H. R. 854

To amend title XIX of the Social Security Act to improve the provision and quality of services to individuals with mental retardation or related condition.

IN THE HOUSE OF REPRESENTATIVES

February 6, 1989

Mr. Florio (for himself, Mr. Waxman, Mr. Dingell, Mr. Walgren, Mr. Richardson, Mr. Leland, Mr. Wyden, Mr. Bates, Mr. Coelho, Mr. Sikorski, and Mr. Markey) 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 improve the provision and quality of services to individuals with mental retardation or related condition.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medicaid Community and Facility Habilitation Services Amendments of 1989".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:
Sec. 1. Short title; table of contents. **TITLE I—COMMUNITY HABILITATION AND SUPPORTIVE SERVICES**

Sec. 101. Community habilitation and supportive services as optional, statewide, service.

Sec. 102. Quality assurance for community habilitation and supportive services. Sec. 103. Eliminating prior institutionalization requirement under waiver authority. Sec. 104. Annual report.

**TITLE II—QUALITY ASSURANCE FOR HABILITATION FACILITY SERVICES**

Sec. 201. Requirements for habilitation facilities.
Sec. 202. Survey and certification process.
Sec. 203. Enforcement process.
Sec. 204. Effective dates.
Sec. 205. Annual report.

**TITLE III—APPROPRIATE PLACEMENT FOR INDIVIDUALS WITH MENTAL RETARDATION OR RELATED CONDITION**

Sec. 301. State preadmission screening and annual client review requirements.
Sec. 302. Revision of utilization review provisions.

**TITLE IV—PAYMENT FOR COMMUNITY HABILITATION SERVICES AND HABILITATION FACILITY SERVICES**

Sec. 401. Payment for community habilitation services.

**TITLE V—EMPLOYEE PROTECTIONS AND MISCELLANEOUS**

Sec. 501. Employee protections for closure and reductions in capacity. Sec. 502. Use of State developmental disabilities agency in certain medicaid administrative functions.

**1 TITLE I—COMMUNITY HABILITATION AND SUPPORTIVE SERVICES**

**SEC. 101. COMMUNITY HABILITATION AND SUPPORTIVE SERVICES AS OPTIONAL, STATEWIDE, SERVICE.**

(a) **PROVISION AS OPTIONAL, STATEWIDE SERVICE.**—

Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) by striking "and" at the end of paragraph (20),
(2) by redesignating paragraph (21) as paragraph (22), and
(3) by inserting after paragraph (20) the following new paragraph:

"(21) community habilitation and supportive services (as defined in section 1926(a)) for individuals with mental retardation or related conditions (as defined in subsection (m)) without regard to whether or not individuals who receive such services have been discharged from a nursing facility or habilitation facility; and".

(b) DEFINITION OF COMMUNITY HABILITATION AND SUPPORTIVE SERVICES.—Title XIX of such Act, as amended by section 303(a) of the Family Support Act of 1988 (Public Law 100-485), is amended—

(1) by redesignating section 1926 as section 1928,

and

(2) by inserting after section 1925 the following new section:

"COMMUNITY HABILITATION AND SUPPORTIVE SERVICES
"SEC. 1926. (a) COMMUNITY HABILITATION AND SUPPORTIVE SERVICES DEFINED.—In this title, the term 'community habilitation and supportive services'—

"(1) means services designed—

"(A) to assist individuals in acquiring, retaining, and improving self-help, socialization, and
adaptive skills necessary to function successfully in a home or community-based setting, "(B) to assist individuals in participating in community or other activities; and "(2) includes (except as provided in paragraph (3)) such prevocational, education, supported employment, and other supportive services, including transportation, functional assistive technologies and devices, and respite care services, as the State determines to be necessary and effective in promoting the individual's capability to engage in major life activities with other individuals, including employment and participation in community activities; but "(3) does not include— "(A) special education and related services (as defined in section 602 (16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401 (16), (17)) which otherwise are available to the individual through a local educational agency, and "(B) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730);
"(4) does not include room and board, consisting of non-personnel costs directly attributable to—

"(A) the purchase of food on behalf of clients,

"(B) the cost of property,

"(C) the purchase of household supplies not otherwise employed in the provision of covered services,

"(D) utility expenses, and

"(E) costs of facility maintenance, upkeep, and improvement, other than such costs for modifications or adaptations to a facility required to assure the health and safety of residents or to meet the requirements of the applicable life safety code, and

"(5) does not include payments made, directly or indirectly, to members of the family of the individual receiving such services.".

(c) INDIVIDUAL WITH MENTAL RETARDATION OR RELATED CONDITION DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by inserting after subsection (1) the following new subsection:

"(m) The term 'individual with mental retardation or related condition' means an individual with mental retarda-
tion or an individual who has a severe, chronic disability
that—

"(1) is attributable—
"(A) to cerebral palsy or epilepsy,
"(B) to any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;
"(2) is manifested before the person reaches age 22;
"(3) is likely to continue indefinitely; and
"(4) results in substantial functional limitations in 3 or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.".

(d) CONFORMING AMENDMENTS.—
(1) Section 1905(d) of such Act (42 U.S.C, 1396d{d)) is amended—
(A) by striking "the mentally retarded or persons with related conditions" and inserting
"individuals with mental retardation or related condition"

(B) by striking "mentally retarded individuals" in paragraph (1) and inserting "individuals with mental retardation", and

(C) by striking "the mentally retarded individual" in paragraph (2) and inserting "the individual with mental retardation or related condition".

(2) Section 1915(c) of such Act (42 U.S.C. 1395n) is amended—

(A) in paragraph (4MB), by striking "habilitation" and inserting "community habilitation and supportive", and

(B) by striking paragraph (5).

(3) Section 1919(e)(7)(G)(ii) of such Act (42 U.S.C. 1396r(e)(7)(G)(i)) is amended by striking "mentally retarded or a person with a related condition (as described in section 1905(d))" and inserting "an individual with mental retardation or related condition".

(4) Section 1902(j) of such Act (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting "(22)".

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(5) Section 19O2(a)(10)(C)(iv) of such Act (42
U.S.C. 1396a{(a}{(10})(C)(iv)) is amended by striking
"through (20)" and inserting "through (21)".

(f) EFFECTIVE DATE.—The amendments made by this
section apply to services furnished on or after January 1,
1990, without regard to whether or not final regulations to
carry out such amendments have been promulgated by such
date; except that—

(1) such amendments shall not apply to habilita-
tion services furnished under a waiver under section
1915(c) of the Social Security Act (as in effect on the
date of the enactment of this Act), if such waiver was
approved before the date of the enactment of this Act,
and

(2) such amendments shall not apply to services
furnished before the end of the 30-day period beginning
on the date the Secretary of Health and Human Serv-
ices promulgates interim requirements described in sec-
tion 1926(i)(l) of the Social Security Act.

(g) No ABROGATION or FREEDOM OF CHOICE,—

Nothing in this section shall be construed as abrogating the
right of Medicaid clients to freedom of choice, under section
19O2(a)(23) of the Social Security Act, with respect to the
providers from whom they can receive covered services.
SEC 102. QUALITY ASSURANCE FOR COMMUNITY HABILITATION AND SUPPORTIVE SERVICES.

Section 1926 of the Social Security Act, as inserted by section 101(a) of this Act, is amended by adding at the end the following new subsections:

"(b) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION.—The objectives of community habilitation and supportive services are to expand opportunities for independence, productivity, and integration into the community for individuals with mental retardation and related conditions. Except with respect to services provided under a waiver under section 1915(c) approved before January 1, 1990, the provisions of this section apply to community habilitation and supportive services provided under such a waiver.

"(c) INDIVIDUAL SERVICE PLANS.—

"(I) REQUIREMENT.—Community habilitation and supportive services must be provided in accordance with an individual service plan (in this section referred to as an 'ISP') which states specific objectives necessary to meet some or all of the client's needs, as identified in the comprehensive functional assessment conducted under subsection (d). In addition, the ISP shall include a description of the medical care service needs of the client, as identified by the client's physician. Nothing in this paragraph shall be construed as requiring a State to make available medical assistance under
this title for all types or elements of community habilitation and supportive services. If a State provides such medical assistance for some or all such types or elements and an ISP identifies such types or elements with respect to a client, the medical assistance shall be made available under this title for those types and elements for that client under the ISP,

"(2) PREPARATION.—Each ISP for a client shall be prepared, before the date community habilitation and supportive services are first provided to the client under this title, by an appropriate interdisciplinary team and shall be periodically reviewed and revised by such a team after each assessment under subsection (d).

"(3) REQUIRED PARTICIPATION IN DEVELOPMENT OF ISP.—In developing an ISP for a client, the team shall notify, and provide for and encourage the participation of, the client, the client's parents (if the client is a minor), and the client's legal guardian (if any).

"(4) PERMISSIVE PARTICIPATION OF PARENTS OF ADULT CLIENTS.—A parent (if the client is not a minor) who is not a legal guardian of the client may participate in developing the ISP unless the client has objected to the parent's participation.
"(5) AVAILABILITY.—A copy of each ISP must, consistent with the client's right to confidentiality described in section 1927(c)(l)(A)(iv), be made accessible to all relevant providers including other providers who work with the client, and to the client's parents and legal guardian (if any).

"(d) Comprehensive FUNCTIONAL ASSESSMENT.—

"(1) REQUIREMENT.—The State must provide that each individual who receives community habilitation and supportive services under the State plan under this title must have had a comprehensive functional assessment and must have such an assessment periodically reviewed. Such an assessment and review must be conducted by an interdisciplinary team. Such an assessment and review must identify each client's developmental and behavioral management needs.

"(2) FREQUENCY.—

"(A) ASSESSMENTS,—Such an assessment must be conducted before the receipt of community habilitation and supportive services under this title,

"(B) REVIEWS.—A review of each such assessment shall be performed in no case less often than once every 12 months,
"(3) Use. — The results of such an assessment or review shall be used in developing, reviewing, and revising the client's ISP under subsection (c).

"(e) Minimum Requirements for Services. — Community habilitation and supportive services provided under this title must meet such requirements for clients' rights and quality, consistent with the objectives described in subsection (b), as are published or developed by the Secretary under subsection (i). Such requirements, shall include—

"(1) minimum qualifications for personnel providing such services,

"(2) guidelines for such minimum compensation for personnel as will assure the availability and continuity of qualified personnel to provide such services for clients of various levels of impairment, and

"(8) a specification of clients' rights, including the rights described in clauses (i) through (iv), (vi), (vii), and (si) of section 1927(c)(l)(A).

