning Council (BHPC) is committed to full transparency and public input in all work of the BHPC. All meetings of the BHPC, Executive Committee, Statutory Subcommittees and all other committees which may be formed, will be conducted in compliance with the New Mexico Open Meetings Act and hereby incorporates by reference the New Mexico Opening Meetings Act §10-15-1 into policy and procedure.

§10-15-1 guarantees the right of public access and input to all proceedings at the State, regional and local levels, is equally applicable to elected and appointed BHPC members, and is

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applicable to any gathering wherein there is both a voting quorum present in person or by electronic means and the BHPC, Executive Committee or one of its statutory subcommittee's will formulate policy, discuss public business or take action.

2. Closed Meetings
Permissible: If the BHPC, Executive Committee or one of its statutory subcommittees wishes to hold a closed meeting, it may do so only to engage in one or more of the following:
   a. Deliberations about the issuance, suspension, renewal or revocation of a BHPC Statement of Support;
   b. Discussion of the hiring, promotion, demotion, dismissal, assignment or resignation of a BHPC member;
   c. The investigation, consideration of complaints or charges against a BHPC member;
   d. Deliberations in connection with an administrative adjudicatory proceeding held by the BHPC;
   e. Discussion of a sole source purchase that exceeds $2,500 or of the contents of competitive sealed proposals during the contract negotiation process;
   f. Meeting with the BHPC’s attorney pertaining to threats of pending litigation in which BHPC is or may become a participant;
   g. Discussion of the purchase, acquisition or disposal of real property.

3. Emergency Meetings
Under limited circumstances, an emergency meeting may be held with little advance notice if:
   a. The BHPC, Executive Committee or one of its statutory subcommittees did not expect the circumstance giving rise to the meeting; and
   b. If the BHPC, Executive Committee does not act immediately, injury or damage to persons or property or substantial financial loss to the BHPC or one of its statutory subcommittees is likely.
C. Process

1. To properly close a portion of an open meeting, the following actions must be taken:
   a. A motion stating the specific provision above authorizing the closed meeting and a reasonably specific description of the subject to be discussed;
   b. A roll call vote on the motion to close the meeting in the open session;
   c. The vote of each member is recorded in the minutes;
   d. Only the matters stated in the motion to close are discussed in the closed session;
   e. Generally, action on an item discussed in a closed session must be taken in an open meeting;
   f. After a closed meeting is completed, a statement affirming that the matters discussed in the closed meeting were limited to those stated in the motion to close is recorded in the minutes.
   g. For closed meetings of the BHPC, Executive Committee or one of its statutory Subcommittees held separate from an open meeting, the above criteria apply except:
   h. Instead of a motion to close, appropriate public notice is provided that includes the specific provision above, authorizing the closed meeting and a reasonably specific description of the subject to be discussed or;
   i. Following the completion of the closed meeting, a statement is entered into the minutes of the next open meeting specifying that the matters discussed in the closed meeting were limited to those stated in the notice of the closed meeting.

D. Procedure

1. Notice
   a. Reasonable advance notice of such meetings must be provided to the public;
   b. The notice complies with deadlines and procedures for meetings as directed by the BHPC Executive Committee;
   c. The notice includes the date, time and location of the meeting to the Purchasing Collaborative website and at least one local newspaper;
   d. The notice is posted which is accessible to the public;
e. Notice has been provided to all FCC licensed broadcast stations and newspapers of general circulation that have provided a written request for notice of meetings.

f. The notice includes an agenda or information on how the public may obtain a copy of the agenda;

g. All Council, subcommittees and other committee meetings and notice thereof shall be held in accordance with Article III of the Bylaws.

2. Occurrence

a. Council: Regular meetings of the Council shall be held at least quarterly (and no more than six times a year) at the time and place fixed at the request of the Chair, or the Executive Committee of the Council in consultation with representatives of the Collaborative. See Bylaws, Article III, Paragraph A-C. Election of officers shall occur at the May, regular meeting. Special and Emergency meetings may be called in accordance with the Bylaws.

b. Statutory Subcommittees: Each statutory subcommittee shall meet at least quarterly.

c. Executive Committee: The Executive Committee shall meet at least quarterly.

d. Ad Hoc Subcommittees: The Ad Hoc Subcommittees shall meet as needed and will be announced via electronic media.

It is the expectation that Council members, although not expected to attend all subcommittee meetings, will review all minutes of the council/subcommittee prior to Council meetings for the purpose of discussion and voting.

The Council shall conduct business in accordance to its bylaws and Roberts Rules of order. The purpose of this is to allow equal opportunity for members to participate and for both support and dissent to occur. It is the responsibility of the chair to insure adherence to the approved agenda timeline. In order to accomplish this, the Chair may set time limitations per speaker.

A call for the question always requires a 2/3 vote of attending members in order to pass.

Electronic Participation: If a member of the BHPC, Executive Committee or one of its statutory subcommittees
participates in a meeting by telephone, it must be pursuant to the by-laws of the BHPC which authorizes its members to:
   a. Participate by conference telephone or similar communications equipment, and;
   b. It must be "difficult or impossible" for that member to attend the meeting in person, and
   c. Each member participating telephonically can be identified when speaking, and;
   d. All participants are able to hear each other at the same time and;
   e. Members of the public attending the meeting are able to hear any member of the BHPC or one of its statutory subcommittees who speaks during the meeting.

E. Protocols

1. Council Packets

   At least three days prior to every, regular Council meeting, the Membership will receive a packet containing:
   a. The Agenda and the Minutes from the prior, regular Council meeting, (because the Statutory Subcommittees meet the day before the Council meeting);
   b. Comments or corrections to the packet should be submitted to the Chair prior to the Council meeting.

F. Agenda

1. The meeting agenda will:
   a. Include a list of specific items the BHPC, Executive Committee or Statutory Subcommittee intends to discuss or transact at the meeting;
   b. Clearly describe agenda items that the BHPC, Executive Committee or Statutory Subcommittee intends to discuss or act on during the meeting in order to give adequate public notice;
   c. Except for an emergency meeting, the agenda is available to the public at least 24 hours before the meeting.

Records are defined as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of
physical form or characteristics, or means of transmission, made or received in connection with the transaction of official business by the BHPC" are available upon request.

The BHPC Open Meetings Policy and Procedure is to be liberally construed while exceptions to the rule are to be narrowly construed. If a BHPC member is unable to determine whether a meeting is subject to the Transparency Rule, he or she should either leave the meeting or ensure that the meeting complies with the Rule. When in doubt, the members of any committee should follow an open-meeting policy.

2. Agenda/Business Items
   Inclusion of Agenda/Business Items for discussion should be done as follows:
   a. Any Council member, agency, organization or individual may bring business matters to the Behavioral Health Planning Council for consideration;
   b. Formal submission of proposed business items on an approved BHPC Business Item Application is required, (Appendix B);
   c. BHPC Business Item Applications must be submitted to:

      Behavioral Health Planning Council
      37 Plaza La Prenza
      Santa Fe, NM 87505
      505/ 476-9286 (office)

      for proper routing to the appropriate BHPC staff or committee.

G. Minutes

1. A detailed summary of proceedings and all votes and recommendations of the Council, Statutory Subcommittees and Executive Committee shall be recorded into the minutes. The representative state staff will record such minutes and will forward drafts to the Executive Committee for its review prior to disbursement to the Membership. If the meeting is open, written minutes are required. Minutes must contain at least:
   a. The date, time and place of the meeting, and;
The names of all members of the BHPC or one of its statutory subcommittees attending the meeting and of those members who are absent, and;
b. The names of all members of the BHPC or one of its statutory subcommittees attending the meeting and of those members who are absent, and;
c. A description of the substance of all proposals considered during the meeting, and;
d. A record of any decisions made and votes taken that shows how each member voted, (voting by secret ballot is not permitted), and;
e. A draft copy of the minutes is prepared within ten working days of the public meeting, and;
f. The minutes are approved, amended or disapproved at the next meeting where a quorum of the BHPC, Executive Committee or one of its statutory subcommittees is present, and;
g. All minutes are made available for public inspection.

IX. Council and Third Parties. In accordance with its statutory and Advisory obligations, the Council shall interact with the following professional partners in the manner prescribed below:

A. Behavioral Health Purchasing Collaborative
The Behavioral Health Purchasing Collaborative ("Collaborative") – Please reference the website at www.BHC.state.nm.us/BHcollaborative, for membership. The Collaborative will provide a knowledge base and training for the Council as needed.

The Council in coordination with the Collaborative will:
1. Assign a representative as a non-voting member of the Collaborative and its workgroups;
2. Prioritize the information needed by the Council and develop a uniform reporting method;
3. Develop a mechanism for obtaining process and outcome data from the Collaborative and the Statewide Entity;
4. Develop and sustain an effective partnership with the Purchasing Collaborative and the Statewide Entity.
B. Statewide Entity

The Statewide Entity has been contracted by the Collaborative to meet the behavioral health service needs and provider network capacity throughout New Mexico by transitioning from current multiple systems to one behavioral health delivery system for all New Mexicans.

1. The Council in coordination with the Collaborative and the Statewide Entity will develop a mechanism for obtaining process and outcome data;

2. The Council will request that a Statewide Entity assign a representative to attend each subcommittee and Council meeting. The Council will request that the Statewide Entity assign a representative to attend all statutory subcommittee meetings;

3. The Council will provide a place on the agenda in order to ensure that the Statewide Entity furnishes regular updates about decisions and activities at all Council meetings, and;

4. The Council will provide recommendations through presentations to the Collaborative.

C. Behavioral Health Service Division

The Behavioral Health Services Division of the Human Services Department ("Staff") shall provide staff support for the Council.

A Council coordinator shall be provided by the Behavioral Health Services Division and shall be a non-voting member of the Council.

Staff support for the subcommittees shall be provided by the Collaborative as needed, which would include the Department of Health, Children Youth and Families and the Human Services Department. Staff members will provide administrative support to the Chair and Co-Chair of the Subcommittees and may be non-voting members. The Chair and Vice-Chair of the Council are persons authorized to request staff services or information from the Collaborative.

X. Amendment. This Manual shall be maintained, reviewed and updated annually by the Executive Committee or an ad-hoc committee of its choosing. Proposed amendments shall be mailed or e-mailed to the membership of the Council two weeks prior to
any meeting where amendments are scheduled to be discussed and adopted. A simple majority of a quorum shall be sufficient to adopt any amendments to the Manual.

XI. **Concerns and Feedback.**

The Behavioral Health Planning Council follows a consistent procedure for recording, triaging, resolving and tracking complaints/grievances, defined as "expressions of dissatisfaction", filed verbally or in writing, by Council Members, Local Collaboratives, person's with mental illness or substance use disorders, their advocates, behavioral health service providers, State agency personnel and other stakeholders, about the BHPC's policies, procedures, practices, actions or personnel. The intent of this policy and procedure is to ensure fair, appropriate and timely resolution of such complaints or grievances. In conjunction with the Chair and Co-Chair of the BHPC, the Executive Committee will review complaints on a case by case basis and determine steps of action to resolve the complaints.

A complaint or grievance can be mailed to:

Behavioral Health Planning Council
37 Plaza La Prenza
Santa Fe, NM 87505
505/ 476-9286 (office)
505/ 699-0234 (cell)
505/ 476-9277 (FAX)
SECTION 3
Legislation
House Bill 271
and
House Bill 259 (Amendment)

HB 271
AN ACT

RELATING TO BEHAVIORAL HEALTH; ESTABLISHING AN INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE AND A BEHAVIORAL HEALTH PLANNING COUNCIL; PRESCRIBING POWERS, DUTIES AND MEMBERSHIP; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PURPOSE.--The purpose of creating a single interagency behavioral health purchasing collaborative is to develop a statewide system of behavioral health care that promotes the behavioral health and well-being of children, individuals and families; encourages a seamless system of care that is accessible and continuously available; and emphasizes prevention and early intervention, resiliency, recovery and rehabilitation.

Section 2. A new section of the Public Health Act is enacted to read:

"BEHAVIORAL HEALTH PLANNING COUNCIL CREATED--POWERS AND DUTIES--MEMBERSHIP.--There is created the "behavioral health planning council".

