

109TH CONGRESS
1ST SESSION

S. 528

To authorize the Secretary of Health and Human Services to provide grants to States to conduct demonstration projects that are designed to enable medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2005

Mr. HARKIN (for himself and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To authorize the Secretary of Health and Human Services to provide grants to States to conduct demonstration projects that are designed to enable medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

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 “Money Follows the
5 Person Act of 2005”.

1 **SEC. 2. MONEY FOLLOWS THE PERSON REBALANCING DEM-**
2 **ONSTRATION.**

3 (a) PROGRAM PURPOSE AND AUTHORITY.—The Sec-
4 retary of Health and Human Services (in this section re-
5 ferred to as the “Secretary”) is authorized to award, on
6 a competitive basis, grants to States in accordance with
7 this section for demonstration projects (each in this sec-
8 tion referred to as an “MFP demonstration project”) de-
9 signed to achieve the following objectives with respect to
10 institutional and home and community-based long-term
11 care services under State medicaid programs:

12 (1) REBALANCING.—Increase the use of home
13 and community-based, rather than institutional,
14 long-term care services.

15 (2) MONEY FOLLOWS THE PERSON.—Eliminate
16 barriers or mechanisms, whether in the State law,
17 the State medicaid plan, the State budget, or other-
18 wise, that prevent or restrict the flexible use of med-
19 icaid funds to enable medicaid-eligible individuals to
20 receive support for appropriate and necessary long-
21 term services in the settings of their choice.

22 (3) CONTINUITY OF SERVICE.—Increase the
23 ability of the State medicaid program to assure con-
24 tinued provision of home and community-based long-
25 term care services to eligible individuals who choose

1 to transition from an institutional to a community
 2 setting.

3 (4) QUALITY ASSURANCE AND QUALITY IM-
 4 PROVEMENT.—Ensure that procedures are in place
 5 (at least comparable to those required under the
 6 qualified HCB program) to provide quality assur-
 7 ance for eligible individuals receiving medicaid home
 8 and community-based long-term care services and to
 9 provide for continuous quality improvement in such
 10 services.

11 (b) DEFINITIONS.—For purposes of this section:

12 (1) HOME AND COMMUNITY-BASED LONG-TERM
 13 CARE SERVICES.—The term “home and community-
 14 based long-term care services” means, with respect
 15 to a State medicaid program, home and community-
 16 based services (including home health and personal
 17 care services) that are provided under the State’s
 18 qualified HCB program or that could be provided
 19 under such a program but are otherwise provided
 20 under the medicaid program.

21 (2) ELIGIBLE INDIVIDUAL.—The term “eligible
 22 individual” means, with respect to an MFP dem-
 23 onstration project of a State, an individual in the
 24 State—

(A) who, immediately before beginning participation in the MFP demonstration project—

(i) resides (and has resided, for a period of not less than six months or for such longer minimum period, not to exceed 2 years, as may be specified by the State) in an inpatient facility;

(ii) is receiving medicaid benefits for inpatient services furnished by such inpatient facility; and

(iii) with respect to whom a determination has been made that, but for the provision of home and community-based long-term care services, the individual would continue to require the level of care provided in an inpatient facility; and

(B) who resides in a qualified residence beginning on the initial date of participation in the demonstration project.

(3) INPATIENT FACILITY.—The term “inpatient facility” means a hospital, nursing facility, or intermediate care facility for the mentally retarded. Such term includes an institution for mental diseases, but only, with respect to a State, to the extent medical

1 assistance is available under the State medicaid plan
 2 for services provided by such institution.

3 (4) INDIVIDUAL’S AUTHORIZED REPRESENTA-
 4 TIVE.—The term ‘individual’s authorized representa-
 5 tive’ means, with respect to an eligible individual,
 6 the individual’s parent, family member, guardian,
 7 advocate, or other authorized representative of the
 8 individual.

