

“(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

“(1) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a National Clearinghouse for Long-Term Care Information. The Clearinghouse may be established through a contract or inter-agency agreement.

“(2) DUTIES.—

“(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

“(i) educate consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program and provide contact information for obtaining State-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;

“(ii) provide objective information to assist consumers with the decisionmaking process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care and provide contact information for additional objective resources on planning for long-term care needs; and

“(iii) maintain a list of States with State long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships.

“(B) REQUIREMENT.—In providing information to consumers on long-term care in accordance with this subsection, the National Clearinghouse for Long-Term Care Information shall not advocate in favor of a specific long-term care insurance provider or a specific long-term care insurance policy.

“(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, \$3,000,000 for each of fiscal years 2006 through 2010.”

#### § 1396q. Application of provisions of subchapter II relating to subpoenas

The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II, except that, in so applying such subsections, and in applying section 405(l) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner 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.

(Aug. 14, 1935, ch. 531, title XIX, §1918, as added Pub. L. 98-369, div. B, title III, §2370(a), July 18, 1984, 98 Stat. 1110; amended Pub. L. 103-296, title I, §108(d)(5), Aug. 15, 1994, 108 Stat. 1486.)

#### AMENDMENTS

1994—Pub. L. 103-296 inserted before period at end “, except that, in so applying such subsections, and in applying section 405(l) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner 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 DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

#### EFFECTIVE DATE

Pub. L. 98-369, div. B, title III, §2370(b), July 18, 1984, 98 Stat. 1110, provided that: “The amendment made by

this section [enacting this section] shall become effective on the date of the enactment of this Act [July 18, 1984].”

#### § 1396r. Requirements for nursing facilities

##### (a) “Nursing facility” defined

In this subchapter, 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 1395x(l) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; 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.

###### (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;

(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);

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

(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 1320a-7a of this title (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 1320a-7a(a) of this title.

##### **(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 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. 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.

#### **(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**

##### **(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.

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,

(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)<sup>1</sup> 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 subchapter 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

<sup>1</sup> See References in Text note below.

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.

Such term includes an individual who provides such services through an agency or under a contract with the facility.

**(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 conducted 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.

**(8) Information on nurse staffing**

**(A) In general**

A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

**(B) Publication of data**

A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

**(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.

**(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 sur-

vey 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 purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter 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 subchapter or a State's entitlement to Federal medical assistance under this subchapter 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 subchapter, including the right to request an assessment under section 1396r-5(c)(1)(B) of this title;

(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 subchapter—

(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 1396a(a)(28)(B) of this title) 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 1396o of this title), 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 subchapter 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 subchapter 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 subchapter or subchapter 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 subchapter after admission to the facility, only charges which may be imposed under this subchapter 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.

**(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 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; 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<sup>2</sup> [42 U.S.C. 10801 et seq.].

<sup>2</sup> See References in Text note below.

**(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 subchapter 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 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

**(F) Continuing rights in case of voluntary withdrawal from participation****(i) In general**

In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this subchapter but continues to provide services of the type provided by nursing facilities—

(I) the facility's voluntary withdrawal from participation is not an acceptable

basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

**(ii) Information for new residents**

The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this subchapter with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this subchapter.

**(iii) Continuation of payments and oversight authority**

Notwithstanding any other provision of this subchapter, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of—

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this subchapter; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) (including involuntary termination of a participation agreement deemed continued under this clause).

**(iv) No application to new residents**

This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility

on or after the effective date of the withdrawal from participation under this subparagraph.

**(3) Access and visitation rights**

A nursing facility must—

(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;

(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 subchapter or subchapter XVIII, (II) subject to subparagraph (B)(v), not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter 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 subchapter, 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.

**(v) Treatment of continuing care retirement communities admission contracts**

Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1396r-5 of this title, contracts for admission to a State licensed, registered, certified, or equivalent con-



tinuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.

**(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 \$50 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 this subchapter when the amount in the resident's account reaches \$200 less than the dollar amount determined under section 1382(a)(3)(B) of this title 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 subchapter 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.

**(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 subchapter or subchapter XVIII.

**(7) 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 subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

**(B) "Certain medicaid-eligible individual" 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 subchapter 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 subchapter.

**(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 1320a-3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a-5(b) of this title) 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 licens-

ing 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).

**(V)<sup>3</sup> Availability of survey, certification, and complaint investigation reports**

A nursing facility must—

(i) have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years available for any individual to review upon request; and

(ii) post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

The facility shall not make available under clause (i) identifying information about complainants or residents.

**(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 applica-

ble Federal, State, and local laws and regulations (including the requirements of section 1320a-3 of this title) 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 subchapter, 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 reg-

<sup>3</sup>So in original. There are no subpars. (D) to (U).

istry relating to the 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.

**(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 subchapter, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

**(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)) 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.

**(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 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 1396d(h) of this title) 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 1396d(d) of this title; and

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

**(iii) Review required upon change in resident's condition**

A review and determination under clause (i) or (ii) must be conducted promptly

after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) with respect to a mentally ill or mentally retarded resident, that there has been a significant change in the resident's physical or mental condition.

**(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 subchapter 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 retar-

ation, 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).

**(D) Denial of payment**

**(i) For failure to conduct preadmission screening or review**

No payment may be made under section 1396b(a) of this title 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 1396b(a) of this title 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 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 subchapter, 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 1396d(d) of this title).

(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**

**(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 subchapter, 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 shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency eval-

uation 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 social service needs, care of cognitively impaired residents, basic restorative services, and residents’ rights) and content of the curriculum (including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training<sup>4</sup>, (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—

<sup>4</sup>So in original. Probably should be followed by a closing parenthesis.

(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 December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training 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) subject to subparagraphs (C) and (D), 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 1395i-3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i); or

(c) has been assessed a civil money penalty described in section 1395i-3(h)(2)(B)(ii) of this title 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<sup>5</sup> (i), (iii), or (iv) of subsection (h)(2)(A), clauses<sup>5</sup> (i) or (iii) of section 1395i-3(h)(2)(B) of this title, or section 1395i-3(h)(4) of this title, 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.

