

111TH CONGRESS
1ST SESSION

S. 1256

To amend title XIX of the Social Security Act to establish financial incentives for States to expand the provision of long-term services and supports to Medicaid beneficiaries who do not reside in an institution, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2009

Ms. CANTWELL (for herself and Mr. KOHL) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to establish financial incentives for States to expand the provision of long-term services and supports to Medicaid beneficiaries who do not reside in an institution, 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 “Home and Community Balanced Incentives Act of
6 2009”.

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

Sec. 1. Short title; table of contents.

TITLE I—BALANCING INCENTIVES

Sec. 101. Enhanced FMAP for expanding the provision of non-institutionally-based long-term services and supports.

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

Sec. 201. Removal of barriers to providing home and community-based services under State plan amendment option for individuals in need.

Sec. 202. Mandatory application of spousal impoverishment protections to recipients of home and community-based services.

Sec. 203. State authority to elect to exclude up to 6 months of average cost of nursing facility services from assets or resources for purposes of eligibility for home and community-based services.

TITLE III—COORDINATION OF HOME AND COMMUNITY-BASED WAIVERS

Sec. 301. Streamlined process for combined waivers under subsections (b) and (c) of section 1915.

TITLE I—BALANCING INCENTIVES

5 SEC. 101. ENHANCED FMAP FOR EXPANDING THE PROVI- 6 SION OF NON-INSTITUTIONALLY-BASED 7 LONG-TERM SERVICES AND SUPPORTS.

8 (a) ENHANCED FMAP TO ENCOURAGE EXPAN-
 9 SION.—Section 1905 of the Social Security Act (42 U.S.C.
 10 1396d) is amended—

11 (1) in the first sentence of subsection (b)—

12 (A) by striking “, and (4)” and inserting
 13 “, (4)”; and

14 (B) by inserting before the period the fol-
 15 lowing: “, and (5) in the case of a balancing in-

1 centive payment State, as defined in subsection
 2 (y)(1), that meets the conditions described in
 3 subsection (y)(2), the Federal medical assist-
 4 ance percentage shall be increased by the appli-
 5 cable number of percentage points determined
 6 under subsection (y)(3) for the State with re-
 7 spect to medical assistance described in sub-
 8 section (y)(4)”; and

9 (2) by adding at the end the following new sub-
 10 section:

11 “(y) STATE BALANCING INCENTIVE PAYMENTS PRO-
 12 GRAM.—For purposes of clause (5) of the first sentence
 13 of subsection (b):

14 “(1) BALANCING INCENTIVE PAYMENT
 15 STATE.—A balancing incentive payment State is a
 16 State—

17 “(A) in which less than 50 percent of the
 18 total expenditures for medical assistance for fis-
 19 cal year 2009 for long-term services and sup-
 20 ports (as defined by the Secretary, subject to
 21 paragraph (5)) are for non-institutionally-based
 22 long-term services and supports described in
 23 paragraph (5)(B);

1 “(B) that submits an application and
2 meets the conditions described in paragraph
3 (2); and

4 “(C) that is selected by the Secretary to
5 participate in the State balancing incentive pay-
6 ment program established under this sub-
7 section.

8 “(2) CONDITIONS.—The conditions described in
9 this paragraph are the following:

10 “(A) APPLICATION.—The State submits an
11 application to the Secretary that includes the
12 following:

13 “(i) A description of the availability of
14 non-institutionally-based long-term services
15 and supports described in paragraph
16 (5)(B) available (for fiscal years beginning
17 with fiscal year 2009).

18 “(ii) A description of eligibility re-
19 quirements for receipt of such services.

20 “(iii) A projection of the number of
21 additional individuals that the State ex-
22 pects to provide with such services to dur-
23 ing the 5-fiscal-year period that begins
24 with fiscal year 2011.

1 “(iv) An assurance of the State’s com-
2 mitment to a consumer-directed long-term
3 services and supports system that values
4 quality of life in addition to quality of care
5 and in which beneficiaries are empowered
6 to choose providers and direct their own
7 care as much as possible.

