

Independent Living Services and Centers for Independent Living Proposed Rule, 45 CFR Part 1329

December 18, 2015

Administration for Community Living
Attention: IL NPRM
U.S. Department of Health and Human Services
Washington, DC 20201

The National Council on Independent Living (NCIL) is the longest-running national cross-disability, grassroots organization run by and for people with disabilities. Founded in 1982, NCIL represents thousands of organizations and individuals including: individuals with disabilities, Centers for Independent Living (CILs), Statewide Independent Living Councils (SILCs), and other organizations that advocate for the human and civil rights of people with disabilities throughout the country.

NCIL would like to thank you for the opportunity to provide comments on the proposed rule published on November 16, 2015 regarding implementation of the Workforce Innovation and Opportunity Act (WIOA) and the transfer of Independent Living Services and Centers for Independent Living (CILs) programs to the Department of Health and Human Services (HHS). Upon reviewing the proposed rule, we are very pleased with the outcome. We would like to extend our sincere thanks and congratulations.

We have tried to respond to all of the areas for which you requested input, and we have provided additional feedback as well. NCIL submits the following comments:

Subpart A—General Provisions

Text: “In considering the purpose of the Act and the changes made under WIOA, we wish to highlight ACL’s interpretation that the IL programs promote a philosophy of person-centeredness in keeping with the mission of ACL and with the policy of the Department of Health and Human Services...Because so much of the work done by IL programs involves these same principles, we believe it is important to clarify that the June 2014 guidance, including person-centered planning requirements, applies to IL programs.” (Supplementary Information)

Comment: Person Centered Planning and Consumer Control are not interchangeable terms. Person Centered Planning does not fit into the Independent Living philosophy. We suggest reviewing [the power point at this link](#), which was presented by NCIL, ACL, and CMS (PDF).

- **1329.4 Definitions**
 - a. *Definition of Independent Living Core Services*

Text: “In considering whether to define the term “institution,” we looked at a variety of existing Medicare and Medicaid definitions, including the definitions at Sections 1819(a) and 1862(e)(1) of the Social Security Act, and [42 CFR 416.201](#), 441.301(c)(5), and 441.710(a)(2). These definitions include hospitals, skilled nursing facilities, Medicaid nursing facilities, and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services. They also include a definition consistent with settings that are not “community based” for Section 1915(c) home and community based waivers and for Section 1915(i) State plan home and community based services. We are concerned, however, that defining “institution” based on the Medicare and Medicaid model may not be broad enough to encompass all institutions with which CILs may work, including juvenile detention centers, jails and prisons. We seek public comment on whether to include a definition and, if so, the suitability of applying Medicare and Medicaid definitions to the fifth core service.” (Supplementary Information)

Comment: We agree that a definition of institution based on the existing definitions under the Medicare/Medicaid model does not encompass the reality faced by people with disabilities. Many CILs find themselves assisting with transitions from jails, prisons and youth correctional facilities. These transitions into community based situations fit into the fifth core services just as transitions from nursing homes do. Another transition that often takes place is transitioning a person from the home of loved ones into an independent setting.

We believe the definition of institution should be broad enough to encompass a variety of situations. If it is necessary to define types of institutions, we recommend that the wording “including but not limited to” be used. For example:

The definition of institution includes but is not limited to:

- Nursing homes
- Prisons or jails
- Youth correctional facilities
- Parental/guardian controlled home living
- Any situation in which a person with a disability is not free to control all aspects of his or her life.

Text: We also considered definitions of “home and community-based residences” and “at risk” of institutionalization. We determined not to define these terms at this time, but request comment on whether and how “home and community-based residences” and “at risk” of institutionalization should be defined for purposes of the fifth core service. We are specifically interested in learning how CILs that are already transitioning individuals with disabilities to the community and/or doing work to avoid the institutionalization of people with significant disabilities currently define “transition” from institutions to the community, and people who are “at risk of entering institutions.” To maintain the consumer-directed purpose of the programs, ACL also invites comments on the effectiveness and limitations of including the issue of being “at risk” as a part of

CIL consumers self-disclosing their needs in the intake process.” (Supplementary Information)

Comment: We believe that it is up to the individual to determine whether or not they are at-risk through self-disclosure. The staff person may assist the individual by giving some examples of what at risk may look like. Some of those examples might include a negative home environment, loss or lack of any significant services and supports, or an adverse change in life events.

