

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 85

To provide for home and community-based services for individuals with disabilities, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. FEINGOLD (for himself and Mr. SIMON) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To provide for home and community-based services for individuals with disabilities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Long-Term Care Reform and Deficit Reduction Act of  
6 1995”.

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

Sec. 1. Short title; table of contents.

TITLE I—HOME AND COMMUNITY-BASED SERVICES FOR  
INDIVIDUALS WITH DISABILITIES

- Sec. 101. State programs for home and community-based services for individuals with disabilities.
- Sec. 102. State plans.
- Sec. 103. Individuals with disabilities defined.
- Sec. 104. Home and community-based services covered under State plan.
- Sec. 105. Cost sharing.
- Sec. 106. Quality assurance and safeguards.
- Sec. 107. Advisory groups.
- Sec. 108. Payments to States.
- Sec. 109. Appropriations; allotments to States.
- Sec. 110. Federal evaluations.
- Sec. 111. Information and technical assistance grants relating to development of hospital linkage programs.

#### TITLE II—PROVISIONS RELATING TO MEDICARE

- Sec. 201. Recapture of certain health care subsidies received by high-income individuals.
- Sec. 202. Imposition of 10 percent copayment on home health services under medicare.
- Sec. 203. Reduction in payments for capital-related costs for inpatient hospital services.
- Sec. 204. Elimination of formula-driven overpayments for certain outpatient hospital services.
- Sec. 205. Reduction in routine cost limits for home health services.

## 1 **TITLE I—HOME AND COMMU-** 2 **NITY-BASED SERVICES FOR** 3 **INDIVIDUALS WITH DISABIL-** 4 **ITIES**

### 5 **SEC. 101. STATE PROGRAMS FOR HOME AND COMMUNITY-** 6 **BASED SERVICES FOR INDIVIDUALS WITH** 7 **DISABILITIES.**

8 (a) IN GENERAL.—Each State that has a plan for  
 9 home and community-based services for individuals with  
 10 disabilities submitted to and approved by the Secretary  
 11 under section 102(b) may receive payment in accordance  
 12 with section 108.

13 (b) ENTITLEMENT TO SERVICES.—Nothing in this  
 14 title shall be construed to create a right to services for

1 individuals or a requirement that a State with an approved  
2 plan expend the entire amount of funds to which it is enti-  
3 tled under this title.

4 (c) DESIGNATION OF AGENCY.—Not later than 6  
5 months after the date of enactment of this Act, the Sec-  
6 retary shall designate an agency responsible for program  
7 administration under this title.

8 **SEC. 102. STATE PLANS.**

9 (a) PLAN REQUIREMENTS.—In order to be approved  
10 under subsection (b), a State plan for home and commu-  
11 nity-based services for individuals with disabilities must  
12 meet the following requirements:

13 (1) STATE MAINTENANCE OF EFFORT.—

14 (A) IN GENERAL.—A State plan under this  
15 title shall provide that the State will, during  
16 any fiscal year that the State is furnishing serv-  
17 ices under this title, make expenditures of State  
18 funds in an amount equal to the State mainte-  
19 nance of effort amount for the year determined  
20 under subparagraph (B) for furnishing the  
21 services described in subparagraph (C) under  
22 the State plan under this title or the State plan  
23 under title XIX of the Social Security Act (42  
24 U.S.C. 1396 et seq.).

1 (B) STATE MAINTENANCE OF EFFORT  
2 AMOUNT.—

3 (i) IN GENERAL.—The maintenance of  
4 effort amount for a State for a fiscal year  
5 is an amount equal to—

6 (I) for fiscal year 1997, the base  
7 amount for the State (as determined  
8 under clause (ii)) updated through the  
9 midpoint of fiscal year 1997 by the  
10 estimated percentage change in the  
11 index described in clause (iii) during  
12 the period beginning on October 1,  
13 1995, and ending at that midpoint;  
14 and

15 (II) for succeeding fiscal years,  
16 an amount equal to the amount deter-  
17 mined under this clause for the pre-  
18 vious fiscal year updated through the  
19 midpoint of the year by the estimated  
20 percentage change in the index de-  
21 scribed in clause (iii) during the 12-  
22 month period ending at that midpoint,  
23 with appropriate adjustments to re-  
24 flect previous underestimations or  
25 overestimations under this clause in

1           the projected percentage change in  
2           such index.

3           (ii) STATE BASE AMOUNT.—The base  
4           amount for a State is an amount equal to  
5           the total expenditures from State funds  
6           made under the State plan under title XIX  
7           of the Social Security Act (42 U.S.C. 1396  
8           et seq.) during fiscal year 1995 with re-  
9           spect to medical assistance consisting of  
10          the services described in subparagraph (C).

11          (iii) INDEX DESCRIBED.—For pur-  
12          poses of clause (i), the Secretary shall de-  
13          velop an index that reflects the projected  
14          increases in spending for services under  
15          subparagraph (C), adjusted for differences  
16          among the States.

17          (C) MEDICAID SERVICES DESCRIBED.—  
18          The services described in this subparagraph are  
19          the following:

20               (i) Personal care services (as de-  
21               scribed in section 1905(a)(24) of the Social  
22               Security Act (42 U.S.C. 1396d(a)(24))).

23               (ii) Home or community-based serv-  
24               ices furnished under a waiver granted

1 under subsection (c), (d), or (e) of section  
2 1915 of such Act (42 U.S.C. 1396n).

3 (iii) Home and community care fur-  
4 nished to functionally disabled elderly indi-  
5 viduals under section 1929 of such Act (42  
6 U.S.C. 1396t).

7 (iv) Community supported living ar-  
8 rangements services under section 1930 of  
9 such Act (42 U.S.C. 1396u).

10 (v) Services furnished in a hospital,  
11 nursing facility, intermediate care facility  
12 for the mentally retarded, or other institu-  
13 tional setting specified by the Secretary.

14 (2) ELIGIBILITY.—

15 (A) IN GENERAL.—Within the amounts  
16 provided by the State and under section 108 for  
17 such plan, the plan shall provide that services  
18 under the plan will be available to individuals  
19 with disabilities (as defined in section 103(a))  
20 in the State.

21 (B) INITIAL SCREENING.—The plan shall  
22 provide a process for the initial screening of an  
23 individual who appears to have some reasonable  
24 likelihood of being an individual with disabili-  
25 ties. Any such process shall require the provi-

1           sion of assistance to individuals who wish to  
2           apply but whose disability limits their ability to  
3           apply. The initial screening and the determina-  
4           tion of disability (as defined under section  
5           103(b)(1)) shall be conducted by a public  
6           agency.

7           (C) RESTRICTIONS.—

8           (i) IN GENERAL.—The plan may not  
9           limit the eligibility of individuals with dis-  
10          abilities based on—

11                   (I) income;

12                   (II) age;

13                   (III) residential setting (other  
14                   than with respect to an institutional  
15                   setting, in accordance with clause  
16                   (ii)); or

17                   (IV) other grounds specified by  
18                   the Secretary;

19          except that through fiscal year 2005, the  
20          Secretary may permit a State to limit eligi-  
21          bility based on level of disability or geog-  
22          raphy (if the State ensures a balance be-  
23          tween urban and rural areas).

24          (ii) INSTITUTIONAL SETTING.—The  
25          plan may limit the eligibility of individuals

1 with disabilities based on the definition of  
2 the term “institutional setting”, as deter-  
3 mined by the State.

4 (D) CONTINUATION OF SERVICES.—The  
5 plan must provide assurances that, in the case  
6 of an individual receiving medical assistance for  
7 home and community-based services under the  
8 State medicaid plan under title XIX of the So-  
9 cial Security Act (42 U.S.C. 1396 et seq.) as of  
10 the date a State’s plan is approved under this  
11 title, the State will continue to make available  
12 (either under this plan, under the State medic-  
13 aid plan, or otherwise) to such individual an ap-  
14 propriate level of assistance for home and com-  
15 munity-based services, taking into account the  
16 level of assistance provided as of such date and  
17 the individual’s need for home and community-  
18 based services.

19 (3) SERVICES.—

20 (A) NEEDS ASSESSMENT.—Not later than  
21 the end of the second year of implementation,  
22 the plan or its amendments shall include the re-  
23 sults of a statewide assessment of the needs of  
24 individuals with disabilities in a format required  
25 by the Secretary. The needs assessment shall

1 include demographic data concerning the num-  
2 ber of individuals within each category of dis-  
3 ability described in this title, and the services  
4 available to meet the needs of such individuals.

5 (B) SPECIFICATION.—Consistent with sec-  
6 tion 104, the plan shall specify—

7 (i) the services made available under  
8 the plan;

9 (ii) the extent and manner in which  
10 such services are allocated and made avail-  
11 able to individuals with disabilities; and

12 (iii) the manner in which services  
13 under the plan are coordinated with each  
14 other and with health and long-term care  
15 services available outside the plan for indi-  
16 viduals with disabilities.

17 (C) TAKING INTO ACCOUNT INFORMAL  
18 CARE.—A State plan may take into account, in  
19 determining the amount and array of services  
20 made available to covered individuals with dis-  
21 abilities, the availability of informal care. Any  
22 individual plan of care developed under section  
23 104(b)(1)(B) that includes informal care shall  
24 be required to verify the availability of such  
25 care.

- 1 (D) ALLOCATION.—The State plan—
- 2 (i) shall specify how services under
- 3 the plan will be allocated among covered
- 4 individuals with disabilities;
- 5 (ii) shall attempt to meet the needs of
- 6 individuals with a variety of disabilities
- 7 within the limits of available funding;
- 8 (iii) shall include services that assist
- 9 all categories of individuals with disabili-
- 10 ties, regardless of their age or the nature
- 11 of their disabling conditions;
- 12 (iv) shall demonstrate that services
- 13 are allocated equitably, in accordance with
- 14 the needs assessment required under sub-
- 15 paragraph (A); and
- 16 (v) shall ensure that—
- 17 (I) the proportion of the popu-
- 18 lation of low-income individuals with
- 19 disabilities in the State that rep-
- 20 resents individuals with disabilities
- 21 who are provided home and commu-
- 22 nity-based services either under the
- 23 plan, under the State medicaid plan,
- 24 or under both, is not less than

1 (II) the proportion of the popu-  
2 lation of the State that represents in-  
3 dividuals who are low-income individ-  
4 uals.

5 (E) LIMITATION ON LICENSURE OR CER-  
6 TIFICATION.—The State may not subject  
7 consumer-directed providers of personal assist-  
8 ance services to licensure, certification, or other  
9 requirements that the Secretary finds not to be  
10 necessary for the health and safety of individ-  
11 uals with disabilities.

12 (F) CONSUMER CHOICE.—To the extent  
13 feasible, the State shall follow the choice of an  
14 individual with disabilities (or that individual's  
15 designated representative who may be a family  
16 member) regarding which covered services to re-  
17 ceive and the providers who will provide such  
18 services.

19 (4) COST SHARING.—The plan shall impose cost  
20 sharing with respect to covered services in accord-  
21 ance with section 105.

