

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5902

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2010

Ms. LINDA T. SÁNCHEZ of California (for herself, Ms. BALDWIN, Mr. BRALEY of Iowa, Mr. DELAHUNT, Ms. DELAURO, Ms. EDWARDS of Maryland, Mr. ELLISON, Mr. FARR, Mr. FATAH, Mr. FILNER, Mr. GRIJALVA, Mr. HARE, Mr. HASTINGS of Florida, Mr. HONDA, Ms. KAPTUR, Mr. LANGEVIN, Ms. LEE of California, Mr. LEWIS of Georgia, Mr. LOEBSACK, Mr. McDERMOTT, Mr. MICHAUD, Ms. PINGREE of Maine, Ms. ROYBAL-ALLARD, Ms. SCHAKOWSKY, Mr. SIRES, Ms. SUTTON, Mr. THOMPSON of California, Ms. WOOLSEY, and Mr. WU) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Direct Care Workforce  
3 Empowerment Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) direct care workers are the linchpin of the  
7 Nation’s paid long-term care system, providing es-  
8 sential care and daily living services to more than 13  
9 million elderly and disabled Americans;

10 (2) the ability to meet the Nation’s long-term  
11 care challenges depends largely on a strong, stable  
12 direct care workforce;

13 (3) over  $\frac{2}{3}$  of older adults will need some form  
14 of long-term care at some point in their lives;

15 (4) the United States is experiencing a severe  
16 shortage of qualified direct care workers to provide  
17 personal and long-term care and support services;

18 (5) according to the Bureau of Labor Statistics,  
19 direct care workforce occupations consist of nursing  
20 aides, home health aides, and personal and home  
21 care aides;

22 (6) direct care work is demanding, working con-  
23 ditions are often difficult, and turnover is high be-  
24 cause of low pay, lack of access to health insurance  
25 and other benefits, strenuous conditions, limited op-

1 opportunities for advancement, inadequate training,  
2 and lack of respect;

3 (7) direct care workers are often underpaid,  
4 with nearly 1 in 3 living near or below the poverty  
5 level, and more than 1 in 4 lacking health insurance;

6 (8) the average annual income for direct care  
7 workers is \$17,000, and 40 percent of direct care  
8 workers live in households that receive one or more  
9 public benefits such as food stamps or Medicaid; and

10 (9) States have management information sys-  
11 tems that are rarely set up to gather and report  
12 basic information about the direct care workforce  
13 that could be used assess changes and challenges to  
14 the workforce.

15 **SEC. 3. LIMITATION TO EXEMPTION UNDER THE FAIR**  
16 **LABOR STANDARDS ACT.**

17 (a) HOME CARE WORKERS.—Section 13(a)(15) of  
18 the Fair Labor Standards Act of 1938 (29 U.S.C.  
19 213(a)(15)) is amended to read as follows:

20 “(15) any employee employed on a casual basis  
21 in domestic service employment to provide baby-  
22 sitting services or any employee employed on a cas-  
23 ual basis in domestic service employment to provide  
24 companionship services for individuals who (because  
25 of age, infirmity, or disability) are unable to care for

1 themselves (as such terms are defined and delimited  
2 by regulations of the Secretary);”.

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

6 “(z) The term ‘casual basis’ means employment  
7 which is irregular or intermittent, and which is not per-  
8 formed by an individual whose vocation is the provision  
9 of babysitting or companionship services or an individual  
10 employed by an employer or agency other than the family  
11 or household using their services. Employment is not on  
12 a casual basis, whether performed for one or more family  
13 or household employers, if such employment for all such  
14 employers exceeds 20 hours per week in the aggregate.”.