### **(C) Waiver authorized**

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of subchapter XVIII) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

### **(D) Waiver of disapproval of nurse-aide training programs**

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

### **(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.

### **(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

<sup>5</sup>So in original. Probably should be "clause".

and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, 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 subchapter and those costs which are to be included in the payment amount under this subchapter 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 subchapter, for purposes of section 1396a(a)(28)(B) of this title, 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 subchapter) 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 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).

**(10) Special focus facility program**

**(A) In general**

The Secretary shall conduct a special focus facility program for enforcement of requirements for nursing facilities that the Secretary has identified as having substantially failed to meet applicable requirements of this chapter.

**(B) Periodic surveys**

Under such program the Secretary shall conduct surveys of each facility in the program not less often than once every 6 months.

**(g) Survey and certification process**

**(1) State and Federal responsibility**

**(A) In general**

Under each State plan under this subchapter, 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) Removal of name from nurse aide registry**

**(i) In general**

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

**(ii) Timing of determination**

In no case shall a determination on a petition submitted under clause (i) be made

prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

**(E) 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 conducted is subject to a civil money penalty of not to exceed \$2,000. The provisions of section 1320a-7a of this title (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 1320a-7a(a) of this title. 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.

**(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 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.

**(II) Special surveys**

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 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 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 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.

**(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 1396b(a)(2)(D) of this title 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 1316 of this title in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1316(a)(1) of this title.

**(D) Special surveys of compliance**

Where the Secretary has reason to question the compliance of 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 subchapter or under subchapter XVIII,

(iii) copies of statements of ownership under section 1320a-3 of this title, and

(iv) information disclosed under section 1320a-5 of this title.

**(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 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of non-compliance with any of the requirements of subsections (b), (c), and (d), or of any adverse action taken against a nursing facility under paragraphs<sup>6</sup> (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 medic-aid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

**(E) Submission of survey and certification information to the Secretary**

In order to improve the timeliness of information made available to the public under subparagraph (A) and provided on the Nursing Home Compare Medicare website under subsection (i), each State shall submit information respecting any survey or certification made respecting a nursing facility (including any enforcement actions taken by the State) to the Secretary not later than the date on which the State sends such information to the facility. The Secretary shall use the information submitted under the preceding sentence to update the information provided on the Nursing Home Compare Medicare website as expeditiously as practicable but not less frequently than quarterly.

**(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—

(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

(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

<sup>6</sup>So in original. Probably should be "paragraph".

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.

(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 subparagraph (A).

**(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 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 1396b(a)(7) of this title, 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 subchapter. For purposes of section 1396b(a)(7) of this title, 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 subchapter.

**(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).

**(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 assist-

ance 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**

**(I) In general**

Subject to subclause (II), the Secretary may impose a civil money penalty in an amount not to exceed \$10,000 for each day of noncompliance. The provisions of section 1320a-7a of this title (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 1320a-7a(a) of this title.

**(II) Reduction of civil money penalties in certain circumstances**

Subject to subclause (III), in the case where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by not more than 50 percent.

**(III) Prohibitions on reduction for certain deficiencies**

**(aa) Repeat deficiencies**

The Secretary may not reduce the amount of a penalty under subclause (II) if the Secretary had reduced a penalty imposed on the facility in the preceding year under such subclause with respect to a repeat deficiency.

**(bb) Certain other deficiencies**

The Secretary may not reduce the amount of a penalty under subclause (II) if the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents of the facility, or results in the death of a resident of the facility.

**(IV) Collection of civil money penalties**

In the case of a civil money penalty imposed under this clause, the Secretary shall issue regulations that—

(aa) subject to item (cc), not later than 30 days after the imposition of the penalty, provide for the facility to have the opportunity to participate in an independent informal dispute resolution process which generates a written record prior to the collection of such penalty;

(bb) in the case where the penalty is imposed for each day of noncompliance, provide that a penalty may not be imposed for any day during the period beginning on the initial day of the imposition of the penalty and ending on the day on which the informal dispute resolution process under item (aa) is completed;

(cc) may provide for the collection of such civil money penalty and the placement of such amounts collected in an escrow account under the direction of the Secretary on the earlier of the date on which the informal dispute resolution process under item (aa) is completed or the date that is 90 days after the date of the imposition of the penalty;

(dd) may provide that such amounts collected are kept in such account pending the resolution of any subsequent appeals;

(ee) in the case where the facility successfully appeals the penalty, may provide for the return of such amounts collected (plus interest) to the facility; and

(ff) in the case where all such appeals are unsuccessful, may provide that some portion of such amounts collected may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).

**(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.

**(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 subchapter 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, and
- (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.

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

**(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).

**(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<sup>7</sup> 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 resi-

dents, 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 terminated, 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.

**(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), (ii)(IV),<sup>8</sup> (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of

<sup>8</sup> So in original. Cl. (ii) of par. (2)(A) of this subsection does not contain subclauses. Probably means cl. (ii)(IV) of par. (3)(C) of this subsection.

<sup>7</sup> So in original. Probably should be followed by a comma.

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 subchapter XVIII.

**(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 subchapter and subchapter XVIII, including investigations by State medicaid fraud control units.

**(i) Nursing Home Compare website**

**(1) Inclusion of additional information**

**(A) In general**

The Secretary shall ensure that the Department of Health and Human Services includes, as part of the information provided for comparison of nursing homes on the official Internet website of the Federal Government for Medicare beneficiaries (commonly referred to as the “Nursing Home Compare” Medicare website) (or a successor website), the following information in a manner that is prominent, updated on a timely basis, easily accessible, readily understandable to consumers of long-term care services, and searchable:

(i) Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1320a-7j(g) of this title, including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include—

(I) concise explanations of how to interpret the data (such as plain English explanation of data reflecting “nursing home staff hours per resident day”);

(II) differences in types of staff (such as training associated with different categories of staff);

(III) the relationship between nurse staffing levels and quality of care; and

(IV) an explanation that appropriate staffing levels vary based on patient case mix.

(ii) Links to State Internet websites with information regarding State survey and certification programs, links to Form 2567 State inspection reports (or a successor form) on such websites, information to guide consumers in how to interpret and understand such reports, and the facility plan of correction or other response to such report. Any such links shall be posted on a timely basis.