22 (5) TYPES OF PROVIDERS AND REQUIREMENTS  
23 FOR PARTICIPATION.—The plan shall specify—

24 (A) the types of service providers eligible  
25 to participate in the program under the plan,

1 which shall include consumer-directed providers  
2 of personal assistance services, except that the  
3 plan—

4 (i) may not limit benefits to services  
5 provided by registered nurses or licensed  
6 practical nurses; and

7 (ii) may not limit benefits to services  
8 provided by agencies or providers certified  
9 under title XVIII of the Social Security  
10 Act (42 U.S.C. 1395 et seq.); and

11 (B) any requirements for participation ap-  
12 plicable to each type of service provider.

13 (6) PROVIDER REIMBURSEMENT.—

14 (A) PAYMENT METHODS.—The plan shall  
15 specify the payment methods to be used to re-  
16 imburse providers for services furnished under  
17 the plan. Such methods may include retrospec-  
18 tive reimbursement on a fee-for-service basis,  
19 prepayment on a capitation basis, payment by  
20 cash or vouchers to individuals with disabilities,  
21 or any combination of these methods. In the  
22 case of payment to consumer-directed providers  
23 of personal assistance services, including pay-  
24 ment through the use of cash or vouchers, the  
25 plan shall specify how the plan will assure com-

1           pliance with applicable employment tax and  
2           health care coverage provisions.

3           (B) PAYMENT RATES.—The plan shall  
4           specify the methods and criteria to be used to  
5           set payment rates for—

6                   (i) agency administered services fur-  
7                   nished under the plan; and

8                   (ii) consumer-directed personal assist-  
9                   ance services furnished under the plan, in-  
10                  cluding cash payments or vouchers to indi-  
11                  viduals with disabilities, except that such  
12                  payments shall be adequate to cover  
13                  amounts required under applicable employ-  
14                  ment tax and health care coverage provi-  
15                  sions.

16           (C) PLAN PAYMENT AS PAYMENT IN  
17           FULL.—The plan shall restrict payment under  
18           the plan for covered services to those providers  
19           that agree to accept the payment under the  
20           plan (at the rates established pursuant to sub-  
21           paragraph (B)) and any cost sharing permitted  
22           or provided for under section 105 as payment  
23           in full for services furnished under the plan.

24           (7) QUALITY ASSURANCE AND SAFEGUARDS.—  
25           The State plan shall provide for quality assurance

1 and safeguards for applicants and beneficiaries in  
2 accordance with section 106.

3 (8) ADVISORY GROUP.—The State plan shall—

4 (A) assure the establishment and mainte-  
5 nance of an advisory group under section  
6 107(b); and

7 (B) include the documentation prepared by  
8 the group under section 107(b)(4).

9 (9) ADMINISTRATION AND ACCESS.—

10 (A) STATE AGENCY.—The plan shall des-  
11 ignate a State agency or agencies to administer  
12 (or to supervise the administration of) the plan.

13 (B) COORDINATION.—The plan shall speci-  
14 fy how it will—

15 (i) coordinate services provided under  
16 the plan, including eligibility prescreening,  
17 service coordination, and referrals for indi-  
18 viduals with disabilities who are ineligible  
19 for services under this title with the State  
20 medicaid plan under title XIX of the Social  
21 Security Act (42 U.S.C. 1396 et seq.), ti-  
22 tles V and XX of such Act (42 U.S.C. 701  
23 et seq. and 1397 et seq.), programs under  
24 the Older Americans Act of 1965 (42  
25 U.S.C. 3001 et seq.), programs under the

1           Developmental Disabilities Assistance and  
2           Bill of Rights Act (42 U.S.C. 6000 et  
3           seq.), programs under the Individuals with  
4           Disabilities Education Act (20 U.S.C.  
5           1400 et seq.), and any other Federal or  
6           State programs that provide services or as-  
7           sistance targeted to individuals with dis-  
8           abilities; and

9                   (ii) coordinate with health plans.

10           (C) ADMINISTRATIVE EXPENDITURES.—  
11           Effective beginning with fiscal year 2005, the  
12           plan shall contain assurances that not more  
13           than 10 percent of expenditures under the plan  
14           for all quarters in any fiscal year shall be for  
15           administrative costs.

16           (D) INFORMATION AND ASSISTANCE.—The  
17           plan shall provide for a single point of access to  
18           apply for services under the State program for  
19           individuals with disabilities. Notwithstanding  
20           the preceding sentence, the plan may designate  
21           separate points of access to the State program  
22           for individuals under 22 years of age, for indi-  
23           viduals 65 years of age or older, or for other  
24           appropriate classes of individuals.

1           (10) REPORTS AND INFORMATION TO SEC-  
2           RETARY; AUDITS.—The plan shall provide that the  
3           State will furnish to the Secretary—

4                   (A) such reports, and will cooperate with  
5                   such audits, as the Secretary determines are  
6                   needed concerning the State's administration of  
7                   its plan under this title, including the process-  
8                   ing of claims under the plan; and

9                   (B) such data and information as the Sec-  
10                  retary may require in a uniform format as spec-  
11                  ified by the Secretary.

12          (11) USE OF STATE FUNDS FOR MATCHING.—  
13          The plan shall provide assurances that Federal  
14          funds will not be used to provide for the State share  
15          of expenditures under this title.

16          (12) HEALTH CARE WORKER REDEPLOY-  
17          MENT.—The plan shall provide for the following:

18                   (A) Before initiating the process of imple-  
19                   menting the State program under such plan,  
20                   negotiations will be commenced with labor  
21                   unions representing the employees of the af-  
22                   fected hospitals or other facilities.

23                   (B) Negotiations under subparagraph (A)  
24                   will address the following:

1 (i) The impact of the implementation  
2 of the program upon the workforce.

3 (ii) Methods to redeploy workers to  
4 positions in the proposed system, in the  
5 case of workers affected by the program.

6 (C) The plan will provide evidence that  
7 there has been compliance with subparagraphs  
8 (A) and (B), including a description of the re-  
9 sults of the negotiations.

10 (13) TERMINOLOGY.—The plan shall adhere to  
11 uniform definitions of terms, as specified by the Sec-  
12 retary.

13 (b) APPROVAL OF PLANS.—The Secretary shall ap-  
14 prove a plan submitted by a State if the Secretary deter-  
15 mines that the plan—

16 (1) was developed by the State after a public  
17 comment period of not less than 30 days; and

18 (2) meets the requirements of subsection (a).

19 The approval of such a plan shall take effect as of the  
20 first day of the first fiscal year beginning after the date  
21 of such approval (except that any approval made before  
22 January 1, 1997, shall be effective as of January 1, 1997).  
23 In order to budget funds allotted under this title, the Sec-  
24 retary shall establish a deadline for the submission of such  
25 a plan before the beginning of a fiscal year as a condition

1 of its approval effective with that fiscal year. Any signifi-  
2 cant changes to the State plan shall be submitted to the  
3 Secretary in the form of plan amendments and shall be  
4 subject to approval by the Secretary.

5 (c) MONITORING.—The Secretary shall annually  
6 monitor the compliance of State plans with the require-  
7 ments of this title according to specified performance  
8 standards. In accordance with section 108(e), States that  
9 fail to comply with such requirements may be subject to  
10 a reduction in the Federal matching rates available to the  
11 State under section 108(a) or the withholding of Federal  
12 funds for services or administration until such time as  
13 compliance is achieved.

14 (d) TECHNICAL ASSISTANCE.—The Secretary shall  
15 ensure the availability of ongoing technical assistance to  
16 States under this section. Such assistance shall include  
17 serving as a clearinghouse for information regarding suc-  
18 cessful practices in providing long-term care services.

19 (e) REGULATIONS.—The Secretary shall issue such  
20 regulations as may be appropriate to carry out this title  
21 on a timely basis.

22 **SEC. 103. INDIVIDUALS WITH DISABILITIES DEFINED.**

23 (a) IN GENERAL.—For purposes of this title, the  
24 term “individual with disabilities” means any individual

1 within one or more of the following categories of individ-  
2 uals:

3 (1) INDIVIDUALS REQUIRING HELP WITH AC-  
4 TIVITIES OF DAILY LIVING.—An individual of any  
5 age who—

6 (A) requires hands-on or standby assist-  
7 ance, supervision, or cueing (as defined in regu-  
8 lations) to perform three or more activities of  
9 daily living (as defined in subsection (d)); and

10 (B) is expected to require such assistance,  
11 supervision, or cueing over a period of at least  
12 90 days.

13 (2) INDIVIDUALS WITH SEVERE COGNITIVE OR  
14 MENTAL IMPAIRMENT.—An individual of any age—

15 (A) whose score, on a standard mental sta-  
16 tus protocol (or protocols) appropriate for  
17 measuring the individual's particular condition  
18 specified by the Secretary, indicates either se-  
19 vere cognitive impairment or severe mental im-  
20 pairment, or both;

21 (B) who—

22 (i) requires hands-on or standby as-  
23 sistance, supervision, or cueing with one or  
24 more activities of daily living;

1 (ii) requires hands-on or standby as-  
2 sistance, supervision, or cueing with at  
3 least such instrumental activity (or activi-  
4 ties) of daily living related to cognitive or  
5 mental impairment as the Secretary speci-  
6 fies; or

7 (iii) displays symptoms of one or more  
8 serious behavioral problems (that is on a  
9 list of such problems specified by the Sec-  
10 retary) that create a need for supervision  
11 to prevent harm to self or others; and

12 (C) who is expected to meet the require-  
13 ments of subparagraphs (A) and (B) over a pe-  
14 riod of at least 90 days.

15 Not later than 2 years after the date of enactment  
16 of this Act, the Secretary shall make recommenda-  
17 tions regarding the most appropriate duration of dis-  
18 ability under this paragraph.

19 (3) INDIVIDUALS WITH SEVERE OR PROFOUND  
20 MENTAL RETARDATION.—An individual of any age  
21 who has severe or profound mental retardation (as  
22 determined according to a protocol specified by the  
23 Secretary).

24 (4) YOUNG CHILDREN WITH SEVERE DISABIL-  
25 ITIES.—An individual under 6 years of age who—

1 (A) has a severe disability or chronic medi-  
2 cal condition that limits functioning in a man-  
3 ner that is comparable in severity to the stand-  
4 ards established under paragraphs (1), (2), or  
5 (3); and

6 (B) is expected to have such a disability or  
7 condition and require such services over a pe-  
8 riod of at least 90 days.

9 (5) STATE OPTION WITH RESPECT TO INDIVID-  
10 UALS WITH COMPARABLE DISABILITIES.—Not more  
11 than 2 percent of a State's allotment for services  
12 under this title may be expended for the provision of  
13 services to individuals with severe disabilities that  
14 are comparable in severity to the criteria described  
15 in paragraphs (1) through (4), but who fail to meet  
16 the criteria in any single category under such para-  
17 graphs.

18 (b) DETERMINATION.—

19 (1) IN GENERAL.—In formulating eligibility cri-  
20 teria under subsection (a), the Secretary shall estab-  
21 lish criteria for assessing the functional level of dis-  
22 ability among all categories of individuals with dis-  
23 abilities that are comparable in severity, regardless  
24 of the age or the nature of the disabling condition  
25 of the individual. The determination of whether an

1 individual is an individual with disabilities shall be  
2 made by a public or nonprofit agency that is speci-  
3 fied under the State plan and that is not a provider  
4 of home and community-based services under this  
5 title and by using a uniform protocol consisting of  
6 an initial screening and a determination of disability  
7 specified by the Secretary. A State may not impose  
8 cost sharing with respect to a determination of dis-  
9 ability. A State may collect additional information,  
10 at the time of obtaining information to make such  
11 determination, in order to provide for the assess-  
12 ment and plan described in section 104(b) or for  
13 other purposes.

