

101ST CONGRESS
1ST SESSION

H. R. 854

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1989

Mr. FLORIO (for himself, Mr. WAXMAN, Mr. DINGELL, Mr. WALGREN, Mr. RICHARDSON, Mr. LBLAND, Mr. WYDEN, Mr. BATES, Mr. COELHO, Mr. SIKORSKI, and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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

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

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents. **TITLE I—COMMUNITY HABILITATION AND SUPPORTIVE SERVICES**

- Sec. 101. Community habilitation and supportive services as optional, statewide, service.
- Sec. 102. Quality assurance for community habilitation and supportive services.
- Sec. 103. Eliminating prior institutionalization requirement under waiver authority.
- Sec. 104. Annual report.

TITLE II—QUALITY ASSURANCE FOR HABILITATION FACILITY SERVICES

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

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

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

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

- Sec. 401. Payment for community habilitation services.

TITLE V—EMPLOYEE PROTECTIONS AND MISCELLANEOUS

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

1 TITLE I—COMMUNITY HABILITA-
2 TION AND SUPPORTIVE SERV-
3 ICES

4 SEC. 101. COMMUNITY HABILITATION AND SUPPORTIVE SERV-
 5 ICES AS OPTIONAL, STATEWIDE, SERVICE.

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

7 Section 1905(a) of the Social Security Act (42 U.S.C.
 8 1396d(a)) is amended—

9 (1) by striking "and" at the end of paragraph
 10 (20),

1 (2) by redesignating paragraph (21) as paragraph
2 (22), and

3 (3) by inserting after paragraph (20) the following
* new paragraph:

5 "(21) community habilitation and supportive serv-
6 ices (as defined in section 1926(a)) for individuals with
7 mental retardation or related conditions (as defined in
8 subsection (m)) without regard to whether or not indi-
9 viduals who receive such services have been discharged
10 from a nursing facility or habilitation facility; and".

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

15 (1) by redesignating section 1926 as section 1928,
16 and

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

19 "COMMUNITY HABILITATION AND SUPPORTIVE SERVICES
20 "SEC. 1926. (a) COMMUNITY HABILITATION AND SUP-
21 PORTIVE SERVICES DEFINED.—In this title, the term 'com-
22 munity habilitation and supportive services'— -

23 "(1) means services designed—

24 "(A) to assist individuals in acquiring, retain-
25 ing, and improving self-help, socialization, and

1 adaptive skills necessary to function successfully
2 in a home or community-based setting,

3 "(B) to assist individuals in participating in
4 community or other activities; and

5 "(2) includes (except as provided in paragraph (3))

6 such prevocational, education, supported employment,
7 and other supportive services, including transportation,
8 functional assistive technologies and devices, and res-
9 pite care services, as the State determines to be neces-
10 sary and effective in promoting the individual's capabil-
11 ity to engage in major life activities with other individ-
12 uals, including employment and participation in com-
13 munity activities; but

14 "(3) does not include—

15 "(A) special education and related services
16 (as defined in section 602 (16) and (17) of the
17 Education of the Handicapped Act (20 U.S.C.
18 1401 (16), (17)) which otherwise are available to
19 the individual through a local educational agency,
20 and

21 "(B) vocational rehabilitation services which
22 otherwise are available to the individual through a
23 program funded under section 110 of the Reha-
24 bilitation Act of 1973 (29 U.S.C. 730);

"(4) does not include room and board, consisting
2 of non-personnel costs directly attributable to—

3 "(A) the purchase of food on behalf of cli-

4 ents,

5 "(B) the cost of property,

6 "(C) the purchase of household supplies not

7 otherwise employed in the provision of covered

8 services,

9 "(D) utility expenses, and

10 "(E) costs of facility maintenance, upkeep,

11 and improvement, other than such costs for modi-

12 fications or adaptations to a facility required to

13 assure the health and safety of residents or to

14 meet the requirements of the applicable life safety

15 code, and

16 "(5) does not include payments made, directly or

17 indirectly, to members of the family of the individual

18 receiving such services."

19 (c) INDIVIDUAL WITH MENTAL RETARDATION OR RE-

20 LATED CONDITION DEFINED.—Section 1905 of such Act

21 (42 U.S.C. 1396d) is amended by inserting after subsection

22 (1) the following new subsection:

23 "(m) The term 'individual with mental retardation or

24 related condition' means an individual with mental retarda-

1 tion or an individual who has a severe, chronic disability
2 that—

3 "(1) is attributable—

4 "(A) to cerebral palsy or epilepsy,

5 "(B) to any other condition, other than
6 mental illness, found to be closely related to
7 mental retardation because this condition results
8 in impairment of general intellectual functioning
9 or adaptive behavior similar to that of mentally
10 retarded persons, and requires treatment or serv-
11 ices similar to those required for these persons;

12 "(2) is manifested before the person reaches age
13 22;

14 "(3) is likely to continue indefinitely; and

15 "(4) results in substantial functional limitations in
16 3 or more of the following areas of major life activity:
17 self-care, understanding and use of language, learning,
18 mobility, self-direction, and capacity for independent
19 living."

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 1905(d) of such Act (42 U.S.C,
22 1396d{d)) is amended—

23 (A) by striking "the mentally retarded or
24 persons with related conditions" and inserting

1 "individuals with mental retardation or related
2 condition"

3 (B) by striking "mentally retarded individ-
4 uals" in paragraph (1) and inserting "individuals
5 with mental retardation", and

6 (C) *by* striking "the mentally retarded indi-
7 vidual" in paragraph (2) and inserting "the indi-
8 vidual with mental retardation or related condi-
9 tion".

10 (2) Section 1915(c) of such Act (42 U.S.C.
11 1395n) is amended—

12 (A) in paragraph (4MB), by striking "habilita-
13 tion" and inserting "community habilitation and
14 supportive", and

15 (B) *by* striking paragraph (5).

16 (3) Section 1919(e)(7)(G)(ii) of such Act (42
17 U.S.C, 1396r(e)(7)(G)(i)) is amended by striking "men-
18 tally retarded or a person with a related condition (as
19 described in section 1905(d))" and inserting "an indi-
20 vidual with mental retardation or related condition".

21 (4) Section 1902(j) of such Act (42 U.S.C.
22 1396a(j)) is amended by striking "(21)" and inserting
23 "(22)".

1 (5) Section 1902(a)(10)(C)(iv) of such Act (42
2 U.S.C. 1396a{a}(10)(C)(iv)) is amended by striking
3 "through (20)" and inserting "through (21)".

4 (f) EFFECTIVE DATE.—The amendments made by this
5 section apply to services furnished on or after January 1,
6 1990, without regard to whether or not final regulations to
7 carry out such amendments have been promulgated by such
8 date; except that—

9 (1) such amendments shall not apply to habilita-
10 tion services furnished under a waiver under section
11 1915(c) of the Social Security Act (as in effect on the
12 date of the enactment of this Act), if such waiver was
13 approved before the date of the enactment of this Act,
14 and

15 (2) such amendments shall not apply to services
16 furnished before the end of the 30-day period beginning
17 on the date the Secretary of Health and Human Serv-
18 ices promulgates interim requirements described in sec-
19 tion 1926(i)(1) of the Social Security Act.

20 (g) NO ABROGATION OR FREEDOM OF CHOICE,—
21 Nothing in this section shall be construed as abrogating the
22 right of Medicaid clients to freedom of choice, under section
23 1902(a)(23) of the Social Security Act, with respect to the
24 providers from whom they can receive covered services.

1 **SEC 102. QUALITY ASSURANCE FOR COMMUNITY HABILITA-**
2 **TION AND SUPPORTIVE SERVICES.**

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

6 "{b) INDEPENDENCE, PRODUCTIVITY, AND INTEGEA-
7 TION.—The objectives of community habilitation and sup-
8 portive services are to expand opportunities for independ-
9 ence, productivity, and integration into the community for
10 individuals with mental retardation and related conditions.
11 Except with respect to services provided under a waiver
12 under section 1915(c) approved before January 1, 1990, the
13 provisions of this section apply to community habilitation and
14 supportive services provided under such a waiver.

15 "(c) INDIVIDUAL SERVICE PLANS.—

16 "(I) REQUIREMENT.—Community habilitation
17 and supportive services must be provided in accordance
18 with an individual service plan (in this section referred
19 to as an 'ISP') which states specific objectives neces-
20 sary to meet some or all of the client's needs, as iden-
21 tified in the comprehensive functional assessment con-
22 ducted under subsection (d). In addition, the ISP shall
23 include a description of the medical care service needs
24 of the client, as identified by the client's physician.
25 Nothing in this paragraph shall be construed as requir-
26 ing a State to make available medical assistance under

1 this title for all types or elements of community habi-
2 tation and supportive services. If a State provides such
3 medical assistance for some or all such types or ele-
4 ments and an ISP identifies such types or elements
5 with respect to a client, the medical assistance shall be
6 made available under this title for those types and ele-
7 ments for that client under the ISP,

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

15 "(3) REQUIRED PARTICIPATION IN DEVELOP-
16 MENT OF ISP.—In developing an ISP for a client, the
17 team shall notify, and provide for and encourage the
18 participation of, the client, the client's parents (if the
19 client is a minor), and the client's legal guardian (if
20 any).

21 "(4) PERMISSIVE PARTICIPATION OF PARENTS
22 OP ADULT CLIENTS.—A parent (if the client is not a
23 minor) who is not a legal guardian of the client may
24 participate in developing the ISP unless the client has
25 objected to the parent's participation.

1 "(5) AVAILABILITY.—A copy of each ISP must,
2 consistent with the client's right to confidentiality de-
3 scribed in section 1927(c)(1)(A)(iv), be made accessible
4 to all relevant providers including other providers who
5 work with the client, and to the client's parents and
6 legal guardian (if any).

7 "(d) Comprehensive FUNCTIONAL ASSESSMENT.—

8 "(1) REQUIREMENT.—The State must provide
9 that each individual who receives community habilita-
10 tion and supportive services under the State plan under
11 this title must have had a comprehensive functional as-
12 sessment and must have such an assessment periodical-
13 ly reviewed. Such an assessment and review must be
14 conducted by an interdisciplinary team. Such an assess-
15 ment and review must identify each client's develop-
16 mental and behavioral management needs.

17 "(2) FREQUENCY.—

18 "(A) ASSESSMENTS,—Such an assessment
19 must be conducted before the receipt of communi-
20 ty habilitation and supportive services under this
21 title,

22 "(B) REVIEWS.—A review of each such as-
23 sessment shall be performed in no case less often
24 than once every 12 months,

1 "(3) Use.—The results of such an assessment or
2 review shall be used in developing, reviewing, and re-
3 vising the client's ISP under subsection (c).

4 "(e) MINIMUM REQUIREMENTS FOB SERVICES.—Com-
5 munity habilitation and supportive services provided under
6 this title must meet such requirements for clients' rights and
7 quality, consistent with the objectives described in subsection
8 (b), as are published or developed by the Secretary under
9 subsection (i). Such requirements, shall include—

10 " (1) minimum qualifications for personnel provid-
11 ing such services,

12 " (2) guidelines for such minimum compensation
13 for personnel as will assure the availability and conti-
14 nuity of qualified personnel to provide such services for
15 clients of various levels of impairment, and

16 " (8) a specification of clients' rights, including the
17 rights described in clauses (i) through (iv), (vi), (vii),
18 and (si) of section 1927{c}(1)(A).

