

111TH CONGRESS  
1ST SESSION

# H. R. 2688

To amend title XIX of the Social Security Act to improve the State plan amendment option for providing home and community-based services under the Medicaid Program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 2009

Mr. PALLONE (for himself and Ms. DEGETTE) 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 improve the State plan amendment option for providing home and community-based services under the Medicaid Program, 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       “Empowered at Home Act of 2009”.

6       (b) **TABLE OF CONTENTS.**—The table of contents of  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STRENGTHENING THE MEDICAID HOME AND  
COMMUNITY-BASED STATE PLAN AMENDMENT OPTION

- Sec. 101. Removal of barriers to providing home and community-based services under State plan amendment option for individuals in need.
- Sec. 102. Increase in Federal medical assistance percentage (FMAP) for the provision of home and community-based services under Medicaid through the State plan amendment option.
- Sec. 103. Annual report on use of Medicaid State plan amendment option for home and community-based services.

TITLE II—STATE GRANTS TO FACILITATE HOME AND  
COMMUNITY-BASED SERVICES AND PROMOTE HEALTH

- Sec. 201. Reauthorization of Medicaid investment grants and expansion of permissible uses in order to facilitate the provision of home and community-based and other long-term care services.
- Sec. 202. Health promotion grants.

TITLE III—PROMOTING AND PROTECTING COMMUNITY LIVING

- Sec. 301. Mandatory application of spousal impoverishment protections to recipients of home and community-based services.
- Sec. 302. Exclusion of 6 months of average cost of nursing facility services from assets or resources for purposes of eligibility for home and community-based services.

TITLE IV—MISCELLANEOUS

- Sec. 401. Improved data collection.
- Sec. 402. GAO report on Medicaid home health services and the extent of consumer self-direction of such services.

1 **TITLE I—STRENGTHENING THE**  
2 **MEDICAID HOME AND COM-**  
3 **MUNITY-BASED STATE PLAN**  
4 **AMENDMENT OPTION**

5 **SEC. 101. REMOVAL OF BARRIERS TO PROVIDING HOME**  
6 **AND COMMUNITY-BASED SERVICES UNDER**  
7 **STATE PLAN AMENDMENT OPTION FOR INDI-**  
8 **VIDUALS IN NEED.**

9 (a) PARITY WITH INCOME ELIGIBILITY STANDARD  
10 FOR INSTITUTIONALIZED INDIVIDUALS.—Paragraph (1)  
11 of section 1915(i) of the Social Security Act (42 U.S.C.

1 1396n(i)) is amended by striking “150 percent of the pov-  
2 erty line (as defined in section 2110(c)(5))” and inserting  
3 “300 percent of the supplemental security income benefit  
4 rate established by section 1611(b)(1)”.

5 (b) AUTHORITY TO OFFER DIFFERENT TYPE,  
6 AMOUNT, DURATION, OR SCOPE OF HOME AND COMMU-  
7 NITY-BASED SERVICES.—Section 1915(i) of the Social Se-  
8 curity Act (42 U.S.C. 1396n(i)) is amended by adding at  
9 the end the following new paragraph:

10 “(6) AUTHORITY TO OFFER DIFFERENT TYPE,  
11 AMOUNT, DURATION, OR SCOPE OF HOME AND COM-  
12 MUNITY-BASED SERVICES.—A State may offer home  
13 and community-based services to individuals under  
14 this paragraph that differ in type, amount, duration,  
15 or scope from the home and community-based serv-  
16 ices offered to other such individuals, taking into ac-  
17 count the needs-based criteria established under  
18 paragraph (1)(A), so long as such services are with-  
19 in the scope of services described in paragraph  
20 (4)(B) of subsection (c) for which the Secretary has  
21 the authority to approve a waiver and do not include  
22 room or board.”.

