

**TITLE 42 - THE PUBLIC HEALTH AND WELFARE**  
**CHAPTER 7 - SOCIAL SECURITY**  
**SUBCHAPTER XVIII - HEALTH INSURANCE FOR AGED AND DISABLED**  
**Part A - Hospital Insurance Benefits for Aged and Disabled**

**§ 1395i-3. Requirements for, and assuring quality of care in, skilled nursing facilities**

**(a) “Skilled nursing facility” defined**

In this subchapter, the term “skilled nursing facility” means an institution (or a distinct part of an institution) which—

- (1)** is primarily engaged in providing to residents—
  - (A)** skilled nursing care and related services for residents who require medical or nursing care, or
  - (B)** rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases;
- (2)** has in effect a transfer agreement (meeting the requirements of section 1395x (l) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and
- (3)** meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

**(b) Requirements relating to provision of services**

**(1) Quality of life**

**(A) In general**

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

**(B) Quality assessment and assurance**

A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility’s staff, which

- (i)** meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and
- (ii)** develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

**(2) Scope of services and activities under plan of care**

A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

- (A)** describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;
- (B)** is initially prepared, with the participation to the extent practicable of the resident or the resident’s family or legal representative, by a team which includes the resident’s attending physician and a registered professional nurse with responsibility for the resident; and
- (C)** is periodically reviewed and revised by such team after each assessment under paragraph (3).

**(3) Residents’ assessment**

**(A) Requirement**

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

- (i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;
- (ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;
- (iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and
- (iv) includes the identification of medical problems.

**(B) Certification****(i) In general**

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

**(ii) Penalty for falsification**

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

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

**(III)** The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a (a) of this title.

**(iii) Use of independent assessors**

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

**(C) Frequency****(i) In general**

Subject to the timeframes prescribed by the Secretary under section 1395yy (e)(6) of this title, such an assessment must be conducted—

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

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

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

**(ii) Resident review**

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

**(D) Use**

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

**(E) Coordination**

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

**(4) Provision of services and activities****(A) In general**

To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

- (i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- (ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- (iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;
- (iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;
- (v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;
- (vi) routine and emergency dental services to meet the needs of each resident; and
- (vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

**(B) Qualified persons providing services**

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

**(C) Required nursing care****(i) In general**

Except as provided in clause (ii), a skilled nursing facility must provide 24-hour licensed nursing service which is sufficient to meet nursing needs of its residents and must use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week.

**(ii) Exception**

To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

- (I)** the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,
- (II)** the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week,

(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty,

(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12)<sup>1</sup> of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

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

A waiver under this subparagraph shall be subject to annual renewal.

**(5) Required training of nurse aides**

**(A) In general**

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

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

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

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

**(B) Offering competency evaluation programs for current employees**

A skilled nursing facility must provide, for individuals used as a nurse aide<sup>2</sup> by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

**(C) Competency**

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

**(D) Re-training required**

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

**(E) Regular in-service education**

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

**(F) “Nurse aide” defined**

In this paragraph, the term “nurse aide” means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—

- (i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or
- (ii) who volunteers to provide such services without monetary compensation.

**(G) “Licensed health professional” defined**

In this paragraph, the term “licensed health professional” means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician.

**(6) Physician supervision and clinical records**

A skilled nursing facility must—

- (A) require that the medical care of every resident be provided under the supervision of a physician;
- (B) provide for having a physician available to furnish necessary medical care in case of emergency; and
- (C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents’ assessments (described in paragraph (3)).

**(7) Required social services**

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

**(8) Information on nurse staffing**

**(A) In general**

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

**(B) Publication of data**

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

**(c) Requirements relating to residents’ rights**

**(1) General rights**

**(A) Specified rights**

A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

- (i) Free choice

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

**(ii) Free from restraints**

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

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

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

**(iii) Privacy**

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

**(iv) Confidentiality**

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

**(v) Accommodation of needs**

The right—

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

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

**(vi) Grievances**

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

**(vii) Participation in resident and family groups**

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

**(viii) Participation in other activities**

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

**(ix) Examination of survey results**

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

**(x) Refusal of certain transfers**

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this subchapter) to a portion of the facility that is not such a skilled nursing facility.

**(xi) Other rights**

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.

**(B) Notice of rights and services**

A skilled nursing facility must—

- (i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;
- (ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under section 1396r (e)(6) of this title; and
- (iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this subchapter or by the facility's basic per diem charge.