19 "(f) MINIMUM REQUIREMENTS FOR RESIDENTIAL
20 SETTINGS.—

21 " (1) CLIENTS' RIGHTS AND ADMINISTRATION.—
22 A residential setting in which one or more community
23 habilitation or supportive services are provided must
24 meet the requirements of—

1 "(A) section 1927(c)(1) (relating to clients'
2 rights), and

3 "(B) section 1927(d) {relating to administra-
4 tion and other matters),

5 in the same manner as such requirements apply to ha-
6 bilitntion facilities under such section; except that, in
7 applying the requirement of section 1927 {d}(2) (relating
8 to life safety code), the Secretary shall provide for the
9 application of such life safety requirements {if any) that
10 arc appropriate to the residential setting,

11 "{2) DISCLOSURE OF OWNERSHIP AND CONTROL

12 **TNTERESTS AND EXCLUSION OF REPEATED VIOLA-**
13 **TORS.—A residential setting—**

14 "(A) must disclose persons with an owner-
15 ship or control interest (including such, persons as
16 defined in section 1124(a)(3)) in the setting, and

17 "(B) may not have, as a person with an
18 ownership or control interest in the setting;, any
19 individual or person who has been excluded from
20 participation in the program under this title or
21 who has had such an ownership or control interest
22 in one or more residential settings which have
23 been found repeatedly to have provided care of
24 substandard quality in the setting.

1 "(3) CONTINUATION OF ACTIVE TREATMENT

2 FOB CERTAIN CLIENTS UPON CONVERSION FROM A
3 HABILITATION FACILITY.—If part or all of a facility
4 converts from an habilitation facility to a residential
5 setting, each client who was a resident of the portion
6 of the facility so converted at the time of the conver-
7 sion and who, under the client's individual program
8 plan at such time, required continuous active treatment
9 (as defined in section 1927(b)(2)(A)), the residential set-
10 ting must continue to provide for (or arrange for the
11 provision of) continuous active treatment {as so defined)
12 so long as such client resides in the setting and contin-
18 ues to require such active treatment. Nothing in sec-
14 tion 1902(a)(10)(B) shall be construed as requiring-
15 medical assistance made available under the previous
16 sentence to be made available to individuals not de-
17 scribed in such sentence.

18 "(4) DOCUMENTATION OF RECEIPT OF MEDICAL
19 CASE SERVICES.—A residential setting must include,
20 in the clinical records of each client, documentation of
21 the provision of medical care services to the client.
22 Nothing in this paragraph shall be construed as requir-
23 ing a State to make available medical assistance under
24 this title for all types or elements of Medicare care
25 services for such clients.

1 "(g) SURVEY AND CERTIFICATION PROCESS.—

2 "(1) RESPONSIBILITIES OF THE STATE.—

3 "(A) IN GENERAL.—Subject to paragraph

4 (2), under each State plan under this title, the
5 State shall be responsible for certifying the com-
6 pliance of providers of community habilitation and
7 supportive services, and of residential settings in
8 which such services are provided, with the re-
9 quirements of subsections (e) and (1)

10 "(B) EDUCATIONAL PROGRAM.—Each State
11 shall conduct periodic educational programs for
12 the staff and clients in residential settings in
13 which community habilitation and supportive serv-
14 ices are provided, and the parents (if the client is
15 a minor) and legal guardians (if any) of such cli-
16 ents, in order to present current regulations, pro-
17 cedures, and policies under this section.

18 "(C) INVESTIGATION OF ALLEGATIONS OF
19 CLIENT NEGLIGENCE AND ABUSE AND MISAPPRO-
20 PRIATION or CLIENT PROPERTY.—The State
21 shall provide, through the agency responsible for
22 surveys and certification of providers of communi-
23 ty habilitation and supportive services and resi-
24 dential settings under this subsection, for a proc-
25 ess for the receipt, review, and investigation of al-

1 legations of client neglect and abuse (including in-
2 juries of unknown source) by personnel providing
3 such services and of misappropriation of client
4 property by such personnel. Such process shall
5 provide for documentation of findings relating to
6 such allegations with respect to an individual, for
7 inclusion of any brief statement of the individual
8 disputing such findings, and for inclusion, in any
9 disclosure of such findings, of such brief statement
10 (or of a clear and accurate summary thereof). The
11 findings relating to such allegations shall be made
12 available, on request, to the State protection and
13 advocacy system established under part C of the
14 Developmental Disabilities Assistance and Bill of
15 Rights Act and to other appropriate agency or
16 agencies with whom a client, parent, or guardian
17 may file a complaint respecting client abuse and
18 neglect and misappropriation of client property.

19 "(D) CONSTRUCTION,—The failure of the
20 Secretary to issue regulations to carry out this
21 subsection shall not relieve a State of its responsi-
22 bility under this subsection,

23 "(2) RESPONSIBILITIES OF THE SECRETARY,—
24 The Secretary shall be responsible for certifying the
25 compliance of State providers of community habilitation

1 and supportive services, and of State residential set-
2 tings in which such *services* are provided, with the re-
3 quirements of subsections (e) and (f).

4 "(3) FREQUENCY OF CERTIFICATIONS.—Certifi-
5 cation of providers and settings under this subsection
6 shall occur no less frequently than once every 12
7 months.

8 "(4) SURVEYS AND REVIEWS.—

9 "(A) SURVEYS OF RESIDENTIAL SET--
10 TINGS.—The certification under this subsection
11 with respect to a setting must be based on a
12 survey. Such survey for a residential setting must
13 be conducted without prior notice to the setting,
14 Any individual who notifies (or causes to be noti-
15 fied) a residential setting of the time or date on
16 which such a survey is scheduled to be conducted
17 is subject to a civil money penalty of not to
18 exceed \$2,000. The provisions of section 1128A
19 (other than subsections (a) and (b)) shall apply to
20 a civil money penalty under the previous sentence
21 in the same manner as such provisions apply to a
22 penalty or proceeding under section 1128A(a).
23 The Secretary shall review each State's proce-
24 dures for scheduling and conduct such surveys to
25 assure *that* the State has taken all reasonable

1 steps to avoid giving notice of such a survey
2 through the scheduling procedures and the con-
3 duct of the surveys themselves.

4 "(B) SURVEY PROTOCOL.—Surveys under
5 this paragraph shall be conducted upon a protocol
8 which the Secretary has provided for under subsec-
7 tion (i).

8 "(C) PROHIBITION OF CONFLICT OF INTER-
9 EST IN SURVEY TEAM MEMBERSHIP.—A State
10 and the Secretary may not use as a member of a
11 survey team under this paragraph an individual
12 who is serving (or has served within the previous
13 2 years) as a member of the staff of, or as a con-
14 sultant to, the provider or residential setting being
15 surveyed (or the person responsible for such set-
16 ting) respecting compliance with the requirements
17 of subsections (e) and (f) or who has a personal or
18 familial financial interest in the provider or setting
19 being surveyed-

20 "(D) TRAINING REQUIRED.—No individual
21 shall serve on or after January 1, 1992, as a
22 member of a survey team under this paragraph or
23 paragraph (5) unless the individual has successful-
24 ly completed a training and testing program in

1 survey and certification techniques that has been
2 approved by the Secretary under subsection (i)(3).

3 “(E) REVIEWS OF PROVIDERS.—The certifi-
4 cation under this subsection with respect to a pro-
5 vider (other than with respect to a residential set-
6 ting) must be based on a periodic review of the
7 provider s performance.

8 “(5) VALIDATION SURVEYS AND REVIEWS.—

9 “(A) IN GENERAL.—The Secretary shall
10 conduct onsite surveys of a representative sample
11 of residential settings in each State, within 2
12 months of the date of surveys conducted under
13 paragraph (4) by the State, in a sufficient number
14 to allow inferences about the adequacies of each
15 State's surveys conducted under paragraph (4). In
16 conducting such surveys, the Secretary shall use
17 the same survey protocols as the State is required
18 to use under paragraph (4). If the State has deter-
19 mined that an individual setting meets the re-
20 quirements of subsection (e) and (f), but the Secre-
21 tary determines that the setting does not meet
22 such requirements, the Secretary's determination
23 as to the setting's non-compliance with such re-
24 quirements is binding and supersedes that of the
25 State survey.

1 "(B) SPECIAL SURVEYS AND REVIEWS OF
2 COMPLIANCE.—Where the Secretary has reason
3 to question the compliance of a provider or setting
4 with any of the requirements of subsections (e)
5 and (f), the Secretary may conduct a survey of the
6 Betting or a review of the provider and, on the
7 basis of that survey or review, make independent
8 and binding determinations concerning the extent
9 to which the setting or provider meets such re-
10 quirements.

11 "(6) INVESTIGATION OF COMPLAINTS AND MONI-
12 TOEING HABILITATION FACILITY COMPLIANCE.—
13 Each State and the Secretary shall maintain proce-
14 dures and adequate staff to investigate complaints of
15 violations of requirements by providers of community
16 habilitation and supportive services or by residential
17 settings in which such services are provided.

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

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

23 "(i) information respecting all surveys,
24 reviews, and certifications made under this
25 subsection respecting providers and settings,

1 including statements of deficiencies and plans
2 of correction,

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

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

8 "(iv) information disclosed under section
9 1126.

10 "(B) NOTICE TO PROTECTION AND ADVOCA-
11 CY SYSTEM.—Each State shall notify the agency
12 responsible for the protection and advocacy
13 system for developmentally disabled individuals
14 established under part C of the Developmental
15 Disabilities Assistance and Bill of Rights Act of
16 the State's findings of non-compliance with any of
17 the requirements of subsections (e) and (f) with re-
18 spect to a provider or setting in the State.

19 "(C) NOTICE TO FAMILY.—If a State finds
20 that a provider or setting has provided services of
21 substandard quality, the State shall notify the
22 parent (if the client is a minor), or legal guardian
23 (if any) of each client with respect to which such
24 finding is made,

1 "(D) ACCESS TO FRAUD CONTROL UNITS.—

2 Each State shall provide its State Medicaid fraud
3 and abuse control unit (established under section
4 1903(q)) with access to all information of the
5 State agency responsible for surveys, re views, and
6 certifications under this subsection.

7 "(h) ENFORCEMENT PROCESS,—

8 "(1) IN GENERAL.—If a State finds, on the basis
9 of a survey or review under subsection (f)(2) or other-
10 wise, that a provider of community habilitation and
11 supportive services or a residential setting in which
12 such services are provided no longer meets the require-
13 ments of this section, and further finds that the provid-
14 er's or setting's deficiencies—

15 "(A) immediately jeopardize the health or
16 safety of its clients, the State shall take immedi-
17 ate action to remove the jeopardy and correct the
18 deficiencies through the remedy specified in para-
19 graph (2)(A){iii), or terminate the provider's or
20 setting's participation under the State plan and

21 may provide, in addition, for one or more of the

22 other remedies described in paragraph (2); or

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

1 "(i) terminate the provider's or setting's
2 participation under the State plan,

3 "(ii) provide for one or more of the rem-
4 edies described in paragraph {2), or

5 "(iii) do both;

6 but in any case in which the Secretary has not provid-
7 ed for a civil money penalty under paragraph (3)(C)(i),
8 the State shall provide for a civil money penalty under
9 paragraph (2)(A)(i) for each day in which the State
10 finds that the provider or setting was not in compliance
11 with such requirements. Nothing in this paragraph
12 shall be construed as restricting the remedies available
13 to a State to remedy a provider's or setting's deficien-
14 cies. If the State finds that a provider or setting meets
15 such requirements but, as of a previous period, did not
16 meet such requirements, the State shall provide for a
17 civil money penalty under sub paragraph (C)(ii) for the
18 days on which it finds that the provider or setting was
19 not in compliance with such requirements.

20 "(2) SPECIFIED REMEDIES.—

21 "(A) LISTING.—Except as provided in sub-
22 paragraph (B)(ii), each State shall establish by law
23 (whether statute or regulation) at least the follow-
24 ing remedies:

1 "(i) Denial of payment under the State
2 plan with respect to any individual admitted
3 to a residential setting involved after such
4 notice to the public and to the setting as
5 may be provided for by the State.

