

100TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. CHAFEE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assem-*
3 *bled,*

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the "Medicaid Home and
6 Community Quality Services Act of 1987".

2**1 SEC 2. DEFINITIONS,**

2 Section 1905 of the Social Security Act is amended
3 by adding at the end thereof the following new subsec-
4 tions;

5 "(r) INDIVIDUAL WITH A SEVERE DISABILITY,—

6 "(1) The term 'individual with a severe disabil-
7 ity means an individual who is under a disability
8 within the meaning of section 1614{a}(3) of this Act,
9 the onset of which occurred before the individual at-
10 tained the age that applies with respect to a fiscal
11 year (as determined under paragraph (2)).

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

14 "(A) 22 plus the number of fiscal years
15 after fiscal year 1986 and before the beginning
16 of such fiscal year; and

17 "(B) 50 "

18 (s) COMMUNITY AND FAMILY SUPPORT SERVICES.—

19 The term 'community and family support services' means
20 supportive services made available to an individual with a
21 severe disability (or to his natural, adoptive, or foster
22 family or spouse) to enable such individual to begin,
23 resume, or continue living in a family home, foster family
24 home, or community living facility. Such supportive serv-
25 ices shall include both in-home and out — of — home services

1 (as needed) from among those enumerated in section
2 1921(a)(2).

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

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

12 "(1) in which not more than five individuals
13 with a severe disability are living, are provided sur-
14rogate family services, and receive medical assist-
15ance which includes payment for one or more serv-
16ices enumerated in section 1921(a)(2); and

17 "(2) that is under contract with an agency li-
18censed or designated to place individuals with a
19severe disability in such residence.

20 "(v) COMMUNITY LIVING FACILITY.—

21 "(1) The term 'community' living facility¹
22 means a single household, other than a family home
23 or foster family home, composed of related or unre-
24lated persons, which— .

1 "(A) provides living arrangements and one
2 or more of the care and services enumerated in
3 section 1921(a)(2) to one or more individuals
4 with a severe disability;

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

9 "(i) the number of individuals in an
10 average family household in the area in
11 which such facility is located (as deter-
12 mined in accordance with data from the
13 1980 decennial census), or

14 "(ii) the number of individuals in an
15 average family household in such area (as
16 determined in accordance with any decen-
17 nial census conducted after the 1980 de-
18 cennial census);

19 "(C) is located in a neighborhood which—

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

22 "(ii) is populated primarily by indi-
23 viduals other than individuals with a severe
24 disability;

1 "(D) meets such standards of safety and
2 sanitation, and other standards relating to serv-
3 ices provided by the facility, as are promulgated
4 by the State;

5 "(E) meets the requirements of section
6 1861(j)(14) of this Act with respect to the per-
7 sonal funds of individuals residing in such facil-
8 ity; and

9 "(F) is staffed by individuals who (i) are
10 trained or retrained in accordance with the pro-
11 visions of the State implementation strategy
12 (submitted to the Secretary under section
13 1921(c)(5)) by the State in which such facility
14 is located, and (ii) in providing such living ar-
15 rangements, care, or service to individuals with
16 a severe disability, cooperate with other provid-
17 ers and with appropriate case managers in im-
18 plementing a written habilitation plan for each
19 such individual.

20 "(2) A facility that-

21 "(A) is in operation on September 30,
22 1987.

23 "(B) does not increase its number of beds
24 after such date (exclusive of beds occupied by
25 staff members);

1 "(C) does not contain more than eight
2 beds (exclusive of beds occupied by staff mem-
3 bers):

4 "(D) consists of a cluster of two or three
5 facilities in proximity to one another, each of
6 which meets the requirements of paragraph (1)
7 (except for sub paragraph (C) of such para-
8 graph);

9 shall be treated as a community living facility.

10 "(w) WRITTEN HABILITATION PLAN.—The term 'writ-
11 ten habilitation plan' means a plan for medical assistance
12 and other services for an individual with a severe disability
13 which-

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

16 "(A) individuals who are representative of
17 professional and other disciplines which are rel-
18 evant to the habilitation of such individual, and
19 have been involved in providing services to the
20 individual or are likely to be involved in pro-
21 viding services to the individual (including the
22 professionals responsible for providing case
23 management services and case coordination
24 services to the individual),

1 "(B) such individual, persons requested to
2 participate by the individual, and, when appro-
3 prate, the spouse, parent, guardian, other family
4 member, or advocate of such individual;

5 "(2) is based upon a comprehensive assessment
6 of the service needs of the individual designed to—

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

10 "(B) promote and increase interaction be-
11 tween disabled and non-disabled individuals
12 within the community, and

13 "(C) in the case of any such individual
14 who has attained the age of 18 and who is not
15 engaged in competitive or supported employ-
16 ment, assess the individual's capability of en-
17 gaging in supported employment or other work
18 in integrated employment environments;

19 (3) specifies—

20 "(A) the particular objectives to be
21 achieved with respect to an individual described
22 in behavioral terms that provide measurable in-
23 dices of performance,

24 "(B) the dates by which the particular ob-
25 jectives are to be achieved,

1 "(C) the program strategies for achieving
2 the specific objectives, and

3 "(D) the priority with which the specific
4 objectives are to be achieved; and

5 "(4) is re-evaluated by such team at least once
6 each year.

7 "(x) CASE MANAGEMENT SERVICES.—The term 'case
8 management services' means, with respect to any individ-
9 ual with a severe disability, services rendered to such indi-
10 vidual by a designated qualified professional who—

11 (1) has a continuing relationship with such in-
12 dividual but who is not associated with the commu-
13 nity living facility, foster family home, family home,
14 or any other provider of ongoing direct services to
15 such individual;

16 “(2) coordinates and monitors the development
17 and implementation of the written habilitation plan
18 for such individual;

19 “(3) provides such individual (or his spouse,
20 parent, guardian, other family member, or advocate,
21 as appropriate) with information about, and referral
22 to, appropriate social, educational, vocational, medi-
23 cal, advocacy, or other services which are among or
24 in addition to those for which payment may be made
25 under this title;

1 "(4) provides assistance and serves as an advo-
2 cate in procuring such services as necessary;

3 "(5) periodically reviews the changing needs of
4 such individual and the appropriateness of the medi-
5 cal assistance and other services provided to such in-
6 dividual;

7 "(6) cooperates with personnel in school, em-
8 ployment related, or treatment settings who have
9 specific responsibilities for developing or implement-
10 ing any individual education plan, plan of vocational
11 services, or plan of treatment designed for such indi-
12 vidual, so that all such plans are, to the greatest
13 extent possible, coordinated and complementary; and

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

17 "(y) INDIVIDUAL AND FAMILY SUPPORT SERVICES.—

18 The term 'individual and family support services' means—

19 "(1) those services provided to an individual
20 with a severe disability which the individual's inter-
21 disciplinary team (described in subsection (w)(1))
22 determines are appropriate for carrying out those ac-
23 tivities of daily living which the individual cannot
24 perform for himself, including non-medical personal
25 care, attendant care, assistance in ambulating or

1 transferring, limited domestic services, and assistance
2 with communicative devices and aids; and

3 "(2) services provided to the family of an indi-
4 vidual with a severe disability which the individual's
5 interdisciplinary team determines are appropriate for
6 assisting the family in providing services described
7 in paragraph (1) to the individual, including respite
8 care.