(iii) The standardized complaint form developed under section 1320a-7j(f) of this title, including explanatory material on

what complaint forms are, how they are used, and how to file a complaint with the State survey and certification program and the State long-term care ombudsman program.

(iv) Summary information on the number, type, severity, and outcome of substantiated complaints.

(v) The number of adjudicated instances of criminal violations by a facility or the employees of a facility—

(I) that were committed inside of the facility; and

(II) with respect to such instances of violations or crimes committed outside of the facility, that were violations or crimes that resulted in the serious bodily injury of an elder.

**(B) Deadline for provision of information**

**(i) In general**

Except as provided in clause (ii), the Secretary shall ensure that the information described in subparagraph (A) is included on such website (or a successor website) not later than 1 year after March 23, 2010.

**(ii) Exception**

The Secretary shall ensure that the information described in subparagraph (A)(i) is included on such website (or a successor website) not later than the date on which the requirements under section 1320a-7j(g) of this title are implemented.

**(2) Review and modification of website**

**(A) In general**

The Secretary shall establish a process—

(i) to review the accuracy, clarity of presentation, timeliness, and comprehensiveness of information reported on such website as of the day before March 23, 2010; and

(ii) not later than 1 year after March 23, 2010, to modify or revamp such website in accordance with the review conducted under clause (i).

**(B) Consultation**

In conducting the review under subparagraph (A)(i), the Secretary shall consult with—

(i) State long-term care ombudsman programs;

(ii) consumer advocacy groups;

(iii) provider stakeholder groups;

(iv) skilled nursing facility employees and their representatives; and

(v) any other representatives of programs or groups the Secretary determines appropriate.

**(j) Construction**

Where requirements or obligations under this section are identical to those provided under section 1395i-3 of this title, the fulfillment of those requirements or obligations under section 1395i-3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

(Aug. 14, 1935, ch. 531, title XIX, §1919, as added and amended Pub. L. 100-203, title IV,

§§ 4211(a)(3), (c), 4212(a), (b), 4213(a), 4216, Dec. 22, 1987, 101 Stat. 1330–182, 1330–196, 1330–207, 1330–213, 1330–220, as amended Pub. L. 100–360, title IV, § 411(l)(3)(C)(ii), (6)(B), (8)(A), July 1, 1988, 102 Stat. 803–805; Pub. L. 100–360, title III, § 303(a)(2), title IV, § 411(l)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(iii), (D), (5), (6)(A), (7), (8)(B), July 1, 1988, 102 Stat. 760, 801–805, as amended Pub. L. 100–485, title VI, § 608(d)(27)(C)–(E), (I), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101–239, title VI, § 6901(b)(1), (3), (4)(A), (d)(1), (4), Dec. 19, 1989, 103 Stat. 2298–2301; Pub. L. 101–508, title IV, §§ 4751(b)(2), 4801(a)(2)–(6)(A), (7), (b)(2)–(5)(A), (6)–(8), (d)(1), (e)(2)–(7)(A), (8)–(10), (12)–(15), (18), Nov. 5, 1990, 104 Stat. 1388–205, 1388–211 to 1388–219; Pub. L. 102–375, title VII, § 708(a)(1)(B), Sept. 30, 1992, 106 Stat. 1292; Pub. L. 104–315, §§ 1(a), (b), Oct. 19, 1996, 110 Stat. 3824; Pub. L. 105–15, § 1, May 15, 1997, 111 Stat. 34; Pub. L. 105–33, title IV, §§ 4754(a), 4755(b), Aug. 5, 1997, 111 Stat. 526; Pub. L. 106–4, § 2(a), Mar. 25, 1999, 113 Stat. 7; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(p)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397; Pub. L. 106–402, title IV, § 401(b)(6)(A), Oct. 30, 2000, 114 Stat. 1738; Pub. L. 106–554, § 1(a)(6) [title IX, § 941(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586; Pub. L. 108–173, title IX, § 932(c)(2), Dec. 8, 2003, 117 Stat. 2401; Pub. L. 109–171, title VI, § 6015(a), Feb. 8, 2006, 120 Stat. 65; Pub. L. 109–432, div. B, title IV, § 405(c)(2)(B), Dec. 20, 2006, 120 Stat. 3000; Pub. L. 111–148, title VI, §§ 6101(c)(1)(B), 6103(b)(1), (2)(A), (3), (c)(2), 6111(b), 6121(b), Mar. 23, 2010, 124 Stat. 702, 707–709, 715, 721.)

#### AMENDMENT OF SUBSECTION (d)(1)

*Pub. L. 111–148, title VI, § 6101(c)(1)(B), (2), Mar. 23, 2010, 124 Stat. 702, provided that, effective on the date on which the Secretary of Health and Human Services makes certain information available to the public, subsection (d)(1) of this section is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B). See 2010 Amendment note and Effective Date of 2010 Amendment note below.*

#### REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (b)(4)(C)(ii)(IV), (c)(2)(B)(iii)(II), and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Section 307(a)(12) of the Act was repealed by Pub. L. 106–501, title III, § 306(5), Nov. 13, 2000, 114 Stat. 2244, and provisions formerly appearing in section 307(a)(12) of the Act are now contained in section 307(a)(9) of the Act, which is classified to section 3027(a)(9) of this title. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.), respectively, of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (c)(2)(B)(iii)(III), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act [of 1986], referred to in subsec. (c)(2)(B)(iii)(IV), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the

Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

Section 6901(b)(4)(B)–(D) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (e)(2)(A), is section 6901(b)(4)(B)–(D) of Pub. L. 101–239, which is set out as a note under section 1395i–3 of this title.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

#### PRIOR PROVISIONS

A prior section 1919 of act Aug. 14, 1935, was renumbered section 1922 and is classified to section 1396r–3 of this title.

#### AMENDMENTS

2010—Subsec. (b)(5)(F). Pub. L. 111–148, § 6121(b)(2), inserted concluding provisions.

Subsec. (d)(1)(B). Pub. L. 111–148, § 6101(c)(1)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to required notice to a State licensing agency of change in ownership, control interest, management, or certain positions of responsibility for a nursing facility.

Subsec. (d)(1)(V). Pub. L. 111–148, § 6103(c)(2), added subpar. (V).