23 (c) REMOVAL OF LIMITATION ON SCOPE OF SERV-  
24 ICES.—Paragraph (1) of section 1915(i) of the Social Se-  
25 curity Act (42 U.S.C. 1396n(i)), as amended by sub-

1 section (a), is amended by striking “or such other services  
2 requested by the State as the Secretary may approve”

3 (d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE  
4 FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING  
5 HOME AND COMMUNITY-BASED SERVICES UNDER A  
6 STATE PLAN AMENDMENT.—

7 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)  
8 of the Social Security Act (42 U.S.C.  
9 1396a(a)(10)(A)(ii)) is amended—

10 (A) in subclause (XVIII), by striking “or”  
11 at the end;

12 (B) in subclause (XIX), by adding “or” at  
13 the end; and

14 (C) by inserting after subclause (XIX), the  
15 following new subclause:

16 “(XX) who are eligible for home  
17 and community-based services under  
18 needs-based criteria established under  
19 paragraph (1)(A) of section 1915(i)  
20 and who will receive home and com-  
21 munity-based services pursuant to a  
22 State plan amendment under section  
23 1915(i);”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) Section 1903(f)(4) of the Social Secu-  
2 rity Act (42 U.S.C. 1396b(f)(4)) is amended in  
3 the matter preceding subparagraph (A), by in-  
4 serting “1902(a)(10)(A)(ii)(XX),” after  
5 “1902(a)(10)(A)(ii)(XIX),”.

6 (B) Section 1905(a) of the Social Security  
7 Act (42 U.S.C. 1396d(a)) is amended in the  
8 matter preceding paragraph (1)—

9 (i) in clause (xii), by striking “or” at  
10 the end;

11 (ii) in clause (xiii), by adding “or” at  
12 the end; and

13 (iii) by inserting after clause (xiii) the  
14 following new clause:

15 “(xiv) individuals who are eligible for home and  
16 community-based services under needs-based criteria  
17 established under paragraph (1)(A) of section  
18 1915(i) and who will receive home and community-  
19 based services pursuant to a State plan amendment  
20 under such subsection,”.

21 (e) ELIMINATION OF OPTION TO LIMIT NUMBER OF  
22 ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR  
23 GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA  
24 IS MODIFIED.—Paragraph (1) of section 1915(i) of such  
25 Act (42 U.S.C. 1396n(i)) is amended—

1           (1) by striking subparagraph (C) and inserting  
2 the following:

3                   “(C) PROJECTION OF NUMBER OF INDI-  
4 VIDUALS TO BE PROVIDED HOME AND COMMU-  
5 NITY-BASED SERVICES.—The State submits to  
6 the Secretary, in such form and manner, and  
7 upon such frequency as the Secretary shall  
8 specify, the projected number of individuals to  
9 be provided home and community-based serv-  
10 ices.”; and

11           (2) in subclause (II) of subparagraph (D)(ii),  
12 by striking “to be eligible for such services for a pe-  
13 riod of at least 12 months beginning on the date the  
14 individual first received medical assistance for such  
15 services” and inserting “to continue to be eligible for  
16 such services after the effective date of the modifica-  
17 tion and until such time as the individual no longer  
18 meets the standard for receipt of such services under  
19 such pre-modified criteria”.

20           (f) ELIMINATION OF OPTION TO WAIVE  
21 STATEWIDENESS.—Paragraph (3) of section 1915(i) of  
22 such Act (42 U.S.C. 1396n(3)) is amended by striking  
23 “section 1902(a)(1) (relating to statewideness) and”.

24           (g) EFFECTIVE DATE.—The amendments made by  
25 this section take effect on the first day of the first fiscal

1 year quarter that begins after the date of enactment of  
2 this Act.

