

111TH CONGRESS
1ST SESSION

H. R. 1670

To amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2009

Mr. DAVIS of Illinois (for himself, Mr. PAYNE, Mrs. CHRISTENSEN, Mr. BRADY of Pennsylvania, Ms. LEE of California, Mr. MEEKS of New York, Mr. CARNEY, Mr. DOYLE, Mr. LARSON of Connecticut, Mr. MOORE of Kansas, Mr. HINCHEY, Mr. KUCINICH, Mr. LEWIS of Georgia, Ms. BALDWIN, Mr. COHEN, Mr. FATTAH, Ms. DELAURO, Mr. ISRAEL, Ms. KAPTUR, Mr. KIND, Mr. LANGEVIN, Mr. OLVER, Ms. LORETTA SANCHEZ of California, Ms. SCHWARTZ, Mr. SESTAK, and Ms. VELÁZQUEZ) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Community Choice Act of 2009”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

Sec. 101. Coverage of community-based attendant services and supports under the Medicaid program.
Sec. 102. Enhanced FMAP for ongoing activities of early coverage States that enhance and promote the use of community-based attendant services and supports.
Sec. 103. Increased Federal financial participation for certain expenditures.

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

Sec. 201. Grants to promote systems change and capacity building.
Sec. 202. Demonstration project to enhance coordination of care under the Medicare and Medicaid programs for dual eligible individuals.

3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress makes the following find-
5 ings:

6 (1) Long-term services and supports provided
7 under the Medicaid program established under title
8 XIX of the Social Security Act (42 U.S.C. 1396 et
9 seq.) must meet the abilities and life choices of indi-
10 viduals with disabilities and older Americans, includ-
11 ing the choice to live in one's own home or with
12 one's own family and to become a productive mem-
13 ber of the community.

14 (2) Similarly, under the United States Supreme
15 Court's decision in *Olmstead v. L.C.*, 527 U.S. 581
16 (1999), individuals with disabilities have the right to
17 choose to receive their long-term services and sup-

1 ports in the community, rather than in an institu-
2 tional setting.

3 (3) Nevertheless, research on the provision of
4 long-term services and supports under the Medicaid
5 program (conducted by and on behalf of the Depart-
6 ment of Health and Human Services) continues to
7 show a significant funding and programmatic bias
8 toward institutional care. In 2007, only 42 percent
9 of long-term care funds expended under the Med-
10 icaid program, and only about 13.6 percent of all
11 funds expended under that program, pay for services
12 and supports in home and community-based set-
13 tings.

14 (4) While much effort has been dedicated to
15 “rebalancing” the current system, overall about 60
16 percent of Medicaid long-term care dollars are still
17 spent on institutional services, with about 40 percent
18 going to home and community-based services. In
19 2007, only 11 States spent 50 percent or more of
20 their Medicaid long-term care funds on home and
21 community-based care.

22 (5) The statistics are even more dispropor-
23 tionate for adults with physical disabilities. In 2007,
24 69 percent of Medicaid long-term care spending for
25 older people and adults with physical disabilities

1 paid for institutional services. Only 6 States spent
2 50 percent or more of their Medicaid long-term care
3 dollars on home and community-based services for
4 older people and adults with physical disabilities
5 while 1/2 of the States spent less than 25 percent.
6 This disparity continues even though, on average, it
7 is estimated that Medicaid dollars can support near-
8 ly 3 older people and adults with physical disabilities
9 in home and community-based services for every per-
10 son in a nursing home.

11 (6) For Medicaid beneficiaries who need long-
12 term care, services provided in an institutional set-
13 ting represent the only guaranteed benefit. Only 30
14 States have adopted the benefit option of providing
15 personal care, or attendant, services under their
16 Medicaid programs.

17 (7) Although every State has chosen to provide
18 certain services under home and community-based
19 waivers, these services are unevenly available within
20 and across States, and reach a small percentage of
21 eligible individuals. Individuals with the most signifi-
22 cant disabilities are usually afforded the least
23 amount of choice, despite advances in medical and
24 assistive technologies and related areas.

1 (8) Despite the more limited funding for home
2 and community-based services, the majority of indi-
3 viduals who use Medicaid long-term services and
4 supports prefer to live in the community, rather
5 than in institutional settings.

6 (9) The goals of the Nation properly include
7 providing families of children with disabilities, work-
8 ing-age adults with disabilities, and older Americans
9 with—

10 (A) a meaningful choice of receiving long-
11 term services and supports in the most inte-
12 grated setting appropriate to the individual’s
13 needs;

14 (B) the greatest possible control over the
15 services received and, therefore, their own lives
16 and futures; and

17 (C) quality services that maximize inde-
18 pendence in the home and community.

19 (b) PURPOSES.—The purposes of this Act are the fol-
20 lowing:

21 (1) To reform the Medicaid program estab-
22 lished under title XIX of the Social Security Act (42
23 U.S.C. 1396 et seq.) to provide services in the most
24 integrated setting appropriate to the individual’s
25 needs, and to provide equal access to community-

1 based attendant services and supports in order to
2 assist individuals in achieving equal opportunity, full
3 participation, independent living, and economic self-
4 sufficiency.