8 “(v) A proposed budget that details
9 the State’s plan to expand and diversify
10 medical assistance for non-institutionally-
11 based long-term services and supports de-
12 scribed in paragraph (5)(B) during such 5-
13 fiscal-year period, and that includes—

14 “(I) a description of the new or
15 expanded offerings of such services
16 that the State will provide; and

17 “(II) the projected costs of the
18 services identified in subclause (I).

19 “(vi) A description of how the State
20 intends to achieve the target spending per-
21 centage applicable to the State under sub-
22 paragraph (B).

23 “(vii) An assurance that the State will
24 not use Federal funds, revenues described
25 in section 1903(w)(1), or revenues ob-

1 tained through the imposition of bene-
2 ficiary cost-sharing for medical assistance
3 for non-institutionally-based long-term
4 services and supports described in para-
5 graph (5)(B) for the non-Federal share of
6 expenditures for medical assistance de-
7 scribed in paragraph (4).

8 “(B) TARGET SPENDING PERCENTAGES.—

9 “(i) In the case of a balancing incen-
10 tive payment State in which less than 25
11 percent of the total expenditures for home
12 and community-based services under the
13 State plan and the various waiver authori-
14 ties for fiscal year 2009 are for such serv-
15 ices, the target spending percentage for the
16 State to achieve by not later than October
17 1, 2015, is that 25 percent of the total ex-
18 penditures for home and community-based
19 services under the State plan and the var-
20 ious waiver authorities are for such serv-
21 ices.

22 “(ii) In the case of any other bal-
23 ancing incentive payment State, the target
24 spending percentage for the State to
25 achieve by not later than October 1, 2015,

1 is that 50 percent of the total expenditures
2 for home and community-based services
3 under the State plan and the various waiver
4 authorities are for such services.

5 “(C) MAINTENANCE OF ELIGIBILITY RE-
6 QUIREMENTS.—The State does not apply eligi-
7 bility standards, methodologies, or procedures
8 for determining eligibility for medical assistance
9 for non-institutionally-based long-term services
10 and supports described in paragraph (5)(B))
11 that are more restrictive than the eligibility
12 standards, methodologies, or procedures in ef-
13 fect for such purposes on December 31, 2010.

14 “(D) USE OF ADDITIONAL FUNDS.—The
15 State agrees to use the additional Federal funds
16 paid to the State as a result of this subsection
17 only for purposes of providing new or expanded
18 offerings of non-institutionally-based long-term
19 services and supports described in paragraph
20 (5)(B) (including expansion through offering
21 such services to increased numbers of bene-
22 ficiaries of medical assistance under this title).

23 “(E) STRUCTURAL CHANGES.—The State
24 agrees to make, not later than the end of the
25 6-month period that begins on the date the

State submits and application under this paragraph, such changes to the administration of the State plan (and, if applicable, to waivers approved for the State that involve the provision of long-term care services and supports) as the Secretary determines, by regulation or otherwise, are essential to achieving an improved balance between the provision of non-institutionally-based long-term services and supports described in paragraph (5)(B) and other long-term services and supports, and which shall include the following:

“(i) ‘NO WRONG DOOR’—SINGLE ENTRY POINT SYSTEM.—Development of a statewide system to enable consumers to access all long-term services and supports through an agency, organization, coordinated network, or portal, in accordance with such standards as the State shall establish and that—

“(I) shall require such agency, organization, network, or portal to provide—

“(aa) consumers with information regarding the availability

1 of such services, how to apply for
2 such services, and other referral
3 services; and

4 “(bb) information regarding,
5 and make recommendations for,
6 providers of such services; and

7 “(II) may, at State option, per-
8 mit such agency, organization, net-
9 work, or portal to—

10 “(aa) determine financial
11 and functional eligibility for such
12 services and supports; and

13 “(bb) provide or refer eligi-
14 ble individuals to services and
15 supports otherwise available in
16 the community (under programs
17 other than the State program
18 under this title), such as housing,
19 job training, and transportation.

20 “(ii) PRESUMPTIVE ELIGIBILITY.—At
21 the option of the State, provision of a 60-
22 day period of presumptive eligibility for
23 medical assistance for non-institutionally-
24 based long-term services and supports de-
25 scribed in paragraph (5)(B) for any indi-

vidual whom the State has reason to believe will qualify for such medical assistance (provided that any expenditures for such medical assistance during such period are disregarded for purposes of determining the rate of erroneous excess payments for medical assistance under section 1903(u)(1)(D)).