6 "(ii) A civil money penalty assessed and
7 collected, with interest, for each day in
8 which the provider or setting is or was out of
9 compliance with a requirement of this sec-
10 tion. Funds collected by a State as a result
11 of imposition of such a penalty (or as a result
12 of the imposition by the State of a civil
13 money penalty for activities described in sub-
14 section (g)(4)(A)) shall be applied to the pro-
15 tection of *the* health or property of clients of
16 providers of community habilitation and sup-
17 portive services that the State or the Secre-
18 tary finds deficient, including payment for
19 the costs of relocation of clients, maintenance
20 of operation of a provider pending correction
21 of deficiencies or closure, and reimbursement
22 of clients for personal funds lost.

23 "(iii) The appointment of temporary
24 management to oversee the operation of a
25 residential setting and to assure the health

and safety of the setting's clients, where there is a need for temporary management while—

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

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

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

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

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification

1 of violations and final imposition of the remedies
2 and shall provide for the imposition of incremen-
3 tally more severe fines for repeated or uncorrected
4 deficiencies. In addition, the State may provide
5 for other specified remedies.

6 "(B) DEADLINE AND GUIDANCE.—AS a con-
7 dition for approval of a State plan for calendar
8 quarters beginning on or after January 1, 1990,
9 each State shall establish the remedies described
10 in clauses (i) through (iv) of sub paragraph (A) by
11 not later than January 1, 1990. The Secretary
12 shall provide, through regulations or otherwise by
13 not later than July 1, 1989, guidance to States in
14 establishing such remedies; but the failure of the
15 Secretary to provide such guidance shall not re-
16 lieve a State of the responsibility for establishing
17 such remedies.

18 "(C) ASSURING PROMPT COMPLIANCE,—If
19 a residential setting has not complied with any of
20 the requirements of this section within 3 months
21 after the date the setting is found to be out of
22 compliance with such requirements, the State
23 shall impose the remedy described in sub para-
24 graph (A)(i) for all individuals who are admitted to
25 the setting after such date-

1 "(D) FUNDING.—The reasonable expendi-
2 tures of a State to provide for temporary manage-
3 ment and other expenses associated with imple-
4 menting the remedies described in clauses (iii) and
5 (IV) of sub paragraph (A) shall be considered, for
6 purposes of section 1903(a)(7), to be necessary for
7 the proper and efficient administration of the
8 State plan.

9 "(3) SECRETARIAL AUTHORITY,—

10 "(A) For STATE PROVIDERS AND SET-
11 TINGS.—With respect to a State provider of com-
12 munity habilitation and supportive services and a
13 State residential setting in which such services
14 are provided, the Secretary shall have the author-
15 ity and duties of a State under this subsection, in-
16 cluding the authority to impose remedy described
17 in clauses (i) and (ii) of paragraph (2)(A), except
18 that the remedy described in sub paragraph (C)(i)
19 shall be substituted for the remedy described in
20 paragraph (2)(A)(ii).

21 "(B) OTHER PROVIDERS AND SETTINGS.—

22 With respect to any other provider of community
23 habilitation and supportive services and any other
24 residential setting in which such services are pro-
25 vided in a State, if the Secretary finds that a pro-

1 vider or setting no longer meets a requirement of
2 this section and further finds that the provider's
3 or setting's deficiencies—

4 "(i) immediately jeopardize the health
5 or safety of its clients, the Secretary shall
6 take immediate action to remove the jeop-
7 ardy and correct the deficiencies through the
8 remedy specified in sub paragraph (C)(ii), or
9 terminate the provider's or setting's partici-
10 pation under the State plan and may provide,
11 in addition, for one or more of the other rein-
12 edies described in sub paragraph (C); or

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

17 but in any case the Secretary shall provide for a
18 civil money penalty under paragraph (2)(A)(i) for
19 each day in which the Secretary finds that the
20 provider or setting was not in compliance with
21 such requirements. Nothing in this sub paragraph
22 shall be construed as restricting the remedies
23 available to the Secretary to remedy a provider's
24 or setting's deficiencies. If the Secretary finds
25 that a. provider or setting meets such requirements

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

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

10 "(i) AUTHORITY WITH RESPECT TO
11 CIVIL MONEY PENALTIES.—The Secretary
12 shall impose a civil money penalty in an
13 amount not to exceed \$10,000 for each day
14 of non-compliance. The provisions of section
15 1128A (other than subsections (a) and (b))
16 shall apply to a civil money penalty under
17 the previous sentence in the same manner as
18 such provisions apply to a penalty or pro-
19 ceeding under section 1128A(a),

20 "(ii) APPOINTMENT OF TEMPORARY
21 MANAGEMENT,—In consultation with the
22 State, the Secretary may appoint temporary
23 management to oversee the operation of a
24 residential setting and to assure the health
25 and safety of the setting's clients, where

1 there is a, need for temporary management
2 while _
3 "(I) there is an orderly closure of
4 the setting, or
5 "(II) improvements are made in
6 order to bring the setting into compli-
7 ance with all the requirements of this
8 section,
9 The temporary management under this
10 clause shall not be terminated under sub-
11 clause (II) until the Secretary has deter-
12 mined that the setting has the management
13 capability to ensure continued compliance
14 with all the requirements of this section.
15 The Secretary shall specify criteria, as to when
16 and how each of such remedies is to be applied,
17 the amounts of any fines, and the severity of each
18 of these remedies, to be used in the imposition of
19 such remedies. Such criteria shall be designed so
20 as to minimize the time between the identification
21 of violations and final imposition of the remedies
22 and shall provide for the imposition of incremen-
23 tally more severe fines for repeated or uncorrected
24 deficiencies.

1 "(4) EFFECTIVE PERIOD OF DENIAL OF PAY-
2 MENT.—A finding to deny payment under this subsec-
 tion shall terminate when the State or Secretary (or
4 both, as the case may be) finds that the provider or
5 setting is in compliance with all the requirements of
6 this section.

7 "(i) SECRETARIAL RESPONSIBILITIES.—

8 "(1) PUBLICATION OF INTERIM REQUIRE-
9 MENTS,—

10 "(A) IN GENERAL.—The Secretary shall
11 publish, by January 1, 1990, an interim regula-
12 tion that sets forth interim requirements, consist-
13 ent with sub paragraph (B), for the provision of
14 community habilitation and supportive services,
15 including—

16 " (i) the requirements of subsection (b)
17 (relating to objectives), of subsection (c) (re-
18 lating to ISP's} of subsection (d) (relating to
19 comprehensive functional assessments), and
20 of subsection (0 (relating to residential set-
21 tings), and

22 "(ii) survey protocols (for use under sub-
23 section (g)) which relate to such require-
24 ments.

1 "(B) MINIMUM PROTECTIONS.—Interim re-
2 quirements under sub paragraph (A) and final re-
3 quirements under paragraph (2) shall assure,
4 through methods other than reliance on State li-
5 censure processes, that—

6 "(i) individuals receiving community ha-
7 bilitation and supportive services are protect-
8 ed from neglect, physical and sexual abuse,
9 and financial exploitation;

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

14 "(iii) individuals or entities delivering
15 such services to clients, or relatives of such
16 individuals, are prohibited from being named
17 beneficiaries of life insurance policies pur-
18 chased by {or on behalf of) such clients.

19 "(2) DEVELOPMENT OF FINAL REQUIRE-
20 MENTS.—The Secretary shall develop, by not Later
21 than October 1, 1991—

22 "(A) final requirements, consistent with para-
23 graph (1)(B), respecting the provision of appropri-
24 ate, quality community habilitation and supportive
25 services under this title, and including at least the

1 requirements referred to in paragraph (l)(A)(i),
2 and

3 "(B) survey protocols and methods for evalu-
4 ating and assuring the quality of such services.

5 The Secretary may, from time to time, revise such re-
6 quirements, protocols, and methods.

7 "(3) APPROVAL OF TRAINING PROGRAMS.—The
8 Secretary shall provide, by not later than October 1,
9 1990, for the approval of comprehensive training pro-
10 grams of State and Federal surveyors in the conduct of
11 surveys under paragraphs (4) and (5) of subsection (g).

12 "(4) NO DELEGATION TO STATES. The Secre-
13 tary's authority under this subsection shall not be dele-
14 gated to States.

15 "(5) NO PREVENTION OF MORE STRINGENT RE-
16 QUIREMENTS BY STATES.—Nothing in this section
17 shall be construed as preventing States from imposing
18 requirements that are more stringent than the require-
19 ments published or developed by the Secretary under
20 this subsection.

21 "(j) DENIAL OF PAYMENT FOR SUBSTANDARD SEBV-
22 ICES.—In order for payments to be made to a State under
23 section 1903(a) for community habilitation and supportive
24 services furnished on and after January 1, 1992, including

1 such services furnished under section 1915(c) or
2 1905(a)(21)—

3 "(1) the State must apply the protocols and meth-
4 ods developed under subsection (i)(2) to such services,
5 and

6 "(2) the State must provide that payment will not
7 be made for such services if such protocols and meth-
8 ods indicate that such services are substandard.

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

14 (b) EFFECTIVE DATE.—The amendments made by sub-
15 section (a) shall apply to community habilitation and support-
16 ive services furnished on or after January 1, 1990; except
17 that such amendments shall not apply to such services pro-
18 vided under a waiver approved under section 1915(c) of the
19 Social Security Act before January 1, 1990.

20 (e) WAIVER OF PAPERWORK REDUCTION , ETC.—
21 Chapter 35 of title 44, United States Code, and Executive
22 Order 12291 shall not apply to information and regulations
23 required for purposes of carrying out this title and implement-
24 ing the amendments made by this title.

1 SEC. 103. ELIMINATING PRIOR INSTITUTIONALIZATION RE
2 QUIREMENT UNDER WAIVER AUTHORITY.

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

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

11 SEC. 304. ANNUAL REPORT.

12 The Secretary of Health and Human Services shall
13 report to the Congress annually on the extent to which pro-
14 viders of community habilitation and supportive services and
15 residential settings in which such services are provided are
16 complying with the requirements of subsections (e) and (f) of
17 section 1926 of the Social Security Act (as inserted by the
18 amendments made by this title) and the number and type of
19 enforcement actions taken by States and the Secretary under
20 section 1926(h) of such Act (as inserted by This title).

21 **TITLE II—QUALITY ASSURANCE**
22 **FOR HABILITATION FACILITY**
23 **SERVICES**

24 SEC. 201. REQUIREMENTS FOR HABILITATION FACILITIES,

25 (a) SPECIFICATION OF FACILITY REQUIREMENTS,—

26 Title XIX of the Social Security Act, as amended by section

1 303(a) of the Family Support Act of 1988 (Public Law 100-
2 485) and as amended by section 101)(b) of this Act, is amend-
3 ed by inserting after section 1926 the following new section:

4 "REQUIREMENTS FOR HABILITATION FACILITIES

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

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

8 "(1) is primarily engaged in providing to clients
9 health or habilitation services to individuals with
10 mental retardation or related condition, and is not pri-
11 marily for the care and treatment of mental diseases;
12 and

13 "(2) meets the requirements for an habilitation fa-
14 cility described in subsections (b), (c), and (d) of this
15 section,

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

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

20 "(1) QUALITY OF LIFE.—An habilitation facility
21 must care for Its clients in such a manner and in such
22 an environment as will promote maintenance or en-
23 hancement of the quality of life, independence, produc-
24 tivity, and integration into the community of each
25 client.

1 "(2) SCOPE OF SERVICES AND ACTIVITIES
2 UNDER INDIVIDUAL PROGRAM PLAN,—

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

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

12 "(i) the acquisition of behaviors and
13 skills necessary for the client to function
14 with as much self determination, independ-
15 ence, productivity, and integration as possi-
16 ble, and

17 "(ii) the prevention or deceleration of
18 regression or loss of current optimal func-
19 tional status.

