

109TH CONGRESS
1ST SESSION

S. 401

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 SENATE OF THE UNITED STATES

FEBRUARY 16, 2005

Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. KERRY, Mr. BIDEN, Mr. DAYTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Finance

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 “Medicaid Community-Based Attendant Services and
6 Supports Act of 2005”.

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 non-elderly 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 ability 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) Research on the provision of long-term serv-
 15 ices and supports under the medicaid program (con-
 16 ducted by and on behalf of the Department of
 17 Health and Human Services) has revealed a signifi-

1 cant funding bias toward institutional care. Only
2 about 33 percent of long term care funds expended
3 under the medicaid program, and only about 11 per-
4 cent of all funds expended under that program, pay
5 for services and supports in home and community-
6 based settings.

7 (3) In the case of medicaid beneficiaries who
8 need long term care, the only long-term care service
9 currently guaranteed by Federal law in every State
10 is nursing home care. Only 30 States have adopted
11 the benefit option of providing personal care services
12 under the medicaid program. Although every State
13 has chosen to provide certain services under home
14 and community-based waivers, these services are un-
15 evenly available within and across States, and reach
16 a small percentage of eligible individuals. In fiscal
17 year 2003, only 7 States spent 50 percent or more
18 of their medicaid long term care funds under the
19 medicaid program on home and community-based
20 care.

21 (4) The goals of the Nation properly include
22 providing families of children with disabilities, work-
23 ing-age adults with disabilities, and older Americans
24 with—

1 (A) a meaningful choice of receiving long-
2 term services and supports in the most inte-
3 grated setting appropriate to their needs;

4 (B) the greatest possible control over the
5 services received and, therefore, their own lives
6 and futures; and

7 (C) quality services that maximize inde-
8 pendence in the home and community, including
9 in the workplace.

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

12 (1) To reform the medicaid program established
13 under title XIX of the Social Security Act (42
14 U.S.C. 1396 et seq.) to provide equal access to com-
15 munity-based attendant services and supports.

16 (2) To provide financial assistance to States as
17 they reform their long-term care systems to provide
18 comprehensive statewide long-term services and sup-
19 ports, including community-based attendant services
20 and supports that provide consumer choice and di-
21 rection, in the most integrated setting appropriate.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

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

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

(1) by inserting “(i)” after “(D)”;

(2) by adding “and” after the semicolon; and

(3) by adding at the end the following new clause:

“(ii) subject to section 1936, for the inclusion of community-based attendant services and supports for any individual who—

“(I) is eligible for medical assistance under the State plan;

“(II) with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded (whether or not coverage of such intermediate care facility is provided under the State plan); and

1 “(III) chooses to receive such services
2 and supports;”.

3 (b) COMMUNITY-BASED ATTENDANT SERVICES AND
4 SUPPORTS.—

5 (1) IN GENERAL.—Title XIX of the Social Se-
6 curity Act (42 U.S.C. 1396 et seq.) is amended—

7 (A) by redesignating section 1936 as sec-
8 tion 1937; and

9 (B) by inserting after section 1935 the fol-
10 lowing:

11 “COMMUNITY-BASED ATTENDANT SERVICES AND
12 SUPPORTS

13 “SEC. 1936. (a) REQUIRED COVERAGE.—

14 “(1) IN GENERAL.—Not later than October 1,
15 2009, 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, 2005, and ends
24 on September 30, 2009, 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.—That the State
 15 has developed and shall implement the provision of
 16 community-based attendant services and supports
 17 under the State plan through active collaboration
 18 with—

19 “(A) individuals with disabilities;

20 “(B) elderly individuals;

21 “(C) representatives of such individuals;

22 and

23 “(D) providers of, and advocates for, serv-
 24 ices and supports for such individuals.

1 “(2) ASSURANCE OF PROVISION ON A STATE-
 2 WIDE BASIS AND IN MOST INTEGRATED SETTING.—
 3 That community-based attendant services and sup-
 4 ports will be provided under the State plan to indi-
 5 viduals described in section 1902(a)(10)(D)(ii) on a
 6 statewide basis and in a manner that provides such
 7 services and supports in the most integrated setting
 8 appropriate for each individual eligible for such serv-
 9 ices and supports.