5 (2) To provide financial assistance to States as
6 they reform their long-term care systems to provide
7 comprehensive statewide long-term services and sup-
8 ports, including community-based attendant services
9 and supports that provide consumer choice and di-
10 rection, in the most integrated setting appropriate.

11 (3) To assist States in meeting the growing de-
12 mand for community-based attendant services and
13 supports, as the Nation's population ages and indi-
14 viduals with disabilities live longer.

15 (4) To assist States in complying with the U.S.
16 Supreme Court decision in *Olmstead v. L.C.*, 527
17 U.S. 581 (1999), and implementing the integration
18 mandate of the Americans with Disabilities Act.

1 **TITLE I—ESTABLISHMENT OF**
2 **MEDICAID PLAN BENEFIT**

3 **SEC. 101. COVERAGE OF COMMUNITY-BASED ATTENDANT**
4 **SERVICES AND SUPPORTS UNDER THE MED-**
5 **ICAID PROGRAM.**

6 (a) MANDATORY COVERAGE.—Section
7 1902(a)(10)(D) of the Social Security Act (42 U.S.C.
8 1396a(a)(10)(D)) is amended—

- 9 (1) by inserting “(i)” after “(D)”;
- 10 (2) by adding “and” after the semicolon; and
- 11 (3) by adding at the end the following new
12 clause:

13 “(ii) subject to section 1943, for the
14 inclusion of community-based attendant
15 services and supports for any individual
16 who—

17 “(I) is eligible for medical assist-
18 ance under the State plan;

19 “(II) with respect to whom there
20 has been a determination that the in-
21 dividual requires the level of care pro-
22 vided in a nursing facility, institution
23 for mental diseases, or an inter-
24 mediate care facility for the mentally
25 retarded (whether or not coverage of

1 such institution or intermediate care
2 facility is provided under the State
3 plan); and

4 “(III) chooses to receive such
5 services and supports;”.

6 (b) COMMUNITY-BASED ATTENDANT SERVICES AND
7 SUPPORTS.—

8 (1) IN GENERAL.—Title XIX of the Social Se-
9 curity Act (42 U.S.C. 1396 et seq.) is amended by
10 adding at the end the following new section:

11 “COMMUNITY-BASED ATTENDANT SERVICES AND
12 SUPPORTS

13 “SEC. 1943. (a) REQUIRED COVERAGE.—

14 “(1) IN GENERAL.—Not later than October 1,
15 2014, a State shall provide through a plan amend-
16 ment for the inclusion of community-based attendant
17 services and supports (as defined in subsection
18 (g)(1)) for individuals described in section
19 1902(a)(10)(D)(ii) in accordance with this section.

20 “(2) ENHANCED FMAP AND ADDITIONAL FED-
21 ERAL FINANCIAL SUPPORT FOR EARLIER COV-
22 ERAGE.—Notwithstanding section 1905(b), during
23 the period that begins on October 1, 2009, and ends
24 on September 30, 2014, in the case of a State with
25 an approved plan amendment under this section dur-
26 ing that period that also satisfies the requirements

1 of subsection (c) the Federal medical assistance per-
2 centage shall be equal to the enhanced FMAP de-
3 scribed in section 2105(b) with respect to medical
4 assistance in the form of community-based attendant
5 services and supports provided to individuals de-
6 scribed in section 1902(a)(10)(D)(ii) in accordance
7 with this section on or after the date of the approval
8 of such plan amendment.

9 “(b) DEVELOPMENT AND IMPLEMENTATION OF BEN-
10 EFIT.—In order for a State plan amendment to be ap-
11 proved under this section, a State shall provide the Sec-
12 retary with the following assurances:

13 “(1) ASSURANCE OF DEVELOPMENT AND IM-
14 PLEMENTATION COLLABORATION.—

15 “(A) IN GENERAL.—That State plan
16 amendment—

17 “(i) has been developed in collabora-
18 tion with, and with the approval of, a De-
19 velopment and Implementation Council es-
20 tablished by the State that satisfies the re-
21 quirements of subparagraph (B); and

22 “(ii) will be implemented in collabora-
23 tion with such Council and on the basis of
24 public input solicited by the State and the
25 Council.

1 “(B) DEVELOPMENT AND IMPLEMENTA-
2 TION COUNCIL REQUIREMENTS.—For purposes
3 of subparagraph (A), the requirements of this
4 subparagraph are that—

5 “(i) the majority of the members of
6 the Development and Implementation
7 Council are individuals with disabilities, el-
8 derly individuals, and their representatives;
9 and

10 “(ii) in carrying out its responsibil-
11 ities, the Council actively collaborates
12 with—

13 “(I) individuals with disabilities;

14 “(II) elderly individuals;

15 “(III) representatives of such in-
16 dividuals; and

17 “(IV) providers of, and advocates
18 for, services and supports for such in-
19 dividuals.

20 “(2) ASSURANCE OF PROVISION ON A STATE-
21 WIDE BASIS AND IN MOST INTEGRATED SETTING.—

22 That consumer controlled community-based attend-
23 ant services and supports will be provided under the
24 State plan to individuals described in section
25 1902(a)(10)(D)(ii) on a statewide basis and in a

1 manner that provides such services and supports in
2 the most integrated setting appropriate to the indi-
3 vidual’s needs.

