weaken nursing home standards	**Clinton Vetoed Dole-Gingrich Attempt to Weaken Nursing Home Standards:** On December 6, 1995, President Clinton vetoed the Republican budget (H.R. 2491), which would have weakened federal standards that ensure quality for nursing homes. On November 17, 1995, Dole voted for the Dole-Gingrich budget reconciliation bill (conference report)(H.R. 2491), which would weaken nursing home standards by turning enforcement of private nursing homes to the states, and allowing states to obtain waivers from federal standards. This could result in substandard care and unsafe living conditions for our nation's elderly. [Veto Message of H.R. 2491, 12/6/95, Congressional Quarterly, 11/25/95, p. 3540; p. 3613, vote #584, 11/17/95, Senate Democratic Policy Committee, 11/17/95] **Dole Voted Several Times for the Elimination of Federal Nursing Home Standards:** On October 19, 1995, Dole voted for the Senate Finance Committee version of the FY 96 Budget Reconciliation bill (S. 1357) that would have repealed almost all federal restrictions on nursing homes. [Legi-Slate electronic vote service, vote #8350 (passed 11-9); Congressional Quarterly, 9/30/95, p. 3002] During Finance Committee debate on the bill, Dole voted against an amendment to maintain current federal standards that ensure quality care in nursing homes. In addition, Dole voted against an amendment to require federal approval of *state* nursing home quality standards. [Legi-Slate electronic vote service, vote #8220 (rejected 10-10), vote #8221 (rejected 10-10), 9/29/96; Congressional Quarterly, 9/30/95, p. 3002] On October 27, 1995, after the bill was reported out of committee, Dole voted against an amendment to the FY 96 Budget Reconciliation bill (S. 1357) to reinstate 1987 federal standards for nursing homes in the Medicaid program. [Congressional Quarterly, 11/4/95, p. 3411, vote #522] **Editorials Criticize GOP Proposal to Remove Nursing Home Standards:** • New York Times, "Keep Nursing Home Standards": "To abandon national standards now may invite a return to the nursing home disasters of the past." [NYT, 10/18/95] • USA Today, "Dropping Federal Regs Is an Invitation to Tragedy": "No credible evidence exists to justify reversing course. If changes are necessary they should be based on the same kind of thorough study and public hearings that produced the original regulations. Seniors are in nursing homes because of advanced age, mental or physical disabilities, to recover from hospitalization or because they have no one to care for them. They are frail and vulnerable. They deserve all the protection the public can provide." [USA Today, 9/27/95]

"...real Bob Dole..."	

10/25/96 23:22 NO.087 002

Key Medicaid Provisions

Following are key provisions of changes proposed for the federal-state Medicaid program, which provides health insurance for the poor and disabled. According to the conference report on the deficit-reducing budget-reconciliation bill (HR 2491 — H Rept 104-350): *(Story, p. 3539)*

● **Spending.** Federal spending on Medicaid would be reduced by $163.4 billion from projected levels over seven years, a decline from the $182 billion reduction promised in the budget resolution and from the $170 billion level approved in both chambers on the original reconciliation bill. The change, which will allow states to choose the higher of the House or Senate funding level, was aimed at assuaging members' concerns about their state's federal funding. Federal spending would total $791 billion over the seven years, an average annual increase of 5.2 percent, taking the program's federal cost from $97.1 billion in 1996 to $127.4 billion in 2002.

● **Block grants.** The conferees agreed on the key premise of the Medicaid changes: the repeal of most federal eligibility and coverage requirements that states now must meet in order to get federal money. In effect, the current "entitlement" under which federal and state governments must pay to cover anyone who meets eligibility requirements would be replaced with a fixed amount of money in the form of block grants to states. In return, state governments would get broad flexibility to determine who is covered and how.

Before qualifying for any federal matching funds, states would be required to design a plan that explains eligibility requirements, benefit packages and administrative guidelines. States would be required to put up some of their own money and to use the federal money for health care. It would be left to the state's discretion to determine how much to pay doctors, hospitals and other health care providers. Along those lines, the agreement would repeal the current "Boren amendment," which requires states to pay hospitals and nursing facilities rates that are "reasonable and adequate" to cover costs.

● **Formula.** Negotiators agreed to distribute the federal pool of dollars on a "needs based" formula, as measured by the number of poor residents in a state, the severity of the state's caseload and a state health care cost index. Every state would be guaranteed minimum growth rates: at least 3.5 percent in 1997, 3 percent in 1998, 2.5 percent in fiscal 1999 and 2 percent in each subsequent year. The maximum growth rate would be 9 percent in 1997 and 5.33 percent in later years. However, the 10 states with the lowest spending per person in poverty, which include Texas, Virginia, Florida and California, would be allowed to grow at a maximum of 7 percent in the later years.

To determine how much money states would have to spend to qualify for federal funds, states would get two choices. They could choose a formula, based on per capita income, which has a revised maximum state contribution of 40 percent. Or they could choose a new formula that takes into account a state's total taxable resources to determine its ability to pay.

● **Beneficiary spending.** The conference agreement would require states to continue the entitlement for health care coverage for poor pregnant women and children under age 13, although it would be up to the states to determine what benefits to provide. States would be required to spend a specified percentage (85 percent of a three-year average spent on mandatory benefits) on nursing home residents, senior citizens and the disabled, as defined by the state.

For low-income senior citizens, states would be required to help pay their Medicare Part B premiums, which help cover the costs of doctor visits and outpatient care. Under the agreement, the payment would be a minimum of 90 percent of a three-year average of state state spending. Under current law, states must cover the Part B copayments and deductibles.

States also would be required to set aside a percentage of their funding for community health centers and rural health clinics. Under the conference agreement, the amount would be determined by the state average payments to the centers, not necessarily a set amount.

● **Nursing homes.** Conferees agreed to retain most of the federal provisions governing nursing home standards, enacted in 1987 (PL 100-203) in response to reports of lax state standards and patient abuse. States would be charged with enforcing the federal standards, with some federal oversight. State would not be permitted to substitute state standards for the federal rules, a provision the Senate had inserted during floor debate.

On a related issue, current law would be retained to prevent a spouse from becoming impoverished by the costs of nursing home care. The House originally had proposed leaving this up to the states.

● **Limits on lawsuits.** Conferees agreed to a House concept that would prohibit applicants, beneficiaries, providers or health plans from suing states over compliance with federal provisions. However, individuals could register a complaint against the state with the Secretary of Health and Human Services.

● **Childhood immunizations.** The agreement would require states to cover childhood immunizations under a schedule to be determined by the states.

● **Abortion/family planning.** Federal funding would be available for abortions for poor women in cases of rape, incest or when the woman's life was in danger. States would be required to provide pre-pregnancy family planning services and supplies.

● **Emergency health care for illegal aliens.** The agreement would create a $3.5 billion fund to help the 15 states with the largest populations of illegal aliens pay for emergency treatment for those aliens.

● **New Hampshire and Louisiana.** New Hampshire and Louisiana, which at one time relied heavily on federal payments to hospitals to boost their overall Medicaid spending without raising their state contribution, would be required to gradually increase their state funding in order to receive their federal share.

—Colette Fraley

10/19/95 -- SENATE Vote No. 8350: 11-9 (DEM: 0-9; REP: 11-0)

(Senate Committee on Finance

Ordered reported by Senate Committee on Finance.)

----------Among 11 Members Who Voted 'YES'----------

DOLE (R-KS)

SENATE VOTES 582, 583, 584

	582	583	584
ALABAMA			
Shelby	Y	Y	Y
Heflin	Y	N	N
ALASKA			
Murkowski	Y	Y	Y
Stevens	Y	Y	Y
ARIZONA			
Kyl	Y	Y	Y
McCain	Y	Y	Y
ARKANSAS			
Bumpers	Y	N	N
Pryor	Y	N	N
CALIFORNIA			
Boxer	Y	N	N
Feinstein	N	N	N
COLORADO			
Brown	Y	Y	Y
Campbell	Y	Y	Y
CONNECTICUT			
Dodd	N	N	N
Lieberman	N	N	N
DELAWARE			
Roth	N	Y	Y
Biden	N	N	N
FLORIDA			
Mack	Y	Y	Y
Graham	Y	N	N
GEORGIA			
Coverdell	Y	Y	Y
Nunn	Y	Y	N
HAWAII			
Akaka	N	N	N
Inouye	Y	N	N
IDAHO			
Craig	Y	Y	Y
Kempthorne	Y	Y	Y
ILLINOIS			
Moseley-Braun	N	N	N
Simon	N	N	N
INDIANA			
Coats	Y	Y	Y
Lugar	Y	Y	Y
IOWA			
Grassley	Y	Y	Y
Harkin	Y	N	N
KANSAS			
Dole	Y	Y	Y
Kassebaum	Y	Y	Y
KENTUCKY			
McConnell	Y	Y	Y
Ford	Y	N	N
LOUISIANA			
Breaux	Y	Y	N
Johnston	Y	N	N
MAINE			
Cohen	Y	Y	N
Snowe	Y	Y	Y
MARYLAND			
Mikulski	Y	N	N
Sarbanes	Y	N	N
MASSACHUSETTS			
Kennedy	Y	N	N
Kerry	N	N	N
MICHIGAN			
Abraham	Y	Y	Y
Levin	Y	N	N
MINNESOTA			
Grams	Y	Y	Y
Wellstone	Y	N	N
MISSISSIPPI			
Cochran	Y	Y	Y
Lott	Y	Y	Y
MISSOURI			
Ashcroft	Y	Y	Y
Bond	Y	Y	Y
MONTANA			
Burns	Y	Y	Y
Baucus	Y	Y	N
NEBRASKA			
Exon	Y	N	N
Kerrey	Y	N	N
NEVADA			
Bryan	Y	N	N
Reid	Y	N	N
NEW HAMPSHIRE			
Gregg	Y	Y	Y
Smith	Y	Y	Y
NEW JERSEY			
Bradley	N	N	N
Lautenberg	N	N	N
NEW MEXICO			
Domenici	Y	Y	Y
Bingaman	Y	N	N
NEW YORK			
D'Amato	Y	Y	Y
Moynihan	Y	N	N
NORTH CAROLINA			
Helms	Y	Y	Y
Faircloth	Y	Y	Y
NORTH DAKOTA			
Conrad	Y	N	N
Dorgan	Y	N	N
OHIO			
DeWine	N	Y	Y
Glenn	Y	N	N
OKLAHOMA			
Inhofe	Y	Y	Y
Nickles	Y	Y	Y
OREGON			
Hatfield	Y	Y	Y
Packwood			
PENNSYLVANIA			
Santorum	Y	Y	Y
Specter	Y	N	Y
RHODE ISLAND			
Chafee	Y	N	Y
Pell	N	N	N
SOUTH CAROLINA			
Thurmond	Y	Y	Y
Hollings	N	N	N
SOUTH DAKOTA			
Pressler	Y	Y	Y
Daschle	Y	N	N
TENNESSEE			
Frist	Y	Y	Y
Thompson	Y	Y	Y
TEXAS			
Gramm	Y	Y	Y
Hutchison	Y	Y	Y
UTAH			
Bennett	Y	Y	Y
Hatch	Y	Y	Y
VERMONT			
Jeffords	Y	Y	Y
Leahy	N	N	N
VIRGINIA			
Warner	Y	Y	Y
Robb	Y	N	N
WASHINGTON			
Gorton	N	Y	Y
Murray	Y	N	N
WEST VIRGINIA			
Byrd	Y	N	N
Rockefeller	Y	N	N
WISCONSIN			
Feingold	Y	N	N
Kohl	Y	N	N
WYOMING			
Simpson	Y	Y	Y
Thomas	Y	Y	Y

KEY

- Y Voted for (yea).
- # Paired for.
- + Announced for.
- N Voted against (nay).
- X Paired against.
- – Announced against.
- P Voted "present."
- C Voted "present" to avoid possible conflict of interest.
- ? Did not vote or otherwise make a position known.

Democrats Republicans

ND Northern Democrats SD Southern Democrats

Southern states - Ala., Ark., Fla., Ga., Ky., La., Miss., N.C., Okla., S.C., Tenn., Texas, Va.

582. S 440. National Highway System/Conference Report. Adoption of the conference report to designate a new 160,000-mile National Highway System and to repeal all federal speed limits and motorcycle helmet laws. Adopted (thus sent to the House) 80-16: R 47-3; D 33-13 (ND 24-12, SD 9-1), Nov. 17, 1995.

583. HR 2491. Fiscal 1996 Budget-Reconciliation/Antitrust Provisions. Abraham, R-Mich., motion to waive the Budget Act with respect to the Exon, D-Neb., point of order against provisions in the conference agreement to the bill that would have granted special antitrust rules for provider service networks and would have exempted physician office laboratories from the 1988 amendments to the Clinical Lab Improvement Act. Motion rejected 54-46: R 51-2; D 3-43 (ND 1-35, SD 2-8), Nov. 17, 1995. A three-fifths majority vote (60) of the total Senate is required to waive the Budget Act. (Subsequently, the chair upheld the Exon point of order and the extraneous provisions were struck from the bill.)

584. HR 2491. Fiscal 1996 Budget-Reconciliation/Further Amendment to Conference Agreement. Motion to recede and concur in the conference agreement to the bill with a further amendment to strike provisions, favored by doctors, that would relax antitrust rules for provider service networks and exempt physician office laboratories from the 1988 amendments to the Clinical Lab Improvement Act. The conference agreement would reduce projected spending by $894 billion and taxes by $245 billion over seven years to provide for a balanced budget by fiscal 2002. Over seven years, the conference report would reduce projected spending on Medicare by $270 billion, Medicaid by $163 billion, welfare programs by $82 billion, the earned-income tax credit by $32 billion, agriculture programs by $12 billion and federal employee retirement programs by $10 billion. The bill would grant a $500 per-child tax credit for families with incomes up to $110,000, reduce taxes on capital gains income, and expand eligibility for Individual Retirement Accounts. The bill would allow oil drilling in the Arctic National Wildlife Refuge in Alaska; impose royalties for hardrock mining on federal lands; cap the federal direct student loan program; and increase the federal debt limit from $4.9 trillion to $5.5 trillion. Motion agreed to (thus sending the conference report back to the House) 52-47: R 52-1; D 0-46 (ND 0-38, SD 0-10), Nov. 17, 1995. A "nay" was a vote in support of the president's position.

RECONCILIATION

GOP Plows Ahead on Medicaid With Small Concessions

As the Senate Finance Committee pushed ahead with plans to end Medicaid's federal guarantee of basic health insurance to the poor, fissures appeared and began to widen among Senate Republicans.