10 “(3) ASSURANCE OF NONDISCRIMINATION.—
 11 That the State will provide community-based attend-
 12 ant services and supports to an individual described
 13 in section 1902(a)(10)(D)(ii) without regard to the
 14 individual’s age, type of disability, or the form of
 15 community-based attendant services and supports
 16 that the individual requires in order to lead an inde-
 17 pendent life.

18 “(4) ASSURANCE OF MAINTENANCE OF EF-
 19 FORT.—That the level of State expenditures for op-
 20 tional medical assistance that—

21 “(A) is described in a paragraph other
 22 than paragraphs (1) through (5), (17) and (21)
 23 of section 1905(a) or that is provided under a
 24 waiver under section 1915, section 1115, or
 25 otherwise; and

1 “(B) is provided to individuals with disabil-
 2 ities or elderly individuals for a fiscal year,
 3 shall not be less than the level of such expenditures
 4 for the fiscal year preceding the fiscal year in which
 5 the State plan amendment to provide community-
 6 based attendant services and supports in accordance
 7 with this section is approved.

8 “(c) REQUIREMENTS FOR ENHANCED FMAP FOR
 9 EARLY COVERAGE.—In addition to satisfying the other re-
 10 quirements for an approved plan amendment under this
 11 section, in order for a State to be eligible under subsection
 12 (a)(2) during the period described in that subsection for
 13 the enhanced FMAP for early coverage under subsection
 14 (a)(2), the State shall satisfy the following requirements:

15 “(1) SPECIFICATIONS.—With respect to a fiscal
 16 year, the State shall provide the Secretary with the
 17 following specifications regarding the provision of
 18 community-based attendant services and supports
 19 under the plan for that fiscal year:

20 “(A)(i) The number of individuals who are
 21 estimated to receive community-based attendant
 22 services and supports under the plan during the
 23 fiscal year.

1 “(ii) The number of individuals that re-
2 ceived such services and supports during the
3 preceding fiscal year.

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

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

11 “(D) The procedures the State will imple-
12 ment to inform all potentially eligible individ-
13 uals and relevant other individuals of the avail-
14 ability of such services and supports under this
15 title, and of other items and services that may
16 be provided to the individual under this title or
17 title XVIII.

18 “(E) The procedures the State will imple-
19 ment to ensure that such services and supports
20 are provided in accordance with the require-
21 ments of subsection (b)(1).

22 “(F) The procedures the State will imple-
23 ment to actively involve individuals with disabil-
24 ities, elderly individuals, and representatives of
25 such individuals in the design, delivery, admin-

1 istration, and evaluation of the provision of
2 such services and supports under this title.

3 “(2) PARTICIPATION IN EVALUATIONS.—The
4 State shall provide the Secretary with such sub-
5 stantive input into, and participation in, the design
6 and conduct of data collection, analyses, and other
7 qualitative or quantitative evaluations of the provi-
8 sion of community-based attendant services and sup-
9 ports under this section as the Secretary deems nec-
10 essary in order to determine the effectiveness of the
11 provision of such services and supports in allowing
12 the individuals receiving such services and supports
13 to lead an independent life to the maximum extent
14 possible.

15 “(d) QUALITY ASSURANCE PROGRAM.—

16 “(1) STATE RESPONSIBILITIES.—In order for a
17 State plan amendment to be approved under this
18 section, a State shall establish and maintain a qual-
19 ity assurance program with respect to community-
20 based attendant services and supports that provides
21 for the following:

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

1 “(i) minimum qualifications and train-
2 ing requirements for agency-based and
3 other models;

4 “(ii) financial operating standards;
5 and

6 “(iii) an appeals procedure for eligi-
7 bility denials and a procedure for resolving
8 disagreements over the terms of an individ-
9 ualized plan.

10 “(B) The State shall modify the quality as-
11 surance program, as appropriate, to maximize
12 consumer independence and consumer control
13 in both agency-provided and other delivery mod-
14 els.

15 “(C) The State shall provide a system that
16 allows for the external monitoring of the quality
17 of services and supports by entities consisting
18 of consumers and their representatives, dis-
19 ability organizations, providers, families of dis-
20 abled or elderly individuals, members of the
21 community, and others.

22 “(D) The State shall provide for ongoing
23 monitoring of the health and well-being of each
24 individual who receives community-based at-
25 tendant services and supports.

1 “(E) The State shall require that quality
2 assurance mechanisms appropriate for the indi-
3 vidual be included in the individual’s written
4 plan.