“(iii) CASE MANAGEMENT.—Development, in accordance with guidance from the Secretary, of conflict-free case management services to—

“(I) address transitioning from receipt of institutionally-based long-term services and supports described in paragraph (5)(A) to receipt of non-institutionally-based long-term services and supports described in paragraph (5)(B); and

“(II) in conjunction with the beneficiary, assess the beneficiary’s needs and, if appropriate, the needs of family caregivers for the beneficiary, and develop a service plan, arrange for services and supports, support the

1 beneficiary (and, if appropriate, the
2 caregivers) in directing the provision
3 of services and supports, for the bene-
4 ficiary, and conduct ongoing moni-
5 toring to assure that services and sup-
6 ports are delivered to meet the bene-
7 ficiary's needs and achieve intended
8 outcomes.

9 “(iv) CORE STANDARDIZED ASSESS-
10 MENT INSTRUMENTS.—Development of
11 core standardized assessment instruments
12 for determining eligibility for non-institu-
13 tionally-based long-term services and sup-
14 ports described in paragraph (5)(B), which
15 shall be used in a uniform manner
16 throughout the State, to—

17 “(I) assess a beneficiary's eligi-
18 bility and functional level in terms of
19 relevant areas that may include med-
20 ical, cognitive, and behavioral status,
21 as well as daily living skills, and voca-
22 tional and communication skills;

23 “(II) based on the assessment
24 conducted under subclause (I), deter-
25 mine a beneficiary's needs for train-

1 ing, support services, medical care,
2 transportation, and other services,
3 and develop an individual service plan
4 to address such needs;

5 “(III) conduct ongoing moni-
6 toring based on the service plan; and

7 “(IV) require reporting of collect
8 data for purposes of comparison
9 among different service models.

10 “(F) DATA COLLECTION.—Collecting from
11 providers of services and through such other
12 means as the State determines appropriate the
13 following data:

14 “(i) SERVICES DATA.—Services data
15 from providers of non-institutionally-based
16 long-term services and supports described
17 in paragraph (5)(B) on a per-beneficiary
18 basis and in accordance with such stand-
19 ardized coding procedures as the State
20 shall establish in consultation with the Sec-
21 retary.

22 “(ii) QUALITY DATA.—Quality data
23 on a selected set of core quality measures
24 agreed upon by the Secretary and the
25 State that are linked to population-specific

1 outcomes measures and accessible to pro-
 2 viders.

3 “(iii) OUTCOMES MEASURES.—Out-
 4 comes measures data on a selected set of
 5 core population-specific outcomes measures
 6 agreed upon by the Secretary and the
 7 State that are accessible to providers and
 8 include—

9 “(I) measures of beneficiary and
 10 family caregiver experience with pro-
 11 viders;

12 “(II) measures of beneficiary and
 13 family caregiver satisfaction with serv-
 14 ices; and

15 “(III) measures for achieving de-
 16 sired outcomes appropriate to a spe-
 17 cific beneficiary, including employ-
 18 ment, participation in community life,
 19 health stability, and prevention of loss
 20 in function.

21 “(3) APPLICABLE NUMBER OF PERCENTAGE
 22 POINTS INCREASE IN FMAP.—The applicable number
 23 of percentage points are—

24 “(A) in the case of a balancing incentive
 25 payment State subject to the target spending

1 percentage described in paragraph (2)(B)(i), 5
 2 percentage points; and

3 “(B) in the case of any other balancing in-
 4 centive payment State, 2 percentage points.

5 “(4) ELIGIBLE MEDICAL ASSISTANCE EXPENDI-
 6 TURES.—

7 “(A) IN GENERAL.—Subject to subpara-
 8 graph (B), medical assistance described in this
 9 paragraph is medical assistance for non-institu-
 10 tionally-based long-term services and supports
 11 described in paragraph (5)(B) that is provided
 12 during the period that begins on October 1,
 13 2011, and ends on September 30, 2015.

