

99th CONGRESS  
1st session

S. 823

---

IN THE SENATE OF THE UNITED STATES

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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 severely  
disabled individuals to attain or maintain their maximum  
potential for independence and capacity to participate in  
community and family life.

1 Be it enacted by the senate and House of Representatives  
2 Of the United States of America in Congress assembled.

3 SHORT TITLE

4 Section 1. This Act may be cited as the "Community and  
5 Family Living Amendments of 1985".

6 DEFINITIONS

7 sec. 2. Section 1985 of the Social Security Act is  
8 amended by adding at the end thereof the following new  
9 subsections:

10 "(O) Severely Disabled Individual.--

1           "(1) In general.--The term "severely disabled  
2       individual" means an individual who is under a disability  
3       within the meaning of section 223(d) of this Act, the  
4       onset of which occurred--

5           " (A) before the individual attained age 35, or

6           " (B) In the case of an individual whose  
7       disability is primarily due to a mental impairment,  
8       before the individual attained age 22.

9           "(2) inapplicability of earnings test.--In  
10      determining whether an individual meets the criteria of  
11      paragraph (1), the State shall not find that an  
12      Individual is not under a disability on the basis of  
13      earnings.

14      "(p) Community and Family Support Services--The term  
15      "community and family support services" means supportive  
16      services made available to a severely disabled Individual (or  
17      to his natural, adoptive\* or foster family or spouse) to  
18      enable such individual to begin, resume\* or continue living  
19      in a family home or community living facility. Such  
20      supportive services shall include both in-home and out-of-  
21      home services (as needed) from among those enumerated in  
22      section 1919(a).

23      "(q) family Home.--The term " family home" means a  
24      residence maintained by an individual (whether or not  
25      disabled) or a couple, or by a natural, adoptive, or foster

1 family, in. which one or more severely disabled individuals  
2 are living who receive medical assistance which includes  
3 payment for some services enumerated in section 1919(a).

4 "(r) Community Living Facility.—The term "community  
5 living facility\* means a single household, other than a  
6 family home, composed of related or unrelated persons,

7 which—

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

11 "(2) has a number of beds (exclusive of beds  
12 occupied by staff members) not in excess of the product  
13 obtained by multiplying by three the greater of--

14 "(A) the number of individuals in an average  
15 family household in the area in which such facility  
16 is located (as determined in accordance with data  
17 from the 1960 decennial census), or

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

22 "(3) is located in a neighborhood which—

23 "(A) is representative of residential  
24 neighborhoods in such area, and

25 "(B) is populated primarily by individuals other

1 than severely disabled individuals)

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

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

10 "(6) is staffed by individuals who (A) are trained  
11 or retrained in accordance with the provisions of the  
12 community and family living implementation agreement  
13 entered into under section 1919(d) by the state in which  
14 such facility is located, and (B) in providing such  
15 living arrangements, care, or service to severely  
16 disabled individuals, cooperate with other providers and  
17 with appropriate case Managers in implementing a written  
18 plan of habilitation or rehabilitation for each such  
19 individual.

20 "(s) Written Habilitation or Rehabilitation Plan.--The  
21 term " written habilitation or rehabilitation plan' means a  
22 plan for medical assistance and other services for a severely  
23 disabled individual which is--

24 "(1) developed by an interdisciplinary team  
25 consisting of--

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

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

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

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

17          "(4) designed to promote and increase interaction  
18          between disabled and non-disabled individuals within the  
19          community: an3

20          "(5) re-evaluated by such team at least once each  
21          year.

22          "(t) Case Management Services.—The term "case  
23          management services" means, with respect to any severely  
24          disabled individual, services rendered to such individual by  
25          a designated qualified professional who—

1       "(1) has a continuing relationship with such  
2 individual but who is not associated with the community  
3 living facility or family home or other provider of  
4 ongoing direct services to such individual;

5       "(2) coordinates the development and implementation  
6 of the individual written plan of habilitation or  
7 rehabilitation for such individual;

8       "(3) provides such individual (or his spouse,  
9 parent, guardian, other fully member, or advocate, as  
10 appropriate) with information about, and referral to,  
11 appropriate social, educational, vocational, medical,  
12 advocacy, or other services which are among or in  
13 addition to those for which payment may be Made under  
14 this titles

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

17       "(5) periodically reviews the changing needs of such  
18 individual and the appropriateness of the Medical  
19 assistance and other services provided to such  
20 individual]