Subsec. (f)(2)(A)(i)(I). Pub. L. 111–148, § 6121(b)(1), inserted “ (including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training” before “ , (II)”.

Subsec. (f)(10). Pub. L. 111–148, § 6103(b)(3), added par. (10).

Subsec. (g)(5)(E). Pub. L. 111–148, § 6103(b)(2)(A), added subpar. (E).

Subsec. (h)(3)(C)(ii). Pub. L. 111–148, § 6111(b)(1), designated existing provisions as subcl. (I), inserted heading, substituted “Subject to subclause (II), the Secretary” for “The Secretary”, and added subcls. (II) to (IV).

Subsec. (h)(8). Pub. L. 111–148, § 6111(b)(2), which directed insertion of “(ii)(IV),” after “(i),” in subsec. “(h)(5)(8)” of this section, was executed to subsec. (h)(8), to reflect the probable intent of Congress. Subsec. (h)(5) does not contain “(i),”.

Subsecs. (i), (j). Pub. L. 111–148, § 6103(b)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

2006—Subsec. (c)(5)(A)(i)(II). Pub. L. 109–432 substituted “subparagraph (B)(v)” for “clause (v)”.

Pub. L. 109–171, § 6015(a)(1), inserted “subject to clause (v)” after “(II)”.

Subsec. (c)(5)(B)(v). Pub. L. 109–171, § 6015(a)(2), added cl. (v).

2003—Subsec. (f)(2)(B)(iii). Pub. L. 108–173, § 932(c)(2)(A), substituted “subparagraphs (C) and (D)” for “subparagraph (C)” in introductory provisions.

Subsec. (f)(2)(D). Pub. L. 108–173, § 932(c)(2)(B), added subpar. (D).

2000—Subsec. (b)(8). Pub. L. 106–554 added par. (8).

Subsec. (c)(2)(B)(iii)(III). Pub. L. 106–402 substituted “subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part C of the Developmental Disabilities Assistance and Bill of Rights Act”.

1999—Subsec. (b)(3)(C)(i)(I). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(p)(1)], struck out “not later than” before “14 days”.

Subsec. (c)(2)(F). Pub. L. 106–4 added subpar. (F).

Subsec. (d)(4)(A). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(p)(2)], inserted closing parenthesis after “section 1320a–3 of this title”.

1997—Subsec. (f)(2)(B)(iii). Pub. L. 105-15, §1(1), inserted “subject to subparagraph (C),” after “(iii)”.

Subsec. (f)(2)(C). Pub. L. 105-15, §1(2), added subpar. (C).

Subsec. (g)(1)(D), (E). Pub. L. 105-33, §4755(b), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(3)(D). Pub. L. 105-33, §4754(a), inserted “and” at end of cl. (i), substituted a period for “, and” at end of cl. (ii), and struck out cl. (iii) which read as follows: “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.”

1996—Subsec. (b)(3)(E). Pub. L. 104-315, §2(a), inserted at end “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.”

Subsec. (e)(7)(B). Pub. L. 104-315, §1(a)(1)(A), struck out “annual” before “resident review” in heading.

Subsec. (e)(7)(B)(iii). Pub. L. 104-315, §2(b), added cl. (iii).

Pub. L. 104-315, §1(a)(1)(B), struck out cl. (iii) which related to frequency of reviews as annual, pre-admission, and initial.

Subsec. (e)(7)(D)(i). Pub. L. 104-315, §1(a)(2), struck out “annual” before “review” in heading.

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102-375 substituted “title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act” for “section 307(a)(12) of the Older Americans Act of 1965”.

1990—Subsec. (b)(1)(B). Pub. L. 101-508, §4801(e)(2), inserted at end “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.”

Subsec. (b)(3)(C)(i)(I). Pub. L. 101-508, §4801(e)(3), substituted “not later than 14 days” for “4 days”.

Subsec. (b)(3)(F). Pub. L. 101-508, §4801(b)(8), substituted “specialized services” for “active treatment” in cls. (i) and (ii).

Pub. L. 101-508, §4801(b)(4)(A), inserted at end “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).”

Pub. L. 101-508, §4801(b)(2)(A), substituted “Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility” for “A nursing facility” in introductory provisions.

Subsec. (b)(4)(A)(vii). Pub. L. 101-508, §4801(e)(4), added cl. (vii).

Subsec. (b)(4)(C)(ii). Pub. L. 101-508, §4801(e)(5)(A), substituted “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” for “A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if” in introductory provisions.

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101-508, §4801(e)(5)(B)–(D), which directed amendment of cl. (ii) by adding subcls. (IV) and (V) at the end, was executed by adding subcls. (IV) and (V) after subcl. (III) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(5)(A). Pub. L. 101-508, §4801(a)(2), designated existing provision as cl. (i), substituted “Except as provided in clause (ii), a nursing facility” for “A nursing facility” and “on a full-time basis” for “(on a full-time, temporary, per diem, or other basis)”, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101-508, §4801(a)(3), substituted “any State registry established under sub-

section (e)(2)(A) that the facility believes will include information” for “the State registry established under subsection (e)(2)(A) as to information in the registry”.

Subsec. (b)(5)(D). Pub. L. 101-508, §4801(a)(4), inserted before period at end “, or a new competency evaluation program”.

Subsec. (b)(5)(F)(i). Pub. L. 101-508, §4801(e)(6), substituted “(G) or a registered dietician” for “(G)”.

Subsec. (b)(6)(A). Pub. L. 101-508, §4801(d)(1), inserted before semicolon at end “(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)”.

Subsec. (c)(1)(A). Pub. L. 101-508, §4801(e)(8)(B), inserted at end “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 subchapter or a State’s entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.”

Subsec. (c)(1)(A)(iv). Pub. L. 101-508, §4801(e)(9), inserted before period at end “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”.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101-508, §4801(e)(8)(A), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101-508, §4801(e)(10), inserted “including the notice (if any) of the State developed under subsection (e)(6)” after “in such rights”.

Subsec. (c)(2)(E). Pub. L. 101-508, §4751(b)(2), added subpar. (E).