9 "(z) SPECIALIZED VOCATIONAL SERVICES.—

10 "{1) The term 'specialized vocational services'
11 means services designed to enhance the independ-
12 ence, productivity, and integration of an individual
13 with a severe disability, including—

14 "(A) prevocational services for such an in-
15 dividual whose earning capacity (as determined
16 on the basis of a current vocational assessment
17 or other objective measure of work perform-
18 ance) is less than 50 percent of the minimum
19 wage established under section 6(a) of the Fair
20 Labor Standards Act of 1938; and

21 "(B) supported employment services for
22 such an individual for whom competitive em-
23 ployment—

24 "(i) has not traditionally occurred, or

1 "(ii) has been interrupted or intermit-
2 tent as a result of such disability (and for
3 whom ongoing support services are needed
4 to perform such employment),

5 "(2) For purposes of paragraph (1)—

6 "(A) the term prevocational services'
7 means services that are designed to assist an in-
8 dividual in acquiring and maintaining basic
9 work and work-related skills necessary to ac-
10 quire and retain work in an integrated work set-
11 ting, which services may include—

12 "(i) training the individual to follow
13 directions, adapt to work routines, and
14 carry out assigned duties in an effective
15 and efficient manner,

16 "(ii) helping the individual to acquire
17 appropriate attitudes and work habits, in-
18 cluding instruction in socially-appropriate
19 behaviors on and off the job site,

20 "(iii) assisting the individual to adjust
21 to the productive and social demands of
22 the work place,

23 "(iv) familiarizing the individual with
24 job production and performance require-
25 ments,

1 "(v) providing transportation between
2 the individual's place of residence and the
3 workplace when other forms of transporta-
4 tion are unavailable or inaccessible,

5 "(vi) providing mobility training, in-
6 cluding the utilization of public and para-
7 transit systems,

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

10 "(viii) instructing individuals in ap-
11 propriate use of job-related facilities (e.g..
12 break areas, lunch rooms, cafeterias and
13 rest rooms); and

14 "(B) the term 'supported employment
15 services' means services designed to assist an
16 individual in procuring and maintaining employ-
17 ment, which services may include—

18 "(i) individuated assessment,

19 "(ii) individualized and group coun-
20 seling,

21 "(iii) individualized job development
22 and placement services that produce an ap-
23 propriate job match for the individual and
24 such individual's employer,

1 retain, regain, or improve the self-help, socialization,
2 and adaptive skills necessary to Reside successfully
3 in home and community based settings.

4 "(2) The services specified in this paragraph
5 are--

6 "(i) specialized vocational services (as de-
7 fined in subsection (z)) and educationally-relat-
8 ed services (as defined in subsection (cc));

9 "(ii) special education services (as defined
10 in section 602(16) of the Education of the
11 Handicapped Act) which otherwise are available
12 to the individual through a Local educational
13 agency ,

14 "(iii) vocational rehabilitation services
15 which otherwise are provided to the individual
16 through a program funded under section 110 or
17 633 of the Rehabilitation Act of 1973.

18 "(bb) CASE COORDINATION SERVICES.—The term
19 case coordination services' means, with respect to any in-
20 dividual with a severe disability, services rendered to such
21 individual by a designated qualified professional who—

22 "(1) is employed by an agency directly respon-
23 sible for providing habilitation services to such indi-
24 vidual; and

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

3 (2) by striking the period at the end of para-
4 graph (47) added by section 9407(a) of the Omnibus
5 Budget Reconciliation Act of 1986 and inserting a
6 semicolon and transferring and inserting such para-
7 graph after paragraph (46);

8 (3) by striking the period at the end of the para-
9 graph (47) added by section 11005(b) of the Anti-
10 Drug Abuse Act of 1986 and inserting "; and", by
11 re-designating such paragraph as paragraph (48), and
12 by transferring and inserting such paragraph after
13 paragraph (47); and

14 (4) by inserting after paragraph (48) the follow-
15 ing new paragraph:

16 "(49) effective not later than the first day of the
17 second fiscal year beginning after the date of enactment of
18 the Medicaid Home and Community Quality Services Act
19 of 1987, that with respect to any individual with a severe
20 disability who *is* entitled to medical assistance under such
21 plan and who resides in a family home, foster family
22 home, or community living facility, such assistance shall
23 include an array of community and family support services
24 which the State determines are appropriate, when com-
25 bined with other medical assistance available under the

1 plan and with other available resources, to assist in provid-
2 ing for the health, safety, and effective habilitation or reha-
3 bilitation of such individual, including at a minimum case
4 management services, individual and family support serv-
5 ices, specialized vocational services, and protective inter-
6 vention."

7 (b) INCLUSION AS MEDICAL ASSISTANCE.—Section
8 1905 {a}(13) of such Act is amended by inserting before the
9 semicolon at the end thereof the following: ", including
10 community and family support services for individuals
11 with a severe disability".

12 (c) SERVICES FOR INDIVIDUALS WITH A SEVERE DIS-
13 ABILITY,—Title XIX of such Act is amended—

14 (1) by re-designating section 1921 as section
15 1922; and

16 (2) by inserting after section 1920 the following
17 *new* section:

18 "MEDICAL ASSISTANCE, HABILITATION, AND REHABILITATION
19 FOR INDIVIDUALS WITH A SEVERE DISABILITY

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

22 "(1) For purposes of section 1903, amounts ex-
23 pended by a State under its Slate plan for communi-
24 ty and family support services may be included as
25 medical assistance if such services are provided—

1 "(K) Services to enable the individual to
2 improve or maintain functional capacities (in-
3 cluding physical therapy, occupational therapy,
4 speech therapy and audiology, respiratory ther-
5 apy, and non-averse behavior intervention
6 therapy)

7 "(L) Prostheses, assistive devices, supplies,
8 appliances, and communicative aids and de-
9 vices.