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

**(C) Rights of incompetent residents**

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

**(D) Use of psychopharmacologic drugs**

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs. In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.

**(E) Information respecting advance directives**

A skilled nursing facility must comply with the requirement of section 1395cc (f) of this title (relating to maintaining written policies and procedures respecting advance directives).

**(2) Transfer and discharge rights****(A) In general**

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

- (i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- (ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (iii) the safety of individuals in the facility is endangered;
- (iv) the health of individuals in the facility would otherwise be endangered;
- (v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or
- (vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

**(B) Pre-transfer and pre-discharge notice**

**(i) In general**

Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

- (I)** notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,
- (II)** record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and
- (III)** include in the notice the items described in clause (iii).

**(ii) Timing of notice**

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

- (I)** in a case described in clause (iii) or (iv) of subparagraph (A);
- (II)** in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;
- (III)** in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or
- (IV)** in a case where a resident has not resided in the facility for 30 days.

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

**(iii) Items included in notice**

Each notice under clause (i) must include—

- (I)** for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section; and
- (II)** the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]).

**(C) Orientation**

A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

**(3) Access and visitation rights**

A skilled nursing facility must—

- (A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;
- (B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;
- (C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;
- (D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and
- (E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

**(4) Equal access to quality care**

A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this subchapter for all individuals regardless of source of payment.

**(5) Admissions policy**

**(A) Admissions**

With respect to admissions practices, a skilled nursing facility must—

- (i)
  - (I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or under a State plan under subchapter XIX of this chapter,
  - (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or such a State plan, and
  - (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and
- (ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

**(B) Construction**

- (i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this subchapter with respect to admissions practices of skilled nursing facilities.

- (ii) Contracts with legal representatives

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

**(6) Protection of resident funds****(A) In general**

The skilled nursing facility—

- (i) may not require residents to deposit their personal funds with the facility, and
- (ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

**(B) Management of personal funds**

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

**(i) Deposit**

The facility must deposit any amount of personal funds in excess of \$100 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits<sup>3</sup> all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

**(ii) Accounting and records**

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

**(iii) Conveyance upon death**

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

**(C) Assurance of financial security**

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

**(D) Limitation on charges to personal funds**

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XIX of this chapter.

**(d) Requirements relating to administration and other matters****(1) Administration****(A) In general**

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

**(B) Required notices**

If a change occurs in—

- (i) the persons with an ownership or control interest (as defined in section 1320a-3 (a)(3) of this title) in the facility,
- (ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a-5 (b) of this title) of the facility,

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

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

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

**(C) Skilled nursing facility administrator**

The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

**(2) Licensing and Life Safety Code**

**(A) Licensing**

A skilled nursing facility must be licensed under applicable State and local law.

**(B) Life Safety Code**

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

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

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

**(3) Sanitary and infection control and physical environment**

A skilled nursing facility must—

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

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

**(4) Miscellaneous**

**(A) Compliance with Federal, State, and local laws and professional standards**

A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a-3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

**(B) Other**

A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

**(e) State requirements relating to skilled nursing facility requirements**

The requirements, referred to in section 1395aa (d) of this title, with respect to a State are as follows:

**(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs**

The State must—

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

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

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

**(2) Nurse aide registry**

**(A) In general**

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

**(B) Information in registry**

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

**(C) Prohibition against charges**

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

**(3) State appeals process for transfers and discharges**

The State, for transfers and discharges from skilled nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism for hearing appeals on transfers and discharges of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3) of this section; but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

**(4) Skilled nursing facility administrator standards**

By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of skilled nursing facilities.

**(5) Specification of resident assessment instrument**

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

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

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

**(f) Responsibilities of Secretary relating to skilled nursing facility requirements**

**(1) General responsibility**

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

**(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs**

**(A) In general**

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to

(I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum,

(II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training),

(III) qualifications of instructors, and

(IV) procedures for determination of competency;

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

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

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

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

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

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata<sup>4</sup> basis during the period in which the nurse aide is so employed.

**(B) Approval of certain programs**

Such requirements—

- (i) may permit approval of programs offered by or in facilities (subject to clause (iii)), as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;
- (ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and
- (iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—
  - (I) offered by or in a skilled nursing facility which, within the previous 2 years—
    - (a) has operated under a waiver under subsection (b)(4)(C)(ii)(II) of this section;
    - (b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) of this section or section 1396r (g)(2)(B)(i) of this title, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or
    - (c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) of this section or section 1396r (h)(2)(A)(ii) of this title of not less than \$5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(2)(B) of this section, subsection (h)(4) of this section, section 1396r (h)(1)(B)(i) of this title, or in clause (i), (iii), or (iv) of section 1396r (h)(2)(A) of this title, or
      - (II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

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

**(C) Waiver authorized**

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

- (i) determines that there is no other such program offered within a reasonable distance of the facility,
- (ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and
- (iii) provides notice of such determination and assurances to the State long-term care ombudsman.

