To amend title XIX of the Social Security Act to assist severely disabled individuals to attain or maintain their maximum potential for independence and capacity to participate in community and family life.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1985

Mr. FLORIO (for himself, Mr. COELHO, Mr. MORRISON of Connecticut, Mr. GALLO, and Mr. TOERICELLI) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to assist severely disabled individuals to attain or maintain their maximum potential for independence and capacity to participate in community and family life.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Community and Family Living Amendments of 1985".

6 SEC. 2. DEFINITIONS.

7 Section 1905 of the Social Security Act is amended by adding at the end thereof the following new subsections:
"(o) SEVERELY DISABLED INDIVIDUAL.—The term 'severely disabled individual' means an individual who is disabled (within the meaning of section 1614(a)(3) of this Act), if the onset of the disability occurred—

"(1) before the individual attained age 35, or

"(2) in the case of an individual whose disability is primarily due to a mental impairment, before the individual attained age 22.

"(p) COMMUNITY AND FAMILY LIVING SERVICES.—The term 'community and family living services' means supportive services made available to a severely disabled individual (or to his natural, adoptive, or foster family or spouse) to enable such individual to begin, resume, or continue living in a family home or community living facility. Such supportive services shall include both in-home and out-of-home services (as needed) from among those enumerated in section 1919(a).

"(q) FAMILY HOME.—The term 'family home' means a residence maintained by an individual (whether or not disabled) or a couple, or by a natural, adoptive, or foster family, in which one or more severely disabled individuals are living who receive medical assistance which includes payment for some services enumerated in section 1919(a).

"(r) COMMUNITY LIVING FACILITY.—The term 'community living facility' means a single household, other than a
family home, composed of related or unrelated persons,
which—

"(1) provides living arrangements and some care
or service enumerated in section 1919(a) to one or
more severely disabled individuals;

"(2) has a number of beds (exclusive of beds occu-
pied by staff members) not in excess of the product ob-
tained by multiplying by three the greater of—

"(A) the number of individuals in an average
family household in the area in which such facility
is located (as determined in accordance with data
from the 1980 decennial census), or

"(B) the number of individuals in an average
family household in such area (as determined in
accordance with any decennial census conducted
after the 1980 decennial census);

"(3) is located in a neighborhood which—

"(A) is representative of residential neighbor-
hoods in such area, and

"(B) is populated primarily by individuals
other than severely disabled individuals;

"(4) meets such standards of safety and sanitation,
and other standards relating to services provided by
the facility, as are established under regulations of the
Secretary for community living facilities, in addition to those applicable under State law;

"(5) meets the requirements of section 1861(j)(14) of this Act with respect to the personal funds of individuals residing in such facility, and

"(6) is staffed by individuals who (A) are trained or retrained in accordance with the provisions of the community and family living implementation agreement entered into under section 1919(d) by the State in which such facility is located, and (B) in providing such living arrangements, care, or service to severely disabled individuals, cooperate with other providers and with appropriate case managers in implementing a written plan of habilitation or rehabilitation for each such individual;

except that paragraphs (2) and (3) shall not apply in the case of a facility which was in operation on September 30, 1985, has not increased the number of its beds since that date, and has no more than 15 beds (exclusive of accommodations for staff).

"(s) W RITTEN H ABILITATION OR R EHABILITATION P LAN.—The term 'written habilitation or rehabilitation plan' means a plan for medical assistance and other services for a severely disabled individual which is—
"(1) developed by an interdisciplinary team consisting of—

"(A) individuals who are representative of professional and other disciplines which are relevant to the habilitation or rehabilitation of such individual, and have been involved in providing services to the individual or are likely to be involved in providing services to the individual, and

"(B) such individual, persons requested to participate by the individual, and, when appropriate, the spouse, parent, guardian, other family member, or advocate of such individual;

"(2) responsive to the individual needs of such individual, as determined by members of the team through individual assessment;

"(3) designed to enable such individual to attain or retain to the greatest extent possible capabilities for independence or self-care;

"(4) designed to promote and increase interaction between disabled and nondisabled individuals within the community; and

"(5) reevaluated by such team at least once each year.