10 "(M) Preventive and therapeutic dental
11 services,

12 "(N) Adaptation of equipment and vehi-
13 cles, and of housing or other space, to be used
14 by an individual with a severe disability,

15 "(O) Comprehensive outpatient rehabilita-
16 tion facility services.

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

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

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

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

3 "(C) Cash payments as a service.

4 "(D) Averse behavior intervention, man-
5 agement, or therapies.

6 "(E) Any service to any individual to the
7 extent that (he provider of the service or the in-
8 dividual receiving the service is eligible to re-
9 ceive payment under title XVIII with respect to
10 the provision of the service.

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

16 "(G) Any service to any individual with a
17 severe disability living in any hospital, skilled
18 nursing facility, or intermediate care facility (in-
19 cluding any such hospital or facility for mental
20 diseases).

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

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

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

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

14 "(2) report to the Secretary on the implementa-
15 tion of the State's implementation strategy (submit-
16 ted to the Secretary under paragraph (5)) in such
17 form and with such frequency as the Secretary may
18 prescribe and comply with the requests of the Secre-
19 tary to correct or verify such report;

20 "(3) cooperate with the Secretary in carrying
21 out his responsibility (under section 11(d) of the
22 Medicaid Home and Community Quality Services
23 Act of 1987) to assess the State's compliance with
24 its State implementation strategy (submitted to the
25 Secretary under paragraph (5)), including making

1 available to the Secretary such records as the Secre-
2 tary may reasonably require to assess such compli-
3 ance;

4 "(4) promulgate standards governing each ele-
5 ment of community and family support services cov-
6 ered under its plan, monitor all providers of such
7 services to assure that such providers comply with
8 applicable standards, and take necessary steps to
9 assure that such standards are promptly and effec-
10 tively enforced;

11 "(5) submit to the Secretary a State implemen-
12 tation strategy (as described in subsection (d)) that is
13 annually reviewed and updated (as appropriate);

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

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

19 "(8) ensure that individuals with a severe dis-
20 ability are granted equal access to available commu-
21 nity and family support services without regard to
22 their place of residence or the nature or degree of
23 their disability;

24 "(9) ensure that, to the extent possible, any in-
25 dividual with a severe disability for whom a public

1 agency (or an agency under contract with a public
2 agency) arranges a residential placement is placed in
3 a foster family home or community living facility
4 that is located as close to the home of the natural,
5 adoptive, or foster family of the individual as is con-
6 sistent with the best interests of the individual; and

7 "(10) ensure that, to the extent possible, any in-
8 dividual with a severe disability who has attained the
9 age of 18 for whom a public agency (or an agency
10 under contract with a public agency) arranges work
11 or work-related services for which payment is made
12 under this title are provided in an integrated work
13 environment

14 "(d) STATE IMPLEMENTATION STRATEGY,—The State
15 implementation strategy submitted to the Secretary under
16 subsection (c){5} shall—

17 "(1)(A) describe—

18 "(i) the extent and scope of community
19 and family support services provided to individ-
20 uals with a severe disability which are financed
21 (in whole or in part) under—

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

23 "(H) other Federal or Federally-assist-
24 ed State programs or social entitlement
25 programs, and

1 "(III) non-Federal sources, and
2 "(ii) the extent and scope of services pro-
3 vided to individuals with a severe disability
4 who are residing in a facility that is an acute
5 care hospital, a skilled nursing facility, an inter-
6 mediate care facility (including a facility that is
7 certified in accordance with section 1905(d)), a
8 board and care facility, or other public or pri-
9 vate facility having 16 or more beds and in
10 which a significant number of recipients of sup-
11 plemental security income benefits reside or are
12 likely to reside, which are so financed;

13 "(B) set forth specific objectives and a project-
14 ed schedule for expanding and improving community
15 and family support services for individuals with a
16 severe disability over the succeeding five-year
17 period, which objectives shall identify the extent to
18 which such services will be financed under the
19 State's plan under this title and from other funding
20 sources;

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

24 "(i) the service needs of such individual
25 and the types of services the individual would

1 require if transferred to a family home, foster
2 family home, or community living facility, are
3 identified not later than 18 months after the date
4 on which community and family support serv-
5 ices are first covered under the State plan (and
6 annually thereafter), and

7 "(ii) such individual and, as appropriate,
8 such individual's spouse, parent, guardian, ap-
9 propriate family member, or advocate, are af-
10 forded an opportunity to participate in the proc-
11 ess under clause (i);

12 "(D) in the case of any individual with a severe
13 disability who is residing in a skilled nursing facility
14 or an intermediate care facility (other than a facility
15 that is certified in accordance with section 1905(d))
16 and who is determined (in accordance with sub-para-
17 graph (C)) to be in need of alternative residential
18 placement, provide that (subject to sub paragraph (F))
19 such individual is transferred from such facility not
20 later than 40 months after the date on which the
21 process described in sub paragraph (C) is completed
22 with respect to such individual;

23 "(E) in the case of any individual with a severe
24 disability who is residing in a facility described in
25 sub paragraph (A)(ii) and who is not transferred pur-

1 suant to sub paragraph (D), set forth specific objec-
2 tives and a projected schedule for transferring such
3 individual over the succeeding five-year period (in
4 accordance with sub paragraph (F));

5 *(F) provide that in transferring any individual
6 with a severe disability from a skilled nursing facili-
7 ty, an intermediate care facility, or a board and care
8 facility to a family home, foster family home, or
9 community living facility—

10 "(i) such individual is placed only in a fa-
11 cility or program that is capable of providing an
12 appropriate array of community and family sup-
13 port services, and

14 "(ii) to the extent that an appropriate array
15 of such services cannot be provided in a family
16 home, foster family home, or community living
17 facility deemed to be capable of meeting the in-
18 dividual's needs that is located in the communi-
19 ty where the individual would otherwise reside,
20 such individual is temporarily placed in an in-
21 termediate care facility that is certified under
22 section 1905(d);

23 "(G) provide that prior to transfer of any indi-
24 vidual with a severe disability from a skilled nursing
25 facility, an intermediate care facility, or a board and

1 care facility to a family home, foster family home,
2 or community living facility deemed to be capable of
3 meeting the individual's needs—

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

6 "(I) identifies the specific community
7 and family support services, as well as
8 other services, that such individual will re-
9 quire and will have available when such
10 individual is transferred to a family home,
11 foster family home, or community living
12 facility,

13 "(II) involves the interdisciplinary
14 team (or other professional group) respon-
15 sible for the written habilitation plan with
16 respect to such individual while residing in
17 the facility from which transfer is to be
18 made, and the professional responsible for
19 providing case management services and
20 other appropriate professional personnel
21 who are likely to be involved in providing
22 services to the individual in the communi-
23 ty, and

