

108TH CONGRESS  
1ST SESSION

# S. 1394

To establish a demonstration project under the medicaid program to encourage the provision of community-based services to individuals with disabilities.

---

## IN THE SENATE OF THE UNITED STATES

JULY 11, 2003

Mr. HARKIN (for himself, Mr. SMITH, Mr. KENNEDY, Mr. LAUTENBERG, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To establish a demonstration project under the medicaid program to encourage the provision of community-based services to individuals with disabilities.

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.**

4       This Act may be cited as the “Money Follows the  
5       Person Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) In his budget for fiscal year 2004, Presi-  
9       dent George W. Bush proposes a “Money Follows

1 the Person” rebalancing initiative under the med-  
2 icaid program to help States rebalance their long-  
3 term services support systems more evenly between  
4 institutional and community-based services.

5 (2) The President, by proposing this initiative,  
6 and Congress, recognize that States have not fully  
7 developed the systems needed to create a more equi-  
8 table balance between institutional and community-  
9 based services spending under the medicaid pro-  
10 gram.

11 (3) While a few States have been successful at  
12 achieving this balance, nationally, approximately 70  
13 percent of the medicaid funding spent for long-term  
14 services is devoted to nursing facilities and inter-  
15 mediate care facilities for the mentally retarded.  
16 Only 30 percent of such funding is spent for com-  
17 munity-based services.

18 (4) As a result, there are often long waiting  
19 lists for community-based services and supports.

20 (5) In the Americans with Disabilities Act of  
21 1990, Congress found that individuals with disabil-  
22 ities continue to encounter various forms of discrimi-  
23 nation, including segregation, and that discrimina-  
24 tion persists in such critical areas as institutionaliza-  
25 tion.

1           (6) In 1999, the Supreme Court held in  
 2           Olmstead v. LC (527 U.S. 581 (1999)) that needless  
 3           institutionalization is discrimination under the  
 4           Americans with Disabilities Act of 1990, noting that  
 5           institutional placement of people who can be served  
 6           in the community “perpetuates unwarranted as-  
 7           sumptions that persons so isolated are unworthy of  
 8           participating in community life.” (Id. at 600). The  
 9           Court further found that “confinement in an institu-  
 10          tion severely diminishes the everyday life activities of  
 11          individuals, including family relations, social con-  
 12          tacts, work options, economic independence, edu-  
 13          cational advancement, and cultural enrichment.” (Id.  
 14          at 601).

15          (7) Additional resources would be helpful for  
 16          assisting States in rebalancing their long-term serv-  
 17          ices support system and complying with the  
 18          Olmstead decision.

19 **SEC. 3. AUTHORITY TO CONDUCT MEDICAID DEMONSTRA-**  
 20 **TION PROJECTS.**

21          (a) DEFINITIONS.—In this section:

22           (1) COMMUNITY-BASED SERVICES AND SUP-  
 23          PORTS.—The term “community-based services and  
 24          supports” means, with respect to a State, any items  
 25          or services that are an allowable expenditure for

1 medical assistance under the State medicaid pro-  
 2 gram, or under a waiver of such program and that  
 3 the State determines would allow an individual to  
 4 live in the community.

5 (2) INDIVIDUAL’S REPRESENTATIVE; REP-  
 6 REPRESENTATIVE.—The terms “individual’s representa-  
 7 tive” and “representative” mean a parent, family  
 8 member, guardian, advocate, or authorized rep-  
 9 resentative of an individual.

10 (3) MEDICAID LONG-TERM CARE FACILITY.—  
 11 The term “medicaid long-term care facility” means  
 12 a hospital, nursing facility, or intermediate care fa-  
 13 cility for the mentally retarded, as such terms are  
 14 defined for purposes of the medicaid program.

15 (4) MEDICAID PROGRAM.—The term “medicaid  
 16 program” means the State medical assistance pro-  
 17 gram established under title XIX of the Social Secu-  
 18 rity Act (42 U.S.C. 1396 et seq.).

19 (5) SECRETARY.—The term “Secretary” means  
 20 the Secretary of Health and Human Services.

21 (6) STATE.—The term “State” has the mean-  
 22 ing given such term for purposes of the medicaid  
 23 program.