14 (2) PERIODIC REASSESSMENT.—The determina-  
15 tion that an individual is an individual with disabili-  
16 ties shall be considered to be effective under the  
17 State plan for a period of not more than 6 months  
18 (or for such longer period in such cases as a signifi-  
19 cant change in an individual's condition that may af-  
20 fect such determination is unlikely). A reassessment  
21 shall be made if there is a significant change in an  
22 individual's condition that may affect such deter-  
23 mination.

24 (c) ELIGIBILITY CRITERIA.—The Secretary shall re-  
25 assess the validity of the eligibility criteria described in

1 subsection (a) as new knowledge regarding the assess-  
2 ments of functional disabilities becomes available. The  
3 Secretary shall report to the Congress on its findings  
4 under the preceding sentence as determined appropriate  
5 by the Secretary.

6 (d) ACTIVITY OF DAILY LIVING DEFINED.—For pur-  
7 poses of this title, the term “activity of daily living” means  
8 any of the following: eating, toileting, dressing, bathing,  
9 and transferring.

10 **SEC. 104. HOME AND COMMUNITY-BASED SERVICES COV-**  
11 **ERED UNDER STATE PLAN.**

12 (a) SPECIFICATION.—

13 (1) IN GENERAL.—Subject to the succeeding  
14 provisions of this section, the State plan under this  
15 title shall specify—

16 (A) the home and community-based serv-  
17 ices available under the plan to individuals with  
18 disabilities (or to such categories of such indi-  
19 viduals); and

20 (B) any limits with respect to such serv-  
21 ices.

22 (2) FLEXIBILITY IN MEETING INDIVIDUAL  
23 NEEDS.—Subject to subsection (e)(2), such services  
24 may be delivered in an individual’s home, a range of

1 community residential arrangements, or outside the  
2 home.

3 (b) REQUIREMENT FOR NEEDS ASSESSMENT AND  
4 PLAN OF CARE.—

5 (1) IN GENERAL.—The State plan shall provide  
6 for home and community-based services to an indi-  
7 vidual with disabilities only if the following require-  
8 ments are met:

9 (A) COMPREHENSIVE ASSESSMENT.—

10 (i) IN GENERAL.—A comprehensive  
11 assessment of an individual's need for  
12 home and community-based services (re-  
13 gardless of whether all needed services are  
14 available under the plan) shall be made in  
15 accordance with a uniform, comprehensive  
16 assessment tool that shall be used by a  
17 State under this paragraph with the ap-  
18 proval of the Secretary. The comprehensive  
19 assessment shall be made by a public or  
20 nonprofit agency that is specified under  
21 the State plan and that is not a provider  
22 of home and community-based services  
23 under this title.

24 (ii) EXCEPTION.—The State may elect  
25 to waive the provisions of clause (i) if—

1 (I) with respect to any area of  
2 the State, the State has determined  
3 that there is an insufficient pool of  
4 entities willing to perform comprehen-  
5 sive assessments in such area due to  
6 a low population of individuals eligible  
7 for home and community-based serv-  
8 ices under this title residing in the  
9 area; and

10 (II) the State plan specifies pro-  
11 cedures that the State will implement  
12 in order to avoid conflicts of interest.

13 (B) INDIVIDUALIZED PLAN OF CARE.—

14 (i) IN GENERAL.—An individualized  
15 plan of care based on the assessment made  
16 under subparagraph (A) shall be developed  
17 by a public or nonprofit agency that is  
18 specified under the State plan and that is  
19 not a provider of home and community-  
20 based services under this title, except that  
21 the State may elect to waive the provisions  
22 of this sentence if, with respect to any area  
23 of the State, the State has determined  
24 there is an insufficient pool of entities will-  
25 ing to develop individualized plans of care

1 in such area due to a low population of in-  
2 dividuals eligible for home and community-  
3 based services under this title residing in  
4 the area, and the State plan specifies pro-  
5 cedures that the State will implement in  
6 order to avoid conflicts of interest.

7 (ii) REQUIREMENTS WITH RESPECT  
8 TO PLAN OF CARE.—A plan of care under  
9 this subparagraph shall—

10 (I) specify which services in-  
11 cluded under the individual plan will  
12 be provided under the State plan  
13 under this title;

14 (II) identify (to the extent pos-  
15 sible) how the individual will be pro-  
16 vided any services specified under the  
17 plan of care and not provided under  
18 the State plan;

19 (III) specify how the provision of  
20 services to the individual under the  
21 plan will be coordinated with the pro-  
22 vision of other health care services to  
23 the individual; and

24 (IV) be reviewed and updated  
25 every 6 months (or more frequently if

1           there is a change in the individual's  
2           condition).

3           The State shall make reasonable efforts to  
4           identify and arrange for services described  
5           in subclause (II). Nothing in this sub-  
6           section shall be construed as requiring a  
7           State (under the State plan or otherwise)  
8           to provide all the services specified in such  
9           a plan.

10           (C) INVOLVEMENT OF INDIVIDUALS.—The  
11           individualized plan of care under subparagraph  
12           (B) for an individual with disabilities shall—

13                   (i) be developed by qualified individ-  
14                   uals (specified in subparagraph (B));

15                   (ii) be developed and implemented in  
16                   close consultation with the individual (or  
17                   the individual's designated representative);  
18                   and

19                   (iii) be approved by the individual (or  
20                   the individual's designated representative).

21           (c) REQUIREMENT FOR CARE MANAGEMENT.—

22                   (1) IN GENERAL.—The State shall make avail-  
23                   able to each category of individuals with disabilities  
24                   care management services that at a minimum in-  
25                   clude—

1 (A) arrangements for the provision of such  
2 services; and

3 (B) monitoring of the delivery of services.

4 (2) CARE MANAGEMENT SERVICES.—

5 (A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the care management serv-  
7 ices described in paragraph (1) shall be pro-  
8 vided by a public or private entity that is not  
9 providing home and community-based services  
10 under this title.

11 (B) EXCEPTION.—A person who provides  
12 home and community-based services under this  
13 title may provide care management services if—

14 (i) the State determines that there is  
15 an insufficient pool of entities willing to  
16 provide such services in an area due to a  
17 low population of individuals eligible for  
18 home and community-based services under  
19 this title residing in such area; and

20 (ii) the State plan specifies procedures  
21 that the State will implement in order to  
22 avoid conflicts of interest.

23 (d) MANDATORY COVERAGE OF PERSONAL ASSIST-  
24 ANCE SERVICES.—The State plan shall include, in the  
25 array of services made available to each category of indi-

1 viduals with disabilities, both agency-administered and  
2 consumer-directed personal assistance services (as defined  
3 in subsection (h)).

4 (e) ADDITIONAL SERVICES.—

5 (1) TYPES OF SERVICES.—Subject to subsection  
6 (f), services available under a State plan under this  
7 title may include any (or all) of the following:

8 (A) Homemaker and chore assistance.

9 (B) Home modifications.

10 (C) Respite services.

11 (D) Assistive technology devices, as defined  
12 in section 3(2) of the Technology-Related As-  
13 sistance for Individuals With Disabilities Act of  
14 1988 (29 U.S.C. 2202(2)).

15 (E) Adult day services.

16 (F) Habilitation and rehabilitation.

17 (G) Supported employment.

18 (H) Home health services.

19 (I) Transportation.

20 (J) Any other care or assistive services  
21 specified by the State and approved by the Sec-  
22 retary that will help individuals with disabilities  
23 to remain in their homes and communities.

1           (2) CRITERIA FOR SELECTION OF SERVICES.—

2           The State electing services under paragraph (1)  
3           shall specify in the State plan—

4                   (A) the methods and standards used to se-  
5                   lect the types, and the amount, duration, and  
6                   scope, of services to be covered under the plan  
7                   and to be available to each category of individ-  
8                   uals with disabilities; and

9                   (B) how the types, and the amount, dura-  
10                  tion, and scope, of services specified, within the  
11                  limits of available funding, provide substantial  
12                  assistance in living independently to individuals  
13                  within each of the categories of individuals with  
14                  disabilities.

15          (f) EXCLUSIONS AND LIMITATIONS.—A State plan  
16          may not provide for coverage of—

17                  (1) room and board;

18                  (2) services furnished in a hospital, nursing fa-  
19                  cility, intermediate care facility for the mentally re-  
20                  tarded, or other institutional setting specified by the  
21                  Secretary; or

22                  (3) items and services to the extent coverage is  
23                  provided for the individual under a health plan or  
24                  the medicare program.

1 (g) PAYMENT FOR SERVICES.—In order to pay for  
2 covered services, a State plan may provide for the use of—

3 (1) vouchers;

4 (2) cash payments directly to individuals with  
5 disabilities;

6 (3) capitation payments to health plans; and

7 (4) payment to providers.

8 (h) PERSONAL ASSISTANCE SERVICES.—

9 (1) IN GENERAL.—For purposes of this title,  
10 the term “personal assistance services” means those  
11 services specified under the State plan as personal  
12 assistance services and shall include at least hands-  
13 on and standby assistance, supervision, cueing with  
14 activities of daily living, and such instrumental ac-  
15 tivities of daily living as deemed necessary or appro-  
16 priate, whether agency-administered or consumer-di-  
17 rected (as defined in paragraph (2)). Such services  
18 shall include services that are determined to be nec-  
19 essary to help all categories of individuals with dis-  
20 abilities, regardless of the age of such individuals or  
21 the nature of the disabling conditions of such indi-  
22 viduals.

23 (2) CONSUMER-DIRECTED.—For purposes of  
24 this title:

1 (A) IN GENERAL.—The term “consumer-  
2 directed” means, with reference to personal as-  
3 sistance services or the provider of such serv-  
4 ices, services that are provided by an individual  
5 who is selected and managed (and, at the op-  
6 tion of the service recipient, trained) by the in-  
7 dividual receiving the services.

8 (B) STATE RESPONSIBILITIES.—A State  
9 plan shall ensure that where services are pro-  
10 vided in a consumer-directed manner, the State  
11 shall create or contract with an entity, other  
12 than the consumer or the individual provider,  
13 to—

14 (i) inform both recipients and provid-  
15 ers of rights and responsibilities under all  
16 applicable Federal labor and tax law; and

17 (ii) assume responsibility for providing  
18 effective billing, payments for services, tax  
19 withholding, unemployment insurance, and  
20 workers’ compensation coverage, and act  
21 as the employer of the home care provider.

22 (C) RIGHT OF CONSUMERS.—Notwith-  
23 standing the State responsibilities described in  
24 subparagraph (B), service recipients, and,  
25 where appropriate, their designated representa-

1           tive, shall retain the right to independently se-  
2           lect, hire, terminate, and direct (including man-  
3           age, train, schedule, and verify services pro-  
4           vided) the work of a home care provider.

5           (3) AGENCY ADMINISTERED.—For purposes of  
6           this title, the term “agency-administered” means,  
7           with respect to such services, services that are not  
8           consumer-directed.

