To amend title XIX of the social security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 3), 1989

Mr. CHAFEE (for himself, Mr. MITCHELL, Mr. DOLE, Mr. ARMSTRONG, Mr. BRADLEY, Mr. MOYNIHAN, Mr. BAUCTJS, Mr. MATSUNAGA, Mr. RIEGLE, Mr. PRYOR, Mr. ROCKEFELLER, Mr. PASCHLE, Mr. NUNN, Mr. GORE, Mr. WIETH, Mr. HOLLINGS, Mr. BURDICK, Mr. STEVENS, Mr. HARKIN, Mr. BIDEN, Mr. SHELBY, Mr. BINGAMAN, Mr. INOUYE, Mr. DODD, Mr. ADAMS, Mr. LEAHY, Mr. CONRAD, Mr. HATCH, Mr. GARN, Mr. HATFIELD, Mr. HUMPHREY, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. MCCAIN, Mr. CRANSTON, Mr. MURKOWSKI, Mr. WALLOP, Mr. BURNS, Mr. THURMOND, Mr. SPECTER, Mr. KERRY, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

1 Be it enacted by the Senate and House of Representa-

2 tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicaid Home and Community Quality Services Act of 1989".

SEC. 2. DEFINITIONS.

Section 1905 of the Social Security Act is amended by adding at the end thereof the following new subsections:

"(r) INDIVIDUAL WITH A SEVERE DISABILITY.—

"(1) The term 'individual with a severe disability' means an individual who is under a disability within the meaning of section 1614(a)(3) of this Act, the onset of which occurred before the individual attained the age that applies with respect to a fiscal year (as determined under paragraph (2)).

"(2) For purposes of paragraph (1), the age that applies with respect to a fiscal year is the lesser of—

"(A) 22 plus the number of fiscal years after fiscal year 1989 and before the beginning of such fiscal year; and

"(B) 50.

"(s) COMMUNITY AND FAMILY SUPPORT SERVICES.—
The term 'community and family support services' means supportive services made available to an individual with a severe disability (or to such individual's natural, adoptive, or foster family or spouse) to enable such individual to begin, resume, or continue living in a family home, foster 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 1921(a)(2).

"(t) FAMILY HOME.—The term 'family home' means a residence maintained by an individual (whether or not disabled) or a couple, or by a natural or adoptive family, in which one or more individuals with a severe disability are living who receive medical assistance which includes payment for some services enumerated in section 1921(a)(2).

"(u) FOSTER FAMILY HOME.—The term 'foster family home' means a residence maintained by an individual or couple—

"(1) in which not more than three individuals with a severe disability are living, are provided surrogate family services, and receive medical assistance which includes payment for one or more services enumerated in section 1921(a)(2); and

"(2) that is under contract with an agency licensed or designated to place individuals with a severe disability in such residence.

"(v) COMMUNITY LIVING FACILITY.—

"(1) The term 'community living facility' means a single household, other than a family home or foster family home, composed of related or unrelated persons, which—
"(A) provides living arrangements and one or more of the services enumerated in section 1921(a)(2) to one or more individuals with a severe disability;

"(B) has a number of beds (exclusive of beds occupied by staff members) not in excess of the product obtained by multiplying by three the greater of—

"(i) 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

"(ii) 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);

"(C) is located in a neighborhood which—

"(i) is representative of residential neighborhoods in such area, and

"(ii) is populated primarily by individuals other than individuals with a severe disability;
"(D) meets such standards of safety and sanitation, and other standards relating to services provided by the facility, as are promulgated by the State;

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

"(F) is staffed by individuals who (i) are trained or retrained in accordance with the provisions of the State implementation strategy (submitted to the Secretary under section 1921(c)(1)) by the State in which such facility is located, and (ii) in providing such living arrangements and services to individuals with a severe disability, cooperate with other providers and with appropriate case managers in implementing a written habilitation plan for each such individual.

"(2) A facility that—

"(A) was in operation on September 30, 1989;

"(B) does not increase its number of beds after such date (exclusive of beds occupied by staff members); and
"(C)(i) does not contain more than fifteen beds (exclusive of beds occupied by staff members), or

"(ii) consists of a cluster of two or three facilities in proximity to one another, each of which has no more than eight beds and which otherwise meets the requirements of paragraph (1);

shall be treated as a community living facility.

"(w) Written Habilitation Plan.—The term 'written habilitation plan' means a plan for medical assistance and other services for an individual with a severe disability which—

"(1) is developed by an interdisciplinary team consisting of—

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

"(B) individuals who are representative of professional and other disciplines which are relevant to the habilitation 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 (including the individuals responsible for providing case management serv
ices and case coordination services to the individual);

"(2) is based upon a comprehensive assessment of the strengths of the individual and the services and support necessary to—

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

"(B) promote and increase interaction between disabled and non-disabled individuals within the community, and

"(C) in the case of any such individual who has attained the age of 18 and who is not engaged in supported employment (or other employment in an integrated employment environment), assess the services and support needed by the individual to engage in such forms of paid employment;

"(3) specifies—

"(A) the individuals responsible for providing services under the plan and the frequency and duration with respect to which such services are provided,

"(B) the particular objectives to be achieved with respect to an individual described in behav
ternal terms that provide measurable indices of performance,

"(C) the dates by which the particular objectives are to be achieved,

"(D) the services and program strategies for achieving the specific objectives, and

"(E) the priority with which the specific objectives are to be achieved; and

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

"(x) CASE MANAGEMENT SERVICES.—The term 'case management services' means, with respect to any individual with a severe disability, services rendered to such individual by a designated qualified individual who—

"(1) has a continuing relationship with such individual but who is neither associated with nor employed by (nor has any other conflict of interest with respect to) the community living facility, foster family home, family home, or any other provider of ongoing direct services to such individual;

"(2) coordinates and monitors the development and implementation of the written habilitation plan for such individual;

"(3) provides such individual (or such individual's spouse, parent, guardian, other family member, or ad-
vocate, as appropriate) with information about, and re-
feral to, appropriate social, educational, vocational,
medical, advocacy, or other services which are among
or in addition to those for which payment may be made
under this title;
"(4) provides assistance and serves as an advocate
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, habilitation, or treatment settings who
have specific responsibilities for developing or imple-
menting any individual education plan, plan of voca-
tional services, plan of habilitation, or plan of treat-
ment designed for such individual, so that all such
plans are coordinated and complementary; and
"(7) is available to such individual or such individ-
ual's family for consultation or crisis intervention when
required.
"(y) INDIVIDUAL AND FAMILY SUPPORT SERVICES.—
The term 'individual and family support services' means—
"(1) those services provided to an individual with
a severe disability which the individual's interdiscipli-
nary team (described in subsection (w)(l)) determines are appropriate for carrying out those activities of daily living which the individual cannot perform for himself, including non-medical personal assistance, attendant services, assistance in ambulating or transferring, limited domestic services, and assistance with assistive devices and communicative devices and aids; and

"(2) services provided to the family of an individual with a severe disability 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.