3 **SEC. 102. INCREASE IN FEDERAL MEDICAL ASSISTANCE**  
4 **PERCENTAGE (FMAP) FOR THE PROVISION**  
5 **OF HOME AND COMMUNITY-BASED SERVICES**  
6 **UNDER MEDICAID THROUGH THE STATE**  
7 **PLAN AMENDMENT OPTION.**

8 (a) IN GENERAL.—Section 1905(b) of the Social Se-  
9 curity Act (42 U.S.C. 1396d(b)) is amended by adding  
10 at the end the following: “Notwithstanding the previous  
11 provisions of this subsection, the Federal medical assist-  
12 ance percentage with respect to amounts expended as  
13 medical assistance for home and community-based services  
14 provided through a State plan amendment that satisfies  
15 the requirements of section 1915(i) shall be the enhanced  
16 FMAP (as defined in section 2105(b)), but determined by  
17 substituting ‘10 percent’ for ‘30 percent’ in such section.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 subsection (a) shall apply to home and community-based  
20 services furnished on or after October 1, 2009.

21 **SEC. 103. ANNUAL REPORT ON USE OF MEDICAID STATE**  
22 **PLAN AMENDMENT OPTION FOR HOME AND**  
23 **COMMUNITY-BASED SERVICES.**

24 The Secretary of Health and Human Services shall  
25 submit to Congress an annual report on the extent to

1 which State Medicaid plans have adopted a State plan  
 2 amendment under section 1915(i) of the Social Security  
 3 Act (42 U.S.C. 1396n(i)), as amended by this title, for  
 4 medical assistance for home and community-based services  
 5 for elderly and disabled individuals. Each such report shall  
 6 include the number of beneficiaries who are provided serv-  
 7 ices under such an amendment and on changes made in  
 8 the use of waiver authority under section 1915(c) of such  
 9 Act (42 U.S.C. 1396n(c)) as a result of implementation  
 10 of such a State plan amendment.

11 **TITLE II—STATE GRANTS TO FA-**  
 12 **CILITATE HOME AND COMMU-**  
 13 **NITY-BASED SERVICES AND**  
 14 **PROMOTE HEALTH**

15 **SEC. 201. REAUTHORIZATION OF MEDICAID INVESTMENT**  
 16 **GRANTS AND EXPANSION OF PERMISSIBLE**  
 17 **USES IN ORDER TO FACILITATE THE PROVI-**  
 18 **SION OF HOME AND COMMUNITY-BASED AND**  
 19 **OTHER LONG-TERM CARE SERVICES.**

20 (a) 2-YEAR REAUTHORIZATION; INCREASED FUND-  
 21 ING.—Section 1903(z)(4)(A) of the Social Security Act  
 22 (42 U.S.C. 1396b(z)(4)(A)) is amended—

- 23 (1) in clause (i), by striking “and” at the end;  
 24 (2) in clause (ii), by striking the period at the  
 25 end and inserting “; and”; and

1           (3) by inserting after clause (ii), the following  
2 new clauses:

3                   “(iii) \$150,000,000 for fiscal year  
4                   2010; and

5                   “(iv) \$150,000,000 for fiscal year  
6                   2011.”.

7           (b) EXPANSION OF PERMISSIBLE USES.—Section  
8 1903(z)(2) of the Social Security Act (42 U.S.C.  
9 1396b(z)(2)) is amended by adding at the end the fol-  
10 lowing new subparagraphs:

11                   “(G)(i) Methods for ensuring the avail-  
12                   ability and accessibility of home- and commu-  
13                   nity-based services in the State, recognizing  
14                   multiple delivery options that take into account  
15                   differing needs of individuals, through the cre-  
16                   ation or designation (in consultation with orga-  
17                   nizations representing elderly individuals and  
18                   individuals of all ages with physical, mental,  
19                   cognitive, or intellectual impairments, and orga-  
20                   nizations representing the long-term care work-  
21                   force, including organized labor, and health  
22                   care and direct service providers) of one or  
23                   more statewide or regional public entities or  
24                   nonprofit organizations (such as fiscal inter-  
25                   mediaries, agencies with choice, home care com-