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

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

**(3) Federal guidelines for State appeals process for transfers and discharges**

For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from skilled nursing facilities.

**(4) Secretarial standards for qualification of administrators**

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

**(5) Criteria for administration**

The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

- (A) its governing body and management,
- (B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,
- (C) disaster preparedness,
- (D) direction of medical care by a physician,
- (E) laboratory and radiological services,
- (F) clinical records, and
- (G) resident and advocate participation.

**(6) Specification of resident assessment data set and instruments**

The Secretary shall—

- (A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and
- (B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

**(7) List of items and services furnished in skilled nursing facilities not chargeable to the personal funds of a resident**

**(A) Regulations required**

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this subchapter for extended care services.

**(B) Rule if failure to publish regulations**

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

**(g) Survey and certification process**

**(1) State and Federal responsibility**

**(A) In general**

Pursuant to an agreement under section 1395aa of this title, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance

with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

**(B) Educational program**

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

**(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property**

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

**(D) Removal of name from nurse aide registry**

**(i) In general**

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

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

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

**(ii) Timing of determination**

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

**(E) Construction**

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

**(2) Surveys**

**(A) Standard survey**

**(i) In general**

Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed \$2,000. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a (a) of this title. The Secretary shall

review each State's procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

**(ii) Contents**

Each standard survey shall include, for a case-mix stratified sample of residents—

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

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

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

**(iii) Frequency**

**(I) In general**

Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

**(II) Special surveys**

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

**(B) Extended surveys**

**(i) In general**

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

**(ii) Timing**

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

**(iii) Contents**

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

**(iv) Construction**

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

**(C) Survey protocol**

Standard and extended surveys shall be conducted—

- (i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and
- (ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

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

**(D) Consistency of surveys**

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

**(E) Survey teams**

- (i) In general

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

- (ii) Prohibition of conflicts of interest

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

- (iii) Training

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

**(3) Validation surveys****(A) In general**

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

**(B) Scope**

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

**(C) Remedies for substandard performance**

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise

is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

**(D) Special surveys of compliance**

Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

**(4) Investigation of complaints and monitoring compliance**

Each State shall maintain procedures and adequate staff to—

- (A)** investigate complaints of violations of requirements by skilled nursing facilities, and
- (B)** monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—
  - (i)** the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;
  - (ii)** the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or
  - (iii)** the State has reason to question the compliance of the facility with such requirements.

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

**(5) Disclosure of results of inspections and activities**

**(A) Public information**

Each State, and the Secretary, shall make available to the public—

- (i)** information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,
- (ii)** copies of cost reports of such facilities filed under this subchapter or subchapter XIX of this chapter,
- (iii)** copies of statements of ownership under section 1320a-3 of this title, and
- (iv)** information disclosed under section 1320a-5 of this title.

**(B) Notice to ombudsman**

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a skilled nursing facility under paragraph (1), (2), or (4) of subsection (h) of this section, with respect to a skilled nursing facility in the State.

**(C) Notice to physicians and skilled nursing facility administrator licensing board**

If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify—

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

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

**(D) Access to fraud control units**

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b (q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

**(h) Enforcement process**

**(1) In general**

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

(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

**(2) Secretarial authority**

**(A) In general**

With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

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

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

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

**(B) Specified remedies**

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

**(i) Denial of payment**

The Secretary may deny any further payments under this subchapter with respect to all individuals entitled to benefits under this subchapter in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

**(ii) Authority with respect to civil money penalties**

The Secretary may impose a civil money penalty in an amount not to exceed \$10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a (a) of this title.

**(iii) Appointment of temporary management**

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

- (I)** there is an orderly closure of the facility, or
- (II)** improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

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

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

**(C) Continuation of payments pending remediation**

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

- (i)** the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,
- (ii)** the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and
- (iii)** the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

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

**(D) Assuring prompt compliance**

If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

**(E) Repeated noncompliance**

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

- (i)** impose the remedy described in subparagraph (B)(i), and

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

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

**(3) Effective period of denial of payment**

A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

**(4) Immediate termination of participation for facility where Secretary finds noncompliance and immediate jeopardy**

If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this subchapter. If the facility's participation under this subchapter is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this subchapter consistent with the requirements of subsection (c)(2) of this section.