9 (5) MEDICAID.—The term “medicaid” means,
 10 with respect to a State, the State program under
 11 title XIX of the Social Security Act (including any
 12 waiver or demonstration under such title or under
 13 section 1115 of such Act relating to such title).

14 (6) QUALIFIED HCB PROGRAM.—The term
 15 “qualified HCB program” means a program pro-
 16 viding home and community-based long-term care
 17 services operating under medicaid, whether or not
 18 operating under waiver authority.

19 (7) QUALIFIED RESIDENCE.—The term “quali-
 20 fied residence” means, with respect to an eligible in-
 21 dividual—

22 (A) a home owned or leased by the indi-
 23 vidual or the individual’s family member;

24 (B) an apartment with an individual lease,
 25 with lockable access and egress, and which in-

cludes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and

(C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

(8) QUALIFIED EXPENDITURES.—The term “qualified expenditures” means expenditures by the State under its MFP demonstration project for home and community-based long-term care services for an eligible individual participating in the MFP demonstration project, but only with respect to services furnished during the 12-month period beginning on the date the individual is discharged from an inpatient facility referred to in paragraph (2)(A)(i).

(9) SELF-DIRECTED SERVICES.—The term “self-directed” means, with respect to, home and community-based long-term care services for an eligible individual, such services for the individual which are planned and purchased under the direction and control of such individual or the individual's authorized representative, including the amount, duration, scope, provider, and location of such services, under the State medicaid program consistent with the following requirements:

1 (A) ASSESSMENT.—There is an assess-
 2 ment of the needs, capabilities, and preferences
 3 of the individual with respect to such services.

4 (B) SERVICE PLAN.—Based on such as-
 5 sessment, there is developed jointly with such
 6 individual or the individual's authorized rep-
 7 resentative a plan for such services for such in-
 8 dividual that is approved by the State and
 9 that—

10 (i) specifies those services which the
 11 individual or the individual's authorized
 12 representative would be responsible for di-
 13 recting;

14 (ii) identifies the methods by which
 15 the individual or the individual's author-
 16 ized representative will select, manage, and
 17 dismiss providers of such services;

18 (iii) specifies the role of family mem-
 19 bers and others whose participation is
 20 sought by the individual or the individual's
 21 authorized representative with respect to
 22 such services;

23 (iv) is developed through a person-
 24 centered process that—

1 (I) is directed by the individual
2 or the individual's authorized rep-
3 resentative;

4 (II) builds upon the individual's
5 capacity to engage in activities that
6 promote community life and that re-
7 spects the individual's preferences,
8 choices, and abilities; and

9 (III) involves families, friends,
10 and professionals as desired or re-
11 quired by the individual or the indi-
12 vidual's authorized representative;

13 (v) includes appropriate risk manage-
14 ment techniques that recognize the roles
15 and sharing of responsibilities in obtaining
16 services in a self-directed manner and as-
17 sure the appropriateness of such plan
18 based upon the resources and capabilities
19 of the individual or the individual's author-
20 ized representative; and

21 (vi) may include an individualized
22 budget which identifies the dollar value of
23 the services and supports under the control
24 and direction of the individual or the indi-
25 vidual's authorized representative.

1 (C) BUDGET PROCESS.—With respect to
 2 individualized budgets described in subpara-
 3 graph (B)(vi), the State application under sub-
 4 section (c)—

5 (i) describes the method for calcu-
 6 lating the dollar values in such budgets
 7 based on reliable costs and service utiliza-
 8 tion;

9 (ii) defines a process for making ad-
 10 justments in such dollar values to reflect
 11 changes in individual assessments and
 12 service plans; and

13 (iii) provides a procedure to evaluate
 14 expenditures under such budgets.

15 (10) STATE.—The term “State” has the mean-
 16 ing given such term for purposes of title XIX of the
 17 Social Security Act.