A. The council shall consist of the following members, all of whom shall be appointed by and serve at the pleasure of the governor:

(1) consumers of behavioral health services and consumers of substance abuse services, as follows:

(a) adults with serious mental illness;
(b) seniors;
(c) family members of adults with serious mental illness and of children with serious emotional or neurobiological disorders;
(d) persons with co-occurring disorders; and
(e) Native American representatives from a pueblo, an Apache tribe, the Navajo Nation and an urban Native American population;

(2) providers;

(3) state agency representation from agencies responsible for:

(a) adult mental health and substance abuse;
(b) children's mental health and substance abuse;
(c) education;
(d) vocational rehabilitation;
(e) criminal justice;
(f) juvenile justice;
(g) housing;
(h) medicaid and social services;
(i) health policy planning;
(j) developmental disabilities planning; and
(k) disabilities issues and advocacy;

(4) such other members as the governor may appoint to ensure appropriate cultural and geographic representation; and
(5) advocates.

B. Providers and state agency representatives together may not constitute more than forty-nine percent of the council membership.

C. The council shall:

(1) advocate for adults, children and adolescents with serious mental illness or severe emotional, neurobiological and behavioral disorders, as well as those with mental illness or emotional problems, including substance abuse and co-occurring disorders;

(2) report annually to the governor and the legislature on the adequacy and allocation of mental health services throughout the state;

(3) encourage and support the development of a comprehensive, integrated, community-based behavioral health system of care, including mental health and substance abuse services, and services for persons with co-occurring disorders;

(4) advise state agencies responsible for behavioral health services for children and adults, as those agencies are charged in Section 9-7-6.4 NMSA 1978;

(5) meet regularly and at the call of the chair, who shall be selected by the council membership from among its members;

(6) establish subcommittees, to meet at least quarterly, as follows:

(a) a medicaid subcommittee, chaired by the secretary of human services or a designee, which may also serve as a subcommittee of the medicaid advisory committee;

(b) a child and adolescent subcommittee, chaired by the secretary of children, youth and families or a designee;

(c) an adult subcommittee, chaired by the secretary of health or a designee

(d) a substance abuse subcommittee, chaired by the secretary of health or a designee, which shall include DWI issues and shall include representation from local DWI councils; and

(e) other subcommittees as may be established by the chair of the council to address specific issues. All subcommittees may include nonvoting members appointed by the chair for purposes of providing expertise necessary to the charge of the respective subcommittee;

(7) review and make recommendations for the comprehensive mental health state block grant and the substance abuse block grant applications, the state plan for medicaid services and any other plan or application for federal or foundation funding for behavioral health services; and

(8) replace the governor's mental health planning council and act in accordance with Public Law 102-321 of the federal Public Health Service Act."

Section 3. Section 9-2A-8 NMSA 1978 (being Laws 1992, Chapter 57, Section 8, as amended) is amended to read:

"9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.—In addition to other duties provided by law or assigned to the department by the governor, the department shall:

A. develop priorities for department services and resources based on state policy and national best-practice standards and local considerations and priorities;

B. strengthen collaboration and coordination in state and local services for children, youth and families by integrating critical functions as appropriate, including service delivery and contracting for services across divisions and related agencies;

C. develop and maintain a statewide database, including client tracking of services for children, youth and families

D. develop standards of service within the department that focus on prevention, monitoring and outcomes;
E. analyze policies of other departments that affect children, youth and families to encourage common contracting procedures, common service definitions and a uniform system of access;

F. enact regulations to control disposition and placement of children under the Children's Code, including regulations to limit or prohibit the out-of-state placement of children, including those who have developmental disabilities or emotional, neurobiological or behavioral disorders, when in-state alternatives are available;

G. develop reimbursement criteria for licensed child care centers and licensed home providers establishing that accreditation by a department-approved national accrediting body is sufficient qualification for the child care center or home provider to receive the highest reimbursement rate paid by the department;

H. assume and implement responsibility for children's mental health and substance abuse services in the state, coordinating with the human services department and the department of health;

I. assume and implement the lead responsibility among all departments for domestic violence services;

J. implement prevention and early intervention as a departmental focus;

K. conduct biennial assessments of service gaps and needs and establish outcome measurements to address those service gaps and needs, including recommendations from the governor's children's cabinet and the children, youth and families advisory committee; and

L. ensure that behavioral health services provided, including mental health and substance abuse services for children, adolescents and their families, shall be in compliance with requirements of Section 9-7-6.4 NMSA 1978."

Section 4. Section 9-3-5 NMSA 1978 (being Laws 1977, Chapter 257, Section 6, as amended) is amended to read:

"9-3-5. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary of corrections is responsible to the governor for the operation of the corrections department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary of the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Corrections Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereon;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;
(7) provide courses of instruction and practical training for employees of
the department and other persons involved in the administration of programs with the objective
of improving the operations and efficiency of administration;
(8) prepare an annual budget of the department;
(9) provide cooperation, at the request of heads of administratively
attached agencies, in order to:
   (a) minimize or eliminate duplication of services and jurisdictional
   conflicts;
   (b) coordinate activities and resolve problems of mutual concern;
and
   (c) resolve by agreement the manner and extent to which the
department shall provide budgeting, record-keeping and related clerical assistance to
administratively attached agencies;
(10) appoint, with the governor's consent, a "director" for each division.
These appointed positions are exempt from the provisions of the Personnel Act. Persons
appointed to these positions shall serve at the pleasure of the secretary;
(11) give bond as provided in the Surety Bond Act. The department shall
pay the costs of the bonds; and
(12) require performance bonds of such department employees and
officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay
the costs of the bonds.
C. The secretary may apply for and receive, with the governor's approval, in the
name of the department any public or private funds, including United States government funds,
available to the department to carry out its programs, duties or services.
D. Where functions of departments overlap or a function assigned to one
department could better be performed by another department, a secretary may recommend
appropriate legislation to the next session of the legislature for its approval.
E. The secretary may make and adopt such reasonable and procedural rules and
regulations as may be necessary to carry out the duties of department and its divisions. No rule
or regulation promulgated by the director of any division in carrying out the functions and duties
of the division shall be effective until approved by the secretary. Unless otherwise provided by
statute, no regulation affecting any person or agency outside the department shall be adopted,
amended or repealed without a public hearing on the proposed action before the secretary or a
hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise
permitted by statute. Notice of the subject matter of the regulation, the action proposed to be
taken, the time and place of the hearing, the manner in which interested persons may present
their views and the method by which copies of the proposed regulation, proposed amendment
or repeal of an existing regulation may be obtained shall be published once at least thirty days
prior to the hearing date in a newspaper of general circulation and mailed at least thirty days
prior to the hearing date to all persons who have made a written request for advance notice of
hearing. All rules and regulations shall be filed in accordance with the State Rules Act.
F. Behavioral health services, including mental health and substance abuse
services, provided by the department for persons under the department's supervision shall be in
compliance with the requirements of Section 9-7-6.4 NMSA 1978."

Section 5. Section 9-7-3 NMSA 1978 (being Laws 1977, Chapter 253, Section 3, as
amended) is amended to read:
"9-7-3. PURPOSE.--The purpose of the Department of Health Act is to establish a
single, unified department to administer the laws and exercise the functions relating to health
formerly administered and exercised by organizational units of state government, including the
state health agency, the scientific laboratory system and an appropriate allocation of
administrative support services of the health and social services department and the hospital and institutions department. All public health and scientific laboratory functions formerly performed by the health and environment department shall be performed by the department. Behavioral health services, including mental health and substance abuse services, provided by or through the department shall be subject to the direction of the secretary and the provisions of Section 9-7-6.4 NMSA 1978.

Section 6. Section 9-7-6.1 NMSA 1978 (being Laws 1999, Chapter 270, Section 1) is amended to read:

"9-7-6.1. BEHAVIORAL HEALTH SERVICES--POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH.--Subject to appropriation, the department shall:
A. contract for behavioral health treatment and support services, including mental health, alcoholism and other substance abuse services;
B. establish standards for the delivery of behavioral health services, including quality management and improvement, performance measures, accessibility and availability of services, utilization management, credentialing and recredentialing, rights and responsibilities of providers, preventive behavioral health services, clinical treatment and evaluation and the documentation and confidentiality of client records;
C. ensure that all behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978;
D. assume responsibility for and implement adult mental health and substance abuse services in the state coordinating with the human services department and the children, youth and families department;
E. establish criteria for determining individual eligibility for behavioral health services; and
F. maintain a management information system in accordance with standards for reporting clinical and fiscal information."

Section 7. Section 9-7-6.2 NMSA 1978 (being Laws 1999, Chapter 270, Section 2) is amended to read:

"9-7-6.2. CONTRACT ELIGIBILITY.--Subject to the provisions of Section 9-7-6.4 NMSA 1978, the department may enter into contracts for behavioral health services with municipalities, counties, state institutions of higher education, tribal or pueblo governments or organizations, regional provider service networks or private nonprofit or for-profit corporations authorized to do business in New Mexico."

Section 8. A new section of the Department of Health Act, Section 9-7-6.4 NMSA 1978, is enacted to read:

"9-7-6.4. INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE.--A. There is created the "interagency behavioral health purchasing collaborative", consisting of the secretaries of human services, health, corrections, children, youth and families, finance and administration, labor, public education and transportation; the directors of the state agency on aging, the administrative office of the courts, the New Mexico office of Indian affairs, the New Mexico mortgage finance authority, the governor's committee on concerns of the handicapped, the developmental disabilities planning council, the vocational rehabilitation division the public education department and the New Mexico health policy commission; and the governor's health policy coordinator, or their designees. The collaborative shall be chaired by the secretary of human services with the respective secretaries of health and children, youth and families alternating annually as co-chairs."
B. The collaborative shall meet regularly and at the call of either co-chair and shall:

(1) identify behavioral health needs statewide, with an emphasis on that hiatus between needs and services set forth in the department of health’s gap analysis and in on-going needs assessments, and develop a master plan for statewide delivery of services;

(2) give special attention to regional differences, including cultural, rural, frontier, urban and border issues;

(3) inventory all expenditures for behavioral health, including mental health and substance abuse;

(4) plan, design and direct a statewide behavioral health system, ensuring both availability of services and efficient use of all behavioral health funding, taking into consideration funding appropriated to specific affected departments; and

(5) contract for operation of one or more behavioral health entities to ensure availability of services throughout the state.

C. The plan for delivery of behavioral health services shall include specific service plans to address the needs of infants, children, adolescents, adults and seniors as well as to address workforce development and retention and quality improvement issues. The plan shall be revised every two years and shall be adopted by the department of health as part of the statewide health plan.

D. The plan shall take the following principles into consideration, to the extent practicable and within available resources:

(1) services should be individually centered and family focused based on principles of individual capacity for recovery and resiliency;

(2) services should be delivered in a culturally responsive manner in a home or community-based setting, where possible;

(3) services should be delivered in the least restrictive and most appropriate manner;

(4) individualized service planning and case management should take into consideration individual and family circumstances, abilities and strengths and be accomplished in consultation with appropriate family, caregivers and other persons critical to the individual’s life and well-being;

(5) services should be coordinated, accessible, accountable and of high quality;

(6) services should be directed by the individual or family served to the extent possible;

(7) services may be consumer or family provided, as defined by the collaborative;

(8) services should include behavioral health promotion, prevention, early intervention, treatment and community support; and

(9) services should consider regional differences, including cultural, rural, frontier, urban and border issues.

E. The collaborative shall seek and consider suggestions of Native American representatives from Indian nations, tribes, pueblos and the urban Indian population, located wholly or partially within New Mexico, in the development of the plan for delivery of behavioral health services.

Section 9. Section 9-7-11.2 NMSA 1978 (being Laws 1991, Chapter 139, Section 2, as amended) is amended to read:

"9-7-11.2. NEW MEXICO HEALTH POLICY COMMISSION CREATED--COMPOSITION--DUTIES.--
A. There is created the "New Mexico health policy commission", which is administratively attached to the department of finance and administration.

B. The New Mexico health policy commission shall consist of eight members appointed by the governor with the advice and consent of the senate to reflect the ethnic, economic, geographic and professional diversity of the state. No member of the commission shall have a pecuniary or fiduciary interest in the health services industry for three years preceding his appointment to the commission. Two members shall be appointed for one-year terms, three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and all subsequent appointments shall be made for three-year terms.

C. The New Mexico health policy commission shall meet at the call of the chairman and shall meet not less than quarterly. The chairman shall be elected from among the members of the commission. Members of the New Mexico health policy commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act.

D. The New Mexico health policy commission shall establish task forces as needed to make recommendations to the commission on various health issues. Task force members may include individuals who have expertise or a pecuniary or fiduciary interest in the health services industry. Voting members of a task force may receive mileage expenses if they:

(1) are members who represent consumer interests;
(2) are individuals who were not appointed to represent the views of the organization or agency for which they work; or
(3) represent an organization that has a policy of not reimbursing travel expenses of employees or representatives for travel to meetings.