"(f) Minimum Requirements for Residential Settings. —

"(1) Clients' rights and administration. — A residential setting in which one or more community habilitation or supportive services are provided must meet the requirements of—
"(A) section 1927(c)(1) (relating to clients' rights), and

"(B) section 1927(d) (relating to administration and other matters),
in the same manner as such requirements apply to habilitation facilities under such section; except that, in applying the requirement of section 1927(d)(2) (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the residential setting,

"(2) DISCLOSURE or OWNERSHIP AND CONTROL INTERESTS AND EXCLUSION OF REPEATED VIOLATORS.—A residential setting—

"(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1124(a)(3)) in the setting, and

"(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this title or who has had such an ownership or control interest in one or more residential settings which have been found repeatedly to have provided care of substandard quality in the setting.
"(3) CONTINUATION OF ACTIVE TREATMENT

FOB CERTAIN CLIENTS UPON CONVERSION FROM A HABILITATION FACILITY.—If part or all of a facility converts from an habilitation facility to a residential setting, each client who was a resident of the portion of the facility so converted at the time of the conversion and who, under the client's individual program plan at such time, required continuous active treatment (as defined in section 1927(b)(2)(A)), the residential setting must continue to provide for (or arrange for the provision of) continuous active treatment (as so defined) so long as such client resides in the setting and continues to require such active treatment. Nothing in section 1902(a)(10)(B) shall be construed as requiring medical assistance made available under the previous sentence to be made available to individuals not described in such sentence.

"(4) DOCUMENTATION OF RECEIPT OF MEDICAL CASE SERVICES.—A residential setting must include, in the clinical records of each client, documentation of the provision of medical care services to the client. Nothing in this paragraph shall be construed as requiring a State to make available medical assistance under this title for all types or elements of Medicare care services for such clients.
"(g) SURVEY AND CERTIFICATION PROCESS.—

"(1) RESPONSIBILITIES OF THE STATE.—

"(A) IN GENERAL.—Subject to paragraph (2), under each State plan under this title, the State shall be responsible for certifying the compliance of providers of community habilitation and supportive services, and of residential settings in which such services are provided, with the requirements of subsections (e) and (l)

"(B) EDUCATIONAL PROGRAM.—Each State shall conduct periodic educational programs for the staff and clients in residential settings in which community habilitation and supportive services are provided, and the parents (if the client is a minor) and legal guardians (if any) of such clients, in order to present current regulations, procedures, and policies under this section.

"(C) INVESTIGATION OF ALLEGATIONS OF CLIENT NEGLECT AND ABUSE AND MISAPPROPRIATION OR CLIENT PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of providers of community habilitation and supportive services and residential settings under this subsection, far a process for the receipt, review, and investigation of al-
legations of client neglect and abuse (including injuries of unknown source) by personnel providing such services and of misappropriation of client property by such personnel. Such process shall provide for documentation of findings relating to such allegations with respect to an individual, for inclusion of any brief statement of the individual disputing such findings, and for inclusion, in any disclosure of such findings, of such brief statement (or of a clear and accurate summary thereof). The findings relating to such allegations shall be made available, on request, to the State protection and advocacy system established under part C of the Developmental Disabilities Assistance and Bill of Rights Act and to other appropriate agency or agencies with whom a client, parent, or guardian may file a complaint respecting client abuse and neglect and misappropriation of client property.

"(D) CONSTRUCTION,—The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection,

"(2) RESPONSIBILITIES OF THE SECRETARY,—
The Secretary shall be responsible for certifying the compliance of State providers of community habilitation...
and supportive services, and of State residential settings in which such services are provided, with the requirements of subsections (e) and (f).

"(3) FREQUENCY OF CERTIFICATIONS.—Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

"(4) SURVEYS AND REVIEWS.—

"(A) SURVEYS OF RESIDENTIAL SETTINGS.—The certification under this subsection with respect to a setting must be based on a survey. Such survey for a residential setting must be conducted without prior notice to the setting, Any individual who notifies (or causes to be notified) a residential setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

The Secretary shall review each State's procedures for scheduling and conduct such surveys to assure that the State has taken all reasonable
steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(B) SURVEY PROTOCOL.—Surveys under this paragraph shall be conducted upon a protocol which the Secretary has provided for under subsection (i).

"(C) PROHIBITION OF CONFLICT OF INTEREST IN SURVEY TEAM MEMBERSHIP.—A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the provider or residential setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsections (e) and (f) or who has a personal or familial financial interest in the provider or setting being surveyed-

"(D) TRAINING REQUIRED.—No individual shall serve on or after January 1, 1992, as a member of a survey team under this paragraph or paragraph (5) unless the individual has successfully completed a training and testing program in
survey and certification techniques that has been approved by the Secretary under subsection (i)(3).

“(E) REVIEWS OF PROVIDERS.—The certification under this subsection with respect to a provider (other than with respect to a residential setting) must be based on a periodic review of the provider's performance.

"(5) VALIDATION SURVEYS AND REVIEWS.—

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of residential settings in each State, within 2 months of the date of surveys conducted under paragraph (4) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (4). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (4). If the State has determined that an individual setting meets the requirements of subsection (e) and (f), but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's non-compliance with such requirements is binding and supersedes that of the State survey."
"(B) SPECIAL SURVEYS AND REVIEWS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a provider or setting with any of the requirements of subsections (e) and (f), the Secretary may conduct a survey of the betting or a review of the provider and, on the basis of that survey or review, make independent and binding determinations concerning the extent to which the setting or provider meets such requirements.

"(6) INVESTIGATION OF COMPLAINTS AND MONITORING HABILITATION FACILITY COMPLIANCE.—Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of requirements by providers of community habilitation and supportive services or by residential settings in which such services are provided.

"(7) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers and settings,
including statements of deficiencies and plans of correction,

"(ii) copies of cost reports (if any) of such providers and settings filed under this title,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICE TO PROTECTION AND ADVOCACY SYSTEM—Each State shall notify the agency responsible for the protection and advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act of the State's findings of non-compliance with any of the requirements of subsections (e) and (f) with respect to a provider or setting in the State.

"(C) NOTICE TO FAMILY.—If a State finds that a provider or setting has provided services of substandard quality, the State shall notify the parent (if the client is a minor), or legal guardian (if any) of each client with respect to which such finding is made,
"(D) Access to Fraud Control Units.—

Each State shall provide its State Medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

"(h) Enforcement Process,—

"(1) In General.—If a State finds, on the basis of a survey or review under subsection (f)(2) or otherwise, that a provider of community habilitation and supportive services or a residential setting in which such services are provided no longer meets the requirements of this section, and further finds that the provider's or setting's deficiencies—

"(A) immediately jeopardize the health or safety of its clients, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the provider's or setting's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

"(B) do not immediately jeopardize the health or safety of its clients, the State may—
"(i) terminate the provider's or setting's participation under the State plan,

"(ii) provide for one or more of the remedies described in paragraph (2), or

"(iii) do both;

but in any case in which the Secretary has not provided for a civil money penalty under paragraph (3)(C)(i), the State shall provide for a civil money penalty under paragraph (2)(A)(i) for each day in which the State finds that the provider or setting was not in compliance with such requirements. Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a provider's or setting's deficiencies. If the State finds that a provider or setting meets such requirements but, as of a previous period, did not meet such requirements, the State shall provide for a civil money penalty under sub paragraph (C)(ii) for the days on which it finds that the provider or setting was not in compliance with such requirements.

"(2) SPECIFIED REMEDIES.—

"(A) LISTING.—Except as provided in sub-paragraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:
"(i) Denial of payment under the State plan with respect to any individual admitted to a residential setting involved after such notice to the public and to the setting as may be provided for by the State.

"(ii) A civil money penalty assessed and collected, with interest, for each day in which the provider or setting is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsection (g)(4)(A)) shall be applied to the protection of the health or property of clients of providers of community habilitation and supportive services that the State or the Secretary finds deficient, including payment for the costs of relocation of clients, maintenance of operation of a provider pending correction of deficiencies or closure, and reimbursement of clients for personal funds lost.

"(iii) The appointment of temporary management to oversee the operation of a residential setting and to assure the health
and safety of the setting's clients, where there is a need for temporary management while—

"(I) there is an orderly closure of the setting, or

"(II) improvements are made in order to bring the setting into compliance with all the requirements of this section.

The temporary management under this clause shall not be terminated under sub-clause (II) until the State has determined that the setting has the management capability to ensure continued compliance with all the requirements of this section.

"(iv) The authority, in the case of an emergency, to close a residential setting, to transfer clients in that setting to other settings, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification
of violations and final imposition of the remedies
and shall provide for the imposition of incremen-
tally more severe fines for repeated or uncorrected
deficiencies. In addition, the State may provide
for other specified remedies.

"(B) Deadline and Guidance.—As a con-
dition for approval of a State plan for calendar
quarters beginning on or after January 1, 1990,
each State shall establish the remedies described
in clauses (i) through (iv) of subparagraph (A) by
not later than January 1, 1990. The Secretary
shall provide, through regulations or otherwise by
not later than July 1, 1989, guidance to States in
establishing such remedies; but the failure of the
Secretary to provide such guidance shall not re-
lieve a State of the responsibility for establishing
such remedies.

"(C) Assuring Prompt Compliance,—If
a residential setting has not complied with any of
the requirements of this section within 3 months
after the date the setting is found to be out of
compliance with such requirements, the State
shall impose the remedy described in sub para-
graph (A)(i) for all individuals who are admitted to
the setting after such date-
(D) FUNDING.—The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of sub paragraph (A) shall be considered, for purposes of section 1903(a)(7), to be necessary for the proper and efficient administration of the State plan.

(3) SECRETARIAL AUTHORITY,—

(A) For STATE PROVIDERS AND SETTINGS.—With respect to a State provider of community habilitation and supportive services and a State residential setting in which such services are provided, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedy described in clauses (i) and (ii) of paragraph (2)(A), except that the remedy described in sub paragraph (C)(i) shall be substituted for the remedy described in paragraph (2)(A)(ii).