"(z) SPECIALIZED VOCATIONAL SERVICES.—

"(1) The term 'specialized vocational services' means services designed to enhance the independence, productivity, and integration of an individual with a severe disability, including—

"(A) prevocational services for such an individual whose earning capacity (as determined on the basis of a current vocational assessment or other objective measure of work performance) is less than 50 percent of the minimum wage established under section 14(c) of the Fair Labor Standards Act of 1938; and
"(B) supported employment services for such
an individual for whom competitive employment—
"(i) has not traditionally occurred, or
"(ii) has been interrupted or intermittent
as a result of such disability (and for whom
ongoing support services are needed to per-
form such employment).

"(2) For purposes of paragraph (1)—
"(A) the term 'prevocational services' means
services that are designed to assist an individual
in acquiring and maintaining basic work and
work-related skills necessary to acquire and retain
work in an integrated work setting, which serv-
ices shall include—
"(i) training the individual to follow di-
rections, adapt to work routines, and carry
out assigned duties in an effective and effi-
cient manner,
"(ii) helping the individual to acquire
appropriate attitudes and work habits, includ-
ing instruction in socially-appropriate behav-
iors on and off the job site,
"(iii) assisting the individual to adjust to
the productive and social demands of the
work place,
"(iv) familiarizing the individual with job production and performance requirements,

"(v) providing transportation between the individual's place of residence and the workplace when other forms of transportation are unavailable or inaccessible,

"(vi) providing mobility training, including the utilization of public and Para transit systems,

"(vii) training the individual in the use of assistive devices and aids, and

"(viii) instructing individuals in appropriate use of job-related facilities (e.g., break areas, lunch rooms, cafeterias and rest rooms); and

"(B) the term 'supported employment services' means services designed to assist an individual in procuring and maintaining integrated, paid employment, which services shall include—

"(i) individualized assessment,

"(ii) individualized and group counseling,

"(iii) individualized job development and placement services that produce an appropriate
ate job match for the individual and such individual's employer,

"(iv) on-the-job training in work and work-related skills required to perform the job,

"(v) ongoing supervision and monitoring of the individual's performance on the job,

"(vi) ongoing support services necessary to assure job retention,

"(vii) training in related skills essential to obtaining and retaining employment, such as the effective use of community resources and transportation,

"(viii) transportation between the individual's place of residence and the work place when other forms of transportation are unavailable or inaccessible, and

"(ix) adaptive equipment necessary to obtain and retain employment.

"(aa) HABILITATION SERVICES.—

"(1) Subject to paragraph (2), the term 'habilitation services' means those services (including specialized vocational services and educationally-related services) provided to an individual with a severe disability which the individual's interdisciplinary team (described
in subsection (w)(l)) determines are appropriate in as-
sisting the individual to acquire, retain, regain, or im-
prove the self-help, socialization, decision making, and
adaptive skills necessary to achieve independence, pro-
ductivity, and integration and to live successfully in
home and community based settings.

"(2) The term 'habilitation services' does not
include—

"(A) special education services (as defined in
section 602(16) of the Education of the Handi-
capped Act) which otherwise are available to the
individual through a local educational agency; and

"(B) vocational rehabilitation services which
otherwise are provided to the individual through a
program funded under section 110 or 633 of the

"(bb) CASE COORDINATION SERVICES.—The term
'case coordination services' means, with respect to any indi-
vidual with a severe disability, services rendered to such indi-
vidual by a designated qualified individual who—

"(1) is employed by an agency directly responsible
for providing habilitation services to such individual; and

"(2) in cooperation with the individual responsible
for providing case management services, is responsible
for coordinating the agency's responsibilities for implementing such individual's written habilitation plan.

"(cc) EDUCATIONALLY-RELATED SERVICES.—The term 'educationally-related services' means, with respect to an individual with a severe disability who is eligible to receive services under parts B and H of the Education of the Handicapped Act, services covered as medical assistance under the State plan and required by such individual in order to receive a free appropriate public education (as defined in section 602(18) of such Act) or appropriate early intervention services (as defined in section 672(2) of such Act), including those services appropriate in assisting the individual to acquire, retain, regain, or improve the self-help, socialization, decision making, and adaptive skills necessary to achieve independence, productivity and integration.

"(dd) ASSISTIVE TECHNOLOGY.—The term 'assistive technology' means the systematic application of technology, engineering methodologies, or scientific principles to meet the needs and address the barriers confronted by an individual with a severe disability (including physical, sensory, and cognitive functional limitations in such areas as employment, recreation, independent living and other home and community living arrangements).

"(ee) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION.—The terms 'independence, 'productivity, and 'inte-
'gration' when used in reference to the provision of community and family support services under this title have the same meaning with respect to individuals with a severe disability as the meaning given to such terms with respect to persons with developmental disabilities in section 102 of Developmental Disabilities Assistance and Bill of Rights Act.”.

SEC. 3. COMMUNITY AND FAMILY SUPPORT SERVICES FOR CERTAIN INDIVIDUALS WITH A SEVERE DISABILITY.

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

(1) by striking "and" at the end of paragraph (46);

(2) by striking the period at the end of paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting a semicolon and transferring and inserting such paragraph after paragraph (46);

(3) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting ",; and", by redesignating such paragraph as paragraph (48), and by transferring and inserting such paragraph after paragraph (47); and

• S 384 IS
(4) by inserting after paragraph (48) the following new paragraph:

"(49) effective not later than the first day of the second fiscal year beginning after the date of enactment of the Medicaid Home and Community Quality Services Act of 1989, provide that with respect to any individual with a severe disability who is entitled to medical assistance under such plan and who resides in a family home, foster family home, or community living facility, such assistance shall include an array of community and family support 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, specialized vocational services, and protective intervention.".

(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 community and family support services for individuals with a severe disability".

(c) SERVICES FOR INDIVIDUALS WITH A SEVERE DISABILITY.—Title XIX of such Act is amended—
(1) by re-designating section 1921 as section 1922;
and
(2) by inserting after section 1920 the following new section:

"MEDICAL ASSISTANCE, HABILITATION, AND REHABILITA-
TION FOR INDIVIDUALS WITH A SEVERE DISABILITY

"SEC. 1921. (a) COMMUNITY AND FAMILY SUPPORT
SERVICES.—

"(1) For purposes of section 1903, amounts ex-
pended by a State under its State plan for community
and family support services may be included as medical
assistance if such services are provided—
"(A) to an individual with a severe disability
residing in a family home, foster family home, or
community living facility, and
"(B) in accordance with the individual's writ-
ten habilitation plan.