E. The New Mexico health policy commission shall:

(1) develop a plan for and monitor the implementation of the state's health policy;
(2) obtain and evaluate information from a broad spectrum of New Mexico's society to develop and monitor the implementation of the state's health policy;
(3) obtain and evaluate information relating to factors that affect the availability and accessibility of health services and health care personnel in the public and private sectors;
(4) perform needs assessments on health personnel, health education and recruitment and retention and make recommendations regarding the training, recruitment, placement and retention of health professionals in underserved areas of the state;
(5) prepare and publish an annual report describing the progress in addressing the state’s health policy and planning issues. The report shall include a work plan of goals and objectives for addressing the state's health policy and planning issues in the upcoming year;
(6) distribute the annual report to the governor, appropriate state agencies and interim legislative committees and interested parties;
(7) establish a process to prioritize recommendations on program development, resource allocation and proposed legislation;
(8) provide information and analysis on health issues;
(9) serve as a catalyst and synthesizer of health policy in the public and private sectors;
(10) respond to requests by the executive and legislative branches of government; and
(11) ensure that any behavioral health projects, including those relating to mental health and substance abuse, are conducted in compliance with the requirements of Section 9-7-6.4 NMSA 1978."
Section 10. Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

1. except as otherwise provided in the Human Services Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

2. delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

3. organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

4. within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

5. take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

6. conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

7. provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

8. prepare an annual budget of the department;

9. provide cooperation, at the request of heads of administratively attached agencies, in order to:

   a. minimize or eliminate duplication of services and jurisdictional conflicts;

   b. coordinate activities and resolve problems of mutual concern;

and

   c. resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

10. appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary, except as provided in Section 9-8-9 NMSA 1978;

11. give bond in the penal sum of twenty-five thousand dollars ($25,000) and require directors to each give bond in the penal sum of ten thousand dollars ($10,000) conditioned upon the faithful performance of duties as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

12. require performance bonds of such department employees and officers as he deems necessary as provided in the Surety Bond Act. The department shall pay the costs of these bonds.
C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. In the event the secretary anticipates that adoption, amendment or repeal of a rule or regulation will be required by a cancellation, reduction or suspension of federal funds or order by a court of competent jurisdiction:

(1) if the secretary is notified by appropriate federal authorities at least sixty days prior to the effective date of such cancellation, reduction or termination of federal funds, the department is required to promulgate regulations through the public hearing process to be effective on the date mandated by the appropriate federal authority; or

(2) if the secretary is notified by appropriate federal authorities or court order less than sixty days prior to the effective date of such cancellation, reduction or suspension of federal funds or court order, the department is authorized without a public hearing to promulgate interim rules or regulations effective for a period not to exceed ninety days. Interim regulations shall not be promulgated without first providing a written notice twenty days in advance to providers of medical or behavioral health services and beneficiaries of department programs. At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

G. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act, interim rulemaking shall be conducted pursuant to Subsection E of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the department shall also send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules and regulations promulgated pursuant to the provisions of this subsection shall be in effect not less than five days after the public hearing;

(4) rules and regulations promulgated pursuant to the provisions of this subsection shall not be in effect for more than ninety days; and

(5) if final rules and regulations are necessary to replace the interim rules and regulations, the department shall give notice of intent to promulgate final rules and
regulations at the time of notice herein. The final rules and regulations shall be promulgated not more than forty-five days after the public hearing and filed in accordance with the State Rules Act.

H. At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

I. The secretary shall ensure that any behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

J. All rules and regulations shall be filed in accordance with the State Rules Act."

Section 11. Section 22-14-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 197, as amended by Laws 1993, Chapter 226, Section 31 and also by Laws 1993, Chapter 229, Section 2) is amended to read:

"22-14-8. VOCATIONAL REHABILITATION DIVISION--POWERS-- DUTIES.--The vocational rehabilitation division of the public education department shall:
A. provide vocational rehabilitation to qualified individuals;
B. administer any state plan or federal aid funds relating to vocational rehabilitation;
C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;
D. enter into reciprocal agreements with other states to provide vocational rehabilitation;
E. accept gifts or grants to be used for vocational rehabilitation;
F. enforce regulations for the administration of laws relating to vocational rehabilitation;
G. conduct research and compile statistics relating to vocational rehabilitation; and
H. ensure that behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978."

Section 12. Section 34-9-3 NMSA 1978 (being Laws 1959, Chapter 162, Section 3, as amended) is amended to read:

"34-9-3. DIRECTOR--DUTIES.--The director of the administrative office of the courts shall, under the supervision and direction of the supreme court:
A. supervise all matters relating to administration of the courts;
B. examine fiscal matters and the state of the dockets of the courts, secure information as to the courts' need of assistance and prepare and transmit to the supreme court statistical data and reports as to the business of the courts;
C. submit to the supreme court and to the legislature by January 30 of each year a report of the activities of the administrative office of the courts and of the state of business of the courts, including the statistical data submitted to the supreme court pursuant to Subsection B of this section, and the director's recommendations. This report is a public document;
D. deal with the problems of finance of those courts supported by legislative appropriation and be concerned with adequate but economical financing of each of these courts and the equitable distribution of available funds among them. For this purpose, the director shall receive, adjust and approve proposed budgets submitted by these courts prior to submission of the budgets to the state budget division of the department of finance and administration for inclusion in the executive budget. The district courts of all counties within a judicial district shall
be included within a single budget. Budget proposals shall be submitted by the courts at the time and in the form prescribed by the director;
E. perform other duties in aid of the administration of justice and the administration and dispatch of the business of the courts as directed by the supreme court. The courts shall comply with all requests of the director for information; and
F. encourage that any behavioral health services, including mental health and substance abuse services, funded, provided, contracted for or approved by the office be in compliance with the requirements of Section 9-7-6.4 NMSA 1978."

Section 13. A new section of the Mortgage Finance Authority Act is enacted to read:
"DUTIES--BEHAVIORAL HEALTH.--The authority shall:
A. appoint a representative to both the behavioral health planning council and the interagency behavioral health purchasing collaborative; and
B. ensure that any behavioral health services, including mental health and substance abuse services, and any housing provided for consumers of those services, that are provided, contracted for or approved by the authority are in compliance with requirements of Section 9-7-6.4 NMSA 1978."

Section 14. Section 67-3-8 NMSA 1978 (being Laws 1967, Chapter 226, Section 7, as amended) is amended to read:
"67-3-8. POWERS AND DUTIES OF SECRETARY.--The secretary shall:
A. serve as the chief staff officer of the state transportation commission and shall be responsible to the commission for the operations and management of the work of the department;
B. organize the department in such a manner as to properly conduct the work of the department;
C. establish six highway construction districts with the approval of the state transportation commission. The secretary shall designate a district engineer in each construction district to supervise and manage the operations of the district. The district engineer shall be a professional engineer. The authority and responsibility for the actual construction for all construction projects within the district shall be delegated to the district engineer. District engineers shall attend state transportation commission meetings;
D. in accordance with the provisions of the Personnel Act, employ such assistants and employees as may be required for the efficient operation of the department, each of whom shall possess all the qualifications that may be prescribed for such position; provided that, notwithstanding the provisions of the Personnel Act, no more than five division directors shall be covered by and subject to the Personnel Act;
E. observe, administer and enforce the provisions of law now existing or hereafter enacted that pertain to the state highways, the state transportation commission or the department; and
F. ensure that any behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978."

Section 15. STATE AGENCY ON AGING--SUCCESSOR AGENCY--DUTY.--The state agency on aging, or a successor agency, shall appoint the secretary or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that any behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved, are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.
Section 16. NEW MEXICO OFFICE OF INDIAN AFFAIRS--SUCCESSOR AGENCY--DUTY.--The New Mexico office of Indian affairs, or a successor agency, shall appoint the secretary or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that all behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved by the commission, are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

Section 17. PUBLIC EDUCATION DEPARTMENT.--The public education department shall appoint the secretary of public education or the secretary's designee to serve as a member of the interagency behavioral health purchasing collaborative and shall ensure that any behavioral health services, including mental health and substance abuse services funded, provided, contracted for or approved, are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

Section 18. REPEAL.--Section 24-1-26 NMSA 1978 (being Section 1) is repealed. Laws 2003, Chapter 59 HB 271
HB 259 (Amendment)
AN ACT

RELATING TO BEHAVIORAL HEALTH; PROVIDING FOR A NATIVE AMERICAN SUBCOMMITTEE; AMENDING A SECTION OF NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-1-28 NMSA 1978 (being Laws 2004, Chapter 46, Section 2) is amended to read:

"24-1-28. BEHAVIORAL HEALTH PLANNING COUNCIL CREATED--POWERS AND DUTIES--MEMBERSHIP.--There is created the "behavioral health planning council".

A. The council shall consist of the following members, all of whom shall be appointed by and serve at the pleasure of the governor:

(1) consumers of behavioral health services and consumers of substance abuse services, as follows:

(a) adults with serious mental illness;
(b) seniors;
(c) family members of adults with serious mental illness and of children with serious emotional or neurobiological disorders; and
(d) persons with co-occurring disorders;

(2) Native American representatives from a pueblo, an Apache tribe, the Navajo Nation and an urban Native American population;

(3) providers;

(4) state agency representation from agencies responsible for:

(a) adult mental health and substance abuse;
(b) children's mental health and substance abuse;
(c) education;
(d) vocational rehabilitation;
(e) criminal justice;
(f) juvenile justice;
(g) housing;
(h) medicaid and social services;
(i) health policy planning;
(j) developmental disabilities planning; and
(k) disabilities issues and advocacy;

(5) such other members as the governor may appoint to ensure appropriate cultural and geographic representation; and

(6) advocates.

B. Providers and state agency representatives together may not constitute more than forty-nine percent of the council membership.

C. The council shall:

(1) advocate for adults, children and adolescents with serious mental illness or severe emotional, neurobiological and behavioral disorders, as well as those with mental illness or emotional problems, including substance abuse and co-occurring disorders;

(2) report annually to the governor and the legislature on the adequacy and allocation of mental health services throughout the state;

(3) encourage and support the development of a comprehensive, integrated, community-based behavioral health system of care, including mental health and substance abuse services, and services for persons with co-occurring disorders;
(4) advise state agencies responsible for behavioral health services for children and adults, as those agencies are charged in Section 9-7-6.4 NMSA 1978;
   (5) meet regularly and at the call of the chair, who shall be selected by the council membership from among its members;
   (6) establish subcommittees, to meet at least quarterly, as follows:
       (a) a medicaid subcommittee, chaired by the secretary of human services or a designee, which may also serve as a subcommittee of the medicaid advisory committee;
       (b) a child and adolescent subcommittee, chaired by the secretary of children, youth and families or a designee;
       (c) an adult subcommittee, chaired by the secretary of health or a designee;
       (d) a substance abuse subcommittee, chaired by the secretary of health or a designee, which shall include DWI issues and shall include representation from local DWI councils;
       (e) a Native American subcommittee, chaired by the secretary of Indian affairs or a designee; and
       (f) other subcommittees as may be established by the chair of the council to address specific issues. All subcommittees may include nonvoting members appointed by the chair for purposes of providing expertise necessary to the charge of the respective subcommittee;
   (7) review and make recommendations for the comprehensive mental health state block grant and the substance abuse block grant applications, the state plan for medicaid services and any other plan or application for federal or foundation funding for behavioral health services; and
   (8) replace the governor's mental health planning council and act in accordance with Public Law 102-321 of the federal Public Health Service Act." HB 259
SECTION 4
Block Grant Oversight
Title XIX -- Block Grants

Part B -- Block Grants Regarding Mental Health and Substance Abuse

Subpart I -- Block Grants for Community Mental Health Services

Sec. 1911  Formula grants to States

(a) In general -- For the purpose described in subsection (b) of this section, the Secretary, acting through the Director of the Center for Mental Health Services, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 1918 of this title. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 1917 of this title.

(b) Purpose of grants -- A funding agreement for a grant under subsection (a) of this section is that, subject to section 1916 of this title, the State involved will expend the grant only for the purpose of -

(1) carrying out the plan submitted under section 1912(a) of this title by the State for the fiscal year involved;
(2) evaluating programs and services carried out under the plan; and
(3) planning, administration, and educational activities related to providing services under the plan.

Sec. 1912  State plan for comprehensive community mental health services for certain individuals

(a) In general -- The Secretary may make a grant under section 1911 only if -

(1) the State involved submits to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance;
(2) the plan meets the criteria specified in subsection (b) of this section; and
(3) the plan is approved by the Secretary.