4 “(3) ASSURANCE OF NONDISCRIMINATION.—
5 That the State will provide community-based attend-
6 ant services and supports to an individual described
7 in section 1902(a)(10)(D)(ii) without regard to the
8 individual’s age, type or nature of disability, severity
9 of disability, or the form of community-based attend-
10 ant services and supports that the individual re-
11 quires in order to lead an independent life.

12 “(4) ASSURANCE OF MAINTENANCE OF EF-
13 FORT.—That the level of State expenditures for
14 medical assistance that is provided under section
15 1905(a), section 1915, section 1115, or otherwise to
16 individuals with disabilities or elderly individuals for
17 a fiscal year shall not be less than the level of such
18 expenditures for the fiscal year preceding the first
19 full fiscal year in which the State plan amendment
20 to provide community-based attendant services and
21 supports in accordance with this section is imple-
22 mented.

23 “(c) REQUIREMENTS FOR ENHANCED FMAP FOR
24 EARLY COVERAGE.—In addition to satisfying the other re-
25 quirements for an approved plan amendment under this

1 section, in order for a State to be eligible under subsection
2 (a)(2) during the period described in that subsection for
3 the enhanced FMAP for early coverage under subsection
4 (a)(2), the State shall satisfy the following requirements:

5 “(1) SPECIFICATIONS.—With respect to a fiscal
6 year, the State shall provide the Secretary with the
7 following specifications regarding the provision of
8 community-based attendant services and supports
9 under the plan for that fiscal year:

10 “(A)(i) The number of individuals who are
11 estimated to receive community-based attendant
12 services and supports under the plan during the
13 fiscal year.

14 “(ii) The number of individuals that re-
15 ceived such services and supports during the
16 preceding fiscal year.

17 “(B) The maximum number of individuals
18 who will receive such services and supports
19 under the plan during that fiscal year.

20 “(C) The procedures the State will imple-
21 ment to ensure that the models for delivery of
22 such services and supports are consumer con-
23 trolled (as defined in subsection (g)(2)(B)).

24 “(D) The procedures the State will imple-
25 ment to inform all potentially eligible individ-

1 uals and relevant other individuals of the avail-
2 ability of such services and supports under this
3 title, and of other items and services that may
4 be provided to the individual under this title or
5 title XVIII and other Federal or State long-
6 term service and support programs.

7 “(E) The procedures the State will imple-
8 ment to ensure that such services and supports
9 are provided in accordance with the require-
10 ments of subsection (b)(1).

11 “(F) The procedures the State will imple-
12 ment to actively involve in a systematic, com-
13 prehensive, and ongoing basis, the Development
14 and Implementation Council established in ac-
15 cordance with subsection (b)(1)(A)(ii), individ-
16 uals with disabilities, elderly individuals, and
17 representatives of such individuals in the de-
18 sign, delivery, administration, implementation,
19 and evaluation of the provision of such services
20 and supports under this title.

21 “(2) PARTICIPATION IN EVALUATIONS.—The
22 State shall provide the Secretary with such sub-
23 stantive input into, and participation in, the design
24 and conduct of data collection, analyses, and other
25 qualitative or quantitative evaluations of the provi-

1 sion of community-based attendant services and sup-
2 ports under this section as the Secretary deems nec-
3 essary in order to determine the effectiveness of the
4 provision of such services and supports in allowing
5 the individuals receiving such services and supports
6 to lead an independent life to the maximum extent
7 possible.

8 “(d) QUALITY ASSURANCE.—

9 “(1) STATE RESPONSIBILITIES.—In order for a
10 State plan amendment to be approved under this
11 section, a State shall establish and maintain a com-
12 prehensive, continuous quality assurance system
13 with respect to community-based attendant services
14 and supports that provides for the following:

15 “(A) The State shall establish require-
16 ments, as appropriate, for agency-based and
17 other delivery models that include—

18 “(i) minimum qualifications and train-
19 ing requirements for agency-based and
20 other models;

21 “(ii) financial operating standards;
22 and

23 “(iii) an appeals procedure for eligi-
24 bility denials and a procedure for resolving

1 disagreements over the terms of an individ-
2 ualized plan.

3 “(B) The State shall modify the quality as-
4 surance system, as appropriate, to maximize
5 consumer independence and consumer control
6 in both agency-provided and other delivery mod-
7 els.

8 “(C) The State shall provide a system that
9 allows for the external monitoring of the quality
10 of services and supports by entities consisting
11 of consumers and their representatives, dis-
12 ability organizations, providers, families of dis-
13 abled or elderly individuals, members of the
14 community, and others.

15 “(D) The State shall provide for ongoing
16 monitoring of the health and well-being of each
17 individual who receives community-based at-
18 tendant services and supports.

19 “(E) The State shall require that quality
20 assurance mechanisms pertaining to the indi-
21 vidual be included in the individual’s written
22 plan.

23 “(F) The State shall establish a process
24 for the mandatory reporting, investigation, and
25 resolution of allegations of neglect, abuse, or ex-

1 ploitation in connection with the provision of
2 such services and supports.

3 “(G) The State shall obtain meaningful
4 consumer input, including consumer surveys,
5 that measure the extent to which an individual
6 receives the services and supports described in
7 the individual’s plan and the individual’s satis-
8 faction with such services and supports.

