



State Advisory Councils

Purpose of Advisory Council

The AT Act describes the requirement to establish an advisory council “to provide consumer-responsive, consumer-driven advice to the State for, planning of, implementation of, and evaluation of the activities carried out through the grant, including setting the measurable goals described in subsection (d)(3). It is helpful to articulate and set forth expectations in your initial invitation to prospective members. The primary functions of the advisory council are:

- To serve as ambassadors of the AT Act program
- To assist with the development of the three year State Plan for Assistive Technology (SPAT) submitted to the Administration on Community Living, US Department of Health and Human Services
- To assist the program with implementing and evaluating the activities identified in the SPAT and suggesting amendments, if needed, based on the Annual Progress Report (APR)
- To provide a stakeholder voice about issues related to access to and acquisition of assistive technology in the state the program serves
- To provide input to other agencies and or partners in order to improve AT services within the state

Composition

In accordance with section 4(c)(2), the advisory council is to be a consumer-majority body, that is, with at least 51% individuals who are people with disabilities who are users of assistive technology devices and services. The AT Act prescribes a set of representatives from agencies and organizations, including: a representative of the designated State agency as defined in section 7 of the Rehabilitation Act of 1973 (e.g. the vocational rehabilitation (VR) agency); a representative of the State agency for individuals who are blind, if such an agency is separate; a representative of a State center for independent living under title VII of the Rehabilitation Act of 1973; a representative of the State workforce investment board established under section 111 of the Workforce Innovation and Opportunity Act; and a representative of the State educational agency as defined in section 9101 of the Elementary and Secondary Education Act. In addition, the AT program may appoint additional representatives from other state agencies, public agencies, or private organizations, as long as the consumer majority is maintained. As the State AT program recruits consumer members and makes additional appointments, care should be taken to maintain a council that reflects the diversity of the State “with respect to race,

ethnicity, types of disabilities across the age span” as well as the types of AT devices and services used by its citizens with disabilities. It is recommended that any additional requirements (e.g. residency in the state) be added to the Advisory Council by-laws or operating procedures. Responsibilities of members include:

- Attend and actively participate in all Assistive Technology program Advisory Council (ATAC) meetings
- Serve as a liaison between the State At Act program and entity they represent (including state agencies and the community as a whole), promoting and sharing the state AT programs' mission and resources
- Participate in identification and exploration of new opportunities to increase access to and acquisition of assistive technology devices and services, especially those involving partnerships with diverse stakeholders
- Assist in educating others about AT devices and services through the state AT Act program (and other resources as appropriate)
- Participate in reviewing the state program's efforts and achievements of its goals
- Support the establishment/maintenance/improvement of state and federal laws and policies that promote access to and acquisition of assistive technology

Advisory Councils vs. Board of Directors

AT Act Programs all have a public agency that serves as the Lead Entity. The agency was designated by the state governor and that agency controls and administers the funds, submits the application, and implements other duties required of AT Act programs. If the Governor also designated an implementing entity, they implement all state level and state leadership activities under a contract or other administrative agreement with the lead agency. The entity responsible for the advisory council should be the implementing entity except for when the lead agency performs all the requirements of the AT Act program and there is no implementing entity.

The agency in which a program is located, as well as if there is an implementing entity, influences the structure and operations of the advisory council. Advisory Council members may have current or prior experience serving on a Board of Directors. It is important to distinguish key differences between the two. One important difference is the degree of control over finances (“fiduciary responsibility”) and the influence over personnel decisions (hiring/firing for example). Advisory Councils are meant to be just that, advisory in nature. The AT Act refers to the advisory body as a “council”. It is recommended that the AT Act program avoid the term “Advisory Board” to avoid confusion or misperception, and use the language in the AT Act, “AT Advisory Council”.

Most programs establish an advisory council as an autonomous entity whose sole purpose is to serve and support the AT Act program. However, there are two other models that might be used by programs with an existing agency Advisory Board and/or an Advisory Council that serves more than one program.

Advisory Councils and Boards of Directors: AT Act Programs in a Nonprofit Agency

If your AT Act program is implemented by a nonprofit entity, the nonprofit's Board of Directors may decide to establish the AT Act Advisory Council as a committee. An advisory committee is not the legal governing body of the organization and does not carry the same legal responsibilities and fiduciary duties. Rather, the advisory committee, which may be called the AT Advisory Council, serves to make recommendations and/or provide key information and materials as specified in the AT Act. The line between the two groups must be clearly defined to ensure proper oversight of the organization, protect the valid actions of the board of directors, and reduce personal liability risks of advisory council members. The Board of Directors by-laws should specify the AT Advisory Council's purpose and role, guidelines for membership, its relationship to the Board of Directors, and Advisory Council operations.

