

109TH CONGRESS  
1ST SESSION

# H. R. 1264

To amend title XIX of the Social Security Act to provide funds to States to enable them to increase the wages paid to targeted direct support professionals in providing services to individuals with disabilities under the Medicaid program.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2005

Mr. TERRY (for himself, Mrs. CAPPS, and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend title XIX of the Social Security Act to provide funds to States to enable them to increase the wages paid to targeted direct support professionals in providing services to individuals with disabilities under the Medicaid program.

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; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Direct Support Professionals Fairness and Security Act  
6       of 2005”.

7       (b) FINDINGS.—Congress finds the following:

1           (1) Direct support professionals are the pri-  
2           mary providers of long term care services for mil-  
3           lions of individuals who have physical or mental dis-  
4           abilities. Direct support professionals provide assist-  
5           ance with activities of daily living, instrumental ac-  
6           tivities of daily living, assistance with rehabilitation,  
7           habilitation, training needs and other tasks. All pro-  
8           vide essential supports that help keep individuals  
9           with disabilities connected to their communities.

10          (2) These workers who provide intimate sup-  
11          ports are predominately female and many are the  
12          sole breadwinners of their families. Although work-  
13          ing and paying taxes, many women in these jobs re-  
14          main impoverished and are eligible for many of the  
15          same Federal and state public assistance programs  
16          upon which the very individuals with disabilities to  
17          whom they provide supports must depend.

18          (3) Throughout the nation, there is a critical  
19          shortage of direct support professionals. Vacancy  
20          and turn over rates are high. In many parts of the  
21          country, individuals with disabilities are unable to  
22          access the services they need, thereby jeopardizing  
23          their health and quality of life, placing even greater  
24          burdens on their family members and informal care-

1       givers and creating long waiting lists for community  
2       placement.

3           (4) The crisis that the nation faces today will  
4       only get worse. Over the next 30 years, there will be  
5       a rapid rise of the population over 65 years of age.  
6       At the same time, advances in medical science and  
7       drug therapy are increasing the number of people, of  
8       all ages, living with severe disabilities. Thus, while  
9       demand for direct support professional services is in-  
10      creasing, the pool of younger, entry level workers is  
11      shrinking. By 2010, more than 780,000 additional  
12      workers must be found to fill long-term direct sup-  
13      port staff positions.

14          (5) To stabilize and increase the number of di-  
15      rect support professionals in the work force, the  
16      wages and benefits of direct support professionals  
17      must be improved and made equitable among long  
18      term support options.

19          (6) Medicaid is the single-largest payor of long-  
20      term supports and services for people with disabili-  
21      ties. Enhanced Federal Medicaid matching funds  
22      should be available to assist states committed to ad-  
23      dressing wage differentials among direct support  
24      professionals by increasing the wages of direct sup-

1 port professionals and supporting and improving the  
 2 stability of the direct support professional workforce.

3 **SEC. 2. MEDICAID AMENDMENT.**

4 (a) AUTHORIZING ESTABLISHMENT OF DIRECT SUP-  
 5 PORT PROFESSIONAL WAGE ENHANCEMENT PLANS.—  
 6 Title XIX of the Social Security Act is amended—

7 (1) by redesignating section 1936 as section  
 8 1937; and

9 (2) by inserting after section 1935 the following  
 10 new section:

11 “DIRECT SUPPORT PROFESSIONAL WAGE ENHANCEMENT  
 12 PLAN

13 “SEC. 1936. (a) STATE OPTION.—As a condition for  
 14 the receipt of increased funding described in subsection  
 15 (f), a State is required to provide for the implementation  
 16 of a direct support professional wage enhancement plan  
 17 under this section.

18 “(b) DIRECT SUPPORT PROFESSIONAL WAGE EN-  
 19 HANCEMENT PLAN.—

20 “(1) IN GENERAL.—For purposes of this sec-  
 21 tion, the term ‘direct support professional wage en-  
 22 hancement plan’ means a plan of a State that the  
 23 Secretary determines meets the following require-  
 24 ments:

25 “(A) DEADLINE FOR SUBMISSION.—The  
 26 plan is submitted to the Secretary not later

1           than 120 days after the date the Secretary pro-  
2           vides notice to States under paragraph (3).