21       "(6) cooperates with personnel in school, employment  
22 related, or treatment settings who have specific  
23 responsibilities for developing or implementing any  
24 individual education plan, plan of vocational services,  
25 or plan of treatment designed for such individual, so

1 that all such plans are, to the greatest extent possible,  
2 coordinated and complementary; and

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

5 "(u) Individual and Family Support services.-- The term  
6 "individual and family support services' means--

7 "(1) those services provided to a severely disabled  
8 individual which the individual's interdisciplinary team  
9 (described in subsection (s)(1) determines are  
10 appropriate for carrying out those activities of daily  
11 living which the individual cannot perform for himself,  
12 including non-medical personal care, assistance in  
13 ambulating or transferring, limited domestic services,  
14 and assistance with communicative devices and aids, and

15 "(2) services provided to the family of a severely  
16 disabled individual which the individual's  
17 interdisciplinary teams determines are appropriate for  
18 assisting the family in providing services described in  
19 subparagraph (A) to the individual, including respite  
23 care.

21 "(v) Cluster Home.--The term "cluster home" means a  
22 facility which--

23 "(1) was in operation on September 30, 1985;

24 "(2) has not increased its number of beds since  
25 September 30, 1985; and

1           "(3) consists of \* cluster of two or three  
2 facilities in proximity to one another, each of which  
3 would meet the definition of a community living facility  
4 (As defined in subsection (c)), except that the presence  
5 of the other facilities of the cluster in the  
6 neighborhood violates the requirement of subsection  
7 (c) (3) .".

8 COMMUNITY AND FAMILY SUPPORT SERVICES FOR CERTAIN SEVERELY  
9 DISABLED INDIVIDUALS

10 sec. 3. (a) State Plan Requirement.—Section 1982(a) of  
11 the social security Act is amended—

12           (1) by striking out "and" at the end of paragraph  
13 (45) ;

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

17           (3) by inserting after paragraph (46) the following  
18 new paragraph;

19           "(47) effective not later than October 1, 1988,  
20 provide that with respect to any severely disabled  
21 individual who is entitled to medical assistance under  
22 such plan and who resides in a family home or community  
23 living facility, such assistance shall include an array  
24 of community and family support services which the State  
25 determines are appropriate, when combined with other

medical assistance available under the plan and with other available resources, to assist in providing for the health, safety, and effective habilitation or rehabilitation of such individual, including at a minimum case management services, individual and family support services, and protective intervention.".

(b) Inclusion as Medical Assistance.--Section 1905(a) (13) of such Act is amended by inserting before the semicolon at the end thereof the following: \*\*, including community and family support services for severely disabled individuals".

(c) Services For Severely Disabled Individuals.—Title XIX of such Act is amended by adding at the end thereof the following new section:

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

"Sec. 1919. (a) Community and Family Support Services.-

"(1) Payment authorized.--For purposes of section 1903, amounts expended by a State under its State plan for community and family support services may be included as medical assistance if such services are provided--

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

"(B) in accordance with an individual written habilitation or rehabilitation plan.



1 similar trained animals.

2 "(W) Services (other than board, lodging, and  
3 basic foster care) provided to any severely disabled  
4 individual by members of a family or household in  
5 which such Individual is living.

6 "(o) support services to families and  
7 care givers, including specialized training and  
8 respite care in or out of the home or usual  
9 residence.

10 "(P) Special transportation services.

11 "(Q) home-maker and home health services.

12 "(R) Chore services.

13 "(S) Crisis intervention.

14 "(T) Personal guidance, supervision, counseling,  
15 representation\* and advocacy.

16 "(U) specialized vocational services which will  
17 enhance the Independence, productivity, and community  
18 integration of a severely disabled individual,  
19 including employment training, support necessary to  
20 maintain the employment of such individual, and other  
21 training and therapeutic activities specified in the  
22 written plan of habilitation or rehabilitation  
23 developed with respect to such Individual and for  
24 which the Individual is not eligible under the  
25 Rehabilitation Act.

1           "(V) Appropriate preventive services to decrease?  
2           the needs of severely disabled individuals for future  
3           services.

4           "(w) Any other services identified by the state  
5           and approved by the Secretary as conforming with the  
\$           purposes of this section.