14 “(B) LIMITATION ON PAYMENTS.—In no
 15 case may the aggregate amount of payments
 16 made by the Secretary to balancing incentive
 17 payment States under this subsection during
 18 the period described in subparagraph (A), or to
 19 a State to which paragraph (6) of the first sen-
 20 tence of subsection (b) applies, exceed
 21 \$3,000,000,000.

22 “(5) LONG-TERM SERVICES AND SUPPORTS DE-
 23 FINED.—In this subsection, the term ‘long-term
 24 services and supports’ has the meaning given that
 25 term by Secretary and shall include the following:

1 “(A) INSTITUTIONALLY-BASED LONG-TERM
2 SERVICES AND SUPPORTS.—Services provided
3 in an institution, including the following:

4 “(i) Nursing facility services.

5 “(ii) Services in an intermediate care
6 facility for the mentally retarded described
7 in subsection (a)(15).

8 “(B) NON-INSTITUTIONALLY-BASED LONG-
9 TERM SERVICES AND SUPPORTS.—Services not
10 provided in an institution, including the fol-
11 lowing:

12 “(i) Home and community-based serv-
13 ices provided under subsection (c), (d), or
14 (i), of section 1915 or under a waiver
15 under section 1115.

16 “(ii) Home health care services.

17 “(iii) Personal care services.

18 “(iv) Services described in subsection
19 (a)(26) (relating to PACE program serv-
20 ices).

21 “(v) Self-directed personal assistance
22 services described in section 1915(j)”.

23 (b) ENHANCED FMAP FOR CERTAIN STATES TO
24 MAINTAIN THE PROVISION OF HOME AND COMMUNITY-
25 BASED SERVICES.—The first sentence of section 1905(b)

1 of such Act (42 U.S.C. 1396d (b)), as amended by sub-
 2 section (a), is amended

3 (1) by striking “, and (5)” and inserting “,
 4 (5)”;

5 (2) by inserting before the period the following:
 6 “, and (6) in the case of a State in which at least
 7 50 percent of the total expenditures for medical as-
 8 sistance for fiscal year 2009 for long-term services
 9 and supports (as defined by the Secretary for pur-
 10 poses of subsection (y)) are for non-institutionally-
 11 based long-term services and supports described in
 12 subsection (y)(5)(B), and which satisfies the require-
 13 ments of subparagraphs (A) (other than clauses (iii),
 14 (v), and (vi)), (C), and (F) of subsection (y)(2), and
 15 has implemented the structural changes described in
 16 each clause of subparagraph (E) of that subsection,
 17 the Federal medical assistance percentage shall be
 18 increased by 1 percentage point with respect to med-
 19 ical assistance described in subparagraph (A) of sub-
 20 section (y)(4) (but subject to the limitation described
 21 in subparagraph (B) of that subsection)”.

22 (c) GRANTS TO SUPPORT STRUCTURAL CHANGES.—

23 (1) IN GENERAL.—The Secretary of Health and
 24 Human Services shall award grants to States for the
 25 following purposes:

1 (A) To support the development of com-
2 mon national set of coding methodologies and
3 databases related to the provision of non-insti-
4 tutionally-based long-term services and supports
5 described in paragraph (5)(B) of section
6 1905(y) of the Social Security Act (as added by
7 subsection (a)).

8 (B) To make structural changes described
9 in paragraph (2)(E) of section 1905(y) to the
10 State Medicaid program.

11 (2) PRIORITY.—In awarding grants for the pur-
12 pose described in paragraph (1)(A), the Secretary of
13 Health and Human Services shall give priority to
14 States in which at least 50 percent of the total ex-
15 penditures for medical assistance under the State
16 Medicaid program for fiscal year 2009 for long-term
17 services and supports, as defined by the Secretary
18 for purposes of section 1905(y) of the Social Secu-
19 rity Act, are for non-institutionally-based long-term
20 services and supports described in paragraph (5)(B)
21 of such section.

22 (3) COLLABORATION.—States awarded a grant
23 for the purpose described in paragraph (1)(A) shall
24 collaborate with other States, the National Gov-
25 ernor's Association, the National Conference of

1 State Legislatures, the National Association of State
 2 Medicaid Directors, the National Association of
 3 State Directors of Developmental Disabilities, and
 4 other appropriate organizations in developing speci-
 5 fications for a common national set of coding meth-
 6 odologies and databases.