(b) Criteria for plan -- With respect to the provision of comprehensive community mental health services to individuals who are either adults with a serious mental illness or children with a serious emotional disturbance, the criteria referred to in subsection (a) of this section regarding a plan are as follows:

(1) COMPREHENSIVE COMMUNITY-BASED MENTAL HEALTH SYSTEMS- The plan provides for an organized community-based system of care for individuals with mental illness and describes available services and resources in a comprehensive system of care, including services for dually diagnosed individuals. The description of the system of care shall include health and mental health services, rehabilitation services, employment services, housing services, educational services,
substance abuse services, medical and dental care, and other support services to be provided to individuals with Federal, State and local public and private resources to enable such individuals to function outside of inpatient or residential institutions to the maximum extent of their capabilities, including services to be provided by local school systems under the Individuals with Disabilities Education Act. The plan shall include a separate description of case management services and provide for activities leading to reduction of hospitalization.

(2) MENTAL HEALTH SYSTEM DATA AND EPIDEMIOLOGY- The plan contains an estimate of the incidence and prevalence in the State of serious mental illness among adults and serious emotional disturbance among children and presents quantitative targets to be achieved in the implementation of the system described in paragraph (1).

(3) CHILDREN'S SERVICES- In the case of children with serious emotional disturbance, the plan—

(A) subject to subparagraph (B), provides for a system of integrated social services, educational services, juvenile services, and substance abuse services that, together with health and mental health services, will be provided in order for such children to receive care appropriate for their multiple needs (such system to include services provided under the Individuals with Disabilities Education Act);

(B) provides that the grant under section 1911 for the fiscal year involved will not be expended to provide any service under such system other than comprehensive community mental health services; and

(C) provides for the establishment of a defined geographic area for the provision of the services of such system.

(4) TARGETED SERVICES TO RURAL AND HOMELESS POPULATIONS- The plan describes the State's outreach to and services for individuals who are homeless and how community-based services will be provided to individuals residing in rural areas.

(5) MANAGEMENT SYSTEMS- The plan describes the financial resources, staffing and training for mental health providers that is necessary to implement the plan, and provides for the training of providers of emergency health services regarding mental health. The plan further describes the manner in which the State intends to expend the grant under section 1911 for the fiscal year involved Except as provided for in paragraph (3), the State plan shall contain the information required under this subsection with respect to both adults with serious mental illness and children with serious emotional disturbance.

(c) Definitions regarding mental illness and emotional disturbance; methods for estimate of incidence and prevalence —

(1) Establishment by Secretary of definitions; dissemination — For purposes of this subpart, the Secretary shall establish definitions for the terms "adults with a serious mental illness" and "children with a serious emotional disturbance". The Secretary shall disseminate the definitions to the States.

(2) Standardized methods — The Secretary shall establish standardized methods
for making the estimates required in subsection (b)(11) of this section with respect to a State. A funding agreement for a grant under section 1911 of this title for the State is that the State will utilize such methods in making the estimates.

(3) Date certain for compliance by Secretary -- Not later than 90 days after July 10, 1992, the Secretary shall establish the definitions described in paragraph (1), shall begin dissemination of the definitions to the States, and shall establish the standardized methods described in paragraph (2).

(d) Requirement of implementation of plan -- (1) Complete implementation -- Except as provided in paragraph (2), in making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that a State has not completely implemented the plan, the Secretary shall reduce the amount of the allotment under section 1911 for the State for the fiscal year involved by an amount equal to 10 percent of the amount determined under section 1917 for the State for the fiscal year.

(2) Substantial implementation and good faith effort regarding fiscal year 1993 --

(A) In making a grant under section 1911 to a State for fiscal year 1993, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that the State has not substantially implemented the plan, the Secretary shall, subject to subparagraph (B), reduce the amount of the allotment under section 1911 for the State for such fiscal year by an amount equal to 10 percent of the amount determined under section 1917 of this title for the State for the fiscal year.

(B) In carrying out subparagraph (A), if the Secretary determines that the State is making a good faith effort to implement the plan required in subsection (a) of this section, the Secretary may make a reduction under such subparagraph in an amount that is less than the amount specified in such subparagraph, except that the reduction may not be made in an amount that is less than 5 percent of the amount determined under section 1917 for the State for fiscal year 1993.

Sec. 1913 Certain agreements

(a) Allocation for systems of integrated services for children -- (1) In general -- With respect to children with a serious emotional disturbance, a funding agreement for a grant under section 1911 is that -

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 10 percent of the grant to increase (relative to fiscal year 1992) funding for the system of integrated services described in section 1912(b)(9) of this title;

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 10 percent of the grant to increase (relative to fiscal year 1993) funding for such system; and
(C) in the case of a grant for any subsequent fiscal year, the State will expend for such system not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver -- (A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of comprehensive community mental health services for children with a serious emotional disturbance, as indicated by a comparison of the number of such children for which such services are sought with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(b) Providers of services -- A funding agreement for a grant under section 1911 for a State is that, with respect to the plan submitted under section 1912(a) of this title for the fiscal year involved -

(1) services under the plan will be provided only through appropriate, qualified community programs (which may include community mental health centers, child mental-health programs, psychosocial rehabilitation programs, mental health peer-support programs, and mental-health primary consumer-directed programs); and

(2) services under the plan will be provided through community mental health centers only if the centers meet the criteria specified in subsection (c) of this section.

(c) Criteria for mental health centers -- The criteria referred to in subsection (b)(2) of this section regarding community mental health centers are as follows:

(1) With respect to mental health services, the centers provide services as follows:

(A) Services principally to individuals residing in a defined geographic area (hereafter in this subsection referred to as a "service area").

(B) Outpatient services, including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service areas of the centers who have been discharged from inpatient treatment at a mental health facility.

(C) 24-hour-a-day emergency care services.

(D) Day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(E) Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission.

(2) The mental health services of the centers are provided, within the limits of the capacities of the centers, to any individual residing or employed in the service area of the center regardless of ability to pay for such services.

(3) The mental health services of the centers are available and accessible promptly, as appropriate and in a manner which preserves human dignity and assures continuity and high quality care.
Sec. 1914  State mental health planning council

(a) In general — A funding agreement for a grant under section 1911 is that the State involved will establish and maintain a State mental health planning council in accordance with the conditions described in this section.

(b) Duties — A condition under subsection (a) of this section for a Council is that the duties of the Council are -

(1) to review plans provided to the Council pursuant to section 1915(a) by the State involved and to submit to the State any recommendations of the Council for modifications to the plans;

(2) to serve as an advocate for adults with a serious mental illness, children with a severe emotional disturbance, and other individuals with mental illnesses or emotional problems; and

(3) to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(c) Membership — (1) In general — A condition under subsection (a) of this section for a Council is that the Council be composed of residents of the State, including representatives of -

(A) the principal State agencies with respect to -

(i) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(ii) the development of the plan submitted pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(B) public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

(C) adults with serious mental illnesses who are receiving (or have received) mental health services; and

(D) the families of such adults or families of children with emotional disturbance.

(2) Certain requirements — A condition under subsection (a) of this section for a Council is that -

(A) with respect to the membership of the Council, the ratio of parents of children with a serious emotional disturbance to other members of the Council is sufficient to provide adequate representation of such children in the deliberations of the Council; and

(B) not less than 50 percent of the members of the Council are individuals who are not State employees or providers of mental health services.

(d) "Council" defined — For purposes of this section, the term "Council" means a State mental health planning council.

Sec. 1915  Additional provisions

(a) Review of State plan by mental health planning council -- The Secretary may make a
grant under section 1911 to a State only if:

(1) the plan submitted under section 1912(a) with respect to the grant and the report of the State under section 1942(a) concerning the preceding fiscal year has been reviewed by the State mental health planning council under section 1914; and

(2) the State submits to the Secretary any recommendations received by the State from such council for modifications to the plan (without regard to whether the State has made the recommended modifications) and any comments concerning the annual report.

(b) Maintenance of effort regarding State expenditures for mental health—(1) In general—A funding agreement for a grant under section 1911 is that the State involved will maintain State expenditures for community mental health services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(2) EXCLUSION OF CERTAIN FUNDS—The Secretary may exclude from the aggregate State expenditures under subsection (a), funds appropriated to the principle agency for authorized activities which are of a non-recurring nature and for a specific purpose.

(3) Waiver—The Secretary may, upon the request of a State, waive the requirement established in paragraph (1) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(4) Noncompliance by State—(A) In making a grant under section 1911 to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with the agreement made under paragraph (1). If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 1911 for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(B) The Secretary may make a grant under section 1911 for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in subparagraph (A).

Sec. 1916 Restrictions on use of payments

(a) In general—A funding agreement for a grant under section 1911 is that the State involved will not expend the grant—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of health services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.
(b) Limitation on administrative expenses -- A funding agreement for a grant under section 1911 is that the State involved will not expend more than 5 percent of the grant for administrative expenses with respect to the grant.

Sec. 1917 Application for grant

(a) In general -- For purposes of section 1911, an application for a grant under such section for a fiscal year in accordance with this section if, subject to subsection (b) of this section

(1) the plan is received by the Secretary not later than September 1 of the fiscal year prior to the fiscal year for which a State is seeking funds, and the report from the previous fiscal year as required under section 1941 is received by December 1 of the fiscal year of the grant;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the plan required in section 300x-1(a) of this title, the information required in section 1915(b)(3)(B) of this title, and the report required in section 1942(a);

(6) the application contains recommendations in compliance with section 1915(a), or if no such recommendations are received by the State, the application otherwise demonstrates compliance with such section; and

(7) the application (including the plan under section 1912(a)) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) Waivers regarding certain territories -- In the case of any territory of the United States except Puerto Rico of this title, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 1916.

Sec. 1918 Determination of amount of allotment

(a) States -- (1) Determination under formula -- Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 1911 for a State for a fiscal year in accordance with the following formula:
(2) Determination of term "A" — For purposes of paragraph (1), the term "A" means the difference between -
(A) the amount appropriated under section 1920(a) of this title for allotments under section 300x of this title for the fiscal year involved; and
(B) an amount equal to 1.5 percent of the amount referred to in subparagraph (A).

(3) Determination of term "U" — For purposes of paragraph (1), the term "U" means the sum of the respective terms "X" determined for the States under paragraph (4).

(4) Determination of term "X" — For purposes of paragraph (1), the term "X" means the product of -
(A) an amount equal to the product of -
   (i) the term "P", as determined for the State involved under paragraph (5); and
   (ii) the factor determined under paragraph (8) for the State; and
(B) the greater of -
   (i) 0.4; and
   (ii) an amount equal to an amount determined for the State in accordance with the following formula:

\[
R\% = \frac{1 - 0.35}{P\%}
\]

(5) Determination of term "P" — (A) For purposes of paragraph (4), the term "P" means the sum of -
(i) an amount equal to the product of 0.107 and the number of individuals in the State who are between 18 and 24 years of age (inclusive);
(ii) an amount equal to the product of 0.166 and the number of individuals in the State who are between 25 and 44 years of age (inclusive);
(iii) an amount equal to the product of 0.099 and the number of individuals in the State who are between 45 and 64 years of age (inclusive); and
(iv) an amount equal to the product of 0.082 and the number of individuals in the State who are 65 years of age or older.

(B) With respect to data on population that is necessary for purposes of
making a determination under subparagraph (A), the Secretary shall use the most recent data that is available from the Secretary of Commerce pursuant to the decennial census and pursuant to reasonable estimates by such Secretary of changes occurring in the data in the ensuing period.

(6) Determination of term "R%" — (A) For purposes of paragraph (4), the term "R%", except as provided in subparagraph (D), means the percentage constituted by the ratio of the amount determined under subparagraph (B) for the State involved to the amount determined under subparagraph (C).

(B) The amount determined under this subparagraph for the State involved is the quotient of -

(i) the most recent 3-year arithmetic mean of the total taxable resources of the State, as determined by the Secretary of the Treasury; divided by

(ii) the factor determined under paragraph (8) for the State.

(C) The amount determined under this subparagraph is the sum of the respective amounts determined for the States under subparagraph (B) (including the District of Columbia).

(D) (i) In the case of the District of Columbia, for purposes of paragraph (4), the term "R%" means the percentage constituted by the ratio of the amount determined under clause (ii) for such District to the amount determined under clause (iii).

(ii) The amount determined under this clause for the District of Columbia is the quotient of -

(I) the most recent 3-year arithmetic mean of total personal income in such District, as determined by the Secretary of Commerce; divided by

(II) the factor determined under paragraph (8) for the District.

(iii) The amount determined under this clause is the sum of the respective amounts determined for the States (including the District of Columbia) by making, for each State, the same determination as is described in clause (ii) for the District of Columbia.