9 “(H) The State shall make available to the
10 public the findings of the quality assurance sys-
11 tem.

12 “(I) The State shall establish an ongoing
13 public process for the development, implementa-
14 tion, and review of the State’s quality assurance
15 system.

16 “(J) The State shall develop and imple-
17 ment a program of sanctions for providers of
18 community-based services and supports that
19 violate the terms or conditions for the provision
20 of such services and supports.

21 “(2) FEDERAL RESPONSIBILITIES.—

22 “(A) PERIODIC EVALUATIONS.—The Sec-
23 retary shall conduct a periodic sample review of
24 outcomes for individuals who receive commu-

1 nity-based attendant services and supports
2 under this title.

3 “(B) INVESTIGATIONS.—The Secretary
4 may conduct targeted reviews and investiga-
5 tions upon receipt of an allegation of neglect,
6 abuse, or exploitation of an individual receiving
7 community-based attendant services and sup-
8 ports under this section.

9 “(C) DEVELOPMENT OF PROVIDER SANC-
10 TION GUIDELINES.—The Secretary shall de-
11 velop guidelines for States to use in developing
12 the sanctions required under paragraph (1)(J).

13 “(e) REPORTS.—The Secretary shall submit to Con-
14 gress periodic reports on the provision of community-based
15 attendant services and supports under this section, par-
16 ticularly with respect to the impact of the provision of
17 such services and supports on—

18 “(1) individuals eligible for medical assistance
19 under this title;

20 “(2) States; and

21 “(3) the Federal Government.

22 “(f) NO EFFECT ON ABILITY TO PROVIDE COV-
23 ERAGE.—

24 “(1) IN GENERAL.—Nothing in this section
25 shall be construed as affecting the ability of a State

1 to provide coverage under the State plan for commu-
2 nity-based attendant services and supports (or simi-
3 lar coverage) under section 1905(a), section 1915,
4 section 1115, or otherwise.

5 “(2) ELIGIBILITY FOR ENHANCED MATCH.—In
6 the case of a State that provides coverage for such
7 services and supports under a waiver, the State shall
8 not be eligible under subsection (a)(2) for the en-
9 hanced FMAP for the early provision of such cov-
10 erage unless the State submits a plan amendment to
11 the Secretary that meets the requirements of this
12 section and demonstrates that the State is able to
13 fully comply with and implement the requirements of
14 this section.

15 “(g) DEFINITIONS.—In this title:

16 “(1) COMMUNITY-BASED ATTENDANT SERVICES
17 AND SUPPORTS.—

18 “(A) IN GENERAL.—The term ‘community-
19 based attendant services and supports’ means
20 attendant services and supports furnished to an
21 individual, as needed, to assist in accomplishing
22 activities of daily living, instrumental activities
23 of daily living, and health-related tasks through
24 hands-on assistance, supervision, or cueing—

1 “(i) under a plan of services and sup-
2 ports that is based on an assessment of
3 functional need and that is agreed to in
4 writing by the individual or, as appro-
5 priate, the individual’s representative;

6 “(ii) in a home or community setting,
7 which shall include but not be limited to a
8 school, workplace, or recreation or religious
9 facility, but does not include a nursing fa-
10 cility, institution for mental diseases, or an
11 intermediate care facility for the mentally
12 retarded;

13 “(iii) under an agency-provider model
14 or other model (as defined in paragraph
15 (2)(C));

16 “(iv) the furnishing of which—

17 “(I) is selected, managed, and
18 dismissed by the individual, or, as ap-
19 propriate, with assistance from the in-
20 dividual’s representative; and

21 “(II) provided by an individual
22 who is qualified to provide such serv-
23 ices, including family members (as de-
24 fined by the Secretary).

1 “(B) INCLUDED SERVICES AND SUP-
2 PORTS.—Such term includes—

3 “(i) tasks necessary to assist an indi-
4 vidual in accomplishing activities of daily
5 living, instrumental activities of daily liv-
6 ing, and health-related tasks;

7 “(ii) the acquisition, maintenance, and
8 enhancement of skills necessary for the in-
9 dividual to accomplish activities of daily
10 living, instrumental activities of daily liv-
11 ing, and health-related tasks;

12 “(iii) backup systems or mechanisms
13 (such as the use of beepers) to ensure con-
14 tinuity of services and supports; and

15 “(iv) voluntary training on how to se-
16 lect, manage, and dismiss attendants.

17 “(C) EXCLUDED SERVICES AND SUP-
18 PORTS.—Subject to subparagraph (D), such
19 term does not include—

20 “(i) the provision of room and board
21 for the individual;

22 “(ii) special education and related
23 services provided under the Individuals
24 with Disabilities Education Act and voca-

1 tional rehabilitation services provided
2 under the Rehabilitation Act of 1973;

3 “(iii) assistive technology devices and
4 assistive technology services;

5 “(iv) durable medical equipment; or

6 “(v) home modifications.

7 “(D) FLEXIBILITY IN TRANSITION TO
8 COMMUNITY-BASED HOME SETTING.—Such
9 term may include expenditures for transitional
10 costs, such as rent and utility deposits, first
11 month’s rent and utilities, bedding, basic kitch-
12 en supplies, and other necessities required for
13 an individual to make the transition from a
14 nursing facility, institution for mental diseases,
15 or intermediate care facility for the mentally re-
16 tarded to a community-based home setting
17 where the individual resides.