3           “(B) CONTENTS.—

4                   “(i) EQUALIZATION OF HOURLY WAGE  
5           RATES.—The plan must describe how the  
6           State intends to use the funds made avail-  
7           able under this section to increase the  
8           hourly wage rate of targeted direct support  
9           professionals so that by the end of the 5-  
10          year implementation period (as defined in  
11          subsection (g)(4)) such rate is equal to the  
12          average hourly wage rate of reference di-  
13          rect support professionals.

14                   “(ii) ADDITIONAL PROVISIONS.—The  
15          plan must include the additional informa-  
16          tion described in subsection (c).

17           “(C) IMPLEMENTATION.—The plan must  
18          be developed and implemented in accordance  
19          with subsection (d).

20                   “(D) ANNUAL REPORTS.—The State must  
21          provide for annual assessments and reports in  
22          accordance with subsection (e).

23           “(2) MODIFICATION OF PLAN.—Nothing in this  
24          section shall be construed as preventing a State  
25          from time to time and with the approval of the Sec-

1       retary from modifying a direct support professional  
2       wage enhancement plan so long as such plan, as  
3       modified, continues to meet the requirements of  
4       paragraph (1).

5           “(3) NOTICE.—Not later than 90 days after the  
6       date of the enactment of this section, the Secretary  
7       shall provide notice to States regarding the provi-  
8       sions of this section, including the availability of en-  
9       hanced funding to implement direct support profes-  
10      sional wage enhancement plans.

11      “(c) CONTENTS OF PLAN.—A direct support profes-  
12      sional wage enhancement plan shall include, consistent  
13      with the other requirements of this section, the following:

14           “(1) A description of how the State intends to  
15      use funds provided under this section to meet the re-  
16      quirement of subsection (b)(1).

17           “(2) A description of the prevailing hourly wage  
18      rates for targeted direct support professionals before  
19      the implementation of such plan and any hourly  
20      wage rate differentials between targeted direct sup-  
21      port professionals and reference direct support pro-  
22      fessionals.

23           “(3) The impact of wage differentials and labor  
24      market conditions on the recruitment and retention

1 of targeted direct support professionals, including  
2 current or projected labor shortages.

3 “(4) The identification of a specific, five-year  
4 performance goal to increase the hourly wage rate of  
5 targeted direct support professionals so as to elimi-  
6 nate any wage rate differential between targeted and  
7 reference direct support professionals and the meth-  
8 odology to be used by the State to achieve its goal.

9 “(5) The annual performance goals and targets  
10 that the State will monitor to track progress toward  
11 achieving its five-year performance goal.

12 “(6) Current efforts to increase and stabilize  
13 the State’s direct support professional labor force  
14 and how the plan shall be coordinated with such ef-  
15 forts.

16 “(7) Methods for assuring that funds provided  
17 under this section shall be spent in accordance with  
18 such plan, and shall not be used to supplant existing  
19 funds for wages and benefits or to reduce the State’s  
20 expenditures below the amount that the State would  
21 have paid had the plan not been in effect.

22 “(8) A description of the stakeholders and col-  
23 laborative process used consistent with subsection  
24 (d) to develop the plan and the means by which such

1 collaboration shall continue during the implementa-  
2 tion of the plan.

3 “(9) Assurances satisfactory to the Secretary  
4 that upon the expiration of the 5-year implementa-  
5 tion period, the State shall provide funding nec-  
6 essary to maintain the wage rates attained under the  
7 plan for targeted direct support professionals at the  
8 five-year performance goal increased annually there-  
9 after by a percentage that is not less than the an-  
10 nual percent increase in the employment cost index  
11 (as published quarterly by the Bureau of Labor Sta-  
12 tistics).