7           "(3) services excluded.—The following services may  
8           not be included as community and family support services;

9           "(A) ROOM and board, other than room and board  
10           provided for less than six consecutive weeks and less  
11           than twelve weeks in a year as an integral but  
12           subordinate part of \* service described in paragraph  
13           (1). However, auxiliary payments may be made as  
14           medical assistance to cover extraordinary costs of  
15           food or housing attributable to the disabling  
16           condition of a particular individual or individuals.

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

19           "(C) Cash payments as a service.

20           "(D) Any service to any Individual to the extent  
21           that the provider of the service or the individual  
22           receiving the service is eligible to receive payment  
23           under title xviii with respect to the provider of

24           the service.25 "(E) Any educational service which the State

1           mates generally available to its residents without  
2           cost and without regard to their Income.

3           "(f) Any service to any severely disabled  
4           individual living in any hospital, skilled nursing  
5           facility, or intermediate care facility (Including  
6           any such hospital or facility for mental diseases).

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

12          :(b) services Are In Addition to other Medical  
13          Assistance.--Community and family support services provided  
14          pursuant to this section shall be in addition to any other  
15          medical assistance for which a severely disabled individual  
16          is otherwise eligible under the State plan.

17          "(c) State Requirements.--In order to receive payment  
18          after September 30, 1938, under section 1903 with respect to  
19          any community or family support services provided under the  
20          state plan to any eligible severely disabled individual, a  
21          State agency administering or supervising the administration  
22          of a state plan under this title shall--

23                 "(1) enter into a community and family living  
24                 implementation agreement with the secretary in accordance  
25                 with subsection (d);

1           "(2) report to the secretary on the implementation  
2       of such agreement in such form and with such frequency as  
3       the Secretary may prescribe {which shall be not less than  
4       one nor tore than four times each fiscal year);

5           "(3) make a copy of such agreement and reports  
6       available for public inspection during normal business  
7       hours at readily accessible locations in the State;

8           "(4) provide for review by an independent auditor  
9       each fiscal year tin accordance with generally accepted  
10      auditing standards) of care and services provided to  
11      severely disabled individuals In such State under such  
12      plan during such year in order to ensure compliance by  
13      the State with the provisions of such plan and with the  
14      community and Family living amendments of 1985) end

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

19          "(d) community and Family living Implementation  
20      Agreement.--The community and family living implementation  
21      **a**greement required under subsection (c)(1) must Include the  
22      following provisions:

23            "(1) Community or family support services.--the  
24            agreement must include provisions to assure that --

25            "(A) community living facilities are not unduly

1 concentrated in any residential area (but may allow  
2 for cluster homes),

3 "(B) every individual on the staff of a  
4 community living facility who is Involved in  
5 providing services to severely disabled individuals  
6 for which any payment is Made under this title has  
7 received or will receive adequate and continuing  
8 training or retraining in The provision of services  
9 to such Individuals;

10 "(C) training will be made available to natural,  
11 adoptive, and foster parents of severely disabled  
12 persons eligible for medical assistance;

13 "(D) case Management services and, as necessary,  
14 individual and family support services, are available  
15 to any severely disabled individual eligible to  
16 receive services under this title,

17 "(E) protective intervention services are  
18 available, as necessary, to any severely disabled  
19 Individual who Is, or would except for his income or  
20 resources be, eligible to receive services under this  
21 title

22 "(F) any severely disabled individual for whom a  
23 public agency <or an agency under contract to a  
24 public agency) arranges placement will have an  
25 opportunity to reside in a family home or community

1 living facility that is located as close to the home  
2 of the natural, adoptive, or foster family of such  
3 individual as is consistent with the best interests  
4 of such individual;

5 "(g) each community living facility or family  
6 home is accredited by an appropriate rational  
7 accrediting body or is licensed or certified by an  
8 appropriate state agency)

9 "(H) periodic independent Monitoring or reviews  
10 are conducted of the Quality of services provided to  
11 severely disabled individuals residing in family  
12 homes or community living facilities;

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

16 "(1) to any individual who believes himself  
17 to be inappropriately placed or who is denied an  
18 appropriate placement or service, or who is being  
19 scheduled for transfer (other than under the  
20 provisions of paragraph (2) (D) of this subsection  
21 and other than on his own initiative) from one  
22 living arrangement (including his own home) to  
23 another\* or

24 "(11) as appropriate, to his spouse, parent,  
35 guardian, appropriate family member, or advocate