**(5) Construction**

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i),<sup>5</sup> and (iii) of paragraph (2)(B) may be imposed during the pendency of any hearing.

**(6) Sharing of information**

Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XIX of this chapter, including investigations by State medicaid fraud control units.

**(i) Construction**

Where requirements or obligations under this section are identical to those provided under section 1396r of this title, the fulfillment of those requirements or obligations under section 1396r of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

**Footnotes**

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

<sup>2</sup> So in original. Probably should be "as nurse aides".

<sup>3</sup> So in original. Probably should be "credit".

<sup>4</sup> So in original. Probably should be "pro rata".

<sup>5</sup> So in original. The comma probably should not appear.

(Aug. 14, 1935, ch. 531, title XVIII, § 1819, as added and amended Pub. L. 100–203, title IV, §§ 4201(a)(3), 4202 (a)(2), 4203 (a)(2), 4206, Dec. 22, 1987, 101 Stat. 1330–160, 1330–175, 1330–179, 1330–182; Pub. L. 100–360, title IV, § 411(1)(1)(A), (2)(A)–(D), (F)–(L)(i), (4), (5), (7), (11), July 1, 1988, 102 Stat. 800–805, as amended Pub. L. 100–485, title VI, § 608(d)(27)(A), (C), (D), (I), (L), Oct. 13, 1988, 102 Stat. 2422, 2423; Pub. L. 101–239, title VI, § 6901(b)(1), (3), (d)(4), Dec. 19, 1989, 103 Stat. 2298, 2301; Pub. L. 101–508, title IV, §§ 4008(h)(1)(B)–(F)(i), (G), (2)(B)–(N), (m)(3)(F)[(E)], 4206(d)(1), Nov. 5, 1990, 104 Stat. 1388–46 to 1388–50, 1388–54, 1388–116; Pub. L. 102–375, title VII, § 708(a)(1)(A), Sept. 30, 1992, 106 Stat. 1291; Pub. L. 103–432, title I, §§ 106(c)(1)(A), (2)(A), (3)(A),

(4)(A), (B), (d)(1)–(5), 110(b), Oct. 31, 1994, 108 Stat. 4406–4408; Pub. L. 105–15, § 1, May 15, 1997, 111 Stat. 34; Pub. L. 105–33, title IV, §§ 4432(b)(5)(A), 4755 (a), Aug. 5, 1997, 111 Stat. 421, 526; Pub. L. 106–554, § 1(a)(6) [title IX, § 941(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 108–173, title VII, § 736(a)(8), title IX, § 932(c)(2), Dec. 8, 2003, 117 Stat. 2355, 2401.)

## References in Text

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

Subparagraphs (B), (C), and (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], referred to in subsec. (e)(2)(A), are set out below.

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

## Amendments

2003—Subsec. (b)(4)(C)(i). Pub. L. 108–173, § 736(a)(8)(A), substituted “at least” for “at least at least”.

Subsec. (d)(1)(A). Pub. L. 108–173, § 736(a)(8)(B), substituted “physical, mental” for “physical mental”.

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

Pub. L. 108–173, § 736(a)(8)(C), realigned margins of concluding provisions.

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

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

1997—Subsec. (b)(3)(C)(i). Pub. L. 105–33, § 4432(b)(5)(A), substituted “Subject to the timeframes prescribed by the Secretary under section 1395yy (e)(6) of this title, such” for “Such” in introductory provisions.

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

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

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

1994—Subsec. (b)(3)(C)(i)(I). Pub. L. 103–432, § 110(b), substituted “but no later than 14 days” for “but no later than not later than 14 days”.

Subsec. (b)(5)(D). Pub. L. 103–432, § 106(d)(1), struck out comma before “or a new competency evaluation program”.

Subsec. (b)(5)(G). Pub. L. 103–432, § 106(d)(2), substituted “licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician” for “or licensed or certified social worker”.

Subsec. (c)(1)(D). Pub. L. 103–432, § 106(c)(2)(A), inserted at end “In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.”

Subsec. (c)(6)(B)(i). Pub. L. 103–432, § 106(c)(3)(A), substituted “\$100” for “\$50”.

Subsec. (e)(2)(B). Pub. L. 103–432, § 106(c)(4)(A), inserted “, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection” after “individual disputing the findings” in first sentence.

