

111TH CONGRESS
2^D SESSION

S. 3696

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

AUGUST 3, 2010

Mr. CASEY 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 Workforce
5 Empowerment Act”.

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 more than 13
4 million elderly and disabled Americans;

5 (2) the ability to meet the Nation's long-term
6 care challenges depends largely on a strong, stable
7 direct care workforce;

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

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

13 (5) according to the Bureau of Labor Statistics,
14 direct care workforce occupations consist of nursing
15 aides, home health aides, and personal and home
16 care aides;

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

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

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

5 (9) States have management information sys-
6 tems that are rarely set up to gather and report
7 basic information about the direct care workforce
8 that could be used to assess changes and challenges
9 to the workforce.

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

12 (a) HOME CARE WORKERS.—Section 13(a)(15) of
13 the Fair Labor Standards Act of 1938 (29 U.S.C.
14 213(a)(15)) is amended to read as follows:

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

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

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

10 **SEC. 4. DIRECT CARE WORKFORCE DATA COLLECTION AND**
11 **MONITORING.**

12 (a) IN GENERAL.—The Secretary of Health and
13 Human Services shall establish a direct care workforce
14 monitoring program to—

15 (1) facilitate the reporting of data by States
16 about the direct care workforce and the sharing of
17 such data among States, including tracking of best
18 practices and cross-State comparisons;

19 (2) enable the Centers for Medicare & Medicaid
20 Services to better collect data across all long-term
21 care settings for services financed through title
22 XVIII or XIX of the Social Security Act (Medicare
23 or Medicaid, respectively);

24 (3) enable the Centers for Medicare & Medicaid
25 Services (and any other agency designated by the

1 Secretary) to provide guidance to States concerning
2 the adequacy and quality of the States' reporting of
3 data, waiver and renewal applications, and any pro-
4 visions of or modifications to State plans regarding
5 the direct care workforce, including by revising any
6 data reporting forms and systems to ensure uniform
7 and consistent State reporting; and

8 (4) include, at a minimum, the collection of direct
9 care workforce data (which may be based on payroll
10 data, taking into account services provided by agen-
11 cy or contract staff) on—

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

13 (B) turnover;

14 (C) tenure;

15 (D) wages;

16 (E) benefits; and

17 (F) vacancies.

18 (b) ADVISORY COUNCIL ON DIRECT CARE WORK-
19 FORCE.—

20 (1) ESTABLISHMENT.—The Secretary, in con-
21 sultation with the Secretary of the Labor, shall es-
22 tablish a National Advisory Council on the Direct
23 Care Workforce (referred to in this section as the
24 “Council”) that shall be composed members to be
25 appointed by the Secretary.

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

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

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

24 (1) analyzes the existing direct care workforce
25 data infrastructure;

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

4 (3) makes recommendations for new or addi-
5 tional uniform data elements across regions and
6 States that is necessary to track supply, demand,
7 and workforce shortages related to the population
8 served by direct care workers;

9 (4) makes recommendations for improvement in
10 the competency, education, and training standards
11 for direct care workers; and

12 (5) includes any other topics requested by the
13 Secretary.

14 **SEC. 5. DIRECT CARE WORKER RECRUITMENT, RETENTION,**
15 **AND EDUCATION GRANT PROGRAM.**

16 (a) GRANTS AUTHORIZED.—

17 (1) IN GENERAL.—The Secretary of Health and
18 Human Services shall award grants to States and
19 other eligible entities to improve the recruitment, re-
20 tention, and education of the direct care workforce.

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

24 (A) \$100,000 for the period of fiscal years
25 2011 through 2013 to each State to assist the

1 State in developing its State direct care work-
2 force plan.

3 (B) The remainder of such amounts to
4 States and other eligible entities on a competi-
5 tive basis for the purposes described in sub-
6 section (b).

7 (b) USE OF FUNDS.—An eligible entity receiving a
8 grant under this subsection (a)(2)(B) may use the grant
9 to—

10 (1) expand and upgrade training programs and
11 infrastructure for direct care workers;

12 (2) implement or improve systems for the moni-
13 toring of and collection of data relating to the direct
14 care workforce;

15 (3) establish or expand recruitment and reten-
16 tion programs for direct care workers, including ini-
17 tiatives which improve the wages and benefits of-
18 fered such workers; and

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

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

6 (d) APPLICATION.—

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

12 (2) CONTENTS.—At a minimum, the Secretary
13 shall require each such application to outline how
14 the eligible entity will establish baseline measures
15 and benchmarks that meet the Secretary’s require-
16 ments to evaluate program outcomes.

17 (e) UNIFORM BASELINE MEASURES.—The Secretary
18 shall require each grantee to establish uniform baseline
19 measures in order to properly evaluate the impact of the
20 work performed by the grantee under this section.

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

1 (g) TERMINATION AUTHORITY.—The Secretary may
2 terminate selection of a grantee under this section for
3 good cause. Such good cause shall include a determination
4 that the grantee—

5 (1) has misappropriated funds provided under
6 this section; or

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

10 (h) DEFINITIONS.—In this section—

11 (1) the term “eligible entity” means a State or
12 political subdivision of a State or any organization
13 that is committed to accomplishing tasks set forth in
14 subsection (b), whether in cooperation with a State,
15 on its own initiative, or in partnership with any
16 other organization; and

17 (2) the term “direct care worker” means a
18 worker (including a nursing aide, home health aide,
19 or personal and home care aide) who provides care
20 and personal assistance to people who are elderly,
21 infirm, or living with a disability.

22 (i) REPORTS AND AUDITS.—Each eligible entity re-
23 ceiving a grant under this section shall submit to the Sec-
24 retary of Health and Human Services a report of the ac-
25 tivities carried out with grant funds. The Secretary may

1 conduct periodic audits and request periodic spending re-
2 ports of States receiving grants under this section.

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

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

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