"(2) The following types of services may be in-
eluded as community and family support services:
"(A) Case management services (as defined
in section 1905(x)).
"(B) Individual and family support services
(as defined in section 1905(y)).
"(C) Specialized vocational services (as de-
defined in section 1905(z)).
"(D) Protective intervention.
"(E) Habilitation services (as defined in section 1905(aa)).

"(F) Case coordination services (as defined in section 1905(bb)).

"(G) Educationally-related services (as defined in section 1905(cc)).

"(H) Periodic interdisciplinary diagnostic and assessment services.

"(I) Personal assistance and attendant care.

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

"(K) Services to enable the individual to improve or maintain functional capacities (including physical therapy, occupational therapy, speech and language pathology and audiology, respiratory therapy, and non-aversive behavior intervention therapy).

"(L) Prostheses, orthoses, supplies, appliances, adaptive equipment, communicative aids, and other functional assistive technologies and devices (including sensory aids) and rehabilitative technology services to evaluate, design, assemble, repair, and maintain such equipment, aids, assistive devices, and systems and to train the individual, family, and provider agency staff in their use.
"(M) Preventive and therapeutic dental services.

"(N) Design and necessary and reasonable adaptation or modification of equipment and vehicles, and of housing or other space, to he used by an individual With a severe disability.

"(O) Comprehensive outpatient rehabilitation facility services.

"(P) Purchase and maintenance of guide dogs and similar trained animals.

"(Q) Services (other than board, lodging, and basic foster care) provided to any individual with a severe disability by members of a family or household in which such individual is living.

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

"(S) Special transportation services.

"(T) Homemaker and home health services.

"(U) Chore services.

"(V) Crisis intervention.

"(W) Personal guidance, supervision, counseling, representation, and advocacy.
"(X) Appropriate preventive services to decrease the needs of individuals with a severe disability for future services.

"(Y) Any other services identified by the State and approved by the Secretary as conforming with the purposes of this section.

"(3) The following services may not be included as community and family support 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 integral but subordinate part of a service described in paragraph (2). However, auxiliary payments may be made as medical assistance to cover extraordinary 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) Aversive behavior intervention, management, or therapies.

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

"(F) Any educational service which the State makes generally available to its residents without cost and without regard to their income except for educationally-related services (as defined in section 1905(cc)).

"(G) Any service to any individual with a severe disability living in any hospital, skilled nursing facility, or intermediate care facility (including any such hospital or facility for mental diseases).

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

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

"(c) STATE REQUIREMENTS.—In order to receive payment under section 1903 with respect to community and family support services provided under the State plan to any
eligible individual with a severe disability, such plan shall provide that the State—

"(1) submit to the Secretary a State implementation strategy (as described in subsection (d)) that is annually reviewed and updated (as appropriate);

"(2) ensure that community living facilities are not unduly concentrated in any residential area (except as provided in section 1905(v)(2));

"(3) report to the Secretary on the implementation of the State's implementation strategy (submitted to the Secretary under paragraph (1)) in such form and with such frequency as the Secretary may prescribe and comply with the requests of the Secretary to correct or verify such report;

"(4) cooperate with the Secretary in carrying out the Secretary's responsibility (under section 11 (d) of the Medicaid Home and Community Quality Services Act of 1989) to assess the State's compliance with its State implementation strategy (submitted to the Secretary under paragraph (1)), including making available to the Secretary such records as the Secretary may reasonably require to assess such compliance;

"(5) promulgate standards governing each element of community and family support services covered under its plan, monitor on an annual basis all providers
of such services to assure that such providers comply
with applicable standards, and take necessary steps to
assure that such standards are promptly and effectively
enforced;

"(6) meet the maintenance of effort requirement
described in subsection (e);

"(7) safeguard the rights of all individuals with a
severe disability who are participating in services for
which payment is made under this title;

"(8) ensure that individuals with a severe disabil-
ity are granted equal access to available community
and family support services without regard to their
place of residence or the nature or degree of their
disability;

"(9) ensure that any individual with a severe dis-
ability for whom a public agency (or an agency under
contract with a public agency) arranges a residential
placement is placed in a foster family home or commu-
nity living facility that is located as close to the home
of the natural, adoptive, or foster family of the individ-
ual as is consistent with the best interests of the indi-
vidual; and

"(10) ensure that in the case of any individual
with a severe disability who has attained the age of 18
for whom a public agency (or an agency under contract
with a public agency) arranges specialized vocational services for which payment is made under this title, priority will be given to providing such services in an integrated work environment.

"(d) STATE IMPLEMENTATION STRATEGY.—The State implementation strategy submitted to the Secretary under subsection (c)(1) shall—

"(1)(A) describe—

"(i) the extent and scope of community and family support services provided to individuals with a severe disability which are financed (in whole or in part) under—

"(I) the State's plan under this title,

"(II) other Federal or Federally-assisted State programs or social entitlement programs, and

"(HI) non-Federal sources, and

"(ii) the extent and scope of services provided to individuals with a severe disability who are residing in a facility that is an acute care hospital, a skilled nursing facility, an intermediate care facility (including a facility that is certified in accordance with section 1905(d)), a board and care facility, or other public or private facility having 16 or more beds and in which a significant
number of recipients of supplemental security income benefits reside or are likely to reside, which are so financed;

"(B) set forth specific objectives and a projected schedule for expanding and improving community and family support services for individuals with a severe disability over the succeeding five-year period, which objectives shall outline the expansion in the number of individuals served and community and family support services provided and identify the extent to which such services will be financed under the State's plan under this title and from other funding sources;

"(C) in the case of any individual with a severe disability who is residing in a facility described in sub-paragraph (A)(ii), provide that—

"(i) the service needs of such individual and the types of services the individual would require if transferred to a family home, foster family home, or community living facility, are identified not later than 18 months after the date on which community and family support services are first covered under the State plan (and annually thereafter), and

"(ii) such individual and, as appropriate, such individual's spouse, parent, guardian, appropriate
family member, or advocate, are afforded an opportunity to participate in the process under clause (i);

"(D) in the case of any individual with a severe disability who is residing in a skilled nursing facility or an intermediate care facility (other than a facility that is certified in accordance with section 1905(d)) and who is determined (in accordance with sub paragraph (C)) to be in need of alternative residential placement, provided that (subject to sub paragraph (F)) such individual is transferred from such facility not later than 40 months after the date on which the process described in sub paragraph (C) is completed with respect to such individual;

"(E) set forth specific objectives and a projected schedule, over the succeeding five-year period, for transferring individuals with a severe disability (who are residing in a facility described in sub paragraph (A)(ii) and are not transferred pursuant to sub paragraph (D)) to more appropriate residential settings where they will be eligible to receive community and family support services;