Moderates, including Finance member John H. Chafee of Rhode Island, warned of trouble ahead over provisions on children's health and abortions for poor women. Moderates and conservatives were nervous about ending federal oversight of nursing homes. And a number of Republicans groused about the prospect of reducing entitlement spending at the same time taxes are cut. *(Moderates, p. 2963)*

Still, the committee's Medicaid proposal, part of the massive deficit-reduction provisions the panel began marking up Sept. 26, largely tracks the House plan to cut $182 billion from the program over seven years. It includes similar provisions on giving the states most of the power to decide who is to be covered, ending most federal restrictions on nursing homes and requiring states to spend their own money to qualify for federal funds. The House Commerce Committee approved its measure Sept. 22 on a near party-line vote. *(Weekly Report, p. 2001; markup, p. 2995)*

"Republican governors say that if there are no entitlements and full flexibility, they can live with the savings," said Chairman William V. Roth Jr., R-Del., in his opening remarks Sept. 26. "Our plan does just that."

Democrats, however, dissented sharply. "This savaging of the Medicaid program is the single most callous proposal before this committee," said John. D. Rockefeller IV, D-W.Va.

While the similarities are striking, Finance's differences with the House proposal are significant. The committee appears more willing to impose restrictions on the states, and it used a different calculation to determine how much federal money states will get.

The Finance proposal starts from a different baseline and uses slightly higher average growth rates than the House plan. Under the Finance plan, 27 states — including 11 represented on the committee — would get more money than under the House plan. However, all the states would fall below spending levels projected under current law.

Chafee, left, Grassley at Sept. 28 markup.

Chafee and the Democrats

From the outset, the Republicans made it clear they planned to end the entitlement and reduce federal spending on Medicaid. But the Democrats and Chafee were equally determined to make it difficult for them.

During opening remarks, Chafee staked his position: "I'm for flexibility, but if providing flexibility means no longer protecting the most vulnerable, I don't think we're headed in the right direction." His first amendment would have required states to maintain the entitlement for current eligible groups while capping the federal per capita contribution.

Roth opposed it, noting that the Finance plan would require states to spend money on the eligible groups but allow the states to control it.

Chafee acknowledged that his proposal would save only $80 billion and knew it would not be approved by the 11 Republicans and nine Democrats on the panel. He then withdrew it.

By a 10-10 vote, with only Democrats joining him, the committee rejected another Chafee amendment designed to require states to provide a minimum benefit package.

While Roth argued that the proposal would limit state flexibility, Democrat John B. Breaux of Louisiana scoffed at the idea of complete state control. "They're spending $90 billion of federal money," he said. "If states want no minimal standards, let them raise all the money themselves."

The committee also rejected, by 10-10 votes with Chafee and the Democrats voting together, amendments addressing low-income mothers, children, infant mortality rates and uninsured people.

Party Lines Fuzz

Party lines became less distinct as the committee adopted other amendments.

The panel approved language to retain current federal restrictions to prevent spouses of nursing home residents from becoming impoverished by nursing home costs. The House measure leaves the decision with states.

"Without this amendment, people might be forced to sell their homes, sue each other or divorce to avoid destitution," said sponsor Kent Conrad, D-N.D., who introduced the amendment with Max Baucus, D-Mont.

However, the panel later twice rejected amendments by David Pryor, D-Ark., that sought to preserve federal nursing home standards or at least permit federal review and approval of state laws. Both votes were 10-10, with Chafee joining the Democrats.

Panel members approved an amendment by Orrin G. Hatch, R-Utah, to require that 1 percent of the federal grant be used for local health centers. The House plan rejected a specific set-aside.

On an amendment to change the formula to reduce how much a state must contribute to get federal money, three Democrats representing urbanized states — Carol Moseley-Braun of Illinois, Daniel Patrick Moynihan of New York and Bill Bradley of New Jersey — joined Republicans, except Chafee, to approve the measure, 15-5.

The amendment, by Alfonse M. D'Amato, R-N.Y., would guarantee that no state received a federal matching rate below 60 percent. In fiscal 1995, 13 states and the District of Columbia, including New York, had a 50-50 matching rate, and 10 others were below 60 percent. Chafee was upset again. "It won't decrease the federal government contribution, but it means there will be less money in these states for Medicaid that we're already spending $182 billion less for."

By Colette Fraley

09/29/95 -- SENATE Vote No. 8220: 10-10 (DEM: 9-0; REP: 1-10)

(Senate Committee on Finance

Rejected amendment by PRYOR (D-AR) to maintain current provisions that ensure quality care in nursing homes.)

---------Among 10 Members Who Voted 'NO'----------

DOLE (R-KS)

----No. 2 of 3----------

09/29/95 -- SENATE Vote No. 8221: 10-10 (DEM: 9-0; REP: 1-10)

(Senate Committee on Finance

Rejected amendment by PRYOR (D-AR) to require federal approval of state nursing home quality standards.)

---------Among 10 Members Who Voted 'NO'----------

DOLE (R-KS)

----No. 3 of 3----------

09/29/95 -- SENATE Vote No. 8223: 7-13 (DEM: 7-2; REP: 0-11)

(Senate Committee on Finance

Rejected amendment by ROCKEFELLER (D-WV) to make technical changes regarding state Medicaid payment rates to hospitals and skilled nursing facilities.)

---------Among 13 Members Who Voted 'NO'----------

DOLE (R-KS)

SENATE VOTES 517, 518, 519, 520, 521, 522, 523

	517	518	519	520	521	522	523
ALABAMA							
Shelby	N	N	N	Y	N	N	N
Heflin	Y	N	Y	Y	N	Y	N
ALASKA							
Murkowski	N	N	N	Y	N	N	N
Stevens	Y	N	N	Y	N	N	N
ARIZONA							
Kyl	N	Y	N	Y	N	N	N
McCain	N	Y	N	Y	N	N	N
ARKANSAS							
Bumpers	Y	N	Y	Y	N	Y	N
Pryor	Y	N	Y	Y	N	Y	Y
CALIFORNIA							
Boxer	Y	N	Y	Y	Y	Y	N
Feinstein	Y	N	Y	Y	?	Y	Y
COLORADO							
Brown	N	Y	N	N	N	N	N
Campbell	N	N	Y	Y	N	N	N
CONNECTICUT							
Dodd	Y	N	Y	Y	N	Y	Y
Lieberman	Y	N	Y	Y	N	Y	Y
DELAWARE							
Roth	N	Y	N	N	N	N	N
Biden	Y	N	Y	Y	N	Y	N
FLORIDA							
Mack	N	Y	N	Y	N	N	N
Graham	Y	N	Y	Y	N	Y	Y
GEORGIA							
Coverdell	N	N	N	Y	N	N	N
Nunn	Y	N	Y	Y	N	Y	Y
HAWAII							
Akaka	Y	N	Y	Y	Y	Y	Y
Inouye	Y	N	Y	Y	Y	Y	N
IDAHO							
Craig	N	N	N	Y	N	N	N
Kempthorne	N	N	N	Y	N	N	N
ILLINOIS							
Moseley-Braun	Y	N	Y	Y	N	Y	N
Simon	Y	N	Y	Y	Y	Y	Y
INDIANA							
Coats	N	Y	N	Y	N	N	N
Lugar	N	N	N	Y	N	N	N
IOWA							
Grassley	N	Y	N	Y	N	N	N
Harkin	Y	N	Y	Y	Y	Y	N
KANSAS							
Dole	N	Y	N	Y	N	N	N
Kassebaum	N	N	N	Y	N	N	N
KENTUCKY							
McConnell	N	N	N	Y	N	N	N
Ford	Y	N	Y	Y	N	Y	N
LOUISIANA							
Breaux	Y	N	Y	Y	N	Y	Y
Johnston	Y	N	Y	Y	N	Y	Y
MAINE							
Cohen	Y	N	Y	Y	N	Y	N
Snowe	Y	N	Y	Y	Y	Y	N
MARYLAND							
Mikulski	Y	N	Y	Y	Y	Y	N
Sarbanes	Y	N	Y	Y	Y	Y	N
MASSACHUSETTS							
Kennedy	Y	N	Y	Y	Y	Y	N
Kerry	Y	N	Y	Y	Y	Y	N
MICHIGAN							
Abraham	N	N	N	Y	N	N	N
Levin	Y	N	Y	Y	Y	Y	Y
MINNESOTA							
Grams	N	Y	N	N	N	N	N
Wellstone	Y	N	Y	Y	Y	Y	N
MISSISSIPPI							
Cochran	N	Y	N	Y	N	N	N
Lott	N	Y	N	Y	N	N	N
MISSOURI							
Ashcroft	N	Y	N	Y	N	N	N
Bond	N	N	N	Y	N	N	N
MONTANA							
Burns	N	N	N	Y	N	N	N
Baucus	N	N	Y	Y	N	Y	N
NEBRASKA							
Exon	Y	N	Y	Y	Y	Y	N
Kerrey	Y	N	Y	Y	Y	Y	Y
NEVADA							
Bryan	Y	N	Y	Y	Y	Y	N
Reid	Y	N	Y	Y	Y	Y	N
NEW HAMPSHIRE							
Gregg	N	N	N	Y	N	Y	N
Smith	N	Y	N	Y	N	N	N
NEW JERSEY							
Bradley	Y	N	Y	Y	Y	Y	Y
Lautenberg	Y	N	Y	Y	N	Y	N
NEW MEXICO							
Domenici	N	N	N	Y	N	N	N
Bingaman	Y	N	Y	Y	N	Y	N
NEW YORK							
D'Amato	N	N	N	Y	N	N	N
Moynihan	N	N	Y	Y	Y	Y	Y
NORTH CAROLINA							
Faircloth	N	Y	N	Y	N	N	N
Helms	N	Y	N	N	N	N	N
NORTH DAKOTA							
Conrad	Y	N	Y	Y	Y	Y	Y
Dorgan	Y	N	Y	Y	N	Y	N
OHIO							
DeWine	N	N	N	Y	N	Y	N
Glenn	Y	N	Y	Y	N	Y	Y
OKLAHOMA							
Inhofe	N	Y	N	Y	N	N	N
Nickles	N	Y	N	N	N	N	N
OREGON							
Hatfield	N	N	N	Y	N	N	N
Vacancy							
PENNSYLVANIA							
Santorum	N	Y	N	Y	N	N	N
Specter	N	N	Y	Y	N	Y	N
RHODE ISLAND							
Chafee	N	N	N	Y	N	N	N
Pell	Y	N	Y	Y	Y	Y	Y
SOUTH CAROLINA							
Thurmond	N	N	N	Y	N	N	N
Hollings	Y	N	Y	Y	Y	Y	N
SOUTH DAKOTA							
Pressler	N	N	N	Y	N	N	N
Daschle	Y	N	Y	Y	N	Y	N
TENNESSEE							
Frist	N	N	N	Y	N	N	N
Thompson	N	Y	N	Y	N	N	N
TEXAS							
Gramm	N	Y	N	Y	N	N	N
Hutchison	N	Y	N	Y	N	N	N
UTAH							
Bennett	N	Y	N	Y	N	N	N
Hatch	N	Y	N	Y	N	N	N
VERMONT							
Jeffords	N	N	Y	Y	N	N	N
Leahy	Y	N	Y	Y	Y	Y	Y
VIRGINIA							
Warner	N	N	N	Y	N	N	N
Robb	Y	N	Y	Y	N	Y	Y
WASHINGTON							
Gorton	N	N	N	Y	N	N	N
Murray	Y	N	Y	Y	Y	Y	N
WEST VIRGINIA							
Byrd	Y	N	Y	Y	N	Y	N
Rockefeller	Y	N	Y	Y	N	Y	N
WISCONSIN							
Feingold	Y	N	Y	Y	Y	Y	N
Kohl	Y	N	Y	Y	Y	Y	N
WYOMING							
Simpson	N	N	N	Y	N	N	N
Thomas	N	N	N	Y	N	N	N

KEY

- Y Voted for (yea).
- # Paired for.
- + Announced for.
- N Voted against (nay).
- X Paired against.
- – Announced against.
- P Voted "present."
- C Voted "present" to avoid possible conflict of interest.
- ? Did not vote or otherwise make a position known.

Democrats Republicans

ND Northern Democrats SD Southern Democrats Southern states - Ala., Ark., Fla., Ga., Ky., La., Miss., N.C., Okla., S.C., Tenn., Texas, Va.

517. S 1357. Fiscal 1996 Budget-Reconciliation/Overseas Tax Break. Exon, D-Neb., motion to waive the Budget Act with respect to the Domenici, R-N.M., point of order against the Dorgan, D-N.D., amendment for violating the Budget Act. The Dorgan amendment would have eliminated a provision of existing law that allows companies that relocate plants overseas to defer taxes on profits derived from products shipped back to the United States. Motion rejected 47-52: R 3-50; D 44-2 (ND 34-2, SD 10-0), Oct. 26, 1995. A three-fifths majority vote (60) of the total Senate is required to waive the Budget Act. (Subsequently, the chair upheld the Domenici point of order, and the Dorgan amendment fell.) *(Story, p. 3358)*

518. S 1357. Fiscal 1996 Budget-Reconciliation/Medicaid Mandates. Gramm, R-Texas, amendment to provide states with more control over Medicaid implementation by revoking mandates in the bill that pregnant women, children under 12 and disabled people be covered. Rejected 23-76: R 23-30; D 0-46 (ND 0-36, SD 0-10), Oct. 27, 1995. *(Story, p. 3380)*

519. S 1357. Fiscal 1996 Budget-Reconciliation/Minimum Wage. Exon, D-Neb., motion to waive the Budget Act with respect to the Domenici, R-N.M., point of order against the Kerry, D-Mass., amendment for violating the Budget Act. The Kerry amendment would have expressed the sense of the Senate that an increase in the federal minimum wage should be debated and voted upon before the end of this session of Congress. Motion rejected 51-48: R 5-48; D 46-0 (ND 36-0, SD 10-0), Oct. 27, 1995. A three-fifths majority vote (60) of the total Senate is required to waive the Budget Act. (Subsequently, the chair upheld the Domenici point of order, and the Kerry amendment fell.) *(Story, p. 3358)*

520. S 1357. Fiscal 1996 Budget-Reconciliation/Employee Pensions. Kennedy, D-Mass., amendment to strike the bill's provision that would have allowed corporations to use excess employee pension assets for other purposes. Adopted 94-5: R 48-5; D 46-0 (ND 36-0, SD 10-0), Oct. 27, 1995. *(Story, p. 3358)*

521. S 1357. Fiscal 1996 Budget-Reconciliation/Corporate Tax Deductions. Exon, D-Neb., motion to waive the Budget Act with respect to the Domenici, R-N.M., point of order against the Wellstone, D-Minn., amendment for violating the Budget Act. The Wellstone amendment would have eliminated three existing law tax preferences: the deduction for intangible oil and gas drilling and development costs, the foreign-earned income exclusion and the Puerto Rico and possessions tax credit. It also would have struck a provision repealing the corporate alternative minimum tax. Motion rejected 25-73: R 1-52; D 24-21 (ND 23-12, SD 1-9), Oct. 27, 1995. A three-fifths majority vote (60) of the total Senate is required to waive the Budget Act. (Subsequently, the chair upheld the Domenici point of order, and the Wellstone amendment fell.) *(Story, p. 3358)*

522. S 1357. Fiscal 1996 Budget-Reconciliation/Nursing Home Standards. Pryor, D-Ark., amendment to reinstate 1987 federal standards for nursing homes in the Medicaid program. Adopted 51-48: R 5-48; D 46-0 (ND 36-0, SD 10-0), Oct. 27, 1995. *(Story, p. 3380)*

523. S 1357. Fiscal 1996 Budget-Reconciliation/Comprehensive Substitute. Simon, D-Ill., comprehensive substitute amendment that would not have granted a tax cut and would have reduced the Consumer Price Index by 0.5 percentage points when calculating cost of living adjustments in all indexed programs and inflation adjustments in the tax code. It would have imposed smaller reductions than the bill in projected spending for Medicare, Medicaid, welfare, farm subsidies and veterans and no reductions in student loan spending. Rejected 19-80: R 0-53; D 19-27 (ND 15-23, SD 6-4), Oct. 27, 1995. *(Story, p. 3358)*

Aid for the World's Poorest

822

The new Republican majority in Congress wants to eliminate government services that private markets could also provide. Yet it has aimed its budget knife at a valuable program — economic aid to the world's poorest countries — that could not possibly survive without Federal funds. Drastic cuts approved by the House and Senate threaten to grind dreadfully poor people into deeper poverty.