7 (4) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated to carry out
 9 this subsection, such sums as may be necessary for
 10 each of fiscal years 2010 through 2012.

11 (d) AUTHORITY FOR INDIVIDUALIZED BUDGETS
 12 UNDER WAIVERS TO PROVIDE HOME AND COMMUNITY-
 13 BASED SERVICES.—In the case of any waiver to provide
 14 home and community-based services under subsection (c)
 15 or (d) of section 1915 of the Social Security Act (42
 16 U.S.C. 1396n) or section 1115 of such Act (42 U.S.C.
 17 1315), that is approved or renewed after the date of enact-
 18 ment of this Act, the Secretary of Health and Human
 19 Services shall permit a State to establish individualized
 20 budgets that identify the dollar value of the services and
 21 supports to be provided to an individual under the waiver.

22 (e) OVERSIGHT AND ASSESSMENT.—

23 (1) DEVELOPMENT OF STANDARDIZED REPORT-
 24 ING REQUIREMENTS.—

(A) STANDARDIZATION OF DATA AND OUT-
 COME MEASURES.—The Secretary of Health
 and Human Services shall consult with States
 and the National Governor’s Association, the
 National Conference of State Legislatures, the
 National Association of State Medicaid Direc-
 tors, the National Association of State Direc-
 tors of Developmental Disabilities, and other
 appropriate organizations to develop specifica-
 tions for standardization of—

(i) reporting of assessment data for
 long-term services and supports (as defined
 by the Secretary for purposes of section
 1905(y)(5) of the Social Security Act) for
 each population served, including informa-
 tion standardized for purposes of certified
 EHR technology (as defined in section
 1903(t)(3)(A) of the Social Security Act
 (42 U.S.C. 1396b(t)(3)(A)) and under
 other electronic medical records initiatives;
 and

(ii) outcomes measures that track as-
 sessment processes for long-term services
 and supports (as so defined) for each such
 population that maintain and enhance indi-

1 vidual function, independence, and sta-
2 bility.

3 (2) ADMINISTRATION OF HOME AND COMMU-
4 NITY SERVICES.—The Secretary of Health and
5 Human Services shall promulgate regulations to en-
6 sure that all States develop service systems that are
7 designed to—

8 (A) allocate resources for services in a
9 manner that is responsive to the changing
10 needs and choices of beneficiaries receiving non-
11 institutionally-based long-term services and sup-
12 ports described in paragraph (5)(B) of section
13 1905(y) of the Social Security Act (as added by
14 subsection (a)) (including such services and
15 supports that are provided under programs
16 other the State Medicaid program), and that
17 provides strategies for beneficiaries receiving
18 such services to maximize their independence;

19 (B) provide the support and coordination
20 needed for a beneficiary in need of such services
21 (and their family caregivers or representative, if
22 applicable) to design an individualized, self-di-
23 rected, community-supported life; and

1 (C) improve coordination among all pro-
2 viders of such services under federally and
3 State-funded programs in order to—

4 (i) achieve a more consistent adminis-
5 tration of policies and procedures across
6 programs in relation to the provision of
7 such services; and

8 (ii) oversee and monitor all service
9 system functions to assure—

10 (I) coordination of, and effective-
11 ness of, eligibility determinations and
12 individual assessments; and

13 (II) development and service
14 monitoring of a complaint system, a
15 management system, a system to
16 qualify and monitor providers, and
17 systems for role-setting and individual
18 budget determinations.

19 (3) MONITORING.—The Secretary of Health
20 and Human Services shall assess on an ongoing
21 basis and based on measures specified by the Agency
22 for Healthcare Research and Quality, the safety and
23 quality of non-institutionally-based long-term serv-
24 ices and supports described in paragraph (5)(B) of
25 section 1905(y) of that Act provided to beneficiaries

1 of such services and supports and the outcomes with
2 regard to such beneficiaries' experiences with such
3 services. Such oversight shall include examination
4 of—

5 (A) the consistency, or lack thereof, of
6 such services in care plans as compared to
7 those services that were actually delivered; and

8 (B) the length of time between when a
9 beneficiary was assessed for such services, when
10 the care plan was completed, and when the ben-
11 eficiary started receiving such services.