18 (c) STATE APPLICATION.—A State seeking approval
 19 of an MFP demonstration project shall submit to the Sec-
 20 retary, at such time and in such format as the Secretary
 21 requires, an application meeting the following require-
 22 ments and containing such additional information, provi-
 23 sions, and assurances, as the Secretary may require:

24 (1) ASSURANCE OF A PUBLIC DEVELOPMENT
 25 PROCESS.—The application contains an assurance

1 that the State has engaged, and will continue to en-
2 gage, in a public process for the design, develop-
3 ment, and evaluation of the MFP demonstration
4 project that allows for input from eligible individ-
5 uals, the families of such individuals, authorized rep-
6 resentatives of such individuals, providers, and other
7 interested parties.

8 (2) OPERATION IN CONNECTION WITH QUALI-
9 FIED HCB PROGRAM TO ASSURE CONTINUITY OF
10 SERVICES.—The State will conduct the MFP dem-
11 onstration project for eligible individuals in conjunc-
12 tion with the operation of a qualified HCB program
13 that is in operation (or approved) in the State for
14 such individuals in a manner that assures continuity
15 of medicaid coverage for such individuals so long as
16 such individuals continue to be eligible for medical
17 assistance.

18 (3) DEMONSTRATION PROJECT PERIOD.—The
19 application shall specify the period of the MFP dem-
20 onstration project, which shall include at least two
21 consecutive fiscal years in the 5-fiscal-year period
22 beginning with fiscal year 2006.

23 (4) SERVICE AREA.—The application shall
24 specify the service area or areas of the MFP dem-

1 onstration project, which may be a Statewide area or
2 one or more geographic areas of the State.

3 (5) TARGETED GROUPS AND NUMBERS OF INDIVIDUALS SERVED.—The application shall specify—

5 (A) the target groups of eligible individuals
6 to be assisted to transition from an inpatient
7 facility to a qualified residence during each fiscal
8 year of the MFP demonstration project;

9 (B) the projected numbers of eligible individuals
10 in each targeted group of eligible individuals
11 to be so assisted during each such year;
12 and

13 (C) the estimated total annual qualified expenditures
14 for each fiscal year of the MFP
15 demonstration project.

16 (6) INDIVIDUAL CHOICE, CONTINUITY OF
17 CARE.—The application shall contain assurances
18 that—

19 (A) each eligible individual or the individual's
20 authorized representative will be provided
21 the opportunity to make an informed choice regarding
22 whether to participate in the MFP
23 demonstration project;

24 (B) each eligible individual or the individual's
25 authorized representative will choose the

1 qualified residence in which the individual will
2 reside and the setting in which the individual
3 will receive home and community-based long-
4 term care services;

5 (C) the State will continue to make avail-
6 able, so long as the State operates its qualified
7 HCB program consistent with applicable re-
8 quirements, home and community-based long-
9 term care services to each individual who com-
10 pletes participation in the MFP demonstration
11 project for as long as the individual remains eli-
12 gible for medical assistance for such services
13 under such qualified HCB program (including
14 meeting a requirement relating to requiring a
15 level of care provided in an inpatient facility
16 and continuing to require such services).

17 (7) REBALANCING.—The application shall—

18 (A) provide such information as the Sec-
19 retary may require concerning the dollar
20 amounts of State medicaid expenditures for the
21 fiscal year, immediately preceding the first fis-
22 cal year of the State's MFP demonstration
23 project, for long-term care services and the per-
24 centage of such expenditures that were for in-
25 stitutional long-term care services or were for

1 home and community-based long-term care
2 services;

3 (B)(i) specify the methods to be used by
4 the State to increase, for each fiscal year dur-
5 ing the MFP demonstration project, the dollar
6 amount of such total expenditures for home and
7 community-based long-term care services and
8 the percentage of such total expenditures for
9 long-term care services that are for home and
10 community-based long-term care services; and

11 (ii) describe the extent to which the MFP
12 demonstration project will contribute to accom-
13 plishment of objectives described in subsection
14 (a).