"(F) provide that in transferring any individual with a severe disability from a facility described in sub-paragraph (A)(ii)—
"(i) such individual is transferred only to a facility or program that is capable of providing an appropriate array of community and family support services (or in the case of an individual transferred to a facility certified in accordance with section 1905(d), active treatment) consistent with such individual's written habilitation plan,

"(ii) priority is given to transferring such individual to a family home, foster family home, or community living facility (including a facility certified in accordance with section 1905(d) that either meets the size and locational requirements for a community living facility under section 1905(v)(l) or is treated as such a facility under section 1905(v)(2)),

"(iii) to the extent the services required by the individual are unavailable in the community in which such individual would otherwise reside, such individual is transferred to a facility certified under section 1905(d) that serves 16 or more individuals with a severe disability, and

"(iv) in the case of an individual transferred pursuant to sub paragraph (D), during any period of time during which the individual is awaiting transfer the individual is furnished active treat-
ment consistent with such individual's written habilitation plan; and

"(G) provide that prior to transfer of any individual with a severe disability from a skilled nursing facility, an intermediate care facility, or a board and care facility to a family home, foster family home, or community living facility deemed to be capable of meeting the individual's needs—

"(i) a community services transfer plan is developed through a process which—

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

"(II) involves the interdisciplinary team (or other professional group) responsible for the written habilitation plan with respect to such individual while residing in the facility from which transfer is to be made, and the professional responsible for providing case management services and other appropriate professional personnel who are likely to be
involved in providing services to the individual in the community, and

"(HI) provides to the individual and, as appropriate, to such individual's spouse, parent, guardian, appropriate family member, or advocate, an opportunity to participate in developing such plan;

"(ii)(I) such individual and such individual's spouse, parent, guardian, appropriate family member, or advocate, are notified in writing at least 60 days before the date of any proposed transfer,

"(II) procedures are established for granting to such individual (or, as appropriate, to such individual's spouse, parent, guardian, appropriate family member, or advocate) an opportunity for an appeal regarding the transfer plan developed under clause (i) with respect to the individual, and for a fair hearing before an impartial hearing officer designated by the State, on the grounds that 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 a particular type of health relat
ed service, habilitation, rehabilitation, housing, or
other service specified in such plan is not yet
available in the area in which such individual will
reside, and
"(III) if such individual initiates an appeal
under sub clause (II), the individual remains in the
facility from which such individual is to be trans-
ferred pending the outcome of the appeal (unless
protective intervention is determined to be neces-
sary with respect to the individual);
"(2) provide that, not later than 18 months after
the date on which community and family support serv-
ices are first covered under the State plan, the State
has in place a preadmission screening program (using
criteria specified by the Secretary) to prevent the inap-
propriate placement of individuals with a severe dis-
ability in skilled nursing facilities and intermediate care
facilities (other than facilities certified under section
1905(d));
"(3) set forth—
"(A)(i) the component parts of a comprehen-
sive, integrated quality assurance system that af-
foards individuals with a severe disability expanded
opportunities for independence, productivity, and
integration and which includes standards to
govern the quality of each element of community and family support services covered under the State plan, as well as each class of residential facilities or living arrangements (except for a family home) in which a significant number of individuals with a severe disability reside, which standards assure that such services—

"(I) are based on timely assessments of the individual's needs and are organized systematically to assure optimal individual development, independent functioning, productivity, and community integration,

"(II) are furnished in accordance with the provisions of the individual's written habilitation plan and reflect the strengths of the individual and the services necessary to assist the individual to achieve more independent functioning with respect to health and physical development, receptive and expressive communication, cognitive learning, mobility, self-direction, socialization, leisure time, and vocational activities,

"(III) are provided in a manner that maximizes opportunities for and fosters the development of relationships between the in-
individual and other members of the community (including individuals who are not disabled),

"(IV) are provided in the home or at school, a job site, or other community setting where existing and newly acquired skills can be put to practical use,

"(V) are designed to ensure that (if the individual resides in a community living facility) services, other than residentially-related services, are provided in settings other than the facility in which the individual resides (unless medically contra-indicated), and

"(VI) are designed to assist the individual to acquire the functional life skills necessary to enhance the capacity of the individual to achieve independent living, to integrate into the community, to increase productivity, and to socially interact with individuals who are not disabled;

"(ii) the methods and procedures to be used in instituting and maintaining the quality assurance system described in sub paragraph (A), and

"(iii) the methods and procedures for—
"(I) providing the same opportunity for public input with respect to the standards de-
veloped under such system as exists under the State plan amendment process,

"(II) requiring review of such standards by the State Planning Council established under section 124 of the Developmental Disabilities Assistance and Bill of Rights Act and the protection and advocacy system established under section 142 of such Act, and

"(III) responding to any comments made by such Council, such protection and advocacy system, and the public with respect to such standards;

"(B)(i) a program for licensing and certifying all facilities and programs that provide community and family support services covered under the State plan, which program, at the option of the State, may include a requirement that a class or classes of facilities or programs are accredited by a national accrediting body that is designated by the Secretary, and

"(ii) a requirement that all physical structures (other than a family home) in which individ-
uals with a severe disability reside, or in which
community and family support services are provided, meet applicable State or local fire, safety, health, and sanitation codes, and have interior and exterior features that are comparable to other residential structures in the surrounding neighborhood;

"(C) a system for conducting an annual independent, third-party evaluation of a cross-section of community and family support services provided under the State plan, which system shall include (at a minimum)—

"(i) an analysis and validation of client-based data,

"(ii) periodic visits to a statistically valid sample of agencies or individuals providing such services,

"(iii) an assessment (conducted with respect to a statistically valid sample of individuals with a severe disability and, where available, through the use of valid and reliable instruments) to determine the extent to which the services contribute to reduced dependency, enhanced opportunities to make choices, the acquisition of positive social behaviors, improved social integration and par-
36 participation in community life, increased pro-
ductivity, consumer satisfaction, the physical
comfort of the individual and the attractiveness and appropriateness (in view of the indi-
vidual's age) of such individual's living envi-
ronment, and the achievement of the written
goals and objectives set forth in the individ-
ual's written habilitation plan, and

"(iv) a summary of findings and recom-
mandations with respect to needed changes
in State laws and the administrative policies
and practices of responsible State and local
agencies (and any other provider of such
services);

"(D) an annual assessment of consumer sat-
sisfaction with community and family support serv-
ices provided under the State plan;

"(E) a program of periodic assessments of
the adequacy of the physical and social environ-
ment of residential settings serving individuals
with a severe disability conducted by a review
body composed of parents, guardians, relatives, or
neighbors of such individuals, except that—
"(i) the parents, guardians, and relatives of such individuals shall comprise a majority of the body,