Ultimately, though, if the individual feels they are at risk, then they should be treated as being at risk.

- Definition of Home and Community Based Residence: Any residence with fewer than 4 people non-related in which a person with a disability is free to control all aspects of his or her life. *Please refer to the detailed definition of Home and Community Based Residence published in the January 16, 2014 Federal Register.*
- Definition of transition process: Services and supports that a consumer identifies that are needed to move that person from an institutional setting to community based setting as define above, including systems advocacy required for the individual to move to a home of their choice.

Text: We further propose to define the term “completed their secondary education” to mean that an eligible youth has received a diploma; has received a certificate of completion for high school or other equivalent document marking the completion of participation in high school; has reached age 18, even if he or she is still receiving services in accordance with an individualized education program developed under the IDEA; or has exceeded the age of eligibility for IDEA services.

Comment: Individuals who have reached the age of 18 but are still receiving services in accordance with an individual’s education program developed under the IDEA should not be considered to have “completed their secondary education.”

Text: Similarly, we propose a broad interpretation of “otherwise left school.” For example, “otherwise left school” could mean that the youth has dropped out of school; taken a leave of absence from secondary school for health or disciplinary reasons; or did not graduate but is no longer attending classes at a secondary school. We request comments on this interpretation.

Comment: We support the interpretation of “otherwise left school” as written in the proposed regulation.

b. Definition of Other Terms in Proposed §1329.4

Advocacy:

Text: We propose to define “Advocacy” consistent with the definition in the existing regulations, [34 CFR 364.4](#). Individual and system advocacy remain integral elements of promoting independent living according to the purpose of the law. The term includes providing assistance and/or representation in obtaining access to benefits, rights, services, and programs to which a consumer or group of consumers may be entitled. We invite comment on the definition.

Comment: We support the definition of Advocacy but ask that the activities described in §1329.10 (b)(5) be included in the definition, as they are part of systems advocacy. The section reads: Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities.

Consumer control:

Text: Consumer control means, with respect to a Center or eligible agency, that the Center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services, in terms of the management, staffing, decision making, operation, and provision of services.

Comment: This definition should also include individual consumer control. With respect to individual consumer control, this means that the individual with a disability has control over their independent living plan (ILP), making informed choices about content and implementation, and over their life.

Service provider:

Text: “Service Provider means a Center for Independent Living that receives financial assistance under Part B or C of chapter 1 of title VII of the Act; **a designated State entity (DSE) that directly provides IL services to individuals with significant disabilities**; or any other entity or individual that provides IL services under a grant or contract from the DSE pursuant to section 704(f) of the Act.”

Comment: A DSE should not be able to provide direct services—A DSE does not provide services the way a CIL does or the same services. The DSE is not consumer controlled and does not provide peer support, systems advocacy, etc. Some States are doing this in place of unavailable CIL services which allows States an excuse to not provide sufficient IL funding. So funding should be made available so CILs are able to provide services where needed in the State.

- **1329.5 Indicators of minimum compliance.**

Text: To be eligible to receive funds under this part, a Center must comply with the standards in section 725(b) and assurances in section 725(c) of the Act, with the indicators of minimum compliance established by the Administrator in accordance with

section 706 of the Act, and the requirements contained in the terms and conditions of the grant award.

Comment: Not only do the proposed regulations not include the required standards and indicators for SILCs, but also there is no mention of those standards and indicators. ACL has stated they will issue SILC standards and indicators as guidance. We do not believe this language is consistent with section 706 (b) of the Act. At minimum, the regulations should refer to the SILC standards and indicators and indicate required compliance.