15 (8) MONEY FOLLOWS THE PERSON.—The appli-
16 cation shall describe the methods to be used by the
17 State to eliminate any legal, budgetary, or other bar-
18 riers to flexibility in the availability of medicaid
19 funds to pay for long-term care services for eligible
20 individuals participating in the project in the appro-
21 priate settings of their choice, including costs to
22 transition from an institutional setting to a qualified
23 residence.

24 (9) MAINTENANCE OF EFFORT AND COST-EF-
25 FECTIVENESS.—The application shall contain or be

1 accompanied by such information and assurances as
2 may be required to satisfy the Secretary that—

3 (A) total expenditures under the State
4 medicaid program for home and community-
5 based long-term care services will not be less
6 for any fiscal year during the MFP demonstra-
7 tion project than for the greater of such ex-
8 penditures for—

9 (i) fiscal year 2004; or

10 (ii) any succeeding fiscal year before
11 the first year of the MFP demonstration
12 project; and

13 (B) in the case of a qualified HCB pro-
14 gram operating under a waiver under sub-
15 section (c) or (d) of section 1915 of the Social
16 Security Act (42 U.S.C. 1396n), but for the
17 amount awarded under a grant under this sec-
18 tion, the State program would continue to meet
19 the cost-effectiveness requirements of subsection
20 (c)(2)(D) of such section or comparable require-
21 ments under subsection (d)(5) of such section,
22 respectively.

23 (10) WAIVER REQUESTS.—The application shall
24 contain or be accompanied by requests for any modi-
25 fication or adjustment of waivers of medicaid re-

quirements described in subsection (d)(3), including adjustments to maximum numbers of individuals included and package of benefits, including one-time transitional services, provided.

(11) QUALITY ASSURANCE AND QUALITY IMPROVEMENT.—The application shall include—

(A) a plan satisfactory to the Secretary for quality assurance and quality improvement for home and community-based long-term care services under the State medicaid program, including a plan to assure the health and welfare of individuals participating in the MFP demonstration project; and

(B) an assurance that the State will cooperate in carrying out activities under subsection (f) to develop and implement continuous quality assurance and quality improvement systems for home and community-based long-term care services.

(12) OPTIONAL PROGRAM FOR SELF-DIRECTED SERVICES.—If the State elects to provide for any home and community-based long-term care services as self-directed services (as defined in subsection (b)(9)) under the MFP demonstration project, the application shall provide the following:

1 (A) MEETING REQUIREMENTS.—A descrip-
 2 tion of how the project will meet the applicable
 3 requirements of such subsection for the provi-
 4 sion of self-directed services.

5 (B) VOLUNTARY ELECTION.—A description
 6 of how eligible individuals will be provided with
 7 the opportunity to make an informed election to
 8 receive self-directed services under the project
 9 and after the end of the project.

10 (C) STATE SUPPORT IN SERVICE PLAN DE-
 11 VELOPMENT.—Satisfactory assurances that the
 12 State will provide support to eligible individuals
 13 who self-direct in developing and implementing
 14 their service plans.

15 (D) OVERSIGHT OF RECEIPT OF SERV-
 16 ICES.—Satisfactory assurances that the State
 17 will provide oversight of eligible individuals' re-
 18 ceipt of such self-directed services, including
 19 steps to assure the quality of services provided
 20 and that the provision of such services are con-
 21 sistent with the service plan under such sub-
 22 section.

23 Nothing in this section shall be construed as requir-
 24 ing a State to make an election under the project to
 25 provide for home and community-based long-term

1 care services as self-directed services, or as requiring
 2 an individual to elect to receive self-directed services
 3 under the project.

4 (13) REPORTS AND EVALUATION.—The applica-
 5 tion shall provide that—

6 (A) the State will furnish to the Secretary
 7 such reports concerning the MFP demonstra-
 8 tion project, on such timetable, in such uniform
 9 format, and containing such information as the
 10 Secretary may require, as will allow for reliable
 11 comparisons of MFP demonstration projects
 12 across States; and

13 (B) the State will participate in and co-
 14 operate with the evaluation of the MFP dem-
 15 onstration project.