(B) OTHER PROVIDERS AND SETTINGS.—

With respect to any other provider of community habilitation and supportive services and any other residential setting in which such services are provided in a State, if the Secretary finds that a pro-
vider or setting no longer meets a requirement of this section and further finds that the provider's or setting's deficiencies—

"(i) immediately jeopardize the health or safety of its clients, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in sub paragraph (C)(ii), or terminate the provider's or setting's participation under the State plan and may provide, in addition, for one or more of the other remedies described in sub paragraph (C); or

"(ii) do not immediately jeopardize the health or safety of its clients, the Secretary may impose any of the remedies described in sub paragraph (C); but in any case the Secretary shall provide for a civil money penalty under paragraph (2)(A)(i) for each day in which the Secretary finds that the provider or setting was not in compliance with such requirements. Nothing in this sub paragraph shall be construed as restricting the remedies available to the Secretary to remedy a provider's or setting's deficiencies. If the Secretary finds that a provider or setting meets such requirements

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but, as of a previous period, did not meet such require-
ments, the Secretary shall provide for a civil
money penalty under sub paragraph (C)(i) for the
days on which he finds that the provider or set-
ting was not in compliance with such require-
ments.

"(C) SPECIFIED REMEDIES.—If the Secre-
tary finds that a provider or setting has not met
an applicable requirement:

"(i) AUTHORITY WITH RESPECT TO
CIVIL MONEY PENALTIES.—The Secretary
shall impose a civil money penalty in an
amount not to exceed $10,000 for each day
of non-compliance. The provisions of section
1128A (other than subsections (a) and (b))
shall apply to a civil money penalty under
the previous sentence in the same manner as
such provisions apply to a penalty or pro-
ceeding under section 1128A(a),

"(ii) APPOINTMENT OF TEMPORARY
MANAGEMENT,—In consultation with the
State, the Secretary may appoint temporary
management to oversee the operation of a
residential setting and to assure the health
and safety of the setting's clients, where
there is a need for temporary management

while_

"(I) there is an orderly closure of
the setting, or

"(II) improvements are made in
order to bring the setting into compli-
ance with all the requirements of this
section,

The temporary management under this
clause shall not be terminated under sub-
clause (II) until the Secretary has deter-
mined that the setting has the management
capability to ensure continued compliance
with all the requirements of this section.

The Secretary shall specify criteria, as to when
and how each of such remedies is to be applied,
the amounts of any fines, and the severity of each
of these remedies, to be used in the imposition of
such remedies. Such criteria shall be designed so
as to minimize the time between the identification
of violations and final imposition of the remedies
and shall provide for the imposition of incremen-
tally more severe fines for repeated or uncorrected
deficiencies.
"(4) Effective period of denial of payment.—A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the provider or setting is in compliance with all the requirements of this section.

"(i) Secretarial Responsibilities.—

"(1) Publication of interim requirements,—

"(A) In general.—The Secretary shall publish, by January 1, 1990, an interim regulation that sets forth interim requirements, consistent with sub paragraph (B), for the provision of community habilitation and supportive services, including—

"(i) the requirements of subsection (b) (relating to objectives), of subsection (c) (relating to ISP's) of subsection (d) (relating to comprehensive functional assessments), and of subsection (0 (relating to residential settings), and

"(ii) survey protocols (for use under subsection (g)) which relate to such requirements.
"(B) MINIMUM PROTECTIONS.—Interim requirements under sub paragraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that—

"(i) individuals receiving community habilitation and supportive services are protected from neglect, physical and sexual abuse, and financial exploitation;

"(ii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

"(iii) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

"(2) DEVELOPMENT OF FINAL REQUIREMENTS.—The Secretary shall develop, by not later than October 1, 1991—

"(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality community habilitation and supportive services under this title, and including at least the
requirements referred to in paragraph (l)(A)(i), and

"(B) survey protocols and methods for evaluating and assuring the quality of such services. The Secretary may, from time to time, revise such requirements, protocols, and methods.

"(3) APPROVAL OF TRAINING PROGRAMS.—The Secretary shall provide, by not later than October 1, 1990, for the approval of comprehensive training programs of State and Federal surveyors in the conduct of surveys under paragraphs (4) and (5) of subsection (g).

"(4) NO DELEGATION TO STATES. The Secretary's authority under this subsection shall not be delegated to States.

"(5) No PREVENTION OF MORE STRINGENT REQUIREMENTS BY STATES.—Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

"(j) DENIAL OF PAYMENT FOR SUBSTANDARD SERVICES.—In order for payments to be made to a State under section 1903(a) for community habilitation and supportive services furnished on and after January 1, 1992, including
such services furnished under section 1915(c) or 1905(a)(21)—

"(1) the State must apply the protocols and methods developed under subsection (i)(2) to such services, and

"(2) the State must provide that payment will not be made for such services if such protocols and methods indicate that such services are substandard.

"(k) NON-DUPLICATION OF PAYMENTS.—Payments made to a habilitation facility for providing community habilitation or supportive services shall not include payment for any services for which payment is otherwise made under this title to such facility."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to community habilitation and supportive services furnished on or after January 1, 1990; except that such amendments shall not apply to such services provided under a waiver approved under section 1915(c) of the Social Security Act before January 1, 1990.

(e) WAIVER OF PAPERWORK REDUCTION, ETC.—Chapter 35 of title 44, United States Code, and Executive Order 12291 shall not apply to information and regulations required for purposes of carrying out this title and implementing the amendments made by this title.
SEC. 103. ELIMINATING PRIOR INSTITUTIONALIZATION REQUIREMENT UNDER WAIVER AUTHORITY.

(a) IN GENERAL—Section 1915(c)(3) of the Social Security Act (42 U.S.C. 1396n(c)(5)) is amended by striking "with respect to" and all that follows through "retarded".

(b) EFFECTIVE DATE.—The amendment made by this section with respect to waivers approved or renewed on or after the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 304. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which providers of community habilitation and supportive services and residential settings in which such services are provided are complying with the requirements of subsections (e) and (f) of section 1926 of the Social Security Act (as inserted by the amendments made by this title) and the number and type of enforcement actions taken by States and the Secretary under section 1926(h) of such Act (as inserted by this title).

TITLE II—QUALITY ASSURANCE FOR HABILITATION FACILITY SERVICES

SEC. 201. REQUIREMENTS FOR HABILITATION FACILITIES,

(a) SPECIFICATION OF FACILITY REQUIREMENTS,—

Title XIX of the Social Security Act, as amended by section
"REQUIREMENTS FOR HABILITATION FACILITIES

"SEC. 1927. (a) HABILITATION FACILITY DEFINED.—

In this title, the term 'habilitation facility' means an institution (or a distinct part of an institution) which—

"(1) is primarily engaged in providing to clients health or habilitation services to individuals with mental retardation or related condition, and is not primarily for the care and treatment of mental diseases;

and

"(2) meets the requirements for an habilitation facility described in subsections (b), (c), and (d) of this section,

In this section, the term 'client' means an individual with mental retardation or a related condition.

"(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

"(1) QUALITY OF LIFE.—An habilitation facility must care for Its clients in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life, independence, productivity, and integration into the community of each client.
"(2) SCOPE OF SERVICES AND ACTIVITIES UNDER INDIVIDUAL PROGRAM PLAN,—

"(A) IN GENERAL,—An habilitation facility must provide each client, in accordance with an individual program plan, with continuous active treatment (as defined in sub paragraph (B)) which is coordinated and monitored by a qualified mental retardation professional.

"(B) ACTIVE TREATMENT DEFINED.—In this section, the term 'active treatment' means services directed towards—

"(i) the acquisition of behaviors and skills necessary for the client to function with as much self determination, independence, productivity, and integration as possible, and

"(ii) the prevention or deceleration of regression or loss of current optimal functional status.

Such term does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program,

"(3) INDIVIDUAL PROGRAM PLAN,—

"(A) DEVELOPMENT OF IPFS.—
"(i) IN GENERAL.—An habilitation fa-
cility must develop (or provide for the devel-
opment of), not later than 30 days after the
date of admission of each client, an individ-
ual program plan (in this section referred to
as an 'IPP') which states specific objectives
necessary to meet the client's needs, as iden-
tified in the comprehensive functional assess-
ment conducted under paragraph (4).

"(ii) PREPARATION BY AN INTERDISCI-
PLINARY TEAM.—Each IFF shall be pre-
pared by an appropriate interdisciplinary
team and shall be periodically reviewed and
revised by such a team after each assessment
under paragraph (4). Such team shall in-
clude, in the case of a client who has a sei-
zure disorder, a professional with expertise in
the diagnosis and treatment of seizure disor-
ders. Such team shall include, in the case of
an IPP which provides for physical or chemi-
cal restraints, a person who has expertise in
positive behavioral interventions,

"(iii) REQUIRED PARTICIPATION IN DE-
VELOPMENT OF IPP.—In developing an IPP
for a client, the facility shall notify, and pro-
vide for and encourage the participation of, the client, the client's parents (if the client is a minor), and the client's legal guardian (if any),

"(iv) PERMISSIVE PARTICIPATION OF PARENTS OF ADULT CLIENTS.—A parent (if the client is not a minor) who is not a legal guardian of the client may participate in developing the IPP unless the client has objected to the parent's participation,

"(B) AVAILABILITY.—A copy of each IPP must, consistent with subsection (e)(1)(A)(iv), be made accessible to all relevant staff, including staffs of other agencies who work with the client, and to the client's parents and legal guardian (if any).

"(C) MEDICAL CARE PLAN.—The IPP shall include a formalized plan for the provision of physician, licensed nursing care, and related medical care services if the client's physician determines that the client requires such a plan.

"(4) COMPREHENSIVE FUNCTIONAL ASSESSMENT.—

"(A) REQUIREMENT.—An habilitation facility must provide for comprehensive functional as-
sessments, and review of such assessments, of each client by an interdisciplinary team. Such an assessment and review must identify each client's developmental and behavioral management needs.

"(B) F'REQUENCY.—

"(i) A SSESSMENTS.—Such an assessment must be conducted promptly upon (but no later than 30 days after the date of) admission for each individual admitted on or after January 1, 1991, and by not later than January 1, 1992, for each client of the facility on that date.

"(ii) R EVIEWS,—A review of each such assessment shall be performed in no case less often than once every 12 months.

"(C) U SE.—The results of such an assessment or review shall be used in developing, reviewing and revising the client's IPP under paragraph (3).

"(D) R EQUIREMENTS RELATING TO PRE-ADMISSION SCREENING FOR INDIVIDUALS WITH MENTAL RETARDATION OR RELATED CONDITION.—An habilitation facility must not admit, on or after January 1, 1991 any new client who is an individual with mental retardation or related
condition (as defined in section 1905(m)) unless
the State mental retardation or developmental dis-
ability authority has determined prior to admis-
sion, based on an independent evaluation per-
formed by a person or entity other than the facil-
ity, that the individual requires the level of serv-
ices provided by an habilitation facility.