1 missions, public authorities, worker associa-  
2 tions, consumer-owned and controlled organiza-  
3 tions (including representatives of individuals  
4 with severe intellectual or cognitive impair-  
5 ment), area agencies on aging, independent liv-  
6 ing centers, aging and disability resource cen-  
7 ters, or other disability organizations) which  
8 may—

9 “(I) develop programs where qualified  
10 individuals provide home- and community-  
11 based services while solely or jointly em-  
12 ployed by recipients of such services;

13 “(II) facilitate the training and re-  
14 cruitment of qualified health and direct  
15 service professionals and consumers who  
16 use services;

17 “(III) recommend or develop a system  
18 to set wages and benefits, and recommend  
19 commensurate reimbursement rates;

20 “(IV) with meaningful ongoing in-  
21 volvement from consumers and workers (or  
22 their respective representatives), develop  
23 procedures for the appropriate screening of  
24 workers, create a registry or registries of  
25 available workers, including policies and

1 procedures to ensure no interruption of  
2 care for eligible individuals;

3 “(V) assist consumers in identifying  
4 workers;

5 “(VI) act as a fiscal intermediary;

6 “(VII) assist workers in finding em-  
7 ployment, including consumer-directed em-  
8 ployment;

9 “(VIII) provide funding for disability  
10 organizations, aging organizations, or  
11 other organizations, to assume roles that  
12 promote consumers’ ability to acquire the  
13 necessary skills for directing their own  
14 services and financial resources; or

15 “(IX) create workforce development  
16 plans on a regional or statewide basis (or  
17 both), to ensure a sufficient supply of  
18 qualified home and community-based serv-  
19 ices workers, including reviews and anal-  
20 yses of actual and potential worker short-  
21 ages, training and retention programs for  
22 home and community-based services work-  
23 ers (which may include, as determined ap-  
24 propriate by the State, allowing participa-  
25 tion in such training to count as an allow-

1           able work activity under the State tem-  
2           porary assistance for needy families pro-  
3           gram funded under part A of title IV), and  
4           plans to assist consumers with finding and  
5           retaining qualified workers.

6           “(ii) Nothing in clause (i) shall be con-  
7           strued as prohibiting the use of funds made  
8           available to carry out this subparagraph for  
9           start-up costs associated with any of the activi-  
10          ties described in subclauses (I) through (IX), as  
11          requiring any consumer to hire workers who are  
12          listed in a worker registry developed with such  
13          funds, or to limit the ability of consumers to  
14          hire or fire their own workers.

15          “(H) Methods for providing an integrated  
16          and efficient system of long-term care through  
17          a review of the Federal, State, local, and pri-  
18          vate long-term care resources, services, and  
19          supports available to elderly individuals and in-  
20          dividuals of all ages with physical, mental, cog-  
21          nitive, or intellectual impairments and the de-  
22          velopment and implementation of a plan to fully  
23          integrate such resources, services, and supports  
24          by aggregating such resources, services, and  
25          supports to create a consumer-centered and

1 cost-effective resource and delivery system and  
2 expanding the availability of home and commu-  
3 nity-based services, and that is designed to re-  
4 sult in administrative savings, consolidation of  
5 common activities, and the elimination of re-  
6 dundant processes.”.

7 (c) ALLOCATION OF FUNDS.—

8 (1) ELIMINATION OF CURRENT LAW REQUIRE-  
9 MENTS FOR ALLOCATION OF FUNDS.—Section  
10 1903(z)(4)(B) of the Social Security Act (42 U.S.C.  
11 1396b(z)(4)(B)) is amended by striking the second  
12 and third sentences.

13 (2) ASSURANCE OF FUNDS TO FACILITATE THE  
14 PROVISION OF HOME AND COMMUNITY-BASED SERV-  
15 ICES AND INTEGRATED SYSTEMS OF LONG-TERM  
16 CARE.—Section 1903(z)(4)(B) of the Social Security  
17 Act (42 U.S.C. 1396b(z)(4)(B)), as amended by  
18 paragraph (1), is amended by inserting after the  
19 first sentence the following new sentence: “Such  
20 method shall provide that 50 percent of such funds  
21 shall be allocated among States that design pro-  
22 grams to adopt the innovative methods described in  
23 subparagraph (G) or (H) (or both) of paragraph  
24 (2).”.