16 (d) SECRETARY'S AWARD OF COMPETITIVE
 17 GRANTS.—

18 (1) IN GENERAL.—The Secretary shall award
 19 grants under this section on a competitive basis to
 20 States selected from among those with applications
 21 meeting the requirements of subsection (c), in ac-
 22 cordance with the provisions of this subsection.

23 (2) SELECTION AND MODIFICATION OF STATE
 24 APPLICATIONS.—In selecting State applications for
 25 the awarding of such a grant, the Secretary—

1 (A) shall take into consideration the man-
2 ner in which and extent to which the State pro-
3 poses to achieve the objectives specified in sub-
4 section (a);

5 (B) shall seek to achieve an appropriate
6 national balance in the numbers of eligible indi-
7 viduals, within different target groups of eligi-
8 ble individuals, who are assisted to transition to
9 qualified residences under MFP demonstration
10 projects, and in the geographic distribution of
11 States operating MFP demonstration projects;

12 (C) shall give preference to State applica-
13 tions proposing—

14 (i) to provide transition assistance to
15 eligible individuals within multiple target
16 groups; and

17 (ii) to provide eligible individuals with
18 the opportunity to receive home and com-
19 munity-based long-term care services as
20 self-directed services, as defined in sub-
21 section (b)(9); and

22 (D) shall take such objectives into consid-
23 eration in setting the annual amounts of State
24 grant awards under this section.

1 (3) WAIVER AUTHORITY.—The Secretary is au-
 2 thorized to waive the following provisions of title
 3 XIX of the Social Security Act, to the extent nec-
 4 essary to enable a State initiative to meet the re-
 5 quirements and accomplish the purposes of this sec-
 6 tion:

7 (A) STATEWIDENESS.—Section
 8 1902(a)(1), in order to permit implementation
 9 of a State initiative in a selected area or areas
 10 of the State.

11 (B) COMPARABILITY.—Section
 12 1902(a)(10)(B), in order to permit a State ini-
 13 tiative to assist a selected category or categories
 14 of individuals described in subsection (b)(2)(A).

15 (C) INCOME AND RESOURCES ELIGI-
 16 BILITY.—Section 1902(a)(10)(C)(i)(III), in
 17 order to permit a State to apply institutional
 18 eligibility rules to individuals transitioning to
 19 community-based care.

20 (D) PROVIDER AGREEMENTS.—Section
 21 1902(a)(27), in order to permit a State to im-
 22 plement self-directed services in a cost-effective
 23 manner.

24 (4) CONDITIONAL APPROVAL OF OUTYEAR
 25 GRANT.—In awarding grants under this section, the

Secretary shall condition the grant for the second and any subsequent fiscal years of the grant period on the following:

(A) NUMERICAL BENCHMARKS.—The

State must demonstrate to the satisfaction of the Secretary that it is meeting numerical benchmarks specified in the grant agreement for—

(i) increasing State medicaid support for home and community-based long-term care services under subsection (c)(5); and

(ii) numbers of eligible individuals assisted to transition to qualified residences.

(B) QUALITY OF CARE.—The State must

demonstrate to the satisfaction of the Secretary that it is meeting the requirements under subsection (c)(9) to assure the health and welfare of MFP demonstration project participants.

(e) PAYMENTS TO STATES; CARRYOVER OF UNUSED GRANT AMOUNTS.—

(1) PAYMENTS.—For each calendar quarter in a fiscal year during the period a State is awarded a grant under subsection (d), the Secretary shall pay to the State from its grant award for such fiscal year an amount equal to the lesser of—

1 (A) 100 percent of the amount of qualified
2 expenditures made during such quarter; or

3 (B) the total amount remaining in such
4 grant award for such fiscal year (taking into
5 account the application of paragraph (2)).

6 (2) CARRYOVER OF UNUSED AMOUNTS.—Any
7 portion of a State grant award for a fiscal year
8 under this section remaining at the end of such fis-
9 cal year shall remain available to the State for the
10 next four fiscal years, subject to paragraph (3).