5 “(F) The State shall establish a process
6 for the mandatory reporting, investigation, and
7 resolution of allegations of neglect, abuse, or ex-
8 ploitation in connection with the provision of
9 such services and supports.

10 “(G) The State shall obtain meaningful
11 consumer input, including consumer surveys,
12 that measure the extent to which an individual
13 receives the services and supports described in
14 the individual’s plan and the individual’s satis-
15 faction with such services and supports.

16 “(H) The State shall make available to the
17 public the findings of the quality assurance pro-
18 gram.

19 “(I) The State shall establish an ongoing
20 public process for the development, implementa-
21 tion, and review of the State’s quality assurance
22 program.

23 “(J) The State shall develop and imple-
24 ment a program of sanctions for providers of
25 community-based services and supports that

1 violate the terms or conditions for the provision
2 of such services and supports.

3 “(2) FEDERAL RESPONSIBILITIES.—

4 “(A) PERIODIC EVALUATIONS.—The Sec-
5 retary shall conduct a periodic sample review of
6 outcomes for individuals who receive commu-
7 nity-based attendant services and supports
8 under this title.

9 “(B) INVESTIGATIONS.—The Secretary
10 may conduct targeted reviews and investiga-
11 tions upon receipt of an allegation of neglect,
12 abuse, or exploitation of an individual receiving
13 community-based attendant services and sup-
14 ports under this section.

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

19 “(e) REPORTS.—The Secretary shall submit to Con-
20 gress periodic reports on the provision of community-based
21 attendant services and supports under this section, par-
22 ticularly with respect to the impact of the provision of
23 such services and supports on—

24 “(1) individuals eligible for medical assistance
25 under this title;

1 “(2) States; and

2 “(3) the Federal Government.

3 “(f) NO EFFECT ON ABILITY TO PROVIDE COVERAGE
4 UNDER A WAIVER.—

5 “(1) IN GENERAL.—Nothing in this section
6 shall be construed as affecting the ability of a State
7 to provide coverage under the State plan for commu-
8 nity-based attendant services and supports (or simi-
9 lar coverage) under a waiver approved under section
10 1915, section 1115, or otherwise.

11 “(2) ELIGIBILITY FOR ENHANCED MATCH.—In
12 the case of a State that provides coverage for such
13 services and supports under a waiver, the State shall
14 not be eligible under subsection (a)(2) for the en-
15 hanced FMAP for the early provision of such cov-
16 erage unless the State submits a plan amendment to
17 the Secretary that meets the requirements of this
18 section.

19 “(g) DEFINITIONS.—In this title:

20 “(1) COMMUNITY-BASED ATTENDANT SERVICES
21 AND SUPPORTS.—

22 “(A) IN GENERAL.—The term ‘community-
23 based attendant services and supports’ means
24 attendant services and supports furnished to an
25 individual, as needed, to assist in accomplishing

activities of daily living, instrumental activities of daily living, and health-related functions through hands-on assistance, supervision, or cueing—

“(i) under a plan of services and supports that is based on an assessment of functional need and that is agreed to by the individual or, as appropriate, the individual’s representative;

“(ii) in a home or community setting, which may include a school, workplace, or recreation or religious facility, but does not include a nursing facility or an intermediate care facility for the mentally retarded;

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

“(iv) the furnishing of which is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual’s representative.

“(B) INCLUDED SERVICES AND SUPPORTS.—Such term includes—

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

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

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

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

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

18 “(i) the provision of room and board
 19 for the individual;

20 “(ii) special education and related
 21 services provided under the Individuals
 22 with Disabilities Education Act and voca-
 23 tional rehabilitation services provided
 24 under the Rehabilitation Act of 1973;

1 “(iii) assistive technology devices and
2 assistive technology services;

3 “(iv) durable medical equipment; or

4 “(v) home modifications.

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

15 “(2) ADDITIONAL DEFINITIONS.—

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

20 “(B) CONSUMER CONTROLLED.—The term
21 ‘consumer controlled’ means a method of pro-
22 viding services and supports that allow the indi-
23 vidual, or where appropriate, the individual’s
24 representative, maximum control of the commu-

1 nity-based attendant services and supports, re-
 2 gardless of who acts as the employer of record.