Subsec. (f)(2)(B)(i). Pub. L. 103–432, § 106(d)(3), substituted “facilities (subject to clause (iii)),” for “facilities,”.

Subsec. (f)(2)(B)(iii)(I)(b). Pub. L. 103–432, § 106(c)(1)(A), inserted before semicolon at end “, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section”.

Subsec. (f)(2)(B)(iii)(I)(c). Pub. L. 103–432, § 106(d)(4), substituted “clause” for “clauses” in two places.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (g)(1)(C). Pub. L. 103-432, § 106(c)(4)(B), substituted second sentence for former second sentence which read as follows: “The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations.”

Subsec. (g)(5)(B). Pub. L. 103-432, § 106(d)(5), substituted “paragraph” for “paragraphs” before “(1), (2), or (4) of subsection (h)”.

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

1990—Subsec. (b)(1)(B). Pub. L. 101-508, § 4008(h)(2)(B), inserted at end “A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.”

Subsec. (b)(3)(C)(i)(I). Pub. L. 101-508, § 4008(h)(2)(C), substituted “not later than 14 days” for “4 days”.

Subsec. (b)(4)(A)(vii). Pub. L. 101-508, § 4008(h)(2)(D), added cl. (vii).

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101-508, § 4008(h)(2)(E), added subcls. (IV) and (V).

Subsec. (b)(5)(A). Pub. L. 101-508, § 4008(h)(1)(B), designated existing provisions as cl. (i), in introductory provisions substituted “Except as provided in clause (ii), a skilled nursing facility” for “A skilled nursing facility” and “on a full-time basis” for “(on a full-time, temporary, per diem, or other basis)”, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101-508, § 4008(h)(1)(C), substituted “any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information” for “the State registry established under subsection (e)(2)(A) of this section as to information in the registry”.

Subsec. (b)(5)(D). Pub. L. 101-508, § 4008(h)(1)(D), inserted before period at end “, or a new competency evaluation program” after “and competency evaluation program”.

Subsec. (b)(5)(F)(i). Pub. L. 101-508, § 4008(h)(2)(F), substituted “(G) or a registered dietician,” for “(G),”.

Subsec. (c)(1)(A). Pub. L. 101-508, § 4008(h)(2)(G)(B)[(ii)], inserted at end “A resident’s exercise of a right to refuse transfer under clause (x) shall not affect the resident’s eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.”

Subsec. (c)(1)(A)(iv). Pub. L. 101-508, § 4008(h)(2)(H), inserted before period at end “and to access to current clinical records of the resident upon request by the resident or the resident’s legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request”.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101-508, § 4008(h)(2)(G)(i), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101-508, § 4008(h)(2)(I), inserted “including the notice (if any) of the State developed under section 1396r (e)(6) of this title” after “in such rights”.

Subsec. (c)(1)(E). Pub. L. 101-508, § 4206(d)(1), added subpar. (E).

Subsec. (e)(1)(A). Pub. L. 101-508, § 4008(h)(2)(J), substituted “subsection (f)(2) of this section” for “clause (i) or (ii) of subsection (f)(2)(A) of this section”.

Subsec. (e)(2)(A). Pub. L. 101-508, § 4008(h)(2)(K)(i), inserted before period at end “, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989”.

Subsec. (e)(2)(C). Pub. L. 101-508, § 4008(h)(2)(K)(ii), added subpar. (C).

Subsec. (f)(2)(A)(ii). Pub. L. 101-508, § 4008(m)(3)(F)[(E)], struck out “and” after semicolon at end.

Subsec. (f)(2)(A)(iv). Pub. L. 101-508, § 4008(h)(1)(E), struck out “and” at end of subcl. (I), inserted “who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program” after “nurse aide” and substituted “, and” for period at end of subcl. (II), and added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101-508, § 4008(h)(1)(G), inserted “(through subcontract or otherwise)” after “may not delegate” in second sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101-508, § 4008(h)(1)(F)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or”.

Subsec. (g)(1)(C). Pub. L. 101-508, § 4008(h)(2)(L), inserted at end “A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.”

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

Subsec. (g)(5)(A)(i). Pub. L. 101–508, § 4008(h)(2)(M), substituted “deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans” for “deficiencies and plans”.

Subsec. (g)(5)(B). Pub. L. 101–508, § 4008(h)(2)(N), substituted “or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h) of this section, with respect” for “with respect”.