"(ii) no member of the body shall be affiliated with the facility or home being reviewed or with any agency responsible for providing funds with respect to such facility or home, and

"(iii) no member of the body shall take part in an assessment with respect to any individual with a severe disability if such member is a parent, guardian, or relative of such individual;

"(F) a systematic methodology for assuring prompt correction of any deficiency identified with respect to the provision of community and family support services under the State plan, which methodology shall include—

"(i) a procedure under which the affected entity may appeal a determination that there is such a deficiency,

"(ii) a requirement that any such entity with respect to which a deficiency is identified submit a plan of correction to the appropriate State agency which sets forth a sched-
ule for promptly eliminating the deficiency, and

"(iii) a program for providing training and technical assistance to assist such entity in eliminating a deficiency; and

"(G) a hierarchy of penalties with respect to any such entity that fails to comply with any standard promulgated pursuant to sub paragraph (A) (including a penalty for terminating such entity's participation in the program under this title);

"(4)(A) in the case of individuals with a severe disability who are living in residential facilities which are not family homes, foster family homes, community living facilities, provide that—

"(i) admissions to such residential facilities are restricted through the use of community and family support services, and

"(ii) the service needs of any such individual are identified in accordance with paragraph (1)(C);

"(B) provide that alternate provisions are made for (and priority given to the development of) appropriate care (including basic maintenance if needed) and services for any individual with a severe disability eligible for medical assistance who has been living in a facility or institution which has been receiving pay-
ments for care, treatment, or maintenance of such indi-


tual 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 in-


dividual or such individual's representative; and

"(C) set forth procedures for ensuring continuity

 of funding and the provision of services to an individual

 with a severe disability when an entity providing serv-

 ices to such individual for which payment is made

 under this title voluntarily discontinues operations or is

 terminated in accordance with paragraph (3)(G);

"(5)(A) provide that, as part of a plan to afford

 the public an adequate opportunity to comment on the

 State's implementation strategy (submitted to the Sec-

 retary under subsection (c)(1)) prior to when such strat-

 egy is submitted to the Secretary (or prior to each

 annual revision)—

"(i) copies of such strategy are distributed to

 individuals, agencies, and organizations in the

 State that are interested in the welfare of individ-

 uals with a severe disability,

"(ii) such individuals, agencies, and organiza-

 tions are afforded not less than 45 days to com-

 ment on the strategy,
"(iii) public hearings are conducted on the contents of the strategy (and the date of any such hearing is published in general circulation newspapers across the State not less than 10 days prior to the hearing),

"(iv) the comments of the State Planning Council established under section 124 of the Developmental Disabilities Assistance and Bill of Rights Act and the protection and advocacy system established under section 142 of such Act are solicited, and

"(v) a summary of the comments received from the general public, such Council, and such protection and advocacy system, is prepared, indicating any revisions made as a result of such comments (or explaining why such revisions were not made);

"(B) set forth the methods and procedures to be used to ensure that, with respect to every organization or agency responsible for providing services to individuals with a severe disability for which any payment is made under this title—

"(i) each member of the staff of such organization or agency is fully qualified to perform any assigned duty and has received or will receive

• S 384 IS
adequate and continuing training or retraining in
the provision of services to such individuals suffi-
cient to allow such member to remain informed of
the latest developments in serving such individ-
uals and to assist the organization or agency in
correcting any deficiencies in the provision of
community and family support services under this
section,

"(ii) such agency or organization maintains
written personnel policies, and

"(ui) such agency or organization has access
to needed technical assistance services;

"(C) set forth the methods and procedures to
ensure that any entity responsible for providing protec-
tive intervention services to an individual with a severe
disability or to an individual who is (or except for such
individual's income and resources would be) eligible to
receive such services under this section—

"(i) has daily, 24-hour access to every orga-
nization or agency responsible for providing serv-
ices to such an individual for which any payment
is made under this title,

"(ii) is independent of each such organization
or agency, and
"(in) has the legal capacity to intervene on behalf of such an individual when necessary to protect such individual's rights;

"(D) set forth the methods by which training and needed technical assistance services are made available to natural, adoptive, and foster parents of individuals with a severe disability who are eligible for medical assistance;

"(E) set forth the methods by which protective intervention services are made available, as necessary, to any individual with a severe disability who is, or would except for such individual's income or resources be, eligible to receive services under this title;

"(F) set forth the steps by which the State ensures that each individual with a severe disability receiving community and family support services under the State plan has access to case management services which are provided—

"(i) by an entity that is organizationally independent of (and free of any conflict of interest with respect to) any entity furnishing ongoing direct services to individuals with a severe disability,

"(ii) with sufficient frequency and intensity to ensure that the objectives in an individual's writ
ten habilitation plan are achieved within the
period of time specified in such plan, and
"(iii) by a trained individual with a caseload
capability to visit each individual under such indi-
vidual's responsibility not less than once a month;
"(G) provide that the State has in effect a man-
agement information system capable of collecting, stor-
ing, and retrieving data with respect to individuals
with a severe disability who receive (or who are eligi-
able to receive) community and family support services
under this section, which system shall—
"(i) be based on information derived from an
individual's written habilitation plan or from any
other needs-assessment data source,
"(ii) provide client-based data with respect to
the nature and extent of service needs, the type
and duration of services provided, the cost and
outcome of such services, and any gaps in avail-
able services, and
"(iii) use (where available) valid and reliable
instruments for collecting such data;
"(H) set forth procedures for—
"(i) 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 served or who is denied an appropriate service, or who is being scheduled for transfer (other than under the provisions of paragraph (1) of this subsection and other than on such individual's own initiative) from one living arrangement (including such individual's own home) to another, or

"(II) as appropriate, to the individual's spouse, parent, guardian, appropriate family member, or advocate acting on such individual's behalf,

"(ii) giving written notice to affected parties at least 60 days before such proposed transfer except in an emergency, and

"(iii) advising individuals with severe disabilities, their families, and their advocates of available alternative arrangements and services, of the right to choose among available licensed or certified providers of services, and of the right to a fair hearing under section 1902(a)(3);

"(J) describe the methods to be used in administering community and family support services under the State plan, including—
(i) the specific roles and responsibilities of—
   (I) specified State and local governmental agencies in establishing policies governing the provision of such services and in providing such services (either directly or under arrangements with other public or private entities),
   (II) the agency responsible for providing protection and advocacy in accordance with subsection (j), and
   (III) the community organizations and agencies responsible for providing such services, and
   (ii) the steps to be taken in recruiting and selecting such provider organizations and agencies;
   (K) set forth criteria to govern the use of psychotropic and anti-convulsant medications and behavior management techniques, as well as monitoring methods to be used to ensure compliance with such criteria;
   (L) set forth the methods by which the number and types of integrated work settings and the range of supportive services available to individuals with a severe disability who have attained the age of 18 are developed and expanded; and
"(M) set forth the methods to assure that the provision of specialized vocational services and educationally-related services under this title to individuals with a severe disability is coordinated (by use, where necessary, of interagency agreements) with the activities of responsible State and local vocational rehabilitation and educational agencies (and other agencies as appropriate); and