12 (4) GAO STUDY AND REPORT.—The Comp-
13 troller General of the United States shall study the
14 longitudinal costs of Medicaid beneficiaries receiving
15 long-term services and supports (as defined by the
16 Secretary for purposes of section 1905(y)(5) of the
17 Social Security Act) over 5-year periods across var-
18 ious programs, including the non-institutionally-
19 based long-term services and supports described in
20 paragraph (5)(B) of such section, PACE program
21 services under section 1894 of the Social Security
22 Act (42 U.S.C. 1395eee, 1396u–4), and services pro-
23 vided under specialized MA plans for special needs
24 individuals under part C of title XVIII of the Social
25 Security Act.

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

5 **SEC. 201. REMOVAL OF BARRIERS TO PROVIDING HOME**
 6 **AND COMMUNITY-BASED SERVICES UNDER**
 7 **STATE PLAN AMENDMENT OPTION FOR INDIV-**
 8 **IDUALS 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.
 12 1396n(i)) is amended by striking “150 percent of the pov-
 13 erty line (as defined in section 2110(c)(5))” and inserting
 14 “300 percent of the supplemental security income benefit
 15 rate established by section 1611(b)(1)”.

16 (b) ADDITIONAL STATE OPTIONS.—Section 1915(i)
 17 of the Social Security Act (42 U.S.C. 1396n(i)) is amend-
 18 ed by adding at the end the following new paragraphs:

19 “(6) STATE OPTION TO PROVIDE HOME AND
 20 COMMUNITY-BASED SERVICES TO INDIVIDUALS ELI-
 21 GIBLE FOR SERVICES UNDER A WAIVER.—

22 “(A) IN GENERAL.—A State that provides
 23 home and community-based services in accord-
 24 ance with this subsection to individuals who
 25 satisfy the needs-based criteria for the receipt

1 of such services established under paragraph
2 (1)(A) may, in addition to continuing to provide
3 such services to such individuals, elect to pro-
4 vide home and community-based services in ac-
5 cordance with the requirements of this para-
6 graph to individuals who are eligible for home
7 and community-based services under a waiver
8 approved for the State under subsection (c),
9 (d), or (e) or under section 1115 to provide
10 such services, but only for those individuals
11 whose income does not exceed 300 percent of
12 the supplemental security income benefit rate
13 established by section 1611(b)(1).

14 “(B) APPLICATION OF SAME REQUIRE-
15 MENTS FOR INDIVIDUALS SATISFYING NEEDS-
16 BASED CRITERIA.—Subject to subparagraph
17 (C), a State shall provide home and community-
18 based services to individuals under this para-
19 graph in the same manner and subject to the
20 same requirements as apply under the other
21 paragraphs of this subsection to the provision
22 of home and community-based services to indi-
23 viduals who satisfy the needs-based criteria es-
24 tablished under paragraph (1)(A).

1 “(C) AUTHORITY TO OFFER DIFFERENT
2 TYPE, AMOUNT, DURATION, OR SCOPE OF HOME
3 AND COMMUNITY-BASED SERVICES.—A State
4 may offer home and community-based services
5 to individuals under this paragraph that differ
6 in type, amount, duration, or scope from the
7 home and community-based services offered for
8 individuals who satisfy the needs-based criteria
9 established under paragraph (1)(A), so long as
10 such services are within the scope of services
11 described in paragraph (4)(B) of subsection (c)
12 for which the Secretary has the authority to ap-
13 prove a waiver and do not include room or
14 board.

15 “(7) STATE OPTION TO OFFER HOME AND COM-
16 MUNITY-BASED SERVICES TO SPECIFIC, TARGETED
17 POPULATIONS.—

18 “(A) IN GENERAL.—A State may elect in
19 a State plan amendment under this subsection
20 to target the provision of home and community-
21 based services under this subsection to specific
22 populations and to differ the type, amount, du-
23 ration, or scope of such services to such specific
24 populations.

25 “(B) 5-YEAR TERM.—

1 “(i) IN GENERAL.—An election by a
 2 State under this paragraph shall be for a
 3 period of 5 years.