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

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

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

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

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

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

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

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

Subsec. (h)(2)(C). Pub. L. 101–239, § 6901(d)(4)(D), inserted “after the effective date of the findings” after “6 months” in introductory provisions.

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

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

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

Subsec. (b)(3)(C)(i)(I). Pub. L. 100–360, § 411(l)(1)(A)(i), substituted “than January 1, 1991” for “than October 1, 1990”.

Subsec. (b)(4)(C)(i). Pub. L. 100–360, § 411(l)(1)(A)(ii), substituted “24-hour licensed nursing” for “24-hour nursing”, “must use” for “must employ”, and “at least 8 consecutive hours a day,” for “during the day tour of duty (of at least 8 hours a day)”.

Subsec. (b)(5)(A). Pub. L. 100–360, § 411(l)(2)(D)(i), as amended by Pub. L. 100–485, § 608(d)(27)(D), struck out “, who is not a licensed health professional (as defined in subparagraph (E)),” after “any individual”.

Pub. L. 100–360, § 411(l)(1)(A)(iii), substituted “January 1, 1990” for “October 1, 1989, (or January 1, 1990, in the case of an individual used by the facility as a nurse aide before July 1, 1989)”.

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

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

Subsec. (c)(1)(D). Pub. L. 100–360, § 411(l)(1)(A)(iv), as added by Pub. L. 100–485, § 608(d)(27)(A), added subpar. (D).

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

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

Subsec. (e)(1)(A). Pub. L. 100–360, § 411(l)(1)(A)(v), formerly § 411(l)(1)(A)(iv), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “January” for “March”.

Subsec. (e)(1)(B). Pub. L. 100–360, § 411(l)(1)(A)(vi), formerly § 411(l)(1)(A)(v), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “January” for “March”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (e)(2)(A). Pub. L. 100–360, § 411(l)(1)(A)(vii), formerly § 411(l)(1)(A)(vi), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “January” for “March”.

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

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

Pub. L. 100–360, § 411(l)(1)(A)(viii), formerly § 411(l)(1)(A)(vii), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “1989” for “1990”.

Subsec. (e)(5). Pub. L. 100–360, § 411(l)(1)(A)(ix), formerly § 411(l)(1)(A)(viii), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “1990” for “1989” in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, § 411(l)(2)(J), substituted “recognition of mental health and social service needs” for “cognitive, behavioral and social care”.

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

Pub. L. 100–360, § 411(l)(1)(A)(x), formerly § 411(l)(1)(A)(ix), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “1988” for “1989”.

Subsec. (f)(6)(A). Pub. L. 100–360, § 411(l)(1)(A)(xi), formerly § 411(l)(1)(A)(x), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “January” for “July”.

Subsec. (f)(6)(B). Pub. L. 100–360, § 411(l)(1)(A)(xii), formerly § 411(l)(1)(A)(xi), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted “April” for “October”.

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

Subsec. (f)(7)(B). Pub. L. 100–360, § 411(l)(2)(L)(i), substituted “shall include” for “shall not include”.

Subsec. (g)(1)(C). Pub. L. 100–360, § 411(l)(5)(A)–(C), substituted “and timely review” for “, review,” inserted “or by another individual used by the facility in providing services to such a resident” after “a nursing facility”, and substituted “The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority.” for “If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.”

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

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

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

Subsec. (g)(2)(C)(i). Pub. L. 100–360, § 411(l)(4), substituted “January” for “October”.

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

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

Subsec. (h)(2)(B)(ii). Pub. L. 100–360, § 411(l)(7)(A), substituted “. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a (a) of this title.” for “and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title.”

Subsec. (h)(5). Pub. L. 100–360, § 411(l)(11), as added by Pub. L. 100–485, § 608(d)(27)(L), substituted “clauses (i), and (iii) of paragraph (2)(B)” for “clauses (i), (iii), and (iv) of paragraph (2)(A)”.

Subsec. (h)(6). Pub. L. 100–360, § 411(l)(7)(B), inserted “by such facilities” after “be made available”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

1987—Subsecs. (g) to (i). Pub. L. 100–203, §§ 4202(a)(2), 4203 (a)(2), 4206, added subsecs. (g), (h), and (i), respectively.

### **Effective Date of 2003 Amendment**

Pub. L. 108–173, title IX, § 932(d), Dec. 8, 2003, 117 Stat. 2402, provided that: “The amendments made by this section [amending this section and sections 1395cc, 1395ff, and 1396r of this title] shall apply to appeals filed on or after October 1, 2004.”