24 "(III) provides to the individual and,
25 as appropriate, to such individual's spouse,

1 parent, guardian, appropriate family
2 member, or advocate, an opportunity to
3 participate in developing such plan;

4 "(ii)(I) such individual and his or her
5 spouse, parent, guardian, appropriate family
6 member, or advocate, are notified in writing at
7 least 60 days before the date of any proposed
8 transfer,

9 "(II) procedures are established for grant-
10 ing to such individual (or, as appropriate, to his
11 spouse, parent, guardian, appropriate family
12 member, or advocate) an opportunity for an
13 appeal regarding the transfer plan developed
14 under clause (i) with respect to the individual,
15 and for a fair hearing before an impartial hear-
16 ing officer designated by the State, on the
17 grounds that the types of health related services,
18 habilitation,* rehabilitation, housing, or other
19 services specified in the community services
20 transfer plan developed with respect to such in-
21 dividual are inappropriate or inadequate, or a
22 particular type of health related service, habili-
23 tation, rehabilitation, housing, or other service
24 specified in such plan is not yet available in the
25 area in which such individual will reside, and

1 "(III) if such individual initiates an appeal
2 under sub clause (II), the individual remains in
3 the facility from which such individual is to be
4 transferred pending the outcome of the appeal
5 (unless protective intervention is determined to
6 be necessary with respect to the individual), and
7 if the individual does not initiate such an
8 appeal, the individual is furnished, to the extent
9 possible, community and family support serv-
10 ices as if the individual were residing in a
11 family home, foster family home, or community
12 living facility;

13 "(2) provide that, not later than 18 months after
14 the date on which community and family support
15 services are first covered under the State plan, the
16 State has in place a preadmission screening program
17 (using criteria specified by the Secretary) to prevent
18 the inappropriate placement of individuals with a
19 severe disability in skilled nursing facilities and in-
20 termediate care facilities;

21 "(3) set forth—

22 "(A) the component parts of a comprehen-
23 sive, integrated quality assurance system that af-
24 fords individuals with a severe disability ex-
25 panded opportunities for independence, produc-

1 "(iii) are provided in a manner that
2 maximizes opportunities for and fosters the
3 development of relationships between the
4 individual and other members of the com-
5 munity (including individuals who are not
6 disabled),
7 "(iv) are provided in the home or at
8 school, a job site, or other community set-
9 ting where existing and newly acquired
10 skills can be put to practical use,
11 "(v) are designed to ensure that (if
12 the individual resides in a community
13 living facility) services, other than residen-
14 tially-related services, are provided in set-
15 tings other than the facility in which the
16 individual resides (unless medically contra-
17 indicated), and
18 "(vi) are designed to assist the indi-
19 vidual to acquire the functional life skills
20 necessary to enhance the capacity of the
21 individual to achieve independent living, to
22 integrate into the community, and to social-
23 ly interact with individuals who are not
24 disabled;

1 "(B) the methods and procedures to be
2 used in instituting and maintaining the quality
3 assurance system described in sub paragraph (A),
4 which procedures shall provide for the same op-
5 portunity for public input with respect to the
6 standards developed under such system as exists
7 under the State plan amendment process, for
8 review of such standards by the State Planning
9 Council established under section 124 of the
10 Developmental Disabilities Assistance and Bill
11 of Rights Act, and for response to any com-
12 ments made by such Council with respect to
13 such standards;

14 "(C)(i) a program for licensing and certify-
15 ing all facilities and programs that provide com-
16 munity and family support services covered
17 under the State plan, which program, at the
18 option of the State, may include a requirement
19 that a class or classes of facilities or programs
20 are accredited by a national accrediting body
21 that is designated by the Secretary, and

22 "(ii) a requirement that all physical struc-
23 tures (other than a family home) in which indi-
24 viduals with a severe disability reside, or in
25 which community and family support services

1 are provided, meet applicable State or local fire,
2 safety, health, and sanitation codes, and have in-
3 terior and exterior features that are comparable
4 to other residential structures in the surrounding
5 neighborhood;

6 "(D) a system for conducting an annual in-
7 dependent, third-party evaluation of community
8 and family support services provided under the
9 State plan, which system shall include (at a
10 minimum)—

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

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

16 "(iii) an assessment (conducted with
17 respect to a statistically valid sample of in-
18 dividuals with a severe disability and,
19 where available, through the use of valid
20 and reliable instruments) to determine the
21 extent to which the services contribute to
22 reduced dependency, enhanced opportuni-
23 ties to make choices, the acquisition of
24 positive social behaviors, improved social
25 integration and participation in community

1 life, increased productivity, consumer satis-
2 faction, the physical comfort of the individ-
3 ual and the attractiveness and appropriate-
4 ness (in view of the individual's age) of
5 such individual's living environment, and
6 the achievement of the written goals and
7 objectives set forth in the individual's writ-
8 ten habilitation plan, and

9 "(iv) a summary of findings and rec-
10 ommendations with respect to needed
11 changes in State laws and the administra-
12 tive policies and practices of responsible
13 State and local agencies (and any other
14 provider of such services);

15 "(E) an annual assessment of consumer
16 satisfaction with community and family support
17 services provided under the State plan;

18 "(F) a program of periodic assessments of
19 the adequacy of the physical and social environ-
20 ment of residential settings serving individuals
21 with a severe disability conducted by a review
22 body composed of parents, guardians, relatives,
23 or neighbors of an individual with a severe dis-
24 ability (except that no member of the body shall
25 be affiliated with the facility or home being re-

1 viewed or with any agency responsible for pro*
 2 viding funds with respect to such facility or
 3 home and in no event may the neighbors of the
 4 individual comprise a majority of the body);

5 and

6 "(G) a systematic methodology for assur-
 7 ing prompt correction of any deficiency identi-
 8 fied with respect to the provision of community
 9 and family support services under the Slate
 10 plan, which methodology shall include—

11 "(i) a procedure under which the af-
 12 fected entity may appeal a determination
 13 that there is such a deficiency,

14 "(ii) a requirement that any such
 15 entity with respect to which a deficiency is
 16 identified submit a plan of correction to the
 17 appropriate State agency which sets forth a
 18 schedule for promptly eliminating the defi-
 19 ciency,

20 "(iii) a program for providing training
 21 and technical assistance to assist such
 22 entity in eliminating a deficiency, and

23 "(iv) a list of penalties with respect
 24 to any such entity that fails to promptly
 25 correct (he deficiency;