(t) **CASE MANAGEMENT SERVICES.**—The term 'case management services' means, with respect to any severely
disabled individual, services rendered to such individual by a
designated qualified professional who—

"(1) has a continuing relationship with such indi-

vidual but who is not associated with the community
living facility or family home or other provider of on go-
ing direct services to such individual;

"(2) coordinates the development and implementa-
tion of the individual written plan of habilitation or re-
habilitation for such individual;

"(3) provides such individual (or his spouse,
parent, guardian, other family member, or advocate, as
appropriate) with information about, and referral to,
appropriate social, educational, vocational, medical, ad-
vocacy, or other services which are among or in addi-
tion to those for which payment may be made under
this title;

"(4) assists in procuring such services as
necessary;

"(5) periodically reviews the changing needs of
such individual and the appropriateness of the medical
assistance and other services provided to such
individual;

"(6) cooperates with personnel in school, employ-
ment related, or treatment settings who have specific
responsibilities for developing or implementing any in-
individual education plan, plan of vocational services, or plan of treatment designed for such individual, so that all such plans are, to the greatest extent possible, coordinated and complementary; and

"(7) is available to such individual or his family for consultation or crisis intervention when required.

"(u) INDIVIDUAL AND FAMILY SUPPORT SERVICES.— The term 'individual and family support services' means—

"(1) those services provided to a severely disabled individual which the individual's interdisciplinary team (described in subsection (s)(l)) determines are appropriate for carrying out those activities of daily living which the individual cannot perform for himself, including nonmedical personal care, assistance in ambulating or transferring, limited domestic services, and assistance with communicative devices and aids, and

"(2) services provided to the family of a severely disabled individual which the individual's interdisciplinary team determines are appropriate for assisting the family in providing services described in paragraph (1) to the individual, including respite care.

"(v) CLUSTER HOME.—The term 'cluster home' means a facility which—

"(1) was in operation on September 30, 1985;
(2) has not increased its number of beds since September 30, 1985; and

(3) consists of a cluster of two or three facilities in proximity to one another, each of which would meet the definition of a community living facility (as defined in subsection (r)), except that the presence of the other facilities of the cluster in the neighborhood violates the requirement of subsection (r)(3).

(w) PROTECTIVE INTERVENTION SERVICES.—The term 'protective intervention services' means those services necessary for intervention by an agency or agencies so authorized under State law in situations where there is suspicion of abuse, neglect, or exploitation of a severely disabled individual and includes—

(1) preliminary investigation and evaluation of reports of abuse, neglect, and exploitation;

(2) medical and psychiatric evaluations (if necessary);

(3) referral to appropriate law enforcement agencies; and

(4) securing coordinated services needed by a severely disabled individual when the individual is unable to secure the services on his own account.". 

•HR 2902 IH
SEC. 3. COMMUNITY AND FAMILY LIVING SERVICES FOR CERTAIN SEVERELY DISABLED INDIVIDUALS.

(a) STATE PLAN REQUIREMENT.—Section 1902(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (45);

(2) by striking out the period at the end of paragraph (46) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (46) the following new paragraph:

"(47) effective not later than October 1, 1988, provide that with respect to any severely disabled individual who is entitled to medical assistance under such plan and who resides in a family home or community living facility, such assistance shall include an array of community and family living services which the State determines are appropriate, when combined with other medical assistance available under the plan and with other available resources, to assist in providing for the health, safety, and effective habilitation or rehabilitation of such individual, including at a minimum case management services, individual and family support services, and protective intervention services.".

(b) INCLUSION AS MEDICAL ASSISTANCE.—Section 1905(a)(13) of such Act is amended by inserting before the semicolon at the end thereof the following: ", including com-
(c) SERVICES FOR SEVERELY DISABLED INDIVIDUALS.—Title XIX of such Act is amended by adding at the end thereof the following new section:

"MEDICAL ASSISTANCE, HABILITATION, AND REHABILITATION FOR SEVERELY DISABLED INDIVIDUALS"

"Sec. 1919. (a) COMMUNITY AND FAMILY LIVING SERVICES.—"

"(1) PAYMENT AUTHORIZED.—For purposes of section 1903, amounts expended by a State under its State plan for community and family living services may be included as medical assistance only if—

"(A) such services are provided—

"(i) to a severely disabled individual residing in a family home or in a community living facility, and

"(ii) in accordance with an individual written habilitation or rehabilitation plan;

and

"(B) the State meets the maintenance of effort requirement described in paragraph (5) for the calendar quarter in which the services are furnished."
"(2) SERVICES INCLUDED.—The following types of services may be included as community and family living services:

"(A) Case management services (as defined in section 1905(t)).

"(B) Individual and family support services (as defined in section 1905(u)).

"(C) Protective intervention services (as defined in section 1905(w)).

"(D) Periodic interdisciplinary diagnostic and assessment services.

"(E) Personal assistance and attendant care.

"(F) Domestic assistance necessitated by the individual's disability.

"(G) Services to enable the individual to improve or maintain functional capacities.

"(H) Prostheses, assistive devices, supplies, appliances, and communicative aids and devices.

"(I) Preventive and therapeutic dental services.