"(6) set forth methods and procedures to assure—

"(A) fair and equitable provisions (as determined by the Secretary in consultation with the Secretary of Labor) to protect the interests of public employees who will be affected by the transfer of individuals with a severe disability from public institutions, including public medical institutions, to community or family living facilities under the implementation strategy, and that maximum efforts will be made to provide for the employment of such employees, including arrangements designed to preserve employee rights and benefits and arrangements to provide (where necessary) for the training or retraining of such employees, and

"(B) application of fair employment standards and equitable compensation to workers in private
programs and facilities offering care and services for which payments are made under this title.

"(e) STATE MAINTENANCE OF EFFORT.—

"(1) A State meets the maintenance of effort requirement of this subsection for any quarter in a fiscal year in which community and family support services are provided if for such quarter the total amount of the funds expended by the State (and political subdivisions thereof) from non-Federal funds for these services for eligible individuals with a severe disability is at least equal to the base amount, increased by the inflation factor that applies with respect to the fiscal year in which such services are provided.

"(2) For purposes of paragraph (1)—

"(A) the term 'base amount' means the average quarterly amount of the funds expended (during the four-quarter period ending September 30, 1989) by the State (and political subdivisions thereof) from non-Federal funds under the plan for services that are community and family support services; and

"(B) the inflation factor that applies with respect to the fiscal year in which such services are provided is the amount (expressed as a percentage) by which the Consumer Price Index for the
third quarter of the fiscal year preceding such fiscal year exceeds the Consumer Price Index for the third quarter of the second fiscal year preceding such fiscal year.

"(f) 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 Medicaid Home and Community Quality Services Act of 1989.

"(g) WAIVER OF STATEWIDE REQUIREMENT AND REQUIREMENT OF COMPARABILITY.—For any one three-year period, a State may provide any new service under this section without regard to the statewide requirement of section 1902(a)(1) or the requirement of section 1902(a)(10)(B).

"(h) WAIVER OF FREEDOM OF CHOICE REQUIREMENT.—A State may provide case management services under this section without regard to the requirement of section 1902(a)(23) to the extent that the State determines that waiving such requirement is necessary to the effective and efficient provision of such services.

"(i) STATE ADMINISTRATION.—The Governor of each State may assign the responsibility for performing specified management functions regarding services provided to individuals with a severe disability under this section to State agen-
cies other than the agency administering the plan under this title”

(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 "a public" and inserting in lieu thereof "an";

(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 plan is developed for the individual, including an assessment of such individual's needs for community and family support services; and

"(4) the institution, if not operated by the State, has a written agreement with an appropriate State agency to cooperate in carrying out the State implementation strategy required to be submitted to the Secretary under section 1921(c)(1).".

(e) CONFORMING AMENDMENTS.—Section 1903(a)(2) of the Social Security Act is amended—

• S 384 IS
(1) by inserting after "professional medical personnel" the following: "or personnel skilled in the delivery of community and family support services needed by individuals with a severe disability"; and

(2) by inserting after "other public agency" the following "or any agency under contract to the State to provide services under section 1921".

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

Section 1903 of the Social Security Act is amended by adding at the end thereof the following new subsection:

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

"(1)(A) Except as provided in paragraph (2), effective for any fiscal year beginning after the date of the enactment of the Medicaid Home and Community Quality Services Act of 1989, the aggregate amount payable under this title to any State for any quarter beginning in such fiscal year for skilled nursing facility services and intermediate care facility services furnished to any individual described in sub paragraph (C) in facilities having more than 15 beds shall not exceed 25 percent of the maximum expenditure amount determined with respect to the State under sub paragraph (B) for such fiscal year."
(B)(i) For purposes of sub paragraph (A), the term 'maximum expenditure amount' means, with respect to a State for a fiscal year, an amount equal to the aggregate amount payable under this title to the State for the services described in sub paragraph (A) for the fiscal year ending after the date of the enactment of the Medicaid Home and Community Quality Services Act of 1989, increased by the percentage (if any) by which CPI percentage increase for the fiscal year exceeds 6.0 percent (and by any amounts expended for the fiscal year for which payment would otherwise be made under this title that are attributable to the cost of implementing a plan of correction which includes a reduction plan approved under section 1919).

(ii) For purposes of clause (i), the 'CPI percentage increase' for a fiscal year is the amount (expressed as a percentage) by which the Consumer Price Index for the third quarter of the fiscal year preceding such fiscal year exceeds the Consumer Price Index for the third quarter of the second fiscal year preceding such fiscal year.

(C) An individual described in this sub paragraph is an individual who—

(i) is under the age of 65, and
"(ii) who is under a disability within the meaning of section 1614(a)(3) of this Act, the onset of which occurred before the individual attained the age of 22.

"(D) For purposes of applying this subsection, aggregate amounts paid under this title shall be determined without adjustments for amounts recovered from third parties considered as overpayments.

"(2) The limitation on payments in paragraph (1) shall not apply to any of the following payments for skilled nursing facility services or intermediate care facility services provided in a facility which unconditionally meets all requirements applicable to such type of facility (including appropriateness of admissions):

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

"(B) Payments for such services for individuals in a facility which is in operation on September 30, 1989, does not increase its number of beds after such date, and has no more than 15 beds (exclusive of beds occupied by staff members).
(C) Payments for such services for individuals in a facility treated as a community living facility under section 1905(v)(2).

SEC. 5. PROTECTION OF RIGHTS OF INDIVIDUALS WITH A SEVERE DISABILITY.

Section 1921 of the Social Security Act (as added by section 3(c) of this Act) is amended by adding at the end thereof the following new subsection:

"(j) PROTECTION OF RIGHTS.—

"(1) Subject to paragraph (3), in order to receive any payments for community and family support services provided under this section, the State must have in effect a system to protect and advocate those rights of individuals with a severe disability who are eligible for medical assistance which relate to the provision of such assistance.

"(2) Such system must be implemented by an agency which—

"(A) is independent of any agency which provides services to individuals with a severe disability under the State plan;

"(B) has the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of individuals
with a severe disability who are eligible for medical assistance; and

"(C) has the authority to obtain access to records of individuals with a severe disability who are eligible for medical assistance in order to carry out such agency's duties under this subsection.