1 "(4)(A) in the case of individuals with a severe
2 disability who are living in residential facilities
3 which are not family homes, foster family homes,
4 community living facilities, provide that—
5 "(i) admissions to such residential facilities
6 are restricted through the use of community-
7 based services, and
8 "(ii) the service needs of any such individ-
9 ual are identified in accordance with paragraph
10 (1)(C); and
11 "(B) provide that alternate provisions are made
12 for appropriate care (including basic maintenance if
13 needed) and services for any individual with a severe
14 disability eligible for medical assistance who has
15 been living in a facility or institution which has been
16 receiving payments for care, treatment or mainte-
17 nance of such individual under this title and which
18 ceases to receive such payments, or ceases to pro-
19 vide such care and services to such individual, other
20 than at the request of the individual or his represent-
21 ative;
22 "(5)(A) provide that, as part of a plan to afford
23 the public an adequate opportunity to comment on
24 the State's implementation strategy prior to when

1 such strategy is submitted to the Secretary (or prior
2 to any annual revision)—

3 "(i) copies of such strategy are distributed
4 to individuals, agencies, and organizations in
5 the State that are interested in the welfare of in-
6 dividuals with a severe disability,

7 "(ii) such individuals, agencies, and orga-
8 nizations are afforded not less than 45 days to
9 comment on the strategy,

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

15 "(iv) the comments of the State Planning
16 Council established under section 124 of the
17 Developmental Disabilities Assistance and Bill
18 of Rights Act are solicited, and

19 "(v) a summary of the comments received
20 from the general public and such Council is
21 prepared, indicating any revisions made as a
22 result of such comments (or explaining why
23 such revisions were not made);

24 "(B) set forth the methods and procedures to be
25 used to ensure that, with respect to every organiza-

1 "(ii) is independent of each such organiza-
2 tion or agency, and

3 "(iii) has the legal capacity to intervene on
4 behalf of an individual with a severe disability
5 when necessary to protect such individual's
6 rights

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

12 "(E) set forth the methods by which protective
13 intervention services are made available, as neces-
14 sary, to any individual with a severe disability who
15 is or would except for his income or resources be,
16 eligible to receive services under this title;

17 "(F) set forth the steps by which the State en-
18 sures that each individual with a severe disability re-
19 ceiving community and family support services
20 under the State plan has access to case management
21 services which are provided—

22 "(i) by an entity that is organizationally in-
23 dependent of any entity furnishing ongoing
24 direct services to individuals with a severe dis-
25 ability,

1 (ii) with sufficient frequency and intensi-
2 ty to ensure that the objectives in an individ-
3 ual's written habilitation plan are achieved
4 within the period of time specified in such plan,
5 and

6 "(iii) by a professional who is permitted to
7 visit each individual under his or her care not
8 less than once a month;

9 "(G) set forth the steps by which qualified pro-
10 viders of case coordination services for individuals
11 with a severe disability are organizationally inde-
12 pendent of any entity furnishing ongoing direct serv-
13 ices to such individuals;

14 "(H) provide that the State has in effect a man-
15 agement information system capable of collecting,
16 storing, and retrieving data with respect to individ-
17 uals with a severe disability who receive (or who are
18 eligible to receive) community and family support
19 services under this section, which system shall—

20 "(i) be based on information derived from
21 an individual's written habilitation plan or from
22 any other need-assessment data source,

23 "(ii) provide client based data with respect
24 to the nature and extent of service needs, the
25 type and duration of services provided, the cost

1 and outcome of such services, and any gaps in
2 available services, and

3 "(iii) use (where available) valid and reli-
4 able instruments for collecting such data:

5 "(I) set forth procedures for—

6 "(i) granting an opportunity for a timely
7 appeal and a speedy hearing before an impartial
8 hearing officer—

9 "(I) to any individual who believes
10 himself to be inappropriately placed or
11 who is denied an appropriate placement or
12 service, or who is being scheduled for
13 transfer (other than under the provisions of
14 paragraph (1) of this subsection and other
15 than on his own initiative) from one living
16 arrangement (including his own home) to
17 another, or

18 "(II) as appropriate, to his spouse,

19 parent, guardian, appropriate family
20 member, or advocate acting on his behalf,

21 "(ii) giving written notice to affected par*
22 ties at least 60 days before such proposed trans-
23 fer except in an emergency, and

24 "(iii) advising individuals with severe dis-
25 abilities, their families, and their advocates of

1 available alternative arrangements and services,
2 of the right to choose among, available licensed
3 or certified providers of services, and of the
4 right to a fair hearing under section 1902(a)(3);

5 "(J) describe the methods to- be used in admin-
6 istering community and family support services
7 under the State plan, including—

8 "(i) the specific roles and responsibilities

10 "(I) specified State and local govern-
11 mental agencies in establishing policies
12 governing the provision of such services
13 and in providing such services (either di-
14 rectly or under arrangements wilt other
15 public or private entities),

16 "(B) the agency responsible for pro-
17 viding protection and advocacy in accord-
18 ance with subsection (j), and

19 "(III) the community organizations
20 and agencies responsible for providing
21 such services, and

22 "(ii) the steps to be taken in recruiting and
23 selecting such provider organizations and agen-
24 cies;

1 "(K) set forth criteria to govern the use of psy-
2 chotropic and anti-convulsant medications and be-
3 havior management techniques, as well as monitor-
4 ing methods to be used to ensure compliance with
5 such criteria; and

6 "(L) set forth the methods by which the
7 number and types of integrated work settings and the
8 range of supportive services available to individuals
9 with a severe disability who have attained the age of
10 18 are developed and expanded; and

11 "(6) set forth methods and procedures to
12 assure

13 /'(A) fair and equitable provisions (as de-
14 termined by the Secretary in consultation with
15 the Secretary of Labor) to protect the interests
16 of public employees who will be affected by the
17 transfer of individuals with a severe disability
18 from public institutions, including public medi-
19 cat institutions, to community or family living
20 facilities under the agreement, and that maxi-
21 mum efforts will be made to provide for the
22 employment of such employees, including ar-
23 rangements designed to preserve employee
24 rights and benefits and arrangements to provide

1 (where necessary) for the training or retraining
2 of such employees, and

3 "(B) application of fair employment stand-
4 ards and equitable compensation to workers in
5 private programs and facilities offering care and
6 services for which payments are made under
7 this title.

8 "(e) STATE MAINTENANCE OF EFFORT.—

9 "(1) A State meets the maintenance of effort
10 requirement of this subsection for any quarter in a
11 fiscal year in which community and family support
12 services are provided if for such quarter the total
13 amount of the funds expended by the State (and po-
14 litical subdivisions thereof) from non-Federal funds
15 for these services for eligible individuals with a
16 severe disability is at least equal to the base amount,
17 increased by the inflation factor that applies with re-
IS spect to the fiscal year in which such services are
19 provided.