(7) Determination of term "P%" — For purposes of paragraph (4), the term "P%" means the percentage constituted by the ratio of the term "P" determined under paragraph (5) for the State involved to the sum of the respective terms "P" determined for the States.

(8) Determination of certain factor — (A) The factor determined under this paragraph for the State involved is a factor whose purpose is to adjust the amount determined under clause (i) of paragraph (4)(A), and the amounts determined under each of subparagraphs (B)(i) and (D)(ii)(I) of paragraph (6), to reflect the differences that exist between the State and other States in the costs of providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance.
(B) Subject to subparagraph (C), the factor determined under this paragraph and in effect for the fiscal year involved shall be determined according to the methodology described in the report entitled "Adjusting the Alcohol, Drug Abuse and Mental Health Services Block Grant Allocations for Poverty Populations and Cost of Service", dated March 30, 1990, and prepared by Health Economics Research, a corporation, pursuant to a contract with the National Institute on Drug Abuse.

(C) The factor determined under this paragraph for the State involved may not for any fiscal year be greater than 1.1 or less than 0.9.

(D) (i) Not later than October 1, 1992, the Secretary, after consultation with the Comptroller General, shall in accordance with this section make a determination for each State of the factor that is to be in effect for the State under this paragraph. The factor so determined shall remain in effect through fiscal year 1994, and shall be recalculated every third fiscal year thereafter.

(ii) After consultation with the Comptroller General, the Secretary shall, through publication in the Federal Register, periodically make such refinements in the methodology referred to in subparagraph (B) as are consistent with the purpose described in subparagraph (A).

(b) Minimum allotments for States — With respect to fiscal year 2000, and subsequent fiscal years, the amount of the allotment of a State under section 1911 of this title shall not be less than the amount the State received under such section for fiscal year 1998.

(c) Territories — (1) Determination under formula — Subject to paragraphs (2) and (4), the amount of an allotment under section 1911 for a territory of the United States for a fiscal year shall be the product of —

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of —

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories — The amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the greater of —

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 20.6 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts — The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section
300x-9(a) of this title for allotments under section 300x of this title for the fiscal year.

(4) Availability of data on population – With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions – For purposes of subsection (a) of this section, the term "State" does not include the territories of the United States.

Sec. 1919    Definitions

For purposes of this subpart:

(1) The terms "adults with a serious mental illness" and "children with a serious emotional disturbance" have the meanings given such terms under section 1912(c)(1) of this title.

(2) The term "funding agreement", with respect to a grant under section 1911 to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

Sec. 1920    Funding

(a) Authorization of appropriations — For the purpose of carrying out this subpart, and subpart III and section 505 with respect to mental health, there are authorized to be appropriated $450,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(b) Allocations for technical assistance, data collection, and program evaluation

(1) In general — For the purpose of carrying out section 1948(a) of this title with respect to mental health and the purposes specified in paragraphs (2) and (3), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section for a fiscal year.

(2) Data collection — The purpose specified in this paragraph is carrying out section 505 and 1971 of this title with respect to mental health.

(3) Program evaluation — The purpose specified in this paragraph is the conduct of evaluations of prevention and treatment programs and services with respect to mental health to determine methods for improving the availability and quality of such programs and services.

Subpart II -- Block Grants for Prevention and Treatment of Substance Abuse

Sec. 1921    Formula grants to States
(a) In general — For the purpose described in subsection (b) of this section, the Secretary, acting through the Center for Substance Abuse Treatment, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 1933. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 1932.

(b) Authorized activities — A funding agreement for a grant under subsection (a) of this section is that, subject to section 1931, the State involved will expend the grant only for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and for related activities authorized in section 1924.

Sec. 1922 Certain allocations

(b a) Allocation regarding primary prevention programs — A funding agreement for a grant under section 1921 is that, in expending the grant, the State involved —

1. will expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse, which programs —
   (A) educate and counsel the individuals on such abuse; and
   (B) provide for activities to reduce the risk of such abuse by the individuals;

2. will, in carrying out paragraph (1) —
   (A) give priority to programs for populations that are at risk of developing a pattern of such abuse; and
   (B) ensure that programs receiving priority under subparagraph (A) develop community-based strategies for the prevention of such abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(e b) Allocations regarding women — (1) In general — Subject to paragraph (2), a funding agreement for a grant under section 300x-21 of this title for a fiscal year is that —

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 5 percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs);

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 5 percent of the grant to so increase (relative to fiscal year 1993) the availability of such services for such women; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such services for such women not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver — (A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of treatments services for women described in such paragraph, as indicated by a
comparison of the number of such women seeking the services with the
availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under
subparagraph (A) not later than 120 days after the date on which the request is
made.

(C) Any waiver provided by the Secretary under subparagraph (A)
shall be applicable only to the fiscal year involved.

(3) Childcare and prenatal care — A funding agreement for a grant under section
1921 for a State is that each entity providing treatment services with amounts reserved
under paragraph (1) by the State will, directly or through arrangements with other public
or nonprofit private entities, make available prenatal care to women receiving such
services and, while the women are receiving the services, childcare.

Sec. 1923   Intravenous substance abuse

(a) Capacity of treatment programs — (1) Notification of reaching capacity — A funding
agreement for a grant under section 1921 is that the State involved will, in the case of
programs of treatment for intravenous drug abuse, require that any such program
receiving amounts from the grant, upon reaching 90 percent of its capacity to admit
individuals to the program, provide to the State a notification of such fact.

(2) Provision of treatment — A funding agreement for a grant under section 1921
is that the State involved will, with respect to notifications under paragraph (1), ensure
that each individual who requests and is in need of treatment for intravenous drug abuse
is admitted to a program of such treatment not later than -

(A) 14 days after making the request for admission to such a program; or

(B) 120 days after the date of such request, if no such program has the
capacity to admit the individual on the date of such request and if interim services
are made available to the individual not later than 48 hours after such request.

(b) Outreach regarding intravenous substance abuse — A funding agreement for a grant
under section 1921 is that the State involved, in providing amounts from the grant to any entity
for treatment services for intravenous drug abuse, will require the entity to carry out activities to
courage individuals in need of such treatment to undergo treatment.

Sec. 1924   Requirements regarding tuberculosis and human immunodeficiency virus

(a) Tuberculosis — (1) In general — A funding agreement for a grant under section
1921 is that the State involved will require that any entity receiving amounts from the
grant for operating a program of treatment for substance abuse -

(A) will, directly or through arrangements with other public or nonprofit
private entities, routinely make available tuberculosis services to each individual
receiving treatment for such abuse; and

(B) in the case of an individual in need of such treatment who is denied
admission to the program on the basis of the lack of the capacity of the program to
admit the individual, will refer the individual to another provider of tuberculosis services.

(2) Tuberculosis services -- For purposes of paragraph (1), the term "tuberculosis services", with respect to an individual, means -

(A) counseling the individual with respect to tuberculosis;

(B) testing to determine whether the individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the individual; and

(C) providing such treatment to the individual.

(b) Human immunodeficiency virus --

(1) Requirement for certain States -- In the case of a State described in paragraph (2), a funding agreement for a grant under section 1921 is that -

(A) with respect to individuals undergoing treatment for substance abuse, the State will, subject to paragraph (3), carry out 1 or more projects to make available to the individuals early intervention services for HIV disease at the sites at which the individuals are undergoing such treatment;

(B) for the purpose of providing such early intervention services through such projects, the State will make available from the grant the percentage that is applicable for the State under paragraph (4); and

(C) the State will, subject to paragraph (5), carry out such projects only in geographic areas of the State that have the greatest need for the projects.

(2) Designated States -- For purposes of this subsection, a State described in this paragraph is any State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which such data are available).

(3) Use of existing programs regarding substance abuse -- With respect to programs that provide treatment services for substance abuse, a funding agreement for a grant under section 1921 for a designated State is that each such program participating in a project under paragraph (1) will be a program that began operation prior to the fiscal year for which the State is applying to receive the grant. A program that so began operation may participate in a project under paragraph (1) without regard to whether the program has been providing early intervention services for HIV disease.

(4) Applicable percentage regarding expenditures for services --

(A) (i) For purposes of paragraph (1)(B), the percentage that is applicable under this paragraph for a designated State is, subject to subparagraph (B), the percentage by which the amount of the grant under section 1921 for the State for the fiscal year involved is an increase over the amount specified in clause (ii).

(ii) The amount specified in this clause is the amount that was reserved by the designated State involved from the allotment of the State under section 300x-1a for fiscal year 1991 in compliance with section 1916(c)(6)(A)(ii) such fiscal year.

(B) If the percentage determined under subparagraph (A) for a designated
State for a fiscal year is less than 2 percent (including a negative percentage, in the
case of a State for which there is no increase for purposes of such subparagraph),
the percentage applicable under this paragraph for the State is 2 percent. If the
percentage so determined is 2 percent or more, the percentage applicable under
this paragraph for the State is the percentage determined under subparagraph (A),
subject to not exceeding 5 percent.

(5) Requirement regarding rural areas -- (A) A funding agreement for a grant
under section 1921 for a designated State is that, if the State will carry out 2 or more
projects under paragraph (1), the State will carry out 1 such project in a rural area of the
State, subject to subparagraph (B).

(B) The Secretary shall waive the requirement established in subparagraph
(A) if the State involved certifies to the Secretary that -

(i) there is insufficient demand in the State to carry out a
project under paragraph (1) in any rural area of the State; or

(ii) there are no rural areas in the State.

(6) Manner of providing services -- With respect to the provision of early
intervention services for HIV disease to an individual, a funding agreement for a grant
under section 1921 for a designated State is that -

(A) such services will be undertaken voluntarily by, and with the informed
consent of, the individual; and

(B) undergoing such services will not be required as a condition of
receiving treatment services for substance abuse or any other services.

(7) Definitions -- For purposes of this subsection:

(A) The term "designated State" means a State described in paragraph (2).

(B) The term "early intervention services", with respect to HIV disease,
means -

(i) appropriate pretest counseling;

(ii) testing individuals with respect to such disease, including tests
to confirm the presence of the disease, tests to diagnose the extent of the
deficiency in the immune system, and tests to provide information on
appropriate therapeutic measures for preventing and treating the
deterioration of the immune system and for preventing and treating
conditions arising from the disease;

(iii) appropriate post-test counseling; and

(iv) providing the therapeutic measures described in clause

(ii).

(C) The term "HIV disease" means infection with the etiologic agent for
acquired immune deficiency syndrome.

(c) Expenditure of grant for compliance with agreements -- (1) In general -- A grant
under section 1921 may be expended for purposes of compliance with the agreements
required in this section, subject to paragraph (2).

(2) Limitation -- A funding agreement for a grant under section 1921 for a State is
that the grant will not be expended to make payment for any service provided for
purposes of compliance with this section to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service -

(A) under any State compensation program, under any insurance policy, or under any Federal or State health benefits program (including the program established in title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and the program established in title XIX of such Act (42 U.S.C. 1396 et seq.)); or

(B) by an entity that provides health services on a prepaid basis.

(d) Maintenance of effort -- With respect to services provided for by a State for purposes of compliance with this section, a funding agreement for a grant under section 1921 is that the State will maintain expenditures of non-Federal amounts for such services at a level that is not less than average level of such expenditures maintained by the State for 2-year period preceding the first fiscal year for which the State receives such a grant.

(e) Applicability of certain provision -- Section 1931 applies to this section (and to each other provision of this subpart).

Sec. 1925  Group homes for recovering substance abusers

(a) State revolving funds for establishment of homes -- A State using funds available under section 1921, may establish and maintain the ongoing operation of a revolving fund in accordance with this section to support group homes for recovering substance abusers as follows:

(1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 6 individuals. The fund is established directly by the State or through the provision of a grant or contract to a nonprofit private entity.

(2) The programs are carried out in accordance with guidelines issued under subsection (b) of this section.

(3) Not less than $100,000 is available for the fund.

(4) Loans made from the revolving fund do not exceed $4,000 and each such loan is repaid to the revolving fund by the residents of the housing involved not later than 2 years after the date on which the loan is made.

(5) Each such loan is repaid by such residents through monthly installments, and a reasonable penalty is assessed for each failure to pay such periodic installments by the date specified in the loan agreement involved.

(6) Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan -

(A) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

(B) any resident of the housing who violates such prohibition will be expelled from the housing;

(C) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

(D) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing,
including the manner in which applications for residence in the housing are approved.

(b) Issuance by Secretary of guidelines -- The Secretary shall ensure that there are in effect guidelines under this subpart for the operation of programs described in subsection (a) of this section.