24 (b) STATE APPLICATION.—A State may apply to the  
 25 Secretary for approval to conduct a demonstration project

1 under which the State shall provide community-based  
2 services and supports to individuals—

3 (1) who are eligible for medical assistance  
4 under the medicaid program;

5 (2) who are residing in a medicaid long-term  
6 care facility and who have resided in such facility for  
7 at least 90 days; and

8 (3) with respect to whom there has been a de-  
9 termination that but for the provision of community-  
10 based services and supports, the individuals would  
11 continue to require the level of care provided in a  
12 medicaid long-term care facility.

13 (c) REQUIREMENTS.—A State is not eligible to con-  
14 duct a demonstration project under this section unless the  
15 State certifies the following:

16 (1) With respect to any individual provided  
17 community-based services and supports under the  
18 demonstration project, the State shall continue to  
19 provide community-based services and supports to  
20 the individual under the medicaid program (and at  
21 the State's Federal medical assistance percentage  
22 (as defined in section 1905(b) of the Social Security  
23 Act) reimbursement rate), for as long as the indi-  
24 vidual remains eligible for medical assistance under  
25 the State medicaid program and continues to require

1 such services and supports, beginning with the  
2 month that begins after the 12-month period in  
3 which the individual is provided such services and  
4 supports under the demonstration project.

5 (2) The State shall allow an individual partici-  
6 pating in the demonstration project (or, as appro-  
7 priate, the individual's representative) to choose the  
8 setting in which the individual desires to receives the  
9 community-based services and supports provided  
10 under the project.

11 (3) The State shall identify and educate individ-  
12 uals residing in a medicaid long-term care facility  
13 who are eligible to participate in the demonstration  
14 project (and, as appropriate the individual's rep-  
15 resentative) about the opportunity for the individual  
16 to receive community-based services and supports  
17 under the demonstration project.

18 (4) The State shall ensure that each individual  
19 identified in accordance with paragraph (3) (and, as  
20 appropriate, the individual's representative), has the  
21 opportunity, information, and tools to make an in-  
22 formed choice regarding whether to transition to the  
23 community through participation in the demonstra-  
24 tion project or to remain in the medicaid long-term  
25 care facility.

1           (5) The State shall maintain an adequate qual-  
2           ity improvement system so that individuals partici-  
3           pating in the demonstration project receive adequate  
4           services and supports.

5           (6) The State shall conduct a process for public  
6           participation in the design and development of the  
7           demonstration project and such process shall include  
8           the participation of individuals with disabilities, el-  
9           derly individuals, or individuals with chronic condi-  
10          tions who are part of the target populations to be  
11          served by the demonstration project, and the rep-  
12          resentatives of such individuals.

13          (7) The Federal funds paid to a State pursuant  
14          to this section shall only supplement, and shall not  
15          supplant, the level of State funds expended for pro-  
16          viding community-based services and supports for  
17          individuals under the State medicaid program as of  
18          the date the State application to conduct a dem-  
19          onstration project under this section is approved.

20          (d) APPROVAL OF DEMONSTRATION PROJECTS.—

21               (1) IN GENERAL.—Subject to paragraph (2),  
22               the Secretary shall conduct a competitive application  
23               process with respect to applications submitted under  
24               subsection (b) (taking into consideration the pref-  
25               erences provided under paragraph (2)) that meet the

requirements of subsection (c). In determining whether to approve such an application, the Secretary may waive the requirement of—

(A) section 1902(a)(1) of the Social Security Act (42 U.S.C. 1396a(a)(1)) to allow for sub-State demonstrations;

(B) section 1902(a)(10)(B) of such Act (42 U.S.C. 1396a(a)(10)(B)) with respect to comparability; and

(C) section 1902(a)(10)(C)(i)(III) of such Act (42 U.S.C. 1396a(a)(10)(C)(i)(III)) with respect to income and resource limitations.

(2) PREFERENCE FOR CERTAIN APPLICATIONS.—In approving applications to conduct demonstration projects under this section, the Secretary shall give preference to approving applications that indicate that the State shall do the following:

(A) Design and implement enduring improvements in community-based long-term services support systems within the State to enable individuals with disabilities to live and participate in community life, particularly with respect to those practices that will ensure the successful transition of such individuals from medicaid long-term care facilities into the community.