Under President Bush's leadership, the United States committed itself to contributing about $1.3 billion next year to the International Development Association, an affiliate of the World Bank that provides very-low-interest loans to poor countries. As part of its deficit reduction program, the House and Senate want to renege on that commitment and reduce the contribution to between $577 million, the House figure, and $775 million, the Senate's figure.

Neither figure makes fiscal or ethical sense. The I.D.A. loan program is cost-effective. Every dollar in American contributions leads to $4 or $5 more in contributions from other industrialized countries. To save a few hundred million out of a $10 billion-plus foreign aid budget, Congress would trigger a $3 billion reduction in I.D.A. loans.

The loan program is also politically effective. By inviting poor countries to open their economies to trade and adopt market reforms, I.D.A. loans are a cheap way for Congress to spread capitalism. The program's multilateral nature insulates recipient countries from pressures to warp their economic programs to suit the narrow export interests of individual donors. I.D.A. programs worked well in Korea, Thailand, Turkey and Indonesia. They are working well in Ghana and Bolivia.

Critics of the I.D.A. say that third-world countries would become more prosperous more rapidly if they relied more on private capital and far less on World Bank handouts. This criticism applied, at least until recently, to World Bank loans for dams and other infrastructure projects. As the new president of the World Bank concedes, private capital markets are willing and able to extend such loans. But private investors will not bail out sub-Saharan Africa and other economic disasters. Over 70 percent of private lending to developing nations goes to fewer than a dozen countries. Sub-Saharan Africa claims only 2 percent.

The I.D.A., not private capital, fights the spread of AIDS. The I.D.A. helps pay for schools. The I.D.A. finances women's health and childhood nutrition programs. The World Bank has shifted its priorities from investing in concrete to investing in people. No one else can take on this role. Do American taxpayers really prefer to save themselves about $2 a year rather than leading the world to help those eking out an existence on less than $2 a day?

Keep Nursing Home Standards

In its ongoing effort to give more power to the states, Congress wants to scrap Federal standards for quality of care in nursing homes. Given past abuses that the standards were designed to guard against, and the future need for even more nursing homes, this is an invitation to trouble. There may well be room to revise the Federal standards to make them simpler and less costly. But with vast changes occurring in the health-care system, the need for Federal standards to insure minimal quality is greater than ever.

It was only about 20 years ago that a series of media exposés, state government reports and legislative hearings revealed widespread abuses in nursing homes, from unsanitary conditions and malnutrition to overmedication, neglect and sexual and physical abuse. In 1987 Congress passed the Nursing Home Reform Act, which set national standards for staff training, individual assessments of patients and protection of basic patient rights, including the right not to be physically restrained, the right to voice grievances and the right to be notified before transfer or discharge.

The law has begun to make a difference. In the mid-1980's, about 40 percent of nursing home patients were physically restrained; now, less than 20 percent are. Improved care has also led to savings on medications and unnecessary hospitalizations.

Now Congress is trying to reshape the health-care system by sharply cutting Medicaid, which provides about 60 percent of nursing home funding, and shifting the money to state control through block grants. Congress wants to cut $182 billion out of Medicaid over seven years, which would likely lead to reduced reimbursement rates for nursing home services and facilities.

Many states are insisting that, if they are to assume control of a reduced pot of money, they must have the power to set their own nursing home standards to eliminate needless costs. House and Senate committees have separately passed bills that would give states primary responsibility for setting quality-of-care standards for nursing homes, with Washington offering only general categories to be covered. Nursing home providers could lean on states to cut back on standards that they will not be able to live up to for lack of funds.

Nearly two million people now reside in nursing homes. But with an estimated 43 percent of people over 65 years of age likely to spend some time in a nursing home, and an aging baby-boomer population, the demand for these facilities will only grow. To abandon national standards now may invite a return to the nursing home disasters of the past.

NYT 10/25/96

11

Today's debate: REGULATING NURSING HOMES

Dropping federal regs is an invitation to tragedy

OUR VIEW **Everyone has heard the horror stories about the bad old days in nursing homes. Why go back to them?**

Eight years ago, after 15 years of argument, Republicans and Democrats in Congress got together to correct a patchwork enforcement. They passed a law to stop nursing home operators from abusing or neglecting the elderly.

They had ample incentive. Reports of residents lying in excrement, dehydrated, malnourished or overmedicated were commonplace. State regulation was a failure. Public outrage was high.

It should be just as high now. The regulations created by that law are aimed to be weakened or stripped away — victims of an ideological crusade to curb federal authority, good or bad.

Control would return to the states, despite their history of failure.

Those pushing the new plan, House and Senate Republicans, claim their legislation is not a repeal. They say the law is ineffective. And they say it's hugely expensive.

All three claims are fiction.

Not a repeal? Under existing regulations violators are subject to financial penalties, decertification, denial of payments or takeover by temporary managers if they violate health and safety standards. Proposed changes would weaken enforcement by states that are vulnerable to powerful lobby groups. The Senate wouldn't require inspections, nurse staffing or protections against restraints or medication.

Not effective? A government study of 269 homes in 10 states cited impressive results. The study found hospitalization of nursing home residents down 25%, use of restraints down 25%, and detection and punishment of abuse increasing.

Too expensive? Quite the contrary. A study of 9,000 Georgia nursing-home residents reports a monthly $76,738 savings by curtailing unnecessary drug therapy, thanks to the regulations. And that's not an isolated case. The National Citizens' Coalition for Nursing Home Reform, a resident advocacy group, says the changes saved billions in costs attributed to poor treatment.

Even the American Health Care Association, representing nursing home owners, says costs have not been a problem.

In fact, nursing home owners signed onto the legislation when it passed in 1987. So did consumer groups. So did state officials. So did the Institute of Medicine, research arm of the National Academy of Sciences, whose 1986 report on nursing home conditions led to the reform.

No credible evidence exists to justify reversing course. If changes are necessary they should be based on the same kind of thorough study and public hearings that produced the original regulations.

Seniors are in nursing homes because of advanced age, mental or physical disabilities, to recover from hospitalization or because they have no one to care for them. They are frail and vulnerable. They deserve all the protection the public can provide.

Stop the scare stories

OPPOSING VIEW **The media's going to torture grandmas. The federal rules just aren't needed.**

By Thomas J. Bliley Jr.

The latest, most preposterous "Medicare" horror story is that our plans to fix Medicaid will allow nursing homes to fire their nurses, tie patients to their beds and sedate them to keep them quiet.

Let's turn on the lights. There's no boogeyman hiding in this closet.

A key component of our "Medigrant" bill is a "Nursing Home Resident Bill of Rights" that includes the right "to be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion." Compliance is mandatory, and states are empowered to shut down those facilities in violation.

Rather than weaken protections for nursing home patients, our bill strengthens them by ending an eight-year experiment with "federalization" of standards that, by all accounts has been a total failure — a bureaucratic nightmare that is confusing, expensive and counterproductive.

Take the federal requirement that states independently assess the need for nursing home placement. After separately assessing some 81,500 patients placed in nursing homes in 1989 — at a cost of $28.5 million — California concluded that only five placements were inappropriate. That works out to $5.7 million per misplacement. What's more, the federal requirement only duplicated existing California procedures that would have revised those patients' placements anyway.

As governor of Arkansas, even Bill Clinton joined the governors of 47 other states in 1989 to criticize the nursing home regulations as inflexible federal "micromanagement." Our bill does exactly what Clinton and the other governors recommended: require the states (which enforce the rules anyway) to enact their own standards under strict federal guidelines.

Under our proposal, no state will see a penny of federal "Medigrant" assistance unless it first enacts rigorous new nursing home standards including: safety; cleanliness and quality; staffing and employee training; protection of patient records, property and legal rights; and patient grievance procedures.

Nobody wants to go back to the days when nursing homes were unsafe and unsanitary, but we don't need a massive and expensive bureaucracy to protect patients. Let's recognize that all wisdom and compassion does *not* reside in Washington. The states are better suited to do this job.

Rep. Thomas J. Bliley Jr., R-Va., is chairman of the House Commerce Committee.

USAT 9.27.95

SENATE VOTES 570, 571, 572, 573, 574, 575, 576

	570	571	572	573	574	575	576
ALABAMA							
Shelby	Y	Y	Y	Y	Y	N	Y
Heflin	Y	N	Y	N	Y	N	Y
ALASKA							
Murkowski	Y	Y	Y	Y	Y	N	Y
Stevens	Y	Y	Y	Y	Y	Y	Y
ARIZONA							
Kyl	Y	Y	Y	Y	Y	N	Y
McCain	Y	Y	Y	Y	Y	N	Y
ARKANSAS							
Bumpers	Y	N	Y	N	N	Y	N
Pryor	Y	N	Y	N	N	Y	N
CALIFORNIA							
Boxer	Y	N	Y	N	N	Y	N
Feinstein	Y	N	Y	N	Y	Y	N
COLORADO							
Brown	Y	Y	Y	Y	Y	Y	N
Campbell	Y	Y	Y	Y	Y	Y	Y
CONNECTICUT							
Dodd	Y	N	Y	N	N	Y	Y
Lieberman	Y	N	Y	N	N	Y	Y
DELAWARE							
Roth	Y	Y	Y	Y	Y	Y	Y
Biden	Y	N	Y	N	N	Y	N
FLORIDA							
Mack	Y	Y	Y	Y	Y	N	Y
Graham	Y	N	Y	N	N	Y	Y
GEORGIA							
Coverdell	Y	Y	Y	Y	Y	N	Y
Nunn	Y	Y	Y	N	Y	Y	N
HAWAII							
Akaka	Y	N	Y	N	N	Y	N
Inouye	Y	N	Y	N	Y	Y	Y
IDAHO							
Craig	Y	Y	Y	Y	Y	N	Y
Kempthorne	Y	Y	Y	Y	Y	N	Y
ILLINOIS							
Moseley-Braun	Y	N	Y	N	N	Y	N
Simon	Y	N	Y	N	N	Y	N
INDIANA							
Coats	Y	Y	Y	Y	Y	N	Y
Lugar	Y	?	?	?	Y	?	?
IOWA							
Grassley	Y	Y	Y	Y	Y	N	Y
Harkin	Y	N	Y	N	N	Y	N
KANSAS							
Dole	Y	Y	Y	Y	Y	N	Y
Kassebaum	Y	Y	Y	Y	Y	Y	Y
KENTUCKY							
McConnell	Y	Y	Y	Y	Y	N	Y
Ford	Y	N	Y	N	Y	N	Y
LOUISIANA							
Breaux	Y	N	Y	N	Y	N	Y
Johnston	Y	N	Y	N	Y	N	Y
MAINE							
Cohen	Y	Y	Y	N	Y	Y	Y
Snowe	Y	Y	Y	N	Y	Y	N
MARYLAND							
Mikulski	Y	N	Y	N	N	Y	N
Sarbanes	Y	N	Y	N	N	Y	N
MASSACHUSETTS							
Kennedy	Y	N	Y	N	Y	Y	N
Kerry	Y	N	Y	N	N	Y	N
MICHIGAN							
Abraham	Y	Y	Y	Y	Y	N	Y
Levin	Y	N	Y	N	N	Y	N
MINNESOTA							
Grams	Y	Y	Y	Y	Y	N	Y
Wellstone	Y	N	Y	N	N	Y	N
MISSISSIPPI							
Cochran	Y	Y	Y	Y	Y	N	Y
Lott	Y	Y	Y	Y	Y	N	Y
MISSOURI							
Ashcroft	N	Y	Y	Y	Y	N	Y
Bond	Y	Y	Y	Y	Y	N	Y
MONTANA							
Burns	Y	Y	Y	Y	Y	N	Y
Baucus	Y	N	Y	N	Y	Y	N
NEBRASKA							
Exon	Y	N	Y	N	N	Y	N
Kerrey	Y	N	Y	N	N	Y	Y
NEVADA							
Bryan	Y	N	Y	N	Y	Y	N
Reid	Y	N	Y	N	N	Y	Y
NEW HAMPSHIRE							570
Gregg *	Y						
Smith	Y						
NEW JERSEY							
Bradley *	Y						
Lautenberg	Y						
NEW MEXICO							
Domenici	Y						
Bingaman	Y						
NEW YORK							
D'Amato	Y						
Moynihan	Y						
NORTH CAROLINA							
Faircloth	Y						
Helms	Y						
NORTH DAKOTA							
Conrad	Y						
Dorgan	Y						
OHIO							
DeWine	Y						
Glenn	Y						
OKLAHOMA							
Inhofe	Y						
Nickles	Y						
OREGON							
Hatfield	Y	Y	Y	Y	Y	N	Y
Vacancy							
PENNSYLVANIA							
Santorum	Y	Y	Y	Y	Y	N	Y
Specter	Y	N	Y	N	Y	Y	Y
RHODE ISLAND							
Chafee	Y	Y	Y	Y	Y	Y	Y
Pell	Y	N	Y	N	Y	Y	N
SOUTH CAROLINA							
Thurmond	Y	Y	Y	Y	Y	N	Y
Hollings	Y	N	Y	N	Y	Y	N
SOUTH DAKOTA							
Pressler	Y	Y	Y	Y	Y	N	Y
Daschle	Y	N	Y	N	Y	Y	Y
TENNESSEE							
Frist	Y	Y	Y	Y	Y	N	Y
Thompson	Y	Y	Y	Y	Y	N	Y
Jeffords	?	?	?	?	?	?	?
Leahy	Y	N	Y	N	N	Y	Y
VIRGINIA							
Warner	Y	Y	Y	Y	Y	N	Y
Robb	Y	N	Y	N	Y	Y	N
WASHINGTON							
Gorton	Y	Y	Y	Y	N	N	Y
Murray	Y	N	Y	N	N	Y	N
WEST VIRGINIA							
Byrd	Y	N	Y	N	N	Y	Y
Rockefeller	Y	N	Y	N	N	Y	N
WISCONSIN							
Feingold	Y	N	Y	N	N	Y	N
Kohl	Y	N	Y	N	N	Y	Y
WYOMING							
Simpson	Y	Y	Y	Y	Y	Y	Y
Thomas	Y	Y	Y	Y	Y	N	Y

ND Northern Democrats SD Southern Democrats Southern states - Ala., Ark., Fla., Ga., Ky., La., Miss., N.C., Okla., S.C., Tenn., Texas, Va.