3 “(C) DELIVERY MODELS.—

4 “(i) AGENCY-PROVIDER MODEL.—The
 5 term ‘agency-provider model’ means, with
 6 respect to the provision of community-
 7 based attendant services and supports for
 8 an individual, a method of providing con-
 9 sumer controlled services and supports
 10 under which entities contract for the provi-
 11 sion of such services and supports.

12 “(ii) OTHER MODELS.—The term
 13 ‘other models’ means methods, other than
 14 an agency-provider model, for the provision
 15 of consumer controlled services and sup-
 16 ports. Such models may include the provi-
 17 sion of vouchers, direct cash payments, or
 18 use of a fiscal agent to assist in obtaining
 19 services.

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

1 “(E) INSTRUMENTAL ACTIVITIES OF DAILY
 2 LIVING.—The term ‘instrumental activities of
 3 daily living’ includes meal planning and prepa-
 4 ration, managing finances, shopping for food,
 5 clothing, and other essential items, performing
 6 essential household chores, communicating by
 7 phone and other media, and traveling around
 8 and participating in the community.

9 “(F) INDIVIDUAL’S REPRESENTATIVE.—
 10 The term ‘individual’s representative’ means a
 11 parent, a family member, a guardian, an advo-
 12 cate, or an authorized representative of an indi-
 13 vidual.”.

14 (c) CONFORMING AMENDMENTS.—

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

20 (2) DEFINITION OF MEDICAL ASSISTANCE.—
 21 Section 1905(a) of the Social Security Act (42
 22 U.S.C. 1396d) is amended—

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

1 (B) by redesignating paragraph (28) as
2 paragraph (29); and

3 (C) by inserting after paragraph (27) the
4 following:

5 “(28) community-based attendant services and
6 supports (to the extent allowed and as defined in
7 section 1936); and”.

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

12 (d) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by this section
15 (other than the amendment made by subsection
16 (c)(1)) take effect on October 1, 2005, and apply to
17 medical assistance provided for community-based at-
18 tendant services and supports described in section
19 1936 of the Social Security Act furnished on or
20 after that date.

21 (2) MANDATORY BENEFIT.—The amendment
22 made by subsection (c)(1) takes effect on October 1,
23 2009.

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 1936 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 AND ACTIVITIES DESCRIBED.—

14 For purposes of paragraph (1), the services and ac-
 15 tivities described in this subparagraph are the fol-
 16 lowing:

17 “(A) One-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, particularly those services
 22 that are provided based on such factors as age,
 23 disability type, ethnicity, income, institutional
 24 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 improvement activities
13 that are designed to ensure and enhance the
14 health and well-being of individuals who rely on
15 community-based attendant services and sup-
16 ports, particularly activities involving or initi-
17 ated by consumers of such services and sup-
18 ports or their representatives.

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

23 “(G) Health promotion and wellness serv-
24 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 microenterprises 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, 2005.

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

16 (a) IN GENERAL.—Section 1936 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, 2005.

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 1936 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, microenterprises and
19 similar joint ventures owned and controlled by
20 individuals with disabilities or representatives of
21 such individuals and community-based attend-
22 ant 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
 13 overmedicalization of long-term services and
 14 supports;

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 con-
4 trolled 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 clude 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 2006 through 2008.

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 NON-**
14 **ELDERLY DUAL ELIGIBLE INDIVIDUALS.**

15 (a) DEFINITIONS.—In this section:

16 (1) NON-ELDERLY DUALY ELIGIBLE INDIVIDUAL.—The term “non-elderly dually eligible individual” means an individual who—

17 (A) has not attained age 65; and

18 (B) is enrolled in the medicare and med-
19 icaid programs established under titles XVIII
20 and XIX, respectively, of the Social Security
21 Act (42 U.S.C. 1395 et seq., 1396 et seq.).
22
23

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

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

6 (b) AUTHORITY TO CONDUCT PROJECT.—The Sec-
 7 retary shall conduct a project under this section for the
 8 purpose of evaluating service coordination and cost-shar-
 9 ing approaches with respect to the provision of commu-
 10 nity-based services and supports to non-elderly dually eli-
 11 gible individuals.

12 (c) REQUIREMENTS.—

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

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

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

21 (d) EVALUATION AND REPORT.—

22 (1) EVALUATION.—Not later than 1 year prior
 23 to the termination date of the project, the Secretary,
 24 in consultation with States participating in the
 25 project, representatives of non-elderly dually eligible

1 individuals, and others, shall evaluate the impact
2 and effectiveness of the project.

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

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

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