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

24 "(3) INDIVIDUAL PROGRAM PLAN,—

25 "(A) DEVELOPMENT OF IPFS.—

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

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

23 "(iii) REQUIRED PARTICIPATION IN DE-
24 VELOPMENT OF IPP.—In developing an IPP
25 for a client, the facility shall notify, and pro-

1 vide for and encourage the participation of,
3 the client, the client's parents (if the client is
 a minor), and the client's legal guardian (if
4 any),

5 "(iv) PERMISSIVE PARTICIPATION OF
6 PARENTS OF ADULT CLIENTS.—A parent (if
7 the client is not a minor) who is not a legal
8 guardian of the client may participate in de-
9 veloping the IPP unless the client has ob-
10 jected to the parent's participation,

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

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

22 "(4) COMPREHENSIVE FUNCTIONAL ASSESS-
23 MENT.—

24 "(A) REQUIREMENT.—An habilitation facili-
25 ty must provide for comprehensive functional as-

1 assessments, and review of such assessments, of
2 each client by an interdisciplinary team. Such an
3 assessment and review must identify each client's
4 developmental and behavioral management needs.

5 "(B) FREQUENCY.—

6 "(i) ASSESSMENTS.—Such an assess-
7 ment must be conducted promptly upon (but
8 no later than 30 days after the date of) ad-
9 mission for each individual admitted on or
10 after January 1, 1991, and by not later than
11 January 1, 1992, for each client of the
12 facility on that date.

13 "(ii) REVIEWS.—A review of each such
14 assessment shall be performed in no case less
15 often than once every 12 months.

16 "(C) USE.—The results of such an assess-
17 ment or review shall be used in developing, re-
18 viewing and revising the client's IPP under para-
19 graph (3).

20 "(D) REQUIREMENTS RELATING TO PRE-
21 ADMISSION SCREENING FOR INDIVIDUALS WITH
22 MENTAL RETARDATION OR RELATED CONDI-
23 TION.—An habilitation facility must not admit, on
24 or after January 1, 1991 any new client who is
25 an individual with mental retardation or related

1 condition (as defined in section 1905(m)) unless
2 the State mental retardation or developmental dis-
3 ability authority has determined prior to admis-
4 sion, based on an independent evaluation per-
5 formed by a person or entity other than the facil-
6 ity, that the individual requires the level of serv-
7 ices provided by an habilitation facility.

8 "(5) PROVISION OF SERVICES AND ACTIVITIES.—

9 "(A) IN GENERAL,—To the extent needed to
10 fulfill all IPPs described in paragraph (3), an ha-
11 bilitation facility must provide (or arrange for the
12 provision of)—

13 "(i) physician services 24 hours a day;

14 "(ii) annual physical examinations (in-
15 eluding vision and hearing examination, rou-
16 tine immunizations and tuberculosis control,
17 and routine laboratory examinations);

18 "(iii) licensed nursing services sufficient
19 to meet health needs of clients;

20 "(iv) comprehensive dental diagnostic
21 services, including—

22 "(I) a complete extraoral and in-
23 traoral examination, not later than one
24 month after the date of admission to the
25 facility (unless such an examination was

1 completed within 12 months before ad-
2 mission), and

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

5 "(v) comprehensive dental treatment
6 services, including—

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

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

13 "(vi) routine and emergency drugs and
14 biologicals for clients and procedures that
15 assure the accurate acquiring, receiving, dis-
16 pensing, and administering of all drugs and
17 biologicals;

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

21 "(viii) meal services, including at least 3
22 meals daily, and food and nutrition services
23 that assure that the meals meet the daily nu-
24 tritional and special dietary needs of each
25 client.

1 The services provided or arranged by the facility
2 must meet professional standards of quality. The
3 facility may, to the extent permitted by State law,
4 utilize physician assistants and nurse practitioners
5 to provide services described in clauses (i) and (ii).

6 "(B) QUALIFIED PERSONS PROVIDING SERV-
7 ICES.—Services described in sub paragraph (A)
8 must be provided by qualified persons in accord-
9 ance with each client's IPP.

10 "(C) FACILITY STAFFING.—

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

15 "(ii) NO DEPENDENCE ON VOLUN-
16 TEERS.—An habilitation facility may not use
17 a. client or volunteer to meet the require-
18 ments of this sub paragraph.

19 "(iii) NO USE OF CERTAIN INDIVIDUALS.—
20 An habilitation facility may not use individuals in
21 the facility who have been convicted of child or
22 client abuse, neglect, or mistreatment. The facility
23 must take all reasonable steps to determine
24 whether applicants for employment at the facility
25 have histories indicating involvement in child or

1 client abuse, neglect, or mistreatment and, if an
2 applicant has such a history, not to use the appli-
3 cant in the facility.

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

6 "(A) require that the health care of every
7 client be provided under the supervision of a phy-
8 sician; and

9 "(B) provide for having a physician available
10 to furnish necessary medical care in case of emer-
11 gency.

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

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

20 "(1) GENERAL RIGHTS,—

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

24 "(i) FREE FROM ABUSE.—The right to
25 be free from physical, verbal, sexual, or psy-

1 chological abuse, corporal or psychological
2 punishment, aversive stimuli, and involuntary
3 seclusion.

4 "(ii) FREE FROM RESTRAINTS.—The
5 right to be free from any physical or chemi-
6 cal restraints imposed for purposes of disci-
7 pline or convenience of the staff or as a sub-
8 stitute for active treatment and not required
9 to treat the client's medical symptoms. Re-
10 straints may only be imposed, in accordance
11 with written policies and procedures as an
12 integral part of the IPP to manage inappro-
13 priate client behavior, but only upon a recent
14 showing, in the client's record, that less in-
15 trusive or more positive techniques have
16 been tried, used appropriately, and proved
17 unsuccessful.

18 "(iii) Privacy. The right to privacy
19 with regard to accommodations, medical
20 treatment written and telephonic communi-
21 cations, visits, and meetings of family and
22 friends and of client groups.

23 "(iv) CONFIDENTIALITY.—The right to
24 confidentiality of personal and clinical
25 records.

1 "(v) ACCOMMODATION OF NEEDS.—

2 The rights

3 "(I) to reside and receive services

4 with reasonable accommodations of indi-

5 vidual needs and preferences (including

6 the right to retain and use personal pos-

7 sessions and clothing), except where the

8 health or safety of the individual or

9 other clients would be endangered, and

10 "(II) to receive adequate notice

11 and explanation of the reasons thereof

12 before the room or roommate of the

13 client in the facility is changed and,

14 other than in extraordinary circum-

15 stances, to disapprove such a change.

16 "(vi) DIGNITY.—The right to be treated

17 with dignity in a manner consistent with the

18 client's chronological age

19 "(vii) GRIEVANCES.—The right to voice

20 grievances with respect to treatment or care

21 that is (or fails to be) furnished, without dis-

22 crimination or reprisal (or threat of discrimi-

23 nation or reprisal) for voicing the grievances

24 and the right to prompt efforts by the facility

25 to resolve grievances the client may have,

1 including those with respect to the behavior
2 of other clients.

3 "(viii) PARTICIPATION IN CLIENT AND
4 FAMILY GROUPS.—The right of the client to
5 organize and participate in client groups In
6 the facility and the right of the client's
7 family to meet in the facility with the fami-
8 lies of other clients in the facility. Nothing in
9 this clause shall be construed as requiring a
10 facility to provide for a room specifically de-
11 signed to accommodate meetings under this
12 clause.

13 "(ix) PARTICIPATION IN OTHER AC-
14 TIVITIES.—The right of the client to partici-
15 pate in social, religious, and community ac-
16 tivities that do not interfere with the rights
17 of other clients in the facility,

18 "(x) EXAMINATION OF SURVEY RE-
19 SULTS.—The right to examine, upon reason-
20 able request, the results of the most recent
21 survey of the facility conducted by the Secre-
22 tary or a State with respect *to* the facility
23 and any plan of correction in effect with re-
24 spect to the facility.

1 "(xi) FREE CHOICE WITH RESPECT TO
2 MEDICAL CARE AND TREATMENT,—The
3 right to choose a personal attending physi-
4 cian and to choose a qualified mental retar-
5 dation professional or case manager, to be
6 fully informed in advance about care and
7 treatment, to be fully informed in advance of
8 any changes in care or treatment that may
9 affect the client's well-being, and to partici-
10 pate in planning care and treatment or
11 changes in such care and treatment.

12 "(xii) VOLUNTARY SERVICES.—The
13 right not to be compelled to perform services
14 for the facility and, if the client chooses to
15 perform such services, to be compensated for
16 such services at prevailing wages commensu-
17 rate with the client's productivity.

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

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

22 "(B) NOTICE OF RIGHTS.—A habilitation fa-
23 cility must—

24 "(i) inform each client, parent (if the
25 client is a minor), or legal guardian (if any),

1 orally and in writing at the time of admission
2 to the facility, of the client's legal rights
3 during the stay at the facility; and

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

10 The written description of legal rights under this
11 sub paragraph shall include a description of the
12 protection of personal funds under paragraph (6)
13 and the mailing address, contact person, and tele-
14 phone number of the State protection and advoca-
15 cy system (established under part C of the Devel-
16 opmental Disabilities Assistance and Bill of
17 Rights Act) or other appropriate agency with
18 whom the client, parent, or guardian may file a
19 complaint respecting client abuse and neglect and
20 misappropriation of client property in the facility.

21 "(C) RIGHTS *OF* INCOMPETENT CLIENTS,—
22 In the case of a client adjudged incompetent
23 under the laws of a State, the rights of the client
24 under this title shall devolve upon, and, to the
25 extent judged necessary by a court of competent

1 jurisdiction, be exercised by, a person appointed
2 under State law to act on the client's behalf. For
3 purposes of the previous sentence, the term
4 'person' includes an organization which is inde-
5 pendent of a facility.

6 "(D) USE OF PSYCHOPHARMACOLOGIC
7 DRUGS.—Psychopharmacologic drugs may be ad-
8 ministered only on the orders of a physician and
9 only as an integral part of a plan (included in the
10 IPP) designed to eliminate or modify the symp-
11 toms or behaviors for which the drugs are pre-
12 scribed and only if, at least annually, an independ-
13 ent, external consultant trained in the administra-
14 tion and interaction of psychopharmacologic drugs
15 reviews the appropriateness of the drug plan of
16 each client receiving such drugs.

17 "(2) TRANSFER AND DISCHARGE RIGHTS.—

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

22 "(i) the transfer or discharge is neces-
23 sary to meet the client's welfare and the cli-
24 ent's welfare cannot be met in the facility;

1 "(ii) the transfer or discharge is appro-
2 priate because the client no longer requires
3 continuous active treatment;

4 "(iii) the safety of individuals in the fa-
5 cility is endangered;

6 "(iv) the health of individuals in the fa-
7 cility would otherwise be endangered; or

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

12 In each of the cases described in clauses (i)
13 through (iv), the basis for the transfer or dis-
14 charge must be documented in the client's clinical
15 record. In the cases described in clauses (i) and
16 (ii), the documentation must be made by a quali-
17 fied mental retardation professional, and in the
18 cases described in clause (iv) the documentation
19 must be made by a physician. A facility may not
20 transfer or discharge a client under clause (i) or
21 (ii) unless the service needs of the client recom-
22 mended under sub paragraph (C)(ii) will be met in
23 the client's new living environment. A facility
24 may not transfer or discharge a client under

1 clause (iii) or (iv) unless adequate arrangements
2 have been made for an alternative placement,

3 "(B) PRETRANSFER AND PREDISCHARGE
4 NOTICE.—

5 "(i) IK GENERAL.—Before effecting a
6 transfer or discharge of a client (including
7 such a transfer or discharge under a redue-
8 tion plan under subsection (i)), a habilitation
9 facility must—

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

14 "(II) record the reasons in the cli-
15 ent's clinical record (including any docu-
16 mentation required under sub paragraph
17 (A)), and

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

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

24 "(I) in a case described in clause
25 (iii) or (iv) of sub paragraph (A);

1 "(II) in a case described in clause
2 *(i)* of sub paragraph (A), where a more
3 immediate transfer or discharge is ne-
4 cessitated by the client's urgent medical
5 needs; or

6 "(III) in a case where a client has
7 not resided in the facility for 60 days.