15 **SEC. 4. DIRECT CARE WORKFORCE DATA COLLECTION AND**  
16 **MONITORING.**

17 (a) IN GENERAL.—The Secretary of Health and  
18 Human Services shall establish a direct care workforce  
19 monitoring program to—

20 (1) facilitate the reporting of data by States  
21 about the direct care workforce and the sharing of  
22 such data among States, including tracking of best  
23 practices and cross-State comparisons;

24 (2) enable the Centers for Medicare & Medicaid  
25 Services to better collect data across all long-term

1 care settings for services financed through title  
2 XVIII or XIX of the Social Security Act (Medicare  
3 or Medicaid, respectively);

4 (3) enable the Centers for Medicare & Medicaid  
5 Services (and any other agency designated by the  
6 Secretary) to provide guidance to States concerning  
7 the adequacy and quality of the States' reporting of  
8 data, waiver and renewal applications, and any pro-  
9 visions of or modifications to State plans regarding  
10 the direct care workforce, including by revising any  
11 data reporting forms and systems to ensure uniform  
12 and consistent State reporting; and

13 (4) include, at a minimum, the collection of di-  
14 rect care workforce data (which may be based on  
15 payroll data, taking into account services provided  
16 by agency or contract staff) on—

17 (A) schedule (both location and hours);

18 (B) turnover;

19 (C) tenure;

20 (D) wages;

21 (E) benefits; and

22 (F) vacancies.

23 (b) ADVISORY COUNCIL ON DIRECT CARE WORK-  
24 FORCE.—

1           (1) ESTABLISHMENT.—The Secretary, in con-  
2           sultation with the Secretary of the Labor, shall es-  
3           tablish a National Advisory Council on the Direct  
4           Care Workforce (referred to in this section as the  
5           “Council”) that shall be composed members to be  
6           appointed by the Secretary.

7           (2) DUTIES.—The Council shall consult with,  
8           advise, and make recommendations to the Secretary  
9           with respect to the Secretary’s administration of the  
10          program established under subsection (a).

11          (3) ADMINISTRATIVE PROVISIONS.—Members of  
12          the Council shall serve a term no longer than 5  
13          years and be representative of diverse public and pri-  
14          vate sector expertise and interests, including rep-  
15          resentation from individuals with unique expertise  
16          on topics related to direct care services or the direct  
17          care workforce (including at least 1 individual with  
18          experience in providing direct care services in an in-  
19          stitutional or facility-based setting and 1 individual  
20          with experience in providing such services in a home  
21          or community-based setting), and from officials from  
22          the Department of Health and Human Services, the  
23          Department of Labor, and others as the Secretary  
24          determines appropriate.

1 (c) REPORTS.—Not later than 3 years after the date  
2 of the enactment of this section, and periodically there-  
3 after, as determined by the Secretary, the Secretary shall  
4 prepare and submit to the appropriate committees of Con-  
5 gress a report that—

6 (1) analyzes the existing direct care workforce  
7 data infrastructure;

8 (2) analyzes the current and projected needs for  
9 the direct care workforce, including information on  
10 turnover and retention of workers;

11 (3) makes recommendations for new or addi-  
12 tional uniform data elements across regions and  
13 States that is necessary to track supply, demand,  
14 and workforce shortages related to the population  
15 served by direct care workers;

16 (4) makes recommendations for improvement in  
17 the competency, education, and training standards  
18 for direct care workers; and

19 (5) includes any other topics requested by the  
20 Secretary.

21 **SEC. 5. DIRECT CARE WORKER RECRUITMENT, RETENTION,**  
22 **AND EDUCATION GRANT PROGRAM.**

23 (a) GRANTS AUTHORIZED.—

24 (1) IN GENERAL.—The Secretary of Health and  
25 Human Services shall award grants to States and

1 other eligible entities to improve the recruitment, re-  
2 tention, and education of the direct care workforce.

3 (2) TYPES OF GRANTS.—Of the amounts au-  
4 thorized under subsection (k), the Secretary shall  
5 award grants as follows:

6 (A) \$100,000 for the period of fiscal years  
7 2011 through 2013 to each State to assist the  
8 State in developing its State direct care work-  
9 force plan.

