a State that, under State law, vests authority for the administration of the activities carried out under this chapter in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity'' for ''Governor'' in first sentence and ''appointing authority'' for ''Governor'' in second and third sentences.

Subsec. (b)(4)(A)(i). Pub. L. 105–277, § 101(f) [title VIII, § 402(c)(6)(B)], substituted ''section 705(20)(B)'' for ''section 705(20)(A)''.

Subsec. (b)(5)(B). Pub. L. 105–277, § 101(f) [title VIII, § 402(c)(6)(C)], substituted ''chief executive officer'' for ''Governor'' in heading and ''appointing authority described in paragraph (3) shall'' for ''Governor shall'' in text.

Subsec. (b)(6)(A)(ii), (7)(B). Pub. L. 105–277, § 101(f) [title VIII, § 402(c)(6)(D)], substituted ''appointing authority described in paragraph (3)'' for ''Governor''.

§ 726. Evaluation standards and performance indicators

(a) Establishment

(1) In general

(A) Establishment of standards and indicators

The Commissioner shall, not later than July 1, 1999, establish and publish evaluation standards and performance indicators for the vocational rehabilitation program carried out under this subchapter.

(B) Review and revision

Effective July 1, 1999, the Commissioner shall review and, if necessary, revise the evaluation standards and performance indicators every 3 years. Any revisions of the standards and indicators shall be developed with input from State vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. Any revisions of the standards and indicators shall be subject to the publication, review, and comment provisions of paragraph (3).

(C) Bases

Effective July 1, 1999, to the maximum extent practicable, the standards and indicators shall be consistent with the core indicators of performance established under section 2871(b) of this title.

(2) Measures

The standards and indicators shall include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of this subchapter.

(3) Comment

The standards and indicators shall be developed with input from State vocational rehabilitation agencies, related professional and consumer organizations, recipients of vocational rehabilitation services, and other interested parties. The Commissioner shall publish in the Federal Register a notice of intent to regulate regarding the development of proposed standards and indicators. Proposed standards and indicators shall be published in the Federal Register for review and comment. Final standards and indicators shall be published in the Federal Register.

(b) Compliance

(1) State reports

In accordance with regulations established by the Secretary, each State shall report to the Commissioner after the end of each fiscal year the extent to which the State is in compliance with the standards and indicators.

(2) Program improvement

(A) Plan

If the Commissioner determines that the performance of any State is below established standards, the Commissioner shall provide technical assistance to the State, and the State and the Commissioner shall jointly develop a program improvement plan outlining the specific actions to be taken by the State to improve program performance.

(B) Review

The Commissioner shall—

(i) review the program improvement efforts of the State on a biannual basis and, if necessary, request the State to make further revisions to the plan to improve performance; and

(ii) continue to conduct such reviews and request such revisions until the State sustains satisfactory performance over a period of more than 1 year.

(c) Withholding

If the Commissioner determines that a State whose performance falls below the established standards has failed to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Commissioner shall, consistent with subsections (c) and (d) of section 727 of this title, reduce or make no further payments to the State under this program, until the State has entered into an approved program improvement plan, or satisfies the Commissioner that the State is complying substantially with the terms and conditions of such a program improvement plan, as appropriate.

(d) Report to Congress

Beginning in fiscal year 1999, the Commissioner shall include in each annual report to the Congress under section 710 of this title an analysis of program performance, including relative State performance, based on the standards and indicators.

(Pub. L. 93–112, title I, § 106, as added Pub. L. 105–220, title IV, § 404, Aug. 7, 1998, 112 Stat. 1156.)

PRIOR PROVISIONS

A prior section 726, Pub. L. 93–112, title I, § 106, as added Pub. L. 102–569, title I, § 127(a), Oct. 29, 1992, 106 Stat. 4385, related to evaluation standards and performance indicators, prior to the general amendment of this subchapter by Pub. L. 105–220.