Subsec. (c)(7), (8). Pub. L. 101-508, §4801(e)(7)(A), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e)(1)(A). Pub. L. 101-508, §4801(e)(18), substituted “under subsection (f)(2)” for “under clause (i) or (ii) of subsection (f)(2)(A)”.

Subsec. (e)(2)(A). Pub. L. 101-508, §4801(e)(12)(A), inserted “, 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” after “in the State”.

Subsec. (e)(2)(C). Pub. L. 101-508, §4801(e)(12)(B), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 101-508, §4801(b)(2)(B), designated existing provision as cl. (i), inserted cl. (i) heading, and added cls. (ii) and (iii).

Subsec. (e)(7)(B)(i)(II), (ii)(II). Pub. L. 101-508, §4801(b)(8), substituted “specialized services” for “active treatment”.

Subsec. (e)(7)(B)(iv). Pub. L. 101-508, §4801(b)(4)(B), added cl. (iv).

Subsec. (e)(7)(C)(i) to (iii). Pub. L. 101-508, §4801(b)(8), substituted “specialized services” for “active treatment” wherever appearing.

Subsec. (e)(7)(C)(iv). Pub. L. 101-508, §4801(b)(5)(A), added cl. (iv).

Subsec. (e)(7)(D). Pub. L. 101-508, §4801(b)(3)(A), struck out “where failure to conduct preadmission screening” after “Denial of payment” in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (e)(7)(E). Pub. L. 101-508, §4801(b)(8), substituted “specialized services” for “active treatment”.

Pub. L. 101-508, §4801(b)(6), inserted at end “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.”

Pub. L. 101-508, §4801(b)(3)(B), substituted “the requirements of subparagraphs (A) through (C) of this paragraph” for “the requirement of this paragraph”.

Subsec. (e)(7)(G)(i). Pub. L. 101-508, §4801(b)(7), substituted “serious mental illness (as defined by the Secretary in consultation with the National Institute of



Mental Health)” for “primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)” and inserted before period at end “or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness”.

Subsec. (e)(7)(G)(iii). Pub. L. 101-508, § 4801(b)(8), substituted “specialized services” for “active treatment”.

Subsec. (f)(2)(A)(iv)(II). Pub. L. 101-508, § 4801(a)(5)(B), inserted “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” after “nurse aide”.

Subsec. (f)(2)(A)(iv)(III). Pub. L. 101-508, § 4801(a)(5)(A), (C), (D), added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101-508, § 4801(a)(7), inserted “(through subcontract or otherwise)” after “may not delegate” in last sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101-508, § 4801(a)(6)(A), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or”.

Subsec. (g)(1)(C). Pub. L. 101-508, § 4801(e)(13), inserted at end “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.”

Subsec. (g)(5)(A)(i). Pub. L. 101-508, § 4801(e)(14), substituted “deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans” for “deficiencies and plans”.

Subsec. (g)(5)(B). Pub. L. 101-508, § 4801(e)(15), substituted “or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect” for “with respect”.

1989—Subsec. (b)(5)(A). Pub. L. 101-239, § 6901(b)(1)(A), substituted “October 1, 1990” for “January 1, 1990” in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101-239, § 6901(b)(1)(B), substituted “January 1, 1990” and “October 1, 1990” for “July 1, 1989” and “January 1, 1990”, respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101-239, § 6901(d)(4)(A), substituted “Secretary until such an order could reasonably be obtained” for “Secretary) until such an order could reasonably be obtained”.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101-239, § 6901(d)(4)(B), substituted “accommodation” for “accommodations”.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101-239, § 6901(d)(4)(C), substituted “and content of the curriculum” for “content of the curriculum”.

Pub. L. 101-239, § 6901(b)(3)(A), inserted “care of cognitively impaired residents,” after “social service needs.”

Subsec. (f)(2)(A)(ii). Pub. L. 101-239, § 6901(b)(3)(B), substituted “recognition of mental health and social service needs, care of cognitively impaired residents” for “cognitive, behavioral and social care”.

Subsec. (f)(2)(A)(iv). Pub. L. 101-239, § 6901(b)(3)(C), (D), added cl. (iv).

Subsec. (f)(2)(B)(ii). Pub. L. 101-239, § 6901(b)(4)(A), substituted “July 1, 1989” for “January 1, 1989”.

Subsec. (h)(3)(D). Pub. L. 101-239, § 6901(d)(4)(D), substituted “not longer than 6 months after the effective date of the findings” for “not longer than 6 months”.

Subsec. (h)(8). Pub. L. 101-239, § 6901(d)(1), inserted at end “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 subchapter XVIII.”

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100-360, § 411(l)(2)(B), struck out “in the case of a resident eligible for benefits under this subchapter,” before “uses an instrument”.

Subsec. (b)(3)(A)(iv). Pub. L. 100-360, § 411(l)(2)(A), as amended by Pub. L. 100-485, § 608(d)(27)(C), struck out “in the case of a resident eligible for benefits under part A of subchapter XVIII of this chapter,” before “includes the identification of medical problems”.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100-360, § 411(l)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: “The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a-7a of this title.”

Subsec. (b)(4)(C)(i)(II). Pub. L. 100-360, § 411(l)(3)(A)(i), inserted “professional” after “registered”.

Subsec. (b)(4)(C)(ii). Pub. L. 100-360, § 411(l)(3)(A)(i)-(iv), in heading, substituted “(ii) Waiver” for “(ii) Facility waivers.—(i) Waiver”, in subcl. (III), inserted “professional” after “registered”, and in concluding provisions, substituted “clause (iii)” for “clause (ii)” and “use” for “employ”.

Subsec. (b)(4)(C)(iii). Pub. L. 100-360, § 411(l)(3)(A)(v), (vi), substituted “(iii) Assumption” for “(ii) Assumption” in heading and “exercise” for “excercise” in text.

Subsec. (b)(5)(A). Pub. L. 100-360, § 411(l)(3)(B), which directed amendment of subpar. (A) by striking “subparagraph (E)” and inserting “subparagraph (F)”, could not be executed because of prior amendment by Pub. L. 100-360, § 411(l)(2)(D)(i), see Amendment note below.