1 acting on his behalf,  
2 and for giving written notice to affected parties at  
3 least 30 days before such proposed transfer except in  
4 an emergency

5 "{J) the availability {including volume and  
6 distribution) of care and services of high quality to  
7 persons with severe disabilities who are or could be  
8 living in a family home or community living facility  
9 is adequate to meet changing needs;

10 "{K) the availability of suitable domestic  
11 arrangements and services is adequate (whether  
12 supplied directly or by incentives to the private  
13 sector) to enable severely disabled Individuals who  
14 art eligible for supplemental security income  
15 Benefits under title xvi to live in family homes or  
16 community living facilities; and

17 "(1) suitable state supplementary payments, as  
18 authorized under sections 1616 and 1618, or other  
19 assistance in cash or in kind to or on behalf of such  
20 individuals, based on their need for shelter and  
21 maintenance, is made available.

22 "(3) Severely disabled individuals living In  
23 residential facilities which are not family homes or  
24 community living facilities\*—The agreement must Include  
25 provisions with respect to severely disabled Individuals

1 who are living in residential facilities which are not  
2 fatally homes or community living facilities which assure  
3 that—

4 "(A) admissions to such residential facilities  
5 will be restricted through the use of community-based  
6 services

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

20 "(c) the number of individuals who are at any  
21 one time identified in subparagraph (B) will be  
22 reduced progressively over a period of ten years,  
23 such reductions to take place according to a plan to  
24 be set forth in the agreement;

25 "(D) prior to transfer of any severely disabled

1 individual residing at any time during the period of  
2 the agreement in a skilled nursing facility, an  
3 intermediate care facility\* or a board and care  
4 facility, to a family home or community living  
5 faculty located in such State, a community services  
6 transfer plan will be developed through a process  
7 which-

8 "(i) identifies the specific community and  
9 family support services, as well as other  
10 services, that such individual will require and  
11 will have available when such individual is  
12 transferred to a community living facility or  
13 family hone:

14 "(11) involves the Interdisciplinary team  
15 (or other professional croup) responsible for the  
16 Individual treatment plan or written plan of care  
17 or habilitation or rehabilitation with respect to  
18 such individual while residing in the facility  
19 from which transfer is to Be Made, and the case  
20 manager and other appropriate professional  
21 personnel who are lively to be involved in  
22 providing services to the individual in the  
23 community and

24 "(iii) provides to the individual arm as  
25 appropriate to his spouse, parent, guardian.

1 appropriate family member, or advocate, an  
2 opportunity to participate in developing the  
3 community services transfer plan

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

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

19 "(i) the types of health related services,  
20 habilitation, rehabilitation, housing, or other  
21 services specified in the community services  
22 transfer plan developed with respect to such  
23 individual are inappropriate or inadequate: or  
24 "(ii) a particular type of health related  
25 service, habilitation, rehabilitation, housing.

1           or other service specified in such plan is not  
2           yet available An the area in which such  
3           Individual will reside:

4           "(G) alternate provisions will be made for  
5           appropriate care (including basic maintenance if  
6           needed) and services for any severely disabled  
7           individual eligible for medical assistance who has  
8           been living in a facility or institution which has  
9           been receiving payments for care, treatment, or  
10          Maintenance of such individual under this title and  
11          which ceases to receive such payments, or ceases to  
12          provide such care and services to such individual,  
13          other than at the request of the individual or his  
14          representative;

15          "(H) not later than October 1, 1988, any public  
16          or private institution (other than a correctional  
17          institution.) receiving any state or Federal funds  
18          (under this title or any other provision of law),  
19          Which is not a family home or community living  
20          facility and which admits severely disabled  
21          Individuals as in-patients or residents, will be  
22          either accredited by an appropriate national  
23          accrediting body or certified as a skilled nursing  
24          facility or intermediate care facility under this  
25          title!

1       "(I) the State will cooperate In any on site  
2       sample surveys and validation procedures which May be  
3       conducted by the secretary under section 1903(g) (2)  
4       and which nay, at the discretion of the Secretary,  
5       include--

6               "(1) Inspection of individual records with  
7       special reference to compliance with the  
8       **community** and family Living Amendments of 1905,  
9       and

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

13              "(3) objectives of agreement.--The agreement trust  
14       include descriptions of the Methods to be used to achieve  
15       the following objectives:

16              "(A) To advise severely disabled individuals or  
17       families or other advocates, individually and  
18       collectively, of the alternative arrangements and  
19       services available to then, of their right to freedom  
20       of choice of provider under section 1902(a) (23), and  
21       of their right to a fair hearing under section  
22       1902(a){3) and this section.