570. HR 2491. Fiscal 1996 Budget Reconciliation/Nursing Home Standards. Pryor, D-Ark., motion to instruct the Senate conferees to insist on maintaining the 1987 Budget Reconciliation Act's federal standards for those nursing homes under the Medicare and Medicaid programs and not to allow states to receive a waiver of those standards. Motion agreed to 95-1: R 49-1; D 46-0 (ND 36-0, SD 10-0), Nov. 13, 1995. *(Story, p. 3503)*

571. HR 2491. Fiscal 1996 Budget Reconciliation/Medicare Reductions. Domenici, R-N.M., motion to table (kill) the Rockefeller, D-W.Va., motion to instruct the Senate conferees not to agree to any Medicare reductions beyond the $89 billion needed to maintain solvency of the Medicare trust fund through 2006 and to ensure deficit neutrality by reducing tax cuts for upper-income taxpayers and corporations. Motion agreed to 51-46: R 50-1; D 1-45 (ND 0-36, SD 1-9), Nov. 13, 1995. *(Story, p. 3503)*

572. HR 2491. Fiscal 1996 Budget Reconciliation/Social Security. Graham, D-Fla., motion to instruct the Senate conferees to delete the provisions that use $12 billion in Social Security cuts as an offset for on-budget spending. Motion agreed to 97-0: R 51-0; D 46-0 (ND 36-0, SD 10-0), Nov. 13, 1995. *(Story, p. 3503)*

573. HR 2491. Fiscal 1996 Budget Reconciliation/Medicaid and Medicare Provisions. Domenici, R-N.M., motion to table (kill) the Kennedy, D-Mass., motion to instruct the Senate conferees to restore drug discounts to state Medicaid programs and public health facilities; to retain provisions against health care provider fraud and abuse; to retain current federal nursing home standards; and to remove provisions that provide greater or lesser Medicaid spending in states based upon the votes needed for passage. Motion rejected 48-49: R 48-3; D 0-46 (ND 0-36, SD 0-10), Nov. 13, 1995. (Subsequently, the Kennedy motion was adopted by voice vote.) *(Story, p. 3503)*

574. S 395. Alaska Power Administration Sale/Conference Report. Adoption of the conference report on the bill to authorize sale of two federal hydroelectric dams in Alaska to state and local utilities and subsequently terminate the Alaska Power Administration, lift the 22-year-old ban on export of crude oil produced on Alaska's North Slope, and waive some federal royalty payments for oil and gas companies involved in deep-water drilling in the Gulf of Mexico. Adopted (thus cleared for the president) 69-29: R 51-2; D 18-27 (ND 11-24, SD 7-3), Nov. 14, 1995. A "yea" was a vote in support of the president's position. *(Story, p. 3534)*

575. HR 1868. Fiscal 1996 Foreign Operations Appropriations/Family Planning Assistance. Hatfield, R-Ore., motion to table (kill) the underlying Senate amendment, which the House amended to prohibit family planning assistance to foreign nongovernmental organizations that provide abortion or abortion counseling. The House language would also ban aid for the United Nations Population Fund unless it shut down operations in China by March 1, 1996. Motion agreed to 54-44: R 12-40; D 42-4 (ND 36-0, SD 6-4), Nov. 15, 1995. *(Story, p. 3550)*

576. HR 2020. Fiscal 1996 Treasury-Postal Appropriations/Conference Report. Adoption of the conference report to provide $23,163,754,000 for the Treasury Department, the U.S. Postal Service, the Executive Office of the President and certain independent agencies in fiscal 1996. The conference report provides $337,193,000 less than the $23,500,947,000 provided in fiscal 1995 and $1,732,734,000 less than the $24,896,488,000 requested by the administration. Adopted (thus cleared for the president) 63-35: R 49-2; D 14-33 (ND 9-27, SD 5-6), Nov. 15, 1995. *(Story, p. 3550)*

* *After Vote 570, Sen. Bill Bradley, D-N.J., was granted unanimous consent to change his vote from "yea" to "nay." The Congressional Record for Nov. 15 should have reflected the change, but it did not.*

Nursing homes

BILLS WOULD RELAX FEDERAL CONTROLS ON NURSING HOMES

REPEAL OF '87 LAW SOUGHT

G.O.P. Favors Shift of Power to States, but Critics See Setback in Patient Care

By ROBERT PEAR

WASHINGTON, Oct. 6 — Budget bills drafted by both houses of Congress would repeal tough Federal standards for the quality of care in nursing homes, even though the inquiry says it has not sought wholesale elimination of the standards.

Since these standards were adopted in 1987, nursing homes have reduced the use of tranquilizers, sedatives and other drugs, and the use of physical restraints has dropped sharply, Linda Keegan, vice president of the American Health Care Association, a trade group for nursing homes, said today that fewer than 20 percent of nursing home residents were physically restrained, compared with more than 40 percent in the mid-1980's.

The Republicans are promoting these proposals as part of an overall effort to shift power and responsibility from the Federal Government to the states. Under the proposals, states would set and enforce their own standards, but they could be much less stringent than those now embodied in Federal law.

The Republican proposals come at a time when the need for nursing home care is rising rapidly. More people are living past the age of 80, and nursing homes are caring for sicker patients, providing services previously found only in hospitals.

The current standards result, in a curious way, from President Ronald Reagan's effort to relax Federal rules for nursing homes in the early 1980's. His effort provoked a bipartisan outcry. Under pressure from Congress, the Reagan Administration commissioned a study by the National Academy of Sciences.

The Academy found "shockingly deficient care" in some nursing homes and concluded that "a stronger Federal role is essential." Congress responded in 1987 by passing a law that specifies, in great detail, what nursing homes must do to protect patients' rights and to enhance "the quality of life of each resident."

Even before Congress took action, some governors were trying to relax regulation of nursing homes. Gov. George E. Pataki of New York, a Republican, said in April that he intended to cut back "onerous state

Continued on Page 8, Column 1

Continued From Page 1

regulations" of nursing homes, including requirements for the review of patients' drug use and standards for nursing home administrators. Mr. Pataki said the changes would reduce health care costs without damaging the quality of care.

Representative Thomas J. Bliley Jr., the Virginia Republican who is chairman of the Commerce Committee, said Congress intended to end "an eight-year experiment with federalization of nursing home standards." By all accounts, he said, "Washington-run nursing home regulation has been a bureaucratic nightmare: confusing, expensive and counterproductive."

But Charlene A. Harrington, who was a member of the National Academy of Sciences panel, said the Republican proposal to repeal the 1987 law was appalling.

"Everything we worked on for 20 years is about to go down the drain," said Ms. Harrington, a professor at the School of Nursing at the University of California in San Francisco. "Republicans say states will maintain standards for the quality of care. But states don't have the money. The money is being cut back, and states will not pay for other regulation or the nursing home services needed to comply with these regulations. States will lower their nursing home reimbursement rates, which are already outrageously low. Quality of care will deteriorate."

Paul R. Willging, executive vice president of the American Health Care Association, said, "We never took a position that the 1987 law should be repealed." But nursing home operators say they cannot increase the quality of care if the Government is unwilling to pay for it.

Medicaid helps finance care for two-thirds of the 1.5 million people in nursing homes. The homes must meet Federal standards as a condition of getting any Federal money. Americans are expected to spend $88 billion on nursing-home care this year. Medicaid, for low-income people, accounts for 39 percent of the spending. Medicare, the Federal health insurance program for the elderly and disabled, accounts for 12 percent.

Republicans say that detailed Federal standards are inconsistent with their plans to turn Medicaid over to the states. The House Commerce Committee and the Senate Finance Committee have voted to dismantle the current Medicaid program and give each state a fixed amount of Federal money, or block grant, to finance health care for the poor. States would be free to decide who gets what benefits, with few Federal standards or requirements.

But Catherine Hawes, an expert on aging who was a member of the National Academy of Sciences panel, said it would be a big mistake for Congress to repeal the 1987 law. "It would be like going back to the bad old days, the 1960's and 70's," she said. "In those days, we got stronger standards only after a scandal — if, for example, 10 nursing home residents died in a fire or 20 died of salmonella poisoning."

Families can easily exhaust their assets on nursing home care because the cost averages more than $100 a day. Federal law protects some of the income and assets of spouses of nursing home residents. Democrats say such Federal protections would be eliminated by the Republican proposals.

The Democrats say the Republican proposals would also allow states to require adult children to contribute to the cost of nursing home care for their parents. Until now, Federal authorities have prohibited states from trying to enforce such "family responsibility."

Senate Republicans told their Democratic colleagues that there was no need to worry about eliminating quality standards under Medicaid because, in effect, standards would remain in place under Medicare. But when House Republicans disclosed the text of their Medicare proposals on Sept. 29, it became evident that they would abolish the detailed Medicare standards as well.

Vincent Mor, director of the Center for Gerontology and Health Care Research at Brown University, said the 1987 law was already paying off. It has slowed the deterioration of nursing home residents and reduced their rate of hospitalization, saving $3 billion a year for the Government, he said.

The Republican proposals would require states to set standards for nursing homes in some broadly defined areas. But the Federal Government would not prescribe the content of these standards.

The Republican bills say, for example, that states must establish "qualifications for staff sufficient to provide adequate care." They would eliminate provisions of current law that prescribe training for nurse's aides and require nursing homes to have licensed nurses on duty around the clock, with a registered nurse on duty at least eight hours a day.

The nursing home industry worked with consumer groups to win passage of the 1987 law. An important provision says states must adjust their Medicaid payments to nursing homes to "take into account the costs of complying" with the Federal standards. Citing that guarantee, nursing homes have successfully sued many states, forcing them to increase payments for Medicaid patients.

But as part of their plan to balance the budget, Republicans in Congress have decided to cut projected spending on Medicaid by $182 billion, or 19 percent, over the next seven years.

Federal standards on patient care would give way to those set by states.

Ms. Keegan of American Health Care Association said: "In the event that Congress cuts $182 billion and turns Medicaid over to the states, the states will clearly need flexibility in setting standards. Federal mandates without adequate Federal money would be a disaster."

In January, in a policy statement on Medicaid, the National Governors' Association complained that the 1987 law "puts Congress in the position of micromanaging the program" for nursing homes.

But Dr. Rebecca D. Efird, medical director of the Johns Hopkins Geriatrics Center in Baltimore, said: "If the Federal Government dismantles Medicaid," she said, "some states will drastically reduce the amount of money nursing homes get for each day of care. A state that pays only a pittance cannot turn around and tell providers they must provide a standard of care that would cost much more."

State officials who inspect nursing homes see no need to repeal the 1987 law. "I'd be very apprehensive about what might happen," said Ellen T. Reap, director of the Delaware Office of Health Facility Licensing and Certification, who is also president of the National Association of Health Facility Survey Agencies. "It would be degrading to residents, they would deteriorate unnecessarily, if this law was repealed."

VLS

NYT 10/7/95

SENATE VOTES 126, 127, 128, 129, 130, 131, 132

	126	127	128	129	130	131	132
ALABAMA							
Shelby	Y	Y	N	Y	Y	Y	Y
Heflin	N	Y	Y	N	N	Y	Y
ALASKA							
Murkowski	Y	Y	N	Y	Y	Y	Y
Stevens	Y	Y	Y	N	Y	Y	Y
ARIZONA							
Kyl	Y	N	N	Y	Y	Y	Y
McCain	Y	Y	N	Y	Y	Y	Y
ARKANSAS							
Bumpers	N	Y	Y	N	N	Y	Y
Pryor	N	Y	Y	N	N	Y	Y
CALIFORNIA							
Boxer	N	Y	Y	N	N	Y	Y
Feinstein	N	Y	Y	N	N	Y	Y
COLORADO							
Brown	Y	N	N	Y	Y	Y	N
Campbell	N	Y	N	Y	Y	Y	Y
CONNECTICUT							
Dodd	N	Y	Y	N	N	Y	Y
Lieberman	N	Y	Y	N	N	Y	Y
DELAWARE							
Roth	Y	Y	N	N	Y	Y	Y
Biden	N	Y	Y	N	N	Y	Y
FLORIDA							
Mack	Y	N	N	Y	Y	Y	Y
Graham	N	Y	Y	N	N	Y	Y
GEORGIA							
Coverdell	Y	N	N	Y	Y	Y	Y
Nunn	Y	Y	Y	N	N	Y	Y
HAWAII							
Akaka	N	Y	Y	N	N	Y	Y
Inouye	N	Y	Y	N	N	Y	Y
IDAHO							
Craig	Y	Y	N	N	Y	Y	Y
Kempthorne	Y	Y	N	N	Y	Y	Y
ILLINOIS							
Moseley-Braun	N	Y	Y	N	N	Y	Y
Simon	N	Y	Y	N	N	Y	Y
INDIANA							
Coats	Y	Y	N	N	Y	Y	Y
Lugar	Y	Y	Y	N	Y	Y	Y
IOWA							
Grassley	Y	Y	N	Y	Y	Y	Y
Harkin	N	Y	Y	N	N	Y	Y
KANSAS							
Dole	Y	Y	N	Y	Y	Y	Y
Kassebaum	Y	N	Y	Y	Y	Y	Y
KENTUCKY							
McConnell	Y	Y	N	Y	Y	Y	Y
Ford	N	Y	Y	N	N	Y	Y
LOUISIANA							
Breaux	N	Y	Y	N	N	Y	Y
Johnston	N	Y	Y	N	N	Y	Y
MAINE							
Cohen	Y	Y	Y	N	N	Y	Y
Snowe	N	Y	Y	N	N	Y	Y
MARYLAND							
Mikulski	N	Y	Y	N	N	Y	Y
Sarbanes	N	Y	Y	N	N	Y	Y
MASSACHUSETTS							
Kennedy	N	Y	Y	N	N	Y	Y
Kerry	N	Y	Y	N	N	Y	Y
MICHIGAN							
Abraham	Y	Y	N	N	Y	Y	Y
Levin	N	Y	Y	N	N	Y	Y
MINNESOTA							
Grams	Y	Y	N	Y	Y	Y	Y
Wellstone	N	Y	Y	N	N	Y	Y
MISSISSIPPI							
Cochran	Y	Y	N	Y	Y	Y	Y
Lott	Y	Y	N	Y	Y	Y	Y
MISSOURI							
Ashcroft	Y	Y	N	Y	Y	Y	Y
Bond	Y	Y	N	N	Y	Y	Y
MONTANA							
Burns	Y	Y	N	N	Y	Y	Y
Baucus	N	Y	Y	N	N	Y	Y
NEBRASKA							
Exon	N	Y	Y	N	N	Y	Y
Kerrey	Y	Y	Y	N	N	Y	Y
NEVADA							
Bryan	N	Y	Y	N	N	Y	Y
Reid	N	Y	Y	N	N	Y	Y
NEW HAMPSHIRE							
Gregg	Y	Y	Y	N	Y	Y	N
Smith	Y	Y	N	N	Y	Y	Y
NEW JERSEY							
Bradley	N	Y	Y	N	N	Y	Y
Lautenberg	N	Y	Y	N	N	Y	Y
NEW MEXICO							
Domenici	Y	Y	Y	N	Y	Y	Y
Bingaman	N	Y	Y	N	N	Y	Y
NEW YORK							
D'Amato	Y	Y	N	N	Y	Y	Y
Moynihan	N	Y	Y	N	N	Y	Y
NORTH CAROLINA							
Faircloth	Y	N	N	Y	Y	Y	N
Helms	Y	N	N	Y	Y	Y	N
NORTH DAKOTA							
Conrad	N	Y	Y	N	N	Y	Y
Dorgan	N	Y	Y	N	N	Y	Y
OHIO							
DeWine	Y	Y	Y	N	Y	Y	Y
Glenn	N	Y	Y	N	N	Y	Y
OKLAHOMA							
Inhofe	Y	N	N	Y	Y	Y	Y
Nickles	Y	N	N	Y	Y	Y	Y
OREGON							
Hatfield	Y	Y	Y	N	Y	Y	Y
Wyden	N	Y	N	N	N	Y	Y
PENNSYLVANIA							
Santorum	Y	Y	N	N	Y	Y	Y
Specter	N	Y	Y	N	Y	Y	Y
RHODE ISLAND							
Chafee	Y	Y	Y	N	N	Y	Y
Pell	N	Y	Y	N	N	Y	Y
SOUTH CAROLINA							
Thurmond	Y	Y	N	Y	Y	Y	Y
Hollings	N	Y	Y	N	N	Y	Y
SOUTH DAKOTA							
Pressler	Y	Y	N	N	Y	Y	Y
Daschle	N	Y	Y	N	N	Y	Y
TENNESSEE							
Frist	Y	Y	N	N	Y	Y	Y
Thompson	Y	Y	N	N	Y	Y	Y
TEXAS							
Gramm	Y	N	N	Y	Y	Y	Y
Hutchison	Y	Y	N	Y	Y	Y	Y
UTAH							
Bennett	Y	Y	N	Y	Y	Y	N
Hatch	Y	Y	N	Y	Y	Y	N
VERMONT							
Jeffords	N	Y	Y	N	N	Y	Y
Leahy	N	Y	Y	N	N	Y	Y
VIRGINIA							
Warner	Y	Y	N	N	Y	Y	Y
Robb	Y	Y	Y	N	N	?	Y
WASHINGTON							
Gorton	Y	N	N	N	Y	Y	Y
Murray	N	Y	Y	N	N	Y	Y
WEST VIRGINIA							
Byrd	N	Y	Y	N	N	Y	Y
Rockefeller	N	Y	Y	N	N	Y	Y
WISCONSIN							
Feingold	N	Y	Y	N	N	?	Y
Kohl	N	Y	Y	N	N	Y	Y
WYOMING							
Simpson	Y	Y	Y	N	Y	Y	Y
Thomas	Y	N	N	Y	Y	Y	Y