1 (B) Design and implement a long-term  
2 services support system in the State that pre-  
3 vents individuals from entering medicaid long-  
4 term care facilities in order to gain access to  
5 community-based services and supports.

6 (C) Engage in systemic reform activities  
7 within the State to rebalance expenditures for  
8 long-term services under the State medicaid  
9 program through administrative actions that re-  
10 duce reliance on institutional forms of service  
11 and build up more community capacity.

12 (D) Address the needs of populations that  
13 have been underserved with respect to the avail-  
14 ability of community services or involve individ-  
15 uals or entities that have not previously partici-  
16 pated in the efforts of the State to increase ac-  
17 cess to community-based services.

18 (E) Actively engage in collaboration be-  
19 tween public housing agencies, the State med-  
20 icaid agency, independent living centers, and  
21 other agencies and entities in order to coordi-  
22 nate strategies for obtaining community inte-  
23 grated housing and supportive services for an  
24 individual who participates in the demonstra-  
25 tion project, both with respect to the period

1 during which such individual participates in the  
2 project and after the individual's participation  
3 in the project concludes, in order to enable the  
4 individual to continue to reside in the commu-  
5 nity.

6 (F) Develop and implement policies and  
7 procedures that allow the State medicaid agen-  
8 cy to administratively transfer or integrate  
9 funds from the State budget accounts that are  
10 obligated for expenditures for medicaid long-  
11 term care facilities to other accounts for obliga-  
12 tion for the provision of community-based serv-  
13 ices and supports (including accounts related to  
14 the provision of such services under a waiver  
15 approved under section 1915 of the Social Se-  
16 curity Act (42 U.S.C. 1396n)) when an indi-  
17 vidual transitions from residing in such a facil-  
18 ity to residing in the community.

19 (e) PAYMENTS TO STATES.—

20 (1) IN GENERAL.—The Secretary shall pay to  
21 each State with a demonstration project approved  
22 under this section an amount for each quarter occur-  
23 ring during the period described in paragraph (2)  
24 equal to 100 percent of the State's expenditures in  
25 the quarter for providing community-based services

1 and supports to individuals participating in the dem-  
2 onstration project.

3 (2) PERIOD DESCRIBED.—The period described  
4 in this paragraph is the 12-month period that begins  
5 on the date on which an individual first receives  
6 community-based services and supports under the  
7 demonstration project in a setting that is not a med-  
8 icaid long-term care facility and is selected by the  
9 individual.

10 (f) REPORTS.—

11 (1) IN GENERAL.—Each State conducting a  
12 demonstration project under this section shall sub-  
13 mit a report to the Secretary that, in addition to  
14 such other requirements as the Secretary may re-  
15 quire, includes information regarding—

16 (A) the types of community-based services  
17 and supports provided under the demonstration  
18 project;

19 (B) the number of individuals served under  
20 the project;

21 (C) the expenditures for, and savings re-  
22 sulting from, conducting the project; and

23 (D) to the extent applicable, the changes in  
24 State's long-term services system developed in

1           accordance with the provisions of subsection  
2           (d)(2).

3           (2) UNIFORM DATA FORMAT.—In requiring in-  
4           formation under this subsection, the Secretary shall  
5           develop a uniform data format to be used by States  
6           in the collection and submission of data in the State  
7           report required under paragraph (1).

8           (g) EVALUATIONS.—The Secretary shall use an  
9           amount, not to exceed one-half of 1 percent of the amount  
10          appropriated under subsection (h) for each fiscal year, to  
11          provide, directly or through contract—

12           (1) for the evaluation of the demonstration  
13          projects conducted under this section;

14           (2) technical assistance to States concerning  
15          the development or implementation of such projects;  
16          and

17           (3) for the collection of the data described in  
18          subsection (f)(1).

19          (h) FUNDING.—

20           (1) IN GENERAL.—There is appropriated to  
21          carry out this section \$350,000,000 for each of fis-  
22          cal years 2004 through 2008.

23           (2) AVAILABILITY.—Funds appropriated under  
24          paragraph (1) for a fiscal year shall remain available

- 1       until expended, but not later than September 30,
- 2       2008.

○