4 “(ii) PHASE-IN OF SERVICES AND ELI-
 5 GIBILITY PERMITTED DURING INITIAL 5-
 6 YEAR PERIOD.—A State making an elec-
 7 tion under this paragraph may, during the
 8 first 5-year period for which the election is
 9 made, phase-in the enrollment of eligible
 10 individuals, or the provision of services to
 11 such individuals, or both, so long as all eli-
 12 gible individuals in the State for such serv-
 13 ices are enrolled, and all such services are
 14 provided, before the end of the initial 5-
 15 year period.

16 “(C) RENEWAL.—An election by a State
 17 under this paragraph may be renewed for addi-
 18 tional 5-year terms if the Secretary determines,
 19 prior to beginning of each such renewal period,
 20 that the State has—

21 “(i) adhered to the requirements of
 22 this subsection and paragraph in providing
 23 services under such an election; and

1 “(ii) met the State’s objectives with
 2 respect to quality improvement and bene-
 3 ficiary outcomes.”.

4 (c) REMOVAL OF LIMITATION ON SCOPE OF SERV-
 5 ICES.—Paragraph (1) of section 1915(i) of the Social Se-
 6 curity Act (42 U.S.C. 1396n(i)), as amended by sub-
 7 section (a), is amended by striking “or such other services
 8 requested by the State as the Secretary may approve”.

9 (d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE
 10 FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING
 11 HOME AND COMMUNITY-BASED SERVICES UNDER A
 12 STATE PLAN AMENDMENT.—

13 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)
 14 of the Social Security Act (42 U.S.C.
 15 1396a(a)(10)(A)(ii)) is amended—

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

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

20 (C) by inserting after subclause (XIX), the
 21 following new subclause:

22 “(XX) who are eligible for home
 23 and community-based services under
 24 needs-based criteria established under
 25 paragraph (1)(A) of section 1915(i),

1 or who are eligible for home and com-
 2 munity-based services under para-
 3 graph (6) of such section, and who
 4 will receive home and community-
 5 based services pursuant to a State
 6 plan amendment under such sub-
 7 section;”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 1903(f)(4) of the Social Secu-
 10 rity Act (42 U.S.C. 1396b(f)(4)) is amended in
 11 the matter preceding subparagraph (A), by in-
 12 serting “1902(a)(10)(A)(ii)(XX),” after
 13 “1902(a)(10)(A)(ii)(XIX),”.

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

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

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

21 (iii) by inserting after clause (xiii) the
 22 following new clause:

23 “(xiv) individuals who are eligible for home and
 24 community-based services under needs-based criteria
 25 established under paragraph (1)(A) of section

1 1915(i), or who are eligible for home and commu-
 2 nity-based services under paragraph (6) of such sec-
 3 tion, and who will receive home and community-
 4 based services pursuant to a State plan amendment
 5 under such subsection,”.

6 (e) ELIMINATION OF OPTION TO LIMIT NUMBER OF
 7 ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR
 8 GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA
 9 IS MODIFIED.—Paragraph (1) of section 1915(i) of such
 10 Act (42 U.S.C. 1396n(i)) is amended—

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

13 “(C) PROJECTION OF NUMBER OF INDI-
 14 VIDUALS TO BE PROVIDED HOME AND COMMU-
 15 NITY-BASED SERVICES.—The State submits to
 16 the Secretary, in such form and manner, and
 17 upon such frequency as the Secretary shall
 18 specify, the projected number of individuals to
 19 be provided home and community-based serv-
 20 ices.”; and

21 (2) in subclause (II) of subparagraph (D)(ii),
 22 by striking “to be eligible for such services for a pe-
 23 riod of at least 12 months beginning on the date the
 24 individual first received medical assistance for such
 25 services” and inserting “to continue to be eligible for

1 such services after the effective date of the modifica-
 2 tion and until such time as the individual no longer
 3 meets the standard for receipt of such services under
 4 such pre-modified criteria”.

5 (f) ELIMINATION OF OPTION TO WAIVE
 6 STATEWIDENESS; ADDITION OF OPTION TO WAIVE COM-
 7 PARABILITY.—Paragraph (3) of section 1915(i) of such
 8 Act (42 U.S.C. 1396n(3)) is amended by striking
 9 “1902(a)(1) (relating to statewideness)” and inserting
 10 “1902(a)(10)(B) (relating to comparability)”.