13 “(d) DEVELOPMENT AND IMPLEMENTATION OF  
14 PLAN.—A direct support professional wage enhancement  
15 plan shall be developed and implemented in collaboration  
16 with—

17 “(1) targeted individuals with disabilities and  
18 family representatives;

19 “(2) targeted direct support professionals;

20 “(3) agencies or provider organizations that  
21 serve targeted individuals with disabilities and em-  
22 ploy targeted direct support professionals; and

23 “(4) individuals and organizations representing  
24 the interests of those described in paragraphs (1)  
25 through (3).

1 “(e) ANNUAL ASSESSMENT AND REPORT.—

2 “(1) IN GENERAL.—A State shall—

3 “(A) perform an assessment of the  
4 operation of the direct care support profes-  
5 sional wage enhancement plan in the State  
6 in each fiscal year; and

7 “(B) report to the Secretary by Janu-  
8 ary 1 following the end of the fiscal year,  
9 on the results of such assessment.

10 “(2) CONTENTS.—Each such assessment shall  
11 include the following:

12 “(A) An assessment of the effectiveness of  
13 the plan in increasing the wages of targeted di-  
14 rect support professionals and reducing or  
15 eliminating the wage gap with reference direct  
16 support professionals.

17 “(B) An assessment of the State’s progress  
18 in meeting its annual performance goals under  
19 the plan.

20 “(C) An assessment of the effectiveness of  
21 the State’s collaboration with stakeholders on  
22 plan development and implementation issues.

23 “(D) A review and assessment of State ac-  
24 tivities to coordinate the plan with other activi-

1           ties in the State to improve and stabilize the di-  
2           rect support professional workforce.

3           “(E) Recommendations for improving the  
4           plan.

5           “(F) Such other information as the Sec-  
6           retary may specify.

7           “(f) INCREASE IN PAYMENT TO IMPLEMENT PLAN.—

8           “(1) IN GENERAL.—Subject to paragraph (2),  
9           for each calendar quarter during the 5-year imple-  
10          mentation period in which a direct support profes-  
11          sional wage enhancement plan is in effect under this  
12          section in a State, the amount of payment for med-  
13          ical assistance under section 1903(a)(1) shall be in-  
14          creased by the wage enhancement incentive percent-  
15          age (as defined in paragraph (3)(G)) multiplied by  
16          the portion of total funds expended during the quar-  
17          ter for the provision of direct support services to tar-  
18          geted individuals that are attributable to the wages  
19          of targeted direct support professionals.

20          “(2) LIMITATION.—

21                 “(A) IN GENERAL.—Payments made under  
22                 paragraph (1) shall be used only to increase the  
23                 wages of targeted direct support professionals.

24                 “(B) TREATMENT OF EMPLOYEE BENE-  
25                 FITS AND SALARY RELATED BENEFITS.—For

1 purposes of subparagraph (A), payments for  
2 costs of employee benefits and other salary re-  
3 lated benefits (including mandatory employment  
4 taxes and benefits) shall be treated as payments  
5 to increase the wages of targeted direct support  
6 professionals so long as payments attributable  
7 to such non-wage benefits do not exceed 20 per-  
8 cent of the total amounts that increase the  
9 wages of targeted direct support professionals.

10 “(3) DEFINITIONS.—For purposes of this sub-  
11 section:

12 “(A) ANNUAL RATE DIFFERENTIAL PER-  
13 CENTAGE.—The term ‘annual rate differential  
14 percentage’ means, with respect to a State for  
15 a year in which the direct support professional  
16 wage enhancement plan is in effect, the percent  
17 of the direct support professional wage rate dif-  
18 ferential (as defined in subparagraph (E)) to be  
19 paid under plan for the year.

20 “(B) AVERAGE REFERENCE DIRECT SUP-  
21 PORT PROFESSIONAL HOURLY WAGE RATE.—  
22 The term ‘average reference direct support pro-  
23 fessional hourly wage rate’ means, for a year  
24 under a direct support professional wage en-  
25 hancement plan, the average direct support pro-

1           fessional hourly wage rate (as defined in sub-  
2           paragraph (D)), including any projected in-  
3           crease, paid in the year to reference direct sup-  
4           port professionals who are employed by the  
5           State or, if there are no such employees, to ref-  
6           erence direct support professionals who are em-  
7           ployed by local governments in the State, or,  
8           when necessary to meet the purpose of the plan,  
9           any other reference wage rate defined by the  
10          State and as approved by the Secretary.