9   **SEC. 105. COST SHARING.**

10          (a) NO COST SHARING FOR POOREST.—

11               (1) IN GENERAL.—The State plan may not im-  
12               pose any cost sharing for individuals with income (as  
13               determined under subsection (d)) less than 150 per-  
14               cent of the official poverty level applicable to a fam-  
15               ily of the size involved (referred to in paragraph  
16               (2)).

17               (2) OFFICIAL POVERTY LEVEL.—For purposes  
18               of paragraph (1), the term “official poverty level ap-  
19               plicable to a family of the size involved” means, for  
20               a family for a year, the official poverty line (as de-  
21               fined by the Office of Management and Budget, and  
22               revised annually in accordance with section 673(2)  
23               of the Community Services Block Grant Act (42  
24               U.S.C. 9902(2)) applicable to a family of the size in-  
25               volved.

1 (b) SLIDING SCALE FOR REMAINDER.—

2 (1) REQUIRED COINSURANCE.—The State plan  
3 shall impose cost sharing in the form of coinsurance  
4 (based on the amount paid under the State plan for  
5 a service)—

6 (A) at a rate of 10 percent for individuals  
7 with disabilities with income not less than 150  
8 percent, and less than 175 percent, of such offi-  
9 cial poverty line (as so applied);

10 (B) at a rate of 15 percent for such indi-  
11 viduals with income not less than 175 percent,  
12 and less than 225 percent, of such official pov-  
13 erty line (as so applied);

14 (C) at a rate of 25 percent for such indi-  
15 viduals with income not less than 225 percent,  
16 and less than 275 percent, of such official pov-  
17 erty line (as so applied);

18 (D) at a rate of 30 percent for such indi-  
19 viduals with income not less than 275 percent,  
20 and less than 325 percent, of such official pov-  
21 erty line (as so applied);

22 (E) at a rate of 35 percent for such indi-  
23 viduals with income not less than 325 percent,  
24 and less than 400 percent, of such official pov-  
25 erty line (as so applied); and

1 (F) at a rate of 40 percent for such indi-  
2 viduals with income equal to at least 400 per-  
3 cent of such official poverty line (as so applied).

4 (2) REQUIRED ANNUAL DEDUCTIBLE.—The  
5 State plan shall impose cost sharing in the form of  
6 an annual deductible—

7 (A) of \$100 for individuals with disabilities  
8 with income not less than 150 percent, and less  
9 than 175 percent, of such official poverty line  
10 (as so applied);

11 (B) of \$200 for such individuals with in-  
12 come not less than 175 percent, and less than  
13 225 percent, of such official poverty line (as so  
14 applied);

15 (C) of \$300 for such individuals with in-  
16 come not less than 225 percent, and less than  
17 275 percent, of such official poverty line (as so  
18 applied);

19 (D) of \$400 for such individuals with in-  
20 come not less than 275 percent, and less than  
21 325 percent, of such official poverty line (as so  
22 applied);

23 (E) of \$500 for such individuals with in-  
24 come not less than 325 percent, and less than

1           400 percent, of such official poverty line (as so  
2           applied); and

3                   (F) of \$600 for such individuals with in-  
4           come equal to at least 400 percent of such offi-  
5           cial poverty line (as so applied).

6           (c) RECOMMENDATION OF THE SECRETARY.—The  
7           Secretary shall make recommendations to the States as  
8           to how to reduce cost-sharing for individuals with extraor-  
9           dinary out-of-pocket costs for whom the cost-sharing pro-  
10          visions of this section could jeopardize their ability to take  
11          advantage of the services offered under this title. The Sec-  
12          retary shall establish a methodology for reducing the cost-  
13          sharing burden for individuals with exceptionally high out-  
14          of-pocket costs under this title.

15          (d) DETERMINATION OF INCOME FOR PURPOSES OF  
16          COST SHARING.—The State plan shall specify the process  
17          to be used to determine the income of an individual with  
18          disabilities for purposes of this section. Such standards  
19          shall include a uniform Federal definition of income and  
20          any allowable deductions from income.

21       **SEC. 106. QUALITY ASSURANCE AND SAFEGUARDS.**

22          (a) QUALITY ASSURANCE.—

23                  (1) IN GENERAL.—The State plan shall specify  
24          how the State will ensure and monitor the quality of  
25          services, including—

1 (A) safeguarding the health and safety of  
2 individuals with disabilities;

3 (B) setting the minimum standards for  
4 agency providers and how such standards will  
5 be enforced;

6 (C) setting the minimum competency re-  
7 quirements for agency provider employees who  
8 provide direct services under this title and how  
9 the competency of such employees will be en-  
10 forced;

11 (D) obtaining meaningful consumer input,  
12 including consumer surveys that measure the  
13 extent to which participants receive the services  
14 described in the plan of care and participant  
15 satisfaction with such services;

16 (E) establishing a process to receive, inves-  
17 tigate, and resolve allegations of neglect or  
18 abuse;

19 (F) establishing optional training programs  
20 for individuals with disabilities in the use and  
21 direction of consumer directed providers of per-  
22 sonal assistance services;

23 (G) establishing an appeals procedure for  
24 eligibility denials and a grievance procedure for

1           disagreements with the terms of an individual-  
2           ized plan of care;

3           (H) providing for participation in quality  
4           assurance activities; and

5           (I) specifying the role of the Long-Term  
6           Care Ombudsman (under the Older Americans  
7           Act of 1965 (42 U.S.C. 3001 et seq.)) and the  
8           protection and advocacy system (established  
9           under section 142 of the the Developmental  
10          Disabilities Assistance and Bill of Rights Act  
11          (42 U.S.C. 6042)) in assuring quality of serv-  
12          ices and protecting the rights of individuals  
13          with disabilities.

14          (2) ISSUANCE OF REGULATIONS.—Not later  
15          than 1 year after the date of enactment of this Act,  
16          the Secretary shall issue regulations implementing  
17          the quality provisions of this subsection.

18          (b) FEDERAL STANDARDS.—The State plan shall ad-  
19          here to Federal quality standards in the following areas:

20               (1) Case review of a specified sample of client  
21               records.

22               (2) The mandatory reporting of abuse, neglect,  
23               or exploitation.

24               (3) The development of a registry of provider  
25               agencies or home care workers and consumer di-

1       rected providers of personal assistance services  
2       against whom any complaints have been sustained,  
3       which shall be available to the public.

4               (4) Sanctions to be imposed on States or pro-  
5       viders, including disqualification from the program,  
6       if minimum standards are not met.

7               (5) Surveys of client satisfaction.

8               (6) State optional training programs for infor-  
9       mal caregivers.

10       (c) CLIENT ADVOCACY.—

11               (1) IN GENERAL.—The State plan shall provide  
12       that the State will expend the amount allocated  
13       under section 109(b)(2) for client advocacy activi-  
14       ties. The State may use such funds to augment the  
15       budgets of the Long-Term Care Ombudsman (under  
16       the Older Americans Act of 1965 (42 U.S.C. 3001  
17       et seq.) and the protection and advocacy system (es-  
18       tablished under section 142 of the the Developmen-  
19       tal Disabilities Assistance and Bill of Rights Act (42  
20       U.S.C. 6042)) or may establish a separate and inde-  
21       pendent client advocacy office in accordance with  
22       paragraph (2) to administer a new program de-  
23       signed to advocate for client rights.

24               (2) CLIENT ADVOCACY OFFICE.—

1 (A) IN GENERAL.—A client advocacy office  
2 established under this paragraph shall—

3 (i) identify, investigate, and resolve  
4 complaints that—

5 (I) are made by, or on behalf of,  
6 clients; and

7 (II) relate to action, inaction, or  
8 decisions, that may adversely affect  
9 the health, safety, welfare, or rights of  
10 the clients (including the welfare and  
11 rights of the clients with respect to  
12 the appointment and activities of  
13 guardians and representative payees),  
14 of—

15 (aa) providers, or represent-  
16 atives of providers, of long-term  
17 care services;

18 (bb) public agencies; or

19 (cc) health and social service  
20 agencies;

21 (ii) provide services to assist the cli-  
22 ents in protecting the health, safety, wel-  
23 fare, and rights of the clients;

24 (iii) inform the clients about means of  
25 obtaining services provided by providers or

1 agencies described in clause (i)(II) or serv-  
2 ices described in clause (ii);

3 (iv) ensure that the clients have regu-  
4 lar and timely access to the services pro-  
5 vided through the office and that the cli-  
6 ents and complainants receive timely re-  
7 sponses from representatives of the office  
8 to complaints; and

9 (v) represent the interests of the cli-  
10 ents before governmental agencies and  
11 seek administrative, legal, and other rem-  
12 edies to protect the health, safety, welfare,  
13 and rights of the clients with regard to the  
14 provisions of this title.

15 (B) CONTRACTS AND ARRANGEMENTS.—

16 (i) IN GENERAL.—Except as provided  
17 in clause (ii), the State agency may estab-  
18 lish and operate the office, and carry out  
19 the program, directly, or by contract or  
20 other arrangement with any public agency  
21 or nonprofit private organization.

22 (ii) LICENSING AND CERTIFICATION  
23 ORGANIZATIONS; ASSOCIATIONS.—The  
24 State agency may not enter into the con-  
25 tract or other arrangement described in

1 clause (i) with an agency or organization  
2 that is responsible for licensing, certifying,  
3 or providing long-term care services in the  
4 State.

5 (d) SAFEGUARDS.—

6 (1) CONFIDENTIALITY.—The State plan shall  
7 provide safeguards that restrict the use or disclosure  
8 of information concerning applicants and bene-  
9 ficiaries to purposes directly connected with the ad-  
10 ministration of the plan.

11 (2) SAFEGUARDS AGAINST ABUSE.—The State  
12 plans shall provide safeguards against physical, emo-  
13 tional, or financial abuse or exploitation (specifically  
14 including appropriate safeguards in cases where pay-  
15 ment for program benefits is made by cash pay-  
16 ments or vouchers given directly to individuals with  
17 disabilities). All providers of services shall be re-  
18 quired to register with the State agency.

19 (3) REGULATIONS.—Not later than January 1,  
20 1997, the Secretary shall promulgate regulations  
21 with respect to the requirements on States under  
22 this subsection.

23 (e) SPECIFIED RIGHTS.—The State plan shall pro-  
24 vide that in furnishing home and community-based serv-

1 ices under the plan the following individual rights are pro-  
2 tected:

3 (1) The right to be fully informed in advance,  
4 orally and in writing, of the care to be provided, to  
5 be fully informed in advance of any changes in care  
6 to be provided, and (except with respect to an indi-  
7 vidual determined incompetent) to participate in  
8 planning care or changes in care.

9 (2) The right to—

10 (A) voice grievances with respect to serv-  
11 ices that are (or fail to be) furnished without  
12 discrimination or reprisal for voicing grievances;

13 (B) be told how to complain to State and  
14 local authorities; and

15 (C) prompt resolution of any grievances or  
16 complaints.

17 (3) The right to confidentiality of personal and  
18 clinical records and the right to have access to such  
19 records.

20 (4) The right to privacy and to have one's prop-  
21 erty treated with respect.

22 (5) The right to refuse all or part of any care  
23 and to be informed of the likely consequences of  
24 such refusal.

1           (6) The right to education or training for one-  
2           self and for members of one's family or household on  
3           the management of care.