23              "(B) To assure fair and equitable provisions as  
24       determined by the secretary in consultation with the  
25       secretary of Labor) to protect the interests of

1 public employees who will be affected by the transfer  
2 of severely disabled Individuals from public  
3 institutions, including public medical institutions,  
4 to community or family living facilities under the  
5 agreements and that maximum efforts will be made to  
6 provide for the employment of such employees,  
7 including arrangements designed to preserve employee  
8 rights and benefits and arrangements to provide  
9 (where necessary) for the training or retraining of  
10 such employees.

11 " (C) To assure application of fair employment  
12 standards and equitable compensation to workers in  
13 private programs and facilities offering care and  
14 services for which payments are made under this  
15 title.

16 " (D) To assure timely submission of any  
17 demographic, fiscal, or other reports by the State as  
18 requires by the secretary, relating to community or  
19 institutional services to severely disabled  
20 individuals, including, if requested, copies of any  
21 surveys or plans of correction for major modification  
22 by any intermediate care facility for the Mentally  
23 retarded or persons with related disorders, or other  
24 intermediate care facility or skilled nursing  
25 facility within the State.

1           "(4) State maintenance of effort.--The State  
2       implementation agreement must provide that --

3           "(A) any services which were provided by the  
4       state for severely disabled individuals during fiscal  
5       year 1986 At State expense {without reimbursement in  
6       whole or in part by the federal government under this  
7       title op otherwise), must continue to be provided by  
8       the state, at state expense (and without  
9       reimbursement under this title), in the same amount,  
10      duration, and scope for all fiscal years thereafter;  
11      and

12           "(B) any facility or other provider of such  
13      services must Meet all requirements of this title  
14      relating to a facility or other provider of the same  
15      type (as determined by the secretary).

16           "(e) Audit.--The secretary may provide for an  
17      independent audit of Medical assistance provided under any  
18      State plan in order to ensure the compliance of such plan  
19      with the provisions of this section and the Community and  
20      Family living Amendments of 1905. Such audit shall bf  
21      conducted in accordance with generally accepted auditing  
22      standards.

23           "(f) noncompliance.--If. on the basis of an audit  
24      conducted in accordance with subsection (e), and after  
25      affording the State agency notice and an opportunity to

1 comment, the secretary finds that any amount paid to a State  
2 under section 1903 with respect to medical assistance for  
3 severely disabled Individuals has been expended under such  
4 plan in a manner that does not comply with the provisions of  
5 this section or of the Community and family Living Amendments  
6 of 1985, the Secretary may treat such amount as an  
7 overpayment to such State under section 1903(d)(5).

8 "(g) Review by Comptroller General--The Comptroller  
9 General of the united states shall, from time to time, review  
10 state plans approved by the Secretary pursuant to section  
11 1982 In order to ensure the compliance of such plans with the  
12 provisions of this section And the Community and Family  
13 Living Amendments of 1985.

13 "(h) waiver of statewide Requirement.--For any 2-year  
15 period, a State may provide any new service under this  
16 section without regard to the statewide requirement of  
17 section 1902(a)(1).

18 (d) intermediate Care Facility services in an Institution  
19 for the Mentally Retarded.--section 1905(d) of the Social  
20 security Act is amended-

21 (1) by striking out "'public'";

22 (2) by striking out "and" at the end of paragraph  
23 (2); and

24 (3) by striking out paragraph (3) and inserting In  
25 Lieu thereof the following:

1       "(3) the individual needs of each newly admitted  
2 individual are ascertained by an Interdisciplinary team  
3 within 30 days, and an individual written habilitation or  
4 rehabilitation plan is developed for the individual,  
5 including an assessment of his needs for community and  
6 family support services\*

7       "(4) the state has in effect (not later than October  
8 1, 1988) and is implementing an implementation agreement  
9 with the Secretary for progressive reduction in the  
10 number of severely disabled individuals living in  
11 facilities which do not meet the site and location  
12 criteria for community living facilities, and

13       "{5) the institution, if not operated by the State,  
14 has a written agreement with an appropriate states agency  
15 to cooperate in the implementation of the agreement  
15 between the State and the secretary.\*\*.