Additionally, we recommend that a rotation be established for every CIL to be reviewed on a timely basis, and allow resources to review centers that have issues that require ILA's attention.

- **1329.7 Enforcement and appeals procedures.**

- (a) Processes for Centers for Independent Living

- (1) *Text:* If the Director of the Independent Living Administration (Director) determines that any Center receiving funds under this part, other than a Center that is provided Part C funding by the State under section 723 of the Act, is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and of this part, the Director must provide notice to the Center pursuant to guidance determined by the Administrator.”

Comment: The Director determines this without a Peer Review? This section does not follow what the law says about Onsite Compliance Reviews (text below). We recommend the following: “If the Director of the Independent Living Administration (ILA) determines **as the result of a Peer Review** that any Center...”

- Onsite Compliance Reviews.—

- (1) Reviews.—

- The Administrator shall annually conduct onsite compliance reviews of at least 15 percent of the centers for independent living that receive funds under section 722 and shall periodically conduct such a review of each such center. The Administrator shall annually conduct onsite compliance reviews of at least one-third of the designated State units that receive funding under section 723, and, the extent necessary to determine the compliance of such a State unit with subsections (f) and (g) of section 723, centers that receive funding under section 723 in such State.

- (2) Qualifications of employees conducting reviews.—The Administrator shall—

(A) to the maximum extent practicable, carry out a review described in paragraph (1) by using employees of the Department of Health and Human Services who are knowledgeable about the provision of independent living services;

(B) ensure that the employee of the Department of Health and Human Services with responsibility for supervising such a review shall have such knowledge; and

(C) ensure that at least one member of a team conducting such a review shall be an individual who—

(i) is not a government employee; and

(ii) has experience in the operation of centers for independent living.

- Onsite Compliance Review requires a peer, but Technical Assistance does not.
- Receiving Technical Assistance should not be contingent on developing a corrective action plan and a corrective action plan should not be a result of Technical Assistance.
- Enforcement and Appeals are two different processes that should not be blended together.

Text: Because the processes we propose are new, particularly with regard to Part B funds, we are considering the issuance of sub-regulatory guidance to provide additional detail. Such an approach provides ACL and stakeholders with the opportunity to determine the processes that allow Centers and States to come into compliance quickly, while giving ACL the authority to take enforcement actions if the need arises.
(Supplemental Information)

Comment: We would look forward to the opportunity work with ACL on developing such guidance.

Subpart B—Independent Living Services

• 1329.10 Authorized use of funds for Independent Living Services.

(a) *Text:* The State, after reserving funds under section 13(d) for SILC training and technical assistance:

Comment: The proposed rule allows for the interpretation that the State may reserve funds for SILC training and technical assistance, which is not consistent with section 711(A)(a) of the Act. Preferred wording would be:

After funds are reserved by the Administrator under section 13(d) for SILC training and technical assistance, the State:

(a)(2) *Text:* May retain funds under section 704(c)(5) of the Act;

Comment: Preferred wording would be:

May retain not more than 5% of funds for the purposes under section 704(c) of the Act.

(b) *Text:* The State may use the remainder of the funds described in paragraph (a)(3) of this section to —”

Comment: The language appears to give the State authority to determine how funds will be used. Preferred wording would be:

The remainder of the funds described in paragraph (a)(3) shall be distributed by the State, as designated in the approved State Plan, for the following allowable purposes:

- **1329.11 DSE eligibility and application.**

(a) *Text:* Any designated State entity (DSE) identified by the state pursuant to section 704(c) of the Act is eligible to apply for assistance under this part in accordance with section 704 of the Act.

Comment: This could be interpreted to mean the State selects the DSE. While we understand the State will have to agree to the selection of the DSE, it is clear in the law that the DSE is designated in the SPIL by the SILC and CILs. Preferred wording would be:

Any designated State entity (DSE) identified in the SPIL and agreed to by the State is eligible to apply for assistance under this part in accordance with section 704 of the Act, 29 U.S.C. 796c.