"(J) Adaptation of equipment and vehicles, and of housing or other space, to be used by a severely disabled individual.

"(K) Comprehensive outpatient rehabilitation facility services.
"(L) Adult day programs.

"(M) Purchase, training, and maintenance of
guide dogs and similar trained animals.

"(N) Services (other than board, lodging, and
basic foster care) provided to any severely dis-
abled individual by members of a family or house-
hold in which such individual is living.

"(O) Support services to families and care-
givers, including specialized training and respite
care in or out of the home or usual residence.

"(P) Special transportation services.

"(Q) Homemaker and home health services.

"(R) Chore services.

"(S) Crisis intervention.

"(T) Personal guidance, supervision, counsel-
ing, representation, and advocacy.

"(U) Specialized vocational services which
will enhance the independence, productivity, and
community integration of a severely disabled indi-
vidual, including employment training, support
necessary to maintain the employment of such indi-
dividual, orientation and mobility training, and
other training and therapeutic activities specified
in the written plan of habilitation or rehabilitation
developed with respect to such individual and for
which the individual is not eligible under the Rehabili-
tation Act.

"(V) Appropriate preventive services to de-
crease the needs of severely disabled individuals
for future services.

"(W) Any other services identified by the
State and approved by the Secretary as conform-
ing with the purposes of this section.

"(3) SERVICES EXCLUDED.—The following serv-
ices may not be included as community and family
living services:

"(A) Room and board, other than room and
board provided for less than six consecutive weeks
and less than twelve weeks in a year as an inte-
gral but subordinate part of a service described in
paragraph (2). However, auxiliary payments may
be made as medical assistance to cover extraordi-
inary costs of food or housing attributable to the
disabling condition of a particular individual or
individuals.

"(B) Any service for which payment is made
under section 403 or 422 of this Act.

"(C) Cash payments as a service.

"(D) Any service to any individual to the
extent that the provider of the service or the indi-
individual receiving the service is eligible to receive payment under title XVE3 with respect to the provision of the service.

"(E) Any educational service which the State makes generally available to its residents without cost and without regard to their income.

"(F) Any service to any severely disabled individual living in any hospital, skilled nursing facility, or intermediate care facility (including any such hospital or facility for mental diseases).

"(4) ADMINISTRATIVE COSTS.—Amounts expended by the State or by a provider of services to administer the provision of community and family living services pursuant to this section shall be treated as administrative costs of the State plan.

"(5) REQUIRED MAINTENANCE OF EFFORT.—

"(A) GENERAL RULE.—A State meets the maintenance of effort requirement of this paragraph only if, for in the quarter in which community and family living services are provided, the total amount of the funds expended by the State (and political subdivisions thereof) from non-Federal funds for these services for eligible severely disabled individuals is at least equal to the base amount (described in subparagraph (B)) increased
(for calendar quarters beginning after October 1, 1985) by an inflation factor (described in subparagraph (C)).

"(B) BASE AMOUNT.—The base amount, referred to in subparagraph (A), is the average quarterly amount of the funds expended (during the 4-quarter period ending September 30, 1985) by the State (and political subdivisions thereof) from non-Federal funds under the plan for services that are community and family living services.

"(C) INFLATION FACTOR.—The inflation factor, referred to in subparagraph (A) for a calendar quarter, is a factor, established by Secretary, that takes into account inflation in the costs for community and family living services or similar services between March 1985 and the quarter involved.

"(b) RELATION TO OTHER SERVICES AND GROUNDS FOR ELIGIBILITY.—

"(1) SERVICES ARE IN ADDITION TO OTHER MEDICAL ASSISTANCE.—Community and family living services provided pursuant to this section shall be in addition to any other medical assistance for which a
severely disabled individual is otherwise eligible under
the State plan.

"(2) NO CHANGE IN OTHER ELIGIBILITY.—Nothing
in this section shall be construed to deny to any
eligible individual medical assistance to which the indi-
vidual would be entitled under any other section of this
title.

"(c) STATE REQUIREMENTS.—In order to receive pay-
ment after September 30, 1988, under section 1903 with re-
spect to any community and family living services provided
under the State plan to any eligible severely disabled individ-
ual, a State agency administering or supervising the adminis-
tration of a State plan under this title shall—

"(1) enter into a community and family living im-
plementation agreement with the Secretary in accord-
ance with subsection (d);

"(2) report to the Secretary on the implementa-
tion of such agreement in such form and with such fre-
quency as the Secretary may prescribe (which shall be
not less than once nor more than four times each fiscal
year);

"(3) make a copy of such agreement and reports
available for public inspection during normal business
hours at readily accessible locations in the State;
"(4) provide for review by an independent auditor each fiscal year (in accordance with generally accepted auditing standards) of care and services provided to severely disabled individuals in such State under such plan during such year in order to ensure compliance by the State with the provisions of such plan and with the amendments made by the Community and Family Living Amendments of 1985; and

"(5) submit a copy of any such audit to the Governor of the State, the legislature of the State, and the Secretary not later than 120 days after the close of the fiscal year to which such audit pertains.