"(5) Provision of Services and Activities.—
"(A) In General,—To the extent needed to
fulfill all IPPs described in paragraph (3), an ha
bilitation facility must provide (or arrange for the
provision of)—

"(i) physician services 24 hours a day;
"(ii) annual physical examinations (in-
eluding vision and hearing examination, rou-
tine immunizations and tuberculosis control,
and routine laboratory examinations);
"(iii) licensed nursing services sufficient
to meet health needs of clients;
"(iv) comprehensive dental diagnostic
services, including—
"(I) a complete extraoral and in-
traoral examination, not later than one
month after the date of admission to the
facility (unless such an examination was
completed within 12 months before ad-
mission), and

"(II) periodic examination and di-
agnosis performed at least annually;

"(v) comprehensive dental treatment
services, including—

"(I) provision of emergency dental
treatment on a 24-hour-a-day basis by a
licensed dentist, and

"(II) dental care needed for relief
of pain and infections, restoration of
teeth, and maintenance of dental health;

"(vi) routine and emergency drugs and
biologicals for clients and procedures that
assure the accurate acquiring, receiving, dis-
pening, and administering of all drugs and
biologicals;

"(vii) professional program services
needed to implement the active treatment
plan defined in each client's IPP; and

"(viii) meal services, including at least 3
meals daily, and food and nutrition services
that assure that the meals meet the daily nu-
tritional and special dietary needs of each
client.
The services provided or arranged by the facility must meet professional standards of quality. The facility may, to the extent permitted by State law, utilize physician assistants and nurse practitioners to provide services described in clauses (i) and (ii).

"(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in sub paragraph (A) must be provided by qualified persons in accordance with each client's IPP.

"(C) FACILITY STAFFING.—

"(i) IN GENERAL.—An habilitation facility must have, or arrange for the provision of, sufficient direct care staff to meet the needs of clients at the facility.

"(ii) NO DEPENDENCE ON VOLUNTEERS.—An habilitation facility may not use a client or volunteer to meet the requirements of this sub paragraph.

"(iii) NO USE OF CERTAIN INDIVIDUALS.—An habilitation facility may not use individuals in the facility who have been convicted of child or client abuse, neglect, or mistreatment. The facility must take all reasonable steps to determine whether applicants for employment at the facility have histories indicating involvement in child or
client abuse, neglect, or mistreatment and, if an applicant has such a history, not to use the applicant in the facility.

"(6) PHYSICIAN SUPERVISION.—An habilitation facility must—

"(A) require that the health care of every client be provided under the supervision of a physician; and

"(B) provide for having a physician available to furnish necessary medical care in case of emergency.

"(7) RECORDS.—An habilitation facility must maintain records on all clients, which records include clinical records, IPPs (described in paragraph (3)), and the clients' comprehensive functional assessments (described in paragraph (4)), as well as the findings of any preadmission screen.

"(c) REQUIREMENTS RELATING TO CLIENTS' RIGHTS.—

"(l) GENERAL RIGHTS,—

"(A) SPECIFIED RIGHTS.—An habilitation facility must protect and promote the rights of each client, including each of the following rights:

"(i) FREE FROM ABUSE.—The right to be free from physical, verbal, sexual, or psy-
chological abuse, corporal or psychological punishment, aversive stimuli, and involuntary seclusion.

"(ii) FREE FROM RESTRAINTS.—The right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience of the staff or as a substitute for active treatment and not required to treat the client's medical symptoms. Restraints may only be imposed, in accordance with written policies and procedures as an integral part of the IPP to manage inappropriate client behavior, but only upon a recent showing, in the client's record, that less intrusive or more positive techniques have been tried, used appropriately, and proved unsuccessful.

"(iii) Privacy. The right to privacy with regard to accommodations, medical treatment written and telephonic communications, visits, and meetings of family and friends and of client groups.

"(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records.
(v) ACCOMMODATION OF NEEDS.—

The rights

(I) to reside and receive services

with reasonable accommodations of individual needs and preferences (including

the right to retain and use personal possessions and clothing), except where the

health or safety of the individual or other clients would be endangered, and

(II) to receive adequate notice

and explanation of the reasons thereof before the room or roommate of the client in the facility is changed and, other than in extraordinary circumstances, to disapprove such a change.

(vi) DIGNITY.—The right to be treated with dignity in a manner consistent with the client's chronological age

(vii) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal (or threat of discrimination or reprisal) for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the client may have,
including those with respect to the behavior of other clients.

"(viii) PARTICIPATION IN CLIENT AND FAMILY GROUPS.—The right of the client to organize and participate in client groups in the facility and the right of the client's family to meet in the facility with the families of other clients in the facility. Nothing in this clause shall be construed as requiring a facility to provide for a room specifically designed to accommodate meetings under this clause.

"(ix) PARTICIPATION IN OTHER ACTIVITIES.—The right of the client to participate in social, religious, and community activities that do not interfere with the rights of other clients in the facility,

"(x) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.
"(xi) FREE CHOICE WITH RESPECT TO MEDICAL CARE AND TREATMENT,—The right to choose a personal attending physician and to choose a qualified mental retardation professional or case manager, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the client's well-being, and to participate in planning care and treatment or changes in such care and treatment.

"(xii) VOLUNTARY SERVICES.—The right not to be compelled to perform services for the facility and, if the client chooses to perform such services, to be compensated for such services at prevailing wages commensurate with the client's productivity.

"(xiii) OTHER RIGHTS.—Any other right established by the Secretary.

Clause (v) shall not be construed as requiring the provision of a private room,

"(B) NOTICE OF RIGHTS.—A habilitation facility must—

"(i) inform each client, parent (if the client is a minor), or legal guardian (if any),
orally and in writing at the time of admission to the facility, of the client's legal rights during the stay at the facility; and

"(ii) make available to each client, parent (if the client is a minor), or legal guardian (if any), upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights).

The written description of legal rights under this sub paragraph shall include a description of the protection of personal funds under paragraph (6) and the mailing address, contact person, and telephone number of the State protection and advocacy system (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act) or other appropriate agency with whom the client, parent, or guardian may file a complaint respecting client abuse and neglect and misappropriation of client property in the facility.

"(C) RIGHTS OF INCOMPETENT CLIENTS,—

In the case of a client adjudged incompetent under the laws of a State, the rights of the client under this title shall devolve upon, and, to the extent judged necessary by a court of competent
jurisdiction, be exercised by, a person appointed under State law to act on the client's behalf. For purposes of the previous sentence, the term 'person' includes an organization which is independent of a facility.

"(D) USE OF PSYCHOPHARMACOLOGIC DRUGS.—Psychopharmacologic drugs may be administered only on the orders of a physician and only as an integral part of a plan (included in the IPP) designed to eliminate or modify the symptoms or behaviors for which the drugs are prescribed and only if, at least annually, an independent, external consultant trained in the administration and interaction of psychopharmacologic drugs reviews the appropriateness of the drug plan of each client receiving such drugs.

"(2) TRANSFER AND DISCHARGE RIGHTS.—

"(A) IN GENERAL —A habilitation facility must permit each client to remain in the facility and must not transfer or discharge the client from the facility unless—

"(i) the transfer or discharge is necessary to meet the client's welfare and the client's welfare cannot be met in the facility;
"(ii) the transfer or discharge is appropriate because the client no longer requires continuous active treatment;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered; or

"(v) the facility ceases to operate or the transfer or discharge is pursuant to a court order or under a reduction plan approved by the Secretary under subsection (i).

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the client's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by a qualified mental retardation professional, and in the cases described in clause (iv) the documentation must be made by a physician. A facility may not transfer or discharge a client under clause (i) or (ii) unless the service needs of the client recommended under sub paragraph (C)(ii) will be met in the client's new living environment. A facility may not transfer or discharge a client under
clause (iii) or (iv) unless adequate arrangements have been made for an alternative placement, 

"(B) PRETRANSFER AND PREDISCHARGE NOTICE.—

"(i) IN GENERAL.—Before effecting a transfer or discharge of a client (including such a transfer or discharge under a reduction plan under subsection (i)), a habilitation facility must—

"(I) notify the client, parent (if the client is a minor), or legal guardian (if any) of the transfer or discharge and the reasons therefor, 

"(II) record the reasons in the client's clinical record (including any documentation required under sub paragraph (A)), and 

"(III) include in the notice the items described in clause (iii). 

"(ii) Timing of NOTICE.—The notice under clause (i)(I) must be made at least 60 days in advance of the client's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of sub paragraph (A);
"(II) in a case described in clause (i) of sub paragraph (A), where a more immediate transfer or discharge is necessitated by the client's urgent medical needs; or

"(III) in a case where a client has not resided in the facility for 60 days. In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

"(in) ITEMS INCLUDED IN NOTICE.— Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after January 1, 1991, notice of the client's right to appeal the transfer or discharge under the State process established under subsection (e)(5)(B); and

"(II) in the case of clients with developmental disabilities, the mailing address, contact person, and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under part C of the Develop-
mental Disabilities Assistance and Bill of Eights Act,

"(C) SUMMARY, POST-DISCHARGE PLAN, AND ORIENTATION.—If a client is to be either transferred or discharged (including such a transfer or discharge under a reduction plan under subsection (i)), the facility must—

"(i) provide a final summary of the client's developmental, behavioral, social, health, and nutritional status and skills at the time for the discharge that is available for release to authorized persons and agencies, with legal consent of the client, parent (if the client is a minor), or legal guardian (if any),

"(n) provide recommendations relating to the service needs of the client in the client's new living environment; and

"(iii) provide the client with sufficient preparation and orientation (taking into account the client's length of stay at the facility) to ensure safe and orderly transfer or discharge from the facility.