(c) Applicability to territories -- The requirements established in subsection (a) of this section shall not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

Sec. 1926 State law regarding sale of tobacco products to individuals under age of 18

(a) Relevant law -- (1) In general -- Subject to paragraph (2), for fiscal year 1994 and subsequent fiscal years, the Secretary may make a grant under section 1921 only if the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

(2) Delayed applicability for certain States -- In the case of a State whose legislature does not convene a regular session in fiscal year 1993, and in the case of a State whose legislature does not convene a regular session in fiscal year 1994, the requirement described in paragraph (1) as a condition of a receipt of a grant under section 1921 shall apply only for fiscal year 1995 and subsequent fiscal years.

(b) Enforcement -- (1) In general -- For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 1921 is that the State involved will enforce the law described in subsection (a) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.

(2) Activities and reports regarding enforcement -- For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 1921 is that the State involved will:

(A) annually conduct random, unannounced inspections to ensure compliance with the law described in subsection (a) of this section; and

(B) annually submit to the Secretary a report describing:

(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and

(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

(c) Noncompliance of State -- Before making a grant under section 1921 to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (a) and (b) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State
is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under such section for the State for the fiscal year involved by an amount equal to -

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 1933 for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 1933 for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 1933 for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 1933 for the State for the fiscal year.

(d) "First applicable fiscal year" defined -- For purposes of this section, the term "first applicable fiscal year" means -

(1) fiscal year 1995, in the case of any State described in subsection (a)(2) of this section; and

(2) fiscal year 1994, in the case of any other State.

Sec. 1927 Treatment services for pregnant women

(a) In general -- A funding agreement for a grant under section 1921 is that the State involved -

(1) will ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant; and

(2) will, in carrying out paragraph (1), publicize the availability to such women of services from the facilities and the fact that the women receive such preference.

(b) Referrals regarding States -- A funding agreement for a grant under section 1921 is that, in carrying out subsection (a)(1) of this section -

(1) the State involved will require that, in the event that a treatment facility has insufficient capacity to provide treatment services to any woman described in such subsection who seeks the services from the facility, the facility refer the woman to the State; and

(2) the State, in the case of each woman for whom a referral under paragraph (1) is made to the State -

(A) will refer the woman to a treatment facility that has the capacity to provide treatment services to the woman; or

(B) will, if no treatment facility has the capacity to admit the woman, make interim services available to the woman not later than 48 hours after the woman seeks the treatment services.

Sec. 1928 Additional agreements

(a) Improvement of process for appropriate referrals for treatment -- With respect to
individuals seeking treatment services, a funding agreement for a grant under section 1921 is that the State involved will improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals.

(b) Continuing education — With respect to any facility for treatment services or prevention activities that is receiving amounts from a grant under section 1921, a funding agreement for a State for a grant under such section is that continuing education in such services or activities (or both, as the case may be) will be made available to employees of the facility who provide the services or activities.

(c) Coordination of various activities and services — A funding agreement for a grant under section 1921 is that the State involved will coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, educational, vocational rehabilitation, and employment services).

(d) Waiver of requirement — (1) In general — Upon the request of a State, the Secretary may provide to a State a waiver of any or all of the requirements established in this section if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State.

(2) Date certain for acting upon request — The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver — Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

**Sec. 1929 Submission to Secretary of statewide assessment of needs**

The Secretary may make a grant under section 1921 only if the State submits to the Secretary an assessment of the need in the State for authorized activities (which assessment is conducted in accordance with criteria issued by the Secretary), both by locality and by the State in general, which assessment includes a description of -

(1) the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism;

(2) current prevention and treatment activities in the State;

(3) the need of the State for technical assistance to carry out such activities;

(4) efforts by the State to improve such activities; and

(5) the extent to which the availability of such activities is insufficient to meet the need for the activities, the interim services to be made available under sections 1923(a) and 1927(b), and the manner in which such services are to be so available.

**Sec. 1930 Maintenance of effort regarding State expenditures**

(a) In general — With respect to the principal agency of a State for carrying out authorized activities, a funding agreement for a grant under section 1921 for the State for a fiscal year is that
such agency will for such year maintain aggregate State expenditures for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(b) EXCLUSION OF CERTAIN FUNDS - The Secretary may exclude from the aggregate State expenditures under subsection (a), funds appropriated to the principle agency for authorized activities which are of a non-recurring nature and for a specific purpose.

(bc) Waiver — (1) In general — Upon the request of a State, the Secretary may waive all or part of the requirement established in subsection (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(2) Date certain for acting upon request — The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver — Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(ed) Noncompliance by State — (1) In general — In making a grant under section 1921 of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with any agreement made under subsection (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 1921 for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(2) Submission of information to Secretary — The Secretary may make a grant under section 1921 for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in paragraph (1).

Sec. 1931 Restrictions on expenditure of grant

(a) In general — (1) Certain restrictions — A funding agreement for a grant under section 1921 is that the State involved will not expend the grant —

(A) to provide inpatient hospital services, except as provided in subsection (b) of this section;

(B) to make cash payments to intended recipients of health services;

(C) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(D) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(E) to provide financial assistance to any entity other than a public or nonprofit private entity; or

(F) to carry out any program prohibited by section 256(b) of the Health

(2) Limitation on administrative expenses -- A funding agreement for a grant under section 1921 is that the State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant.

(3) Limitation regarding penal and correctional institutions -- A funding agreement for a State for a grant under section 1921 is that, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, the State will not expend more than an amount equal to the amount expended for such purpose by the State from the grant made under section 1912A to the State for fiscal year 1991 (as section 1912A was in effect for such fiscal year.)

(b) Exception regarding inpatient hospital services -- (1) Medical necessity as precondition -- With respect to compliance with the agreement made under subsection (a) of this section, a State may expend a grant under section 1921 to provide inpatient hospital services as treatment for substance abuse only if it has been determined, in accordance with guidelines issued by the Secretary, that such treatment is a medical necessity for the individual involved, and that the individual cannot be effectively treated in a community-based, nonhospital, residential program of treatment.

(2) Rate of payment -- In the case of an individual for whom a grant under section 1921 is expended to provide inpatient hospital services described in paragraph (1), a funding agreement for the grant for the State involved is that the daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse.

(c) Waiver regarding construction of facilities -- (1) In general -- The Secretary may provide to any State a waiver of the restriction established in subsection (a)(1)(C) of this section for the purpose of authorizing the State to expend a grant under section 1921 for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition.

(2) Standard regarding need for waiver -- The Secretary may approve a waiver under paragraph (1) only if the State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available.

(3) Amount -- In granting a waiver under paragraph (1), the Secretary shall allow the use of a specified amount of funds to construct or rehabilitate a specified number of beds for residential treatment and a specified number of slots for outpatient treatment, based on reasonable estimates by the State of the costs of construction or rehabilitation. In considering waiver applications, the Secretary shall ensure that the State has carefully designed a program that will minimize the costs of additional beds.

(4) Matching funds -- The Secretary may grant a waiver under paragraph (1) only if the State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided under section 300x-21 of this title.

(5) Date certain for acting upon request -- The Secretary shall act upon a request
for a waiver under paragraph (1) not later than 120 days after the date on which the request is made. of this title was in effect for such fiscal year).

Sec. 1932 Application for grant; approval of State plan

(a) In general — For purposes of section 1921, an application for a grant under such section for a fiscal year is in accordance with this section if, subject to subsections (c) and (d)(2) of this section -

(1) the application is received by the Secretary not later than October 1 of the fiscal year for which the State is seeking funds;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the information required in section 1929, the information required in section 1930(c)(2), and the report required in section 300x-52(a) of this title;

(6) (A) the application contains a plan in accordance with subsection (b) of this section and the plan is approved by the Secretary; and

(B) the State provides assurances satisfactory to the Secretary that the State complied with the provisions of the plan under subparagraph (A) that was approved by the Secretary for the most recent fiscal year for which the State received a grant under section 1921; and

(7) the application (including the plan under paragraph (6)) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) State plan — (1) In general — A plan submitted by a State under subsection (a)(6) of this section is in accordance with this subsection if the plan contains detailed provisions for complying with each funding agreement for a grant under section 1921 that is applicable to the State, including a description of the manner in which the State intends to expend the grant.

(2) Authority of Secretary regarding modifications — As a condition of making a grant under section 1921 for a State for a fiscal year, the Secretary may require that the State modify any provision of the plan submitted by the State under subsection (a)(6) of this section (including provisions on priorities in carrying out authorized activities). If the Secretary approves the plan and makes the grant to the State for the fiscal year, the Secretary may not during such year require the State to modify the plan.

(3) Authority of Center for Substance Abuse Prevention — With respect to plans submitted by the States under subsection (a)(6) of this section, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall review and approve or disapprove the provisions of the plans that relate to prevention activities.
(c) Waivers regarding certain territories -- In the case of any territory of the United States except Puerto Rico of this title, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 1931.

(d) Issuance of regulations; precondition to making grants -- (1) Regulations -- Not later than August 25, 1992, the Secretary, acting as appropriate through the Director of the Center for Treatment Improvement or the Director of the Center for Substance Abuse Prevention, shall by regulation establish standards specifying the circumstances in which the Secretary will consider an application for a grant under section 1921 to be in accordance with this section.

(2) Issuance as precondition to making grants -- The Secretary may not make payments under any grant under section 1921 for fiscal year 1993 on or after January 1, 1993, unless the Secretary has issued standards under paragraph (1).

(e) WAIVER AUTHORITY FOR CERTAIN REQUIREMENTS-- (1) IN GENERAL-- Upon the request of a State, the Secretary may waive the requirements of all or part of the sections described in paragraph (2) using objective criteria established by the Secretary by regulation after consultation with the States and other interested parties including consumers and providers.

(2) SECTIONS-- The sections described in paragraph (1) are sections 1922(c), 1923, 1924 and 1928.

(3) DATE CERTAIN FOR ACTING UPON REQUEST-- The Secretary shall approve or deny a request for a waiver under paragraph (1) and inform the State of that decision not later than 120 days after the date on which the request and all the information needed to support the request are submitted.

(4) ANNUAL REPORTING REQUIREMENT-- The Secretary shall annually report to the general public on the States that receive a waiver under this subsection.

Sec. 1933 Determination of amount of allotment

(a) States -- (1) In general -- Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 1921 for a State for a fiscal year as follows:

(A) The formula established in paragraph (1) of section 1918(a) shall apply to this subsection to the same extent and in the same manner as the formula applies for purposes of section 1918(a), except that, in the application of such formula for purposes of this subsection, the modifications described in subparagraph (B) shall apply.

(B) For purposes of subparagraph (A), the modifications described in this subparagraph are as follows:

(i) The amount specified in paragraph (2)(A) of section 1918(a) is deemed to be the amount appropriated under section 1935(a) for allotments under section 1921 for the fiscal year involved.

(ii) The term "P" is deemed to have the meaning given in paragraph (2) of this subsection. Section 1918(a)(5)(B) applies to the data
used in determining such term for the States.

(iii) The factor determined under paragraph (8) of section 1918(a)
is deemed to have the purpose of reflecting the differences that exist
between the State involved and other States in the costs of providing
authorized services.

(2) Determination of term "P" — For purposes of this subsection, the term "P"
means the percentage that is the arithmetic mean of the percentage determined under
subparagraph (A) and the percentage determined under subparagraph (B), as follows:

(A) The percentage constituted by the ratio of -
   (i) an amount equal to the sum of the total number of
      individuals who reside in the State involved and are between 18 and 24
      years of age (inclusive) and the number of individuals in the State who
      reside in urbanized areas of the State and are between such years of age; to
   (ii) an amount equal to the total of the respective sums determined
      for the States under clause (i).

(B) The percentage constituted by the ratio of -
   (i) the total number of individuals in the State who are
      between 25 and 64 years of age (inclusive); to
   (ii) an amount equal to the sum of the respective amounts
determined for the States under clause (i).

(b) Minimum allotments for States — (1) In general. - With respect to fiscal year 2000,
and each subsequent fiscal year, the amount of the allotment of a State under section 1921 shall
not be less than the amount the State received under such section for the previous fiscal year
increased by an amount equal to 30.65 percent of the percentage by which the aggregate amount
allotted to the States for such fiscal year exceeds the aggregate amount allotted to the States for
the previous fiscal year.

(2) Limitation — (A) In general. - Except as provided in subparagraph (B), a
State shall not receive an allotment under section 1921 for a fiscal year in an amount that
is less than an amount equal to 0.375 percent of the amount appropriated under section
1935(a) for such fiscal year.