4           (7) The right to be free from physical or mental  
5           abuse, corporal punishment, and any physical or  
6           chemical restraints imposed for purposes of dis-  
7           cipline or convenience and not included in an indi-  
8           vidual's plan of care.

9           (8) The right to be fully informed orally and in  
10          writing of the individual's rights.

11          (9) The right to a free choice of providers.

12          (10) The right to direct provider activities when  
13          an individual is competent and willing to direct such  
14          activities.

15 **SEC. 107. ADVISORY GROUPS.**

16          (a) FEDERAL ADVISORY GROUP.—

17               (1) ESTABLISHMENT.—The Secretary shall es-  
18               tablish an advisory group, to advise the Secretary  
19               and States on all aspects of the program under this  
20               title.

21               (2) COMPOSITION.—The group shall be com-  
22               posed of individuals with disabilities and their rep-  
23               resentatives, providers, Federal and State officials,  
24               and local community implementing agencies. A ma-

1 jority of its members shall be individuals with dis-  
2 abilities and their representatives.

3 (b) STATE ADVISORY GROUPS.—

4 (1) IN GENERAL.—Each State plan shall pro-  
5 vide for the establishment and maintenance of an  
6 advisory group to advise the State on all aspects of  
7 the State plan under this title.

8 (2) COMPOSITION.—Members of each advisory  
9 group shall be appointed by the Governor (or other  
10 chief executive officer of the State) and shall include  
11 individuals with disabilities and their representa-  
12 tives, providers, State officials, and local community  
13 implementing agencies. A majority of its members  
14 shall be individuals with disabilities and their rep-  
15 resentatives. The members of the advisory group  
16 shall be selected from those nominated as described  
17 in paragraph (3).

18 (3) SELECTION OF MEMBERS.—Each State  
19 shall establish a process whereby all residents of the  
20 State, including individuals with disabilities and  
21 their representatives, shall be given the opportunity  
22 to nominate members to the advisory group.

23 (4) PARTICULAR CONCERNS.—Each advisory  
24 group shall—

1 (A) before the State plan is developed, ad-  
2 vise the State on guiding principles and values,  
3 policy directions, and specific components of the  
4 plan;

5 (B) meet regularly with State officials in-  
6 volved in developing the plan, during the devel-  
7 opment phase, to review and comment on all as-  
8 pects of the plan;

9 (C) participate in the public hearings to  
10 help assure that public comments are addressed  
11 to the extent practicable;

12 (D) report to the Governor and make  
13 available to the public any differences between  
14 the group's recommendations and the plan;

15 (E) report to the Governor and make avail-  
16 able to the public specifically the degree to  
17 which the plan is consumer-directed; and

18 (F) meet regularly with officials of the des-  
19 igned State agency (or agencies) to provide  
20 advice on all aspects of implementation and  
21 evaluation of the plan.

22 **SEC. 108. PAYMENTS TO STATES.**

23 (a) IN GENERAL.—Subject to section 102(a)(9)(C)  
24 (relating to limitation on payment for administrative  
25 costs), the Secretary, in accordance with the Cash Man-

1 agement Improvement Act, shall authorize payment to  
2 each State with a plan approved under this title, for each  
3 quarter (beginning on or after January 1, 1997), from its  
4 allotment under section 109(b), an amount equal to—

5 (1)(A) with respect to the amount demonstrated  
6 by State claims to have been expended during the  
7 year for home and community-based services under  
8 the plan for individuals with disabilities that does  
9 not exceed 20 percent of the amount allotted to the  
10 State under section 109(b), 100 percent of such  
11 amount; and

12 (B) with respect to the amount demonstrated  
13 by State claims to have been expended during the  
14 year for home and community-based services under  
15 the plan for individuals with disabilities that exceeds  
16 20 percent of the amount allotted to the State under  
17 section 109(b), the Federal home and community-  
18 based services matching percentage (as defined in  
19 subsection (b)) of such amount; plus

20 (2) an amount equal to 90 percent of the  
21 amount demonstrated by the State to have been ex-  
22 pended during the quarter for quality assurance ac-  
23 tivities under the plan; plus

24 (3) an amount equal to 90 percent of amount  
25 expended during the quarter under the plan for ac-

1        activities (including preliminary screening) relating to  
2        determination of eligibility and performance of needs  
3        assessment; plus

4            (4) an amount equal to 90 percent (or, begin-  
5        ning with quarters in fiscal year 2005, 75 percent)  
6        of the amount expended during the quarter for the  
7        design, development, and installation of mechanical  
8        claims processing systems and for information re-  
9        trieval; plus

10           (5) an amount equal to 50 percent of the re-  
11        mainder of the amounts expended during the quar-  
12        ter as found necessary by the Secretary for the prop-  
13        er and efficient administration of the State plan.

14        (b) FEDERAL HOME AND COMMUNITY-BASED SERV-  
15        ICES MATCHING PERCENTAGE.—In subsection (a), the  
16        term “Federal home and community-based services  
17        matching percentage” means, with respect to a State, the  
18        State’s Federal medical assistance percentage (as defined  
19        in section 1905(b) of the Social Security Act (42 U.S.C.  
20        1396d(b))) increased by 15 percentage points, except that  
21        the Federal home and community-based services matching  
22        percentage shall in no case be more than 95 percent.

23        (c) PAYMENTS ON ESTIMATES WITH RETROSPEC-  
24        TIVE ADJUSTMENTS.—The method of computing and  
25        making payments under this section shall be as follows:

1           (1) The Secretary shall, prior to the beginning  
2 of each quarter, estimate the amount to be paid to  
3 the State under subsection (a) for such quarter,  
4 based on a report filed by the State containing its  
5 estimate of the total sum to be expended in such  
6 quarter, and such other information as the Secretary  
7 may find necessary.

8           (2) From the allotment available therefore, the  
9 Secretary shall provide for payment of the amount  
10 so estimated, reduced or increased, as the case may  
11 be, by any sum (not previously adjusted under this  
12 section) by which the Secretary finds that the esti-  
13 mate of the amount to be paid the State for any  
14 prior period under this section was greater or less  
15 than the amount that should have been paid.

16       (d) APPLICATION OF RULES REGARDING LIMITA-  
17 TIONS ON PROVIDER-RELATED DONATIONS AND HEALTH  
18 CARE-RELATED TAXES.—The provisions of section  
19 1903(w) of the Social Security Act (42 U.S.C. 1396b(w))  
20 shall apply to payments to States under this section in  
21 the same manner as they apply to payments to States  
22 under section 1903(a) of such Act (42 U.S.C. 1396b(a)).

23       (e) FAILURE TO COMPLY WITH STATE PLAN.—If a  
24 State furnishing home and community-based services  
25 under this title fails to comply with the State plan ap-

1 proved under this title, the Secretary may either reduce  
2 the Federal matching rates available to the State under  
3 subsection (a) or withhold an amount of funds determined  
4 appropriate by the Secretary from any payment to the  
5 State under this section.

6 **SEC. 109. APPROPRIATIONS; ALLOTMENTS TO STATES.**

7 (a) APPROPRIATIONS.—

8 (1) FISCAL YEARS 1997 THROUGH 2005.—Sub-  
9 ject to paragraph (5)(C), for purposes of this title,  
10 the appropriation authorized under this title for each  
11 of fiscal years 1997 through 2005 is the following:

12 (A) For fiscal year 1997, \$1,800,000,000.

13 (B) For fiscal year 1998, \$3,500,000,000.

14 (C) For fiscal year 1999, \$5,800,000,000.

15 (D) For fiscal year 2000, \$7,300,000,000.

16 (E) For fiscal year 2001,  
17 \$10,000,000,000.

18 (F) For fiscal year 2002,  
19 \$15,700,000,000.

20 (G) For fiscal year 2003,  
21 \$22,800,000,000.

22 (H) For fiscal year 2004,  
23 \$30,700,000,000.

24 (I) For fiscal year 2005, \$34,600,000,000.

1           (2) SUBSEQUENT FISCAL YEARS.—For pur-  
2           poses of this title, the appropriation authorized for  
3           State plans under this title for each fiscal year after  
4           fiscal year 2005 is the appropriation authorized  
5           under this subsection for the preceding fiscal year  
6           multiplied by—

7                   (A) a factor (described in paragraph (3))  
8                   reflecting the change in the consumer price  
9                   index for the fiscal year; and

10                   (B) a factor (described in paragraph (4))  
11                   reflecting the change in the number of individ-  
12                   uals with disabilities for the fiscal year.

13           (3) CPI INCREASE FACTOR.—For purposes of  
14           paragraph (2)(A), the factor described in this para-  
15           graph for a fiscal year is the ratio of—

16                   (A) the annual average index of the  
17                   consumer price index for the preceding fiscal  
18                   year, to—

19                   (B) such index, as so measured, for the  
20                   second preceding fiscal year.

21           (4) DISABLED POPULATION FACTOR.—For pur-  
22           poses of paragraph (2)(B), the factor described in  
23           this paragraph for a fiscal year is 100 percent plus  
24           (or minus) the percentage increase (or decrease)  
25           change in the disabled population of the United

1 States (as determined for purposes of the most re-  
2 cent update under subsection (b)(3)(D)).

3 (5) ADDITIONAL FUNDS DUE TO MEDICAID  
4 OFFSETS.—

5 (A) IN GENERAL.—Each participating  
6 State must provide the Secretary with informa-  
7 tion concerning offsets and reductions in the  
8 medicaid program resulting from home and  
9 community-based services provided disabled in-  
10 dividuals under this title, that would have been  
11 paid for such individuals under the State medic-  
12 aid plan. At the time a State first submits its  
13 plan under this title and before each subsequent  
14 fiscal year (through fiscal year 2005), the State  
15 also must provide the Secretary with such  
16 budgetary information (for each fiscal year  
17 through fiscal year 2005), as the Secretary de-  
18 termines to be necessary to carry out this para-  
19 graph.

20 (B) REPORTS.—Each State with a pro-  
21 gram under this title shall submit such reports  
22 to the Secretary as the Secretary may require  
23 in order to monitor compliance with subpara-  
24 graph (A). The Secretary shall specify the for-

1 mat of such reports and establish uniform data  
2 reporting elements.

3 (C) ADJUSTMENTS TO APPROPRIATION.—

4 (i) IN GENERAL.—For each fiscal year  
5 (beginning with fiscal year 1997 and end-  
6 ing with fiscal year 2005) and based on a  
7 review of information submitted under sub-  
8 paragraph (A), the Secretary shall deter-  
9 mine the amount by which the appropria-  
10 tion authorized under subsection (a) will  
11 increase. The amount of such increase for  
12 a fiscal year shall be limited to the reduc-  
13 tion in Federal expenditures of medical as-  
14 sistance (as determined by Secretary) that  
15 would have been made under title XIX of  
16 the Social Security Act (42 U.S.C. 1396 et  
17 seq.) but for the provision of home and  
18 community-based services under the pro-  
19 gram under this title.

20 (ii) ANNUAL PUBLICATION.—The Sec-  
21 retary shall publish before the beginning of  
22 such fiscal year, the revised appropriation  
23 authorized under this subsection for such  
24 fiscal year.