20 "(2) For purposes of paragraph (1)—

21 "(A) the term 'base amount' means the av-
22 erage quarterly amount of the funds expended
23 (during the four-quarter period ending Septem-
24 ber 30, 1987) by the State (and political subdi-
25 visions thereof) from non-Federal funds under

1 the plan for services that arc community and
2 family support services; and
3 " {B) the inflation factor that applies with
4 respect to the fiscal year in which such services
5 are provided is the amount (expressed as a per-
6 centage) by which the Consumer Price Index for
7 the third quarter of the fiscal year preceding
8 such fiscal year exceeds the Consumer Price
9 Index for the third quarter of the second fiscal
10 year preceding such fiscal year.

11 "(f) REVIEW BY COMPTROLLER GENERAL,—The
12 Comptroller General of the United States shall, from time
13 to time, review State plans approved by the Secretary pur-
14 suant to section 1902 in order to ensure the compliance of
15 such plans with the provisions of this section and the Med-
16 icaid Home and Community Quality Services Act of 1987.

17 "(g) WAIVER OF STATEWIDE REQUIREMENT AND RE-
18 QUIREMENT OF COMPARABILITY.—For any three-year
19 period, a State may provide any new service under this
20 section without regard to the statewide requirement of sec-
21 tion 1902 {a)(1) or the requirement of section
22 1902(a)(10)(B).

23 "(h) WAIVER OF FREEDOM OF CHOICE REQUIRE-
24 MENT.—A State may provide case management services
25 under this section without regard to the requirement of sec-

1 tion 1902(a)(23) to the extent that the State determines that
2 waiving such requirement is necessary to the effective and
3 efficient provision of such services.

4 "(i) STATE ADMINISTRATION,—The Governor of each
5 State may assign the responsibility for performing speci-
6 fied management functions regarding services provided to
7 individuals with a severe disability under this section to
8 State agencies other than the agency administering the plan
9 under this title."

10 (d) INTERMEDIATE CARE FACILITY SERVICES IN AN IN-
11 STITUTION FOR THE MENTALLY RETARDED.---- Section
12 1905(d) of the Social Security Act is amended—

13 (1) by striking out "a public' and inserting in
14 lieu thereof "an";

15 (2) by striking out "and" at the end of para-
16 graph (2); and

17 (3) by striking out paragraph (3) and inserting
18 in lieu thereof the following:

19 "(3) the individual needs of each newly admit-
20 ted individual are ascertained by an interdisciplinary
21 team within 30 days, and an individual written ha-
22 bilitation plan is developed for the individual, includ-
23 ing an assessment of his needs for community and
24 family support services; and

1 "(4) the institution, if not operated by the State,
2 has a written agreement with an appropriate State
3 agency to cooperate in carrying out the State imple-
4 mentation strategy required to be submitted to the
5 Secretary under section 1921(c)(5)."

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

8 (1) by inserting after "professional medical
9 personnel" the following: "or personnel skilled

10 in the delivery of community and family sup-
11 port services needed by individuals with a
12 severe disability"; and

13 (2) by inserting after "other public
14 agency"¹¹ the following "or any agency under
15 contract to the State to provide services under
16 section 1921".

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

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

21 "(w) LIMITATION ON PAYMENTS FOR SERVICES PROVID-
22 ED EN LARGE FACILITIES.—

23 "(1)(A) Except as provided in paragraph (2),
24 effective for any fiscal year beginning after the first
25 fiscal year to begin after the date of the enactment of

1 the Medic aid Home and Community Quality Serv-
2 ices Act of 1937, the aggregate amount payable
3 under this title to any State for any quarter beginning
4 in such fiscal year for skilled nursing facility serv-
5 ices and intermediate care facility services furnished
6 to any individual described in sub paragraph (C) in
7 facilities having more than 15 beds shall not exceed
8 25 percent of the maximum expenditure amount de-
9 termined with respect to the State under sub para-
10 graph (B) for such fiscal year.

11 "(B){i) For purposes of sub paragraph (A), the
12 term 'maximum expenditure amount' means, with re-
13 spect to a State for a fiscal year, an amount equal to
14 the aggregate amount payable under this title to the
15 State for the services described in sub paragraph (A)
16 for the fiscal year immediately preceding the first
17 fiscal year to begin after the date of the enactment of
18 the Medicaid Home and Community Quality Serv-
19 ices Act of 1987, increased by the percentage (if
20 any) by which CPI percentage increase for the fiscal
21 year exceeds 6.0 percent (and by any amounts ex-
22 pended for the fiscal year for which payment would
23 otherwise be made under this title that are attributa-
24 ble to the cost of implementing a plan of correction
25 or reduction plan approved under section 1919).

1 onset of which occurred before the individual
2 attained the age of 22.

3 "(D) For purposes of applying this subsection,
4 aggregate amounts paid under this title shall be de-
5 termined without adjustments for amounts recovered
6 from third parties considered as overpayments.

7 "(2) The limitation on payments in paragraph
8 (1) shall not apply, with respect to skilled nursing fa-
9 cility services or intermediate care facility services
10 provided in a facility which unconditionally meets
11 all requirements applicable to such type of facility
12 (including appropriateness of admissions), to—

13 "(A) payments for such services for indi-
14 viduals in a facility which meets the size and
15 location requirements for a community living
16 facility;

17 "(B) payments for such services for indi-
18 viduals in a facility which is in operation on
19 September 30, 1987, does not increase its
20 number of beds after such date, and has no
21 more than 15 beds (exclusive of beds occupied
22 by staff members); and

23 "(C) payments for such services for indi-
24 viduals in a facility treated as a community
25 living facility under section 1905(v)(2).

1 SEC. 5, PROTECTION OF RIGHTS OF INDIVIDUALS WITH A SEVERE
2 DISABILITY.

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

6 "(j) PROTECTION OF RIGHTS.—

7 "(1) Subject to paragraph (3), in order to re-
8 ceive any payments for community and family sup-
9 port services provided under this section, the State
10 must have in effect a system to protect and advocate
11 those rights of individuals with a severe disability
12 who are eligible for medical assistance which relate
13 to the provision of such assistance.

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

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

19 "(B) has the authority to pursue legal, ad-
20 ministrative, and other appropriate remedies to
21 insure the protection of the rights of individuals
22 with a severe disability who are eligible for
23 medical assistance; and

24 "(C) has the authority to obtain access to
25 records of individuals with a severe disability
26 who are eligible for medical assistance in order

1 to carry out such agency's duties under this
2 subsection

3 "(3)(A) In the case of a State that has in effect
4 a system for providing protection and advocacy
5 under part C of the Development Disabilities Assist-
6 ance and Bill of Rights Act, such State shall take ap-
7 propriate steps to ensure that such existing system is
8 used to perform the protection and advocacy func-
9 tions required by this section.

