

112TH CONGRESS
1ST SESSION

S. 1273

To amend the Fair Labor Standards Act with regard to certain exemptions under that Act for direct care workers and to improve the systems for the collection and reporting of data relating to the direct care workforce, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2011

Mr. CASEY (for himself, Mr. HARKIN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act with regard to certain exemptions under that Act for direct care workers and to improve the systems for the collection and reporting of data relating to the direct care workforce, 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.**

4 This Act may be cited as the “Direct Care Job Qual-
5 ity Improvement Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) direct care workers are the linchpin of the
2 Nation's paid long-term care system, providing es-
3 sential care and daily living services to many of the
4 approximately 10,000,000 Americans who are elder-
5 ly or live with disabilities;

6 (2) more than two-thirds of older adults will
7 need some form of long-term care at some point in
8 their lives and by 2020, 15,000,000 Americans are
9 expected to need such care;

10 (3) the ability to meet the Nation's need for
11 long-term care services and supports depends largely
12 on a strong, stable direct care workforce;

13 (4) the United States faces an impending short-
14 age of qualified direct care workers to provide per-
15 sonal and long-term care and support services;

16 (5) direct care work is demanding, working con-
17 ditions are often difficult, and turnover is high be-
18 cause of low pay, lack of access to health insurance
19 and other benefits, inadequate training, limited op-
20 portunities for advancement, and lack of respect;

21 (6) direct care workers are often underpaid: 45
22 percent of direct care workers live at or below the
23 poverty level, and nearly half live in households that
24 receive one or more public benefits;

1 (7) the average annual income for direct care
2 workers is \$17,000, and more than 1 in 4 of such
3 workers lack health insurance; and

4 (8) State management information systems are
5 rarely designed to gather and report basic informa-
6 tion about the direct care workforce that could be
7 used to assess workforce challenges or monitor
8 changes in the direct care workforce over time.

9 **SEC. 3. LIMITATION TO EXEMPTION UNDER THE FAIR**
10 **LABOR STANDARDS ACT.**

11 (a) HOME CARE WORKERS.—Section 13(a)(15) of
12 the Fair Labor Standards Act of 1938 (29 U.S.C.
13 213(a)(15)) is amended to read as follows:

14 “(15) any employee employed on a casual basis
15 in domestic service employment to provide baby-
16 sitting services or any employee employed on a cas-
17 ual basis in domestic service employment to provide
18 companionship services for individuals who (because
19 of age, infirmity, or disability) are unable to care for
20 themselves (as such terms are defined and delimited
21 by regulations of the Secretary);”.

22 (b) DEFINITION.—Section 3 of the Fair Labor
23 Standards Act of 1938 (29 U.S.C. 203) is amended by
24 adding at the end the following:

1 “(z) The term ‘casual basis in domestic service em-
2 ployment to provide companionship services’ means em-
3 ployment which is irregular or intermittent, and which is
4 not performed by an individual—

5 “(1) whose vocation is the provision of compan-
6 ionship services; or

7 “(2) who is employed by an employer or agency
8 other than the family or household using the services
9 of such employer or agency.

10 Employment is not on a casual basis if any family or
11 household employer employs an individual performing
12 companionship services for more than five (5) hours per
13 week or has employed the individual for a time period that
14 has extended beyond twelve (12) weeks in a calendar
15 year.”.

16 **SEC. 4. LONG-TERM SERVICES AND SUPPORTS.**

17 (a) DIRECT CARE WORKFORCE MONITORING PRO-
18 GRAM.—

19 (1) IN GENERAL.—The Secretary, in coopera-
20 tion with the heads of other relevant departments,
21 shall develop a program to monitor the capacity and
22 adequacy of the direct care workforce in all relevant,
23 as determined by the Secretary, Federal health care
24 programs (as defined in section 1128B(f) of the So-
25 cial Security Act (42 U.S.C. 1320a–7b(f)).

1 (2) MONITORING AND EVALUATION.—Under
2 the program described in paragraph (1), the Sec-
3 retary shall monitor and evaluate—

4 (A) the quality of services provided by di-
5 rect care workers through Federal health care
6 programs, including in-home and community-
7 based settings and in long-term care settings;
8 and

9 (B) the adequacy of the direct care work-
10 force to provide services through such pro-
11 grams, including—

12 (i) the stability of such workforce, in-
13 cluding turnover rates;

14 (ii) an evaluation of geographic vari-
15 ation in the adequacy of such workforce;
16 and

17 (iii) the adequacy of such workforce to
18 meet the current and future demand for
19 long-term services and supports under such
20 programs.