- **1329.12 Role of the designated State entity.**

(a)(2) *Text:* (A DSE that applies for and receives assistance must:) Provide administrative support services for a program under Part B and for CILs under Part C when administered by the State under section 723 of the Act.

Comment: This does not provide for the SPIL to direct what that program will be. Preferred wording would be:

Provide administrative support services for a program under Part B, as directed by the approved State Plan, and for CILs under Part C when administered by the State under section 723 of the Act, 29 U.S.C. 796f-2;

(b) *Text:* The DSE must also carry out its other responsibilities under the Act including, but not limited to, arranging for the delivery of IL services under Part B of the Act, and for the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities, as authorized in the approved State Plan.

Comment: There are two issues of concern here:

1. This wording could be interpreted to presume the DSE will deliver IL services under Part B.
2. This wording may be confusing because two separate concepts are intermingled and the resources for the SILC are not emphasized.

Preferred wording would be:

The DSU must also carry out its other responsibilities under the Act including, but not limited to:

(i) allocating funds for the delivery of IL services under Part B of the Act as directed by the SPIL; and

(ii) allocating the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities under section 205(c), consistent with the approved State Plan.

We would also recommend providing direction or guidance on what constitutes “necessary and sufficient resources” to establish and **maintain** a SILC that meets the requirements of section 705 giving consideration to the following:

- Resources sufficient to provide:
 - Staff/personnel
 - Operating expenses
 - Council compensation and expenses
 - Meeting expenses including meeting space, alternate formats, interpreters, and other accommodations
 - Resources to attend and/or secure training for staff and Council members
- **1329.13 Allotment of Federal Funds for State Independent Living (IL) Services.**

(c) *Text:* If the State plan designates a State agency or unit of a State agency to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate of different State agency of unit of a State agency to administer the rest of the plan, the division of the State’s allotment between these two units is a matter for State determination, consistent with the State plan.

Comment: This section of the proposed regulations is not consistent with section 704(c) of the Act, which provides for a single DSE, and appears to be a throwback to the presumption that “designated state entity” is a new term for the “designated state unit” and is not relative to the Act as amended by WIOA. The duties of the DSE, as detailed in section 704 (c) of the Act do not justify having 2 DSEs – one DSE should be able to

carry out the duties and responsibilities. We strongly recommend that this section be deleted.

(d) *Text:* The Administrator shall reserve between 1.8 percent and 2 percent of appropriated funds to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to SILCs. Training and technical assistance funds shall be administered in accordance with section 711A of the Act.

Comment: The law only allows for the ACL to provide TA to SILCs directly. Does not allow TA to be provided directly by ACL to Centers.

- **1329.14 Establishment of a SILC.**

(b) *Text:* The SILC shall not be established as an entity within a State agency, including the DSE. The SILC shall be independent of and autonomous from the DSE and all other state agencies.

Comment: We strongly support the language in the proposed regulations. We recommend direction or guidance on what constitutes “autonomous” giving consideration to the following:

- The SILC, through bylaws, policy or other statement, identifies what it works to achieve, including such elements as its vision and mission.
- The SILC hires, supervises and evaluates its director.
- The SILC reviews and monitors progress on its own work.
- The SILC influences the appointment process to ensure compliance with requirements of the Act by recruiting and recommending members and communicating with the appointment authority about how candidates would affect compliance.
- The SILC has freedom to advocate about issues of its own choice.
- The SILC develops statutory authority, procedures, and other systematic methods for gaining, maintaining, and protecting its autonomy.
- The SILC accounts for its decisions and actions.
- The SPIL describes the status of the SILC and how that status demonstrates the autonomy of the SILC.
- The SILC has a code of ethical behavior, including regulation of conflicts of interest, for council members.
- The SILC has a plan for orientation and training of members, which may include mentoring of new members.

Additionally, the supplementary information requested comment regarding current CIL-Tribal relationships. Currently there are currently no tribal CILs to our knowledge.