10 "(B) The State must provide assurances to the
11 Secretary that the amounts paid to the State under
12 this title that are attributable to the use of the system
13 in effect under part C of such Act shall be the only
14 Federal funds used for the purposes of providing
15 protection and advocacy relating to the provision of
16 medical assistance to individuals with a severe dis-
17 ability."

18 **SEC. 6. PRIVATE ENFORCEMENT.**

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

23 "(k) PRIVATE ENFORCEMENT.—

24 "(1){A) Except as provided in paragraph (3),
25 any person injured or adversely affected or aggrieved

1 by a violation of this section, or of the Medicaid
2 Home and Community Quality Services Act of 1987,
3 by a State agency administering the State plan may
4 bring an action to enjoin such violation.

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

9 "(C) The party bringing such action may elect,
10 by so stating in the complaint filed at the com-
11 mencement of such action, to recover reasonable at-
12 torney's fees and costs from the defendant in the
13 event that such party prevails.

14 "(2) Not less than 15 days before commencing
15 an action under this subsection, an interested party
16 shall give notice by registered mail to the Secretary,
17 the Attorney General of the United States, and the
18 State agency administering the State plan alleged to
19 be in violation of this section or of the Medicaid
20 Home and Community Quality Services Act of 1987.
21 Such notice shall state the nature of the alleged vio-
22 lation and the court in which such action will be
23 brought.

24 "(3) The approval of the State plan under sec-
25 tion 1902(b) shall not be a bar to the bringing of an

1 action under this subsection, nor shall it constitute a
2 defense to any such action."

3 **SEC. 7. RATES OF PAYMENT FOR SERVICES.**

4 Section 1902(a)(13) of the Social Security Act is
5 amended by striking out "and" at the end of sub paragraph
6 (D), by adding "and" at the end of sub paragraph (E), and
7 by adding at the end thereof the following new sub para-
8 graph:

9 "(F) for payment for community and
10 family support services for individuals with a
11 severe disability, described in section 1921 and
12 provided under the plan, through the use of
13 rates (determined in accordance with methods
14 and standards developed by the State) which the
15 State finds, and makes assurances satisfactory to
16 the Secretary, are reasonable and adequate to
17 assure the provision of care and service in con-
18 formity with applicable State and Federal laws
19 and regulations, and applicable quality and
20 safety standards, and to assure that individuals
21 with a severe disability eligible for medical as-
22 sistance have reasonable access (taking into ac-
23 count geographic location and reasonable travel
24 time for family and friends) to community and
25 family support services of adequate quality;"

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

3 (a) OPTIONAL ELIGIBILITY.—Section 1902 of the
4 Social Security Act is amended by re-designating the sub-
5 section (1) added *by* section 3(b) of the Employment Op-
6 portunities for Disabled Americans Act as subsection (o)
7 and by inserting after such subsection the following new
8 subsection:

9 "(p) ELIGIBILITY OF CERTAIN INDIVIDUALS WITH A
10 SEVERE DISABILITY--

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

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

15 "(B) as determined by the State, is an indi-
16 vidual who requires (or whose family requires)
17 community and family support services, and

18 "(C) if the individual were in a medical
19 institution, would be an individual with respect

20 to whom supplemental security benefits (or a

21 State supplementary payment) could be paid
22 under title XVI;

23 shall be deemed, for purposes of *this* title only, to be
24 an individual with respect to whom a supplemental
25 security income payment, or State supplementary
26 payment, respectively, is being paid under title XVI.

1 income standard for all individuals with a severe dis-
2 ability,";

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

4 (3) by striking out the semicolon at the end of

6 sub clause (X) and inserting in lieu thereof "or";

7 and

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

9 "(XI) who are disabled children
10 or disabled spouses who, except for
11 resources deemed to them, would be
12 eligible for supplementary security
13 income benefits under **title XVI**;"

14 (d) ELIGIBILITY OF DISABLED CHILD,—Section
15 1634(c)(1) of such Act is amended by striking out "the
16 effective date of this subsection" and inserting in lieu
17 thereof "January 1, 1957".

18 **SEC. 9. REMOVAL OF CERTAIN LIMITATIONS ON REDUCTION AND**
19 **CORRECTION PLANS FOR INTERMEDIATE CARE**
20 **FACILITIES FOR THE MENTALLY RETARDED.**

21 Section 1919 of the Social Security Act (42 U.S.C.
22 1396r) is amended—

23 (1) in subsection (d)—

24 (A) by striking "(d)(i)" and inserting in
25 lieu thereof (d)", and

1 (B) by striking paragraph (2); and
2 at (2) by striking subsection (f).

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

5 Section 1902(f) of the Social Security Act (42 U.S.C.
6 1396a(f)) is amended:

7 (I) by inserting "(1)" after the subsection des-
8 ignation;

9 (2) by inserting "'paragraph (2),' before "sub-
10 section (e)"; and

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

13 "(2) Notwithstanding paragraph (1), an individual
14 with a severe disability receiving benefits under title XVI
15 or deemed to receive such benefits under this title shall be
16 entitled to receive medical assistance as long as such indi-
17 vidual remains severely disabled and continues to receive
18 benefits under title XVI or is deemed to receive benefits
19 under this title."

20 **SEC. 11. RESPONSIBILITIES OF THE SECRETARY.**

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

23 (1) The Secretary of Health and Human Serv-
24 ices (referred to in this section as the "Secretary")
25 shall establish, within the Health Care Financing Ad-

1 ministration, a Bureau of Developmental Disabilities
2 Services (referred to in this subsection as the
3 Bureau). The Bureau shall be the principal office in
4 the Department of Health and Human Services for
5 administering and carrying out programs relating to
6 the furnishing of quality services to individuals with
7 a severe disability in order to promote their inde-
8 pendency productivity, and integration into the com-
9 munity, and to provide coordinated leadership, guid-
10 ance, and support to assist States in developing such
11 services.

12 (2) The Bureau shall be headed by a Director
13 who shall be appointed by the Secretary in consulta-
14 tion with the Administrator of the Health Care Fi-
15 nancing Administration. The position of Director
16 shall be placed in Level IV of the Executive Sched-
17 ule in section 5318 of title 5, United States Code and
18 shall be designated *a* career reserved position in the
19 Senior Executive Service. The Director shall have
20 training and experience in the furnishing of services
21 to individuals with developmental disabilities.