1 (D) CONSTRUCTION.—Nothing in this sub-  
2 section shall be construed as requiring States to  
3 determine eligibility for medical assistance  
4 under the State medicaid plan on behalf of indi-  
5 viduals receiving assistance under this title.

6 (b) ALLOTMENTS TO STATES.—

7 (1) IN GENERAL.—The Secretary shall allot the  
8 amounts available under the appropriation author-  
9 ized for the fiscal year under paragraph (1) of sub-  
10 section (a) (without regard to any adjustment to  
11 such amount under paragraph (5) of such sub-  
12 section), to the States with plans approved under  
13 this title in accordance with an allocation formula  
14 developed by the Secretary that takes into account—

15 (A) the percentage of the total number of  
16 individuals with disabilities in all States that re-  
17 side in a particular State;

18 (B) the per capita costs of furnishing home  
19 and community-based services to individuals  
20 with disabilities in the State; and

21 (C) the percentage of all individuals with  
22 incomes at or below 150 percent of the official  
23 poverty line (as described in section 105(a)(2))  
24 in all States that reside in a particular State.

1           (2) ALLOCATION FOR CLIENT ADVOCACY AC-  
2           TIVITIES.—Each State with a plan approved under  
3           this title shall allocate one-half of one percent of the  
4           State’s total allotment under paragraph (1) for cli-  
5           ent advocacy activities as described in section  
6           106(c).

7           (3) NO DUPLICATE PAYMENT.—No payment  
8           may be made to a State under this section for any  
9           services provided to an individual to the extent that  
10          the State received payment for such services under  
11          section 1903(a) of the Social Security Act (42  
12          U.S.C. 1396b(a)).

13          (4) REALLOCATIONS.—Any amounts allotted to  
14          States under this subsection for a year that are not  
15          expended in such year shall remain available for  
16          State programs under this title and may be reallo-  
17          cated to States as the Secretary determines appro-  
18          priate.

19          (5) SAVINGS DUE TO MEDICAID OFFSETS.—

20                (A) IN GENERAL.—Except as provided in  
21                subparagraph (B), from the total amount of the  
22                increase in the amount available for a fiscal  
23                year under paragraph (1) of subsection (a) re-  
24                sulting from the application of paragraph (5) of  
25                such subsection, the Secretary shall allot to

1 each State with a plan approved under this  
2 title, an amount equal to the Federal offsets  
3 and reductions in the State's medicaid plan for  
4 such fiscal year that was reported to the Sec-  
5 retary under subsection (a)(5), reduced or in-  
6 creased, as the case may be, by any amount by  
7 which the Secretary determines that any esti-  
8 mated Federal offsets and reductions in such  
9 State's medicaid plan reported to the Secretary  
10 under subsection (a)(5) for the previous fiscal  
11 year were greater or less than the actual Fed-  
12 eral offsets and reductions in such State's med-  
13 icaid plan.

14 (B) CAP ON STATE SAVINGS ALLOT-  
15 MENT.—In no case shall the allotment made  
16 under this paragraph to any State for a fiscal  
17 year exceed the product of—

18 (i) the Federal medical assistance per-  
19 centage for such State (as defined under  
20 section 1905(b) of the Social Security Act  
21 (42 U.S.C. 1396d(b))); multiplied by

22 (ii)(I) for fiscal year 1997, the base  
23 medical assistance amount for the State  
24 (as determined under subparagraph (C))  
25 updated through the midpoint of fiscal

1 year 1997 by the estimated percentage  
2 change in the index described in section  
3 102(a)(1)(B)(iii) during the period begin-  
4 ning on October 1, 1995, and ending at  
5 that midpoint; and

6 (II) for succeeding fiscal years, an  
7 amount equal to the amount determined  
8 under this clause for the previous fiscal  
9 year updated through the midpoint of the  
10 year by the estimated percentage change in  
11 such index during the 12-month period  
12 ending at that midpoint, with appropriate  
13 adjustments to reflect previous  
14 underestimations or overestimations under  
15 this clause in the projected percentage  
16 change in such index.

17 (C) BASE MEDICAL ASSISTANCE  
18 AMOUNT.—The base medical assistance amount  
19 for a State is an amount equal to the total ex-  
20 penditures from Federal and State funds made  
21 under the State plan under title XIX of the So-  
22 cial Security Act (42 U.S.C 1396 et seq.) dur-  
23 ing fiscal year 1995 with respect to medical as-  
24 sistance consisting of the services described in  
25 section 102(a)(1)(C).

1 (c) STATE ENTITLEMENT.—This title constitutes  
2 budget authority in advance of appropriations Acts, and  
3 represents the obligation of the Federal Government to  
4 provide for the payment to States of amounts described  
5 in subsection (a).

6 **SEC. 110. FEDERAL EVALUATIONS.**

7 (a) IN GENERAL.—Not later than December 31,  
8 2002, December 31, 2005, and each December 31 there-  
9 after, the Secretary shall provide to Congress analytical  
10 reports that evaluate—

11 (1) the extent to which individuals with low in-  
12 comes and disabilities are equitably served;

13 (2) the adequacy and equity of service plans to  
14 individuals with similar levels of disability across  
15 States;

16 (3) the comparability of program participation  
17 across States, described by level and type of disabil-  
18 ity; and

19 (4) the ability of service providers to sufficiently  
20 meet the demand for services.

21 (b) GERIATRIC ASSESSMENTS.—Not later than 18  
22 months after the date of enactment of this Act, the Sec-  
23 retary shall report to Congress concerning the feasibility  
24 of providing reimbursement under health plans and other

1 payers of health services for full geriatric assessment,  
2 when recommended by a physician.

3 **SEC. 111. INFORMATION AND TECHNICAL ASSISTANCE**  
4 **GRANTS RELATING TO DEVELOPMENT OF**  
5 **HOSPITAL LINKAGE PROGRAMS.**

6 (a) FINDINGS.—Congress finds that—

7 (1) demonstration programs and projects have  
8 been developed to offer care management to hos-  
9 pitalized individuals awaiting discharge who are in  
10 need of long-term health care services that meet in-  
11 dividual needs and preferences in home and commu-  
12 nity-based settings as an alternative to long-term  
13 nursing home care or institutional placement; and

14 (2) there is a need to disseminate information  
15 and technical assistance to hospitals and State and  
16 local community organizations regarding such pro-  
17 grams and projects and to provide incentive grants  
18 to State and local public and private agencies, in-  
19 cluding area agencies on aging, to establish and ex-  
20 pand programs that offer care management to indi-  
21 viduals awaiting discharge from acute care hospitals  
22 who are in need of long-term care so that services  
23 to meet individual needs and preferences can be ar-  
24 ranged in home and community-based settings as an

1 alternative to long-term placement in nursing homes  
2 or other institutional settings.

3 (b) DISSEMINATION OF INFORMATION, TECHNICAL  
4 ASSISTANCE, AND INCENTIVE GRANTS TO ASSIST IN THE  
5 DEVELOPMENT OF HOSPITAL LINKAGE PROGRAMS.—  
6 Part C of title III of the Public Health Service Act (42  
7 U.S.C. 248 et seq.) is amended by adding at the end there-  
8 of the following new section:

9 **“SEC. 327B. DISSEMINATION OF INFORMATION, TECHNICAL**  
10 **ASSISTANCE AND INCENTIVE GRANTS TO AS-**  
11 **SIST IN THE DEVELOPMENT OF HOSPITAL**  
12 **LINKAGE PROGRAMS.**

13 “(a) DISSEMINATION OF INFORMATION.—The Sec-  
14 retary shall compile, evaluate, publish and disseminate to  
15 appropriate State and local officials and to private organi-  
16 zations and agencies that provide services to individuals  
17 in need of long-term health care services, such information  
18 and materials as may assist such entities in replicating  
19 successful programs that are aimed at offering care man-  
20 agement to hospitalized individuals who are in need of  
21 long-term care so that services to meet individual needs  
22 and preferences can be arranged in home and community-  
23 based settings as an alternative to long-term nursing home  
24 placement. The Secretary may provide technical assistance  
25 to entities seeking to replicate such programs.

1       “(b) INCENTIVE GRANTS TO ASSIST IN THE DEVEL-  
2       OPMENT OF HOSPITAL LINKAGE PROGRAMS.—The Sec-  
3       retary shall establish a program under which incentive  
4       grants may be awarded to assist private and public agen-  
5       cies, including area agencies on aging, and organizations  
6       in developing and expanding programs and projects that  
7       facilitate the discharge of individuals in hospitals or other  
8       acute care facilities who are in need of long-term care serv-  
9       ices and placement of such individuals into home and com-  
10      munity-based settings.

11      “(c) ADMINISTRATIVE PROVISIONS.—

12           “(1) ELIGIBLE ENTITIES.—To be eligible to re-  
13      ceive a grant under subsection (b) an entity shall  
14      be—

15           “(A)(i) a State agency as defined in sec-  
16      tion 102(43) of the Older Americans Act of  
17      1965 (42 U.S.C. 3002(43)); or

18           “(ii) a State agency responsible for admin-  
19      istering home and community care programs  
20      under title XIX of the Social Security Act (42  
21      U.S.C. 1396 et seq.); or

22           “(B) if no State agency described in sub-  
23      paragraph (A) applies with respect to a particu-  
24      lar State, a public or nonprofit private entity.

1           “(2) APPLICATIONS.—To be eligible to receive  
2           an incentive grant under subsection (b), an entity  
3           shall prepare and submit to the Secretary an appli-  
4           cation at such time, in such manner and containing  
5           such information as the Secretary may require, in-  
6           cluding—

7                   “(A) an assessment of the need within the  
8                   community to be served for the establishment  
9                   or expansion of a program to facilitate the dis-  
10                  charge of individuals in need of long-term care  
11                  who are in hospitals or other acute care facili-  
12                  ties into home and community-care programs  
13                  that provide individually planned, flexible serv-  
14                  ices that reflect individual choice or preference  
15                  rather than nursing home or institutional set-  
16                  tings;

17                  “(B) a plan for establishing or expanding  
18                  a program for identifying individuals in hospital  
19                  or acute care facilities who are in need of indi-  
20                  vidualized long-term care provided in home and  
21                  community-based settings rather than nursing  
22                  homes or other institutional settings and under-  
23                  taking the planning and management of indi-  
24                  vidualized care plans to facilitate discharge into  
25                  such settings;

1           “(C) assurances that nongovernmental  
2 case management agencies funded under grants  
3 awarded under this section are not direct pro-  
4 viders of home and community-based services;

5           “(D) satisfactory assurances that adequate  
6 home and community-based long term care  
7 services are available, or will be made available,  
8 within the community to be served so that indi-  
9 viduals being discharged from hospitals or acute  
10 care facilities under the proposed program can  
11 be served in such home and community-based  
12 settings, with flexible, individualized care that  
13 reflects individual choice and preference;

14           “(E) a description of the manner in which  
15 the program to be administered with amounts  
16 received under the grant will be continued after  
17 the termination of the grant for which such ap-  
18 plication is submitted; and

19           “(F) a description of any waivers or ap-  
20 provals necessary to expand the number of indi-  
21 viduals served in federally funded home and  
22 community-based long term care programs in  
23 order to provide satisfactory assurances that  
24 adequate home and community-based long term

1 care services are available in the community to  
2 be served.