1 (d) RENAMING PROGRAM.—The heading of section  
2 1903(z) of such Act is amended by striking “TRANS-  
3 FORMATION” and inserting “INVESTMENT”.

4 (e) CLARIFICATION.—Such section is further amend-  
5 ed by adding at the end the following new paragraph:

6 “(6) CLARIFICATION OF PROTECTION OF BENE-  
7 FICIARIES.—Nothing in this section shall be con-  
8 strued as authorizing States to use payments pro-  
9 vided under this subsection for the purpose of lim-  
10 iting eligibility or benefits under this title.”.

11 (f) EFFECTIVE DATE.—The amendments made by  
12 this section take effect on October 1, 2009.

13 **SEC. 202. HEALTH PROMOTION GRANTS.**

14 (a) DEFINITIONS.—In this section:

15 (1) ELIGIBLE MEDICAID BENEFICIARY.—The  
16 term “eligible Medicaid beneficiary” means an indi-  
17 vidual who is enrolled in the State Medicaid plan  
18 under title XIX of the Social Security Act and—

19 (A) has attained the age of 60 and is not  
20 a resident of a nursing facility; or

21 (B) is an adult with a physical, mental,  
22 cognitive, or intellectual impairment.

23 (2) ELIGIBLE STATE.—The term “eligible  
24 State” means a State that submits an application to

1 the Secretary for a grant under this section, in such  
2 form and manner as the Secretary shall require.

3 (3) EVIDENCE- AND COMMUNITY-BASED  
4 HEALTH PROMOTION PROGRAM.—The term  
5 “evidence- and community-based health promotion  
6 program” means a community-based program (such  
7 as a program for chronic disease self-management,  
8 physical or mental activity, falls prevention, smoking  
9 cessation, or dietary modification) that has been ob-  
10 jectively evaluated and found to improve health out-  
11 comes or meet health promotion goals by preventing,  
12 delaying, or decreasing the severity of physical, men-  
13 tal, cognitive, or intellectual impairment and that  
14 meets generally accepted standards for best profes-  
15 sional practice.

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

18 (b) AUTHORITY TO CONDUCT DEMONSTRATION  
19 PROJECT.—The Secretary shall award grants on a com-  
20 petitive basis to eligible States to conduct in accordance  
21 with this section an evidence- and community-based health  
22 promotion program that is designed to achieve the fol-  
23 lowing objectives with respect to eligible Medicaid bene-  
24 ficiaries:

1           (1) LIFESTYLE CHANGES.—To empower eligible  
2 Medicaid beneficiaries to take more control over  
3 their own health through lifestyle changes that have  
4 proven effective in reducing the effects of chronic  
5 disease and slowing the progression of disability.

6           (2) DIFFUSION.—To mobilize the Medicaid,  
7 aging, disability, public health, and nonprofit net-  
8 works at the State and local levels to accelerate the  
9 translation of credible research into practice through  
10 the deployment of low-cost evidence-based health  
11 promotion and disability prevention programs at the  
12 community level.

13          (c) SELECTION AND AMOUNT OF GRANT AWARDS.—  
14 In awarding grants to eligible States under this section  
15 and determining the amount of the awards, the Secretary  
16 shall—

17           (1) take into consideration the manner and ex-  
18 tent to which the eligible State proposes to achieve  
19 the objectives specified in subsection (b); and

20           (2) give preference to eligible States pro-  
21 posing—

22           (A) programs through public service pro-  
23 vider organizations or other organizations with  
24 expertise in serving eligible Medicaid bene-  
25 ficiaries;

1 (B) strong State-level collaboration across,  
2 Medicaid agencies, State units on aging, State  
3 independent living councils, State associations  
4 of Area Agencies on Aging, and State agencies  
5 responsible for public health; or

6 (C) interventions that have already dem-  
7 onstrated effectiveness and replicability in a  
8 community-based, nonmedical setting.