"(d) COMMUNITY AND FAMILY LIVING IMPLEMENTATION AGREEMENT.—The community and family living implementation agreement required under subsection (c)(l) must include the following provisions:

"(1) COMMUNITY AND FAMILY LIVING SERVICES.—The agreement must include provisions to assure that—

"(A) community living facilities are not unduly concentrated in any residential area (but may allow for cluster homes);

"(B) every individual on the staff of a community living facility who is involved in providing services to severely disabled individuals for which
any payment is made under this title has received
or will receive adequate and continuing training
or retraining in the provision of services to such
individuals;

"(C) training will be made available to natu-
ral, adoptive, and foster parents of severely dis-
abled persons eligible for medical assistance;

"(D) case management services and, as nec-
essary, individual and family support services, are
available to any severely disabled individual eligi-
ble to receive services under this title;

"(E) protective intervention services are
available, as necessary, to any severely disabled
individual who is, or would except for his income
or resources be, eligible to receive services under
this title;

"(F) any severely disabled individual for
whom a public agency (or an agency under con-
tract to a public agency) arranges placement will
have an opportunity to reside in a family home or
community living facility that is located as close
to the home of the natural, adoptive, or foster
family of such individual as is consistent with the
best interests of such individual;
(G) each community living facility or family home is accredited by an appropriate national accrediting body or is licensed or certified by an appropriate State agency;

(H) periodic independent monitoring or reviews are conducted of the quality of services provided to severely disabled individuals residing in family homes or community living facilities;

(I) procedures are established for granting an opportunity for a timely appeal and a speedy hearing before an impartial hearing officer—

(i) to any individual who believes himself to be inappropriately placed or who is denied an appropriate placement or service, or who is being scheduled for transfer (other than under the provisions of paragraph (2)(D) of this subsection and other than on his own initiative) from one living arrangement (including his own home) to another, or

(ii) as appropriate, to his spouse, parent, guardian, appropriate family member, or advocate acting on his behalf,

and for giving written notice to affected parties at least 30 days before such proposed transfer except in an emergency;
"(J) the availability (including volume and distribution) of care and services of high quality to severely disabled individuals who are or could be living in a family home or community living facility will be increased until adequate to meet changing needs;

"(K) the availability of suitable domestic arrangements and services (whether supplied directly or by incentives to the private sector) will be increased until adequate to enable severely disabled individuals who are eligible for supplemental security income benefits under title XVI to live in family homes or community living facilities; and

"(L) suitable State supplementary payments, as authorized under sections 1616 and 1618, or other assistance in cash or in kind to or on behalf of such individuals, based on their need for shelter or maintenance, or both, will be made available not later than October 1, 1989.

"(2) Severely disabled individuals living in residential facilities which are not family homes or community living facilities.—The agreement must include provisions with respect to severely disabled individuals who are living in residential
facilities which are not family homes or community living facilities which assure that—

"(A) admissions to such residential facilities will be limited through the use of individually planned and appropriate community and family living services;

"(B) within one year after October 1, 1988, and annually thereafter, individuals eligible for medical assistance who are living in skilled nursing facilities, intermediate care facilities, board and care facilities, or other public or private facilities, having 16 or more beds and in which a significant number of recipients of supplemental security income benefits are likely to reside, will be identified, and the needs of such individuals will be assessed, including a description of the types of medical assistance and other services that such individual will require when transferred to a family home or community living facility;

"(C) the number of individuals who are at any one time identified in subparagraph (B) will be reduced progressively over a period of ten years, such reductions to take place according to a plan to be set forth in the agreement;
"(D) prior to transfer of any severely disabled individual residing at any time during the period of the agreement in a skilled nursing facility, an intermediate care facility, or a board and care facility, to a family home or community living facility located in such State, a community services transfer plan will be developed through a process which—

"(i) identifies the specific community and family living services, as well as other services, that such individual will require and will have available when such individual is transferred to a community living facility or family home;

"(ii) involves the interdisciplinary team (or other professional group) responsible for the individual treatment plan or written plan of care or habilitation or rehabilitation with respect to such individual while residing in the facility from which transfer is to be made, and the case manager and other appropriate professional personnel who are likely to be involved in providing services to the individual in the community; and
"(iii) provides to the individual and as appropriate to his spouse, parent, guardian, appropriate family member, or advocate, an opportunity to participate in developing the community services transfer plan;