10 (B) The remainder of such amounts to  
11 States and other eligible entities on a competi-  
12 tive basis for the purposes described in sub-  
13 section (b).

14 (b) USE OF FUNDS.—An eligible entity receiving a  
15 grant under this subsection (a)(2)(B) may use the grant  
16 to—

17 (1) expand and upgrade training programs and  
18 infrastructure for direct care workers;

19 (2) implement or improve systems for the moni-  
20 toring of and collection of data relating to the direct  
21 care workforce;

22 (3) establish or expand recruitment and reten-  
23 tion programs for direct care workers, including ini-  
24 tiatives which improve the wages and benefits of-  
25 fered such workers; and



1           (4) develop or expand programs that promote  
2           the role of direct care workers in new cost-effective  
3           models of providing care to people with chronic  
4           health conditions, disabilities, and other extended  
5           support needs, and include approaches such as re-  
6           mote monitoring, wellness, and prevention.

7           (c) GRANT PERIOD.—The Secretary may award  
8           grants under this section for periods of not more than 3  
9           years. The Secretary may extend the period of a grant  
10          under this section. Each such extension shall be for a pe-  
11          riod of not more than 3 years.

12          (d) APPLICATION.—

13               (1) IN GENERAL.—To apply for a grant under  
14               this section, an eligible entity shall submit an appli-  
15               cation to the Secretary in such form, in such man-  
16               ner, and containing such information as the Sec-  
17               retary may require.

18               (2) CONTENTS.—At a minimum, the Secretary  
19               shall require each such application to outline how  
20               the eligible entity will establish baseline measures  
21               and benchmarks that meet the Secretary’s require-  
22               ments to evaluate program outcomes.

23           (e) UNIFORM BASELINE MEASURES.—The Secretary  
24          shall require each grantee to establish uniform baseline

1 measures in order to properly evaluate the impact of the  
2 work performed by the grantee under this section.

3 (f) SUPPLEMENT, NOT SUPPLANT.—Amounts pro-  
4 vided to an eligible entity under this section shall be used  
5 to supplement and not supplant other Federal, State, and  
6 local public funds expended to improve the recruitment,  
7 retention, and education of the direct care workforce.

8 (g) TERMINATION AUTHORITY.—The Secretary may  
9 terminate selection of a grantee under this section for  
10 good cause. Such good cause shall include a determination  
11 that the grantee—

12 (1) has misappropriated funds provided under  
13 this section; or

14 (2) has failed to make adequate progress to-  
15 ward accomplishing any goal set by the Secretary or  
16 included in the grantee’s application.

17 (h) DEFINITIONS.—In this section—

18 (1) the term “eligible entity” means a State or  
19 political subdivision of a State or any organization  
20 that is committed to accomplishing tasks set forth in  
21 subsection (b), whether in cooperation with a State,  
22 on its own initiative, or in partnership with any  
23 other organization; and

24 (2) the term “direct care worker” means a  
25 worker (including a nursing aide, home health aide,

1 or personal and home care aide) who provides care  
2 and personal assistance to people who are elderly,  
3 infirm, or living with a disability.

4 (i) REPORTS AND AUDITS.—Each eligible entity re-  
5 ceiving a grant under this section shall submit to the Sec-  
6 retary of Health and Human Services a report of the ac-  
7 tivities carried out with grant funds. The Secretary may  
8 conduct periodic audits and request periodic spending re-  
9 ports of States receiving grants under this section.

10 (j) REPORT.—Not later than 3 years after the date  
11 of making initial grants under this section, the Secretary  
12 shall prepare and submit to Congress a report that de-  
13 scribes the effectiveness of the grants awarded under this  
14 section in achieving specific State goals, including the ef-  
15 fectiveness of the programs funded by grants in reducing  
16 turnover rates in the direct care workforce.

17 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
18 are authorized to be appropriated to the Secretary of  
19 Health and Human Services \$25,000,000 for each of fis-  
20 cal years 2011 through 2016, to carry out this section.

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