KEY

- Y Voted for (yea).
- # Paired for.
- + Announced for.
- N Voted against (nay).
- X Paired against.
- – Announced against.
- P Voted "present."
- C Voted "present" to avoid possible conflict of interest.
- ? Did not vote or otherwise make a position known.

Democrats Republicans

	126	127	128	129	130	131	132
TEXAS							
Gramm	Y	N	N	Y	Y	Y	Y
Hutchison	Y	Y	N	Y	Y	Y	Y
UTAH							
Bennett	Y	Y	N	Y	Y	Y	N
Hatch	Y	Y	N	Y	Y	Y	N
VERMONT							
Jeffords	N	Y	Y	N	N	Y	Y
Leahy	N	Y	Y	N	N	Y	Y
VIRGINIA							
Warner	Y	Y	N	N	Y	Y	Y
Robb	Y	Y	Y	N	N	?	Y
WASHINGTON							
Gorton	Y	N	N	N	Y	Y	Y
Murray	N	Y	Y	N	N	Y	Y
WEST VIRGINIA							
Byrd	N	Y	Y	N	N	Y	Y
Rockefeller	N	Y	Y	N	N	Y	Y
WISCONSIN							
Feingold	N	Y	Y	N	N	?	Y
Kohl	N	Y	Y	N	N	Y	Y
WYOMING							
Simpson	Y	Y	Y	N	Y	Y	Y
Thomas	Y	N	N	Y	Y	Y	Y

ND Northern Democrats SD Southern Democrats

Southern states: Ala., Ark., Fla., Ga., Ky., La., Miss., N.C., Okla., S.C., Tenn., Texas, Va.

126. S Con Res 57. Fiscal 1997 Budget Resolution/ Education Spending. Domenici, R-N.M., amendment to table (kill) the Kerry, D-Mass., amendment to increase education spending by $56 billion over six years to the level requested by the president and to offset the costs by ending certain corporate tax preferences. Motion agreed to 52-48: R 49-4; D 3-44 (ND 1-36, SD 2-8), May 22, 1996. *(Story, p. 1449)*

127. S Con Res 57. Fiscal 1997 Budget Resolution/ Energy Assistance Preservation. Wellstone, D-Minn., amendment to express the sense of the Senate that funding for the Low Income Home Energy Assistance Program (LIHEAP) in fiscal 1997 should not be less than the actual expenditure in fiscal 1996. Adopted 88-12: R 41-12; D 47-0 (ND 37-0, SD 10-0), May 22, 1996. *(Story, p. 1449)*

128. S Con Res 57. Fiscal 1997 Budget Resolution/ Tax Supermajority. Exon, D-Neb., motion to table (kill) the Kyl, R-Ariz., amendment to express the sense of the Senate that fundamental tax reform should be accompanied by a constitutional amendment to require a supermajority of Congress to approve tax increases. Motion agreed to 59-41: R 13-40; D 46-1 (ND 36-1, SD 10-0), May 22, 1996. *(Story, p. 1449)*

129. S Con Res 57. Fiscal 1997 Budget Resolution/ Energy Assistance Cut. Kyl, R-Ariz., amendment to reduce spending for the Low Income Home Energy Assistance Program (LIHEAP) by $633 million over six years by following the president's request through fiscal 2000 and freezing the program at $819 million thereafter. Rejected 26-74: R 26-27; D 0-47 (ND 0-37, SD 0-10), May 22, 1996. *(Story, p. 1449)*

130. S Con Res 57. Fiscal 1997 Budget Resolution/ Medicare Double Billing. Domenici, R-N.M., motion to table (kill) the Kennedy, D-Mass., amendment to express the sense of Congress that a budget-reconciliation bill considered during the 104th Congress should maintain existing prohibitions against additional charges by Medicare providers and against premium surcharges for senior citizens enrolled in private insurance plans in lieu of Medicare. Motion rejected 49-51: R 49-4; D 0-47 (ND 0-37, SD 0-10), May 22, 1996. (Subsequently, the Kennedy amendment was adopted by voice vote.) *(Story, p. 1449)*

131. S Con Res 57 Fiscal 1997 Budget Resolution/ Nursing Home Standards. Kennedy, D-Mass., amendment to express the sense of the Congress that no changes should be made to federal standards for nursing home quality or the federal enforcement of the standards. Adopted 99-0: R 53-0; D 46-0 (ND 37-0, SD 9-0), May 22, 1996. *(Story, p. 1449)*

132. S Con Res 57. Fiscal 1997 Budget Resolution/ Medicaid Impoverishment. Kennedy, D-Mass., amendment to express the sense of the Congress that spousal and adult child protections against impoverishment related to the Medicaid program should be retained. Adopted 94-6: R 47-6; D 47-0 (ND 37-0, SD 10-0), May 22, 1996. *(Story, p. 1449)*

Budget / Medicare

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Remarks on Vetoing Budget Reconciliation Legislation and an Exchange With Reporters

December 6, 1995

The President: Throughout our history, American Presidents have used the power of the veto to protect our values as a country. In that spirit today, I am acting to protect the values that bind us together in our national community.

My goals as President have been to preserve the American dream for all of our people, to bring the American people together, and to keep America the world's strongest force for peace and freedom and prosperity. In pursuit of that strategy, I have sought to grow the economy, to shrink the Government but leave it strong enough to do the job, and most important, to elevate mainstream values that all Americans share: opportunity and responsibility, work and family, and bringing our community together so that we can be stronger.

I have consistently said that if Congress sends me a budget that violates our values, I'll veto it. Three decades ago, this pen you see here was used to honor our values when President Johnson used it to sign Medicare into law. Today, I am vetoing the biggest Medicare and Medicaid cuts in history, deep cuts in education, a rollback in environmental protection, and a tax increase on working families. I am using this pen to preserve our commitment to our parents, to protect opportunity for our children, to defend the public health and our natural resources and natural beauty, and to stop a tax increase that actually undercuts the value of work.

We must balance the budget, but we must do it in a way that honors the commitments that we all have and that keeps our people together.

Therefore, today, I am vetoing this Republican budget because it would break those commitments and would lead us toward weakness and division when we must move toward strength and unity.

At this point, the President signed the veto message.

Can you bring me some more ink, boys? Here, Todd, I knew you had some. It's a small well. Leave it here and see if I need it.

Q. Mr. President, what happens next?

The President. I'm about to say. As I have said repeatedly, America must balance its budget. It's wrong to pass a legacy of debt onto our children. Our long-term growth depends on it. But we must do it in a way that is good for economic growth and for our values.

The budget I have vetoed in a very real sense, in very concrete ways, undermines our values and would restrict the future of families like the ones that are here with me today. American families want to make the most of their own lives and to pass opportunity onto their children. They deserve our respect and our support. Above all, we shouldn't make it harder for them to fulfill their dreams.

When it comes to health care, we owe a duty to our parents. We have to secure Medicare, and I've spelled out how to do that. But the budget I just vetoed would turn Medicare into a second-class system. The Medicare system has served all senior citizens well for 30 years; it would be over.

This budget would end Medicaid's guarantee that no senior citizen and no American in need would be denied medical care, including poor children and children with disabilities. It would deny care for hundreds of thousands of pregnant women and disabled children. It would repeal standards that ensure quality for nursing homes.

Education means opportunity, and opportunity is the key to the American dream. But this budget cuts education by $30 billion, even in this high technology age when education is more important than ever before. It would essentially end the direct student loan program. It would deny college scholarships to 360,000 deserving students. It would deny preschool opportunities to 150,000 children in the Head Start program.

We must protect the Earth that God gave us and guarantee our children safe food and clean water. This budget would give oil companies the right to drill in the last unspoiled arctic wilderness in Alaska. And it is loaded with special-interest provisions that squander our natural resources. Already, short-term budget cuts have forced us to pull back enforcement of clean air, clean water, even in-

10/25/96 23:22 NO.087 D04

spections of toxic waste sites in our neighborhoods.

People who work hard and save for retirement ought to be able to retire with dignity. We worked hard last year to secure the pension benefits of 40 million Americans with landmark reform legislation. This bill would give companies the green light to raid pension funds and put those retirements at risk again.

Americans know we have to reform the broken welfare system. But cutting child care that helps mothers move from welfare to work, cutting help for abused and disabled children, cutting school lunch, that's not welfare reform. Real welfare reform should be tough on work and tough on responsibility but not tough on children or tough on parents who are responsible and who want to work. We shouldn't lose this historic chance to end welfare as we know it by using the words welfare reform as just another cover to violate our values.

No one who works hard should be taxed into poverty. In 1993, we nearly doubled the earned-income tax credits so that we could say, "If you work 40 hours a week, you've got children in the home, you won't be taxed into poverty. The tax system will help lift you out of poverty." But this budget raises taxes on our hardest pressed working people, even as it gives unnecessarily large income tax relief and other tax relief to those who need it least. Nearly 8 million working families would pay more in new taxes than they would receive from any tax cut in this bill.

Beyond our principles, let me just say this budget is bad for the economy. No business on the edge of the 21st century would cut its investment in education and training, in research. No business would do that. No business would cut back on technology on the edge of the 21st century. The Japanese are in a recession, and they recently doubled their research budget. We are voting in this budget, if I were to allow it to become law, to cut our research budget by a year when we're in a period of economic growth, while another country, looking to the future in a recession, is doubling theirs. So this not only violates our values, it is bad, bad economics.

Now, with this veto, the extreme Republican effort to balance the budget through wrongheaded cuts and misplaced priorities is over. Now, it's up to all of us to go back to work together to show we can balance the budget and be true to our values and our economic interests.

Tomorrow, I will present to the congressional leadership a plan that does balance the budget in 7 years, but it also protects health care, education, and the environment, and it does not raise taxes on working families. It is up to the Republicans now to show that they, too, want to protect these principles, as they pledged to do.

Let me say again, our country is on the move; our economy is growing; many of our most difficult social problems are beginning to yield to the effort and commonsense values of the American people. We have proved again that we are a model for the entire world of peace and reconciliation. With all of our difficult problems, we are moving in the right direction. Now is not the time to derail this movement.

I have vetoed the budget. Now, the question is: Will we get together and balance the budget in a way that is consistent with our values? It's time to finish the job of balancing the budget and do it in the right way.

Thank you.

Q. Mr. President,—*[inaudible]*—Medicare and Medicaid, how are you going to—where are you going to find——

The President. Tune in tomorrow.

NOTE: The President spoke at 3:36 p.m. in the Oval Office at the White House. In his remarks, he referred to White House Staff Secretary Todd Stern.

Message Returning Without Approval to the House of Representatives Budget Reconciliation Legislation

December 6, 1995

To the House of Representatives:

I am returning herewith without my approval H.R. 2491, the budget reconciliation bill adopted by the Republican majority which seeks to make extreme cuts and other unacceptable changes in Medicare and Medicaid, and to raise taxes on millions of working Americans.

As I have repeatedly stressed, I want to find common ground with the Congress on a balanced budget plan that will best serve the American people. But, I have profound differences with the extreme approach that the Republican majority has adopted. It would hurt average Americans and help special interests.

My balanced budget plan reflects the values that Americans share—work and family, opportunity and responsibility. It would protect Medicare and retain Medicaid's guarantee of coverage: invest in education and training and other priorities; protect public health and the environment; and provide for a targeted tax cut to help middle-income Americans raise their children, save for the future, and pay for postsecondary education. To reach balance, my plan would eliminate wasteful spending, streamline programs, and end unneeded subsidies; take the first, serious steps toward health care reform; and reform welfare to reward work.