9 (d) USE OF FUNDS.—An eligible State awarded a  
10 grant under this section shall use the funds awarded to  
11 develop, implement, and sustain high quality evidence- and  
12 community-based health promotion programs. As a condi-  
13 tion of being awarded such a grant, an eligible State shall  
14 agree to—

15 (1) implement such programs in at least 3 geo-  
16 graphic areas of the State; and

17 (2) develop the infrastructure and partnerships  
18 that will be necessary over the long-term to effec-  
19 tively embed evidence- and community-based health  
20 promotion programs for eligible Medicaid bene-  
21 ficiaries within the statewide health, aging, dis-  
22 ability, and long-term care systems.

23 (e) TECHNICAL ASSISTANCE.—The Secretary shall  
24 provide assistance to eligible States awarded grants under  
25 this section, subgrantees and their partners, program or-

1 ganizers, and others in developing evidence- and commu-  
2 nity-based health promotion programs.

3 (f) PAYMENTS TO ELIGIBLE STATES; CARRYOVER OF  
4 UNUSED GRANT AMOUNTS.—

5 (1) PAYMENTS.—For each calendar quarter of  
6 a fiscal year that begins during the period for which  
7 an eligible State is awarded a grant under this sec-  
8 tion, the Secretary shall pay to the State from its  
9 grant award for such fiscal year an amount equal to  
10 the lesser of—

11 (A) the amount of qualified expenditures  
12 made by the State for such quarter; or

13 (B) the total amount remaining in such  
14 grant award for such fiscal year (taking into  
15 account the application of paragraph (2)).

16 (2) CARRYOVER OF UNUSED AMOUNTS.—Any  
17 portion of a State grant award for a fiscal year  
18 under this section remaining available at the end of  
19 such fiscal year shall remain available for making  
20 payments to the State for the next 4 fiscal years,  
21 subject to paragraph (3).

22 (3) REAWARDING OF CERTAIN UNUSED  
23 AMOUNTS.—In the case of a State that the Sec-  
24 retary determines has failed to meet the conditions  
25 for continuation of a demonstration project under

1 this section in a succeeding year, the Secretary shall  
2 rescind the grant award for each succeeding year,  
3 together with any unspent portion of an award for  
4 prior years, and shall add such amounts to the ap-  
5 propriation for the immediately succeeding fiscal  
6 year for grants under this section.

7 (4) PREVENTING DUPLICATION OF PAYMENT.—  
8 The payment under a demonstration project with re-  
9 spect to qualified expenditures shall be in lieu of any  
10 payment with respect to such expenditures that  
11 would otherwise be paid to the State under section  
12 1903(a) of the Social Security Act (42 U.S.C.  
13 1396a(a)). Nothing in the previous sentence shall be  
14 construed as preventing a State from being paid  
15 under such section for expenditures in a grant year  
16 for which payment is available under such section  
17 1903(a) after amounts available to pay for such ex-  
18 penditures under the grant awarded to the State  
19 under this section for the fiscal year have been ex-  
20 hausted.

21 (g) EVALUATION.—Not later than 3 years after the  
22 date on which the first grant is awarded to an eligible  
23 State under this section, the Secretary shall, by grant,  
24 contract, or interagency agreement, conduct an evaluation  
25 of the demonstration projects carried out under this sec-

1 tion that measures the health-related, quality of life, and  
2 cost outcomes for eligible Medicaid beneficiaries and in-  
3 cludes information relating to the quality, infrastructure,  
4 sustainability, and effectiveness of such projects.