18 “(2) ADDITIONAL DEFINITIONS.—

19 “(A) ACTIVITIES OF DAILY LIVING.—The
20 term ‘activities of daily living’ includes eating,
21 toileting, grooming, dressing, bathing, and
22 transferring.

23 “(B) CONSUMER CONTROLLED.—The term
24 ‘consumer controlled’ means a method of select-
25 ing and providing services and supports that

1 allow the individual, or where appropriate, the
2 individual’s representative, maximum control of
3 the community-based attendant services and
4 supports, regardless of who acts as the em-
5 ployer of record.

6 “(C) DELIVERY MODELS.—

7 “(i) AGENCY-PROVIDER MODEL.—The
8 term ‘agency-provider model’ means, with
9 respect to the provision of community-
10 based attendant services and supports for
11 an individual, subject to clause (iii), a
12 method of providing consumer controlled
13 services and supports under which entities
14 contract for the provision of such services
15 and supports.

16 “(ii) OTHER MODELS.—The term
17 ‘other models’ means, subject to clause
18 (iii), methods, other than an agency-pro-
19 vider model, for the provision of consumer
20 controlled services and supports. Such
21 models may include the provision of vouch-
22 ers, direct cash payments, or use of a fiscal
23 agent to assist in obtaining services.

24 “(iii) COMPLIANCE WITH CERTAIN
25 LAWS.—A State shall ensure that, regard-

1 less of whether the State uses an agency-
2 provider model or other models to provide
3 services and supports under a State plan
4 amendment under this section, such serv-
5 ices and supports are provided in accord-
6 ance with the requirements of the Fair
7 Labor Standards Act of 1938 and applica-
8 ble Federal and State laws regarding—

9 “(I) withholding and payment of
10 Federal and State income and payroll
11 taxes;

12 “(II) the provision of unemploy-
13 ment and workers compensation in-
14 surance;

15 “(III) maintenance of general li-
16 ability insurance; and

17 “(IV) occupational health and
18 safety.

19 “(D) HEALTH-RELATED TASKS.—The
20 term ‘health-related tasks’ means specific tasks
21 that can be delegated or assigned by licensed
22 health-care professionals under State law to be
23 performed by an attendant.

24 “(E) INSTRUMENTAL ACTIVITIES OF DAILY
25 LIVING.—The term ‘instrumental activities of

1 daily living’ includes, but is not limited to, meal
2 planning and preparation, managing finances,
3 shopping for food, clothing, and other essential
4 items, performing essential household chores,
5 communicating by phone and other media, and
6 traveling around and participating in the com-
7 munity.

8 “(F) INDIVIDUALS REPRESENTATIVE.—

9 The term ‘individual’s representative’ means a
10 parent, a family member, a guardian, an advo-
11 cate, or other authorized representative of an
12 individual.”.

13 (c) CONFORMING AMENDMENTS.—

14 (1) MANDATORY BENEFIT.—Section
15 1902(a)(10)(A) of the Social Security Act (42
16 U.S.C. 1396a(a)(10)(A)) is amended, in the matter
17 preceding clause (i), by striking “(17) and (21)” and
18 inserting “(17), (21), and (28)”.

19 (2) DEFINITION OF MEDICAL ASSISTANCE.—

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

22 (A) by striking “and” at the end of para-
23 graph (27);

24 (B) by redesignating paragraph (28) as
25 paragraph (29); and

1 (C) by inserting after paragraph (27) the
2 following:

3 “(28) community-based attendant services and
4 supports (to the extent allowed and as defined in
5 section 1943); and”.

6 (3) IMD/ICFMR REQUIREMENTS.—Section
7 1902(a)(10)(C)(iv) of the Social Security Act (42
8 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting
9 “and (28)” after “(24)”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 (other than the amendment made by subsection
14 (c)(1)) take effect on October 1, 2009, and apply to
15 medical assistance provided for community-based at-
16 tendant services and supports described in section
17 1943 of the Social Security Act furnished on or
18 after that date.

19 (2) MANDATORY BENEFIT.—The amendment
20 made by subsection (c)(1) takes effect on October 1,
21 2014.

1 **SEC. 102. ENHANCED FMAP FOR ONGOING ACTIVITIES OF**
 2 **EARLY COVERAGE STATES THAT ENHANCE**
 3 **AND PROMOTE THE USE OF COMMUNITY-**
 4 **BASED ATTENDANT SERVICES AND SUP-**
 5 **PORTS.**

6 (a) IN GENERAL.—Section 1943 of the Social Secu-
 7 rity Act, as added by section 101(b), is amended—

8 (1) by redesignating subsections (d) through (g)
 9 as subsections (f) through (i), respectively;

10 (2) in subsection (a)(1), by striking “subsection
 11 (g)(1)” and inserting “subsection (i)(1)”;

12 (3) in subsection (a)(2), by inserting “, and
 13 with respect to expenditures described in subsection
 14 (d), the Secretary shall pay the State the amount
 15 described in subsection (d)(1)” before the period;

16 (4) in subsection (c)(1)(C), by striking “sub-
 17 section (g)(2)(B)” and inserting “subsection
 18 (i)(2)(B)”; and

19 (5) by inserting after subsection (c), the fol-
 20 lowing:

21 “(d) INCREASED FEDERAL FINANCIAL PARTICIPA-
 22 TION FOR EARLY COVERAGE STATES THAT MEET CER-
 23 TAIN BENCHMARKS.—

24 “(1) IN GENERAL.—Subject to paragraph (2),
 25 for purposes of subsection (a)(2), the amount and
 26 expenditures described in this subsection are an

1 amount equal to the Federal medical assistance per-
2 centage, increased by 10 percentage points, of the
3 expenditures incurred by the State for the provision
4 or conduct of the services or activities described in
5 paragraph (3).