"(3) ACCESS AND VISITATION RIGHTS.—A habilitation facility must—
(A) permit immediate access to any client by any representative of the Secretary, by any representative of the State, by the protection and advocacy system described in paragraph (2)(B)(iii)(H), or by the client's physician or qualified mental retardation professional;

"(B) permit immediate access to a client, subject to the client's right to deny or "withdraw consent at any time, by immediate family or other relatives of the client;

"(C) permit immediate access to a client, subject to reasonable restrictions and the client's right to deny or withdraw consent at any time, by others who are visiting with the consent of the client;

"(D) permit reasonable access to a client by any other entity or individual that provides health, social, legal, or other services to the client or that is a friend of the client, subject to the right of the client, parent (if the client is a minor), or legal guardian {if any) to deny or withdraw consent at any time;

"(E) permit representatives of the State protection and advocacy system (described in paragraph (2)(B)(iii)(II)), with the permission of the
client, parent (if the client is a minor), or legal
guardian (if any) and consistent with State law, to
examine a client's records; and
"(F) permit representatives of such State
protection and advocacy system to have access to
any client and to examine the client's records, in
the case of any client—
"(i) who, by reason of the client's
mental or physical condition, is unable to au-
threshold such examination,
"(ii) who does not have a legal guaiidi-
an, conservator, or other legal representa-
tive, or for whom the legal guardian is the
State, and
"(iii) with respect to whom a complaint
has been received by such system or with re-
spect to whom there is probable cause to be-
lieve that such client has been subject to
abuse and neglect.
"(4) EQUAL ACCESS TO QUALITY CARE.—An ha-
bilitation facility must establish and maintain identical
policies and practices regarding the admission, transfer,
and discharge of, and the provision of services required
under the State plan for, all individuals regardless of
source of payment,
"{5} ADMISSIONS POLICY.—With respect to admissions practices, an habilitation facility must—

"(A)(i) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title, (ii) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title, and (iii) provide to such individuals (and their representatives) oral and written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

"(B) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

"(C) in the case of an individual who is entitled to medical assistance for habilitation facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this title, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a re-
requirement for the individual's continued stay in
the facility

"(6) MANAGEMENT OF CLIENT FUNDS.—

"(A) In general,—The habilitation fa-
cility—

"(i) whether or not a client deposits
personal funds with the facility, must allow
individual clients to manage their financial
affairs and teach them to do so to the extent
of their capabilities, and

"(ii) upon the written authorization of
the client, parent (if the client is a minor), or
legal guardian (if any), must hold, safeguard,
and account for such personal funds under a
system established and maintained by the fa-
cility in accordance with this paragraph.

"(B) FACILITY MANAGEMENT OF PERSONAL
FUNDS.—Upon a facility's acceptance of written
authorization under sub paragraph (A)(ii), the fac-
ility must manage and account for the personal
funds of the client deposited with the facility as
follows:

"(i) DEPOSIT.—The facility must de-
posit any amount of personal funds in excess
of $50 with respect to a client in an interest
bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

"(ii) ACCOUNTING AND RECORDS.—The facility must assure a full and complete separate accounting of each such client's personal funds, maintain a written record of all financial transactions involving the personal funds of a client deposited with the facility, and afford the client, parent (if the client is a minor), or legal guardian (if any) reasonable access to such record.

"(in) NOTICE OF CERTAIN BALANCES,—The facility must notify each client receiving medical assistance under this title or the parent (if the client is a minor) or legal guardian (if any), when the amount in the client's account reaches $200 less than the dollar amount determined under section 1611(a)(3)(B) and the fact that if the amount in the account (in addition to the value of the
client's other non-exempt resources) reaches
the amount determined under such section
the client may lose eligibility for such medi-
cal assistance or for benefits under title XVI.

"(iv) CONVEYANCE UPON DEATH,—
Upon the death of a client with such an ac-
count, the facility must convey promptly the
client's personal funds (and a final accounting
of such funds) to the individual administering
the client's estate,

"(C) ASSURANCE OF FINANCIAL SECURI-
TY.—The facility must purchase a. surety bond, or
otherwise provide assurance satisfactory to the
Secretary, to assure the security of all personal
funds of clients deposited with the facility.

"(D) LIMITATION ON CHARGES TO PERSON-
AL FUNDS.—The facility may not impose a
charge against the personal funds of a client for
any Item or service for which payment is made
under this title.

"(E) NO FACILITY BORROWING OF PERSON-
AL FUNDS.—The facility may not borrow, or use
as security for any indebtedness, personal funds
deposited with the facility.
(d) REQUIREMENTS RELATING TO ADMINISTRATION AND OTHER MATTERS.—

(1) ADMINISTRATION.—An habilitation facility must be administered in a manner that enables it to use its resources effectively and efficiently to promote maintenance or enhancement of the quality of life, independence, productivity, and integration into the community of each client.

(2) LICENSING AND LIFE SAFETY CODE.—

(A) LICENSING.—An habilitation facility must be licensed under applicable State and local law.

(B) LIFE SAFETY CODE.—An habilitation facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to health care occupancies or residential board and care occupancies; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would
not adversely affect the health and safety of clients or personnel, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects clients of and personnel in habilitation facilities.

"(3) SANITATION AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—An habilitation facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which clients reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of clients, personnel, and the general public.

"(4) MISCELLANEOUS.—

"(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS,—An habilitation facility must operate and provide services in compliance with all applicable
Federal, State, and local laws and regulations (including the requirements of section 1124) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

"(B) OTHER.—An habilitation facility must meet such other requirements relating to the health and safety of clients or relating to the physical facilities thereof as the Secretary may find necessary."

(c) STATE REQUIREMENT FOR PREADMISSION SCREENING AND CLIENT REVIEW.—For State requirement for preadmission screening and client review, see the amendment made by section 301 of this Act.

(d) FEDERAL RESPONSIBILITIES.—Section 1927 of such Act is amended by adding at the end the following new subsection:

"(f) RESPONSIBILITIES OF SECRETARY RELATING TO HABILITATION FACILITY REQUIREMENTS.—

"(1) GENERAL RESPONSIBILITY,—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in habilitation facilities under State plans approved under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and
rights of clients and to promote the effective and efficient use of public moneys.

"(2) OPERATIONAL DEFINITION OF CONTINUOUS ACTIVE TREATMENT.—The Secretary shall establish, by not later than January 1, 1991, an operational definition of continuous active treatment that promotes a consistent assessment of whether an habilitation facility is in compliance with the requirements of subsection (b)(2)(A).

"(3) FEDERAL GUIDELINES FOR STATE APPEALS PROCESS FOR TRANSFERS AND DISCHARGES.—For purposes of subsections (c)(2)(B)(iii) and (e)(5)(B), by not later than July 1, 1990, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(5)(B) must meet to provide a fair mechanism for hearing appeals on transfers and discharges of clients from habilitation facilities. The guidelines shall provide, upon the request of a client, parent (if the client is a minor), or legal guardian (if any), for the participation of a representative of the State protection and advocacy system (described in subsection (c)(2)(B)(iii)(II)) in the appeals process with respect to that client.

"(4) CRITERIA FOR ADMINISTRATION.—The Secretary shall establish criteria for assessing an habilita-
tion facility's compliance with the requirement of sub-
section (d)(1) with respect to—

"(A) its governing body and management,

"(B) disaster preparedness,

"(C) laboratory and radiological services (if
provided),

"(D) clinical records, and

"(E) client and advocate participation,".

(b) INCORPORATING REQUIREMENTS INTO STATE
PLAN.—Section 1902(a) of such Act (42 U.S.C.
1396a(a)) is amended—

(1) in paragraph (13)(A), by inserting "which, in
the case of habilitation facilities, take into account the
costs of complying with subsections (b) (other than
paragraph (4)(D)), (e), and (d) of section 1927," after
"State" the second place it appears; and

(2) in paragraph (28), by striking "and" at the
end of sub paragraph (C) and by adding at the end the
following new sub paragraphs:

"(E) that any habilitation facility receiving
payments under such plan must satisfy all the re-
quirements of subsections (b) through (d) of sec-
tion 1927 as they apply to such facilities; and
"(F) for compliance (by the date specified in the respective sections) with the requirements of—

"(i) section 1927(e) (relating to preadmission screening and client review);

"(ii) section 1927(g) (relating to responsibility for survey and certification of habilitation facilities); and

"(iii) sections 1927(h)(2)(B) and i927(h)(2)(D) (relating to establishment and application of remedies)."

(c) REVISION OF PREVIOUS DEFINITION.—Subsection (d) of section 1905 of such Act (42 U.S.C. 1396d) is amended to read as follows:

"(d) For definition of the term 'habilitation facility', see section 1927(a)"

(d) CONFORMING AMENDMENTS.—(1) Section 1902 of such Act (42 U.S.C. 1396a) is amended—

(A) in subsections (a)(10)(A)(ii)(VI), (a)(10)(C)(iv), (a)(13), (a)(30)(B), and (e)(3)(B)(i), by striking "intermediate care facility for the mentally retarded" each place it appears and inserting "habilitation facility";

(B) in subsections (a)(13)(C), by striking "intermediate care facilities for the mentally retarded" and inserting "habilitation facilities";
(C) in subsection (e)(9)(A)(iii), by striking ", nursing facility, or intermediate care facility for the mentally retarded" and inserting "or nursing facility"; and

(D) in subsection (e)(9)(B), by striking ", nursing facilities, or intermediate care facilities for the mentally retarded" and inserting "or nursing facilities".

(2) Section 1905 of such Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)(15), by striking "intermediate care facility for the mentally retarded" and inserting "habilitation facility", and

(B) in subsection (a)(15), by striking "section 1902(a)(31)(A)" and inserting "section 1927(e)".

(3) Section 1915(c) of such Act (42 U.S.C. 1396n(c))—

(A) in paragraphs (1), (2)(C), (5), and (7)(B), by striking "intermediate care facility for the mentally retarded" each place it appears and inserting "habilitation facility",

(B) in paragraph (2)(B), by striking "intermediate care facility services for the mentally retarded" and "habilitation facility services", and

(C) in paragraph (7)(A), by striking "intermediate care facilities for the mentally retarded" and inserting "habilitation facilities",
(4) Section 1916 of such Act (42 U.S.C. 1396o) is amended, in subsections (a)(2)(C) and (b)(2)(C), by striking "intermediate care facility for the mentally retarded" and inserting "habilitation facility".

(5) Section 1917(a)(1)(B)(i) of such Act (42 U.S.C. 1396p(a)(1)(B)(i)) is amended by striking "intermediate care facility for the mentally retarded" and inserting "habilitation facility".

(6) Section 1128B of such Act (42 U.S.C. 1320a-7b) is amended, in subsections (c) and (d)(2)(A), by striking "intermediate care facility for the mentally retarded" and inserting "habilitation facility".

SEC. 2m. SURVEY AND CERTIFICATION PROCESS—
Section 1927 of the Social Security Act, as inserted by section 201, is amended by adding at the end the following new subsection:

"(g) SURVEY AND CERTIFICATION PROCESS—

"(1) STATE AND FEDERAL RESPONSIBILITY.—

"(A) IN GENERAL.—Under each State plan under this title, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of habilitation facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d). The Secretary shall be responsible for certifying,
in accordance with surveys conducted under para-
graph (2), the compliance of State habilitation fa-
cilities with the requirements of such subsections.