17       (e) Conforming amendments.—

18       (1) Section 1903(a)(2) of the Social Security Act Is  
19 amended—

20               (A) by inserting after "'professional medical  
21 personnel'" the following "'or personnel skilled in  
22 the delivery of community and family support services  
23 needed by severely disabled individuals'!" and

24               (B) by inserting after "other public agency"  
25 the following "'or any agency under contract to the

1 State to provide services under section 1919".

2 (2) Section 1915(f) of the Social security Act is  
3 amended by inserting \*\*or implementation agreement"  
4 after "plan amendment''.

5 LIMITATION ON PAYMENTS FOR SERVICES PROVIDED IN LARGE  
6 FACILITIES

7 Sec. 4. Section 1903 of the Social Security Act is  
8 amended by adding at the end thereof the following new  
9 subsection

10 "(s) Limitation on Payments for Services Provided in  
11 Large Facilities.--

12 "(1) General rule.--

13 "(A) Effective far quarters beginning on or  
14 after October 1, 2000, the aggregate amount payable  
15 under this title to any state for any quarter for  
16 skilled nursing facility services and intermediate  
17 care facility services furnished to severely disabled  
16 individuals under 55 years of age in facilities  
19 having more than 15 beds, shall not exceed an amount 29  
equal to 15 percent of the greater of--

21 "(1) 25 percent of the amount paid under  
22 this title to such state for any fiscal year  
23 (selected by the State} ending prior to October  
24 1, 1985, for intermediate care facility services  
25 provided in an intermediate care facility for the

1           mentally retarded (described in section 1905(d)),

2           or

3                 "(ii) the aggregate amount paid under this  
4           title to such state for the quarter ending on  
5           December 31. 1989, for skilled nursing facility  
6           services and intermediate care facility services  
7           furnished to severely disabled individuals (as  
8           defined in section 1905(o)) under 65 years of age  
9           in facilities having more than 15 beds,  
10          increased or decreased in accordance with  
11          subparagraph (B).

12                 "(B) The limitation amount for a State  
13          determined under sub paragraph (A) shall be Increased  
14          or decreased by the percentage increase or decrease  
15          in the consumer Price Index (used for purposes of  
16          section.215 of this act) fro\* the fiscal year .  
17          applicable under clause (1) of subparagraph (K), or  
18          from fiscal year 1989 in the case of clause (ii) of  
19          sub paragraph (A); to the fiscal year to which the  
20          limitation is being applied\*

21                 ''(C) For purposes of applying this subsection,  
22          aggregate amounts paid under this title shall be  
23          determined without adjustments for amounts recovered  
24          from third parties Considered as overpayments.

25          "(2) Exemptions from limitation,--The limitation on

1 payments in paragraph (1) shall not apply to the  
2 following payments for skilled nursing facility services  
3 or intermediate care facility services provided in a  
4 facility which unconditionally meets all requirements  
5 applicable to such type of facility (Including  
6 appropriateness of Admissions};

7 "(A) payments for such services for individuals  
8 in a facility which meets the size and location  
9 requirements for a community living facility,

10 "(B) Payments for such services for individuals  
11 in a facility which was in operation on September 30,  
12 1985, has not increased the number of beds since  
13 September 30, 1985, and has no more than 15 beds  
14 exclusive of accommodations for staff).

15 "(c) Payments for such services for individuals  
16 in a cluster home.

17 "(D) payments for such services for any  
18 individual, if the facility furnishes services  
19 which--

20 "(i) are necessary for the achievement of  
21 one or More significant developmental or  
22 therapeutic objectives with respect to such  
23 individual, and

24 "(ii) are not available in a family home or  
25 community living facility in such State;

1 but only to the extent that the amount of time in  
2 which such individual will reside in such facility  
3 was projected by the interdisciplinary team which  
4 develops such individual's written habilitation or  
5 rehabilitation plan at the time of admission), when  
6 combined with the amount of time in which such  
7 individual resided in any skilled nursing facility or  
8 intermediate care facility after September 30, 2000,  
9 does not exceed two years.''.  
10

REDUCTION IN FEDERAL MATCHING FOR SERVICES PROVIDED IN LARGE  
FACILITIES

12 Sec. 5. Section 1903 of the Social Security Act as:  
13 amended by section 4 of this Act) is amended by adding at the  
14 end thereof the following new subsection;

15 "(t) Reduction in Federal Matching for services Provided  
16 in large facilities.--

17 "(1) General rule.--Effective for quarters beginning  
18 on or after October 1, 1988, the federal medical  
19 assistance percentage shall be reduced for skilled  
20 nursing facility services and intermediate care facility  
21 services, furnished to any severely disabled individual  
22 under 65 years of age.