Pub. L. 100-360, § 411(l)(2)(D)(i), as amended by Pub. L. 100-485, § 608(d)(27)(D), struck out “, who is not a licensed health professional (as defined in subparagraph (E)),” after “any individual” in introductory provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 100-360, § 411(l)(2)(D)(ii), substituted “nursing or nursing-related services” for “such services”.

Subsec. (b)(5)(G). Pub. L. 100-360, § 411(l)(2)(D)(iii), inserted “physical or occupational therapy assistant,” after “occupational therapist.”

Subsec. (c)(1)(B)(i). Pub. L. 100-360, § 303(a)(2), inserted before semicolon at end “and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r-5(c)(1)(B) of this title”.

Subsec. (c)(2)(A)(v). Pub. L. 100-360, § 411(l)(2)(F), substituted “for a stay at the facility” for “an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XVIII of this chapter”.

Subsec. (c)(2)(B)(iii)(III). Pub. L. 100-360, § 411(l)(3)(C)(iii), as added by Pub. L. 100-485, § 608(d)(27)(E), substituted “responsible” for “responsible”.

Subsec. (c)(6). Pub. L. 100-360, § 411(l)(2)(G), substituted “upon the written” for “once the facility accepts the written” in subpar. (A)(ii) and “Upon written” for “Upon a facility’s acceptance of written” in subpar. (B).

Subsec. (c)(7). Pub. L. 100-360, § 411(l)(6)(B), amended Pub. L. 100-203, § 4212(b), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100-360, § 411(l)(3)(C)(ii), as added by Pub. L. 100-485, § 608(d)(27)(E), amended Pub. L. 100-203, § 4211, see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100-360, § 411(l)(3)(D)(i), (ii), substituted “January 1, 1989” for “September 1, 1988” in subpar. (A) and “January” for “September” in subpar. (B).

Subsec. (e)(2)(B). Pub. L. 100-360, § 411(l)(2)(H), inserted after first sentence “The State shall make available to the public information in the registry.”

Subsec. (e)(3). Pub. L. 100-360, § 411(l)(2)(I), inserted “and discharges” after “transfers” in heading and two places in text.

Subsec. (e)(7)(E). Pub. L. 100-360, § 411(l)(3)(D)(iii), substituted “April 1, 1989” for “October 1, 1988”.

Subsec. (f). Pub. L. 100-360, § 411(l)(3)(C)(ii), as added by Pub. L. 100-485, § 608(d)(27)(E), amended Pub. L. 100-203, § 4211, see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100-360, § 411(l)(3)(D)(iv), substituted “September” for “July” in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100-360, § 411(l)(2)(J), substituted “recognition of mental health and social

service needs” for “cognitive, behavioral and social care”.

Subsec. (f)(3). Pub. L. 100-360, §411(l)(2)(I), inserted “and discharges” after “transfers” in heading and in text.

Subsec. (f)(7)(A). Pub. L. 100-360, §411(l)(2)(K), substituted “residents” for “patients”.

Subsec. (f)(7)(B). Pub. L. 100-360, §411(l)(2)(L)(ii), substituted “include” for “do not include”.

Subsec. (g)(1)(C). Pub. L. 100-360, §411(l)(5)(A)–(C), substituted “and timely review” for “, review,”, inserted “or by another individual used by the facility in providing services to such a resident” after “a nursing facility”, and substituted “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” for “If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry 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”.

Subsec. (g)(1)(D). Pub. L. 100-360, §411(l)(5)(D), substituted “to issue regulations to carry out this subsection” for “to establish standards under subsection (f) of this section”.

Subsec. (g)(2)(A)(i). Pub. L. 100-360, §411(l)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: “The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a-7a of this title.”

Subsec. (g)(2)(B)(ii). Pub. L. 100-360, §411(l)(5)(F), as added by Pub. L. 100-485, §608(d)(27)(I), substituted “practicable” for “practical”.

Subsec. (g)(3)(C). Pub. L. 100-360, §411(l)(6)(A), redesignated subpar. (C), relating to special surveys of compliance, as (D).

Subsec. (g)(3)(D). Pub. L. 100-360, §411(l)(5)(G), formerly §411(l)(5)(F), as redesignated by Pub. L. 100-485, §608(d)(27)(I), substituted “on the basis of that survey” for “on that basis”.

Subsec. (g)(4). Pub. L. 100-360, §411(l)(5)(H), formerly §411(l)(5)(G), as redesignated by Pub. L. 100-485, §608(d)(27)(I), struck out “chronically” after “enforcement actions against” in last sentence.

Subsec. (h). Pub. L. 100-360, §411(l)(8)(A), made technical correction to directory language of Pub. L. 100-203, §4213(a), see 1987 Amendment note below.

Subsec. (h)(1). Pub. L. 100-360, §411(l)(8)(B)(i), substituted “paragraph (2)(A)(ii)” for “paragraph (2)(A)(i)” in last sentence.

Subsec. (h)(2)(B)(i). Pub. L. 100-360, §411(l)(8)(B)(ii), struck out “or otherwise” after “regulations”.

Subsec. (h)(3)(C)(ii). Pub. L. 100-360, §411(l)(7)(A), substituted “. The provisions of section 1320a-7a of this title (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 1320a-7a(a) of this title” for “and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a-7a of this title”.

Subsec. (h)(5). Pub. L. 100-360, §411(l)(8)(B)(iii), substituted “State or the Secretary, respectively” for “State and the Secretary”.

Subsec. (h)(9). Pub. L. 100-360, §411(l)(7)(B), inserted “by such facilities” after “be made available”.

1987—Subsec. (c)(7). Pub. L. 100-203, §4212(b), as amended by Pub. L. 100-360, §411(l)(6)(B), added par. (7).

Subsecs. (e), (f). Pub. L. 100-203, §4211, which contained two subsecs. (c), the first of which amended this section and the second of which enacted provisions set out as a note below, was amended by Pub. L. 100-360, §411(l)(3)(C)(ii), to delete the designation, heading, and directory language of the first subsec. (c), resulting in subsecs. (e) and (f) being added by section 4211(a)(3) of Pub. L. 100-203, which enacted subsecs. (a) to (d) of this section.

Subsec. (g). Pub. L. 100-203, §4212(a), added subsec. (g).