8 In the case of such exceptions, notice must
9 be given as many days before the date of the
10 transfer or discharge as is practicable.

11 "(in) ITEMS INCLUDED IN NOTICE.—

12 Each notice under clause *(i)* must include—

13 "(I) for transfers or discharges ef-
14 fected on or after January 1, 1991,
15 notice of the client's right to appeal the
16 transfer or discharge under the State
17 process established under subsection
18 (e)(5)(B); and

19 "(II) in the case of clients with de-
20 velopmental disabilities, the mailing ad-
21 dress, contact person, and telephone
22 number of the agency responsible for
23 the protection and advocacy system for
24 developmentally disabled individuals es-
25 tablished under part C of the Develop-

1 mental Disabilities Assistance and Bill
2 of Eights Act,

3 "(C) SUMMARY, POST-DISCHARGE PLAN,
4 AND ORIENTATION.—If a client is to be either
5 transferred or discharged (including such a trans-
6 fer or discharge under a reduction plan under sub-
7 section (i)), the facility must—

8 "(i) provide a final summary of the cli-
9 ent's developmental, behavioral, social,
10 health, and nutritional status and skills at
11 the time for the discharge that is available
12 for release to authorized persons and agen-
13 cies, with legal consent of the client, parent (if
14 the client is a minor), or legal guardian (if
15 any),

16 "(n) provide recommendations relating
17 to the service needs of the client in the cli-
18 ent's new living environment; and

19 " {iii) provide the client with sufficient
20 preparation and orientation (taking into ac-
21 count the client's length of stay at the facili-
22 ty) to ensure safe and orderly transfer or dis-
23 charge from the facility.

24 "(3) ACCESS AND VISITATION RIGHTS.—A ha-
25 bilitation facility must—

1 {A) permit immediate access to any client
2 by any representative of the Secretary, by any
3 representative of the State, by the protection and
4 advocacy system described in paragraph
5 (2)(B)(iii)(H), or by the client's physician or quali-
6 fied mental retardation professional;

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

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

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

23 "(E) permit representatives of the State pro-
24 tection and advocacy system (described in para-
25 graph (2)(B)(iii)(II)), with the permission of the

1 client, parent (if the client is a minor), or legal

2 guardian (if any) and consistent with State law, to

3 examine a client's records; and

4 "(F) permit representatives of such State

5 protection and advocacy system to have access to

6 any client and to examine the client's records, in

7 the case of any client—

8 "(i) who, by reason of the client's

9 mental or physical condition, is unable to au-

10 thorize such examination,

11 "(ii) who does not have a legal guaidi-

12 an, conservator, or other legal representa-

13 tive, or for whom the legal guardian is the

14 State, and

15 "(iii) with respect to whom a complaint

16 has been received by such system or with re-

17 spect to whom there is probable cause to be-

18 lieve that such client has been subject to

19 abuse and neglect.

20 "(4) EQUAL ACCESS TO QUALITY CARE.—An ha-

21 bilitation facility must establish and maintain identical

22 policies and practices regarding the admission, transfer,

23 and discharge of, and the provision of services required

24 under the State plan for, all individuals regardless of

25 source of payment,

1 "§} ADMISSIONS POLICY.—With respect to ad-
2 missions practices, an habilitation facility must—

3 "(A)(i) not require individuals applying to
4 reside or residing in the facility to waive their
5 rights to benefits under this title, (ii) not require
6 oral or written assurance that such individuals are
7 not eligible for, or will not apply for, benefits
8 under this title, and (iii) provide to such individ-
9 uals (and their representatives) oral and written
10 information about how to apply for and use such
11 benefits and how to receive refunds for previous
12 payments covered by such benefits;

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

17 "(C) in the case of an individual who is enti-
18 tled to medical assistance for habilitation facility
19 services, not charge, solicit, accept, or receive, in
20 addition to any amount otherwise required to be
21 paid under the State plan under this title, any
22 gift, money, donation, or other consideration as a
23 precondition of admitting (or expediting the admis-
24 sion of) the individual to the facility or as a re-

1 quirement for the individual's continued stay in
2 the facility

3 "(6) MANAGEMENT OF CLIENT FUNDS.—

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

6 "(i) whether or not a client deposits

7 personal funds with the facility, must allow
8 individual clients to manage their financial
9 affairs and teach them to do so to the extent
10 of their capabilities, and

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

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

23 "(i) DEPOSIT.—The facility must de-
24 posit any amount of personal funds in excess
25 of \$50 with respect to a client in an interest

1 bearing account (or accounts) that is separate
2 from any of the facility's operating accounts
3 and credit all interest earned on such sepa-
4 rate account to such account. With respect
5 to any other personal funds, the facility must
6 maintain such funds in a non-interest bearing
7 account or petty cash fund.

8 "(ii) ACCOUNTING AND RECORDS.—The
9 facility must assure a full and complete sepa-
10 rate accounting of each such client's personal
11 funds, maintain a written record of all finan-
12 rial transactions involving the personal funds
13 of a client deposited with the facility, and
14 afford the client, parent (if the client is a
15 minor), or legal guardian (if any) reasonable
16 access to such record.

17 "(in) NOTICE OF CERTAIN BAL-
18 ANCES,—The facility must notify each client
19 receiving medical assistance under this title
20 or the parent (if the client is a minor) or
21 legal guardian (if any), when the amount in
22 the client's account reaches \$200 less than
23 the dollar amount determined under section
24 161 1{a)(3)(B) and the fact that if the amount
25 in the account {in addition to the value of the

1 client's other non-exempt resources) reaches
2 the amount determined under such section
3 the client may lose eligibility for such medi-
4 cal assistance or for benefits under title XVI.

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

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

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

21 "(E) NO FACILITY BORROWING OF PERSON-
22 AL FUNDS.—The facility may not borrow, or use
23 as security for any indebtedness, personal funds
24 deposited with the facility.

1 "(d) REQUIREMENTS RELATING TO ADMINISTRATION
2 AND OTHER MATTERS.—

3 "(1) ADMINISTRATION.—An habilitation facility
4 must be administered in a manner that enables it to
5 use its resources effectively and efficiently to promote
6 maintenance or enhancement of the quality of life, in-
7 dependence, productivity, and integration into the com-
8 munity of each client.

9 "(2) LICENSING AND LIFE SAFETY CODE.—

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

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

20 "(i) the Secretary may waive, for such
21 periods as he deems appropriate, specific
22 provisions of such Code which if rigidly ap-
23 plied would result in unreasonable hardship
24 upon a facility, but only if such waiver would

1 not adversely affect the health and safety of
2 clients or personnel, and

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

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

12 "(A) establish and maintain an infection con-
13 trol program designed to provide a safe, sanitary,
14 and comfortable environment in which clients
15 reside and to help prevent the development and
16 transmission of disease and infection, and

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

21 "(4) MISCELLANEOUS.—

22 "(A) COMPLIANCE WITH FEDERAL, STATE,
23 AND LOCAL LAWS AND PROFESSIONAL STAND-
24 AARDS.—An habilitation facility must operate and
25 provide services in compliance with all applicable

1 Federal, State, and local laws and regulations (in-
2 cluding the requirements of section 1124) and
3 with accepted professional standards and princi-
4 ples which apply to professionals providing serv-
5 ices in such a facility.

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

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

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

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

20 "(1) GENERAL RESPONSIBILITY,—It is the duty
21 and responsibility of the Secretary to assure that re-
22 quirements which govern the provision of care in ha-
23 bilitation facilities under State plans approved under
24 this title, and the enforcement of such requirements,
25 are adequate to protect the health, safety, welfare, and

1 rights of clients and to promote the effective and effi-
2 cient use of public moneys.

3 "{2) OPERATIONAL DEFINITION OF CONTINUOUS
4 ACTIVE TREATMENT.—The Secretary shall establish,
5 by not later than January 1, 1991, an operational defi-
6 nition of continuous active treatment that promotes a
7 consistent assessment of whether an habilitation facility
8 is in compliance with the requirements of subsection
9 (b)(2)(A).

10 "(3) FEDERAL GUIDELINES FOR STATE APPEALS
11 PROCESS FOR TRANSFERS AND DISCHARGES.—FOR
12 purposes of subsections (c)(2)(B)(iii) and (e)(5)(B), by
13 not later than July 1, 1990, the Secretary shall estab-
14 lish guidelines for minimum standards which State ap-
15 peals processes under subsection (e)(5)(B) must meet to
16 provide a fair mechanism for hearing appeals on trans-
17 fers and discharges of clients from habilitation facilities.
18 The guidelines shall provide, upon the request of a
19 client, parent (if the client is a minor), or legal guardi-
20 an (if any), for the participation of a representative of
21 the State protection and advocacy system (described in
22 subsection {c)(2)(B)(iii}(II)) in the appeals process with
23 respect to that client.

24 "(4) CRITERIA FOR ADMINISTRATION.—The Sec-
25 retary shall establish criteria for assessing an habilita-

1 (C) in subsection (e)(9)(A)(iii), by striking ", nurs-
2 ing facility, or intermediate care facility for the mental-
3 ly retarded" and inserting "or nursing facility"; and

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

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

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

12 (B) in subsection (a)(15), by striking "section
13 1902(a)(31)(A)" and inserting "section 1927(e)".

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

15 (A) in paragraphs (1), (2)(C), (5), and (7)(B), by
16 striking "intermediate care facility for the mentally re-
17 tarded" each place it appears and inserting "habilita-
18 tion facility",

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

22 (C) in paragraph (7)(A), by striking "intermediate
23 care facilities for the mentally retarded" and inserting
24 "habilitation facilities",

1 (4) Section 1916 of such Act (42 U.S.C. 1396o) is
2 amended, in subsections (a)(2)(C) and (b)(2)(C), by striking
3 "intermediate care facility for the mentally retarded" and in-
4 serting "habilitation facility".

5 (5) Section 1917(a)(1)(B)(i) of such Act (42 U.S.C.
6 1396p(a)(1)(B)(i)) is amended by striking "intermediate care
7 facility for the mentally retarded" and inserting "habilitation
8 facility".

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

13 SEC. 2m. SURVEY AND CERTIFICATION PROCESS-

14 Section 1927 of the Social Security Act, as inserted by
15 section 201, is amended by adding at the end the following
16 new subsection:

17 "(g) SURVEY AND CERTIFICATION PROCESS—

18 "(1) STATE AND FEDERAL RESPONSIBILITY.—

19 "(A) IN GENERAL.—Under each State plan

20 under this title, the State shall be responsible for
21 certifying, in accordance with surveys conducted
22 under paragraph (2), the compliance of habilitation
23 facilities (other than facilities of the State) with
24 the requirements of subsections (b), (c), and (d).

25 The Secretary shall be responsible for certifying,

1 in accordance with surveys conducted under para-
2 graph (2), the compliance of State habilitation fa-
3 cilities with the requirements of such subsections.

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

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

1 ings, of such brief statement (or of a clear and ac-
2 curate summary thereof). The findings relating to
3 such allegations shall be made available, on re-
4 quest, to the State protection and advocacy
5 system (described in subsection (c)(2)(B)(iii)(II))
6 and to other appropriate agency or agencies with
7 whom a client, parent, or guardian may file a
8 complaint respecting client abuse and neglect and
9 misappropriation of client property in the facility.

