

110TH CONGRESS  
1ST SESSION

# H. R. 1279

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 1, 2007

Mrs. CAPP (for herself and Mr. TERRY) 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 2007”.

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



1       their health and quality of life, placing even greater  
2       burdens on their family members and informal care-  
3       givers and creating long waiting lists for community  
4       placement.

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

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

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

1 professionals by increasing the wages of direct sup-  
2 port professionals and supporting and improving the  
3 stability of the direct support professional workforce.

4 **SEC. 2. MEDICAID AMENDMENT.**

5 (a) AUTHORIZING ESTABLISHMENT OF DIRECT SUP-  
6 PORT PROFESSIONAL WAGE ENHANCEMENT PLANS.—

7 Title XIX of the Social Security Act is amended—

8 (1) by redesignating section 1939 as section  
9 1940; and

10 (2) by inserting after section 1938 the following  
11 new section:

12 “DIRECT SUPPORT PROFESSIONAL WAGE ENHANCEMENT

13 PLAN

14 “SEC. 1939. (a) STATE OPTION.—As a condition for  
15 the receipt of increased funding described in subsection  
16 (f), a State is required to provide for the implementation  
17 of a direct support professional wage enhancement plan  
18 under this section.

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

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

1                     “(A) DEADLINE FOR SUBMISSION.—The  
2                     plan is submitted to the Secretary not later  
3                     than 120 days after the date the Secretary pro-  
4                     vides notice to States under paragraph (3).

5                     “(B) CONTENTS.—

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

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

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

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

1           “(2) MODIFICATION OF PLAN.—Nothing in this  
2 section shall be construed as preventing a State  
3 from time to time and with the approval of the Sec-  
4 retary from modifying a direct support professional  
5 wage enhancement plan so long as such plan, as  
6 modified, continues to meet the requirements of  
7 paragraph (1).

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

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

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

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

1           “(3) The impact of wage differentials and labor  
2 market conditions on the recruitment and retention  
3 of targeted direct support professionals, including  
4 current or projected labor shortages.

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

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

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

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

24           “(8) A description of the stakeholders and col-  
25 laborative process used consistent with subsection

1       (d) to develop the plan and the means by which such  
2       collaboration shall continue during the implementa-  
3       tion of the plan.

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

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

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

20           “(2) targeted direct support professionals;

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

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

4               “(e) ANNUAL ASSESSMENT AND REPORT.—

5               “(1) IN GENERAL.—A State shall—

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

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

13               “(2) CONTENTS.—Each such assessment shall  
14 include the following:

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

20                      “(B) An assessment of the State’s progress  
21 in meeting its annual performance goals under  
22 the plan.

23                      “(C) An assessment of the effectiveness of  
24 the State’s collaboration with stakeholders on  
25 plan development and implementation issues.

1                 “(D) A review and assessment of State ac-  
2                 tivities to coordinate the plan with other activi-  
3                 ties in the State to improve and stabilize the di-  
4                 rect support professional workforce.

5                 “(E) Recommendations for improving the  
6                 plan.

7                 “(F) Such other information as the Sec-  
8                 retary may specify.

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

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

22                 “(2) LIMITATION.—

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

1                     “(B) TREATMENT OF EMPLOYEE BENE-  
2                     FITS AND SALARY RELATED BENEFITS.—For  
3                     purposes of subparagraph (A), payments for  
4                     costs of employee benefits and other salary re-  
5                     lated benefits (including mandatory employment  
6                     taxes and benefits) shall be treated as payments  
7                     to increase the wages of targeted direct support  
8                     professionals so long as payments attributable  
9                     to such non-wage benefits do not exceed 20 per-  
10                    cent of the total amounts that increase the  
11                    wages of targeted direct support professionals.

12                    “(3) DEFINITIONS.—For purposes of this sub-  
13                    section:

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

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

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

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

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

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

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

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

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

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

21                             “(F) MANDATORY EMPLOYMENT TAXES  
22                             AND BENEFITS.—The term ‘mandatory employ-  
23                             ment taxes and benefits’ means taxes under  
24                             section 3111 of the Internal Revenue Code of  
25                             1986 (relating to the employer share of FICA

1           taxes) and the employer's share of unemployment  
2           compensation and worker's compensation  
3           payments.

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

7           “(i) the product of (I) the total direct  
8           support professional wage rate differential  
9           (as defined in subparagraph (E), and (II)  
10           annual rate differential percentage (as de-  
11           fined in subparagraph (A)); divided by  
12           “(ii) the average reference direct sup-  
13           port professional hourly wage rate (as de-  
14           fined in subparagraph (B)).

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

22           “(h) GAO STUDY.—

23           “(1) STUDY.—The Comptroller General of the  
24           United States shall conduct a study concerning the  
25           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 (ADL), in-  
15 strumental activities of daily living (IADL) and  
16 health-related functions. Such term includes per-  
17 sonal care services, consumer-directed personal as-  
18 sistance services, rehabilitation services, habilitation  
19 services, and 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 under  
11                   section 1905(a)(7), for intermediate care facility  
12                   services for the mentally retarded under section  
13                   1905(a)(15), for home and community-based serv-  
14                   ices under a State plan option under section 1915(j),  
15                   for self-directed personal assistance services under a  
16                   State plan amendment option under section 1915(i),  
17                   or for home and community-based services under a  
18                   waiver approved under section 1915(c) or section  
19                   1115.”.

20                   (b) CONFORMING AMENDMENT.—Section 1903(a)(1)  
21                   of such Act (42 U.S.C. 1396b(a)(1)) is amended by insert-  
22                   ing “and section 1939(f)” after “1923(f)”.

23                   (c) AUTHORIZATION OF PLANNING GRANTS.—The  
24                   Secretary of Health and Human Services is authorized to  
25                   award State planning grants in an amount not to exceed,

1 in the aggregate, \$3,000,000, in order to assist States in  
2 establishing direct support professional wage enhancement  
3 plans under section 1939 of the Social Security Act, as  
4 inserted by subsection (a).

○