21 (3) DATA SHARING.—For purposes of improv-
22 ing the adequacy of the direct care workforce and
23 quality of services provided by such workforce
24 through Federal health care programs, the Secretary
25 shall—

1 (A) facilitate the sharing of data on such
2 workforce between relevant Federal depart-
3 ments and between States;

4 (B) prepare cross-State comparisons of
5 such data and share such comparisons with
6 States; and

7 (C) share with States and Federal depart-
8 ments best practices for developing an adequate
9 workforce that provides high-quality direct care
10 services.

11 (b) REPORTING ON WORKFORCE ADEQUACY UNDER
12 MEDICAID.—

13 (1) IN GENERAL.—Section 1902(a) of the So-
14 cial Security Act (42 U.S.C. 1396a(a)) is amend-
15 ed—

16 (A) by striking “and” at the end of para-
17 graph (82);

18 (B) by striking the period at the end of
19 paragraph (83) and inserting “; and”; and

20 (C) by inserting after paragraph (83) the
21 following:

22 “(84) provide that the State shall submit to the
23 Secretary an annual report that, with respect to
24 both the current and future needs of individuals who
25 are enrolled in the State plan for long-term care

1 services and supports, details the capacity and ade-
 2 quacy of the direct care workforce (as such term is
 3 defined in subsection (ll)) in the State (including
 4 specifying the number of full-time and part-time di-
 5 rect care workers, the turnover rate for such work-
 6 ers, the number of vacancies for such workers, the
 7 average wage for such workers; the typical benefits
 8 package offered to such workers, and any other data
 9 related to the direct care workforce in the State that
 10 the Secretary requires).”.

11 (2) DEFINITIONS AND EXCEPTION FROM WAIV-
 12 ER.—Section 1902 of the Social Security Act is fur-
 13 ther amended by adding at the end the following:

14 “(ll) DIRECT CARE WORKERS.—

15 “(1) DEFINITIONS.—For purposes of this sub-
 16 section and subsection (a)(84):

17 “(A) DIRECT CARE WORKER.—The term
 18 ‘direct care worker’ has the meaning given each
 19 of the following terms in the 2010 Standard
 20 Occupational Classifications of the Department
 21 of Labor: Home Health Aides [31–1011], Psy-
 22 chiatric Aides [31–1013], Nursing Assistants
 23 [31–1014], and Personal Care Aides [39–
 24 9021].

1 “(B) DIRECT CARE WORKFORCE.—The
2 term ‘direct care workforce’ means the work-
3 force made up of direct care workers.

4 “(2) EXEMPTION FROM WAIVER.—In the case
5 of any State that is providing medical assistance to
6 residents of such State under a waiver granted
7 under section 1115 or section 1915, the Secretary
8 shall require the State to submit the report required
9 under subsection (a)(84) in the same manner as the
10 State would be required to submit such report if the
11 State had in effect a plan approved under this
12 title.”.

13 (3) EFFECTIVE DATE.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the amendments made by
16 this subsection shall take effect 180 days after
17 the date of the enactment of this Act.

18 (B) RULE FOR CHANGES REQUIRING
19 STATE LEGISLATION.—In the case of a State
20 plan for medical assistance under title XIX of
21 the Social Security Act that the Secretary de-
22 termines requires State legislation (other than
23 legislation appropriating funds) in order for the
24 plan to meet the additional requirement im-
25 posed by the amendments made by this sub-

1 section, the State plan shall not be regarded as
 2 failing to comply with the requirements of such
 3 title solely on the basis of the failure of the
 4 State to meet this additional requirement before
 5 the first day of the first calendar quarter begin-
 6 ning after the close of the first regular session
 7 of the State legislature that begins after the
 8 date of the enactment of this Act. For purposes
 9 of the previous sentence, in the case of a State
 10 that has a 2-year legislative session, each year
 11 of such session shall be deemed to be a separate
 12 regular session of the State legislature.

13 **SEC. 5. PRIORITIZING ANALYSIS BY NATIONAL HEALTH**
 14 **CARE WORKFORCE COMMISSION.**

15 (a) **ADDITIONAL HIGH PRIORITY AREA.**—Subpara-
 16 graph (A) of section 5101(d)(4) of the Patient Protection
 17 and Affordable Care Act (42 U.S.C. 294q(d)(4)) is
 18 amended by adding at the end the following:

19 “(vi) With respect to the direct care
 20 workforce—

21 “(I) a review of current and pro-
 22 jected workforce supply and demand,
 23 including a review of workforce size,
 24 employment settings, turnover, com-
 25 pensation, and benefits;

1 “(II) an analysis of the adequacy
2 of existing workforce data, data collec-
3 tion, and monitoring infrastructure;
4 and

5 “(III) recommendations for new
6 or additional uniform data elements
7 across regions and States that are
8 necessary to track workforce supply,
9 demand, and shortages.”.