"(B) EDUCATIONAL PROGRAM.—Each State
shall conduct periodic educational programs for
the staff and clients in habilitation facilities, and
for the parents (if the client is a minor) and legal
guardians (if any) of such clients, in order to
present current regulations, procedures, and poli-
cies under this section-

"(C) INVESTIGATION OF ALLEGATIONS OF
CLIENT NEGLECT AND ABUSE AND MISAPPRO-
PRIATION OF CLIENT PROPERTY.—The State
shall provide, through the agency responsible for
surveys and certification of habilitation facilities
under this subsection, for a process for the re-
ceipt, review, and investigation of allegations of
client neglect and abuse (including injuries of un-
known source) by staff and of misappropriation of
client property by staff in an habilitation facility.
Such process shall provide for documentation of
findings relating to such allegations with respect
to a staff member, for inclusion of any brief state-
ment of the staff member disputing such findings,
and for inclusion, in any disclosure of such find-

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ings, of such brief statement (or of a clear and accurate summary thereof). The findings relating to such allegations shall be made available, on request, to the State protection and advocacy system (described in subsection (c)(2)(B)(iii)(II)) and to other appropriate agency or agencies with whom a client, parent, or guardian may file a complaint respecting client abuse and neglect and misappropriation of client property in the facility.

"(D) CONSTRUCTION.—The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection,

"(2) ANNUAL SURVEYS.—

"(A) IN GENERAL.—Each habilitation facility shall be subject to an annual survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) an habilitation facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000, The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a
penalty proceeding under section 1128A(a).

The Secretary shall review each State's procedures for scheduling and conduct of annual surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(3) Contents.—Each annual survey shall include—

"(i) a review, based on a representative sample of clients and IPPs, of the quality, appropriateness, and effectiveness of active treatment provided, and

"(ii) a review of compliance with all requirements under this section.

"(C) Frequency.—Each habilitation facility shall be subject to an annual survey not later than 15 months after the date of the previous annual survey conducted under this sub paragraph. The Statewide average interval between annual surveys of habilitation facilities shall not exceed 12 months.

"(D) Survey protocol.—Annual surveys shall be conducted—
"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than October 1, 1990, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

"(E) CONSISTENCY OF SURVEYS—Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors,

"(F) SURVEY TEAMS.—

"(i) IN GENERAL.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals.

"{ii) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has
served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

"(iii) Training.—The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of annual surveys under this subsection, including the auditing of client assessments and IPPs. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

"(3) Validation surveys,—

"(A) In general,—The Secretary shall conduct onsite surveys of a representative sample of habilitation facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each
State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual habilitation facility meets the requirements of subsections (b), (e), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's non-compliance with such requirements is binding and supersedes that of the State survey.

"(B) REDUCTION IN ADMINISTRATIVE COSTS FOR SUBSTANDARD PERFORMANCE.—If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1903(a)(2)(D) with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of clients in habilitation facilities surveyed by the Secretary that quarter.
and the numerator of which is equal to the total number of clients in habilitation facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d). A State that is dissatisfied with the Secretary’s findings under this subparagraph may obtain reconsideration and review of the findings under section 1116 in the same manner as a State may seek reconsideration and review under that section of the Secretary’s determination under section 1116(a)(1).

"(C) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of an habilitation facility with any of the requirements of subsections (b), (c), and (d), the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the habilitation facility meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING HABILITATION FACILITY COMPLIANCE.—Each State and the Secretary shall maintain procedures and adequate staff to—
"(A) investigate complaints of violations of requirements by habilitation facilities, and

"(B) monitor, on-site, on a regular, as needed basis, an habilitation facility's compliance with the requirements of subsections (b), (c), and (d), if-

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

"(iii) the State or the Secretary, respectively, has reason to question the compliance of the facility with such requirements.

"(5) disclosure OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting habilita-
tion facilities, including statements of deficiencies and plans of correction,

"(ii) copies of cost reports of such facilities filed under this title,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICE TO PROTECTION AND ADVOCACY SYSTEM.—Each State shall notify the agency responsible for the protection and advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d), with respect to an habilitation facility in the State.

"(C) NOTICE TO FAMILY.—If a State finds that an habilitation facility has provided services of substandard quality, the State shall notify the parent (if the client is a minor), or legal guardian (if any) of each client with respect to which such finding is made.
(D) ACCESS TO FRAUD CONTROL UNITS.—

Each State shall provide its State Medicaid fraud
and abuse control unit (established under section
1903(q)) with access to all information of the
State agency responsible for surveys and certifica-
tions under this subsection.

(b) REQUIRED POSTING of SURVEY RESULTS.—Sec-
tion 1927(d)(4) of such Act, as inserted by section 201 of this
Act, is amended by adding at the end the following new sub-
paragraph:

"(C) POSTING of SURVEY RESULTS.—An
habilitation facility must post in a place readily
accessible to clients the results of the most recent
survey of the facility conducted under subsection
(g)."

SEC-203. ENFORCEMENT PROCESS.

(a) IN GENERAL.—Section 1927 of the Social Security
Act, as inserted by section 201 and amended by section 202,
is further amended by adding at the end the following new
subsection:

"(h) ENFORCEMENT PROCESS.—

"(1) IN GENERAL.—If a State finds, on the basis
of an annual survey under subsection (g)(2) or other-
wise, that an habilitation facility no longer meets a re-
quirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its clients, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

"(B) do not immediately jeopardize the health or safety of its clients, the State may—

"(i) terminate the facility's participation under the State plan,

"(ii) provide for one or more of the remedies described in paragraph (2), or

"(in) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy an habilitation facility's deficiencies. If a State finds that an habilitation facility meets the requirements of subsections (b), (c), and (d), but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph
(2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements,

"(2) SPECIFIED REMEDIES.—

"(A) LISTING.—Except as provided in sub-paragraph (B)(ii), each State shall establish by law {whether statute or regulation} at least the following remedies:

"(i) Denial of payment under the State plan with respect to any individual admitted to the habilitation facility involved after such notice to the public and to the facility as may be provided for by the State.

"(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (h), (e), or id). Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsection (g)(2)(A)) shall be applied to the protection of the health or property of clients of habilitation facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of clients, maintenance of
81 operation of a facility pending

correction of
deficiencies or closure, and reimbursement of

clients for personal funds lost.

"(iii) In cases where a correction or re-
duction plan has not been approved under
subsection (i), the appointment of temporary
management to oversee the operation of the
facility and to assure the health and safety of
the facility's clients, where there is a need
for temporary management while—

"(I) there is an orderly closure of
the facility, or

"(II) improvements are made in
order to bring the facility into compli-
ance with all the requirements of sub
sections (b), (c), and (d).

The temporary management under this
clause shall not be terminated under sub-
clause (II) until the State has determined

that the facility has the management capabil-
ity to ensure continued compliance with all
the requirements of subsections (b), (c), and

(d).

"(iv) The authority, in the case of an
emergency, to close the facility, to transfer
clients in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or unconnected deficiencies. In addition, the State may provide for other specified remedies, such as plans of correction and reduction plans under subsection (i).

"(B) DEADLINE AND GUIDANCE,—As a condition for approval of a State plan for calendar quarters beginning on or after January 1, 1991, each State shall establish the remedies described in clauses (i) through (iv) of sub paragraph (A) by not later than January 1, 1991. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not re-
lieve a State of the responsibility for establishing such remedies.

"(C) ASSURING PROMPT COMPLIANCE.—If an habilitation facility has not complied with any of the requirements of subsections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, and a reduction plan has not been approved with respect to the facility under subsection (i), the State shall impose the remedy described in sub-paragraph (A)(ii) and the remedy described in sub-paragraph (A)(i) for all individuals who are admitted to the facility after such date.

"(D) REPEATED NONCOMPLIANCE.—In the case of an habilitation facility which, on 3 consecutive annual surveys conducted under subsection (g)(2), has been found not to provide continuous active treatment of adequate quality and effectiveness, the State shall (regardless of what other remedies are provided)—

"(i) impose the remedies described in clauses (i) and (ii) of sub paragraph (A), and

"(ii) monitor the facility under subsection (g)(4)(B),
until the facility has demonstrated, to the satisfac-
tion of the State, that it is in compliance with the
requirements of subsections (b), (c), and (d), and
that it will remain in compliance with such re-
quirements. Under clause (i), the remedy de-
scribed in sub paragraph (A)(ii) shall be applied
with respect to each day of non-compliance cov-
ered under any of such 3 annual surveys.

"(E) FUNDING. THE reasonable expendi-
tures of a State to provide for temporary manage-
ment and other expenses associated with imple-
meriting the remedies described in clauses (iii) and
(iv) of sub paragraph (A) shall be considered, for
purposes of section 1903(a)(7), to be necessary for
the proper and efficient administration of the
State plan.

"(3) SECRETARIAL AUTHORITY,—

"(A) FOR STATE HABILITATION FACILI-
ties.—With respect to a State habilitation facil-
ity, the Secretary shall have the authority and
duties of a State under this subsection, including
the authority to impose remedies described in
clauses (i), (ii), and (iii) of paragraph (2)(A), except
that the remedy described in sub paragraph (C)(ii)
shall be substituted for the remedy described in paragraph (2)(A)(ii).

"(B) OTHER HABILITATION FACILITIES.—

With respect to any other habilitation facility in a State, if the Secretary finds that an habilitation facility no longer meets a requirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

"(i) immediately jeopardize the health or safety of its clients, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in sub paragraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in sub paragraph (C); or

"(ii) do not immediately jeopardize the health or safety of its clients, the Secretary may impose any of the remedies described in sub paragraph (C).

Nothing in this sub paragraph shall be construed as restricting the remedies available to the Secretary to remedy an habilitation facility's deficiencies. If the Secretary finds that an habilitation fa-
ility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under sub paragraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

"(C) SPECIFIES REMEDIES.—The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

"(i) DENIAL OF PAYMENT.—The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of non-compliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as
such provisions apply to a penalty or proceeding under section 1128A(a).

"(iii) Appointment of temporary management.—In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's clients, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d).

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each
of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies,

"(D) CONTINUATION OF PAYMENTS PENDING REMEDIATION,—The Secretary may continue payments, over a period of not longer than 6 months, under this title with respect to an habilitation facility not in compliance with a requirement of subsection (b), (c), or (d), if—

"(i) the State survey agency finds that it is more appropriate to take alternative action to assure prompt compliance of the facility with the requirements than to terminate the certification of the facility,

"(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(iii) the State agrees to repay to the Federal Government payments received under this sub paragraph if the corrective
action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for the approval of corrective actions requested by States under this sub paragraph.