23 "(2) Amount of reduction.--The reduction in the  
24 Federal medical assistance percentage under paragraph (1)  
25 shall be--

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

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

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

15           "(ii) one percent of the federal medical  
16           assistance which would otherwise apply but for  
17           this subsection, for each quarter which has  
18           elapsed after September 30, 1993, and before  
19           October 1, 1999.

20           "(3) Exemptions from reduction.--The reduction under  
21           paragraph (1) shall not apply to services furnished in  
22           any facility described in subsection is) (2).

23           PROTECTION OF RIGHTS OF SEVERELY DISABLED INDIVIDUALS

24           Sec. 6. Section 1919 of the Social Security Act (added by  
25           section 3 of this Act) Is amended by adding at the end

1 thereof the following new subsection;

2     ''(i) protection of Rights

3     "(1) common of payment.--In order to receive any  
4 payments pursuant to subsection (a)(1), the State must  
5 have in effect a system to protect and advocate these  
6 rights of severely disabled individuals eligible for  
7 Medical assistance which relate to the provision of such  
8 assistance.

9     ''(2) Agency.--Such system Must be implemented by an  
10 agency which--

11         "(A) is independent of any agency which provides  
12 services to severely disabled individuals under the  
13 State plan;

14         "(B) has the authority to pursue legal  
15 administrative, and other appropriate remedies to  
16 insure the protection of the rights of severely  
17 disabled Individuals eligible for medical assistance:  
18 and

19         "(C) has the authority to obtain access to  
20 records of severely disabled individuals eligible for  
21 medical assistance In order to carry out such  
22 agency's duties under this subsection.''.  
23

PRIVATE ENFORCEMENT

24     Sec. 7. Section 1919 of the Social Security Act (as  
25 amended by section 6 of this Act) is further amended by

1 adding at the end thereof the following new subsection:

2 "{j) Private Enforcement.--

3 "(1) In general.--(A) Except as provided in  
4 paragraph (3), any person injured or adversely affected  
5 or aggrieved ay a violation of this section, or of the  
6 community and family Living amendments of 1985, by a  
7 state Agency administering the state plan may bring an  
8 action to enjoin such violation.

9 "(B) An action Brought under this paragraph shall he  
19 brought in the appropriate district court of the United -  
11 states within the state in which such State plan is in  
12 operation.

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

18 "(2) Notice.--not less than 15 days before  
19 commencing an action under this subsection, an interested  
20 party shall Give notice by registered mail to the  
21 Secretary, the Attorney General of the United States, and  
22 the State agency administering the State plan alleged to  
23 be in violation of this section or of the Community and  
24 Family Living Amendments of 1985. Such notice shall state  
25 the nature of the alleged violation and the court In

1           which such action will be brought.

3       "(3) Approval of State plan shall not constitute a  
3       defense.— The approval of the State plan under section  
4       1902(b) shall not be a bar to the bringing of an action  
5       under this subsection, nor shall it constitute a defense  
6       to any such action.\*\*.

7                       RATES OF PAYMENT FOR SERVICES

8       sec. 8. Section 1902(a)(13) of the Social Security Act is  
9       amended by striking out "and" at the end of sub paragraph  
10      **(B)**, by adding "'and'" at the end of sub paragraph (C), and by  
11      adding at the and thereof the following new sub paragraph:

12               "(D) for payment for community and family  
13               support services for severely disabled individuals,  
14               described in section 1919 and provided under the  
15               plan, through the use of rates (determined in  
16               accordance with methods and standards developed by  
17               the state) which the state finds, and makes  
18               assurances satisfactory to the secretary, are  
19               reasonable and adequate to assure the provision of  
20               care and service in conformity with applicable State  
21               and Federal laws and regulations, and applicable  
22               quality and safety standards, and to assure that  
23               severely disabled individuals eligible for medical  
24               assistance have reasonable access (taking into  
25               account geographic location and reasonable travel time

1           for family and friends) to community and family  
2           support services of adequate quality;