Subsec. (h). Pub. L. 100-203, §4213(a), as amended by Pub. L. 100-360, §411(l)(8)(A), added subsec. (h).

Subsec. (i). Pub. L. 100-203, §4216, added subsec. (i).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 6101(c)(1)(B) of Pub. L. 111-148 effective on the date on which the Secretary of Health and Human Services makes the information described in section 6101(b) of Pub. L. 111-148, set out as a note under section 1320a-3 of this title, available to the public, see section 6101(c)(2) of Pub. L. 111-148, set out as a note under section 1395i-3 of this title.

Pub. L. 111-148, title VI, §6103(b)(2)(B), Mar. 23, 2010, 124 Stat. 709, provided that: “The amendment made by this paragraph [amending this section] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010].”

Amendment by section 6103(c)(2) of Pub. L. 111-148 effective 1 year after Mar. 23, 2010, see section 6103(c)(3) of Pub. L. 111-148, set out as a note under section 1395i-3 of this title.

Amendment by section 6111(b) of Pub. L. 111-148 effective 1 year after Mar. 23, 2010, see section 6111(c) of Pub. L. 111-148, set out as a note under section 1395i-3 of this title.

Amendment by section 6121(b) of Pub. L. 111-148 effective 1 year after Mar. 23, 2010, see section 6121(c) of Pub. L. 111-148, set out as a note under section 1395i-3 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. B, title IV, §405(c)(2)(B), Dec. 20, 2006, 120 Stat. 3000, provided that the amendment made by section 405(c)(2)(B) is effective as if included in the amendment made by section 6015(a)(1) of the Deficit Reduction Act of 2005 [Pub. L. 109-171].

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub. L. 108-173, set out as a note under section 1395i-3 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective Jan. 1, 2003, see section 1(a)(6) [title IX, §941(c)] of Pub. L. 106-554, set out as a note under section 1395i-3 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-4, §2(b), Mar. 25, 1999, 113 Stat. 8, provided that: “The amendment made by subsection (a) [amending this section] applies to voluntary withdrawals from participation occurring on or after the date of the enactment of this Act [Mar. 25, 1999].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title IV, §4754(b), Aug. 5, 1997, 111 Stat. 526, provided that: “The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-315, §1(b), Oct. 19, 1996, 110 Stat. 3824, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1996].”

Pub. L. 104-315, §2(c), Oct. 19, 1996, 110 Stat. 3825, provided that: "The amendments made by this section [amending this section] shall apply to changes in physical or mental condition occurring on or after the date of the enactment of this Act [Oct. 19, 1996]."

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103-171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102-375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102-375, set out as a note under section 3001 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4751(b)(2) of Pub. L. 101-508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101-508, set out as a note under section 1396a of this title.

Pub. L. 101-508, title IV, §4801(a)(6)(B), Nov. 5, 1990, 104 Stat. 1388-212, provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

"(i) had its participation terminated under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or under the State plan under title XIX of such Act [42 U.S.C. 1396 et seq.];

"(ii) was subject to a denial of payment under either such title;

"(iii) was assessed a civil money penalty not less than \$5,000 for deficiencies in nursing facility standards;

"(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

"(v) pursuant to State action, was closed or had its residents transferred."

Amendment by section 4801(a)(2)-(5), (7) of Pub. L. 101-508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, see section 4801(a)(9) of Pub. L. 101-508, set out as a note under section 1396b of this title.

Pub. L. 101-508, title IV, §4801(b)(9), Nov. 5, 1990, 104 Stat. 1388-215, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203].

"(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated."

Pub. L. 101-508, title IV, §4801(d)(2), Nov. 5, 1990, 104 Stat. 1388-215, provided that: "The amendment made by paragraph (1) [amending this section] applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date."

Pub. L. 101-508, title IV, §4801(e)(7)(B), Nov. 5, 1990, 104 Stat. 1388-217, provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated."

Amendment by section 4801(e)(2)-(6), (8)-(10), (12)-(15), and (18) of Pub. L. 101-508 effective as if included in the

enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, see section 4801(e)(19) of Pub. L. 101-508, set out as a note under section 1396a of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6901(b)(1), (4)(A) of Pub. L. 101-239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, and amendment by section 6901(b)(3) of Pub. L. 101-239 applicable to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after end of 90-day period beginning on Dec. 19, 1989, but not to affect competency evaluations conducted under programs offered before end of that period, see section 6901(b)(6) of Pub. L. 101-239, set out as a note under section 1395i-3 of this title.

Amendment by section 6901(d)(1) of Pub. L. 101-239 effective Dec. 19, 1989, and amendment by section 6901(d)(4) of Pub. L. 101-239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, see section 6901(d)(6) of Pub. L. 101-239, set out as a note under section 1395i-3 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, see section 608(g)(1) of Pub. L. 100-485, set out as a note under section 704 of this title.

Amendment by section 303(a)(2) of Pub. L. 100-360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out such amendment has been promulgated by such date, see section 303(g)(1)(A), (5) of Pub. L. 100-360, set out as an Effective Date note under section 1396r-5 of this title.

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by section 411(l)(2)(A)-(D), (F)-(K), (L)(ii), (3)(A), (B), (C)(ii), (iii), (D), (5), (6)(A), (B), (7), and (8)(A), (B) of Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

#### EFFECTIVE DATE

Pub. L. 100-203, title IV, §4214, Dec. 22, 1987, 101 Stat. 1330-219, as amended by Pub. L. 100-360, title IV, §411(l)(10), July 1, 1988, 102 Stat. 806, provided that:

"(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act [42 U.S.C. 1396r], the amendments made by sections 4211 [enacting this section, amending sections 1320a-7b, 1396a, 1396b, 1396d, 1396j, 1396l, 1396n, 1396o, 1396p, 1396r, and 1396s of this title, redesignating section 1396r of this title as section 1396r-3 of this title, and amending provisions set out as a note under section 1396r-3 of this title] and 4212 [amending sections 1395cc, 1396a, 1396b, 1396i, and 1396r of this title] (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act [42 U.S.C. 1396a(a)(28)(B)] (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such section are promulgated by such date.