By contrast, H.R. 2491 would cut deeply into Medicare, Medicaid, student loans, and nutrition programs; hurt the environment; raise taxes on millions of working men and women and their families by slashing the Earned Income Tax Credit (EITC); and provide a huge tax cut whose benefits would flow disproportionately to those who are already the most well-off.

Moreover, this bill creates new fiscal pressures. Revenue losses from the tax cuts grow rapidly after 2002, with costs exploding for provisions that primarily benefit upper-income taxpayers. Taken together, the revenue losses for the 3 years after 2002 for the individual retirement account (IRA), capital gains, and estate tax provisions exceed the losses for the preceding 6 years.

Title VIII would cut Medicare by $270 billion over 7 years—by far the largest cut in Medicare's 30-year history. While we need to slow the rate of growth in Medicare spending, I believe Medicare must keep pace with anticipated increases in the costs of medical services and the growing number of elderly Americans. This bill would fail woefully short and would hurt beneficiaries, over half of whom are women. In addition, the bill introduces untested, and highly questionable, Medicare "choices" that could increase risks and costs for the most vulnerable beneficiaries.

Title VII would cut Federal Medicaid payments to States by $163 billion over 7 years and convert the program into a block grant, eliminating guaranteed coverage to millions of Americans and putting States at risk during economic downturns. States would face untenable choices: cutting benefits, dropping coverage for millions of beneficiaries, or reducing provider payments to a level that would undermine quality service to children, people with disabilities, the elderly, pregnant women, and others who depend on Medicaid. I am also concerned that the bill has inadequate quality and income protections for nursing home residents, the developmentally disabled, and their families, and that it would eliminate a program that guarantees immunizations to many children.

Title IV would virtually eliminate the Direct Student Loan Program, reversing its significant progress and ending the participation of over 1,300 schools and hundreds of thousands of students. These actions would hurt middle- and low-income families, make student loan programs less efficient, perpetuate unnecessary red tape, and deny students and schools the free-market choice of guaranteed or direct loans.

Title V would open the Arctic National Wildlife Refuge (ANWR) to oil and gas drilling, threatening a unique, pristine ecosystem, in hopes of generating $1.3 billion in Federal revenues—a revenue estimate based on wishful thinking and outdated analysis. I want to protect this biologically rich wilderness permanently. I am also concerned that the Congress has chosen to use the reconciliation bill as a catch-all for various objectionable natural resource and environmental policies. One would retain the notorious patenting provision whereby the government transfers billions of dollars of publicly owned minerals at little or no charge to private interests; another would transfer Federal land for a low-level radioactive waste site in California without public safeguards.

While making such devastating cuts in Medicare, Medicaid, and other vital programs, this bill would provide huge tax cuts for those who are already the most well-off. Over 47 percent of the tax benefits would

10/25/96 23:22 NO.087 006

go to families with incomes over $100,000—the top 12 percent. The bill would provide unwarranted benefits to corporations and new tax breaks for special interests. At the same time, it would raise taxes, on average, for the poorest one-fifth of all families.

The bill would make capital gains cuts retroactive to January 1, 1995, providing a windfall of $13 billion in about the first 9 months of 1995 alone to taxpayers who already have sold their assets. While my Administration supports limited reform of the alternative minimum tax (AMT), this bill's cuts in the corporate AMT would not adequately ensure that profitable corporations pay at least some Federal tax. The bill also would encourage businesses to avoid taxes by stockpiling foreign earnings in tax havens. And the bill does not include my proposal to close a loophole that allows wealthy Americans to avoid taxes on the gains they accrue by giving up their U.S. citizenship. Instead, it substitutes a provision that would prove ineffective.

While cutting taxes for the well-off, this bill would cut the EITC for almost 13 million working families. It would repeal part of the scheduled 1996 increase for taxpayers with two or more children, and end the credit for workers who do not live with qualifying children. Even after accounting for other tax cuts in this bill, about eight million families would face a net tax increase.

The bill would threaten the retirement benefits of workers and increase the exposure of the Pension Benefit Guaranty Corporation by making it easy for companies to withdraw tax-favored pension assets for nonpension purposes. It also would raise Federal employee retirement contributions, unduly burdening Federal workers. Moreover, the bill would eliminate the low-income housing tax credit and the community development corporation tax credit, which address critical housing needs and help rebuild communities. Finally, the bill would repeal the tax credit that encourages economic activity in Puerto Rico. We must not ignore the real needs of our citizens in Puerto Rico, and any legislation must contain effective mechanisms to promote job creation in the islands.

Title XII includes many welfare provisions. I strongly support real welfare reform that strengthens families and encourages work and responsibility. But the provisions in this bill, when added to the EITC cuts, would cut low-income programs too deeply. For welfare reform to succeed, savings should result from moving people from welfare to work, not from cutting people off and shifting costs to the States. The cost of excessive program cuts in human terms—to working families, single mothers with small children, abused and neglected children, low-income legal immigrants, and disabled children—would be grave. In addition, this bill threatens the national nutritional safety net by making unwarranted changes in child nutrition programs and the national food stamp program.

The agriculture provisions would eliminate the safety net that farm programs provide for U.S. agriculture. Title I would provide windfall payments to producers when prices are high, but not protect family farm income when prices are low. In addition, it would slash spending for agricultural export assistance and reduce the environmental benefits of the Conservation Reserve Program.

For all of these reasons, and for others detailed in the attachment, this bill is unacceptable.

Nevertheless, while I have major differences with the Congress, I want to work with Members to find a common path to balance the budget in a way that will honor our commitment to senior citizens, help working families, provide a better life for our children, and improve the standard of living of all Americans.

William J. Clinton

The White House,
December 6, 1995.

Proclamation 6856—National Pearl Harbor Remembrance Day, 1995

December 6, 1995

By the President of the United States of America

A Proclamation

America's involvement in World War II began 54 years ago as dawn was shattered by a surprise attack on our forces stationed at Pearl Harbor, Hawaii. In the words of

November 17, 1995
Publication: LB-48-Budget

dpc legislative bulletin

H.R. 2491, Balanced Budget Act of 1995

Summary 1
Major Provisions 3
Agriculture and Related Provisions 3
Banking, Housing, and Related Provisions 4
Communication and Spectrum Allocation Provisions 6
Education and Related Provisions 6
Energy and Natural Resources Provisions 8
Federal Retirement and Related Provisions 11
Medicaid 13
Medicare 16
Transportation and Related Provisions 20
Veterans and Related Provisions 20
Revenues 23
Reaching Hospitals and Graduate Medical Education; Asset Sales; Welfare; and Other Provisions 26

DPC Staff Contact: Ted Zegers (202-224-3232)

dpc
Democratic Policy Committee
United States Senate
Washington, D.C. 20510-7050

Tom Daschle, Chairman
Harry Reid, Co-Chairman

Pregnant Women, Children, and the Disabled

Like the Senate bill, the conference agreement requires State Medicaid plans to make medical assistance available to any pregnant woman or child under 13 whose family income is below 100 percent of poverty, and for the disabled as defined by the State. There are, however, no required benefits (with the one exception of immunizations for children) which must be provided to these or any other groups which States choose to cover.

Set-Asides

The conference agreement, like both the House and Senate bills, establish set-asides for low-income families, elderly, and disabled and for Medicare premiums. The set-aside is a minimum percentage of the State's total Medicaid spending for the year that must be applied to services for the specified group. However, the set-asides are inadequate to their purpose, both because of their funding levels and because of the absence of an entitlement.

Weakened Federal Nursing Home Quality Standards

While the GOP Medicaid plan claims to preserve all the Federal nursing home standards, a careful review shows that the standards have been modified significantly. Enforcement of standards of private nursing homes is handed over to the States. The Federal government may get involved only if the State has failed, through its enforcment, to correct deficiencies. In addition, the confernce agreement allows States to obtain a waiver from Federal standards, if a State adopts its own equivalent or stricter standards. The bill however gives no definition of the terms and provides no guidance for determining equivalency.

Out-of-Pocket Costs for Beneficiaries

Except with regard to pregnant women and children below the poverty line, and state-defined primary and preventive care for children and pregnant women, States would have broad flexibility to impose cost-sharing. Elderly and disabled enrollees could be rquired to pay premiums, deductibles and co-payments.

REQUIREMENTS FOR NURSING FACILITIES[182]

SEC. 1919. [42 U.S.C. 1396r] (a) NURSING FACILITY DEFINED.—In this title, the term "nursing facility" means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreements in effect under section 1866; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d).

(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

(1) QUALITY OF LIFE.—

(A) IN GENERAL.—A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

reasonably

(B) QUALITY ASSESSMENT AND ASSURANCE.—A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A nursing facility must provide services and activities ~~to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident~~ in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

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of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively", effective March 31, 1995.

[182] See Vol. II, P.L. 100-203, §4215, with respect to a report to Congress.

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) RESIDENTS' ASSESSMENT.—

(A) REQUIREMENT.—A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

~~(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A);~~

(ii)(iii) uses an instrument which is specified by the State under subsection (e)(5); and

(iii)(iv) includes the identification of medical problems.

(B) CERTIFICATION.—

(i) IN GENERAL.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) PENALTY FOR FALSIFICATION.—

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(iii) USE OF INDEPENDENT ASSESSORS.—If a State determines, under a survey under subsection (g) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) FREQUENCY.—

(i) IN GENERAL.—Such an assessment must be conducted—

(I) promptly upon (but no later than not later than[183] 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) RESIDENT REVIEW.—The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) USE.—The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) COORDINATION.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(F) REQUIREMENTS RELATING TO PREADMISSION SCREENING FOR MENTALLY ILL AND MENTALLY RETARDED INDIVIDUALS.—Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility must not admit, on or after January 1, 1989, any new resident who—

(i) is mentally ill (as defined in subsection (e)(7)(G)(i)) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) PROVISION OF SERVICES AND ACTIVITIES.—

In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

[183] As in original.

(A) IN GENERAL.—To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

(i) nursing and related services and specialized rehabilitative services ~~to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident~~;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of ~~each~~ resident;~~s~~

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of ~~each~~ resident~~s~~;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of ~~each~~ resident~~s~~;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of ~~each~~ resident~~s~~; and

~~(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State~~.[184]

The services provided or arranged by the facility must meet professional standards of quality.

(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) REQUIRED NURSING CARE; FACILITY WAIVERS.—

(i) GENERAL REQUIREMENTS.—With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) WAIVER BY STATE.—To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if—

(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

[184] See Vol. II, P.L. 101-508, §4801(e)(17)(A), with respect to maintaining regulatory standards for certain services.

(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,

(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) ASSUMPTION OF WAIVER AUTHORITY BY SECRETARY.—If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) REQUIRED TRAINING OF NURSE AIDES.—

(A) IN GENERAL.—(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A), and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) and such preparation as may be

necessary for the individual to complete such a program by October 1, 1990.

(C) COMPETENCY.—The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) that the facility believes will include information concerning the individual.

(D) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) REGULAR IN-SERVICE EDUCATION.—The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) NURSE AIDE DEFINED.—In this paragraph, the term "nurse aide" means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.; or

(iii) who is trained, whether compensated or not, to perform a task-specific function which assists residents in their daily activities.

(G) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term "licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A nursing facility must—

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

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

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), ~~as well as the results of any pre-admission screening con-~~

ducted under subsection (e)(7).

~~(7) REQUIRED SOCIAL SERVICES.—In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.~~

(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

(1) GENERAL RIGHTS.—

(A) SPECIFIED RIGHTS.—A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) ACCOMMODATION OF NEEDS.—The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed, unless a delay in changing a room or roommate while notice is given would endanger the resident or others.

(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have,

including those with respect to the behavior of other residents.

(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

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

(ix) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

~~(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purposes of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility~~.

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

Clause (iii) shall not be construed as requiring the provision of a private room. ~~A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident~~'s ~~eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.~~

(B) NOTICE OF RIGHTS.—A nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this title, including the right to request an assessment under section ~~1924(c)(1)(B)~~, 2115(c)(1)(B)

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6);

(iii) inform each resident who is entitled to medical assistance under this title—

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services ~~(including those specified under section 1902(a)(28)(B))~~ that are included in nursing facility services under the State plan and for which the resident may not be charged ~~(except as permitted in section 1916)~~, and of those other items and services that the facility offers and for which the resident may be charged and the

amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under title XVIII or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) USE OF PSYCHOPHARMACOLOGIC DRUGS.—Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) TRANSFER AND DISCHARGE RIGHTS.—

(A) IN GENERAL.—A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

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

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

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XVIII on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in

the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title after admission to the facility, only charges which may be imposed under this title shall be considered to be allowable.

(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

(i) IN GENERAL.—Before effecting a transfer or discharge of a resident, a nursing facility must—

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

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

(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

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

(V) in a case where the provision of a 30-day notice would be impossible or impracticable.

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

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3);

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965[185] in accordance with section 712 of the Act);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and

[185] See Vol. II, P.L. 89-73.

advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act[186]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i)), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act[187].

(C) ORIENTATION.—A nursing facility must provide ~~sufficient~~ preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) NOTICE ON BED-HOLD POLICY AND READMISSION.—

(i) NOTICE BEFORE TRANSFER.—Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

(I) the provisions of the State plan under this title regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) NOTICE UPON TRANSFER.—At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) PERMITTING RESIDENT TO RETURN.—A nursing facility must establish and follow a written policy under which a resident—

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a ~~semiprivate~~ room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

~~(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).~~

(3) ACCESS AND VISITATION RIGHTS.—A nursing facility must—

(iv) Exception - This subparagraph shall not apply to a voluntary transfer or discharge or a transfer necessitated by a medical emergency.

reasonable

(not including a private room)

[186] See Vol. II, P.L. 88-164; Title I.
[187] See Vol. II, P.L. 99-319.

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

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

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

unless such access would endanger the health or safety of the residents or others in the facility;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) EQUAL ACCESS TO QUALITY CARE.—

(A) IN GENERAL.—A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) CONSTRUCTION.—

(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDICAID PATIENTS.—Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) NO ADDITIONAL SERVICES REQUIRED.—Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) ADMISSIONS POLICY.—

(A) ADMISSIONS.—With respect to admissions practices, a nursing facility must—

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

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

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not

charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this title, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) CONSTRUCTION.—

(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) CONTRACTS WITH LEGAL REPRESENTATIVES.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) CHARGES FOR ADDITIONAL SERVICES REQUESTED.—Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term "nursing facility services".

(iv) BONA FIDE CONTRIBUTIONS.—Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(5) (6) PROTECTION OF RESIDENT FUNDS.—

(A) IN GENERAL.—The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) MANAGEMENT OF PERSONAL FUNDS.—Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) DEPOSIT.—The facility must deposit any amount of personal funds in excess of $250 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts

and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

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

(iii) NOTICE OF CERTAIN BALANCES.—The facility must notify each resident receiving medical assistance under the State plan under title XIX when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1611(a)(3)(B) and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under title XVI.

(iv) CONVEYANCE UPON DEATH.—Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

all other personal property, including medical records, shall be considered part of the resident's estate and shall only be released to the administrator of the estate.

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

(D) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this title or title XVIII.