22 (3) The additional staffing of the Bureau shall
23 be in sufficient numbers to meet program needs, and
24 at levels which shall attract and maintain the most
25 qualified personnel- Such personnel shall include in-

1 individuals who have training and experience in the
2 provision of services to developmentally disabled in-
3 dividuals.

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

7 (5) The Bureau shall be responsible for—

8 (A) preparing all necessary regulations and
9 other administrative policies governing the pro-
10 vision of services under sections 1921 (as added
11 by this Act), 1905(d), and 1915(c) of the Social
12 Security Act as such services relate to individ-
13 uals with a severe disability;

14 (B) coordinating the activities of responsi-
15 ble regional office personnel related to the pro-
16 vision of services to individuals with a severe
17 disability under titles XVIII and XIX of the
18 Social Security Act;

19 (C) conducting periodic studies to deter-
20 mine the consistency, reliability, and validity of
21 surveys of intermediate care facilities certified
22 or requesting certification under section 1905(d)
23 conducted under section 1902(a)(33)(B) of such
24 Act (and, based on such studies, developing

1 policies and procedures governing such sur-
2 veys);

3 (D) preparing and issuing policies govern-
4 ing the conduct of utilization reviews under sec-
5 tion 1902(a)(30)(A) of the Social Security Act,
6 onsite inspections of care under section
7 1902(a)(31)(B) of such Act, and the preparation
8 of professional review reports under section
9 1902(a)(31)(C) of such Act (as such reports per-
10 tain to care provided in facilities certified or re-
11 questing certification under section 1905(d) of
12 such Act);

13 (E) advising the Administrator of the
14 Health Care Financing Administration on all as-
15 pects of policies that may impact upon individ-
16 uals with a severe disability and recommending
17 (in consultation with such Administrator) policy
18 initiatives and modifications necessary to im-
19 prove services provided under titles XVIII and
20 XIX of the Social Security Act in order to pro-
21 mote the independence, productivity, and inte-
22 gration of such individuals (as such terms are
23 defined under section 1905(dd) of the Social
24 Security Act);

1 (F) developing policies and procedures
2 governing the conduct of periodic assessments
3 of the status of individuals with a severe dis-
4 ability who are receiving services under any
5 title of the Social Security Act; and
6 (G) performing such other functions relat-
7 ing to the provision of services to individuals
8 with a severe disability as the Secretary may
9 assign (including any function related to a re-
10 sponsibility of the Secretary under subsection
11 (b), (c), (d), or (e) of this section).

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

14 (1) with respect to Federal and State personnel
15 who perform surveys under section 1902(a)(33)(B)
16 of the Social Security Act of facilities that are certi-
17 fied under section 1905(d) of such Act—

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

1 (B) in accordance with the curriculum de-
2 veloped under sub paragraph (A), design and ini-
3 tiate a comprehensive training program for such
4 personnel which provides—

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

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

16 (iii) continuing education to such per-
17 sonnel at least every 36 months; and

18 (C) develop standards regarding the qualifi-
19 cations of such personnel, including a standard
20 requiring that at least one member of any
21 survey team be a qualified mental retardation
22 professional (as defined by the Secretary);

23 (2) on the basis of a randomly selected sample
24 of Federal and State surveys conducted. periodically
25 conduct studies of the reliability of survey findings

1 to determine the compliance of facilities certified
2 under section 1905 {d) of the Social Security Act
3 with the standards prescribed by the Secretary under
4 paragraph (1) of such section; and

5 (3) make such changes in Federal regulations,
6 administrative policies or procedures (or initiate such
7 specialized training programs) as are—

8 (A) consistent with the findings of studies
9 conducted under paragraph (2), and

10 (B) necessary to improve the reliability and
11 consistency of survey findings and certification
12 decisions with respect to facilities certified
13 under section 1905(d).

14 (c) DEVELOPMENT, TESTING, AND DISSEMINATION OF
15 INSTRUMENTS AND STANDARDS.—

16 (1) Subject to paragraph (2), the Secretary shall
17 support the development, field testing, and dissemi-
18 nation of-

19 (A) reliable and valid instruments to assess
20 service outcomes in the provision of care and
21 services under this Act, including outcomes in
22 such areas as community integration, individual
23 and family satisfaction, and the impact of envi-
24 ronmental factors; and

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

7 (2) Nothing in paragraph (1) shall be construed
8 to allow the Secretary to require that a State use a
9 specific outcome indicator or personnel standard se-
10 lected by the Secretary.

11 (d) ASSESSMENT OF STATE COMPLIANCE WITH STATE
12 IMPLEMENTATION STRATEGY,—

13 (1) Beginning with the first fiscal year begin-
14 ning after the date of enactment of this Act, the Sec-
15 retary, after consultation with the Secretary of Edu-
16 cation, shall conduct an assessment of each State's—

17 (A) compliance with its implementation
18 strategy (required to be submitted to the Secre-
19 tary under section 1921(c){5} of the Social Se-
20 curity Act, as added by section 3(c) of this
21 Act); and

22 (B) progress in carrying out such strategy,
23 including the steps taken to—

1 (i) expand the quantity and improve
2 the quality of community and family sup-
3 port services;

4 (ii) develop essential support services
5 necessary to maintain a responsive network
6 of community and family support services
7 (including the provision of training, techni-
8 cal assistance, and crisis intervention serv-
9 ices); and

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

14 (2) The Secretary shall conduct periodic assess-
15 ments of the adequacy of the quality assurance com-
16 ponents established by States under such implemen-
17 tation strategy.

18 (e) REPORT.—Not later than January 15, 1992, and bi-
19 ennially thereafter, the Secretary shall submit a report to
20 Congress that is based on the assessments, studies, and
21 other activities conducted under subsections (b), (c), and
22 (d) (and such other information as the Secretary may
23 gather). Such report shall contain an analysis of the find-
24 ings of such assessments, studies and activities a descrip-
25 tion of all relevant fiscal, programmatic, and demographic

1 data, and recommendations regarding the need for any
2 changes in Federal law,

3 (f) REGULATIONS.—

4 (1) Prior to the first fiscal year beginning after
5 the date of enactment of this Act, the Secretary shall
6 issue final regulations with respect to all amend-
7 ments to the Social Security Act made by this Act,
8 including regulations which govern the preparation,
9 public review, distribution, and annual revision of
10 the State implementation strategy (required to be
11 submitted to the Secretary under section 1921 {c)(5)
12 of the Social Security Act, as added by section 3(c)
13 of this Act)-

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

18 **SEC 12. EFFECTIVE DATE.**

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