10 (b) APPLICATION.—The amendment made by para-
11 graph (1) applies beginning with the reports required by
12 section 5101(d)(2) of the Patient Protection and Afford-
13 able Care Act (42 U.S.C. 294q(d)(2)) for 2011.

14 **SEC. 6. GRANTS AND TECHNICAL ASSISTANCE FOR DATA**
15 **COLLECTION AND MONITORING.**

16 (a) IN GENERAL.—The Secretary shall award grants
17 to States, Indian tribes, and tribal organizations for the
18 purpose of developing comprehensive data collection and
19 monitoring systems to assess the adequacy and stability
20 of the direct care workforce of the State or Indian tribe,
21 as applicable, to meet current and future demand for long-
22 term services and supports.

23 (b) USE OF FUNDS.—A State, Indian tribe, or tribal
24 organization receiving a grant under subsection (a) shall
25 use the grant for—

1 (1) an assessment of current data sources and
2 data gaps on the volume, stability, and compensation
3 of the State or tribe’s direct care workforce across
4 all settings and programs;

5 (2) consultation with all agencies of the State,
6 Indian tribe, or tribal organization that collect data
7 on the direct care workforce, or data on programs
8 under which services are provided in connection with
9 the direct care workforce, in order to streamline
10 data collection;

11 (3) the development of an implementation plan
12 for establishing a comprehensive and ongoing pro-
13 gram for monitoring the volume, stability, and com-
14 pensation of the direct care workforce;

15 (4) the implementation of such program;

16 (5) the sharing of information on best practices
17 on data collection and monitoring with other States,
18 Indian tribes, or tribal organizations; and

19 (6) the formulation of recommendations for ap-
20 propriate steps to reduce State, local, or tribal bar-
21 riers to comprehensive direct care workforce data
22 collection and monitoring systems, including any
23 necessary changes in State, local, or tribal policies.

24 (c) DISTRIBUTION OF GRANTS.—

1 (1) NUMBER OF GRANTS.—In carrying out sub-
2 section (a) the Secretary shall award grants to not
3 fewer than 5 States each year.

4 (2) GEOGRAPHIC AND DEMOGRAPHIC DIVER-
5 SITY.—In selecting grant recipients under subsection
6 (a), the Secretary shall ensure that grants are
7 awarded to a diversity of grantees in terms of geog-
8 raphy and demographics.

9 (3) PREFERENCE.—In selecting grant recipi-
10 ents under subsection (a), the Secretary shall give
11 preference to States, Indian tribes, and tribal orga-
12 nizations with a relatively high percentage of resi-
13 dents who require publicly financed long-term serv-
14 ices.

15 (d) APPLICATION.—To apply for a grant under this
16 section, an entity shall submit an application to the Sec-
17 retary in such form, in such manner, and containing such
18 information as the Secretary may require. At a minimum,
19 each such application shall include a description of the ac-
20 tivities for which funds are sought and a budget for use
21 of the funds.

22 (e) TECHNICAL ASSISTANCE.—The Secretary shall
23 provide technical assistance to States, Indian tribes, and
24 tribal organizations to develop comprehensive data collec-
25 tion and monitoring systems to assess the adequacy and

1 stability of the State’s direct care workforce under sub-
2 section (b)(1).

3 (f) STATE DEFINED.—For purposes of this section:

4 (1) Subject to paragraph (2), the term “State”
5 means any of the 50 States, the District of Colum-
6 bia, Puerto Rico, Guam, the United States Virgin
7 Islands, American Samoa, and the Commonwealth of
8 the Northern Mariana Islands.

9 (2) The term “State” includes, in lieu of any
10 State listed in paragraph (1), an entity designated
11 by such State to apply for a grant under this sec-
12 tion.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated such sums as may be
15 necessary to carry out this section for each of fiscal years
16 2012 through 2016.

17 **SEC. 7. DIRECT CARE WORKER RECRUITMENT, RETENTION,**
18 **AND EDUCATION GRANT PROGRAM.**

19 (a) IN GENERAL.—The Secretary shall award grants
20 on a competitive basis to States and other eligible entities
21 for the purpose of improving the recruitment, retention,
22 and education of direct care workers.