(B) Exception. - In applying subparagraph (A), the Secretary shall ensure
that no State receives an increase in its allotment under section 1921 for a fiscal
year (as compared to the amount allotted to the State in the prior fiscal year) that
is in excess of an amount equal to 300 percent of the percentage by which the
amount appropriated under section 1935(a) for such fiscal year exceeds the
amount appropriated for the prior fiscal year.

(3) Decrease in or Equal Appropriation — If the amount appropriated under
section 1935(a) for a fiscal year is equal to or less than the amount appropriated under
such section for the prior fiscal year, the amount of the State allotment under section 1921
shall be equal to the amount that the State received under section 1921 in the prior fiscal
year decreased by the percentage by which the amount appropriated for such fiscal year is
less than the amount appropriated or such section for the prior fiscal year.

(c) Territories — (1) Determination under formula — Subject to paragraphs (2) and (4), the
amount of an allotment under section 300x-21 of this title for a territory of the United States for a fiscal year shall be the product of -

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of -

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories — The amount of an allotment under section 300x-21 of this title for a territory of the United States for a fiscal year shall be the greater of -

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 79.4 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts — The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x-35(a) of this title for allotments under section 300x-21 of this title for the fiscal year.

(4) Availability of data on population — With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions — For purposes of subsections (a) and (b) of this section, the term "State" does not include the territories of the United States.

(d) Indian tribes and tribal organizations — (1) In general — If the Secretary -

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subpart be provided directly by the Secretary to such tribe or organization; and

(B) makes a determination that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this, the Secretary shall reserve from the allotment under section 1921 for the State for the fiscal year involved an amount that bears the same ratio to the allotment as the amount provided under this subpart to the tribe or tribal organization for fiscal year 1991 for activities relating to the prevention and treatment of the abuse of alcohol and other drugs bore to the amount of the portion of the allotment under this subpart for the State for such fiscal year that
was expended for such activities.

(2) Tribe or tribal organization as grantee — The amount reserved by the Secretary on the basis of a determination under this paragraph shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(3) Application — In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this paragraph, it shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe.

(4) Definitions — The terms "Indian tribe" and "tribal organization" have the same meaning given such terms in subsections (b) and (c) of section 450b of title 25.

Sec. 1934 Definitions

For purposes of this subpart:

(1) The term "authorized activities", subject to section 300x-31 of this title, means the activities described in section 1921(b).

(2) The term "funding agreement", with respect to a grant under section 1921 to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(3) The term "prevention activities", subject to section 1931, means activities to prevent substance abuse.

(4) The term "substance abuse" means the abuse of alcohol or other drugs.

(5) The term "treatment activities" means treatment services and, subject to section 300x-31 of this title, authorized activities that are related to treatment services.

(6) The term "treatment facility" means an entity that provides treatment services.

(7) The term "treatment services", subject to section 1931, means treatment for substance abuse.

Sec. 1935 Funding

(a) Authorization of appropriations — For the purpose of carrying out this subpart, and section 505 with respect to substance abuse, and section 515(d), there are authorized to be appropriated $2,000,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(b) Allocations for technical assistance, national data base, data collection, and program evaluations — (1) In general — (A) For the purpose of carrying out section 1948(a) with respect to substance abuse, section 1921(d), and the purposes specified in subparagraphs (B) and (C), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section each fiscal year.

(B) The purpose specified in this subparagraph is the collection of data in this paragraph is carrying out sections 505 and 1971 with respect to substance abuse.

(C) The purpose specified in this subparagraph is the conduct of evaluations of authorized activities to determine methods for improving the
availability and quality of such activities.

(2) Activities of Center for Substance Abuse Prevention — Of the amounts reserved under paragraph (1) for a fiscal year, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall obligate 20 percent for carrying out paragraph (1)(C), section 1948 of this title, with respect to prevention activities, and section 1921.

(3) Core Data Set — A State that receives a new grant, contract, or cooperative agreement from amounts available to the Secretary under paragraph (1), for the purposes of improving the data collection, analysis and reporting capabilities of the State, shall be required, as a condition of receipt of funds, to collect, analyze, and report to the Secretary for each fiscal year subsequent to receiving such funds a core data set to be determined by the Secretary in conjunction with the States.

Subpart III -- General Provisions

Sec. 1941 Opportunity for public comment on State plans

A funding agreement for a grant under section 1911 or 1921 is that the State involved will make the plan required in section 300x-1 of this title, and the plan required in section 1932, respectively, public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the plan (including any revisions) and after the submission of the plan to the Secretary.

Sec. 1942 Requirement of reports and audits by States

(a) Report — A funding agreement for a grant under section 1911 or 1921 is that the State involved will submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the States) to be necessary for securing a record and a description of —

(1) the purposes for which the grant received by the State for the preceding fiscal year under the program involved were expended and a description of the activities of the State under the program; and

(2) the recipients of amounts provided in the grant.

(b) Audits — A funding agreement for a grant under section 1911 or 1921 is that the State will, with respect to the grant, comply with chapter 75 of title 31.

(c) Availability to public — A funding agreement for a grant under section 1911 or 1921 is that the State involved will —

(1) make copies of the reports and audits described in this section available for public inspection within the State; and

(2) provide copies of the report under subsection (a) of this section, upon request, to any interested person (including any public agency).
Sec. 1943 Additional requirements

(a) In general — A funding agreement for a grant under section 1911 or 1921 is that the State involved will -

(1) (A) for the fiscal year for which the grant involved is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved; and

(B) ensure that, in the conduct of such peer review, not fewer than 5 percent of the entities providing services in the State under such program are reviewed (which 5 percent is representative of the total population of such entities);

(2) permit and cooperate with Federal investigations undertaken in accordance with section 1945; and

(3) provide to the Secretary any data required by the Secretary pursuant to section 505 and will cooperate with the Secretary in the development of uniform criteria for the collection of data pursuant to such section.

(b) Patient records -- The Secretary may make a grant under section 1911 or 1921 only if the State involved has in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant.

Sec. 1944 Disposition of certain funds appropriated for allotments

(a) In general — Amounts described in subsection (b) of this section and available for a fiscal year pursuant to section 1911 or 1921, as the case may be, shall be allotted by the Secretary and paid to the States receiving a grant under the program involved, other than any State referred to in subsection (b) of this section with respect to such program. Such amounts shall be allotted in a manner equivalent to the manner in which the allotment under the program involved was determined.

(b) Specification of amounts -- The amounts referred to in subsection (a) of this section are any amounts that -

(1) are not paid to States under the program involved as a result of -

(A) the failure of any State to submit an application in accordance with the program;

(B) the failure of any State to prepare such application in compliance with the program; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State under the program;

(2) are terminated, repaid, or offset under section 1945;

(3) in the case of the program established in section 1911, are available as a result of reductions in allotments under such section pursuant to section 1912(d) or 1915(b); or

(4) in the case of the program established in section 1921, are available as a result
Sec. 1945  Failure to comply with agreements

(a) Suspension or termination of payments -- Subject to subsection (e) of this section, if the Secretary determines that a State has materially failed to comply with the agreements or other conditions required for the receipt of a grant under the program involved, the Secretary may in whole or in part suspend payments under the grant, terminate the grant for cause, or employ such other remedies (including the remedies provided for in subsections (b) and (c) of this section) as may be legally available and appropriate in the circumstances involved.

(b) Repayment of payments -- (1) In general -- Subject to subsection (e) of this section, the Secretary may require a State to repay with interest any payments received by the State under section 1911 or 1921 that the Secretary determines were not expended by the State in accordance with the agreements required under the program involved.

(2) Offset against payments -- If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under the program involved.

(c) Withholding of payments -- (1) In general -- Subject to subsections (e) and (g)(3) of this section, the Secretary may withhold payments due under section 1911 or 1921 if the Secretary determines that the State involved is not expending amounts received under the program involved in accordance with the agreements required under the program.

(2) Termination of withholding -- The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under the program involved in accordance with the agreements required under the program.

(d) Applicability of remedies to certain violations -- (1) In general -- With respect to agreements or other conditions for receiving a grant under the program involved, in the case of the failure of a State to maintain material compliance with a condition referred to in paragraph (2), the provisions for noncompliance with the condition that are provided in the section establishing the condition shall apply in lieu of subsections (a) through (c) of this section.

(2) Relevant conditions -- For purposes of paragraph (1):

(A) In the case of the program established in section 1911, a condition referred to in this paragraph is the condition established in section 1912(d) and the condition established in section 1915(b).

(B) In the case of the program established in section 300x-21 of this title, a condition referred to in this paragraph is the condition established in section 1926 and the condition established in section 1930.

(e) Opportunity for hearing -- Before taking action against a State under any of subsections (a) through (c) of this section (or under a section referred to in subsection (d)(2) of this section, as the case may be), the Secretary shall provide to the State involved adequate notice and an opportunity for a hearing.

(f) Requirement of hearing in certain circumstances -- (1) In general -- If the Secretary receives a complaint that a State has failed to maintain material compliance with the agreements
or other conditions required for receiving a grant under the program involved (including any condition referred to for purposes of subsection (d) of this section), and there appears to be reasonable evidence to support the complaint, the Secretary shall promptly conduct a hearing with respect to the complaint.

(2) Finding of material noncompliance — If in a hearing under paragraph (1) the Secretary finds that the State involved has failed to maintain material compliance with the agreement or other condition involved, the Secretary shall take such action under this section as may be appropriate to ensure that material compliance is so maintained, or such action as may be required in a section referred to in subsection (d)(2) of this section, as these may be.

(g) Certain investigations — (1) Requirement regarding Secretary — The Secretary shall in fiscal year 1994 and each subsequent fiscal year conduct in not less than 10 States investigations of the expenditure of grants received by the States under section 1911 or 1921 in order to evaluate compliance with the agreements required under the program involved.

(2) Provision of records, etc., upon request — Each State receiving a grant under section 1911 or 1921, and each entity receiving funds from the grant, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(3) Limitations on authority — The Secretary may not institute proceedings under subsection (c) of this section unless the Secretary has conducted an investigation concerning whether the State has expended payments under the program involved in accordance with the agreements required under the program. Any such investigation shall be conducted within the State by qualified investigators.

Sec. 1946 Prohibitions regarding receipt of funds

(a) Establishment — (1) Certain false statements and representations — A person shall not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from a grant made to the State under section 1911 or 1921.

(2) Concealing or failing to disclose certain events — A person with knowledge of the occurrence of any event affecting the initial or continued right of the person to receive any payments from a grant made to a State under section 1911 or 1921 shall not conceal or fail to disclose any such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such amount is due.

(b) Criminal penalty for violation of prohibition — Any person who violates any prohibition established in subsection (a) of this section shall for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

Sec. 1947 Nondiscrimination
(a) In general — (1) Rule of construction regarding certain civil rights laws — For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of handicap under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded in whole or in part with funds made available under section 300x or 300x-21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition — No person shall on the ground of sex (including, in the case of a woman, on the ground that the woman is pregnant), or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 1911 or 1921.

(b) Enforcement — (1) Referrals to Attorney General after notice — Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to section 1911 or 1921, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may —

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General — When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

Sec. 1948 Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance — The Secretary shall, without charge to a State receiving a grant under section 1911 or 1921, provide to the State (or to any public or nonprofit private entity
within the State) technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision of supplies and services in lieu of grant funds — (1) In general — Upon the request of a State receiving a grant under section 1911 or 1921, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out the program involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments — With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

Sec. 1949. Plans for Performance Partnerships.

(a) DEVELOPMENT- The Secretary in conjunction with States and other interested groups shall develop separate plans for the programs authorized under subparts I and II for creating more flexibility for States and accountability based on outcome and other performance measures. The plans shall each include—

(1) a description of the flexibility that would be given to the States under the plan;

(2) the common set of performance measures that would be used for accountability, including measures that would be used for the program under subpart II for pregnant addicts, HIV transmission, tuberculosis, and those with a co-occurring substance abuse and mental disorders, and for programs under subpart I for children with serious emotional disturbance and adults with serious mental illness and for individuals with co-occurring mental health and substance abuse disorders;

(3) the definitions for the data elements to be used under the plan;

(4) the obstacles to implementation of the plan and the manner in which such obstacles would be resolved;

(5) the resources needed to implement the performance partnerships under the plan; and

(6) an implementation strategy complete with recommendations for any necessary legislation.

(b) SUBMISSION- Not later than 2 years after the date of enactment of this Act, the plans developed undersubsection (a) shall be submitted to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives.

(c) INFORMATION- As the elements of the plans described in subsection (a) are developed, States are encouraged to provide information to the Secretary on a voluntary basis.