Advisory Councils Serving More Than One Program

The AT Advisory Council may be subsumed in another structure, as long as it functions to provide consumer-responsive, consumer-directed advice to the state AT program in accordance with the AT Act. When there is no implementing entity or the implementing entity (if there is one) may decide to assign the statutory responsibilities of the AT Advisory Council to an existing advisory body or committee. For example, a University Center for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD) may elect to have its Consumer Advisory Committee (required under the Developmental Disabilities Act) serve as the AT Advisory Council; a state Vocational Rehabilitation (VR) agency that implements the AT program activities may decide to assign the AT Advisory Council responsibilities to the State Rehabilitation Council. This can create challenges in maintaining the AT Act statutory requirements regarding composition/representation and consumer majority. When the meetings are combined and both advisory purposes are addressed in the same agenda there will be additional complexity in determining how the associated AT Act expenses will be allocated and tracked. There may also be challenges regarding agenda priorities and/or conflicts of interest. AT Act funds should only be used to support those activities directly related to the AT Act program. It is imperative that the advisory council be structured to best meet the needs of the AT program.

How Your Advisory Council Operates

Advisory Councils benefit from having By-laws with clearly defined policies and procedures (similar to those of a governing board). These include position descriptions, attendance, meeting schedule/calendar of activities, and conflict of interest and ethics policy. By-laws may also include the following topics:

Membership

In accordance with section 4(c)(2), the Advisory Council is to be a consumer-majority body, that is, with at least 51% individuals who are people with disabilities (or the family member or guardian of the individual) who are users of assistive

technology devices and services. The AT Act prescribes a set of required representatives from agencies and organizations, including: a representative of the designated State agency as defined in section 7 of the Rehabilitation Act of 1973 (e.g. the vocational rehabilitation (VR) agency); a representative of the State agency for individuals who are blind, if such an agency is separate; a representative of a State center for independent living under title VII of the Rehabilitation Act of 1973; a representative of the State workforce investment board established under section 111 of the Workforce Innovation and Opportunity Act; and a representative of the State educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

In addition, the AT program may appoint additional representatives from other state agencies, public agencies, or private organizations, as long as the consumer majority is maintained. The by-laws and/or operating procedures should include minimum/maximum size parameters and voting vs. non-voting status. Non-voting member status can allow for additional members (including consumers, family members, professionals and/or other agencies) while maintaining the required composition and consumer majority. This can be advantageous in avoiding issues related to member changes that have the potential to affect the consumer majority and/or the needed members for a quorum.

If you are considering inviting AT program subcontractors and/or other program partners to join the Advisory Council, consider they may end up in a “conflict of interest” situation, where recommendations are being voted on that will affect them (positively or negatively). Alternately, you can invite them to join as non-voting members, or involve them in other ways, e.g. members of committees (if your by-laws permit participation by non-members). It is suggested you adopt a conflict of interest policy to which all Advisory Council members must agree.

Recruitment, Appointments and Term Limits:

Your policies and procedures should include the process by which the consumer members and individuals other than those representing required agencies and entities are nominated/recruited and selected. Be strategic in selecting additional representatives who will be committed to advocating for the AT program and who may have the ability to create or strengthen important partnerships. What steps will you take to maintain a council that reflects the diversity of the State “with respect to race, ethnicity, types of disabilities across the age span” as well as the types of AT devices and services used by its citizens with disabilities? You may wish to develop a recruiting matrix to track these variables. What will the application to serve on your Advisory Council look like, and what qualifications will you specify? By what methods will you distribute your application? It is recommended that any additional requirements (e.g. residency in the state; observing at least one meeting prior to consideration) be added to the Advisory Council by-laws or operating procedures.

Having term limits (both length of term, e.g. three years; and number of consecutive terms, e.g. two) is one way to ensure a flow of “new blood” and energy, as well as a way to divest members who have been less than effective or

problematic. You will also want to consider other approaches to and rationales for removing members. For example, lack of participation (unexcused absences) at more than half of the year's meetings or violation of the Conflict of Interest agreement may be grounds for removal. You will also want to consider any special circumstances related to absences that might be an allowable exception.

Structure and Autonomy:

Decisions should be made about the degree of formality and the structure of the Council.