"(E) any severely disabled individual described in subparagraph (D), and his spouse, parent, guardian, appropriate family member, or advocate, are notified in writing at least 60 days before the date of any proposed transfer of such individual to a family home or community living facility;

"(F) procedures are established for granting to a severely disabled individual described in subparagraph (D) or, as appropriate, to his spouse, parent, guardian, appropriate family member, or advocate, an opportunity for an appeal regarding the transfer plan developed under subparagraph (D) with respect to such individual, and for a fair hearing before an impartial hearing officer designated by the State, on the grounds that—

"(i) the types of health related services, habilitation, rehabilitation, housing, or other services specified in the community services
transfer plan developed with respect to such individual are inappropriate or inadequate; or "(ii) a particular type of health related service, habilitation, rehabilitation, housing, or other service specified in such plan is not yet available in the area in which such individual will reside; "(G) alternate provisions will be made for appropriate care (including basic maintenance if needed) and services for any severely disabled individual eligible for medical assistance who has been living in a facility or institution which has been receiving payments for care, treatment, or maintenance of such individual under this title and which ceases to receive such payments, or ceases to provide such care and services to such individual, other than at the request of the individual or his representative; "(H) not later than October 1, 1998, any public or private institution (other than a correctional institution) receiving any State or Federal funds (under this title or any other provision of law), which is not a family home or community living facility and which admits severely disabled individuals as inpatients or residents, will be
either accredited by an appropriate national accrediting body or certified as a skilled nursing facility or intermediate care facility under this title;

"(I) the State will cooperate in any on-site sample surveys and validation procedures which may be conducted by the Secretary under section 1903(g)(2) and which may, at the discretion of the Secretary, include—

"(i) inspection of individual records with special reference to compliance with the requirements of this section and the other amendments made by the Community and Family Living Amendments of 1985, and

"(ii) interviews with residents and with their relatives or guardians and with staff and State officials.

"(3) DESCRIPTION OF METHODS TO ACHIEVE OBJECTIVES.—The agreement must include descriptions of the methods to be used to achieve the following objectives:

"(A) To advise severely disabled individuals or families or other advocates, individually and collectively, of the alternative arrangements and services available to them, of their right to freedom of choice of provider under section
1 1902(a)(23), and of their right to a fair hearing
2 under section 1902(a)(3) and this section.
3 "(B) To assure fair and equitable provisions
4 (as determined by the Secretary in consultation
5 with the Secretary of Labor) to protect the inter-
6 ests of public employees who will be affected by
7 the transfer of severely disabled individuals from
8 public institutions, including public medical insti-
9 tutions, to community or family living facilities
10 under the agreement, and that maximum efforts
11 will be made to provide for the employment of
12 such employees, including arrangements designed
13 to preserve employee rights and benefits and ar-
14 rangements to provide (where necessary) for the
15 training or retraining of such employees.
16 "(C) To assure application of fair employ-
17 ment standards and equitable compensation to
18 workers in private programs and facilities offering
19 care and services for which payments are made
20 under this title.
21 "(D) To assure timely submission of any de-
22 mographic, fiscal, or other reports by the State as
23 required by the Secretary, relating to community
24 or institutional services to severely disabled indi-
25 viduals, including, if requested, copies of any sur-
veys or plans of correction for major modification
by any intermediate care facility for the mentally
retarded or persons with related disorders, or
other intermediate care facility or skilled nursing
facility within the State.

"(E) To assure opportunities for participation
by interested citizens in the development of the
implementation plan or agreement, including op-
portunities for persons who have sensory or other
communication impairments.

"(4) REVIEW OF PLAN BY STATE PLANNING
COUNCILS.—The State planning council (established
under section 124 of the Developmental Disabilities
Assistance and Bill of Rights Act) will review and
comment on the agreement provided under this
subsection.

"(e) AUDIT.—The Secretary may provide for an inde-
pendent audit of medical assistance provided under any State
plan in order to ensure the compliance of such plan with the
provisions of this section and with the other amendments
made by the Community and Family Living Amendments of
1985. Such audit shall be conducted in accordance with gen-
erally accepted auditing standards.

"(f) NONCOMPLIANCE.—If, on the basis of an audit con-
ducted in accordance with subsection (e), and after affording
the State agency notice and an opportunity to comment, the
Secretary finds that any amount paid to a State under section
1903 with respect to medical assistance for severely disabled
individuals has been expended under such plan in a manner
that does not comply with the provisions of this section or of
any of the other amendments made by the Community and
Family Living Amendments of 1985, the Secretary may treat
such amount as an overpayment to such State under section
1903(d)(5).