11 (3) RE-AWARDING OF CERTAIN UNUSED
12 AMOUNTS.—In the case of a State that the Sec-
13 retary determines pursuant to subsection (d)(4) has
14 failed to meet the conditions for continuation of a
15 MFP demonstration project under this section in a
16 succeeding year or years, the Secretary shall rescind
17 the grant awards for such succeeding year or years,
18 together with any unspent portion of an award for
19 prior years, and shall add such amounts to the ap-
20 propriation for the immediately succeeding fiscal
21 year for grants under this section.

22 (4) PREVENTING DUPLICATION OF PAYMENT.—
23 The payment under an MFP demonstration project
24 with respect to qualified expenditures shall be in lieu
25 of any payment with respect to such expenditures

1 that could otherwise be paid under medicaid, includ-
2 ing under section 1903(a) of the Social Security Act.
3 Nothing in the previous sentence shall be construed
4 as preventing the payment under medicaid for such
5 expenditures in a grant year after amounts available
6 to pay for such expenditures under the MFP dem-
7 onstration project have been exhausted.

8 (f) QUALITY ASSURANCE AND IMPROVEMENT; TECH-
9 NICAL ASSISTANCE; OVERSIGHT.—

10 (1) IN GENERAL.—The Secretary, either di-
11 rectly or by grant or contract, shall provide for tech-
12 nical assistance to and oversight of States for pur-
13 poses of upgrading quality assurance and quality im-
14 provement systems under medicaid home and com-
15 munity-based waivers, including—

16 (A) dissemination of information on prom-
17 ising practices;

18 (B) guidance on system design elements
19 addressing the unique needs of participating
20 beneficiaries;

21 (C) ongoing consultation on quality, in-
22 cluding assistance in developing necessary tools,
23 resources, and monitoring systems; and

24 (D) guidance on remedying programmatic
25 and systemic problems.

1 (2) FUNDING.—From the amounts appro-
2 priated under subsection (h) for each of fiscal years
3 2006 through 2010, not more than \$2,400,000 shall
4 be available to the Secretary to carry out this sub-
5 section.

6 (g) RESEARCH AND EVALUATION.—

7 (1) IN GENERAL.—The Secretary, directly or
8 through grant or contract, shall provide for research
9 on and a national evaluation of the program under
10 this section, including assistance to the Secretary in
11 preparing the final report required under paragraph
12 (2). The evaluation shall include an analysis of pro-
13 jected and actual savings related to the transition of
14 individuals to qualified residences in each State con-
15 ducting an MFP demonstration project.

16 (2) FINAL REPORT.—The Secretary shall make
17 a final report to the President and the Congress, not
18 later than September 30, 2011, reflecting the eval-
19 uation described in paragraph (1) and providing
20 findings and conclusions on the conduct and effec-
21 tiveness of MFP demonstration projects.

22 (3) FUNDING.—From the amounts appro-
23 priated under subsection (h) for each of fiscal years
24 2006 through 2010, not more than \$1,100,000 per

1 year shall be available to the Secretary to carry out
 2 this subsection.

3 (h) APPROPRIATIONS.—

4 (1) IN GENERAL.—There are appropriated,
 5 from any funds in the Treasury not otherwise appro-
 6 priated, for grants to carry out this section—

7 (A) \$250,000,000 for fiscal year 2006;

8 (B) \$300,000,000 for fiscal year 2007;

9 (C) \$350,000,000 for fiscal year 2008;

10 (D) \$400,000,000 for fiscal year 2009;

11 and

12 (E) \$450,000,000 for fiscal year 2010.

13 (2) AVAILABILITY.—Amounts made available
 14 under paragraph (1) for a fiscal year shall remain
 15 available for the awarding of grants to States by not
 16 later than September 30, 2010.

17 (i) RULE OF CONSTRUCTION.—Nothing in this Act
 18 shall be construed as requiring a State to agree to a
 19 capped allotment for expenditures for long-term care serv-
 20 ices under medicaid.

○