“(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act [42 U.S.C. 1396r], the amendments made by section 4213 of this Act [amending this section and sections 1396a and 1396b of this title] apply to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning on or after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such amendments are promulgated by such date.

“(2) In applying the amendments made by this part [part 2 of subtitle C (§§ 4211–4218) of title IV of Pub. L. 100–203, see Tables for classification] for services furnished before October 1, 1990—

“(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

“(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act [42 U.S.C. 1396r(b), (c), (d)], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act [42 U.S.C. 1395x(j), 1396d(c)].

“(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.”

#### RETROACTIVE REVIEW

For requirement that procedures developed by a State permit individual to petition for review of any finding made by a State under subsec. (g)(1)(C) of this section or section 1395i–3(g)(1)(C) of this title after Jan. 1, 1995, see section 4755(c) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

#### NURSE AIDE TRAINING AND COMPETENCY EVALUATION; COMPLIANCE ACTIONS

Pub. L. 101–508, title IV, § 4801(a)(1), Nov. 5, 1990, 104 Stat. 1388–211, provided that: “The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [42 U.S.C. 1396c] on the basis of the State’s failure to meet the requirement of section 1919(e)(1)(A) of such Act [42 U.S.C. 1396r(e)(1)(A)] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.”

#### PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW; COMPLIANCE ACTIONS

Pub. L. 101–508, title IV, § 4801(b)(1), Nov. 5, 1990, 104 Stat. 1388–213, provided that: “The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act [42 U.S.C. 1396c, 1396r(e)(7)(D)] on the basis of the State’s failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.”

#### RESTRICTION ON ENFORCEMENT PROCESS

Pub. L. 101–508, title IV, § 4801(c), Nov. 5, 1990, 104 Stat. 1388–215, provided that: “The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [42 U.S.C. 1396c] on the basis of the State’s failure to meet the requirements of section 1919(h)(2) of such Act [42 U.S.C. 1396r(h)(2)] before the effective date of guidelines, issued by the Secretary, re-

garding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.”

#### STAFFING REQUIREMENTS

Pub. L. 101–508, title IV, § 4801(e)(17), Nov. 5, 1990, 104 Stat. 1388–218, as amended by Pub. L. 105–362, title VI, § 602(b)(1), Nov. 10, 1998, 112 Stat. 3286, provided that:

“(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act [42 U.S.C. 1396r(b)(4)(A)(ii), (iv), (v)] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

“(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1999, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and shall include in such study recommendations regarding appropriate minimum ratios.”

#### NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

For satisfaction of training and competency evaluation requirements of subsec. (b)(5)(A) of this section and section 1395i–3(b)(5)(A) of this title and authorization for a State to waive such competency evaluation requirements, see section 6901(b)(4)(B)–(D) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

#### PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

Pub. L. 101–239, title VI, § 6901(c), Dec. 19, 1989, 103 Stat. 2300, provided that: “The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act [42 U.S.C. 1396r(f)(8)(A)] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].”

#### EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Pub. L. 100–203, title IV, § 4211(c), Dec. 22, 1987, 101 Stat. 1330–196, directed Secretary of Health and Human Services to evaluate and report to Congress by not later than Jan. 1, 1993, on implementation of resident assessment process for residents of nursing facilities under amendments made by section 4211(c).

#### REPORT ON STAFFING REQUIREMENTS

Pub. L. 100–203, title IV, § 4211(k), Dec. 22, 1987, 101 Stat. 1330–207, directed Secretary of Health and Human Services to report to Congress, by not later than Jan. 1, 1993, on progress made in implementing the nursing facility staffing requirements of 42 U.S.C. 1396r(b)(4)(C), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which received waivers.

#### ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Pub. L. 100–203, title IV, § 4215, Dec. 22, 1987, 101 Stat. 1330–220, as amended by Pub. L. 101–508, title IV,

§ 4801(b)(5)(B), Nov. 5, 1990, 104 Stat. 1388-214, provided that: “The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act [42 U.S.C. 1396r(b), (c), (d)] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.”

**§ 1396r-1. Presumptive eligibility for pregnant women**

**(a) Ambulatory prenatal care**

A State plan approved under section 1396a of this title may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

**(b) Definitions**

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 month during which the provider makes the determination referred to in subparagraph (A), such last day; and

(2) the term “qualified provider” means any provider that—

(A) is eligible for payments under a State plan approved under this subchapter,

(B) provides services of the type described in subparagraph (A) or (B) of section 1396d(a)(2) of this title or in section 1396d(a)(9) of this title,

(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

(D)(i) receives funds under—

(I) section 254b or 254c of this title,

(II) subchapter V of this chapter, or

(III) title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.];

(ii) participates in a program established under—

(I) section 1786 of this title, or

(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973;

(iii) participates in a State perinatal program; or

(iv) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian

Self-Determination Act (Public Law 93-638) [25 U.S.C. 5321 et seq.].

The term “qualified provider” also includes a qualified entity, as defined in section 1396r-1a(b)(3) of this title.

**(c) Duties of State agency, qualified providers, and presumptively eligible pregnant women**

(1) The State agency shall provide qualified providers with—

(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

(B) information on how to assist such women in completing and filing such forms.

(2) A qualified provider that determines under subsection (b)(1)(A) that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan by not later than the last day of the month following the month during which the determination is made.

(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(l)(1)(A) of this title.

**(d) Ambulatory prenatal care as medical assistance**

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period,

(B) by a provider that is eligible for payments under the State plan; and

(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

**(e) Option to provide presumptive eligibility**

If the State has elected the option to provide a presumptive eligibility period under this section or section 1396r-1a of this title, the State may elect to provide a presumptive eligibility period (as defined in subsection (b)(1)) for individuals who are eligible for medical assistance under clause (i)(VIII), clause (i)(IX), or clause (ii)(XX) of subsection (a)(10)(A)<sup>1</sup> or section 1396u-1 of this title in the same manner as the State provides for such a period under this section or section 1396r-1a of this title, subject to such guidance as the Secretary shall establish.

(Aug. 14, 1935, ch. 531, title XIX, § 1920, as added Pub. L. 99-509, title IX, § 9407(b), Oct. 21, 1986, 100

<sup>1</sup> So in original. Probably means subsection (a)(10)(A) of section 1396a of this title.