3 “(3) AWARDING OF GRANTS.—

4 “(A) PREFERENCES.—In awarding grants  
5 under subsection (b), the Secretary shall give  
6 preference to entities submitting applications  
7 that—

8 “(i) demonstrate an ability to coordi-  
9 nate activities funded using amounts re-  
10 ceived under the grant with programs pro-  
11 viding individualized home and community-  
12 based case management and services to in-  
13 dividuals in need of long term care with  
14 hospital discharge planning programs; and

15 “(ii) demonstrate that adequate home  
16 and community-based long term care man-  
17 agement and services are available, or will  
18 be made available to individuals being  
19 served under the program funded with  
20 amounts received under subsection (b).

21 “(B) DISTRIBUTION.—In awarding grants  
22 under subsection (b), the Secretary shall ensure  
23 that such grants—

24 “(i) are equitably distributed on a ge-  
25 ographic basis;

1           “(ii) include projects operating in  
2           urban areas and projects operating in rural  
3           areas; and

4           “(iii) are awarded for the expansion of  
5           existing hospital linkage programs as well  
6           as the establishment of new programs.

7           “(C) EXPEDITED CONSIDERATION.—The  
8           Secretary shall provide for the expedited consid-  
9           eration of any waiver application that is nec-  
10          essary under title XIX of the Social Security  
11          Act (42 U.S.C. 1396 et seq.) to enable an appli-  
12          cant for a grant under subsection (b) to satisfy  
13          the assurance required under paragraph (1)(D).

14          “(4) USE OF GRANTS.—An entity that receives  
15          amounts under a grant under subsection (b) may  
16          use such amounts for planning, development and  
17          evaluation services and to provide reimbursements  
18          for the costs of one or more case managers to be lo-  
19          cated in or assigned to selected hospitals who  
20          would—

21                 “(A) identify patients in need of individ-  
22                 ualized care in home and community-based  
23                 long-term care;

1           “(B) assess and develop care plans in co-  
2           operation with the hospital discharge planning  
3           staff; and

4           “(C) arrange for the provision of commu-  
5           nity care either immediately upon discharge  
6           from the hospital or after any short term nurs-  
7           ing-home stay that is needed for recuperation  
8           or rehabilitation;

9           “(5) DIRECT SERVICES SUBJECT TO REIM-  
10          BURSEMENTS.—None of the amounts provided  
11          under a grant under this section may be used to  
12          provide direct services, other than case management,  
13          for which reimbursements are otherwise available  
14          under title XVIII or XIX of the Social Security Act  
15          (42 U.S.C. 1395 et seq. and 1396 et seq.).

16          “(6) LIMITATIONS.—

17                 “(A) TERM.—Grants awarded under this  
18                 section shall be for terms of less than 3 years.

19                 “(B) AMOUNT.—Grants awarded to an en-  
20                 tity under this section shall not exceed  
21                 \$300,000 per year. The Secretary may waive  
22                 the limitation under this subparagraph where  
23                 an applicant demonstrates that the number of  
24                 hospitals or individuals to be served under the  
25                 grant justifies such increased amounts.

1           “(C) SUPPLANTING OF FUNDS.—Amounts  
2           awarded under a grant under this section may  
3           not be used to supplant existing State funds  
4           that are provided to support hospital link pro-  
5           grams.

6           “(d) EVALUATION AND REPORTS.—

7           “(1) BY GRANTEES.—An entity that receives a  
8           grant under this section shall evaluate the effective-  
9           ness of the services provided under the grant in fa-  
10          cilitating the placement of individuals being dis-  
11          charged from hospitals or acute care facilities into  
12          home and community-based long term care settings  
13          rather than nursing homes. Such entity shall pre-  
14          pare and submit to the Secretary a report containing  
15          such information and data concerning the activities  
16          funded under the grant as the Secretary determines  
17          appropriate.

18          “(2) BY SECRETARY.—Not later than the end  
19          of the third fiscal year for which funds are appro-  
20          priated under subsection (e), the Secretary shall pre-  
21          pare and submit to the appropriate committees of  
22          Congress, a report concerning the results of the eval-  
23          uations and reports conducted and prepared under  
24          paragraph (1).

1       “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
 2 are authorized to be appropriated to carry out this section,  
 3 \$5,000,000 for each of the fiscal years 1996 through  
 4 1998.”.

5                   **TITLE II—PROVISIONS**  
 6                   **RELATING TO MEDICARE**

7   **SEC. 201. RECAPTURE OF CERTAIN HEALTH CARE SUB-**  
 8                   **SIDIES RECEIVED BY HIGH-INCOME INDIVID-**  
 9                   **UALS.**

10       (a) IN GENERAL.—Subchapter A of chapter 1 of the  
 11 Internal Revenue Code of 1986 is amended by adding at  
 12 the end the following new part:

13   **“PART VIII—CERTAIN HEALTH CARE SUBSIDIES**  
 14                   **RECEIVED BY HIGH-INCOME INDIVIDUALS**

“Sec. 59B. Recapture of certain health care subsidies.

15   **“SEC. 59B. RECAPTURE OF CERTAIN HEALTH CARE SUB-**  
 16                   **SIDIES.**

17       “(a) IMPOSITION OF RECAPTURE AMOUNT.—In the  
 18 case of an individual, if the modified adjusted gross in-  
 19 come of the taxpayer for the taxable year exceeds the  
 20 threshold amount, such taxpayer shall pay (in addition to  
 21 any other amount imposed by this subtitle) a recapture  
 22 amount for such taxable year equal to the aggregate of  
 23 the Medicare part B recapture amounts (if any) for  
 24 months during such year that a premium is paid under

1 part B of title XVIII of the Social Security Act for the  
2 coverage of the individual under such part.

3 “(b) MEDICARE PART B PREMIUM RECAPTURE  
4 AMOUNT FOR MONTH.—For purposes of this section, the  
5 Medicare part B premium recapture amount for any  
6 month is the amount equal to the excess of—

7 “(1) 200 percent of the monthly actuarial rate  
8 for enrollees age 65 and over determined for that  
9 calendar year under section 1839(a)(1) of the Social  
10 Security Act, over

11 “(2) the total monthly premium under section  
12 1839 of the Social Security Act (determined without  
13 regard to subsections (b) and (f) of section 1839 of  
14 such Act).

15 “(c) PHASE-IN OF RECAPTURE AMOUNT.—

16 “(1) IN GENERAL.—If the modified adjusted  
17 gross income of the taxpayer for any taxable year  
18 exceeds the threshold amount by less than \$25,000,  
19 the recapture amount imposed by this section for  
20 such taxable year shall be an amount that bears the  
21 same ratio to the recapture amount that would (but  
22 for this subsection) be imposed by this section for  
23 such taxable year as such excess bears to \$25,000.

24 “(2) JOINT RETURNS.—If a recapture amount  
25 is determined separately for each spouse filing a

1 joint return, paragraph (1) shall be applied by sub-  
2 stituting ‘\$50,000’ for ‘\$25,000’ each place it ap-  
3 pears.

4 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
5 For purposes of this section:

6 “(1) THRESHOLD AMOUNT.—The term ‘thresh-  
7 old amount’ means—

8 “(A) except as otherwise provided in this  
9 paragraph, \$100,000;

10 “(B) \$125,000 in the case of a joint re-  
11 turn; and

12 “(C) zero in the case of a taxpayer who—

13 “(i) is married (as determined under  
14 section 7703) but does not file a joint re-  
15 turn for such year; and

16 “(ii) does not live apart from his  
17 spouse at all times during the taxable year.

18 “(2) MODIFIED ADJUSTED GROSS INCOME.—  
19 The term ‘modified adjusted gross income’ means  
20 adjusted gross income—

21 “(A) determined without regard to sections  
22 135, 911, 931, and 933; and

23 “(B) increased by the amount of interest  
24 received or accrued by the taxpayer during the  
25 taxable year that is exempt from tax.

1           “(3) JOINT RETURNS.—In the case of a joint  
2 return—

3           “(A) the recapture amount under sub-  
4 section (a) shall be the sum of the recapture  
5 amounts determined separately for each spouse;  
6 and

7           “(B) subsections (a) and (c) shall be ap-  
8 plied by taking into account the combined modi-  
9 fied adjusted gross income of the spouses.

10          “(4) COORDINATION WITH OTHER PROVI-  
11 SIONS.—

12          “(A) TREATED AS TAX FOR SUBTITLE F.—  
13 For purposes of subtitle F, the recapture  
14 amount imposed by this section shall be treated  
15 as if it were a tax imposed by section 1.

16          “(B) NOT TREATED AS TAX FOR CERTAIN  
17 PURPOSES.—The recapture amount imposed by  
18 this section shall not be treated as a tax im-  
19 posed by this chapter for purposes of determin-  
20 ing—

21                 “(i) the amount of any credit allow-  
22 able under this chapter; or

23                 “(ii) the amount of the minimum tax  
24 under section 55.

1           “(C) TREATED AS PAYMENT FOR MEDICAL  
2           INSURANCE.—The recapture amount imposed  
3           by this section shall be treated as an amount  
4           paid for insurance covering medical care, within  
5           the meaning of section 213(d).”.

6           (b) TRANSFERS TO FEDERAL SUPPLEMENTARY  
7           MEDICAL INSURANCE TRUST FUND.—

8           (1) IN GENERAL.—There are hereby appro-  
9           priated to the Federal Supplementary Medical Insur-  
10          ance Trust Fund amounts equivalent to the aggre-  
11          gate increase in liabilities under chapter 1 of the In-  
12          ternal Revenue Code of 1986 that is attributable to  
13          the application of section 59B(a) of such Code, as  
14          added by this section.

15          (2) TRANSFERS.—The amounts appropriated  
16          by paragraph (1) to the Federal Supplementary  
17          Medical Insurance Trust Fund shall be transferred  
18          from time to time (but not less frequently than  
19          quarterly) from the general fund of the Treasury on  
20          the basis of estimates made by the Secretary of the  
21          Treasury of the amounts referred to in paragraph  
22          (1). Any quarterly payment shall be made on the  
23          first day of such quarter and shall take into account  
24          the recapture amounts referred to in such section  
25          59B(a) for such quarter. Proper adjustments shall

1 be made in the amounts subsequently transferred to  
2 the extent prior estimates were in excess of or less  
3 than the amounts required to be transferred.

4 (c) REPORTING REQUIREMENTS.—

5 (1) Paragraph (1) of section 6050F(a) of the  
6 Internal Revenue Code of 1986 (relating to returns  
7 relating to social security benefits) is amended by  
8 striking “and” at the end of subparagraph (B) and  
9 by inserting after subparagraph (C) the following  
10 new subparagraph:

11 “(D) the number of months during the cal-  
12 endar year for which a premium was paid under  
13 part B of title XVIII of the Social Security Act  
14 for the coverage of such individual under such  
15 part, and”.

16 (2) Paragraph (2) of section 6050F(b) of such  
17 Code is amended to read as follows:

18 “(2) the information required to be shown on  
19 such return with respect to such individual.”.

20 (3) Subparagraph (A) of section 6050F(c)(1) of  
21 such Code is amended by inserting before the  
22 comma “and in the case of the information specified  
23 in subsection (a)(1)(D)”.

1           (4) The heading for section 6050F of such  
2 Code is amended by inserting “**AND MEDICARE**  
3 **PART B COVERAGE**” before the period.