11 (g) EFFECTIVE DATE.—The amendments made by
 12 this section take effect on the first day of the first fiscal
 13 year quarter that begins after the date of enactment of
 14 this Act.

15 **SEC. 202. MANDATORY APPLICATION OF SPOUSAL IMPOV-**
 16 **ERISHMENT PROTECTIONS TO RECIPIENTS**
 17 **OF HOME AND COMMUNITY-BASED SERVICES.**

18 (a) IN GENERAL.—Section 1924(h)(1)(A) of the So-
 19 cial Security Act (42 U.S.C. 1396r–5(h)(1)(A)) is amend-
 20 ed by striking “(at the option of the State) is described
 21 in section 1902(a)(10)(A)(ii)(VI)” and inserting “is eligi-
 22 ble for medical assistance for home and community-based
 23 services under subsection (c), (d), (e), or (i) of section
 24 1915”.

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

3 **SEC. 203. STATE AUTHORITY TO ELECT TO EXCLUDE UP TO**
 4 **6 MONTHS OF AVERAGE COST OF NURSING**
 5 **FACILITY SERVICES FROM ASSETS OR RE-**
 6 **SOURCES FOR PURPOSES OF ELIGIBILITY**
 7 **FOR HOME AND COMMUNITY-BASED SERV-**
 8 **ICES.**

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

12 “(i) STATE AUTHORITY TO EXCLUDE UP TO 6
 13 MONTHS OF AVERAGE COST OF NURSING FACILITY
 14 SERVICES FROM HOME AND COMMUNITY-BASED SERV-
 15 ICES ELIGIBILITY DETERMINATIONS.—Nothing in this
 16 section or any other provision of this title, shall be con-
 17 strued as prohibiting a State from excluding from any de-
 18 termination of an individual’s assets or resources for pur-
 19 poses of determining the eligibility of the individual for
 20 medical assistance for home and community-based services
 21 under subsection (c), (d), (e), or (i) of section 1915 (if
 22 a State imposes an limitation on assets or resources for
 23 purposes of eligibility for such services), an amount equal
 24 to the product of the amount applicable under subsection
 25 (c)(1)(E)(ii)(II) (at the time such determination is made)

1 and such number, not to exceed 6, as the State may
2 elect.”.

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

9 **TITLE III—COORDINATION OF** 10 **HOME AND COMMUNITY-** 11 **BASED WAIVERS**

12 **SEC. 301. STREAMLINED PROCESS FOR COMBINED WAIV-** 13 **ERS UNDER SUBSECTIONS (B) AND (C) OF** 14 **SECTION 1915.**

15 Not later than 90 days after the date of enactment
16 of this Act, the Secretary of Health and Human Services
17 shall create a template to streamline the process of ap-
18 proving, monitoring, evaluating, and renewing State pro-
19 posals to conduct a program that combines the waiver au-
20 thority provided under subsections (b) and (c) of section
21 1915 of the Social Security Act (42 U.S.C. 1396n) into
22 a single program under which the State provides home and
23 community-based services to individuals based on individ-
24 ualized assessments and care plans (in this section re-
25 ferred to as the “combined waivers program”). The tem-

1 plate required under this section shall provide for the fol-
2 lowing:

3 (1) A standard 5-year term for conducting a
4 combined waivers program.

5 (2) Harmonization of any requirements under
6 subsections (b) and (c) of such section that overlap.

7 (3) An option for States to elect, during the
8 first 5-year term for which the combined waivers
9 program is approved to phase-in the enrollment of
10 eligible individuals, or the provision of services to
11 such individuals, or both, so long as all eligible indi-
12 viduals in the State for such services are enrolled,
13 and all such services are provided, before the end of
14 the initial 5-year period.

15 (4) Examination by the Secretary, prior to each
16 renewal of a combined waivers program, of how well
17 the State has—

18 (A) adhered to the combined waivers pro-
19 gram requirements; and

20 (B) performed in meeting the State's ob-
21 jectives for the combined waivers program, in-
22 cluding with respect to quality improvement
23 and beneficiary outcomes.

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