

111TH CONGRESS  
1ST SESSION

# H. R. 1670

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2009

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

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## A BILL

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

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

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

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

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

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

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

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

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “COMMUNITY-BASED ATTENDANT SERVICES AND  
12 SUPPORTS

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

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

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



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

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

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

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

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

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

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

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

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

13                           “(I) individuals with disabilities;

14                           “(II) elderly individuals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 “(d) QUALITY ASSURANCE.—

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

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

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

21 “(ii) financial operating standards;  
22 and

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

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

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

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

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

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

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

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

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

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

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

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

21          “(2) FEDERAL RESPONSIBILITIES.—

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



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

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

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

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

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

20                 “(2) States; and

21                 “(3) the Federal Government.

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

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

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

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

15 “(g) DEFINITIONS.—In this title:

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

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

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

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

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

16          “(iv) the furnishing of which—

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

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

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

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

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

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

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

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

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

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

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

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

5           “(iv) durable medical equipment; or

6           “(v) home modifications.

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

18          “(2) ADDITIONAL DEFINITIONS.—

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

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

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

6 “(C) DELIVERY MODELS.—

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

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

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

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

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

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

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

17 “(IV) occupational health and  
18 safety.

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

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

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

8 “(F) INDIVIDUALS REPRESENTATIVE.—

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

13 (c) CONFORMING AMENDMENTS.—

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

19 (2) DEFINITION OF MEDICAL ASSISTANCE.—

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

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

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



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

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

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

10 (d) EFFECTIVE DATES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22                           “(1) ELIGIBILITY FOR PAYMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           (a) AUTHORITY TO AWARD GRANTS.—

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

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



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

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

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

15 (A) individuals with disabilities;

16 (B) elderly individuals;

17 (C) representatives of such individuals; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20          (H) engaging in—

21               (i) public awareness campaigns;

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

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

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

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

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

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

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

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

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

5 (c) CONSUMER TASK FORCE.—

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

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

22 (3) COMPOSITION.—

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

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

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

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

18 (d) ANNUAL REPORT.—

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

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

4 (e) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

15 (a) DEFINITIONS.—In this section:

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

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

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

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

9           (c) REQUIREMENTS.—

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

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

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

18           (d) EVALUATION AND REPORT.—

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



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

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

○