"(E) CONTINUATION OF PAYMENTS UNDER REDUCTION PLANS.—The Secretary may continue payments in the case of habilitation facilities under the terms and conditions of a reduction plan approved under subsection (i), but only with respect to services provided on or after the date of such approval.

"(4) EFFECTIVE PERIOD OF DENIAL OR PAYMENT—A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in compliance with all the requirements of subsections (b), (c), and (d).

"(5) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE STATE OR SECRETARY FINDS NON-COMPLIANCE AND IMMEDIATE JEOPARDY.—If either the State or the Secretary finds that an habilitation facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure im-
mediately jeopardizes the health or safety of its clients, the State or the Secretary—

"(A) shall notify the other of such finding, and

"(B) shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan.

If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the clients eligible under the State plan consistent with the requirements of subsection (c)(2).

"(6) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning habilitation facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title, including investig-gallons by State Medicaid fraud control units.

"(i) REDUCTION PLANS,—

"(1) IN GENERAL,—If there is a finding under subsection (h)(l)(B) (including a similar finding under
subsection (h)(3)(A)) or (h)(3)(B)(ii) that an habilitation
facility has any deficiency that does not immediately
jeopardize the health or safety of its clients, the State
may elect in accordance with this subsection to submit
to the Secretary a written plan—

"(A) for permanently reducing the number of
certified beds, within 36 months of the date of the
findings, so that, by the end of such period, the
facility no longer has such deficiency, and

"(B) for providing services to clients of the
facility who will not continue to receive habilita-
tion facility services at the affected facility after
such reduction, including (for clients not in an ha-
bilitation facility) community habilitation and SUP
PORTIVE services.

"(2) APPROVAL OF PLANS.—The Secretary may
not approve a plan submitted under paragraph (1)
unless—

"(A) the State has provided for a hearing on
the plan at the facility involved at least 35 days
before the date of submission of the plan, after
reasonable notice thereof to the staff and clients of
the facility, members of the clients' families, and
the public,
(B) the State demonstrates that, with respect to clients described in paragraph (1)(B), the State has successfully provided services similar to the services to be provided to such clients under the plan,

(C) the plan meets the requirements of paragraph (3), and

(D) the State has provided the assurances required under subsection (j).

(3) REQUIREMENTS OF DEDUCTION PLANS,—

The requirements of this paragraph for a reduction plan with respect to a facility are as follows:

(A) The plan must—

(i) identify the clients described in paragraph (1)(B),

(ii) describe each such client's needs for services described in that paragraph and a timetable for providing such services,

(iii) provide for continuous active treatment for such clients under the clients' IPPs, and

(iv) identify necessary safeguards (including adequate standards for provider participation) to be taken to protect the health and welfare of such clients;
however, individually identifiable information identified under this sub paragraph and respecting a client shall be treated as confidential and not made available to the public.

"(B) The plan must permit each client of the facility who would continue to be eligible for medical assistance while a client of such a facility the option of remaining a client of such facility or a similar facility.

"(C) The plan must specify the actions to be taken including maintenance of adequate ratios of qualified staff to clients, (i) to protect the health and safety of clients who remain at the facility while the reduction plan is in effect and (ii) to provide for continuous active treatment for such clients under the clients' IPPs.

"(4) SEMIANNUAL REVIEW OF COMPLIANCE.—The Secretary shall, at 6-month intervals, review compliance of States with reduction plans approved under this subsection. If the Secretary determines in such a review that the State has failed to comply with the requirements of paragraph (3) or the assurances described in subsection (j), the Secretary shall—
"(A) terminate the facility's participation under the State plan, or

"(B) disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the facility for each month for which the failure continues.

If the Secretary determines in such a review that the State has failed to comply with the requirement of paragraph (3)(C), the Secretary shall disallow, for purposes of Federal financial participation, the cost of care for all eligible individuals in the facility for each month for which the failure continues."

(b) REPEAL OF PREVIOUS CORRECTION AND REDUCTION PLAN PROVISION—Section 1922 of such Act (42 U.S.C. 1396r) is repealed.

(c) CONFORMING AMENDMENTS.—(1) Section 1902 of such Act (42 U.S.C. 1396a) is amended by striking subsection (i).

(2) Section 1903(i) of such Act (42 U.S.C., 1396b(i)) is amended by striking the period at the end of paragraph (7) and inserting "; or" and by adding at the end the following new paragraph:

"(8) with respect to any amount expended for medical assistance for habilitation facility services to
reimburse (or otherwise compensate) an habilitation fa-
cility for payment of a civil money penalty imposed
under section 1927(h)"

(3) Section 1910 (42 U.S.C. 1396i) is amended—

(1) by striking subsection (b), and

(2) in subsection (a), by striking "(a)(1)" and "(2)"
and inserting "(a)" and "(b)", respectively.

SEC 204. EFFECTIVE DATES

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFI-
CATION PROCESS.—Except as otherwise specifically provid-
ed in section 1927 of the Social Security Act, the amend-
ments made by sections 201 and 202 (relating to habilitation
facility requirements and survey and certification require-
ments) shall apply to habilitation facility services furnished on
or after January 1, 1991, without, regard to whether regula-
tions to implement such amendments are promulgated by
such date.

(b) ENFORCEMENT.—Except as otherwise specifically
provided in section 1927 of the Social Security Act, the
amendments made by section 203 of this Act shall take effect
on the date of the enactment of this Act and shall apply to
payments under title XIX of the Social Security Act for cal-
endar quarters beginning on or after the date of the enact-
ment of this Act, without regard to whether regulations to
implement such amendments are promulgated by such date.
(c) TRANSITIONAL RULE—In applying the amendments made by this title for services furnished before January 1, 1991

(A) any reference to an habilitation facility is deemed a reference to an intermediate care facility for the mentally retarded, and

(B) with respect to such an habilitation facility, any reference to a requirement of subsection (b), (c), or (d), is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act.

(d) WAIVER OF PAPERWORK REDUCTION, ETC.—Chapter 35 of title 44, United States Code, and Executive Order 12291 shall not apply to information and regulations required for purposes of carrying out this title and implementing the amendments made by this title.

(e) RELATION TO CURRENT REGULATIONS.—For any period before the effective date of the requirements established under this title, nothing in this title shall be construed as superseding the final regulations (published on June 3, 1988, 53 Federal Register 20448) setting forth conditions for intermediate care facilities for the mentally retarded under the Medicaid program,
SEC. 205. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which habilitation facilities are complying with the requirements of subsections (b), (c), and (d) of section 1927 of the Social Security Act (as added by the amendments made by this title) and the number and type of enforcement actions taken by States and the Secretary under section 1927(h) of such Act (as added by section 203 of this Act).

TITLE III—APPROPRIATE PLACEMENT FOR INDIVIDUALS WITH MENTAL RETARDATION OR RETRACTED CONDITION

SEC. 301 STATE PREADMISSION SCREENING AND ANNUAL CLIENT REVIEW REQUIREMENTS.

Section 1927 of the Social Security Act, as inserted by section 201 of this Act, is further amended by inserting after subsection (d) the following new subsection:

"(e) STATE REQUIREMENT FOR PREADMISSION SCREENING AND CLIENT REVIEW.—

"(1) IN GENERAL.—

"(A) STATE CONDITION OF PLAN APPROVAL.—As a condition of approval of its plan under this title, effective January 1, 1991, the State must have in effect a preadmission screening program, for making determinations (using any crite-
ria developed under subsection (f)(8)) described in subsection (b)(3)(F) for individuals with mental re-

tardation or related condition (as defined in sec-

tion 1905(m)) who are admitt ed to habilitation fa-
cilities on or after January 1, 1991. The failure of
the Secretary to develop minimum criteria under
subsection (f)(8) shall not relieve any State of its
responsibility to have a preadmission screening
program under this paragraph or to perform client
reviews under paragraph (2).

"(B) FEDERAL MINIMUM CRITERIA AND
MONITORING FOR PREADMISSION SCREENING
AND CLIENT REVIEW

"(i) MINIMUM CRITERIA,—The Secre-
tary shall develop, by not later than July 1,
1990, minimum criteria for States to use in
making determinations under subsection
(b)(3)(F) and paragraph (2) of this subsection
and in permitting individuals adversely af-
fected to appeal such determinations, and
shall notify the States of such criteria.

"(ii) MONITORING COMPLIANCE.—The
Secretary shall review a sufficient number of
cases to allow reasonable inferences about
the adequacy of each State's compliance with
the requirements of paragraph (3)(A) (relating to discharge and placement for active treatment of certain clients).

"(2) STATE REQUIREMENT FOR ANNUAL CLIENT REVIEW.—

"(A) IN GENERAL. As of January 1, 1991, in the case of each client, of an habilitation facility, with mental retardation or related condition, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent evaluation performed on site by a person or entity other than the facility)

"(i) whether or not the client requires the level of services provided by an habilitation facility; and 

"(ii) whether or not the client requires community habilitation and supportive services.

Such independent evaluation shall take into account the comprehensive functional assessment under subsection (b)(4).

"(B) FREQUENCY OF REVIEWS.—
"(i) ANNUAL.—Except as presided in clauses (ii) and (iii), the reviews and determinations under sub paragraph (A) must be conducted with respect to each client with mental retardation or related condition not less often than annually.

"(ii) PREADMISSION REVIEW CASES.—

In the case of a client subject to a preadmission review under subsection (b)(3)(F), the review and determination under sub paragraph (A) need not be done until the client has resided in the habilitation facility for 1 year.

"(iii) INITIAL REVIEW,—The reviews and determinations under sub paragraph (A) must first be conducted (for each client not subject to preadmission review under subsection (b)(3)(F)) by not later than January 1, 1992.

"(3) RESPONSE TO PREADMISSION SCREENING AND CLIENT REVIEW.—As of January 1, 1991, the State must meet the following requirements:

"(A) CLIENTS NOT REQUIRING HABILITATION FACILITY SERVICES, BUT REQUIRING COMMUNITY HABILITATION AND SUPPORTIVE SERV-
ICES.—In the case of a client who is determined, under paragraph (2), not to require the level of services provided by an habilitation facility, but to require community habilitation and supportive services, the State must, in consultation with the client's family or legal representative and caregivers—

"(i) arrange for the safe and orderly discharge of the client from the facility, consistent with the requirements of subsection (c)(2),

"(ii) prepare and orient the client for such discharge, and

"(iii) provide for (or arrange for the provision of) such community habilitation and supportive services for the mental retardation or related condition.