5 (h) APPROPRIATIONS.—There are appropriated, from  
6 any funds in the Treasury not otherwise appropriated, the  
7 following amounts to carry out this section:

8 (1) GRANTS TO STATES.—For grants to States,  
9 to remain available until expended—

- 10 (A) \$4,000,000 for fiscal year 2010;  
11 (B) \$6,000,000 for fiscal year 2011;  
12 (C) \$8,000,000 for fiscal year 2012;  
13 (D) \$10,000,000 for fiscal year 2013; and  
14 (E) \$12,000,000 for fiscal year 2014.

15 (2) TECHNICAL ASSISTANCE.—For the provi-  
16 sion of technical assistance through such center in  
17 accordance with subsection (e)—

- 18 (A) \$800,000 for fiscal year 2010;  
19 (B) \$1,200,000 for fiscal year 2011;  
20 (C) \$1,600,000 for fiscal year 2012;  
21 (D) \$2,000,000 for fiscal year 2013; and  
22 (E) \$2,400,000 for fiscal year 2014.

23 (3) EVALUATION.—For conducting the evalua-  
24 tion required under subsection (g), \$4,000,000 for  
25 fiscal year 2012.

1 **TITLE III—PROMOTING AND**  
2 **PROTECTING COMMUNITY**  
3 **LIVING**

4 **SEC. 301. MANDATORY APPLICATION OF SPOUSAL IMPOV-**  
5 **ERISHMENT PROTECTIONS TO RECIPIENTS**  
6 **OF HOME AND COMMUNITY-BASED SERVICES.**

7 (a) IN GENERAL.—Section 1924(h)(1)(A) of the So-  
8 cial Security Act (42 U.S.C. 1396r–5(h)(1)(A)) is amend-  
9 ed by striking “(at the option of the State)is described  
10 in section 1902(a)(10)(A)(ii)(VI)” and inserting “is eligi-  
11 ble for medical assistance for home and community-based  
12 services under subsection (c), (d), (e), (i), or (k) of section  
13 1915”.

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

16 **SEC. 302. EXCLUSION OF 6 MONTHS OF AVERAGE COST OF**  
17 **NURSING FACILITY SERVICES FROM ASSETS**  
18 **OR RESOURCES FOR PURPOSES OF ELIGI-**  
19 **BILITY FOR HOME AND COMMUNITY-BASED**  
20 **SERVICES.**

21 (a) IN GENERAL.—Section 1917 of the Social Secu-  
22 rity Act (42 U.S.C. 1396p) is amended by adding at the  
23 end the following new subsection:

24 “(i) EXCLUSION OF 6 MONTHS OF AVERAGE COST  
25 OF NURSING FACILITY SERVICES FROM HOME AND COM-

1 COMMUNITY-BASED SERVICES ELIGIBILITY DETERMINA-  
2 TIONS.—Notwithstanding any other provision of law, each  
3 State shall exclude from any determination of an individ-  
4 ual’s assets or resources, for purposes of determining the  
5 eligibility of the individual for medical assistance for home  
6 and community-based services under subsection (c), (d),  
7 (e), (i), or (k) of section 1915 (if a State imposes an limi-  
8 tation on assets or resources for purposes of eligibility for  
9 such services), an amount equal to six times the amount  
10 applicable under subsection (c)(1)(E)(ii)(II) (at the time  
11 such determination is made).”.

12 (b) RULE OF CONSTRUCTION.—Nothing in the  
13 amendment made by subsection (a) shall be construed as  
14 affecting a State’s option to apply less restrictive meth-  
15 odologies under section 1902(r)(2) for purposes of deter-  
16 mining income and resource eligibility for individuals spec-  
17 ified in that section.

18 (c) EFFECTIVE DATE.—The amendment made by  
19 subsection (a) takes effect on October 1, 2009.