11                 “(C) BASE-YEAR AVERAGE TARGETED DI-  
12          RECT SUPPORT PROFESSIONAL HOURLY WAGE  
13          RATE.—The term ‘average targeted direct sup-  
14          port professional hourly wage rate’ means, for  
15          a State, the average direct support professional  
16          hourly wage rate (as defined in subparagraph  
17          (D)) paid to targeted direct support profes-  
18          sionals under the State plan in the 12-month-  
19          period immediately preceding the 5-year imple-  
20          mentation period.

21                 “(D) DIRECT SUPPORT PROFESSIONAL  
22          HOURLY WAGE RATE.—The term ‘direct sup-  
23          port professional hourly wage rate’ means—

24                         “(i) the rate of hourly wage paid to a  
25                         direct support professional; plus

1           “(ii) mandatory employment taxes  
2           and benefits (as defined in subparagraph  
3           (F)) paid (as computed and applied on an  
4           hourly basis) with respect to such employ-  
5           ment.

6           “(E) DIRECT SUPPORT PROFESSIONAL  
7           WAGE RATE DIFFERENTIAL.—The term ‘direct  
8           support professional wage rate differential’  
9           means, for a State for a year, the amount by  
10          which—

11           “(i) the average reference direct sup-  
12           port professional hourly wage rate (as de-  
13           fined in subparagraph (B)) for the State  
14           and year, exceeds

15           “(ii) the base-year average targeted  
16           direct support professional hourly wage  
17           rate (as defined in subparagraph (C)) for  
18           the State.

19           “(F) MANDATORY EMPLOYMENT TAXES  
20           AND BENEFITS.—The term ‘mandatory employ-  
21           ment taxes and benefits’ means taxes under  
22           section 3111 of the Internal Revenue Code of  
23           1986 (relating to the employer share of FICA  
24           taxes) and the employer’s share of unemploy-

1           ment compensation and worker’s compensation  
2           payments.

3                   “(G) WAGE ENHANCEMENT INCENTIVE  
4           PERCENTAGE.—The term ‘wage enhancement  
5           incentive percentage’ means—

6                           “(i) the product of (I) the total direct  
7                           support professional wage rate differential  
8                           (as defined in subparagraph (E), and (II)  
9                           annual rate differential percentage (as de-  
10                          fined in subparagraph (A)); divided by

11                           “(ii) the average reference direct sup-  
12                           port professional hourly wage rate (as de-  
13                           fined in subparagraph (B)).

14           “(g) INSPECTOR GENERAL AUDIT.—The Secretary,  
15 through the Inspector General of the Department of  
16 Health and Human Services, shall audit a sample from  
17 among the States in order to assess the effectiveness of  
18 progress made in reducing or eliminating the wage gap  
19 between targeted and reference direct support profes-  
20 sionals through funds under this section.

21           “(h) GAO STUDY.—

22                   “(1) STUDY.—The Comptroller General of the  
23           United States shall conduct a study concerning the  
24           wage equalization and recruitment and retention of

1 direct support professionals who are providing serv-  
2 ices and supports to individuals with disabilities.

3 “(2) REPORTS.—The Comptroller General shall  
4 submit to Congress reports, in the third and fifth  
5 years in which this section is being implemented, on  
6 progress made by States, and the impact of pay-  
7 ments under this section, on providing wage equali-  
8 zation and in improving recruitment and retention of  
9 direct support professionals.

