

Issued September 20, 2001

To:

Directors, Designated State Agencies,
Executive Directors, State Councils on Developmental Disabilities,
Directors, State Protection and Advocacy Agencies Directors,
University Centers

Subject:

Lobbying

Legal and Related References:

Public Law 106-402, Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq).

Content:

ADD has received questions on which activities grantees may engage in to influence legislation and still be in compliance with statutes, regulations and OMB Circulars which generally restrict such activities and other activities Councils, Protection and Advocacy agencies (P&As), University Centers for Excellence and some Projects of National Significance (PNS) are authorized under the provisions of the Developmental Disabilities Assistance and Bill of Rights Act, (the Act), to “educate,” “advise” or “inform” Federal, State and local policymakers. Sections 125(a)(5)(J), 143(a)(2)(L), 153(a)(1), and 161(2)(D)(iii). The “policymakers” referred to in the statute include members of Congress, officials of the Federal executive branch, Governors, members of State legislatures and staff of State agencies.

The ADD grantees have been authorized to undertake such action in order to assist policymakers to improve the services and opportunities available to individuals with developmental disabilities and their families. In addition, State Councils and P&As have the responsibility under the Act to advocate on behalf of individuals with developmental disabilities. [See Sections 121(1) and for enactment or amendment of legislation at the State level affecting individuals with developmental disabilities. Notwithstanding the Congressional authorization of activities to “educate,” “advise” or

“inform” Federal, State and local policymakers and to be “advocates,” there are prohibitions on certain considered to be lobbying which are applicable to all ADD grantees. These restrictions are:

- The prohibitions applicable to nonprofit grantees in OMB Circular A-122, Attachment B, Paragraph 25a (1) and (2) on using funds to influence the outcome of a Federal, state or local election or for contributions to political parties; and
- The prohibition under 45 C.F.R. Part 93 on the use of grant funds to pay any person for influencing or attempting to influence a Member of Congress, any agency official, or other category of person enumerated in the regulations concerning the “awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement” and the similar provision in OMB Circular A-87, Attachment B, Paragraph 27, which applies to State and local governments and Indian tribes (www.whitehouse.gov/omb/circulars/).

There are also specific restrictions on the use of grant funds to influence the enactment of legislation and related activities that are applicable to ADD grantees, Section 503 of Pub. L. 106-554, the Consolidated Appropriations Act, 2001 Web Page:

(www.access.gpo.gov) and OMB Circular A-122, Attachment B, Paragraph 25, which is applicable to nonprofit grantees. The provision of the 2001 appropriation statute is similar to provisions adopted in earlier years. Congress may enact similar provisions in future years.

There is, however, an issue of how the restrictions imposed by the appropriation statute and OMB Circular 122, Attachment B, Paragraph 25 are to be reconciled with the responsibilities of ADD grantees to educate, inform and advise policymakers, including Federal and State legislators.

ADD believes that grantees will be able to meet their responsibility to inform, educate or advise policymakers under the Act and avoid violating the applicable limitations on lobbying by emphasizing nonpartisan analysis, study and research. The exception to this position would be those Projects of National Significance that have not been funded to educate policymakers. Under Section 161 of the Act, Projects of National Significance can be funded for a number of purposes, one of which is to “provide education for policymakers.” Those Projects of National Significance not designated by ADD as having that function are subject to the requirements of Section 503 of Pub. L. 106-554, the Consolidated Appropriations Act, 2001, and, if a nonprofit organization, the requirements of OMB Circular A-122, Attachment B, Paragraph 25, in the same way as other grants under HHS programs. Grantees funded to operate Projects of National Significance, which are unclear about whether their authorized functions include providing education for policymakers should ask ADD for clarification.

Using a nonpartisan approach, grantees would be free to advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the policymaker to form an independent opinion or conclusion. In such an analysis, a grantee would refrain from presenting unsupported opinions, distorted facts, inflammatory and disparaging terms, or conclusions based more on strong emotional feelings than on objective factual conclusions.

Grantees advising legislators and others concerning adoption of legislation should approach the task in a balanced way, discussing the advantages and disadvantages of the legislation and comparing it with other proposals that may also be under consideration. A nonpartisan approach to informing legislators does not require that grantees be neutral about outcomes for individuals with developmental disabilities. Rather, grantees would have to demonstrate an unbiased attitude when considering alternatives for meeting the needs of such persons. Grantees should emphasize their role as a source of information and advice in helping legislators and other policymakers to identify and evaluate the available alternatives for meeting the needs of individuals with developmental disabilities.

Reginald F. Wells, Ph.D.

Deputy Commissioner

Administration on Developmental Disabilities