"(g) REVIEW BY COMPTROLLER GENERAL.—The
Comptroller General of the United States shall, from time to
time, review State plans approved by the Secretary pursuant
to section 1902 in order to ensure the compliance of such
plans with the provisions of this section and the other amend-
ments made by the Community and Family Living Amend-
ments of 1985.

"(h) WAIVES OF STATEWIDE REQUIREMENT.—For
any 2-year period, a State may provide any new service
under this section without regard to the statewide require-
ment of section 1902(a)(l).".

(d) INTERMEDIATE CARE FACILITY SERVICES IN AN
INSTITUTION FOR THE MENTALLY RETARDED.—Section
1905(d) of the Social Security Act is amended—
(1) by striking out "public";
(2) by striking out "and" at the end of paragraph (2); and
(3) by striking out paragraph (3) and inserting in lieu thereof the following:
"(3) the individual needs of each newly admitted individual are ascertained by an interdisciplinary team within 30 days, and an individual written habilitation or rehabilitation plan is developed for the individual, including an assessment of his needs for community and family living services; and
"(4) the institution, if not operated by the State, has a written agreement with an appropriate State agency to cooperate in the implementation of the agreement between the State and the Secretary."

(e) CONFORMING AMENDMENTS.—

(1) Section 1903(a)(2) of the Social Security Act is amended—
(A) by inserting after "professional medical personnel" the following: "or personnel skilled in the delivery of community and family living services needed by severely disabled individuals"; and
(B) by inserting after "other public agency" the following "or any agency under contract to the State to provide services under section 1919".
(2) Section 1915(0 of the Social Security Act is amended by inserting "or implementation agreement" after "plan amendment".

4 SEC. 4. LIMITATION ON PAYMENTS FOR SERVICES PROVIDED IN LARGE FACILITIES.

Section 1903 of the Social Security Act is amended by inserting after subsection (r) the following new subsection:

"(s) LIMITATION ON PAYMENTS FOR SERVICES PROVIDED IN LARGE FACILITIES.—

"(1) GENERAL RULE.—

"(A) Effective for quarters beginning on or after October 1, 2000, the aggregate amount payable under this title to any State for any quarter for skilled nursing facility services and intermediate care facility services furnished to severely disabled individuals under 65 years of age in facilities having more than 15 beds, shall not exceed an amount equal to 15 percent of the greater of—

"(i) 25 percent of the amount paid under this title to such State for any fiscal year (selected by the State) ending prior to October 1, 1985, for intermediate care facility services provided in an intermediate care facility for the mentally retarded (described in section 1905(d)), or

• HR 2902 IH
"(ii) the aggregate amount paid under this title to such State for the quarter ending on December 31, 1989, for skilled nursing facility services and intermediate care facility services furnished to severely disabled individuals (as defined in section 1905(o)) under 65 years of age in facilities having more than 15 beds, increased or decreased in accordance with subparagraph (B).

"(B) The limitation amount for a State determined under subparagraph (A) shall be increased or decreased by the percentage increase or decrease in the medical care component of the consumer price index for all urban consumers (U.S. city average, as published by the Department of Labor) from the fiscal year applicable under clause (i) of subparagraph (A), or from fiscal year 1989 in the case of clause (ii) of subparagraph (A), to the fiscal year to which the limitation is being applied."

"(C) For purposes of applying this subsec-
tion, aggregate amounts paid under this title shall be determined without adjustments for amounts
recovered from third parties considered as over-
payments.

"(2) EXEMPTIONS FROM LIMITATION.—The limi-
tation on payments in paragraph (1) shall not apply to
the following payments for skilled nursing facility serv-
ices or intermediate care facility services provided in a
facility which unconditionally meets all requirements
applicable to such type of facility (including appropri-
ateness of admissions):

"(A) Payments for such services for individ-
uals in a facility which meets the size and location
requirements for a community living facility.

"(B) Payments for such services for individ-
uals in a facility which was in operation on Sep-
tember 30, 1985, has not increased the number of
beds since September 30, 1985, and has no more
than 15 beds (exclusive of accommodations for
staff).

"(C) Payments for such services for individ-
uals in a cluster home.

"(D) Payments for such services for any indi-
vidual, if the facility furnishes services which—
"(i) are necessary for the achievement

of one or more significant developmental or
therapeutic objectives with respect to such individual, and
"(ii) are not available in a family home
or community living facility in such State;
but only to the extent that the amount of time in
which such individual will reside in such facility
(as projected by the interdisciplinary team which
develops such individual's written habilitation or
rehabilitation plan at the time of admission), when
combined with the amount of time in which such
individual resided in any skilled nursing facility or
intermediate care facility after September 30, 2000, does not exceed two years."