(6) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

(B) CERTAIN MEDICAID INDIVIDUALS DEFINED.—In subparagraph (A), the term "certain medicaid-eligible individual" means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.

State

(7) POSTING OF SURVEY RESULTS.—A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g).

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

(1) ADMINISTRATION.—

(A) IN GENERAL.—A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5)).

(B) REQUIRED NOTICES.—If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) NURSING FACILITY ADMINISTRATOR.—The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4).

whether free-standing or hospital-based.

(2) LICENSING AND LIFE SAFETY CODE.—

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

(B) LIFE SAFETY CODE.—A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

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

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

(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A nursing facility must—

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

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents,

personnel, and the general public.

(4) MISCELLANEOUS.—

(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124[188] and with accepted professional standards and principles which apply to professionals providing services in such a facility.

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

(e) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—~~As a condition of approval of its plan under this title, a State must provide for the following:~~

(1) SPECIFICATION AND REVIEW OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND OF NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) and that meet the requirements established under subsection (f)(2), and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii).

~~The failure of the Secretary to establish requirements under subsection (f)(2) shall not relieve any State of its responsibility under this paragraph~~.

(2) NURSE AIDE REGISTRY.—

(A) IN GENERAL.—By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the

[188] As in original. No closing parenthesis.

finding or a clear and accurate summary of such a statement.

(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) STATE APPEALS PROCESS FOR TRANSFERS AND DISCHARGES.—The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3), for hearing appeals on transfers and discharges of residents of such facilities; ~~but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.~~

(4) NURSING FACILITY ADMINISTRATOR STANDARDS.—By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) respecting the qualification of administrators of nursing facilities.

any such standards promulgated shall apply to administrators of hospital-based facilities as well as free-standing facilities.

(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii). ~~Such instrument shall be—~~

~~(A) one of the instruments designated under subsection (f)(6)(B), or~~

~~(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A).~~

(6) NOTICE OF ~~MEDICAID~~ RIGHTS.—Each State, ~~as a condition of approval of its plan under this title, effective April 1, 1988, must~~ shall develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this title.

(7) STATE REQUIREMENTS FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

(A) PREADMISSION SCREENING.—

(i) IN GENERAL.—~~Effective January 1, 1989,~~ The State must have in effect a preadmission screening program, ~~for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F)~~ for mentally ill and mentally retarded individuals (as defined in subparagraph ~~(G)~~ (B)) who are admitted to nursing facilities ~~on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).~~

~~(ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS. The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.~~

(ii) State requirements for Resident Review — The State shall notify the State mental health authority or the State mental retardation or developmental disability authority, as appropriate, of the individuals so identified.

(iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES.—The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) STATE REQUIREMENT FOR ANNUAL RESIDENT REVIEW.—

(i) FOR MENTALLY ILL RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) FOR MENTALLY RETARDED RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8))—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d); and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) FREQUENCY OF REVIEWS.—

(I) ANNUAL.—Except as provided in subclauses (II) and (III), the reviews and determinations under clauses (i) and (ii) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

(II) PREADMISSION REVIEW CASES.—In the case of a resident subject to a preadmission review under

subsection (b)(3)(F), the review and determination under clause (i) or (ii) need not be done until the resident has resided in the nursing facility for 1 year.

(III) INITIAL REVIEW.—The reviews and determinations under clauses (i) and (ii) must first be conducted (for each resident not subject to preadmission review under subsection (b)(3)(F)) by not later than April 1, 1990.

(iv) PROHIBITION OF DELEGATION.—A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) RESPONSE TO PREADMISSION SCREENING AND RESIDENT REVIEW.—As of April 1, 1990, the State must meet the following requirements:

(i) LONG-TERM RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING SPECIALIZED SERVICES.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) OTHER RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING SPECIALIZED SERVICES.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services

for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2),

(II) prepare and orient the resident for such discharge, and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES AND NOT REQUIRING SPECIALIZED SERVICES.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2), and

(II) prepare and orient the resident for such discharge.

(iv) ANNUAL REPORT.—Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).[189]

(D) DENIAL OF PAYMENT.—

(i) FOR FAILURE TO CONDUCT PREADMISSION SCREENING OR ANNUAL REVIEW.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) or subparagraph (B) but for whom the determination is not made.

(ii) FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY LEVEL OF SERVICES.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) PERMITTING ALTERNATIVE DISPOSITION PLANS.—With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary

[189] See Vol. II, P.L. 100-203, §4215 [as amended by P.L. 101-508, §4801(b)(5)(B)], with respect to the required annual report to Congress.

have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

(F) APPEALS PROCEDURES.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) DEFINITIONS.—In this paragraph and in subsection (b)(3)(F):

(i) An individual is considered to be "mentally ill" if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition ~~(as described in section 1905(d))~~.

~~(iii) The term "specialized services" has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4).~~

(f) RESPONSIBILITIES ~~OF SECRETARY~~ RELATING TO NURSING FACILITY REQUIREMENTS.—

a State with a Medigrant plan

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

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

~~(A) IN GENERAL.—~~For purposes of subsections (b)(5) and (e)(1)(A), the ~~Secretary~~ State shall establish, ~~by not later than September 1, 1988—~~

~~(A)~~(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to ~~(i)~~ the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and

(i)

social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, ~~(II)~~ minimum hours of initial and ongoing training and retraining ~~(including not less than 75 hours in the case of initial training)~~, ~~(III)~~ qualifications of instructors, and ~~(IV)~~ procedures for determination of competency;

~~(ii)~~ requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

~~(iii)~~ requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

~~(iv)~~ requirements, under both such programs, that—

~~(I)~~ provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, ~~and~~

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on the date of the enactment of this section[190];

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training

[190]December 22, 1987 [P.L. 100-203; 101 Stat. 1330].

and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) shall prohibit approval of such a program—

(I) offered by or in a nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1819(g)(2)(B)(i) or subsection (g)(2)(B)(i); or

(c) has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i), clauses (i), (iii), or (iv) of subsection (h)(2)(A), clauses (i) or (iii) of section 1819(h)(2)(B), or section 1819(h)(4), or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(3) FEDERAL GUIDELINES FOR STATE APPEALS PROCESS FOR TRANSFERS AND DISCHARGES.—For purposes of subsections (c)(2)(B)(iii) and (e)(3), by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

(4) SECRETARIAL STANDARDS QUALIFICATION OF ADMINISTRATORS.—For purposes of subsections (d)(1)(C) and (e)(4), the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

State —

any such standards must apply to administrators of hospital-based facilities as well as administrators of free standing facilities.

(5) CRITERIA FOR ADMINISTRATION.—The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) SPECIFICATION OF RESIDENT ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3), and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii).

(7) LIST OF ITEMS AND SERVICES FURNISHED IN NURSING FACILITIES NOT CHARGEABLE TO THE PERSONAL FUNDS OF A RESIDENT.—

(A) REGULATIONS REQUIRED.—Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977[191], the Secretary shall issue regulations, on or before the first day of the seventh month to begin after the date of enactment of this section[192], that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this title and those costs which are to be included in the payment amount under this title for nursing facility services.

(B) RULE IF FAILURE TO PUBLISH REGULATIONS.—If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this title, for purposes of section 1902(a)(28)(B), the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this title) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) FEDERAL MINIMUM CRITERIA AND MONITORING FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

(A) MINIMUM CRITERIA.—The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) MONITORING COMPLIANCE.—The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) (relating to discharge and placement

[191] See Vol. II, P.L. 95-142.
[192] December 22, 1987.

~~for active~~ treatment of certain residents).

(9) CRITERIA FOR ~~MONITORING~~ STATE WAIVERS.—The Secretary shall develop, by not ~~later than October~~ 1, 1988, criteria and ~~procedures for monitoring~~ State performances ~~in granting~~ waivers pursuant to subsection (b)(4)(C)(ii).

(g) SURVEY AND CERTIFICATION PROCESS.—

(1) STATE AND FEDERAL RESPONSIBILITY.—

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

~~(B) EDUCATIONAL PROGRAM.—Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.~~

(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

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

(2) SURVEYS.—

(A) ANNUAL STANDARD SURVEY.—

(i) IN GENERAL.—Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be con-

ducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). ~~The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all~~ reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

The State shall take all

(ii) CONTENTS.—Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) and an audit of the residents' assessments under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c).

(iii) FREQUENCY.—

(I) IN GENERAL.—Each nursing facility shall be subject to a standard survey not later than ~~15~~ 24 months after the date of the previous standard survey conducted under this subparagraph. ~~The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.~~

except that in the case of a facility which has been subjected to an extended survey under subparagraph (B), a standard survey shall be conducted not later than 12 months after the date of the preceding extended survey.

(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 4 ~~2~~ months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) EXTENDED SURVEYS.—

(i) IN GENERAL.—Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at ~~the Secretary's or~~ State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) TIMING.—The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) CONTENTS.—In such an extended survey, the survey team shall review and identify the policies and

procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) on the basis of findings in a standard survey.

(C) SURVEY PROTOCOL.—Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not ~~later than~~ January 1, 1990, and

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

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

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

(E) SURVEY TEAMS.—

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

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

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

(3) VALIDATION SURVEYS.—

(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within ~~2~~ 4 months of the date of surveys conducted

under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) SCOPE.—With respect to each State, the Secretary shall conduct surveys under subparagraph (A) ~~each year~~ with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

at least every third year

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

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

(4) INVESTIGATION OF COMPLAINTS AND MONITORING NURSING FACILITY COMPLIANCE.—Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by nursing facilities, and

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

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

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

(iii) the State has reason to question the compliance of the facility with such requirements.

~~A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.~~

(5) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

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

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within ~~14 calendar days~~ after such information is made available to those facilities, and approved plans of correction,

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

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

(iv) information disclosed under section 1126.

(B) NOTICE TO OMBUDSMAN.—Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965[193] in accordance with section 712 of the Act) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d), or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect to a nursing facility in the State.

(C) NOTICE TO PHYSICIANS AND NURSING FACILITY ADMINISTRATOR LICENSING BOARD.—If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State ~~medicaid~~ fraud and abuse control unit (established under section ~~1903(q)~~) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) ENFORCEMENT PROCESS.—

(1) IN GENERAL.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d), ~~and further finds that the facility's deficiencies~~ 1

[193] See Vol. II, P.L. 89-73.

If the State finds that the deficiencies

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

If the State finds that the facility's deficiencies

(C)~~(B)~~ do not immediately jeopardize the health or safety of its residents, the State may—

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

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

(iii) do both.

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

(2) SPECIFIED REMEDIES.—

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

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

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d). ~~Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i)) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.~~

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

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

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

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

determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

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

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

~~(B) DEADLINE AND GUIDANCE. (i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.~~

(B) alternative Remedies

(ii) A State may establish alternative remedies ~~(other than termination of participation)~~ other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in such subparagraph ~~(A)~~.

to the remedies

(C) ASSURING PROMPT COMPLIANCE.—If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, the State ~~shall~~ may impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) REPEATED NONCOMPLIANCE.—In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2), has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (A)(i), and

(ii) monitor the facility under subsection (g)(4)(B),

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d), and that it will remain in compliance with such requirements.

~~(E) FUNDING.—The reasonable expenditures of a State to provide for temporary management and other expenses~~

associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1903(a)(7), to be necessary for the proper and efficient administration of the State plan.

(F) INCENTIVES FOR HIGH QUALITY CARE.—In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this title. For purposes of section 1903(a)(7), proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this title.

(3) SECRETARIAL AUTHORITY.—

(A) FOR STATE NURSING FACILITIES.—With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, ~~including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).~~

Nothing in this paragraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies.

(B) OTHER NURSING FACILITIES.—With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e), and further finds that the facility's deficiencies—

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

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

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

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

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

(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed ~~$10,000~~ $5,000 for each day

see attached language page 7-60

sections (b), (c), and (d), within 3 months after the date the facility is found to be out of compliance with such requirements, the State may impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

"(D) REPEATED NONCOMPLIANCE.—In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2), has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

"(i) impose the remedy described in subparagraph (A)(i), and

"(ii) monitor the facility under subsection (g)(4)(B), until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d), and that it will remain in compliance with such requirements.

"(3) SECRETARIAL AUTHORITY.—

"(A) FOR STATE NURSING FACILITIES.—With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection. Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies.

"(B) OTHER NURSING FACILITIES.—With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), or (d), the Secretary shall notify the State of such deficiency. If, after a reasonable period of time after such notification is given, the Secretary finds that the State has failed to carry out the requirements of paragraph (1)(A) or paragraph (1)(B) (if appropriate) with respect to the deficiency involved, or that the deficiency remains uncorrected—

"(i) the Secretary shall require the facility to correct the deficiency involved;

"(ii) if the Secretary finds that the deficiency involved immediately jeopardizes the health or safety of its residents, the Secretary shall, in consultation with the State, take action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State MediGrant plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); and

"(iii) in the case of a deficiency that remains uncorrected, if the Secretary finds that the deficiency involved does not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

"(C) SPECIFIED REMEDIES.—The remedies specified in this subparagraph are as follows:

"(i) DENIAL OF PAYMENT.—Denial of any further payments to the State in accordance with section 2154(f) for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—Imposition of a civil money penalty against the facility in an amount not to exceed $5,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

See (3)(B) on preceding page of current law

See (3)(C) on preceding page of current law

of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

appointment of temporary management

(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—(In consultation with the State) ~~the Secretary may appoint temporary management~~ to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

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

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

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

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

(4) Special Rules Regarding Payments to Facilities — see language on attached pg 7-61

~~(A)~~ (D) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this title with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d), if—

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

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

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

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

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

See attached page 7-61 - 7-62

(5) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE STATE OR SECRETARY FINDS NONCOMPLIANCE AND IMMEDIATE JEOPARDY.—If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d), and finds that the failure immediately jeopardizes the health or safety of its residents, the State or the Secretary, respectively shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2).

(6) SPECIAL RULES WHERE STATE AND SECRETARY DO NOT AGREE ON FINDING OF NONCOMPLIANCE.—

(A) STATE FINDING OF NONCOMPLIANCE AND NO SECRETARIAL FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d), but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

(B) SECRETARIAL FINDING OF NONCOMPLIANCE AND NO STATE FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d), and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) SPECIAL RULES FOR TIMING OF TERMINATION OF PARTICIPATION WHERE REMEDIES OVERLAP.—If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d), and neither finds that the failure immediately jeopardizes the health or safety of its residents—

(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be termi-

nated, the State's decision to terminate, and timing of such termination, shall control; and

(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

(5) (8) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. ~~The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing~~. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of title XVIII.

or is accredited by an entity pursuant to subsection (i)(2).

(9) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XVIII, including investigations by State ~~medicaid~~ fraud control units. medigrant

(i) CONSTRUCTION.—Where requirements or obligations under this section are identical to those provided under section 1819 of this Act, the fulfillment of those requirements or obligations under section 1819 shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

(2) Effect on Accreditation see page 7-61 + 7-62 attached.

PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN

SEC. 1920. [42 U.S.C. 1396r-1] (a) A State plan approved under section 1902 may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

(b) For purposes of this section—

(1) the term "presumptive eligibility period" means, with respect to a pregnant woman, the period that—

(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan, or

(ii) in the case of a woman who does not file an application by the last day of the month following the

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—Appointment of temporary management (in consultation with the State) to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

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

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

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

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies.

"(4) SPECIAL RULES REGARDING PAYMENTS TO FACILITIES.—

"(A) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The State or the Secretary, as appropriate, may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this title with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d).

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

"(5) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under Federal or State law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of title XVIII or is accredited by an entity pursuant to subsection (i)(2).

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

"(i) CONSTRUCTION.—

"(1) MEDICARE REQUIREMENTS.—Where requirements or obligations under this section are identical to those provided under section 1819 of this Act, the fulfillment of those requirements or obligations under section 1819 shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

"(2) EFFECT OF ACCREDITATION.—

"(A) IN GENERAL.—At the option of a State, or the Secretary, as appropriate, if a nursing facility in the State is accredited by a national accrediting entity meeting such standards as the State or the Secretary may impose, such facility shall be deemed to have met the requirements of this section and the State shall be deemed to have met the survey and certification requirements under subsection (g).

"(B) REQUIREMENT FOR ACCREDITING ENTITY.—A State or the Secretary, as appropriate, may not find that an ac-

See pg 1026 of SSA

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crediting entity meets standards under subparagraph (A) unless such entity applies standards for accreditation for facilities that meet or exceed the requirements of this section.

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"SEC. 2138. OTHER PROVISIONS PROMOTING PROGRAM INTEGRITY.

"(a) PUBLIC ACCESS TO SURVEY RESULTS.—Each MediGrant plan shall provide that upon completion of a survey of any health care facility or organization by a State agency to carry out the plan, the agency shall make public in readily available form and place the pertinent findings of the survey relating to the compliance of the facility or organization with requirements of law.

"(b) RECORD KEEPING.—Each MediGrant plan shall provide for agreements with persons or institutions providing services under the plan under which the person or institution agrees—

"(1) to keep such records, including ledgers, books, and original evidence of costs, as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the plan, and

"(2) to furnish the State agency with such information regarding any payments claimed by such person or institution for providing services under the plan, as the State agency may from time to time request.

"(c) QUALITY ASSURANCE.—Each MediGrant plan shall provide a program to assure the quality of services provided under the plan, including such services provided to individuals with chronic mental or physical illness.

"PART E—ESTABLISHMENT AND AMENDMENT OF MEDIGRANT PLANS

"SEC. 2151. SUBMITTAL AND APPROVAL OF MEDIGRANT PLANS.

"(a) SUBMITTAL.—As a condition of receiving funding under part C, each State shall submit to the Secretary a MediGrant plan that meets the applicable requirements of this title.

"(b) APPROVAL.—Except as the Secretary may provide under section 2154, a MediGrant plan submitted under subsection (a)—

"(1) shall be approved for purposes of this title, and

"(2) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than the first calendar quarter that begins at least 60 days after the date the plan is submitted.

"SEC. 2152. SUBMITTAL AND APPROVAL OF PLAN AMENDMENTS.

"(a) SUBMITTAL OF AMENDMENTS.—A State may amend, in whole or in part, its MediGrant plan at any time through transmittal of a plan amendment under this section.

"(b) APPROVAL.—Except as the Secretary may provide under section 2154, an amendment to a MediGrant plan submitted under subsection (a)—

"(1) shall be approved for purposes of this title, and

"(2) shall be effective as provided in subsection (c).

"(c) EFFECTIVE DATES FOR AMENDMENTS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an amendment to a MediGrant plan shall take effect on one or more effective dates specified in the amendment.

"(2) AMENDMENTS RELATING TO ELIGIBILITY OR BENEFITS.—Except as provided in paragraph (4)—

"(A) NOTICE REQUIREMENT.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior or contemporaneous public notice of the change, in a form and manner provided under applicable State law.

"(B) TIMELY TRANSMITTAL.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60 day period unless the amendment has been transmitted to the Secretary before the end of such period.

REQUIREMENTS FOR NURSING FACILITIES[182]

SEC. 1919. [42 U.S.C. 1396r] (a) NURSING FACILITY DEFINED.—In this title, the term "nursing facility" means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1861(l)) with one or more hospitals having agreements in effect under section 1866; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d).

(b) REQUIREMENTS RELATING TO PROVISION OF SERVICES.—

(1) QUALITY OF LIFE.—

(A) IN GENERAL.—A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

reasonably

(B) QUALITY ASSESSMENT AND ASSURANCE.—A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A nursing facility must provide services and activities ~~to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident~~ in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

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of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively", effective March 31, 1995.

[182] See Vol. II, P.L. 100-203, §4215, with respect to a report to Congress.

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) RESIDENTS' ASSESSMENT.—

(A) REQUIREMENT.—A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

~~(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A);~~

(ii)(iii) uses an instrument which is specified by the State under subsection (e)(5); and

(iii) ~~(iv)~~ includes the identification of medical problems.

(B) CERTIFICATION.—

(i) IN GENERAL.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) PENALTY FOR FALSIFICATION.—

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(iii) USE OF INDEPENDENT ASSESSORS.—If a State determines, under a survey under subsection (g) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) FREQUENCY.—

(i) IN GENERAL.—Such an assessment must be conducted—

(I) promptly upon (but no later than not later than[183] 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) RESIDENT REVIEW.—The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) USE.—The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) COORDINATION.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(F) REQUIREMENTS RELATING TO PREADMISSION SCREENING FOR MENTALLY ILL AND MENTALLY RETARDED INDIVIDUALS.—Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility must not admit, on or after January 1, 1989, any new resident who—

(i) is mentally ill (as defined in subsection (e)(7)(G)(i)) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) PROVISION OF SERVICES AND ACTIVITIES.—

In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

[183] As in original.

(A) IN GENERAL.—To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

(i) nursing and related services and specialized rehabilitative services ~~to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident~~;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of ~~each~~ resident;~~;~~

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of ~~each~~ resident~~;~~

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of ~~each~~ resident~~;~~

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of ~~each~~ resident~~;~~ and

~~(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State~~. [184]

The services provided or arranged by the facility must meet professional standards of quality.

(B) QUALIFIED PERSONS PROVIDING SERVICES.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) REQUIRED NURSING CARE; FACILITY WAIVERS.—

(i) GENERAL REQUIREMENTS.—With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) WAIVER BY STATE.—To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if—

(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

[184] See Vol. II, P.L. 101-508, §4801(e)(17)(A), with respect to maintaining regulatory standards for certain services.

(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,

(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) ASSUMPTION OF WAIVER AUTHORITY BY SECRETARY.—If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) REQUIRED TRAINING OF NURSE AIDES.—

(A) IN GENERAL.—(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A), and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) and such preparation as may be

necessary for the individual to complete such a program by October 1, 1990.

(C) COMPETENCY.—The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) that the facility believes will include information concerning the individual.

(D) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) REGULAR IN-SERVICE EDUCATION.—The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) NURSE AIDE DEFINED.—In this paragraph, the term "nurse aide" means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.; or

(iii) who is trained, whether compensated or not, to perform a task-specific function which assists residents in their daily activities.

(G) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term "licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A nursing facility must—

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

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

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), ~~as well as the results of any pre-admission screening con-~~

ducted under subsection (e)(7).

~~(7) REQUIRED SOCIAL SERVICES.—In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.~~

(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

(1) GENERAL RIGHTS.—

(A) SPECIFIED RIGHTS.—A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) ACCOMMODATION OF NEEDS.—The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed,†

unless a delay in changing a room or roommate while notice is given would endanger the resident or others.

(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have,

including those with respect to the behavior of other residents.

(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

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

(ix) EXAMINATION OF SURVEY RESULTS.—The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

~~(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purposes of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility~~.

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

Clause (iii) shall not be construed as requiring the provision of a private room. ~~A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident~~'s ~~eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.—~~

(B) NOTICE OF RIGHTS.—A nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this title, including the right to request an assessment under section ~~1924(c)(1)(B)~~; 2115(c)(1)(B)

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6);

(iii) inform each resident who is entitled to medical assistance under this title—

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services ~~(including those specified under section 1902(a)(28)(B))~~ that are included in nursing facility services under the State plan and for which the resident may not be charged ~~(except as permitted in section 1916)~~, and of those other items and services that the facility offers and for which the resident may be charged and the

amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under title XVIII or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) USE OF PSYCHOPHARMACOLOGIC DRUGS.—Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) TRANSFER AND DISCHARGE RIGHTS.—

(A) IN GENERAL.—A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

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

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

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title or title XVIII on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in

the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title after admission to the facility, only charges which may be imposed under this title shall be considered to be allowable.

(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

(i) IN GENERAL.—Before effecting a transfer or discharge of a resident, a nursing facility must—

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

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

(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

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

(V) in a case where the provision of a 30-day notice would be impossible or impracticable.

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

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3);

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965[185] in accordance with section 712 of the Act);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and

[185] See Vol. II, P.L. 89-73.

advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act[186]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i)), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act[187].

(C) ORIENTATION.—A nursing facility must provide ~~sufficient~~ preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) NOTICE ON BED-HOLD POLICY AND READMISSION.—

(i) NOTICE BEFORE TRANSFER.—Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

(I) the provisions of the State plan under this title regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) NOTICE UPON TRANSFER.—At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) PERMITTING RESIDENT TO RETURN.—A nursing facility must establish and follow a written policy under which a resident—

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a ~~semiprivate~~ room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

~~(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).~~

(3) ACCESS AND VISITATION RIGHTS.—A nursing facility must—

[186] See Vol. II, P.L. 88-164; Title I.
[187] See Vol. II, P.L. 99-319.

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

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

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

unless such access would endanger the health or safety of the residents or others in the facility;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) EQUAL ACCESS TO QUALITY CARE.—

(A) IN GENERAL.—A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) CONSTRUCTION.—

(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDICAID PATIENTS.—Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) NO ADDITIONAL SERVICES REQUIRED.—Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) ADMISSIONS POLICY.—

(A) ADMISSIONS.—With respect to admissions practices, a nursing facility must—

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

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

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not

charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this title, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) CONSTRUCTION.—

(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) CONTRACTS WITH LEGAL REPRESENTATIVES.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) CHARGES FOR ADDITIONAL SERVICES REQUESTED.—Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term "nursing facility services".

(iv) BONA FIDE CONTRIBUTIONS.—Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(5) (6) PROTECTION OF RESIDENT FUNDS.—

(A) IN GENERAL.—The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) MANAGEMENT OF PERSONAL FUNDS.—Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) DEPOSIT.—The facility must deposit any amount of personal funds in excess of $250 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts

and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

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

(iii) NOTICE OF CERTAIN BALANCES.—The facility must notify each resident receiving medical assistance under the State plan under title XIX when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1611(a)(3)(B) and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under title XVI.

(iv) CONVEYANCE UPON DEATH.—Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

all other personal property, including medical records, shall be considered part of the residents estate and shall only be released to the administrator of the estate.

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

State

(D) LIMITATION ON CHARGES TO PERSONAL FUNDS.—The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this title or title XVIII.

(6) (A) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

(B) CERTAIN MEDICAID INDIVIDUALS DEFINED.—In subparagraph (A), the term "certain medicaid-eligible individual" means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.

(7) (8) POSTING OF SURVEY RESULTS.—A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g).

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

(1) ADMINISTRATION.—

(A) IN GENERAL.—A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5)).

(B) REQUIRED NOTICES.—If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) NURSING FACILITY ADMINISTRATOR.—The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4).

whether free-standing or hospital-based.

(2) LICENSING AND LIFE SAFETY CODE.—

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

(B) LIFE SAFETY CODE.—A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

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

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

(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A nursing facility must—

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

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents,

personnel, and the general public.

(4) MISCELLANEOUS.—

(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124[188] and with accepted professional standards and principles which apply to professionals providing services in such a facility.

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

(e) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—~~As a condition of approval of its plan under this title, a State must provide for the following:~~

(1) SPECIFICATION AND REVIEW OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND OF NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) and that meet the requirements established under subsection (f)(2), and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii).

~~The failure of the Secretary to establish requirements under subsection (f)(2) shall not relieve any State of its responsibility under this paragraph~~.

(2) NURSE AIDE REGISTRY.—

(A) IN GENERAL.—By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the

[188] As in original. No closing parenthesis.

finding or a clear and accurate summary of such a statement.

(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) STATE APPEALS PROCESS FOR TRANSFERS AND DISCHARGES.—The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3), for hearing appeals on transfers and discharges of residents of such facilities; ~~but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.~~

(4) NURSING FACILITY ADMINISTRATOR STANDARDS.—By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) respecting the qualification of administrators of nursing facilities.

any such standards promulgated shall apply to administrators of hospital-based facilities as well as free-standing facilities.

(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii). ~~Such instrument shall be—~~

~~(A) one of the instruments designated under subsection (f)(6)(B), or~~

~~(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A).~~

(6) NOTICE OF ~~MEDICAID~~ RIGHTS.—Each State, ~~as a condition of approval of its plan under this title, effective April 1, 1988, must~~ shall develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this title.

(7) STATE REQUIREMENTS FOR PREADMISSION SCREENING AND RESIDENT REVIEW.—

(A) PREADMISSION SCREENING.—

(i) IN GENERAL.—~~Effective January 1, 1989,~~ The State must have in effect a preadmission screening program, ~~for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F)~~ for mentally ill and mentally retarded individuals (as defined in subparagraph ~~(G)~~ (B)) who are admitted to nursing facilities ~~on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).~~

~~(ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS. The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.~~

(ii) State requirements for Resident Review — The State shall notify the State mental health authority or the State mental retardation or developmental disability authority, as appropriate of the individuals so identified.

(iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES.—The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) STATE REQUIREMENT FOR ANNUAL RESIDENT REVIEW.—

(i) FOR MENTALLY ILL RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) FOR MENTALLY RETARDED RESIDENTS.—As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8))—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d); and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) FREQUENCY OF REVIEWS.—

(I) ANNUAL.—Except as provided in subclauses (II) and (III), the reviews and determinations under clauses (i) and (ii) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

(II) PREADMISSION REVIEW CASES.—In the case of a resident subject to a preadmission review under

subsection (b)(3)(F), the review and determination under clause (i) or (ii) need not be done until the resident has resided in the nursing facility for 1 year.

(III) INITIAL REVIEW.—The reviews and determinations under clauses (i) and (ii) must first be conducted (for each resident not subject to preadmission review under subsection (b)(3)(F)) by not later than April 1, 1990.

(iv) PROHIBITION OF DELEGATION.—A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) RESPONSE TO PREADMISSION SCREENING AND RESIDENT REVIEW.—As of April 1, 1990, the State must meet the following requirements:

(i) LONG-TERM RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING SPECIALIZED SERVICES.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) OTHER RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES, BUT REQUIRING SPECIALIZED SERVICES.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services