10 “(i) DEFINITIONS.—For purposes of this section:

11 “(1) DIRECT SUPPORT PROFESSIONAL.—The  
12 term ‘direct support professional’ means an indi-  
13 vidual who, whether in a supervisory or non-super-  
14 visory capacity, provides services and supports, as  
15 needed, to an individual with a disability to assist in  
16 acquiring, maintaining or enhancing skills necessary  
17 to perform activities of daily living or instrumental  
18 activities of daily living and health-related functions  
19 through hands-on assistance, supervision, or cueing.  
20 Such term includes, among others, individuals who  
21 may be classified as nurses aides, home health aides,  
22 home care aides, personal care aides and personal  
23 assistants, in-home support workers, homemakers,  
24 behavioral specialists, habilitation specialist, mental  
25 health rehabilitation technicians, independent living

1 skills specialists, crisis program workers, qualified  
2 mental health or mental retardation professionals,  
3 and educational technicians.

4 “(2) DIRECT SUPPORT PROFESSIONAL WAGE  
5 ENHANCEMENT PLAN.—The term ‘direct support  
6 professional wage enhancement plan’ is defined in  
7 subsection (b)(1).

8 “(3) DIRECT SUPPORT SERVICES.—The term  
9 ‘direct support services’ means a range of services  
10 and supports, provided by one or more persons, de-  
11 signed to provide support and health-related services  
12 to an individual with a disability to enable them to  
13 perform, acquire, maintain or enhance skills nec-  
14 essary to perform activities of daily living, instru-  
15 mental activities of daily living (IADL) and health-  
16 related functions. Such term includes personal care  
17 services, consumer-directed personal assistance serv-  
18 ices, rehabilitation services, habilitation services, and  
19 respite care.

20 “(4) INDIVIDUAL WITH A DISABILITY.—The  
21 term ‘individual with a disability’ means an indi-  
22 vidual who meets (or is regarded as meeting) the cri-  
23 teria for being disabled under the supplemental secu-  
24 rity income program under title XVI. Such term in-  
25 cludes an individual who, regardless of age, is eligi-

1 ble for and receiving medical assistance under this  
2 title for any benefits described in paragraph (i)(8).

3 “(5) 5-YEAR IMPLEMENTATION PERIOD.—The  
4 term ‘5-year implementation period’ means, with re-  
5 spect to a State and a direct support professional  
6 wage enhancement plan under this section, the pe-  
7 riod of 20 calendar quarters beginning with the first  
8 full calendar quarter in which such plan is imple-  
9 mented in the State under this section. Each of the  
10 five 4-calendar-quarter periods within such period  
11 shall be treated as a year for purposes of this sec-  
12 tion.

13 “(6) REFERENCE DIRECT SUPPORT PROFES-  
14 SIONAL.—The term ‘reference direct support profes-  
15 sional’ means a direct support professional who—

16 “(A) is employed by a State or local gov-  
17 ernment entity; and

18 “(B) provides direct support services to  
19 targeted individuals with disabilities under this  
20 title.

21 “(7) TARGETED DIRECT SUPPORT PROFES-  
22 SIONAL.—The term ‘targeted direct support profes-  
23 sional’ means a direct support professional who—

24 “(A) is not employed by a State or local  
25 government entity; and

1 “(B) provides direct support services to  
2 targeted individuals with disabilities under this  
3 title.

4 “(8) TARGETED INDIVIDUAL WITH A DIS-  
5 ABILITY.—The term ‘targeted individual with a dis-  
6 ability’ means an individual with a disability who is  
7 eligible for and is receiving medical assistance under  
8 this title for personal care services under section  
9 1905(a)(23), for rehabilitative services under section  
10 1905(a)(13), for home health care services, for home  
11 and community-based services under a waiver ap-  
12 proved under section 1915(c) or section 1115, or for  
13 intermediate care facility services for the mentally  
14 retarded.”.

15 (b) CONFORMING AMENDMENT.—Section 1903(a)(1)  
16 of such Act (42 U.S.C. 1396b(a)(1)) is amended by insert-  
17 ing “and section 1936(f)” after “1923(f)”.

18 (c) AUTHORIZATION OF PLANNING GRANTS.—The  
19 Secretary of Health and Human Services is authorized to  
20 award State planning grants in an amount not to exceed,  
21 in the aggregate, \$3,000,000, in order to assist States in  
22 establishing direct support professional wage enhancement  
23 plans under section 1936 of the Social Security Act, as  
24 inserted by subsection (a).

○