SEC. 5. REDUCTION IN FEDERAL MATCHING FOR SERVICES PROVIDED IN LARGE FACILITIES.

Section 1903 of the Social Security Act (as amended by section 4 of this Act) is amended by inserting after subsection (s) the following new subsection:

"(I) REDUCTION IN FEDERAL MATCHING FOR SERVICES PROVIDED IN LARGE FACILITIES.—

"(1) GENERAL RULE.—Effective for quarters begin-
ing on or after October 1, 1988, the Federal medi-
cal assistance percentage shall be reduced for skilled
nursing facility services and intermediate care facility
services, furnished to any severely disabled individual under 65 years of age.

"(2) AMOUNT OF REDUCTION.—The reduction in the Federal medical assistance percentage under paragraph (1) shall be—

"(A) in the case of a State having in effect a community and family living implementation agreement under section 1919(d), one percent of the Federal medical assistance percentage which would otherwise apply but for this subsection, for each quarter which has elapsed after September 30, 1988, and before October 1, 1998; and

"(B) in the case of a State not having such an agreement in effect—

"(i) two percent of the Federal medical assistance percentage which would otherwise apply but for this subsection, for each quarter which has elapsed after September 30, 1988, and before October 1, 1993, plus

"(ii) one percent of the Federal medical assistance which would otherwise apply but for this subsection, for each quarter which has elapsed after September 30, 1993, and before October 1, 1998.
"(3) Exemptions from Reduction. — The reduction under paragraph (1) shall not apply to services furnished in any facility described in subsection (s)(2)."

SEC. 6. PROTECTION OF RIGHTS OF SEVERELY DISABLED INDIVIDUALS.

Section 1919 of the Social Security Act (added by section 3 of this Act) is amended by adding at the end thereof the following new subsection:

"(i) Protection of Rights. — In order to receive any payments pursuant to subsection (a)(1) —

"(1) the State must have in effect a system (which meets the requirements of part C of the Developmental Disabilities Assistance and Bill of Rights Act) to protect and advocate those rights of severely disabled individuals eligible for medical assistance which relate to the provision of such assistance, and

"(2) services provided under the system in order to comply with paragraph (1) must be in addition to services provided by the Federal Government as of September 1985."

SEC. 7. PRIVATE ENFORCEMENT.

Section 1919 of the Social Security Act (as amended by section 6 of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) Private Enforcement. —
"(1) IN GENERAL.—(A) Except as provided in paragraph (3), any person injured or adversely affected or aggrieved by a violation of this section, or of the other amendments made by the Community and Family Living Amendments of 1985, by a State agency administering the State plan may bring an action to enjoin such violation.

"(B) An action brought under this paragraph shall be brought in the appropriate district court of the United States within the State in which such State plan is in operation.

"(C) The party bringing such action may elect, by so stating in the complaint filed at the commencement of such action, to recover reasonable attorney's fees and costs from the defendant in the event that such party prevails.

"(2) NOTICE.—Not less than 15 days before commencing an action under this subsection, an interested party shall give notice by registered mail to the Secretary, the Attorney General of the United States, and the State agency administering the State plan alleged to be in violation of this section or of another amendment made by the Community and Family Living Amendments of 1985. Such notice shall state the
nature of the alleged violation and the court in which
such action will be brought.

"(3) APPROVAL OF STATE PLAN SHALL NOT
CONSTITUTE A DEFENSE.—The approval of the State
plan under section 1902(b) shall not be a bar to the
bringing of an action under this subsection, nor shall it
constitute a defense to any such action.".

SEC. 8. RATES OF PAYMENT FOR SERVICES.

Section 1902(a)(13) of the Social Security Act is amend-
ed by striking out "and" at the end of subparagraph (B), by
adding "and" at the end of subparagraph (C), and by adding
at the end thereof the following new subparagraph:

"(D) for payment for community and family
living services for severely disabled individuals,
described in section 1919 and provided under the
plan, through the use of rates (determined in ac-
cordance with methods and standards developed
by the State) which the State finds, and makes
assurances satisfactory to the Secretary, are rea-
sonable and adequate to assure the provision of
care and service in conformity with applicable
State and Federal laws and regulations, and ap-
plicable quality and safety standards, and to
assure that severely disabled individuals eligible
for medical assistance have reasonable access
(taking into account geographic location and reasonable traveltime for family and friends) to community and family living services of adequate quality;"

SEC. 9. MEDICAID ELIGIBILITY OF CERTAIN SEVERELY DISABLED INDIVIDUALS.