23 (b) USE OF FUNDS.—A State or other eligible entity
24 receiving a grant under subsection (a) shall use the grant
25 to—

1 (1) establish, expand, or upgrade training pro-
2 grams and infrastructure for direct care workers;

3 (2) establish or expand recruitment and reten-
4 tion programs for direct care workers, including ini-
5 tiatives which—

6 (A) improve the wages and benefits offered
7 to direct care workers; and

8 (B) create and implement career ladders
9 for such workers; and

10 (3) develop or expand programs that—

11 (A) promote the role of direct care workers
12 in new cost-effective models of providing serv-
13 ices to persons with disabilities and to persons
14 with chronic health conditions and other ex-
15 tended support needs; and

16 (B) include approaches such as remote
17 monitoring, wellness, and prevention.

18 (c) DIVERSITY.—In selecting grant recipients under
19 subsection (a), the Secretary shall ensure that grants are
20 awarded to States or other eligible entities in a manner
21 that ensures that grant funds are used to enhance the di-
22 rect care workforce—

23 (1) in urban and rural communities; and

24 (2) that serves a diverse patient population, in-
25 cluding with respect to—

- 1 (A) age;
- 2 (B) income level;
- 3 (C) race and ethnicity; and
- 4 (D) disability status.

5 (d) GRANT PERIOD.—The Secretary—

6 (1) may award grants under this section for pe-
7 riods of not more than 3 years; and

8 (2) may extend the period of a grant under this
9 section by not more than 3 years.

10 (e) APPLICATION.—To apply for a grant under this
11 section, an entity shall submit an application to the Sec-
12 retary in such form, in such manner, and containing such
13 information as the Secretary may require.

14 (f) BASELINE MEASURES AND BENCHMARKS.—As a
15 condition on the receipt of a grant under this section, the
16 Secretary shall require each grantee to establish baseline
17 measures and benchmarks (meeting such requirements as
18 the Secretary may determine) in order to properly evaluate
19 the impact of the work performed by the grantee through
20 the grant.

21 (g) SUPPLEMENT, NOT SUPPLANT.—The Secretary
22 shall ensure that amounts provided to a grantee under this
23 section are used to supplement and not supplant other
24 Federal, State, or local public funds expended to improve

1 the recruitment, retention, and education of the direct
2 care workforce.

3 (h) TERMINATION AUTHORITY.—The Secretary may
4 terminate a grant agreement under this section for good
5 cause. Such good cause shall include a determination that
6 the grantee—

7 (1) has misappropriated funds provided under
8 this section; or

9 (2) has failed to make adequate progress to-
10 ward accomplishing any benchmark established
11 under subsection (f).

12 (i) REPORTS AND AUDITS.—As a condition on the re-
13 ceipt of a grant under this section, the Secretary shall re-
14 quire each grantee to agree—

15 (1) to report to the Secretary on the activities
16 carried out with the grant, including, at the request
17 of the Secretary, periodic spending reports; and

18 (2) to allow the Secretary to conduct periodic
19 audits pertaining to funding received through the
20 grant.

21 (j) ELIGIBLE ENTITY.—For purposes of this section,
22 the term “eligible entity” means—

23 (1) a State or political subdivision of a State;
24 or

1 (2) any organization, including a labor-manage-
2 ment partnership, that is committed to carrying out
3 the activities set forth in subsection (b), whether in
4 cooperation with a State, on its own initiative, or in
5 partnership with any other organization.

6 **SEC. 8. REPORTS BY SECRETARY.**

7 Not later than 3 years after the date of awarding the
8 first grant under section 6 or section 7, the Secretary of
9 Health and Human Services shall prepare and submit to
10 the Congress a report that describes the effectiveness of
11 grants awarded under such sections in achieving the pur-
12 poses of such grants, including the effectiveness of the
13 programs funded by such grants in reducing turnover
14 rates in the direct care workforce.

15 **SEC. 9. DEFINITIONS.**

16 For purposes of this Act:

17 (1) **DIRECT CARE WORKER.**—The term “direct
18 care worker” has the meaning given each of the fol-
19 lowing terms in the 2010 Standard Occupational
20 Classifications of the Department of Labor: Home
21 Health Aides [31–1011], Psychiatric Aides [31–
22 1013], Nursing Assistants [31–1014], and Personal
23 Care Aides [39–9021].

1 (2) DIRECT CARE WORKFORCE.—The term “di-
2 rect care workforce” means the workforce made up
3 of direct care workers.

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

○