"(3)(A) In the case of a State that has in effect a system for providing protection and advocacy under part C of the Development Disabilities Assistance and Bill of Rights Act, such State shall take appropriate steps to ensure that such existing system is used to perform the protection and advocacy functions required by this section.

"(B) The State must provide assurances to the Secretary that the amounts paid to the State under this title that are attributable to the use of the system in effect under part C of such Act shall be used only for the purposes of providing protection and advocacy relating to the provision of medical assistance to individuals with a severe disability.

"(4) For purposes of section 1903(a)(1), amounts expended by the State under this subsection shall be treated as amounts expended as medical assistance under the State plan.".
SEC. 6. PRIVATE ENFORCEMENT.

Section 1921 of the Social Security Act (as added by section 3(c) of this Act and amended by section 5 of this Act) is further amended by adding at the end thereof the following new subsection:

"(k) PRIVATE ENFORCEMENT.—

"(1)(A) Except as provided in paragraph (3), any person injured or adversely affected or aggrieved by a violation of this section, or of the Medicaid Home and Community Quality Services Act of 1989, 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) 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 the Medicaid Home and
Community Quality Services Act of 1989. Such notice
shall state the nature of the alleged violation and the
court in which such action will be brought.

"(3) 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. 7. 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 sub paragraph (D), by
adding "and" at the end of sub paragraph (E), and by adding
at the end thereof the following new sub paragraph:

"(F) for payment for community and family
support services for individuals with a severe dis-
ability, described in section 1921 and provided
under the plan, through the use of rates (deter-
mined in accordance with methods and standards
developed by the State) which the State finds, and
makes assurances satisfactory to the Secretary,
are reasonable and adequate to assure the provi-
sion of care and service in conformity with appli-
cable State and Federal laws and regulations, and
applicable quality and safety standards, and to
assure that individuals with a severe disability eli-
gible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time for family and friends) to community and family support services of adequate quality;".

SEC. 8. MEDICAID ELIGIBILITY OF CERTAIN INDIVIDUALS WITH A SEVERE DISABILITY.

(a) OPTIONAL ELIGIBILITY.—Section 1902 of the Social Security Act is amended by redesignating the subsection (1) added by section 3(b) of the Employment Opportunities for Disabled Americans Act as subsection (o) and by inserting after such subsection the following new subsection:

"(p) ELIGIBILITY OF CERTAIN INDIVIDUALS WITH A SEVERE DISABILITY.—"

"(1) At the option of the State, any individual who has not attained the age of 19 and who—"

"(A) qualifies as a disabled individual under section 1614(a),

"(B) as determined by the State, is an individual who requires (or whose family requires) community and family support services, and

"(C) if the individual were in a medical institution, would be an individual with respect to whom supplemental security benefits (or a State
(2) A State electing the option under paragraph (1) shall set forth in its State plan and its State implementation strategy (submitted to the Secretary under section 1921(c)(1)) the criteria which the State will use in identifying eligible 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(f)(4) of such Act is amended—

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

(2) by inserting after sub paragraph (C) the following new sub paragraph:

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

(c) Uniform income standard, and expanded eligibility.—Section 1902(a)(10)(A)(ii) of such Act is amended—
(1) by inserting before the comma at the end of 
sub clause (V) the following new matter: ": Provided,
That if the State establishes such a separate income 
standard for individuals who are in any medical institu-
tion, the State must establish the same separate 
income standard for all individuals with a severe dis-
ability,"

(2) by striking out "or" at the end of sub clause
(XI); 

(3) by striking out the semicolon at the end of 
sub clause (X) and inserting in lieu thereof ", or"; and 

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

"(XI) who are disabled children or

disabled spouses who, except for re-

sources deemed to them, would be eligi-

ble for supplementary security income

benefits under title XVI;".

(d) ELIGIBILITY OF DISABLED CHILD.—Section
1634(c)(l) of such Act is amended by striking out "the effec-
tive date of this subsection" and inserting in lieu thereof
"January 1, 1957".

• S 384 IS
SEC. 9. REMOVAL OF CERTAIN LIMITATIONS ON REDUCTION AND CORRECTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

Section 1919 of the Social Security Act is amended—

(1) in subsection (d)—

(A) by striking "(d)(l)" and inserting in lieu thereof "(d)", and

(B) by striking paragraph (2); and

(2) by striking subsection (f).

SEC. 10. SPECIAL ELIGIBILITY EXCEPTION FOR INDIVIDUALS WITH A SEVERE DISABILITY.

Section 1902(f) of the Social Security Act is amended:

(1) by inserting "(1)" after the subsection designation;

(2) by inserting "paragraph (2)," before "subsection (e)"; and

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

"(2) Notwithstanding paragraph (1), an individual with a severe disability receiving benefits under title XVI or deemed to receive such benefits under this title shall be entitled to receive medical assistance as long as such individual remains severely disabled and continues to receive benefits under title XVI or is deemed to receive benefits under this title.".

• S 384 IS
SEC. 11. RESPONSIBILITIES OF THE SECRETARY.

(a) ESTABLISHMENT OF A BUREAU OF DEVELOPMENTAL DISABILITIES SERVICES.—

(1) The Secretary of Health and Human Services (referred to in this section as the "Secretary") shall establish, within the Health Care Financing Administration, a Bureau of Developmental Disabilities Services (referred to in this subsection as the "Bureau"). The Bureau shall be the principal office in the Department of Health and Human Services for administering and carrying out programs under title XIX of the Social Security Act relating to the furnishing of quality services to individuals with a severe disability in order to promote their independence, productivity, and integration into the community, and to provide coordinated leadership, guidance, and support to assist States in developing such services.

(2) The Bureau shall be headed by a Director who shall be appointed by the Secretary in consultation with the Administrator of the Health Care Financing Administration. The position of Director shall be placed in Level IV of the Executive Schedule in section 5318 of title 5, United States Code and shall be designated a career reserved position in the Senior Executive Service. The Director shall have training and
experience in the furnishing of services to individuals
with developmental disabilities.

(3) The additional staffing of the Bureau shall be
in sufficient numbers to meet program needs, and at
levels which shall attract and maintain the most quali-
fied personnel. Such personnel shall include individuals
who have training and experience in the provision of
services to individuals with developmental disabilities.

(4) The Bureau shall be established and staffed
not later than 6 months after the date of enactment of
this Act.