"(B) CLIENTS NOT REQUIRING HABILITATION FACILITY SERVICES AND NOT REQUIRING COMMUNITY HABILITATION AND SUPPORTIVE SERVICES.—In the case of a client who is determined, under paragraph (2), not to require the level of services provided by an habilitation facility and not to require community habilitation and supportive services, the State must—
"(i) arrange for the safe and orderly discharge of the client from the facility, consists 
ent with the requirements of subsection (c)(2), and.

"(ii) prepare and orient the client for 
such discharge.

"(4) Denial of payment where failure to 
conduct preadmission screening.—No payment 
may be made under section 1903(a) with respect to hab-
ilitation facility services furnished to an individual for 
whom a determination is required under subsection 
(b)(3)(F) or paragraph (2) but for whom the determina-
tion is not made.

"(5) Appeals procedures both for pre-
admission determinations and client review 
and for transfers and discharges.—

"(A) Preadmission and client review 
determinations.—Each State, as a condition of 
approval of its plan under this title, effective Janu-
ary 1, 1991, must have in effect an appeals 
process for individuals adversely affected by deter-
initiations under paragraph (1) or (2).

"(B) Transfers and discharges.—Each 
State, as a condition of approval of its plan under 
this title, effective January 1, 1991, must provide
for a fair mechanism for hearing appeals on transfers or discharges of clients of habilitation facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3); but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism."

SEC. 302. REVISION OF UTILIZATION REVIEW provisions.

(a) Revision of State Plan Requirement.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (30)(B), by striking ", intermediate care facility for the mentally retarded" in clauses (i) and (ii)(II), and

(2) by striking paragraph (31), and

(3) in paragraph (44)—

(A) in the matter before sub paragraph (A), by striking", services in an intermediate care facility for the mentally retarded,";

(B) in sub paragraph (A), by striking "(or, in the case of skilled" the first place it appears and all that follows through "a physician)");

(C) in sub paragraph (A) by striking "or, in the case of" the second place it appears and all
that follows through "in collaboration with a phy-

(D) in sub paragraph (A), by striking "(or, in
the case of services" and all that follows through
"every year)", and

(E) in sub paragraph (B), by striking "or, in
the case" and all that follows through "physi-
cian".

(b) REVISION OF PENALTY PROVISIONS.—Section
1903(g) of such Act (42 U.S.C. 1396b(g)) is amended—

(1) in paragraph (1)—

(A) by striking "or services in an intermedia-
tate care facility for the mentally retarded" each
place it appears,

(B) by striking "and intermediate care facili-
ties for the mentally retarded", and

(C) by striking "paragraphs (26) and (31)"
and inserting "paragraph (26)";

(2) in paragraph (4)(B)—

{A) by striking "and intermediate care facili-
ties for the mentally retarded",

(B) by striking "paragraphs (26) and (31)"
and inserting "paragraph (26)",

(C) by striking "and facilities" and "or facili-
ty" each place it appears;
(3) in paragraph (5)—

(A) by striking "facility or institutional" and inserting "in-patient hospital", and

(B) by striking "facilities or institutions" each place it appears and inserting "hospitals";

and

(4) in paragraph (6)—

(A) by striking sub paragraph (B), and

(B) by redesignating sub paragraph (C) as sub paragraph (B).

(c) CONFORMING AMENDMENTS.—(1) Section 1128(b)(12)(B) of such Act (42 U.S.C.1320a-7(b)(12)(B» is amended by striking "(26), (31), and (33)" and inserting "(26) and (33)".

(2) Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (33)(B), by striking "section 1919(d)" and inserting "section 1919 and section 1927", and

(B) in the third sentence, by striking "(9)(A), (31), and (33)" and inserting "(9)(A) and (31)".

(3) Section 1905(a)(15) of such Act (42 U.S.C, 1396d(a)(15}) is amended by striking ", in accordance with section 1902(a)(31)(A),"
(d) EFFECTIVE DATE.—The amendments made by this section shall not apply to a State until such date as of which the Secretary of Health and Human Services determines that the State has begun conducting annual surveys under section 1927(g) of such Act.

6 TITLE IV—PAYMENT FOR COMMUNITY HABILITATION AND SUPPORTIVE SERVICES AND HABILITATION FACILITY SERVICES

SEC. 401. PAYMENT FOR COMMUNITY HABILITATION AND SUPPORTIVE SERVICES AND HABILITATION FACILITY SERVICES.

(a) REASONABLE AND ADEQUATE PAYMENTS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(13)—

(A) by striking "and" at the end of sub paragraph (D),

(B) by inserting "and" at the end of sub paragraph (E), and

(C) by adding at the end the following new sub paragraph:

"(F) for payment—"
"(i) for community habilitation and supportive services (as defined in section 1920(a)) through rates which are reasonable and adequate (and which may not be established on a capitation basis or any other risk basis) to meet the costs of providing services, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards, and

"(ii) for habilitation facility services through rates which are reasonable and adequate (and which may not be established on a capitation basis or any other risk basis) to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards;"; and

(2) in subsection (h), by adding before the period at the end the following: "or to limit the amount of payment that may be made under a plan under this title for community habilitation and supportive services or for habilitation facility services"
(b) Denial of Federal Payments to Compensate for Civil Monet Penalties.—Section 1903(i)(8) of such Act (42 U.S.C. 1396b(i)(8)) is amended by inserting "(A)" after "medical assistance" and by inserting before the semicolon at the end the following: "for community habilitation and supportive services or habilitation facility services to reimburse (or otherwise compensate) a provider of such services or habilitation facility for payment of a civil money penalty imposed under this title or title XI".

(e) Effective Date.—(1) The amendments made by subsection (a)(1) shall apply—
(A) to community habilitation and supportive services furnished on or after January 1, 1990, or, if later, 30 days after the date of publication of interim regulations under section 1926(i)(1), and
(B) to habilitation facility services furnished on or after January 1, 1991.
(2) The amendment made by subsection (a)(2) shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).
(3) The amendment made by subsection (b) shall apply to civil money penalties imposed after the date of the enactment of this Act.
TITLE V—EMPLOYEE PROTECTIONS AND MISCELLANEOUS

SEC. 501. EMPLOYEE PROTECTIONS FOR CLOSURES AND REDUCTIONS IN CAPACITY.

(a) IN GENERAL.—Section 1927 of the Social Security Act, as inserted by section 201 and amended by sections 202 and 203 of this Act, is further amended by adding at the end the following new subsection:

"(j) EMPLOYEE PROTECTIONS FOR CAPACITY REDUCTIONS.—

"(1) IN GENERAL.—As a requirement of its State plan under section 1902(a), the State must provide that, in the case of any closure or reduction in capacity (whether through a reduction plan under subsection (i) or otherwise) of an habilitation facility in the State made on or after the date of the enactment of this subsection, the following fair and equitable arrangements have been made to protect the interests of employees of the facility affected by such closure or reduction:

"(A) The preservation of rights, privileges, and benefits (including continuation of pension rights and benefits), under applicable collective bargaining agreements.

"(B) The continuation of collective bargaining rights through any certified representative,
"(C) The protection of individual employees against a worsening of their positions with respect to their employment at the facility during the period of the closure or reduction.

"(D) Except as provided in the last sentence of this paragraph, assurance of employment of affected employees, with at least the same pay and same level of responsibilities.

"(E) The establishment of paid training or retraining programs for employment of affected employees in the provision of community habilitation and supportive services.

"(F) Provision of—

"(i) a grievance procedure (meeting the requirements of paragraph (2)) for affected employees to assure the preceding requirements have been met with respect to such employees, or

"(ii) another grievance procedure with respect to affected employees who have a certified bargaining representative, if such other grievance procedure has been agreed to by the State and by the certified bargaining representative.
Nothing in this paragraph shall be construed as entitling an affected employee to lifetime employment or as protecting an employee against a discharge for good cause.

"(2) REQUIREMENTS FOR GRIEVANCE PROCEDURE,—The grievance procedure under paragraph (1)(F)(i) shall include the following:

"(A) Informal resolution of the grievance, during the 60-day period beginning on the date of the filing of the grievance.

"(B) After such period, the affected employee shall be permitted, at the employee's election, the option of (L) submitting the grievance to binding arbitration before a qualified arbitrator who is independent of the interested parties, or (ii) a hearing on the grievance before a State agency.

"(C) An arbitration proceeding or hearing on the grievance, under sub paragraph (B), shall be held within 45 days after the date of the request for such arbitration or hearing under such sub-paragraph.

"(D) A decision on the grievance shall be made within 30 days after the date of such proceeding or hearing,
(E) Costs of the arbitrator shall be divided evenly between the affected employee and the State and costs of the hearing shall be borne by the State.

Costs of the State under sub paragraph (E), and comparable costs of the State under another grievance procedure under paragraph (l)(F)(ii), shall not be considered, For purposes of section 1903(a), costs of administration of the State plan under this title."

(b) PAYMENT FOR TRAINING AND RETRAINING

Costs—Section 1903(b) of such Act (42 U.S.C. 1396b(b)) is amended by adding at the end the following new paragraph:

"(4) Federal reimbursement is available under subsection (a)(7) for reasonable expenses associated with training and retraining programs for habilitation facility employees pursuant to section 1927(j)(1)(E)."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 502, USE OF STATE DEVELOPMENTAL DISABILITIES AGENCY IN CERTAIN MEDICAID ADMINISTRATIVE FUNCTIONS.

(a) IN GENERAL.—Section 1902(a)(5) of the Social Security Act (42 U.S.C. 1396a(a)(5)) is amended—
(1) by inserting "(A)" after "except that", and
(2) by inserting before the semicolon at the end
the following ", and (B) nothing in this paragraph shall
be construed as preventing a State plan from assign-
ing, to a State agency responsible for developmentally
disabled individuals, specific management functions
under the plan relating to provision of services under
the plan to individuals with mental retardation or relat-
ed condition".

(b) AVAILABILITY OF MATCHING FUNDS.—Section
1903(a) of such Act (42 U.S.C. 1396b(a)) is amended by
adding at the end the following:
"Payment shall be made available under paragraph (7) for
amounts expended for reasonable administrative expenses of
a State agency described in section 1902(a)(5)(B) in carrying
out activities described in that section in the same manner as
they are available for similar reasonable administrative ex-
penses of the single State agency described in section
1902(a)(5)."

(c) EFFECTIVE DATE.—The amendments made by this
section shall take effect on the date of the enactment of this
Act