## 20 **TITLE IV—MISCELLANEOUS**

### 21 **SEC. 401. IMPROVED DATA COLLECTION.**

22 (a) SECRETARIAL REQUIREMENT TO REVISE DATA  
23 REPORTING FORMS AND SYSTEMS TO ENSURE UNIFORM  
24 AND CONSISTENT REPORTING BY STATES.—Not later  
25 than 6 months after the date of enactment of this Act,

1 the Secretary of Health and Human Services, acting  
2 through the Administrator of the Centers for Medicare &  
3 Medicaid Services, shall revise CMS Form 372, CMS  
4 Form 64, and CMS Form 64.9 (or any successor forms)  
5 and the Medicaid Statistical Information Statistics  
6 (MSIS) claims processing system to ensure that, with re-  
7 spect to any State that provides medical assistance to indi-  
8 viduals under a waiver or State plan amendment approved  
9 under subsection (c), (d), (e), (i), (j), or (k) of section  
10 1915 of the Social Security Act (42 U.S.C. 1396n), the  
11 State reports to the Secretary, not less than annually and  
12 in a manner that is consistent and uniform for all States  
13 (and, in the case of medical assistance provided under a  
14 waiver or State plan amendment under any such sub-  
15 section for home- and community-based services, in a  
16 manner that is consistent and uniform with the data re-  
17 quired to be reported for purposes of monitoring or evalu-  
18 ating the provision of such services under the State plan  
19 or under a waiver approved under section 1115 of the So-  
20 cial Security Act (42 U.S.C. 1315) to provide such serv-  
21 ices) the following data:

22           (1) The total number of individuals provided  
23           medical assistance for such services under each waiv-  
24           er to provide such services conducted by the State

1 and each State plan amendment option to provide  
2 such services elected by the State.

3 (2) The total amount of expenditures incurred  
4 for such services under each such waiver and State  
5 plan amendment option, disaggregated by expendi-  
6 tures for medical assistance and administrative or  
7 other expenditures.

8 (3) The types of such services provided by the  
9 State under each such waiver and State plan amend-  
10 ment option.

11 (4) The number of individuals on a waiting list  
12 (if any) to be enrolled under each such waiver and  
13 State plan amendment option or to receive services  
14 under each such waiver and State plan amendment  
15 option.

16 (5) With respect to home health services, pri-  
17 vate duty nursing services, case management serv-  
18 ices, and rehabilitative services provided under each  
19 such waiver and State plan amendment option, the  
20 total number of individuals provided each type of  
21 such services, the total amount of expenditures in-  
22 curred for each type of services, and whether each  
23 such service was provided for long-term care or  
24 acute care purposes.

1 (b) PUBLIC AVAILABILITY.—Not later than 6 months  
2 after the date of enactment of this Act, the Secretary of  
3 Health and Human Services, acting through the Adminis-  
4 trator of the Centers for Medicare & Medicaid Services,  
5 shall make publicly available, in a State identifiable man-  
6 ner, the data described in subsection (a) through an Inter-  
7 net website and otherwise as the Secretary determines ap-  
8 propriate.

9 **SEC. 402. GAO REPORT ON MEDICAID HOME HEALTH SERV-**  
10 **ICES AND THE EXTENT OF CONSUMER SELF-**  
11 **DIRECTION OF SUCH SERVICES.**

12 (a) STUDY.—The Comptroller General of the United  
13 States shall study the provision of home health services  
14 under State Medicaid plans under title XIX of the Social  
15 Security Act. Such study shall include an examination of  
16 the extent to which there are variations among the States  
17 with respect to the provision of home health services in  
18 general under State Medicaid plans, including the extent  
19 to which such plans impose limits on the types of services  
20 that a home health aide may provide a Medicaid bene-  
21 ficiary and the extent to which States offer consumer self-  
22 direction of such services or allow for other consumer-ori-  
23 ented policies with respect to such services.

24 (b) REPORT.—Not later than 1 year after the date  
25 of enactment of this Act, the Comptroller General shall

1 submit a report to Congress on the results of the study  
2 conducted under subsection (a), together with such rec-  
3 ommendations for legislative or administrative changes as  
4 the Comptroller General determines appropriate in order  
5 to provide home health services under State Medicaid  
6 plans in accordance with identified best practices for the  
7 provision of such services.

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