6 “(2) EXPENDITURE CRITERIA.—A State shall—

7 “(A) develop criteria for determining the
8 expenditures described in paragraph (1) in col-
9 laboration with the individuals and representa-
10 tives described in subsection (b)(1); and

11 “(B) submit such criteria for approval by
12 the Secretary.

13 “(3) SERVICES, SUPPORTS AND ACTIVITIES DE-
14 SCRIBED.—For purposes of paragraph (1), the serv-
15 ices, supports and activities described in this sub-
16 paragraph are the following:

17 “(A) 1-stop intake, referral, and institu-
18 tional diversion services.

19 “(B) Identifying and remedying gaps and
20 inequities in the State’s current provision of
21 long-term services and supports, particularly
22 those services and supports that are provided
23 based on such factors as age, severity of dis-
24 ability, type of disability, ethnicity, income, in-
25 stitutional bias, or other similar factors.

1 “(C) Establishment of consumer participa-
2 tion and consumer governance mechanisms,
3 such as cooperatives and regional service au-
4 thorities, that are managed and controlled by
5 individuals with significant disabilities who use
6 community-based services and supports or their
7 representatives.

8 “(D) Activities designed to enhance the
9 skills, earnings, benefits, supply, career, and fu-
10 ture prospects of workers who provide commu-
11 nity-based attendant services and supports.

12 “(E) Continuous, comprehensive quality
13 improvement activities that are designed to en-
14 sure and enhance the health and well-being of
15 individuals who rely on community-based at-
16 tendant services and supports, particularly ac-
17 tivities involving or initiated by consumers of
18 such services and supports or their representa-
19 tives.

20 “(F) Family support services to augment
21 the efforts of families and friends to enable in-
22 dividuals with disabilities of all ages to live in
23 their own homes and communities.

24 “(G) Health promotion and wellness serv-
25 ices and activities.

1 “(H) Provider recruitment and enhance-
2 ment activities, particularly such activities that
3 encourage the development and maintenance of
4 consumer controlled cooperatives or other small
5 businesses or micro-enterprises that provide
6 community-based attendant services and sup-
7 ports or related services.

8 “(I) Activities designed to ensure service
9 and systems coordination.

10 “(J) Any other services or activities that
11 the Secretary deems appropriate.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) take effect on October 1, 2009.

14 **SEC. 103. INCREASED FEDERAL FINANCIAL PARTICIPATION**
15 **FOR CERTAIN EXPENDITURES.**

16 (a) IN GENERAL.—Section 1943 of the Social Secu-
17 rity Act, as added by section 101(b) and amended by sec-
18 tion 102, is amended by inserting after subsection (d) the
19 following:

20 “(e) INCREASED FEDERAL FINANCIAL PARTICIPA-
21 TION FOR CERTAIN EXPENDITURES.—

22 “(1) ELIGIBILITY FOR PAYMENT.—

23 “(A) IN GENERAL.—In the case of a State
24 that the Secretary determines satisfies the re-
25 quirements of subparagraph (B), the Secretary

1 shall pay the State the amounts described in
2 paragraph (2) in addition to any other pay-
3 ments provided for under section 1903 or this
4 section for the provision of community-based at-
5 tendant services and supports.

6 “(B) REQUIREMENTS.—The requirements
7 of this subparagraph are the following:

8 “(i) The State has an approved plan
9 amendment under this section.

10 “(ii) The State has incurred expendi-
11 tures described in paragraph (2).

12 “(iii) The State develops and submits
13 to the Secretary criteria to identify and se-
14 lect such expenditures in accordance with
15 the requirements of paragraph (3).

16 “(iv) The Secretary determines that
17 payment of the applicable percentage of
18 such expenditures (as determined under
19 paragraph (2)(B)) would enable the State
20 to provide a meaningful choice of receiving
21 community-based services and supports to
22 individuals with disabilities and elderly in-
23 dividuals who would otherwise only have
24 the option of receiving institutional care.

1 “(2) AMOUNTS AND EXPENDITURES DE-
2 SCRIBED.—

3 “(A) EXPENDITURES IN EXCESS OF 150
4 PERCENT OF BASELINE AMOUNT.—The
5 amounts and expenditures described in this
6 paragraph are an amount equal to the applica-
7 ble percentage, as determined by the Secretary
8 in accordance with subparagraph (B), of the ex-
9 penditures incurred by the State for the provi-
10 sion of community-based attendant services and
11 supports to an individual that exceed 150 per-
12 cent of the average cost of providing nursing fa-
13 cility services to an individual who resides in
14 the State and is eligible for such services under
15 this title, as determined in accordance with cri-
16 teria established by the Secretary.