§ 727. Monitoring and review

(a) In general

(1) Duties

In carrying out the duties of the Commissioner under this subchapter, the Commissioner shall—

(A) provide for the annual review and periodic onsite monitoring of programs under this subchapter; and

(B) determine whether, in the administration of the State plan, a State is complying substantially with the provisions of such plan and with evaluation standards and performance indicators established under section 726 of this title.

(2) Procedures for reviews

In conducting reviews under this section the Commissioner shall consider, at a minimum—

(A) State policies and procedures;

(B) guidance materials;

(C) decisions resulting from hearings conducted in accordance with due process;

(D) State goals established under section 721(a)(15) of this title and the extent to which the State has achieved such goals;

(E) plans and reports prepared under section 726(b) of this title;

(F) consumer satisfaction reviews and analyses described in section 725(c)(4) of this title;

(G) information provided by the State Rehabilitation Council established under section 725 of this title, if the State has such a Council, or by the commission described in section 721(a)(21)(A)(i) of this title, if the State has such a commission;

(H) reports; and

(I) budget and financial management data.

(3) Procedures for monitoring

In conducting monitoring under this section the Commissioner shall conduct—

(A) onsite visits, including onsite reviews of records to verify that the State is following requirements regarding the order of selection set forth in section 721(a)(5)(A) of this title;

(B) public hearings and other strategies for collecting information from the public;

(C) meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 721(a)(21)(A)(i) of this title, if the State has such a commission;

(D) reviews of individual case files, including individualized plans for employment and ineligibility determinations; and

(E) meetings with qualified vocational rehabilitation counselors and other personnel.

(4) Areas of inquiry

In conducting the review and monitoring, the Commissioner shall examine—

(A) the eligibility process;

(B) the provision of services, including, if applicable, the order of selection;

(C) such other areas as may be identified by the public or through meetings with the State Rehabilitation Council, if the State has such a Council or with the commission described in section 721(a)(21)(A)(i) of this title, if the State has such a commission; and

(D) such other areas of inquiry as the Commissioner may consider appropriate.

(5) Reports

If the Commissioner issues a report detailing the findings of an annual review or onsite monitoring conducted under this section, the report shall be made available to the State Rehabilitation Council, if the State has such a Council, for use in the development and modification of the State plan described in section 721 of this title.

(b) Technical assistance

The Commissioner shall—

(1) provide technical assistance to programs under this subchapter regarding improving the quality of vocational rehabilitation services provided; and

(2) provide technical assistance and establish a corrective action plan for a program under this subchapter if the Commissioner finds that the program fails to comply substantially with the provisions of the State plan, or with evaluation standards or performance indicators established under section 726 of this title, in order to ensure that such failure is corrected as soon as practicable.

(c) Failure to comply with plan

(1) Withholding payments

Whenever the Commissioner, after providing reasonable notice and an opportunity for a hearing to the State agency administering or supervising the administration of the State plan approved under section 721 of this title, finds that—

(A) the plan has been so changed that it no longer complies with the requirements of section 721(a) of this title; or

(B) in the administration of the plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 726 of this title,

the Commissioner shall notify such State agency that no further payments will be made to the State under this subchapter (or, in the discretion of the Commissioner, that such further payments will be reduced, in accordance with regulations the Commissioner shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until the Commissioner is satisfied there is no longer any such failure.

(2) Period

Until the Commissioner is so satisfied, the Commissioner shall make no further payments to such State under this subchapter (or shall reduce payments or limit payments to projects under those parts of the State plan in which there is no such failure).

(3) Disbursal of withheld funds

The Commissioner may, in accordance with regulations the Secretary shall prescribe, disburse any funds withheld from a State under paragraph (1) to any public or nonprofit private organization or agency within such State or to any political subdivision of such State submitting a plan meeting the requirements of section 721(a) of this title. The Commissioner may not make any payment under this paragraph unless the entity to which such payment is made has provided assurances to the Commissioner that such entity will contrib-

ute, for purposes of carrying out such plan, the same amount as the State would have been obligated to contribute if the State received such payment.

