

111TH CONGRESS
1ST SESSION

H. R. 868

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

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

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 2009”.

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

1 (1) Direct support professionals (including
2 workers referred to as direct support workers, direct
3 care workers, personal assistants, personal attend-
4 ants, paraprofessionals) are the primary providers of
5 long term care services for millions of individuals
6 who have physical or mental disabilities. Direct sup-
7 port professionals provide assistance with activities
8 of daily living, instrumental activities of daily living,
9 assistance with rehabilitation, habilitation, training
10 needs and other tasks. All provide essential supports
11 that help keep individuals with disabilities connected
12 to their communities.

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

21 (3) Throughout the nation, there is a critical
22 shortage of direct support professionals. Vacancy
23 and turn over rates are high. In many parts of the
24 country, individuals with disabilities are unable to
25 access the services they need, thereby jeopardizing

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 disabili-
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 by adding
 8 at the end the following new section:

9 “DIRECT SUPPORT PROFESSIONAL WAGE ENHANCEMENT
 10 PLAN

11 “SEC. 1942. (a) STATE OPTION.—As a condition for
 12 the receipt of increased funding described in subsection
 13 (f), a State is required to provide for the implementation
 14 of a direct support professional wage enhancement plan
 15 under this section.

16 “(b) DIRECT SUPPORT PROFESSIONAL WAGE EN-
 17 HANCEMENT PLAN.—

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

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

1 “(B) CONTENTS.—

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

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

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

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

21 “(2) MODIFICATION OF PLAN.—Nothing in this
22 section shall be construed as preventing a State
23 from time to time and with the approval of the Sec-
24 retary from modifying a direct support professional
25 wage enhancement plan so long as such plan, as

1 modified, continues to meet the requirements of
2 paragraph (1).

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

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

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

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

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

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

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

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

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

20 “(8) A description of the stakeholders and col-
21 laborative process used consistent with subsection
22 (d) to develop the plan and the means by which such
23 collaboration shall continue during the implementa-
24 tion of the plan.

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

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

15 “(1) targeted individuals with disabilities and
16 family representatives;

17 “(2) targeted direct support professionals;

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

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

24 “(e) ANNUAL ASSESSMENT AND REPORT.—

25 “(1) IN GENERAL.—A State shall—

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

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

8 “(2) CONTENTS.—Each such assessment shall
9 include the following:

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

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

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

21 “(D) A review and assessment of State ac-
22 tivities to coordinate the plan with other activi-
23 ties in the State to improve and stabilize the di-
24 rect support professional workforce.

1 “(E) Recommendations for improving the
2 plan.

3 “(F) Such other information as the Sec-
4 retary may specify.

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

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

18 “(2) LIMITATION.—

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

22 “(B) TREATMENT OF EMPLOYEE BENE-
23 FITS AND SALARY RELATED BENEFITS.—For
24 purposes of subparagraph (A), payments for
25 costs of employee benefits and other salary re-

1 lated benefits (including mandatory employment
2 taxes and benefits) shall be treated as payments
3 to increase the wages of targeted direct support
4 professionals so long as payments attributable
5 to such non-wage benefits do not exceed 20 per-
6 cent of the total amounts that increase the
7 wages of targeted direct support professionals.

8 “(3) DEFINITIONS.—For purposes of this sub-
9 section:

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

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

crease, paid in the year to reference direct support professionals who are employed by the State or, if there are no such employees, to reference direct support professionals who are employed by local governments in the State, or, when necessary to meet the purpose of the plan, any other reference wage rate defined by the State and as approved by the Secretary.

“(C) BASE-YEAR AVERAGE TARGETED DIRECT SUPPORT PROFESSIONAL HOURLY WAGE RATE.—The term ‘average targeted direct support professional hourly wage rate’ means, for a State, the average direct support professional hourly wage rate (as defined in subparagraph (D)) paid to targeted direct support professionals under the State plan in the 12-month-period immediately preceding the 5-year implementation period.

“(D) DIRECT SUPPORT PROFESSIONAL HOURLY WAGE RATE.—The term ‘direct support professional hourly wage rate’ means—

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

“(ii) mandatory employment taxes and benefits (as defined in subparagraph

1 (F)) paid (as computed and applied on an
2 hourly basis) with respect to such employ-
3 ment.

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

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

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

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

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

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

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

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

19 “(h) GAO STUDY.—

20 “(1) STUDY.—The Comptroller General of the
21 United States shall conduct a study concerning the
22 wage equalization and recruitment and retention of
23 direct support professionals who are providing serv-
24 ices and supports to individuals with disabilities.

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

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

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

1 mental health or mental retardation professionals,
2 and educational technicians.

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

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

19 “(4) INDIVIDUAL WITH A DISABILITY.—The
20 term ‘individual with a disability’ means an indi-
21 vidual who meets (or is regarded as meeting) the cri-
22 teria for being disabled under the supplemental secu-
23 rity income program under title XVI. Such term in-
24 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 1942(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 1942 of the Social Security Act, as
4 added by subsection (a).

○