(5) The Bureau shall be responsible for—

(A) preparing all necessary regulations and
other administrative policies governing the provi-
sion of services under sections 1921 (as added by
this Act), 1905(d), and 1915(c) of the Social Secu-

curity Act as such services relate to individuals
with a severe disability;

(B) coordinating the activities of responsible
regional office personnel related to the provision
of services to individuals with a severe disability
under titles XVIII and XIX of the Social Secu-

ity Act;

(C) conducting periodic studies to determine
the consistency, reliability, and validity of surveys

• S 384 IS
of intermediate care facilities certified or requesting certification under section 1905(d) conducted under section 1902(a)(33)(B) of such Act (and, based on such studies, developing policies and procedures governing such surveys);

(D) preparing and issuing policies governing the conduct of utilization reviews under section 1902(a)(30)(A) of the Social Security Act, onsite inspections of care under section 1902(a)(31)(B) of such Act, and the preparation of professional review reports under section 1902(a)(31)(C) of such Act (as such reports pertain to care provided in facilities certified or requesting certification under section 1905(d) of such Act);

(E) advising the Administrator of the Health Care Financing Administration on all aspects of policies that may impact upon individuals with a severe disability and recommending (in consultation with such Administrator) policy initiatives and modifications necessary to improve services provided under titles XVIII and XIX of the Social Security Act in order to promote the independence, productivity, and integration of such individuals (as such terms are defined under section 1905(dd) of the Social Security Act);
(F) developing policies and procedures govern-ning the conduct of periodic assessments of the status of individuals with a severe disability who are receiving services under any title of the Social Security Act;

(G) reviewing State compliance with the provi-sions of, and amendments made, by this Act in such periodic and random fashion as the Bureau deems necessary, making recommendations to the Secretary based on such reviews; and

(H) performing such other functions relating to the provision of services to individuals with a severe disability as the Secretary may assign (in-eluding any function related to a responsibility of the Secretary under subsection (b), (c), (d), or (e) of this section).

(b) TRAINING OF SURVEY PERSONNEL.—The Secretary shall—

(1) with respect to Federal and State personnel who perform surveys under sections 1902(a)(33)(B) and 1910(c)(l) of the Social Security Act of facilities that are certified under section 1905(d) of such Act—

(A) not later than 18 months after the date of enactment of this Act, develop a standardized curriculum for training such personnel which
places particular emphasis on valid and reliable methods for assessing the provision of active treatment provided to residents of such facilities in accordance with standards prescribed by the Secretary;

(B) in accordance with the curriculum developed under sub paragraph (A), design and initiate a comprehensive training program for such personnel which provides—

(i) initial training not later than 30 months after the date of enactment of this Act in the case of personnel assigned to survey such facilities on or before the date of enactment of this Act,

(ii) initial training not later than six months after the date on which personnel are assigned to survey such facilities in the case of personnel assigned to survey such facilities after the date of enactment of this Act, and

(iii) continuing education to such personnel at least every 36 months; and

(C) develop standards regarding the qualifications of such personnel, including a standard requiring that at least one member of any survey

• S 384 IS
team be a qualified developmental disabilities pro-
essional (as defined by the Secretary); 
(2) on the basis of a randomly selected sample of 
Federal and State surveys conducted, periodically con-
duct studies of the reliability of survey findings to de-
termine the compliance of facilities certified under sec-
tion 1905(d) of the Social Security Act with the stand-
ards prescribed by the Secretary under paragraph (1) 
of such section; 
(3) make such changes in Federal regulations, ad-
ministrative policies or procedures (or initiate such spe-
cialized training programs) as are— 
(A) consistent with the findings of studies 
conducted under paragraph (2), and 
(B) necessary to improve the reliability and 
consistency of survey findings and certification de-
cisions with respect to facilities certified under 
section 1905(d); and 
(4) with respect to Federal and State personnel 
who perform surveys regarding State compliance with 
the provisions of, and amendments made, by this Act, 
design and initiate a comprehensive training program 
for such personnel that provides for an amount of 
training at least equal to that described in paragraph 
(1)(B).
(c) Development, Testing, and Dissemination of Instruments and Standards.—

(1) Subject to paragraph (2), the Secretary shall support the development, field testing, and dissemination of—

(A) reliable and valid instruments to assess service outcomes in the provision of care and services under this Act, including outcomes in such areas as community integration, individual and family satisfaction, and the impact of environmental factors; and

(B) competency-based personnel standards with respect to every agency or organization involved in providing services to individuals with a severe disability for which any payment is made as a result of the amendments made by this Act.

(2) Nothing in paragraph (1) shall be construed to allow the Secretary to require that a State use a specific outcome indicator or personnel standard selected by the Secretary.

(d) Assessment of State Compliance with State Implementation Strategy.—

(1) Beginning with the first fiscal year beginning after the date of enactment of this Act, the Secretary, after consultation with the Secretary of Education and
study of any recommendations made by the Bureau of Developmental Disabilities under subsection (a)(5)(G), shall conduct an annual assessment of each State's—

(A) compliance with the provisions of section 1921(c) of the Social Security Act (as added by section 3(c) of this Act); and

(B) progress in carrying out its implementation strategy (required to be submitted under section 1921(c)(I) of such Act), including the steps taken to—

(i) expand the quantity and improve the quality of community and family support services;

(ii) develop essential support services necessary to maintain a responsive network of community and family support services (including the provision of training, technical assistance, and crisis intervention services); and

(iii) promulgate standards governing community and family support services and monitor compliance and take necessary steps to enforce such standards.

(2) The Secretary shall conduct annual assessments of the adequacy of the quality assurance compo-
ments established by States under such implementation strategy. Such assessments shall include a review of community and family support services provided pursuant to such strategy and visits to community living facilities and entities providing such services.

(3) Nothing in this subsection shall be construed to require the approval of the Secretary of any State implementation strategy submitted under section 1921(c)(1) of the Social Security Act, if such strategy meets the requirements of section 1921(d) of such Act (as added by section 3(c) of this Act).

(e) REPORT.—Not later than January 15, 1994, and biennially thereafter, the Secretary shall submit a report to Congress that is based on the assessments, studies, and other activities conducted under subsections (b), (c), and (d) (and such other information as the Secretary may gather). Such report shall contain an analysis of the findings of such assessments, studies, and activities, a description of all relevant fiscal, programmatic, and demographic data, and recommendations regarding the need for any changes in Federal law.

(f) REGULATIONS.—

(1) Prior to the first fiscal year beginning after the date of enactment of this Act, the Secretary shall issue final regulations with respect to all amendments to the Social Security Act made by this Act, including regula
tions which govern the preparation, public review, distribution, and annual revision of the State implementation strategy (required to be submitted to the Secretary under section 1921(c)(1) of the Social Security Act, as added by section 3(c) of this Act).

(2) Nothing in this subsection shall be construed to authorize the Secretary to promulgate standards governing the provision of community and family support services.

(3) Nothing in this subsection shall be construed to prohibit payments under section 1903 of the Social Security Act prior to the issuance of regulations under this subsection to States which comply with the requirements of the amendments made to the Social Security Act by this Act.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall apply with respect to fiscal years beginning after the date of enactment of this Act.

• S 384 IS