10 "(D) CONSTRUCTION,—The failure of the
11 Secretary to issue regulations to carry out this
12 subsection shall not relieve a State of its responsi-
13 bility under this subsection,

14 "(2) ANNUAL SURVEYS.—

15 "(A) IN GENERAL,—Each habilitation facili-
16 ty shall be subject to an annual survey, to be con-
17 ducted without any prior notice to the facility.
18 Any individual who notifies (or causes to be noti-
19 fied) an habilitation facility of the time or date on
20 which such a survey is scheduled to be conducted
21 is subject to a civil money penalty of not to
22 exceed \$2,000, The provisions of section 1128A
23 (other than subsections (a) and (b)) shall apply to
24 a civil money penalty under the previous sentence
25 in the same manner as such provisions apply to a

1 penalty or proceeding under section 1128A(a).
2 The Secretary shall review each State's proce-
3 dures for scheduling and conduct of annual sur-
4 veys to assure that the State has taken all reason-
5 able steps to avoid giving notice of such a survey
6 through the scheduling procedures and the con-
7 duct of the surveys themselves.

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

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

14 "(ii) a review of compliance with all re-
15 quirements under this section.

16 "(C) FREQUENCY.—Each habilitation facility
17 shall be subject to an annual survey not later than
18 15 months after the date of the previous annual
19 survey conducted under this sub paragraph. The
20 Statewide average interval between annual sur-
21 veys of habilitation facilities shall not exceed 12
22 months.

23 "(D) SURVEY PROTOCOL.—Annual surveys
24 shall be conducted—

1 "(i) based upon a protocol which the
2 Secretary has developed, tested, and validat-
3 ed by not later than October 1, 1990, and

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

8 The failure of the Secretary to develop, test, or
9 validate such protocols or to establish such mini-
10 mum qualifications shall not relieve any State of
11 its responsibility (or the Secretary of the Secre-
12 tary's responsibility) to conduct surveys under this
13 sub section.

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

18 "(F) SURVEY TEAMS.—

19 "(i) IN GENERAL.—Surveys under this
20 subsection shall be conducted by a multidisci-
21 plinary team of professionals.

22 "{ii} PROHIBITION OF CONFLICTS OF
23 INTEREST.—A State may not use as a
24 member of a survey team under this subsec-
25 tion an individual who is serving (or has

1 served within the previous 2 years) as a
2 member of the staff of, or as a consultant to,
3 the facility surveyed respecting compliance
4 with the requirements of sub sections (b), (c),
5 and (d), or who has a personal or familial
6 financial interest in the facility being
7 surveyed.

8 "(iii) TRAINING.—The Secretary shall
9 provide for the comprehensive training of
10 State and Federal surveyors in the conduct
11 of annual surveys under this subsection, in-
12 cluding the auditing of client assessments
13 and IPPs. No individual shall serve as a
14 member of a survey team unless the individ-
15 ual has successfully completed a training and
16 testing program in survey and certification
17 techniques that has been approved by the
18 Secretary.

19 "(3) VALIDATION SURVEYS,—

20 "(A) In GENERAL,—The Secretary shall
21 conduct onsite surveys of a representative sample
22 of habilitation facilities in each State, within 2
23 months of the date of surveys conducted under
24 paragraph (2) by the State, in a sufficient number
25 to allow inferences about the adequacies of each

1 State's surveys conducted under paragraph (2). In
2 conducting such surveys, the Secretary shall use
3 the same survey protocols as the State is required
4 to use under paragraph (2). If the State has deter-
5 mined that an individual habilitation facility meets
6 the requirements of subsections (b), (e), and (d),
7 but the Secretary determines that the facility does
8 not meet such requirements, the Secretary's de-
9 termination as to the facility's non-compliance with
10 such requirements is binding and supersedes that
11 of the State survey.

12 "(B) REDUCTION IN ADMINISTRATIVE
13 COSTS FOR SUBSTANDARD PERFORMANCE.—If
14 the Secretary finds, on the basis of such surveys,
15 that a State has failed to perform surveys as re-
16 quired under paragraph {2) or that a State's
17 survey and certification performance otherwise is
18 not adequate, the Secretary may provide for the
19 training of survey teams in the State and shall
20 provide for a reduction of the payment otherwise
21 made to the State under section 1903(a)(2)(D)
22 with respect to a quarter equal to 33 percent mul-
23 tiplied by a fraction, the denominator of which is
24 equal to the total number of clients in habilitation
25 facilities surveyed by the Secretary that quarter

1 and the numerator of which is equal to the total
2 number of clients in habilitation facilities which
3 were found pursuant to such surveys to be not in
4 compliance with any of the requirements of sub-
5 sections (b), (c), and (d). A State that is dissatis-
6 fied with the Secretary's findings under this sub-
7 paragraph may obtain reconsideration and review
8 of the findings under section 1116 in the same
9 manner as a State may seek reconsideration and
10 review under that section of the Secretary's deter-
11 mination under section 1116(a)(1).

12 " (C) SPECIAL SURVEYS OF COMPLIANCE.—
13 Where the Secretary has reason to question the
14 compliance of an habilitation facility with any of
15 the requirements *of* subsections (b), (c), and (d),
16 the Secretary may conduct a survey of the facility
17 and, on the basis of that survey, make independ-
18 ent and binding determinations concerning the
19 extent to which the habilitation facility meets such
20 requirements.

21 "(4) INVESTIGATION OF COMPLAINTS AND MONI-
22 TORING HABILITATION FACILITY COMPLIANCE.—
23 Each State and the Secretary shall maintain proce-
24 dures and adequate staff to—

1 "(A) investigate complaints of violations of
2 requirements by habilitation facilities, and

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

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

11 "(ii) the facility was previously found
12 not to be in compliance with such require-
13 ments, has corrected deficiencies to achieve
14 such compliance, and verification of contin-
15 ued compliance is indicated; or

16 "(iii) the State or the Secretary, respec-
17 tively, has reason to question the compliance
18 of the facility with such requirements.

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

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

24 "(i) information respecting all surveys
25 and certifications made respecting habilita-

1 tion facilities, including statements of defi-
2 ciencies and plans of correction,

3 "(ii) copies of cost reports of such facili-
4 ties filed under this title,

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

7 "(iv) information disclosed under section
8 1126.

9 "(B) NOTICE TO PROTECTION AND ADVOCA-
10 CY SYSTEM.—Each State shall notify the agency
11 responsible for the protection and advocacy
12 system for developmentally disabled individuals
13 established under part C of the Developmental
14 Disabilities Assistance and Bill of Rights Act of
15 the State's findings of noncompliance with any of
16 the requirements of subsections (b), (c), and (d),
17 with respect to an habilitation facility in the *State*.

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

24

1 "(D) ACCESS TO FRAUD CONTROL UNITS.—
2 Each State shall provide its State Medicaid fraud
3 and abuse control unit (established under section
4 1903(q)) with access to all information of the
5 State agency responsible for surveys and certifica-
6 tions under this subsection."

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

11 "(C) POSTING OF SURVEY RESULTS.—AN
12 habilitation facility must post in a place readily
13 accessible to clients the results of the most recent
14 survey of the facility conducted under subsection
15 (g)."

16 SEC- 203. ENFORCEMENT PROCESS.

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

21 "(h) ENFORCEMENT PROCESS.—

22 "(1) IN GENERAL.—If a State finds, on the basis
23 of an annual survey under subsection (g)(2) or other-
24 wise, that an habilitation facility no longer meets a re-

1 quirement of subsection (b), (c), or (d), and further finds
2 that the facility's deficiencies—

3 "(A) immediately jeopardize the health or
4 safety of its clients, the State shall take immedi-
5 ate action to remove the jeopardy and correct the
6 deficiencies through the remedy specified in para-
7 graph (2)(A)(iii), or terminate the facility's partici-
8 pation under the State plan and may provide, in
9 addition, for one or more of the other remedies
10 described in paragraph (2); or

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

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

15 "(ii) provide for one or more of the rem-
16 edies described in paragraph (2), or

17 . "(in) do both.

18 Nothing in this paragraph shall be construed as re-
19 stricting the remedies available to a State to remedy
20 an habilitation facility's deficiencies. If a State finds
21 that an habilitation facility meets the requirements of
22 subsections (b), (c), and (d), but, as of a previous
23 period, did not meet such requirements, the State may
24 provide for a civil money penalty under paragraph

1 (2)(A)(ii) for the days in which it finds that the facility
2 was not in compliance with such requirements,

3 "(2) SPECIFIED REMEDIES.—

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

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

13 "(ii) A civil money penalty assessed and
14 collected, with interest, for each day in
15 which the facility is or was out of compliance
16 with a requirement of subsection (h), (e), or
17 *id*). Funds collected by a State as a result of
18 imposition of such a penalty (or as a result of
19 the imposition by the State of a civil money
20 penalty for activities described in subsection
21 (g}(2)(A)) shall be applied to the protection of
22 the health or property of clients of habilita-
23 tion facilities that the State or the Secretary
24 finds deficient, including payment for the
25 costs of relocation of clients, maintenance of

81 operation of a facility pending
1 correction of
2 deficiencies or closure, and reimbursement of
3 clients for personal funds lost.

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

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

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

17 The temporary management under this
18 clause shall not be terminated under sub-
19 clause (II) until the State has determined
20 that the facility has the management capabil-
21 ity to ensure continued compliance with all
22 the requirements of subsections (b), (c), and
23 (d).

24 "(iv) The authority, in the case of an
25 emergency, to close the facility, to transfer

1 clients in that facility to other facilities, or
2 both.

3 The State also shall specify criteria, as to when
4 and how each of such remedies is to be applied,
5 the amounts of any fines, and the severity of each
6 of these remedies, to be used in the imposition of
7 such remedies. Such criteria shall be designed so
8 as to minimize the time between the identification
9 of violations and final imposition of the remedies
10 and shall provide for the imposition of incremen-
11 tally more severe fines for repeated or unconnected
12 deficiencies. In addition, the State may provide
13 for other specified remedies, such as plans of cor-
14 rection and reduction plans under subsection (i).

15 "(B) DEADLINE AND GUIDANCE,—As a *con-*
16 dition for approval of a State plan for calendar
17 quarters beginning on or After January 1, 1991,
18 each State shall establish the remedies described
19 in clauses (i) through (iv) of sub paragraph (A) by
20 not later than January 1, 1991. The Secretary
21 shall provide, through regulations or otherwise by
22 not later than July 1, 1990, guidance to States in
28 establishing such remedies; but the failure of the
24 Secretary to provide such guidance shall not re-

1 believe a State of the responsibility for establishing
2 such remedies.

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

14 "(D) REPEATED NONCOMPLIANCE.—In the
15 case of an habilitation facility which, on 3 consec-
16 utive annual surveys conducted under subsection
17 (g)(2), has been found not to provide continuous
18 active treatment of adequate quality and effective-
19 ness, the State shall (regardless of what other
20 remedies are provided)—

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

23 "(ii) monitor the facility under subsec-
24 tion (g)(4)(B),

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

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

17 "(3) SECRETARIAL AUTHORITY,—

18 "(A) FOR STATE HABILITATION FACILI-
19 TIES.—With respect to a State habilitation facil-
20 ity, the Secretary shall have the authority and
21 duties of a State under this subsection, including
22 the authority to impose remedies described in
23 clauses (i), (ii), and (iii) of paragraph (2)(A), except
24 that the remedy described in sub paragraph (C)(ii)

1 shall be substituted for the remedy described in
2 paragraph (2)(A)(ii).