17 “(B) APPLICABLE PERCENTAGE.—The
18 Secretary shall establish a payment scale for
19 the expenditures described in subparagraph (A)
20 so that the Federal financial participation for
21 such expenditures gradually increases from 70
22 percent to 90 percent as such expenditures in-
23 crease.

1 “(3) SPECIFICATION OF ORDER OF SELECTION
2 FOR EXPENDITURES.—In order to receive the
3 amounts described in paragraph (2), a State shall—

4 “(A) develop, in collaboration with the in-
5 dividuals and representatives described in sub-
6 section (b)(1) and pursuant to guidelines estab-
7 lished by the Secretary, criteria to identify and
8 select the expenditures submitted under that
9 paragraph; and

10 “(B) submit such criteria to the Sec-
11 retary.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) takes effect on October 1, 2009.

14 **TITLE II—PROMOTION OF SYS-**
15 **TEMS CHANGE AND CAPACITY**
16 **BUILDING**

17 **SEC. 201. GRANTS TO PROMOTE SYSTEMS CHANGE AND CA-**
18 **PACITY BUILDING.**

19 (a) AUTHORITY TO AWARD GRANTS.—

20 (1) IN GENERAL.—The Secretary of Health and
21 Human Services (in this section referred to as the
22 “Secretary”) shall award grants to eligible States to
23 carry out the activities described in subsection (b).

24 (2) APPLICATION.—In order to be eligible for a
25 grant under this section, a State shall submit to the

1 Secretary an application in such form and manner,
2 and that contains such information, as the Secretary
3 may require.

4 (b) PERMISSIBLE ACTIVITIES.—A State that receives
5 a grant under this section may use funds provided under
6 the grant for any of the following activities, focusing on
7 areas of need identified by the State and the Consumer
8 Task Force established under subsection (c):

9 (1) The development and implementation of the
10 provision of community-based attendant services and
11 supports under section 1943 of the Social Security
12 Act (as added by section 101(b) and amended by
13 sections 102 and 103) through active collaboration
14 with—

15 (A) individuals with disabilities;

16 (B) elderly individuals;

17 (C) representatives of such individuals; and

18 (D) providers of, and advocates for, serv-
19 ices and supports for such individuals.

20 (2) Substantially involving individuals with sig-
21 nificant disabilities and representatives of such indi-
22 viduals in jointly developing, implementing, and con-
23 tinually improving a mutually acceptable comprehen-
24 sive, effectively working statewide plan for pre-

1 venting and alleviating unnecessary institutionaliza-
2 tion of such individuals.

3 (3) Engaging in system change and other ac-
4 tivities deemed necessary to achieve any or all of the
5 goals of such statewide plan.

6 (4) Identifying and remedying disparities and
7 gaps in services to classes of individuals with disabil-
8 ities and elderly individuals who are currently expe-
9 riencing or who face substantial risk of unnecessary
10 institutionalization.

11 (5) Building and expanding system capacity to
12 offer quality consumer controlled community-based
13 services and supports to individuals with disabilities
14 and elderly individuals, including by—

15 (A) seeding the development and effective
16 use of community-based attendant services and
17 supports cooperatives, Independent Living Cen-
18 ters, small businesses, micro-enterprises, micro-
19 boards, and similar joint ventures owned and
20 controlled by individuals with disabilities or rep-
21 resentatives of such individuals and community-
22 based attendant services and supports workers;

23 (B) enhancing the choice and control indi-
24 viduals with disabilities and elderly individuals
25 exercise, including through their representa-

1 tives, with respect to the personal assistance
2 and supports they rely upon to lead inde-
3 pendent, self-directed lives;

4 (C) enhancing the skills, earnings, benefits,
5 supply, career, and future prospects of workers
6 who provide community-based attendant serv-
7 ices and supports;

8 (D) engaging in a variety of needs assess-
9 ment and data gathering;

10 (E) developing strategies for modifying
11 policies, practices, and procedures that result in
12 unnecessary institutional bias or the over-
13 medicalization of long-term services and sup-
14 ports;

15 (F) engaging in interagency coordination
16 and single point of entry activities;

17 (G) providing training and technical assist-
18 ance with respect to the provision of commu-
19 nity-based attendant services and supports;

20 (H) engaging in—

21 (i) public awareness campaigns;

22 (ii) facility-to-community transitional
23 activities; and

24 (iii) demonstrations of new ap-
25 proaches; and

1 (I) engaging in other systems change ac-
2 tivities necessary for developing, implementing,
3 or evaluating a comprehensive statewide system
4 of community-based attendant services and sup-
5 ports.

6 (6) Ensuring that the activities funded by the
7 grant are coordinated with other efforts to increase
8 personal attendant services and supports, includ-
9 ing—

10 (A) programs funded under or amended by
11 the Ticket to Work and Work Incentives Im-
12 provement Act of 1999 (Public Law 106–170;
13 113 Stat. 1860);

14 (B) grants funded under the Families of
15 Children With Disabilities Support Act of 2000
16 (42 U.S.C. 15091 et seq.); and

17 (C) other initiatives designed to enhance
18 the delivery of community-based services and
19 supports to individuals with disabilities and el-
20 derly individuals.