### **Effective Date of 2000 Amendment**

Pub. L. 106–554, § 1(a)(6) [title IX, § 941(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586, provided that: “The amendments made by this section [amending this section and section 1396r of this title] shall take effect on January 1, 2003.”

### **Effective Date of 1997 Amendment**

Section 4432(d) of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section and sections 1395k, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395tt, and 1395yy of this title] are effective for cost reporting periods beginning on or after July 1, 1998; except that the amendments made by subsection (b) [amending this section and sections 1395k, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395tt, and 1395yy of this title] shall apply to items and services furnished on or after July 1, 1998.”

### **Effective Date of 1994 Amendment**

Section 106(c)(1)(B) of Pub. L. 103–432 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].”

Section 106(c)(2)(B) of Pub. L. 103–432 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].”

Section 106(c)(3)(B) of Pub. L. 103–432 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect January 1, 1995.”

Section 106(c)(4)(C) of Pub. L. 103–432 provided that: “The amendments made by this paragraph [amending this section] shall take effect January 1, 1995.”

Section 106(d)(7) of Pub. L. 103–432 provided that: “The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].”

### **Effective Date of 1992 Amendment**

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

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

### **Effective Date of 1990 Amendment**

Section 4008(h)(1)(F)(ii) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 106(d)(6), Oct. 31, 1994, 108 Stat. 4407, provided that:

“(I) The amendments made by clause (i) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

“(aa) had its participation terminated under title XVIII of the Social Security Act [this subchapter] or under the State plan under title XIX of such Act [subchapter XIX of this chapter];

“(bb) was subject to a denial of payment under either such title;

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

“(dd) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility’s residents; or

“(ee) pursuant to State action, was closed or had its residents transferred.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(II) Notwithstanding subclause (I) and subject to section 1819(f)(2)(B)(iii)(I) of the Social Security Act [subsec. (f)(2)(B)(iii)(I) of this section] (as amended by clause (i)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility described in subclause (I) if, during the previous 2 years, item (aa), (bb), (cc), (dd), or (ee) of subclause (I) did not apply to the facility.”

Section 4008(h)(1)(H) of Pub. L. 101–508 provided that: “Except as provided in subparagraph (F) [amending this section and enacting provisions set out as a note above], the amendments made by this subsection [probably means this paragraph, amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].”

Section 4008(h)(2)(P) of Pub. L. 101–508 provided that: “The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].”

Section 4206(e)(1) of Pub. L. 101–508 provided that: “The amendments made by subsections (a) and (d) [amending this section and sections 1395cc and 1395bbb of this title] shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].”

### Effective Date of 1989 Amendment

Section 6901(b)(6) of Pub. L. 101–239 provided that:

“(A) In general.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

“(B) Exception.—The amendments made by paragraph (3) [amending this section and section 1396r of this title] shall apply to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 19, 1989], but shall not affect competency evaluations conducted under programs offered before the end of such period.”

Section 6901(d)(6) of Pub. L. 101–239 provided that:

“(A) In general.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396i and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

“(B) Exception.—The amendment made by paragraph (1) [amending section 1396r of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].”

### Effective Date of 1988 Amendments

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

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

### Effective Date

Section 4204 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(l)(9), July 1, 1988, 102 Stat. 805; Pub. L. 100–485, title VI, § 608(d)(27)(K), Oct. 13, 1988, 102 Stat. 2423, provided that:

“(a) New Requirements and Survey and Certification Process.—Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by sections 4201 and 4202 [enacting and amending this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title] (relating to skilled nursing facility requirements and survey and certification requirements) shall apply to services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

“(b) Enforcement.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by section 4203 of this Act [amending this section and section 1395aa of this title] apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

“(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act [section 1395x (j) of this title].

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(c) Waiver of Paperwork Reduction.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part [part 1 of subtitle C (§§ 4201–4206), enacting this section, amending this section and sections 1395x, 1395aa, 1395tt, and 1395yy of this title, and enacting provisions set out as notes under this section] and implementing the amendments made by this part.”

### **Review and Report on Current Standards of Practice for Pharmacy Services Provided to Patients in Nursing Facilities**

Pub. L. 108–173, title I, § 107(b), Dec. 8, 2003, 117 Stat. 2169, provided that:

“(1) Review.—

“(A) In general.—Not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a thorough review of the current standards of practice for pharmacy services provided to patients in nursing facilities.