- **1329.15 Duties of the SILC.**

(c) *Text:* Supplemental information: The resource plan, as required under Section 705(e) of the Act, is a document that is separate from the SPIL and that describes how resources necessary and sufficient to carry out the functions of the SILC, will be made available.

Comment: The SILC resource plan is an integral part of the three-year SPIL. Having the SILC resource plan in the SPIL is what makes it binding. If it was separate, it could create issues, interpretations, and inconsistencies in the execution of annual contracts to a Council based on the SILC resource plan in the SPIL.

Text: Proposed rule: The SILC, in conjunction with the DSE, shall prepare a plan for the provision of resources, including staff and personnel that are necessary and sufficient to carry out the functions of the SILC.

Comment: The proposed rule should provide more detail on what constitutes “necessary and sufficient resources” for the SILC resource plan. Preferred wording would be:

The SILC, in conjunction with the DSE, shall prepare a plan for the provision of resources, including staff and personnel that are necessary and sufficient to carry out the functions of the SILC. The plan should include:

- Staff/personnel
- Operating expenses
- Council compensation and expenses
- Meeting expenses including meeting space, alternate formats, interpreters, and other accommodations
- Resources to attend and/or secure training for staff and Council members

(c)(2) *Text:* Such resources may consist of Part B funds, State matching funds, Innovation and Expansion (I & E) funds authorized by 29 U.S.C. 721(a)(18), and other public and private sources.

Comment: The proposed regulations are not consistent with the law with regard to Innovation and Expansion (I&E) funds. Section 101 (a)(18) of the Act, Innovation and expansion activities reads:

The State plan shall--

(A) include an assurance that the State will reserve and use a portion of the funds allotted to the State under section 110--

(i) for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under this title, particularly individuals with the most significant disabilities, consistent

with the findings of the statewide assessment and goals and priorities of the State as described in paragraph (15); and

(ii) to support the funding of--

(I) the State Rehabilitation Council, if the State has such a Council, consistent with the plan prepared under section 105(d)(1); and

(II) the Statewide Independent Living Council, consistent with the plan prepared under section 705(e)(1);

(B) include a description of how the reserved funds will be utilized; and

(C) provide that the State shall submit to the Commissioner an annual report containing a description of how the reserved funds were utilized during the preceding year.

The regulations should be consistent with the law. Preferred language would be:

Such resources shall consist of Innovation and Expansion (I&E) funds authorized by 29 U.S.C. 721(a)(18) and may include Part B funds, State matching funds, other public funds (such as Social Security reimbursement funds), and private sources.

(c)(4) *Text:* No conditions or requirements may be included in the SILC's resource plan that compromise the independence of the SILC.

Comment: We strongly support this proposed regulation as written.

- **1329.16 Authorities of the SILC.**

(a) *Text:* The SILC may conduct the following discretionary activities, as authorized and described in the approved State Plan:

Comment: The proposed regulations are consistent with the Act. It might be helpful to point out that SILC resource plan should include resources to accomplish the authorities, which are an expansion beyond the SILC duties prior to the passage of WIOA.

- **1329.17 General requirements for a State plan.**

(d)(2)(ii) *Text:* (The State plan must be jointly signed by the—) The director of the DSE; and

Comment: The proposed regulation does not clarify the purpose of the DSE signature on the State plan, as clarified in Program Information ILA PI-15-01 (revised 10-28-15) issued by ILA/ACL. Preferred language would be:

The director of the DSE, signifying agreement to execute the responsibilities of the DSE identified in section 704(c) of the Act; and

(d)(2)(iii) *Text:* Supplemental Information: We propose in § 1329.17(d)(2)(iii), and (iv) to define a CIL for purposes of signing the SPIL as any consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency for individuals with significant disabilities, regardless of funding source, that is designed and operated within a local community by individuals with disabilities; and provides an array of IL services, including, at a minimum, independent living core services and complies with the standards set out in Section 725(b) and provides and complies with the assurances in Section 725(c) of the Act and § 1329.5 of these regulations. We seek comments on this approach.