21 (7) Engaging in transition partnership activities
22 with nursing facilities and intermediate care facili-
23 ties for the mentally retarded that utilize and build
24 upon items and services provided to individuals with
25 disabilities or elderly individuals under the Medicaid

1 program under title XIX of the Social Security Act,
2 or by Federal, State, or local housing agencies, Inde-
3 pendent Living Centers, and other organizations
4 controlled by consumers or their representatives.

5 (c) CONSUMER TASK FORCE.—

6 (1) ESTABLISHMENT AND DUTIES.—To be eli-
7 gible to receive a grant under this section, each
8 State shall establish a Consumer Task Force (re-
9 ferred to in this subsection as the “Task Force”) to
10 assist the State in the development, implementation,
11 and evaluation of real choice systems change initia-
12 tives.

13 (2) APPOINTMENT.—Members of the Task
14 Force shall be appointed by the Chief Executive Of-
15 ficer of the State in accordance with the require-
16 ments of paragraph (3), after the solicitation of rec-
17 ommendations from representatives of organizations
18 representing a broad range of individuals with dis-
19 abilities, elderly individuals, representatives of such
20 individuals, and organizations interested in individ-
21 uals with disabilities and elderly individuals.

22 (3) COMPOSITION.—

23 (A) IN GENERAL.—The Task Force shall
24 represent a broad range of individuals with dis-
25 abilities from diverse backgrounds and shall in-

1 include representatives from Developmental Dis-
2 abilities Councils, Mental Health Councils,
3 State Independent Living Centers and Councils,
4 Commissions on Aging, organizations that pro-
5 vide services to individuals with disabilities and
6 consumers of long-term services and supports.

7 (B) INDIVIDUALS WITH DISABILITIES.—A
8 majority of the members of the Task Force
9 shall be individuals with disabilities or rep-
10 resentatives of such individuals.

11 (C) LIMITATION.—The Task Force shall
12 not include employees of any State agency pro-
13 viding services to individuals with disabilities
14 other than employees of entities described in
15 the Developmental Disabilities Assistance and
16 Bill of Rights Act of 2000 (42 U.S.C. 15001 et
17 seq.).

18 (d) ANNUAL REPORT.—

19 (1) STATES.—A State that receives a grant
20 under this section shall submit an annual report to
21 the Secretary on the use of funds provided under the
22 grant in such form and manner as the Secretary
23 may require.

1 (2) SECRETARY.—The Secretary shall submit
2 to Congress an annual report on the grants made
3 under this section.

4 (e) AUTHORIZATION OF APPROPRIATIONS.—

5 (1) IN GENERAL.—There is authorized to be
6 appropriated to carry out this section, \$50,000,000
7 for each of fiscal years 2010 through 2012.

8 (2) AVAILABILITY.—Amounts appropriated to
9 carry out this section shall remain available without
10 fiscal year limitation.

11 **SEC. 202. DEMONSTRATION PROJECT TO ENHANCE CO-**
12 **ORDINATION OF CARE UNDER THE MEDI-**
13 **CARE AND MEDICAID PROGRAMS FOR DUAL**
14 **ELIGIBLE INDIVIDUALS.**

15 (a) DEFINITIONS.—In this section:

16 (1) DUALY ELIGIBLE INDIVIDUAL.—The term
17 “dually eligible individual” means an individual who
18 is enrolled in the Medicare and Medicaid programs
19 established under Titles XVIII and XIX, respec-
20 tively, of the Social Security Act (42 U.S.C. 1395 et
21 seq., 1396 et seq.).

22 (2) PROJECT.—The term “project” means the
23 demonstration project authorized to be conducted
24 under this section.

1 (3) SECRETARY.—The term “Secretary” means
2 the Secretary of Health and Human Services.

3 (b) AUTHORITY TO CONDUCT PROJECT.—The Sec-
4 retary shall conduct a project under this section for the
5 purpose of evaluating service coordination and cost-shar-
6 ing approaches with respect to the provision of commu-
7 nity-based services and supports to dually eligible individ-
8 uals.

9 (c) REQUIREMENTS.—

10 (1) NUMBER OF PARTICIPANTS.—Not more
11 than 5 States may participate in the project.

12 (2) APPLICATION.—A State that desires to par-
13 ticipate in the project shall submit an application to
14 the Secretary, at such time and in such form and
15 manner as the Secretary shall specify.

16 (3) DURATION.—The project shall be conducted
17 for at least 5, but not more than 10 years.

18 (d) EVALUATION AND REPORT.—

19 (1) EVALUATION.—Not later than 1 year prior
20 to the termination date of the project, the Secretary,
21 in consultation with States participating in the
22 project, representatives of dually eligible individuals,
23 and others, shall evaluate the impact and effective-
24 ness of the project.

1 (2) REPORT.—The Secretary shall submit a re-
2 port to Congress that contains the findings of the
3 evaluation conducted under paragraph (1) along
4 with recommendations regarding whether the project
5 should be extended or expanded, and any other legis-
6 lative or administrative actions that the Secretary
7 considers appropriate as a result of the project.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as are nec-
10 essary to carry out this section.

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