“(B) Specific matters reviewed.—In conducting the review under subparagraph (A), the Secretary shall—

“(i) assess the current standards of practice, clinical services, and other service requirements generally used for pharmacy services in long-term care settings; and

“(ii) evaluate the impact of those standards with respect to patient safety, reduction of medication errors and quality of care.

“(2) Report.—

“(A) In general.—Not later than the date that is 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A).

“(B) Contents.—The report submitted under subparagraph (A) shall contain—

“(i) a description of the plans of the Secretary to implement the provisions of this Act [see Tables for classification] in a manner consistent with applicable State and Federal laws designed to protect the safety and quality of care of nursing facility patients; and

“(ii) recommendations regarding necessary actions and appropriate reimbursement to ensure the provision of prescription drugs to medicare beneficiaries residing in nursing facilities in a manner consistent with existing patient safety and quality of care standards under applicable State and Federal laws.”

### **Study and Report Regarding State Licensure and Certification Standards and Respiratory Therapy Competency Examinations**

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 107], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that:

“(a) Study.—The Secretary of Health and Human Services shall conduct a study that—

“(1) identifies variations in State licensure and certification standards for health care providers (including nursing and allied health professionals) and other individuals providing respiratory therapy in skilled nursing facilities;

“(2) examines State requirements relating to respiratory therapy competency examinations for such providers and individuals; and

“(3) determines whether regular respiratory therapy competency examinations or certifications should be required under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for such providers and individuals.

“(b) Report.—Not later than 18 months after the date of enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit to Congress a report on the results of the study conducted under this section, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.”

### **Retroactive Review**

Section 4755(c) of Pub. L. 105–33 provided that: “The procedures developed by a State under the amendments made by subsection[s] (a) and (b) [amending this section and section 1396r of this title] shall permit an individual to petition for a review of any finding made by a State under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C) or 1396r (g)(1)(C)) after January 1, 1995.”

### **Study and Report on Deeming for Nursing Facilities and Renal Dialysis Facilities**

Pub. L. 104–134, title I, § 101(d) [title V, § 516(d)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–248; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided that:

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“(1) Study.—The Secretary of Health and Human Services shall provide for—

“(A) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying skilled nursing facilities for compliance with the conditions and requirements of sections 1819 and 1861(j) of the Social Security Act [this section and section 1395x (j) of this title] and nursing facilities for compliance with the conditions of section 1919 of such Act [section 1396r of this title], and

“(B) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying renal dialysis facilities for compliance with the conditions and requirements of section 1881(b) of the Social Security Act [section 1395rr (b) of this title].

“(2) Report.—Not later than July 1, 1997, the Secretary shall transmit to Congress a report on each of the studies provided for under paragraph (1). The report on the study under paragraph (1)(A) shall include (and the report on the study under paragraph (1)(B) may include) a specific framework, where appropriate, for implementing a process under which facilities covered under the respective study may be deemed to meet applicable medicare conditions and requirements if they are accredited by a national accreditation body.”

### **Maintaining Regulatory Standards for Certain Services**

Section 4008(h)(2)(O) of Pub. L. 101–508 provided that: “Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), and (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.”

### **Nurse Aide Training and Competency Evaluation Programs; Publication of Proposed Regulations**

Section 6901(b)(2) of Pub. L. 101–239 provided that: “The Secretary of Health and Human Services shall issue proposed regulations to establish the requirements described in sections 1819(f)(2) and 1919(f)(2) of the Social Security Act [subsec. (f)(2) of this section and section 1396r (f)(2) of this title] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].”

### **Nurse Aide Training and Competency Evaluation; Satisfaction of Requirements; Waiver**

Section 6901 (b)(4)(B)–(D) of Pub. L. 101–239 provided that:

“(B) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act [subsec. (b)(5)(A) of this section and section 1396r (b)(5)(A) of this title] (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section and section 1396r (e)(1)(A) of this title]), if such aide would have satisfied such requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for ‘75 hours’ in sections 1819(f)(2) and 1919(f)(2) of such Act [subsec. (f)(2) of this section and section 1396r (f)(2) of this title], respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.

“(C) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

“(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act [Dec. 19, 1989].”

### **Evaluation and Report on Implementation of Resident Assessment Process**

Section 4201(c) of Pub. L. 100–203 provided that: “The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section [enacting this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title].”

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### **Annual Report on Statutory Compliance and Enforcement Actions**

Section 4205 of Pub. L. 100–203 provided that: “The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).”