(a) OPTIONAL ELIGIBILITY.—Section 1902 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(k) ELIGIBILITY OF CERTAIN SEVERELY DISABLED INDIVIDUALS.—Notwithstanding any other provision of this title, a State may, at its option, provide for making payment for community and family living services, or any other service included in the State plan as medical assistance, to any severely disabled individual who expends (or is a member of a family which expends) at least 5 percent of the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1954) of such individual or family, as the case may be, for necessary medical care (as defined in section 213 of the Internal Revenue Code) and for community and family living services described in section 1919 provided to such individual. A State electing this option shall set forth in its State plan and its implementation agreement the criteria which the State will use in identifying individuals or reasonable classifications of such individuals, and the extent of the
services for which payment may be authorized under this subsection.

(b) EXEMPTION FROM FAMILY INCOME LIMITATION.—Section 1903(0(4) of such Act is amended—

(1) by adding "or" at the end of subparagraph (C); and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) who meets the requirements of section 1902(k),".

(c) UNIFORM INCOME STANDARD, AND EXPANDED ELIGIBILITY.—Section 1902(a)(10)(A)(ii) of such Act is amended—

(1) by striking out "or" at the end of subclause (V) and inserting in lieu thereof: "Provided, however, That if the State establishes such a separate income standard for individuals who are in any medical institution, the State must establish the same separate income standard for all severely disabled individuals,";

(2) by striking out the semicolon at the end of subclause (VI) and inserting in lieu thereof ", or"; and

(3) by adding at the end thereof the following:

"(VII) who are disabled children or disabled spouses who, except for resources deemed to them, would be eligi-
ble for supplementary security income benefits under title XVI;".

(d) CONTINUED ELIGIBILITY OF CERTAIN GAINFULLY EMPLOYED INDIVIDUALS.—Section 1902(e) of such Act is amended by adding at the end the following new paragraph:

"(5) Any severely disabled individual under age 65 who, for the month preceding the first month in the period to which this paragraph applies, is entitled to medical assistance under the plan by reason of being under a disability and who would otherwise be denied assistance by reason of section 1611(e)(4) or because his earnings have demonstrated a capacity to engage in substantial gainful activity (or any similar reason designated by the Secretary) shall nevertheless be considered to remain such a disabled individual (for purposes of continuing to be eligible to receive medical assistance under the plan), for so long as the Secretary determines that—

"(A) the individual continues to have the disabling physical or mental impairment on the basis of which the individual was found to be under a disability, and continues to meet all non-disability-related requirements (other than those that relate to earnings) for eligibility for medical assistance under the plan;

"(B) the termination of eligibility for assistance under this title would—

• HR 2902 IH
"(i) seriously inhibit the individual's ability to continue employment, or

"(ii) effectively limit the individual's ability to live in a family home or community living facility; and

"(C) the individual's earnings (and value of employment-related medical benefits) are not sufficient to allow him to provide for himself a reasonable equivalent of the cash benefits (and medical assistance under this title) which would be available to him in the absence of such earnings."

(e) ELIGIBILITY OF DISABLED CHILD.—Section 1902(e) of such Act, as amended by subsection (d), is further amended by adding at the end thereof the following new paragraph:

"(6) Whenever an individual is receiving benefits under title II as an adult disabled child (as provided in section 202(d)(l)(B)(ii)), and but for those benefits would be eligible for supplemental security income benefits under title XVI or for a State supplementary payment, such individual shall be deemed, for purposes of this title only, to be receiving supplemental security income benefits, or a State supplementary payment, respectively.".
SEC. 10. RESPONSIBILITIES OF THE SECRETARY.

(a) ASSESSMENT.—Beginning with fiscal year 1987, the Secretary of Health and Human Services, after consultation with the Secretary of Education, shall assess the status of disabled individuals in each State who are receiving or are entitled to receive services under any title of the Social Security Act, and shall report to the Congress not less often than every two years concerning the progress each State is making toward achieving the national goal of access to community based services and appropriate living arrangements for all such individuals. The Secretary shall make a comprehensive study, including evaluations of the impact of changes in Federal law on communities and on public and private entities. Such report shall include both fiscal and demographic data, together with any recommendations for changes in Federal legislation. The Secretary shall submit a comprehensive report to the Congress not later than January 15, 1997.

(b) REGULATIONS.—Within 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to all amendments to the Social Security Act made by this Act, and after allowing not less than 60 days for public comment, shall issue final regulations not later than 18 months after such date of enactment. Such regulations shall provide for the receipt and preliminary review by
the Secretary of implementation agreements proposed by any State beginning not later than June 30, 1987.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this Act shall apply in fiscal years beginning on or after October 1, 1986.