Will the Advisory Council operate as an autonomous entity? In this scenario, the Council has officers, including a chair. Program staff may provide support as needed (e.g. facilitating meeting logistics; supporting communication with Council members) but are non-voting members. The chair (with other executive officers, and perhaps with the support of program staff) sets the agenda and leads the meetings. An advantage of this structure is the ability of the chair to independently communicate to policy makers the Advisory Council's position on issues, minimizing the risk of program staff being perceived as "lobbying".

Determine the procedure for electing or selecting officers, and what those officers are (typically, chair, vice-chair, and secretary). Develop clear and complete descriptions of the duties of the respective officers, for example: chair (develops agenda; works with staff to communicate/distribute meeting materials in accessible formats to members in advance of meeting; invites guest presenters; facilitates meeting); vice-chair (runs meeting in absence of the chair); secretary (records minutes; maintains membership roster and attendance). Develop rules for term limits for officers.

In lieu of an autonomous entity, Advisory Council support and facilitation should be assigned to a staff person who is interested in taking on this responsibility and who has good facilitation skills; additional administrative support may be required especially for logistics, recording minutes, and processing expenditures. If other than the program director him/herself, responsibilities include collaborating with the program director to construct the agenda; organize and distribute staff reports and materials (including alternate formats) in preparation for the meeting; send out reminders and other relevant communication (e.g. requests for RSVPs); coordinate logistics and arrangements (e.g. catering; sleeping/meeting rooms; booking CART); provide skilled facilitation during the meeting (e.g. encourages participation; guides discussion; keeps meetings on track; follows the agenda); prepares and/or reviews minutes.

Regardless of how the advisory council is structured, it is recommended that documents be stored electronically and available to all Advisory Council members. For example, a secure cloud-based storage option may be a place for storing historical and current information and work products as well as by-laws, board applicants, agendas, minutes and other important documents. A council member and/or staff person should be designated to assist in organizing and maintaining this repository.

Meeting Procedures:

It is important to establish meeting frequency, duration, and location(s) annually and let this be known to member candidates prior to their appointment. Review your state's "Sunshine Law" to determine the extent to which those rules may apply to your meetings (e.g. requirements to publish meeting information on your website). In addition, you may want to consider how/when you will employ technology options (phone, video conference), recognizing that while these are helpful for members who can't travel due to location, schedule or disability they may also present accessibility challenges. Determine how/whether voting can occur electronically, and protocols for same (e.g. 24 hour limit for asynchronous electronic voting on motions).

The Advisory Council should adopt meeting procedures, typically as a part of organizational by-laws. These procedures should address the following: the use of Robert's Rules of Order; quorum requirements; frequency and location of meetings (including the ability to transact business both in-person and via telecommunications) and decision-making methods (majority vote, two-thirds vote, or by consensus).

Meeting Accommodations and Member Compensation:

The Advisory Council should be committed to providing all necessary disability-related accommodations to facilitate full participation of its members with disabilities. This may include personal assistance services, CART, ASL or other language interpretation, assistive listening devices, documents in accessible formats including Braille, or supportive review of materials in advance of the meeting (e.g. for members with intellectual disabilities). As necessary, notice on accommodating chemical sensitivity should be provided to attendees. The location of face-to-face meetings should be fully accessible (including accessible paths from public transportation drop-off points and parking, meeting rooms, restrooms, and sleeping rooms if required). Any refreshment that will be provided should include provision for specific dietary requirements as well as accessibility (e.g. server assistance for buffets; straws).

The AT Act specifically allows reimbursement to members of the Advisory Council "for reasonable and necessary expenses actually incurred in the performance of official duties". This may include travel expenses, meals, payment for or provision of personal assistance services and other accommodations to promote full participation in the council's activities. However, compensation is not permitted for service on the Advisory Council (e.g. an honorarium or other such payment).

Guidelines and specific procedures for reimbursement of expenses associated with meeting attendance should be provided to members who may qualify, usually consumers/family members (not state agency representatives). For example, agency policies on prior expense approvals and expense limitations need to be distributed well in advance.

Frequently Asked Questions about the State Advisory Councils

What AT Act rules apply to the Advisory Council?

There are no AT Act rules, just the statute. However, most states have established a set of by-laws or governing procedures for their AT Council. Those decisions and the ability to amend them are all made at the state level.

Can a resident of a neighboring state serve on the Advisory Council?

While there is no explicit requirement in statute for an individual who serves on an Advisory Council to be a resident of the state, it is difficult to imagine how a person could be “geographically representative of the State” if they do not reside in the state. In any state where there is a more formal appointment process for an Advisory Council member, e.g. appointment is made by the Governor or a State Agency head, there is likely a clear requirement for the appointee to be a current state resident. It may be helpful for the Advisory Council by-laws to clearly address eligibility.