3 "(.B) OTHER HABILITATION FACILITIES.—

4 With respect to any other habilitation facility in a
5 State, if the Secretary finds that an habilitation
6 facility no longer meets a requirement of subsec-
7 tion (b), (c), or (d), and further finds that the *fa-*
8 cility's deficiencies—

9 "(i) immediately jeopardize the health
10 or safety of its clients, the Secretary shall
11 take immediate action to remove the jeop-
12 ardy and correct the deficiencies through the
13 remedy specified in sub paragraph (C)(iii), or
14 terminate the facility's participation under
15 the State plan and may provide, in addition,
16 for one or more of the other remedies de-
17 scribed in sub paragraph (C); or

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

22 Nothing in this sub paragraph shall be construed
28 as restricting the remedies available to the Secre-
24 tary to remedy an habilitation facility's deficien-
25 cies. If the Secretary finds that an habilitation fa-

1 cility meets such requirements but, as of a previ-
2 ous period, did not meet such requirements, the
3 Secretary may provide for a civil money penalty
4 under sub paragraph (C)(ii) for the days on which
5 he finds that the facility was not in compliance
6 with such requirements.

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

11 "(i) DENIAL OF PAYMENT.—The Sec-
12 retary may deny any further payments to the
13 State for medical assistance furnished by the
14 facility to all individuals in the facility or to
15 individuals admitted to the facility after the
16 effective date of the finding.

17 "(ii) AUTHORITY WITH RESPECT TO
18 CIVIL MONEY PENALTIES.—The Secretary
19 may impose a civil money penalty in an
20 amount not to exceed \$10,000 for each day
21 of non-compliance. The provisions of section
22 1128A (other than subsections (a) and (b))
23 shall apply to a civil money penalty under
24 the previous sentence in the same manner as

1 such provisions apply to a penalty or pro-
2 ceeding under section 1128A(a).

3 "(iii) APPOINTMENT OF TEMPORARY
4 MANAGEMENT.—In consultation with the
5 State, the Secretary may appoint temporary
6 management Co oversee the operation of the
7 facility and to assure the health and safety of
8 the facility's clients, where there is a need
9 for temporary management while—

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

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

16 The temporary management under this
17 clause shall not be terminated under sub-
18 clause (II) until the Secretary has deter-
19 mined that the facility has the management
20 capability to ensure continued compliance
21 with all the requirements of subsections (b),
22 (c), and (d),

23 The Secretary shall specify criteria, as to when
24 and how each of such remedies is to be applied,
25 the amounts of any fines, and the severity of each

1 of these remedies, to be used in the imposition of
2 such remedies. Such criteria shall be designed so
3 as to minimize the time between the identification
4 of violations and final imposition of the remedies
5 and shall provide for the imposition of incremen-
6 tally more severe fines for repeated or uncorrected
7 deficiencies,

8 "(D) CONTINUATION OF PAYMENTS PEND-
9 ING REMEDIATION,—The Secretary may continue
10 payments, over a period of not longer than 6
11 months, under this title with respect to an habili-
12 tation facility not in compliance with a require-
13 ment of subsection (b), (c), or (d), if—

14 "(i) the State survey agency finds that
15 it is more appropriate to take alternative
16 action to assure prompt compliance of the fa-
17 cility with the requirements than to termi-
18 nate the certification of the facility,

19 "(ii) the State has submitted a plan and
20 timetable for corrective action to the Secre-
21 tary for approval and the Secretary approves
22 the plan of corrective action, and

23 "(iii) the State agrees to repay to the
24 Federal Government payments received
25 under this sub paragraph if the corrective

1 action is not taken in accordance with the
2 approved plan and timetable.

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

6 "(E) CONTINUATION OF PAYMENTS UNDER
7 REDUCTION PLANS.—The Secretary may contin-
8 ue payments in the case of habilitation facilities
9 under the terms and conditions of a reduction plan
10 approved under subsection (i), but only with re-
11 spect to services provided on or after the date of
12 such approval.

13 "(4) EFFECTIVE PERIOD OF DENIAL or PAY-
14 MENT—A finding to deny payment under this subsec-
15 tion shall terminate when the State or Secretary (or
16 both, as the case may be) finds that the facility is in
17 compliance with all the requirements of subsections (b),
18 (c), and (d).

19 "(5) IMMEDIATE TERMINATION OF PARTICIPA-
20 TION FOR FACILITY WHERE STATE OR SECRETARY
21 FINDS NON-COMPLIANCE AND IMMEDIATE JEOP-
22 ARDY.—If either the State or the Secretary finds that
23 an habilitation facility has not met a requirement of
24 subsection (b), (c), or (d), and finds that the failure im-

1 mediately jeopardizes the health or safety of its clients,
2 the State or the Secretary—

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

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

10 If the facility's participation in the State plan is termi-
11 nated by either the State or the Secretary, the State
12 shall provide for the safe and orderly transfer of the
13 clients eligible under the State plan consistent with the
14 requirements of subsection (c)(2).

15 "(6) SHARING OF INFORMATION.—Notwithstand-
16 ing any other provision of law, all information concern-
17 ing habilitation facilities required by this section to be
18 filed with the Secretary or a State agency shall be
19 made available to Federal or State employees for pur-
20 poses consistent with the effective administration of
21 programs established under this title, including investi-
22 gations by State Medicaid fraud control units.

23 "(i) REDUCTION PLANS,—

24 "(1) IN GENERAL,—If there is a finding under
25 subsection (h)(1)(B) (including a similar finding under

1 subsection (h)(3)(A)) or (h)(3)(B)(ii) that an habilitation
2 facility has any deficiency that does not immediately
3 jeopardize the health or safety of its clients, the State
4 may elect in accordance with this subsection to submit
5 to the Secretary a written plan—

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

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

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

19 "(A) the State has provided for a hearing on
20 the plan at the facility involved at least 35 days
21 before the date of submission of the plan, after
22 reasonable notice thereof to the staff and clients of
23 the facility, members of the clients' families, and
24 the public,

1 "(B) the State demonstrates that, with re-
2 spect to clients described in paragraph (1)(B), the
3 State has successfully provided services similar to
4 the services to be provided to such clients under
5 the plan,

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

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

10 "(3) REQUIREMENTS OF DEDUCTION PLANS,—
11 The requirements of this paragraph for a reduction
12 plan with respect to a facility are as follows:

13 "(A) The plan must—

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

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

19 "(iii) provide for continuous active treat-
20 ment for such clients under the clients' IPPs,
21 and

22 "(iv) identify necessary safeguards (in-
23 cluding adequate standards for provider par-
24 ticipation) to be taken to protect the health
25 and welfare of such clients;

1 however, individually identifiable information iden-
2 tified under this sub paragraph and respecting a
3 client shall be treated as confidential and not
4 made available to the public.

5 "(B) The plan must permit each client of the
6 facility who would continue to be eligible for med-
7 ical assistance while a client of such a facility the
8 option of remaining a client of such facility or a
9 similar facility.

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

17 "(4) SEMIANNUAL REVIEW OF COMPLIANCE.—
18 The Secretary shall, at 6-month intervals, review com-
19 pliance of States with reduction plans approved under
20 this subsection. If the Secretary determines in such a
21 review that the State has failed to comply with the re-
22 quirements of paragraph (3) or the assurances de-
23 scribed in subsection (j), the Secretary shall—

1 "(A) terminate the facility's participation
2 under the State plan, or

3 "(B) disallow, for purposes of Federal finan-
4 cial participation, an amount equal to 5 percent of
5 the cost of care for all eligible individuals in the
6 facility for each month for which the failure con-
7 tinues.

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

14 (b) REPEAL OF PREVIOUS CORRECTION AND REDUC-
15 TION PLAN PROVISION—Section 1922 of such Act (42
16 U.S.C. 1396r) is repealed.

17 (c) CONFORMING AMENDMENTS.—(1) Section 1902 of
18 such Act (42 U.S.C. 1396a) is amended by striking subsec-
19 tion (i).

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

24 "(8) with respect to any amount expended for
25 medical assistance for habilitation facility services to

1 reimburse (*or* otherwise compensate) an habilitation fa-
2, cility for payment of a civil money penalty imposed
3 under section 1927(h)"

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

5 (1) by striking subsection (b), and

6 (2) in subsection (a), by striking "(a)(1)" and "(2)"

7 and inserting "(a)" and "(b)", respectively.

8 SEC 204. EFFECTIVE DATES

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

18 (b) ENFORCEMENT —Except as otherwise specifically
19 provided in section 1927 of the Social Security Act, the
20 amendments made by section 203 of this Act shall take effect
21 on the date of the enactment of this Act and shall apply to
22 payments under title XIX of the Social Security Act for cal-
23 endar quarters beginning on or after the date of the enact-
24 ment of this Act, without regard to whether regulations to
25 implement such amendments are promulgated by such date.

1 (c) TRANSITIONAL RULE —In applying the amend-
2 ments made by this title for services furnished before Janu-
3 ary 1, 1991

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

7 (B) with respect to such an habilitation facility,
8 any reference to a requirement of subsection (b), (c), or
9 (d), is deemed a reference to the provisions of section
10 1861(j) or section 1905(c), respectively, of the Social
11 Security Act.

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

17 (e) RELATION TO CURRENT REGULATIONS.—For any
18 period before the effective date of the requirements estab-
19 lished under this title, nothing in this title shall be construed
20 as superseding the final regulations (published on June 3,
21 1988, 53 Federal Register 20448} setting forth conditions for
22 intermediate care facilities for the mentally retarded under
23 the Medic aid program,

1 **SEC. 205. ANNUAL REPORT.**

2 The Secretary of Health and Human Services shall
3 report to the Congress annually on the extent to which ha-
4 bilitation facilities are complying with the requirements of
5 subsections (b), (c), and (d) of section 1927 of the Social Se-
6 curity Act (as added by the amendments made by this title)
7 and the number and type of enforcement actions taken by
8 States and the Secretary under section 1927(h) of such Act
9 (BUS added by section 203 of this Act).

10 **TITLE III—APPROPRIATE PLACE-**
11 **MENT FOR INDIVIDUALS WITH**
12 **MENTAL RETARDATION OR RE-**
13 **LATED CONDITION**

14 **SEC. 301 STATE PREADMISSION SCREENING AND ANNUAL**
15 **CLIENT REVIEW REQUIREMENTS.**

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

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

21 "(1) IN GENERAL.—

22 "(A) STATE CONDITION OF PLAN APPROV-
23 AL.—As a condition of approval of its plan under
24 this title, effective January 1, 1991, the State
25 must have in effect a preadmission screening pro-
26 gram, for making determinations (using any crite-

1 ria developed under subsection (f)(8)) described in
2 subsection (b)(3)(F) for individuals with mental re-
3 tardation or related condition (as defined in see-
4 tion 1905(m)) who are admitted to habilitation fa-
5 cilities on or after January 1, 1991. The failure of
6 the Secretary to develop minimum criteria under
7 subsection (f)(8) shall not relieve any State of its
8 responsibility to have a preadmission screening
9 program under this paragraph or to perform client
10 reviews under paragraph (2).

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

14 "(i) MINIMUM CRITERIA.—The Secre-
15 tary shall develop, by not later than July 1,
16 1990, minimum criteria for States to use in
17 making determinations under subsection
18 (b)(3)(F) and paragraph (2) of this subsection
19 and in permitting individuals adversely af-
20 fected to appeal such determinations, and
21 shall notify the States of such criteria.

22 "(ii) MONITORING COMPLIANCE.—The
23 Secretary shall review a sufficient number of
24 cases to allow reasonable inferences about
25 the adequacy of each State's compliance with

1 the requirements of paragraph (3)(A) (relat-
2 ing to discharge and placement for active
3 treatment of certain clients).

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

6 "(A) IN GENERAL AS of January 1, 1991,
7 in the case of each client, of an habilitation facili-
8 ty, with mental retardation or related condition,
9 the State mental retardation or developmental dis-
10 ability authority must review and determine (using
11 any criteria developed under subsection (f)(8) and
12 based on an independent evaluation performed on
13 site by a person or entity other than the facili-
14 ty)

15 "(i) whether or not the client requires
16 the level of services provided by an habilita-
17 tion facility; and

18 "(ii) whether or not the client requires
19 community habilitation and supportive serv-
20 ices.