4           (5) The item relating to section 6050F in the  
5 table of sections for subpart B of part III of sub-  
6 chapter A of chapter 61 of such Code is amended by  
7 inserting “and Medicare part B coverage” before the  
8 period.

9           (d) **WAIVER OF CERTAIN ESTIMATED TAX PEN-**  
10 **ALTIES.**—No addition to tax shall be imposed under sec-  
11 tion 6654 of the Internal Revenue Code of 1986 (relating  
12 to failure to pay estimated income tax) for any period be-  
13 fore April 16, 1998, with respect to any underpayment  
14 to the extent that such underpayment resulted from sec-  
15 tion 59B(a) of the Internal Revenue Code of 1986, as  
16 added by this section.

17           (e) **CLERICAL AMENDMENT.**—The table of parts for  
18 subchapter A of chapter 1 of the Internal Revenue Code  
19 of 1986 is amended by adding at the end thereof the fol-  
20 lowing new item:

“Part VIII. Certain health care subsidies received by high-income  
individuals.”.

21           (f) **EFFECTIVE DATE.**—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 1995.

1 **SEC. 202. IMPOSITION OF 10 PERCENT COPAYMENT ON**  
2 **HOME HEALTH SERVICES UNDER MEDICARE.**

3 (a) IN GENERAL.—

4 (1) PART A.—Section 1813(a) of the Social Se-  
5 curity Act (42 U.S.C. 1395e(a)) is amended by add-  
6 ing at the end the following new paragraph:

7 “(5)(A) The amount payable for a home health serv-  
8 ice furnished to an individual under this part shall be re-  
9 duced by a copayment amount equal to 10 percent of the  
10 average nationwide per visit cost for such a service fur-  
11 nished under this title (as determined by the Secretary  
12 on a prospective basis for services furnished during a cal-  
13 endar year).

14 “(B) Subparagraph (A) shall not apply to individuals  
15 whose family income does not exceed 150 percent of the  
16 official poverty line (referred to in section 1905(p)(2)) for  
17 a family of the size involved.”.

18 (2) PART B.—

19 (A) IN GENERAL.—Section 1833(b) of the  
20 Social Security Act (42 U.S.C. 1395l(b)) is  
21 amended by adding at the end the following  
22 new sentence: “If the total amount of the ex-  
23 penses incurred by an individual as determined  
24 under the preceding provisions of this sub-  
25 section include expenses for a home health serv-  
26 ice, such expenses shall be further reduced by

1 a copayment amount equal to 10 percent of the  
2 average nationwide per visit cost for such a  
3 service furnished under this title (as determined  
4 by the Secretary on a prospective basis for serv-  
5 ices furnished during a calendar year). The pre-  
6 ceding sentence shall not apply to individuals  
7 whose family income does not exceed 150 per-  
8 cent of the official poverty line (referred to in  
9 section 1905(p)(2)) for a family of the size in-  
10 volved.”.

11 (B) CONFORMING AMENDMENT.—Section  
12 1833(a)(2) of the Social Security Act (42  
13 U.S.C. 1395l(a)(2)), as amended by sections  
14 147(f)(6)(C) and 156(a)(2)(B)(iii) of the Social  
15 Security Act Amendments of 1994 (Public Law  
16 103–432; 108 Stat. 4432, 4440), is further  
17 amended—

18 (i) in subparagraph (A), by striking  
19 “to home health services (other than a cov-  
20 ered osteoporosis drug (as defined in sec-  
21 tion 1861(kk))) and”;

22 (ii) in subparagraph (E), by striking  
23 “and” at the end;

1 (iii) in subparagraph (F), by striking  
2 the semicolon at the end and inserting “;  
3 and”; and

4 (iv) by adding at the end the following  
5 new subparagraph:

6 “(G) with respect to any home health serv-  
7 ice (other than a covered osteoporosis drug (as  
8 defined in section 1861(kk)))—

9 “(i) the lesser of —

10 “(I) the reasonable cost of such  
11 service, as determined under section  
12 1861(v); or

13 “(II) the customary charges with  
14 respect to such service;

15 less the amount a provider may charge as  
16 described in clause (ii) of section  
17 1866(a)(2)(A); or

18 “(ii) if such service is furnished by a  
19 public provider of services, or by another  
20 provider that demonstrates to the satisfac-  
21 tion of the Secretary that a significant por-  
22 tion of its patients are low-income (and re-  
23 quests that payment be made under this  
24 clause), free of charge or at nominal  
25 charges to the public, the amount deter-

1           mined in accordance with section  
2           1814(b)(2).”.

3           (3)       PROVIDER        CHARGES.—Section  
4           1866(a)(2)(A)(i) of the Social Security Act (42  
5           U.S.C. 1395cc(a)(2)(A)(i)) is amended—

6                   (A) by striking “deduction or coinsurance”  
7                   and inserting “deduction, coinsurance, or  
8                   copayment”; and

9                   (B) by striking “or (a)(4)” and inserting  
10                  “(a)(4), or (a)(5)”.

11          (b) EFFECTIVE DATE.—The amendments made by  
12 subsection (a) shall apply to home health services fur-  
13 nished on or after January 1, 1996.

14 **SEC. 203. REDUCTION IN PAYMENTS FOR CAPITAL-RELAT-**  
15 **ED COSTS FOR INPATIENT HOSPITAL**  
16 **SERVICES.**

17          (a) PPS HOSPITALS.—

18                  (1) REDUCTION IN BASE PAYMENT RATES FOR  
19 PPS HOSPITALS.—Section 1886(g)(1)(A) of the So-  
20 cial Security Act (42 U.S.C. 1395ww(g)(1)(A)) is  
21 amended by adding at the end the following new  
22 sentence: “In addition to the reduction described in  
23 the preceding sentence, for discharges occurring  
24 after September 30, 1995, the Secretary shall reduce  
25 by 7.31 percent the unadjusted standard Federal

1 capital payment rate (as described in section  
2 412.308(c) of title 42, Code of Federal Regulations,  
3 as in effect on the date of enactment of the Long-  
4 Term Care Reform and Deficit Reduction Act of  
5 1995) and shall reduce by 10.41 percent the  
6 unadjusted hospital-specific rate (as described in  
7 section 412.328(e)(1) of title 42, Code of Federal  
8 Regulations, as in effect on the date of enactment of  
9 the Long-Term Care Reform and Deficit Reduction  
10 Act of 1995).”.

11 (2) REDUCTION IN UPDATE.—Section  
12 1886(g)(1) of the Social Security Act (42 U.S.C.  
13 1395ww(g)(1)) is amended—

14 (A) in subparagraph (B)(i)—

15 (i) by striking “and (II)” and insert-  
16 ing “(II)”; and

17 (ii) by striking the semicolon at the  
18 end and inserting the following: “, and  
19 (III) an annual update factor established  
20 for the prospective payment rates applica-  
21 ble to discharges in a fiscal year that (sub-  
22 ject to reduction under subparagraph (C))  
23 will be based upon such factor as the Sec-  
24 retary determines appropriate to take into  
25 account amounts necessary for the efficient

1 and effective delivery of medically appro-  
2 priate and necessary care of high quality;”;

3 (B) by redesignating subparagraph (C) as  
4 subparagraph (D); and

5 (C) by inserting after subparagraph (B)  
6 the following new subparagraph:

7 “(C)(i) With respect to payments attributable  
8 to portions of cost reporting periods or discharges  
9 occurring during each of the fiscal years 1996  
10 through 2003, the Secretary shall include a reduc-  
11 tion in the annual update factor established under  
12 subparagraph (B)(i)(III) for discharges in the year  
13 equal to the applicable update reduction described in  
14 clause (ii) to adjust for excessive increases in capital  
15 costs per discharge for fiscal years prior to fiscal  
16 year 1992 (but in no event may such reduction re-  
17 sult in an annual update factor less than zero).

18 “(ii) In clause (i), the term ‘applicable update  
19 reduction’ means, with respect to the update factor  
20 for a fiscal year—

21 “(I) 4.9 percentage points; or

22 “(II) if the annual update factor for the  
23 previous fiscal year was less than the applicable  
24 update reduction for the previous year, the sum  
25 of 4.9 percentage points and the difference be-

1           tween the annual update factor for the previous  
2           year and the applicable update reduction for the  
3           previous year.”.

4           (b) PPS-EXEMPT HOSPITALS.—Section 1861(v)(1)  
5 of the Social Security Act (42 U.S.C. 1395x(v)(1)) is fur-  
6 ther amended by adding at the end the following new sub-  
7 paragraph:

8           “(T) Such regulations shall provide that, in determin-  
9 ing the amount of the payments that may be made under  
10 this title with respect to the capital-related costs of inpa-  
11 tient hospital services furnished by a hospital that is not  
12 a subsection (d) hospital (as defined in section  
13 1886(d)(1)(B)) or a subsection (d) Puerto Rico hospital  
14 (as defined in section 1886(d)(9)(A)), the Secretary shall  
15 reduce the amounts of such payments otherwise estab-  
16 lished under this title by 15 percent for payments attrib-  
17 utable to portions of cost reporting periods occurring dur-  
18 ing each of the fiscal years 1996 through 2003.”.

19 **SEC. 204. ELIMINATION OF FORMULA-DRIVEN OVERPAY-**  
20 **MENTS FOR CERTAIN OUTPATIENT HOSPITAL**  
21 **SERVICES.**

22           (a) AMBULATORY SURGICAL CENTER PROCE-  
23 DURES.—Section 1833(i)(3)(B)(i)(II) of the Social Secu-  
24 rity Act (42 U.S.C. 1395l(i)(3)(B)(i)(II)) is amended—

25           (1) by striking “of 80 percent”; and



1 (B) in subclause (III), by striking “112  
2 percent,” and inserting “and before July 1,  
3 1996, 112 percent, or”; and

4 (C) by inserting after subclause (III) the  
5 following new subclause:

6 “(IV) July 1, 1996, 100 percent (adjusted by  
7 such amount as the Secretary determines to be nec-  
8 essary to preserve the savings resulting from the en-  
9 actment of section 13564(a)(1) of the Omnibus  
10 Budget Reconciliation Act of 1993),”.

11 (2) ADJUSTMENT TO LIMITS.—Section  
12 1861(v)(1)(L)(ii) of the Social Security Act (42  
13 U.S.C. 1395x(v)(1)(L)(ii)) is amended by adding at  
14 the end the following new sentence: “The effect of  
15 the amendments made by section 205(a)(1) of the  
16 Long-Term Care Reform and Deficit Reduction Act  
17 of 1995 shall not be considered by the Secretary in  
18 making adjustments pursuant to this clause.”.

19 (b) BASING LIMITS IN SUBSEQUENT YEARS ON ME-  
20 DIAN OF COSTS.—

21 (1) IN GENERAL.—Section 1861(v)(1)(L)(i) of  
22 the Social Security Act (42 U.S.C.  
23 1395x(v)(1)(L)(i)), as amended by subsection (a), is  
24 amended in the matter following subclause (IV) by  
25 striking “the mean” and inserting “the median”.

1           (2) EFFECTIVE DATE.—The amendment made  
2           by paragraph (1) shall apply to cost reporting peri-  
3           ods beginning on or after July 1, 1997.

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