Comment: We agree with this definition, however the problem will be determining whether someone complies with the standards set out in section 725.

Text: Supplemental Information: If the proposed language should be implemented in this instance, should it also be applied more broadly across the IL programs?

Comment: We are unsure of what is meant by “more broadly”, and therefore cannot comment at this time without clarification.

Text: Proposed rule: (The State plan must be jointly signed by the—) Not less than 51 percent of the directors of the CILs in the State. For purposes of this provision, if a legal entity that constitutes the “CIL” has multiple Part C grants considered as separate Centers for all other purposes, for SPIL signature purposes, it is only considered as one Center.

Comment: We support the interpretation of the type of entity that constitutes a CIL for SPIL signature purposes as the “legal entity” that may receive more than one grant.

(e) and (e)(1) through (e)(4) *Text:* In States where DSE duties are shared with a separate State agency authorized to administer vocational rehabilitation (VR) services for individuals who are blind, the State plan must be signed by the: (1) Director of the DSE; (2) Director of the separate State agency authorized to provide VR services for individuals who are blind; (3) Chairperson of the SILC, acting on behalf of and at the direction of the SILC; and (4) Not less than 51 percent of the directors of the CILs in the State.

Comment: This section of the proposed regulations is not consistent with section 704(c) of the Act, which provides for a single DSE, and appears to be a throwback to the presumption that “designated state entity” is a new term for the “designated state unit” and is not relative to the Act as amended by WIOA. The duties of the DSE, as detailed in section 704 (c) of the Act do not justify having 2 DSEs – one DSE should be able to carry out the duties and responsibilities. We strongly recommend that this section be deleted.

(g)(2) *Text:* The requirement in paragraph (g)(1) of this section may be met by holding public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings, as appropriate.

Comment: The proposed regulation, as currently worded, is not consistent with section 704(a)(2)(A) of the Act which requires that public input be received prior to development of the State plan. Preferred language would be:

The requirement in paragraph (g)(1) of this section may be met by holding public meetings before a preliminary State plan is prepared **and** by providing a preliminary draft State plan for comment at public meetings prior to submission.

Subpart C—Centers for Independent Living Program

- **1329.21 Continuation awards to entities eligible for assistance under the CIL program.**

(g) *Text:* Grants awarded by the DSE under section 723 of the Act are subject to the requirements of paragraphs (a) and (b) of this section and the order of priorities in section 723(e) of the Act, unless the DSE and the SILC jointly agree on another order of priorities.

Comment: The proposed regulation indicates that the DSE and the SILC jointly agree on the order of priorities, which is inconsistent with section 704 of the Act which specifies that the SILC and CILs develop the SPIL, including a plan for the statewide network of CILs and priorities for the distribution of funding. Preferred wording would be:

Grants awarded by the DSE under section 723 of the Act are subject to the requirements of paragraphs (a) and (b) of this section and the order of the priorities in section 723(e) of the Act, unless the SILC and the CILs jointly agree on another order of priorities, as described in the approved State plan.

- **1329.24 Training and technical assistance to Centers for Independent Living.**

Text: Supplemental information: Proposed §1329.24 sets forth the requirement that the Administrator reserve between 1.8 percent and 2 percent of appropriated funds to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to CILs. The proposed regulation states that the training and technical assistance shall be in accordance with Section 721(b) of the Act. ACL intends to provide further guidance in any funding opportunity announcement related to training and technical assistance for CILs.

Proposed rule: “The Administrator shall reserve between 1.8% and 2% of appropriated funds to provide training and technical assistance to Centers through grants, contracts

or cooperative agreements, consistent with section 721(b) of the Act. The training and technical assistance funds shall be administered in accordance with section 721(b) of the Act.”

Comment: The law does not allow training and technical assistance to CILs be provided directly by ACL. Rather, the law— 721(b)— and section 1329.24 of the proposed regulations, require that training and technical assistance to CILs be provided through grants, contracts, and cooperative agreements. The supplementary information on page 70736 incorrectly states that training and technical assistance may be provided directly.