Does a representative from a required state agency or organization need to be an employee of that agency or organization?

The AT Act only specifies the agencies and/or organizations that must be represented. Unless there are other specific state requirements regarding appointments to advisory councils, the entity has great leeway in choosing who will represent them. It is critical that these entities understand the purpose for their inclusion in the advisory council as well as the role and responsibilities of their representative. It is also important the agency understand their representative may be voting on issues on their behalf.

For the purposes of the AT Act Advisory Council, who is “a consumer”? Is it only a person with a disability?

An individual with a disability who uses assistive technology devices and services is a “consumer”. A family member or guardian of such a person may also serve as a council member in the category of “consumer”.

Are there any restrictions on how long a person can serve as a council member?

There are no restrictions in the AT Act on the terms of service for AT Council members. The AT Act only specifies the composition (required consumer representation and specific agency representatives) and requires a consumer majority. The only other restrictions is that one person cannot be both a consumer and an agency representative.

If a required agency representative is also a consumer, can s/he be counted towards the consumer majority requirement?

No. The Act expressly prohibits “double counting” towards the consumer majority requirement.

Does the advisory council need to be a self-governing body?

No. Although some programs have a council that operates with bylaws and elects its own officers, other programs operate their council more informally and with more direction by program staff (e.g. setting the agenda).

What are some examples of “other representatives” beyond those required under the AT Act?

In addition to representation from required agencies, the state AT program may consider representatives from the state’s protection and advocacy (P&A), Parent Training and Information center (PTI), the state agency responsible for people with developmental disabilities, the state agency responsible for aging services, the state Medicaid agency, Universities, Community programs, etc. As other representatives are added, the consumer majority must still be met.

Should partner agencies who receive funds through the AT Act program (including those who receive devices) sit on the advisory council?

Some state programs have their subcontractors as “ex officio” (non-voting) members of the council, others may have partners as full members, and some do not include partner agencies on their council. The key is to avoid conflict of interest or appearance of conflict of interest (e.g. a partner member would need to recuse him/herself from any actions of the advisory council that would affect the agreement between the partner and the State AT program).

We are having difficulty getting one (or more) of the required entities to designate a representative. What can we do?

When completing the State Plan for Assistive Technology, you must attest to having the required representatives and consumer majority for the advisory council. If you don’t meet the requirements, you must explain the steps you are taking to comply with the required distribution. Steps may include correspondence or meetings between the lead agency and the administration (e.g. Chair of the Workforce Investment Board or the Secretary of Labor) explaining the requirement and requesting the appointment(s).

Can we use AT Act funds to pay the expenses of advisory council members, as well as the cost of any accommodations needed for their participation (e.g. ASL interpreters)?

The AT Act specifically allows reimbursement to members of the advisory council “for reasonable and necessary expenses actually incurred in the performance of official duties”. This may include travel expenses, meals, payment for or provision of personal assistance services and other accommodations to promote full participation in the council’s activities. However, compensation is not permitted for service on the advisory council (e.g. an honorarium or other such payment).

Does the advisory council need to be a separate entity, or can it be a part of another structure, e.g. the Consumer Advisory Committee required by a University Center of Excellence in Developmental Disabilities (UCEDD) where the UCEDD is the lead agency for the state AT program, the Board of Directors of the implementing agency that is a not-for-profit, or a part of the state Rehabilitation Council where VR is the lead agency?

The advisory council may be subsumed in another structure, as long as it functions to provide consumer-responsive, consumer-directed advice to the state AT program and all the requirements for representation, including consumer majority, are met. Note this will create additional complexity in determining how the AT Act funds supporting the advisory council will be allocated.

How do I distribute the expenditures for the advisory council as related to the distribution between "state level" and "state leadership" activities?

The degree to which at a given meeting the advisory council attends to state level and state leadership activities, respectively, should guide your determination of how you will distribute expenses. For example, if your council spends equal time on all activities, this would be "50-50". If your council spends most of its time discussing state level activities, you would reflect that in your allocation (e.g. 80%-20%). Determining this allocation becomes more challenging and complex when the advisory council is a part of another body (e.g. the UCEDD's consumer advisory committee or the State's Rehabilitation Council), especially when the meetings are combined and both advisory purposes are addressed in the same agenda.

Resources

Assistive Technology Act of 1998 as amended

(<https://www.govinfo.gov/content/pkg/PLAW-108publ364/html/PLAW-108publ364.htm>)