21 Such independent evaluation shall take into ac-
22 count the comprehensive functional assessment
23 under subsection (b)(4).

24 . "(B) FREQUENCY OF REVIEWS.—

1 "(i) ANNUAL.—Except as presided in
2 clauses (ii) and (iii), the reviews and determi-
3 nations under sub paragraph (A) must be con-
4 ducted with respect to each client with
5 mental retardation or related condition not
6 less often than annually.

7 "(ii) PREADMISSION REVIEW CASES.—
8 In the case of a client subject to a preadmis-
9 sion review under subsection (b)(3)(F), the
10 review and determination under sub para-
11 graph (A) need not be done until the client
12 has resided in the habilitation facility for 1
13 year.

14 "(iii) INITIAL REVIEW,—The reviews
15 and determinations under sub paragraph (A)
16 must first be conducted (for each client not
17 subject to preadmission review under subsec-
18 tion (b)(3)(F)) by not later than January 1,
19 1992.

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

23 "(A) CLIENTS NOT REQUIRING HABILITA-
24 TION FACILITY SERVICES, BUT REQUIRING COM-
25 MUNITY HABILITATION AND SUPPORTIVE SERV-

1 ICES.—In the case of a client who is determined,
2 under paragraph (2), not to require the level of
3 services provided by an habilitation facility, but to
4 require community habilitation and supportive
5 services, the State must, in consultation with the
6 client's family or legal representative and care-
7 givers—

8 "(i) arrange for the safe and orderly dis-
9 charge of the client from the facility, consist-
10 ent with the requirements of subsection
11 (c)(2),

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

14 "(iii) provide for (or arrange for the pro-
15 vision of) such community habilitation and
16 supportive services for the mental retardation
17 or related condition.

18 "(B) CLIENTS NOT REQUIRING HABILITA-
19 TION FACILITY SERVICES AND NOT REQUIRING
20 COMMUNITY HABILITATION AND SUPPORTIVE
21 SERVICES.—In the case of a client who is deter-
22 mined, under paragraph (2), not to require the
23 level of services provided by an habilitation facili-
24 ty and not to require community habilitation and
26 supportive services, the State must—

1 "(i) arrange for the safe and orderly dis-
2 charge of the client from the facility, consists
3 ent with the requirements of subsection
4 (c)(2), and.

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

7 "(4) DENIAL OF PAYMENT WHERE FAILURE TO
8 CONDUCT PREADMISSION SCREENING.—No payment
9 may be made under section 1903(a) with respect to ha-
10 bilitation facility services furnished to an individual for
11 whom a determination is required under subsection
12 (b)(3)(F) or paragraph (2) but for whom *the* determina-
13 tion is not made.

14 "(5) APPEALS PROCEDURES BOTH FOR PRE-
15 ADMISSION DETERMINATIONS AND CLIENT REVIEW
16 AND FOR TRANSFERS AND DISCHARGES.—

17 "(A) PREADMISSION AND CLIENT REVIEW
18 DETERMINATIONS.—Each State, as a condition of
19 approval of its plan under this title, effective Jan-
20 uary 1, 1991, must have in effect an appeals
21 process for individuals adversely affected by deter-
22 minations under paragraph (1) or (2).

23 "(B) TRANSFERS AND DISCHARGES.—Each
24 State, as a condition of approval of its plan under
25 this title, effective January 1, 1991, must provide

1 for a fair mechanism for hearing appeals on trans-
2 fers or discharges of clients of habilitation facili-
3 ties. Such mechanism must meet the guidelines
4 established by the Secretary under subsection
5 (f)(3); but the failure of the Secretary to establish
6 such guidelines shall not relieve any State of its
7 responsibility to provide for such a fair mecha-
8 nism."

9 **SEC. 302. REVISION OF UTILIZATION REVIEW provisions.**

10 (a) REVISION OF STATE PLAN REQUIREMENT.—Sec-
11 tion 1902(a) of the Social Security Act (42 U.S.C, 1396a(a))
12 is amended—

13 (1) in paragraph (30)(B), by striking ", intermedi-
14 ate care facility for the mentally retarded in clauses
15 (i) and (ii)(II), and

16 (2) by striking paragraph (31), and

17 (3) in paragraph (44)—

18 (A) in the matter before sub paragraph (A),
19 by striking", services in an intermediate care fa-
20 cility for the mentally retarded,"

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

24 (C) in sub paragraph (A) by striking "or, in
25 the case of" the second place it appears and all

1 that follows through "in collaboration with a phy-
2 sician",

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

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

9 (b) REVISION OF PENALTY PROVISIONS.—Section
10 1903(g) of such Act (42 U.S.C. 1396b(g)) is amended—

11 (1) in paragraph (1)—

12 (A) by striking "or services in an intermedi-
13 ate care facility for the mentally retarded" each
14 place it appears,

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

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

19 (2) in paragraph (4)(B)—

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

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

24 (C) by striking "and facilities" and "or facili-
25 ty" each place it appears;

1 (3) in paragraph (5)—

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

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

7 (4) in paragraph (6)—

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

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

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

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

17 (A) in paragraph (33)(B), by striking "section
18 1919(d)" and inserting "section 1919 and section
19 1927", and

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

22 (3) Section 1905(a)(15) of such Act (42 U.S.C,
23 1396d(a)(15)} is amended by striking ", in accordance with
24 section 1902(a)(31)(A),"

1 (d) EFFECTIVE DATE.—The amendments made by this
 2 section shall not apply to a State until such date as of which
 3 the Secretary of Health and Human Services determines that
 4 the State has begun conducting annual surveys under section
 5 1927(g) of such Act.

6 TITLE IV—PAYMENT FOR COMMU-
7 NITY HABILITATION AND SUP-
8 PORTIVE SERVICES AND HA-
9 BILITATION FACILITY SERV-
10 ICES

11 SEC. 401. PAYMENT FOR COMMUNITY HABILITATION AND
 12 SUPPORTIVE SERVICES AND HABILITATION FA-
 13 CILITY SERVICES.

14 (a) REASONABLE AND ADEQUATE PAYMENTS.—Sec-
 15 tion 1902 of the Social Security Act (42 U.S.C. 1396a) is
 16 amended—

17 (1) in subsection (a)(13)— .

18 (A) by striking "and" at the end of sub para-
 19 graph (D),

20 (B) by inserting "and" at the end of sub para-
 21 graph (E), and

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

24 "(F) for payment—

1 "(i) for community habilitation and sup-
2 portive services (as defined in section
3 1920(a)) through rates which are reasonable
4 and adequate (and which may not be estab-
5 lished on a capitation basis or *any* other risk
6 basis) to meet the costs of providing services,
7 efficiently and economically, in conformity
8 with applicable State and Federal laws, reg-
9 ulations, and quality and safety standards,
10 and

11 "(ii) for habilitation facility services
12 through rates which are reasonable and ade-
13 quate {and which may not be established on
14 a capitation basis or any other risk basis) to
15 meet the costs which must be incurred by ef-
16 ficiently and economically operated facilities
17 in order to provide care and services in con-
18 formity with applicable State and Federal
19 laws, regulations, and quality and safety
20 standards;"; and

21 (2) in subsection (h), by adding before the period
22 at the end the following: "or to limit the amount of
23 payment that may be made under a plan under this
24 title for community habilitation and supportive services
25 or for habilitation facility services"

1 (b) DENIAL OF FEDERAL PAYMENTS TO COMPENSATE
2 FOR CIVIL MONEY PENALTIES.—Section 1903 (i)(8) of such
3 Act (42 U.S.C. 1396b(i)(8)) is amended by inserting "(A)"
4 after "medical assistance" and by inserting before the semi-
5 colon at the end the following: "for community habilitation
6 and supportive services or habilitation facility services to re-
7 imburse (or otherwise compensate) a provider of such serv-
8 ices or habilitation facility for payment of a civil money pen-
9 alty imposed under this title or title XI".

10 (e) EFFECTIVE DATE.—(1) The amendments made by
11 subsection (a)(1) shall apply—

12 (A) to community habilitation and supportive serv-
13 ices furnished on or after January 1, 1990, or, if later,
14 30 days after the date of publication of interim regula-
15 tions under section 1926(i)(1), and

16 (B) to habilitation facility services furnished on or
17 after January 1, 1991.

18 (2) The amendment made by subsection (a)(2) shall
19 apply as though it was included in the enactment of the Om-
20 nibus Budget Reconciliation Act of 1981 (Public Law 97-
21 35).

22 (3) The amendment made by subsection (b) shall apply
23 to civil money penalties imposed after the date of the enact-
24 ment of this Act.

1 TITLE V—EMPLOYEE PROTEC-
2 TIONS AND MISCELLANEOUS

3 SEC- -501. EMPLOYEE PROTECTIONS FOR CLOSURES AND RE-
4 Ductions IN CAPACITY.

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

9 "(j) EMPLOYEE PROTECTIONS FOR CAPACITY REDUC-
10 TIONS.—

11 "(1) IN GENERAL.—Aa a requirement of its State
12 plan under section 1902 {a), the State must provide
13 that, in the case of any closure or reduction in capacity
14 (whether through a reduction plan under sub section (i)
15 or otherwise} of an habilitation facility in the State
16 made on or after the date of the enactment of this sub-
17 section, the following fair and equitable arrangements
18 have been made to protect the interests of employees
19 of the facility affected by such closure or reduction:

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

24 "(B) The continuation of collective bargain-
25 ing rights through *any* certified representative,

1 "(C) The protection of individual employees
2 against a worsening of their positions with respect
8 to their employment at the facility during the
4 period of the closure or reduction.

5 "(D) Except as provided in the last sentence
6 of this paragraph, assurance of employment of af-
7 fected employees, with at least the same pay and
8 same level of responsibilities.

9 "(E) The establishment of paid training or
10 retraining programs for employment of affected
11 employees in the provision of community habilita-
12 tion and supportive services.

13 "(F) Provision of—

14 "(i) a grievance procedure (meeting the
15 requirements of paragraph (2)) for affected
16 employees to assure the preceding require-
17 ments have been met with respect to such
18 employees, or

19 "(ii) another grievance procedure with
20 respect to affected employees who have a
21 certified bargaining representative, if such
22 other grievance procedure has been agreed
23 to by the State and by the certified bargain-
24 ing representative.

1 Nothing in this paragraph shall be construed as enti-
2 tling an affected employee to lifetime employment or as
3 protecting an employee against a discharge for good
4 cause.

5 "(2) REQUIREMENTS FOR GRIEVANCE PROCE-
6 DURE,—The grievance procedure under paragraph
7 (1)(F)(i) shall include the following:

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

11 "(B) After such period, the affected employee
12 shall be permitted, at the employee's election, the
13 option of (L) submitting the grievance to binding
14 arbitration before a qualified arbitrator who is in-
15 dependent of the interested parties, or (ii) a hear-
16 ing on the grievance before a State agency.

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

22 "(D) A decision on the grievance shall be
23 made within 30 days after the date of such pro-
24 ceeding or hearing,

1 (1) by inserting "(A)" after "except that", and
2 (2) by inserting before the semicolon at the end
3 the following ", and (B) nothing in this paragraph shall
4 be construed as preventing a State plan from assign-
5 ing, to a State agency responsible for developmentally
6 disabled individuals, specific management functions
7 under the plan relating to provision of services under
8 the plan to individuals with mental retardation or relat-
9 ed condition".

10 (b) AVAILABILITY OF MATCHING FUNDS.—Section
11 1903(a) of such Act (42 U.S.C. 1396b(a)) is amended by
12 adding at the end the following:

13 "Payment shall be made available under paragraph (7) for
14 amounts expended for reasonable administrative expenses of
15 a State agency described in section 1902(a)(5)(B) in carrying
16 out activities described in that section in the same manner as
17 they are available for similar reasonable administrative ex-
18 penses of the single State agency described in section
19 1902(a)(5)".

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