1. **Regulatory Impact Analysis**
2. Regulatory Flexibility Analysis

Text: “The CILs program provides grants to consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies for the provision of IL services to individuals with significant disabilities. WIOA expanded the previous definition of core IL services, specified in Section 7(17) of the Act, to include a fifth core service. Specifically, Centers funded by the program must now provide services that facilitate transition from nursing homes and other institutions to the community, provide assistance to those at risk of entering institutions, and facilitate transition of youth to postsecondary life. Currently there are 354 CILs that receive federal funding under this program.

WIOA did not include any additional funding for the provision of this new fifth core service, but rather assumed that CILs would reallocate existing grant money to ensure the appropriate provision of all services required under Title VII of the Rehabilitation Act. Since successful transition is a process that requires sustained efforts and supports over a long-term period, and the CILs were aware of the changes under the law before officially tracking these efforts as core services, we do not currently have a clear picture of the impact of the changes under WIOA on the programs, though we are applying the closest applicable data to the estimates in this analysis. We hope to conduct a more thorough analysis when we are able to collect updated data and specifically request comments on the impact of the change.”

Comment: We feel that ACL *should* seek to obtain additional funding for the 5th Core Transition Service. It is difficult, if not impossible, for CILs to reallocate financial resources in any substantial or significant way when funding levels have been stagnant for more than 10 years and states are continuing to make budget cuts.

CILs are the only entities mandated by federal law to transition people from nursing homes but don’t have the resources, while other entities (not mandated to do transition) do have the resources (example: Money Follows the Person, ADRC, transition/Medicaid waivers).

We feel that HHS should make CILs the mandatory receiver of all funding for transition services.

Performing fifth Core Transition Services are financially and time intensive for CILs. We feel a minimum of \$150,000 per CIL per year for all CILs is an appropriate amount of funding for those services. This amount can be redirected from agencies currently receiving transition funding who are not mandated by law to provide those services. CILs are mandated to provide transition, don't receive the funds; other entities get the funds, but are not mandated.

Text: The NPRM adopts a narrow interpretation of the 5 percent administrative cap, limiting its application to "Part B" funds only, rather than applying the 5 percent cap on administrative funds allocated to the DSE to all federal funds supporting the Independent Living Services. Additional funding sources include Social Security reimbursements, Vocational Rehabilitation program Innovation and Expansion (I&E) funds, and other public or private funds. The NPRM avoids a broader application of the cap in an attempt to avoid creating too great a disincentive to State agencies to serve as DSEs, given the more limited role of the DSEs in decision-making (as they no longer have a statutory role in the development of the SPIL). Our intent is to effectuate the limitation as required under the law, while helping ensure retention of DSEs for the Part B programs. We request comment on the impacts of this and other potential approaches. (Supplemental Information)

Comment: We agree with this interpretation.

1. Paperwork Reduction Act of 1995
2. 704 Reporting Requirement

Text: Prior to WIOA, an effort was underway to make formal changes to the 704 reporting instruments. The passage of WIOA in July 2014 put those efforts on hold until late 2014. ACL is currently convening workgroups to recommend and implement changes to the 704 reporting instruments, and these changes will be subject to the public comment process under the PRA before they are finalized. Key steps in ACL's current and projected timeline on the process include an external workgroup webinar, held April 1, 2015, to share the status of 704 revision efforts and invite feedback on specific issues. It is ACL's goal to publish the revised reporting instruments for comment in Federal Register in April 2016. According to this projected timeline, in October 2017, programs will begin collecting information for the FY 18 reporting period using the new 704 reporting instruments. In December 2018, the FY18 704 reports reflecting the new reporting requirements will be due.

Comments: We would look forward to working with ACL on the amendments to the 704 reporting instruments.

Again, we greatly appreciate this opportunity to provide comments. We look very forward to working with ACL on the implementation of this rule, and please feel free to contact us if you have any questions.