3   MEDICAID ELIGIBILITY OF CERTAIN SEVERELY DISABLED INDIVIDUALS

4       Sec. 9. (a) Optional Eligibility --Section 1902 of the  
5   Social Security Act is amended by adding at the end thereof  
6   the following new subsection:

7       "(k) Eligibility of certain Severely Disabled  
8   Individuals,--notwithstanding any other provision of this  
9   title, a State may, at its option, provide for making payment  
10   for community and family support services, or any other  
11   service included in the state plan as medical assistance, to  
12   any severely disabled individual who expends (or is a member  
13   Of a family which expends) at least 5 percent of the adjusted  
14   gross income was defined in section 62 of the Internal  
15   Revenue code of 1954) Of such individual or family, as the  
16   case may be, for necessary Medical care (as defined in  
17   section 213 of the internal Revenue Code) and for community  
18   and family support services described in section 1919  
19   provided to such Individual. A State electing this option  
20   shall set forth in its State plan and its implementation  
21   agreement the criteria which the state will use in  
22   identifying individuals or reasonable classifications of such  
23   individuals, and the extent of the services for which payment  
24   may be authorized under this subsection."

25       (b) Exemption From Family Income Limitation.--Section

1 1903(f) (4) of such Act is amended-

2 (1) by adding " or " at the end of sub paragraph (C),

3 and

4 (2) by inserting after sub paragraph (C) the following

5 new sub paragraph;

6 "(D) who meets the requirements of section

7 1902(k),

8 (c) uniform Income Standard, and Expanded Eligibility.--

9 section 1902(a) (18) (A) (11) of the Social Security Act is  
10 amended-

11 (1) by striking out "or" at the end of sub clause

12 (V) and inserting In lieu thereof\* "Provided however'

13 That if the state establishes such a separate income

14 standard for individuals who are in any medical

15 institution, the state must establish the sane separate

16 income standard for all severely disabled individuals,

17 (2) by striking out the semicolon at the end of

18 sub clause (VI) and Inserting in lieu thereof "or";

19 and

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

21 "(VII) who are disabled children or

22 disabled spouses who, except for resources

23 deemed to them, would be eligible for

24 supplementary security income benefits under

25 title XVI;

1 (d) Eligibility of Disabled Child.--Section 1902(e) of  
2 the Social Security Act Is amended by inserting at the end  
3 thereof the following new paragraph;

4 "(5) Whenever an individual Is receiving benefits under  
5 title II as an adult disabled child was provided in section  
6 202(d)(1)(8)(11)), and but for those benefits would be  
7 eligible for supplemental security income benefits under  
a title XVI or for a State supplementary payment, such  
9 individual shall be deemed, for purposes of this title only,  
10 to be receiving supplemental security income benefits, or a  
11 State supplementary payment, respectively.''.  
12

#### RESPONSIBILITIES OF THE SECRETARY

13 Sec. 1B. (a) Assessment.--Beginning with fiscal year  
14 1907, the Secretary of Health and Human services, after  
15 consultation with the Secretary of Education, shall assess  
16 the status of disabled Individuals in each state who are  
17 receiving or are entitled to receive services under any title  
18 of the Social Security Act, and shall report to the Congress  
19 not less often than every two years concerning the progress  
20 each State is making toward achieving the national goal of  
21 access to community based services and appropriate living  
22 arrangements for all such individuals. The secretary shall  
23 make a comprehensive study, including evaluations of the  
24 impact of changes in Federal law on communities and on public  
25 and private entities. Such report shall Include both fiscal

1 and demographic data, together with any recommendations for  
2 changes in Federal legislation. The secretary shall submit a  
3 comprehensive report to the Congress not later than January  
4 15, 1997.

5 (b) Regulations.—Within 12 months after the date of the  
6 enactment of this Act, the Secretary of Health and human  
7 Services shall issue a notice of proposed rule making with  
8 respect to all amendments to the Social Security Act made by  
9 this Act, and after allowing not less than 60 days for public  
10 comment, shall issue final regulations not later than 18  
11 months after such date of enactment. Such regulations shall  
12 provide for the receipt and preliminary review by the  
13 Secretary of implementation agreements proposed by any state  
14 beginning not later than June 30, 1987.

15 EFFECTIVE DATE

16 Sec. 11. Except as otherwise provided, the amendments  
17 made by this Act shall apply in fiscal years beginning on or  
18 after October 1, 1986.