(d) Review

(1) Petition

Any State that is dissatisfied with a final determination of the Commissioner under section 721(b) of this title or subsection (c) of this section may file a petition for judicial review of such determination in the United States Court of Appeals for the circuit in which the State is located. Such a petition may be filed only within the 30-day period beginning on the date that notice of such final determination was received by the State. The clerk of the court shall transmit a copy of the petition to the Commissioner or to any officer designated by the Commissioner for that purpose. In accordance with section 2112 of title 28, the Commissioner shall file with the court a record of the proceeding on which the Commissioner based the determination being appealed by the State. Until a record is so filed, the Commissioner may modify or set aside any determination made under such proceedings.

(2) Submissions and determinations

If, in an action under this subsection to review a final determination of the Commissioner under section 721(b) of this title or subsection (c) of this section, the petitioner or the Commissioner applies to the court for leave to have additional oral submissions or written presentations made respecting such determination, the court may, for good cause shown, order the Commissioner to provide within 30 days an additional opportunity to make such submissions and presentations. Within such period, the Commissioner may revise any findings of fact, modify or set aside the determination being reviewed, or make a new determination by reason of the additional submissions and presentations, and shall file such modified or new determination, and any revised findings of fact, with the return of such submissions and presentations. The court shall thereafter review such new or modified determination.

(3) Standards of review

(A) In general

Upon the filing of a petition under paragraph (1) for judicial review of a determination, the court shall have jurisdiction—

(i) to grant appropriate relief as provided in chapter 7 of title 5, except for interim relief with respect to a determination under subsection (c) of this section; and

(ii) except as otherwise provided in subparagraph (B), to review such determination in accordance with chapter 7 of title 5.

(B) Substantial evidence

Section 706 of title 5 shall apply to the review of any determination under this subsection, except that the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such determination if the court finds that the determination is not supported by substantial evidence in the record of the proceeding submitted pursuant to paragraph (1), as supplemented by any additional submissions and presentations filed under paragraph (2).

(Pub. L. 93–112, title I, § 107, as added Pub. L. 105–220, title IV, § 404, Aug. 7, 1998, 112 Stat. 1157.)

PRIOR PROVISIONS

A prior section 727, Pub. L. 93–112, title I, § 107, as added Pub. L. 102–569, title I, § 128(a), Oct. 29, 1992, 106 Stat. 4386, related to monitoring and review, prior to the general amendment of this subchapter by Pub. L. 105–220.

§ 728. Expenditure of certain amounts

(a) Expenditure

Amounts described in subsection (b) of this section may not be expended by a State for any purpose other than carrying out programs for which the State receives financial assistance under this subchapter, under part B of subchapter VI of this chapter, or under subchapter VII of this chapter.

(b) Amounts

The amounts referred to in subsection (a) of this section are amounts provided to a State under the Social Security Act (42 U.S.C. 301 et seq.) as reimbursement for the expenditure of payments received by the State from allotments under section 730 of this title.

(Pub. L. 93–112, title I, § 108, as added Pub. L. 105–220, title IV, § 404, Aug. 7, 1998, 112 Stat. 1160.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 728, Pub. L. 93–112, title I, § 108, as added Pub. L. 102–569, title I, § 129(a), Oct. 29, 1992, 106 Stat. 4389, related to expenditure of certain amounts, prior to the general amendment of this subchapter by Pub. L. 105–220.

§ 728a. Training of employers with respect to Americans with Disabilities Act of 1990

A State may expend payments received under section 731 of this title—

(1) to carry out a program to train employers with respect to compliance with the requirements of title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.); and

(2) to inform employers of the existence of the program and the availability of the services of the program.

(Pub. L. 93–112, title I, § 109, as added Pub. L. 105–220, title IV, § 404, Aug. 7, 1998, 112 Stat. 1160.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in par. (1), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (§ 12111 et seq.) of chapter 126 of Title 42, The Public Health and Welfare. For complete