(d) PARTICIPANTS- The Secretary shall include among those interested groups that participate in the development of the plan consumers of mental health or substance abuse
services, providers, representatives of political divisions of States, and representatives of racial and ethnic groups including Native Americans.

Sec. 1950    Rule of construction regarding delegation of authority to States

With respect to States receiving grants under section 1911 or 1921, this part may not be construed to authorize the Secretary to delegate to the States the primary responsibility for interpreting the governing provisions of this part.

Sec. 1951    Solicitation of views of certain entities

In carrying out this part, the Secretary, as appropriate, shall solicit the views of the States and other appropriate entities.

Sec. 1952.   Availability to States of Grant Payments.

Any amounts paid to a State for a fiscal year under section 1911 or 1921 shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid.

Sec. 1953    Continuation of certain programs

(a) In general — Of the amount allotted to the State of Hawaii under section 300x of this title, and the amount allotted to such State under section 300x-21 of this title, an amount equal to the proportion of Native Hawaiians residing in the State to the total population of the State shall be available, respectively, for carrying out the program involved for Native Hawaiians.

(b) Expenditure of amounts — The amount made available under subsection (a) of this section may be expended only through contracts entered into by the State of Hawaii with public and private nonprofit organizations to enable such organizations to plan, conduct, and administer comprehensive substance abuse and treatment programs for the benefit of Native Hawaiians. In entering into contracts under this section, the State of Hawaii shall give preference to Native Hawaiian organizations and Native Hawaiian health centers.

(c) Definitions — For the purposes of this subsection, [1] the terms "Native Hawaiian", "Native Hawaiian organization", and "Native Hawaiian health center" have the meaning given such terms in section 11707 of this title.

Sec. 1954    Definitions

(a) Definitions for this subpart — For purposes of this subpart: (1) The term "program involved" means the program of grants established in section 1911 or 1921, or both, as
indicated by whether the State involved is receiving or is applying to receive a grant under section 1911 or 1921, or both.

(2) (A) The term "funding agreement", with respect to a grant under section 1911, has the meaning given such term in section 1919.

(B) The term "funding agreement", with respect to a grant under section 1921, has the meaning given such term in section 1934.

(b) Definitions for this part -- For purposes of this part:

(1) The term "Comptroller General" means the Comptroller General of the United States.

(2) The term "State", except as provided in sections 1918(c)(5) and 1933(c)(5), means each of the several States, the District of Columbia, and each of the territories of the United States.

(3) The term "territories of the United States" means each of the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Palau, the Marshall Islands, and Micronesia.

(4) The term "interim services", in the case of an individual in need of treatment for substance abuse who has been denied admission to a program of such treatment on the basis of the lack of the capacity of the program to admit the individual, means services for reducing the adverse health effects of such abuse, for promoting the health of the individual, and for reducing the risk of transmission of disease, which services are provided until the individual is admitted to such a program.

Sec. 1955   Services Provided by Nongovernmental Organizations.

(a) PURPOSES- The purposes of this section are—

(1) to prohibit discrimination against nongovernmental organizations and certain individuals on the basis of religion in the distribution of government funds to provide substance abuse service under this title and title V, and the receipt of services under such titles; and

(2) to allow the organizations to accept the funds to provide the services to the individuals without impairing the religious character of the organizations or the religious freedom of the individuals.

(b) RELIGIOUS ORGANIZATIONS INCLUDED AS NONGOVERNMENTAL PROVIDERS- (1) IN GENERAL- A State may administer and provide substance abuse services under any program under this title or title V through grants, contracts, or cooperative agreements to provide assistance to beneficiaries under such titles with nongovernmental organizations.

(2) REQUIREMENT- A State that elects to utilize nongovernmental organizations as provided for under paragraph (1) shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide services under substance abuse programs under this title or title V, so long as the programs under such titles are implemented in a manner consistent with the Establishment Clause of the
first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under such programs shall discriminate against an organization that provides services under, or applies to provide services under, such programs, on the basis that the organization has a religious character.

© RELIGIOUS CHARACTER AND INDEPENDENCE- (1) IN GENERAL- A religious organization that provides services under any substance abuse program under this title or title V shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) ADDITIONAL SAFEGUARDS- Neither the Federal Government nor a State or local government shall require a religious organization—
(A) to alter its form of internal governance; or
(B) to remove religious art, icons, scripture, or other symbols;
in order to be eligible to provide services under any substance abuse program under this title or title V.

(d) EMPLOYMENT PRACTICES-
(1) SUBSTANCE ABUSE- A religious organization that provides services under any substance abuse program under this title or title V may require that its employees providing services under such program adhere to rules forbidding the use of drugs or alcohol.

(2) TITLE VII EXEMPTION- The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1, 2000e-2(e)(2)) regarding employment practices shall not be affected by the religious organization's provision of services under, or receipt of funds from, any substance abuse program under this title or title V.

(e) RIGHTS OF BENEFICIARIES OF ASSISTANCE- (1) IN GENERAL- If an of the organization from which the individual receives, or would receive, services funded under any substance abuse program under this title or title V, the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such services) within a reasonable period of time after the date of such objection, services that—
(A) are from an alternative provider that is accessible to the individual;
and
(B) have a value that is not less than the value of the services that the individual would have received from such organization.

(2) NOTICE- The appropriate Federal, State, or local governmental entity shall ensure that notice is provided to individuals described in paragraph (3) of the rights of such individuals under this section.

(3) INDIVIDUAL DESCRIBED- An individual described in this paragraph is an individual who receives or applies for services under any substance abuse program under this title or title V.

(f) NONDISCRIMINATION AGAINST BENEFICIARIES- A religious organization providing services through a grant, contract, or cooperative agreement under any substance abuse
program under this title or title V shall not discriminate, in carrying out such program, against an individual described in subsection (e)(3) on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(g) FISCAL ACCOUNTABILITY- (1) IN GENERAL- Except as provided in paragraph (2), any religious organization providing services under any substance abuse program under this title or title V shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) LIMITED AUDIT- Such organization shall segregate government funds provided under such substance abuse program into a separate account. Only the government funds shall be subject to audit by the government.

(h) COMPLIANCE- Any party that seeks to enforce such party's rights under this section may assert a civil action for injunctive relief exclusively in an appropriate Federal or State court against the entity, agency or official that allegedly commits such violation.

(i) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES- No funds provided through a grant or contract to a religious organization to provide services under any substance abuse program under this title or title V shall be expended for sectarian worship, instruction, or proselytization.

(j) EFFECT ON STATE AND LOCAL FUNDS- If a State or local government contributes State or local funds to carry out any substance abuse program under this title or title V, the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(k) TREATMENT OF INTERMEDIATE CONTRACTORS- If a nongovernmental organization (referred to in this subsection as an "intermediate organization"), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any substance abuse program under this title or title V, the intermediate organization shall have the same duties under this section as the government but shall retain all other rights of a nongovernmental organization under this section.

Sec. 1956. Services for Individuals with Co-occurring Disorders.

States may use funds available for treatment under sections 1911 and 1921 to treat persons with co-occurring substance abuse and mental disorders as long as funds available under such sections are used for the purposes for which they were authorized by law and can be tracked for accounting purposes.

PART C--CERTAIN PROGRAMS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE
Sec. 1971. Data Infrastructure Development.

(a) IN GENERAL- The Secretary may make grants to, and enter into contracts or cooperative agreements with States for the purpose of developing and operating mental health or substance abuse data collection, analysis, and reporting systems with regard to performance measures including capacity, process, and outcomes measures.

(b) PROJECTS- The Secretary shall establish criteria to ensure that services will be available under this section to States that have a fundamental basis for the collection, analysis, and reporting of mental health and substance abuse performance measures and States that do not have such basis. The Secretary will establish criteria for determining whether a State has a fundamental basis for the collection, analysis, and reporting of data.

© CONDITION OF RECEIPT OF FUNDS- As a condition of the receipt of an award under this section a State shall agree to collect, analyze, and report to the Secretary within 2 years of the date of the award on a core set of performance measures to be determined by the Secretary in conjunction with the States.

(d) MATCHING REQUIREMENT-

(1) IN GENERAL- With respect to the costs of the program to be carried out under subsection (a) by a State, the Secretary may make an award under such subsection only if the applicant agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs.

(2) DETERMINATION OF AMOUNT CONTRIBUTED- Non-Federal contributions under paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(e) DURATION OF SUPPORT- The period during which payments may be made for a project under subsection (a) may be not less than 3 years nor more than 5 years.

(f) AUTHORIZATION OF APPROPRIATION- (1) IN GENERAL- For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001, 2002 and 2003.

(2) ALLOCATION- Of the amounts appropriated under paragraph (1) for a fiscal year, 50 percent shall be expended to support data infrastructure development for mental health and 50 percent shall be expended to support data infrastructure development for substance abuse.

Subpart II -- Interim Maintenance Treatment for Narcotics Dependence

Sec. 1976 Interim maintenance treatment
(a) Requirement regarding Secretary — Subject to the following subsections of this section, for the purpose of reducing the incidence of the transmission of HIV disease pursuant to the intravenous abuse of heroin or other morphine-like drugs, the Secretary, in establishing conditions for the use of methadone in public or nonprofit private programs of treatment for dependence on such drugs, shall authorize such programs:

(1) to dispense methadone for treatment purposes to individuals who:

(A) meet the conditions for admission to such programs that dispense methadone as part of comprehensive treatment for such dependence; and

(B) are seeking admission to such programs that so dispense methadone, but as a result of the limited capacity of the programs, will not gain such admission until 14 or more days after seeking admission to the programs; and

(2) in dispensing methadone to such individuals to provide only minimum ancillary services during the period in which the individuals are waiting for admission to programs of comprehensive treatment.

(b) Inapplicability of requirement in certain circumstances — (1) In general — The requirement established in subsection (a) of this section for the Secretary does not apply if any or all of the following conditions are met:

(A) The preponderance of scientific research indicates that the risk of the transmission of HIV disease pursuant to the intravenous abuse of drugs is minimal.

(B) The preponderance of scientific research indicates that the medically supervised dispensing of methadone is not an effective method of reducing the extent of dependence on heroin and other morphine-like drugs.

(C) The preponderance of available data indicates that, of treatment programs that dispense methadone as part of comprehensive treatment, a substantial majority admit all individuals seeking services to the programs not later than 14 days after the individuals seek admission to the programs.

(2) Evaluation by Secretary — In evaluating whether any or all of the conditions described in paragraph (1) have been met, the Secretary shall consult with the National Commission on Acquired Immune Deficiency Syndrome.

© Conditions for obtaining authorization from Secretary — (1) In general — In carrying out the requirement established in subsection (a) of this section, the Secretary shall, after consultation with the National Commission on Acquired Immune Deficiency Syndrome, by regulation issue such conditions for treatment programs to obtain authorization from the Secretary to provide interim maintenance treatment as may be necessary to carry out the purpose described in such subsection. Such conditions shall include conditions for preventing the unauthorized use of methadone.

(2) Counseling on HIV disease — The regulations issued under paragraph (1) shall provide that an authorization described in such paragraph may not be issued to a treatment program unless the program provides to recipients of the treatment counseling on preventing exposure to and the transmission of HIV disease.

(3) Permission of relevant State as condition of authorization — The regulations issued under paragraph (1) shall provide that the Secretary may not provide an
authorization described in such paragraph to any treatment program in a State unless the
chief public health officer of the State has certified to the Secretary that -

(A) such officer does not object to the provision of such authorizations to
treatment programs in the State; and

(B) the provision of interim maintenance services in the State will not
reduce the capacity of comprehensive programs in the State to admit individuals
to the program (relative to the date on which such officer so certifies.)

(4) Date Certain for Issuance of Regulations; Failure of Secretary — The Secretary
shall issue the final rule for purposes of the regulations required in paragraph (1) and such
rule shall be effective, not later than the expiration of the 180-day period beginning on the
date of the enactment of the ADAMHA Reorganization Act. If the Secretary fails to meet
issued on March 2, 1989, with respect to part 291 of title 21, Code of Federal Regulations
(docket numbered 88N-0444; 54 Fed. Reg. 8973 et seq.) is deemed to take effect as a
final rule upon the expiration of such period, and the provisions of paragraph (3) of this
subsection are deemed to be incorporated into such rule.

(d) Definitions — For purposes of this section:

(1) The term “interim maintenance services” means the provision of methadone in a
treatment program under the circumstances described in paragraphs (1) and (2) of subsection (a)

(2) The term “HIV disease” means infection with the etiologic agent for acquired immune
deficiency syndrome.

(3) The term “treatment program” means a public or non-profit private program of treatm
ent for dependence on heroin or other morphine-like drugs.