

111TH CONGRESS
1ST SESSION

S. 683

To amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2009

Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. DURBIN, Mr. KERRY, Mr. SCHUMER, Ms. STABENOW, Mr. DODD, Mr. BROWN, Mr. SANDERS, Mr. CASEY, Mr. TESTER, Mrs. GILLIBRAND, and Mr. BENNET) 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 provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, 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 “Community Choice Act of 2009”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

Sec. 101. Coverage of community-based attendant services and supports under the Medicaid program.

Sec. 102. Enhanced FMAP for ongoing activities of early coverage States that enhance and promote the use of community-based attendant services and supports.

Sec. 103. Increased Federal financial participation for certain expenditures.

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

Sec. 201. Grants to promote systems change and capacity building.

Sec. 202. Demonstration project to enhance coordination of care under the Medicare and Medicaid programs for dual eligible individuals.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Long-term services and supports provided
5 under the Medicaid program established under title
6 XIX of the Social Security Act (42 U.S.C. 1396 et
7 seq.) must meet the abilities and life choices of indi-
8 viduals with disabilities and older Americans, includ-
9 ing the choice to live in one's own home or with
10 one's own family and to become a productive mem-
11 ber of the community.

12 (2) Similarly, under the United States Supreme
13 Court's decision in *Olmstead v. L.C.*, 527 U.S. 581
14 (1999), individuals with disabilities have the right to
15 choose to receive their long-term services and sup-
16 ports in the community, rather than in an institu-
17 tional setting.

1 (3) Nevertheless, research on the provision of
2 long-term services and supports under the Medicaid
3 program (conducted by and on behalf of the Depart-
4 ment of Health and Human Services) continues to
5 show a significant funding and programmatic bias
6 toward institutional care. In 2007, only 42 percent
7 of long-term care funds expended under the Med-
8 icaid program, and only about 13.6 percent of all
9 funds expended under that program, pay for services
10 and supports in home and community-based set-
11 tings.

12 (4) While much effort has been dedicated to
13 “rebalancing” the current system, overall about 60
14 percent of Medicaid long-term care dollars are still
15 spent on institutional services, with about 40 percent
16 going to home and community-based services. In
17 2007, only 11 States spent 50 percent or more of
18 their Medicaid long-term care funds on home and
19 community-based care.

20 (5) The statistics are even more dispropor-
21 tionate for adults with physical disabilities. In 2007,
22 69 percent of Medicaid long-term care spending for
23 older people and adults with physical disabilities
24 paid for institutional services. Only 6 states spent
25 50 percent or more of their Medicaid long-term care

1 dollars on home and community-based services for
2 older people and adults with physical disabilities
3 while 1/2 of the States spent less than 25 percent.
4 This disparity continues even though, on average, it
5 is estimated that Medicaid dollars can support near-
6 ly 3 older people and adults with physical disabilities
7 in home and community-based services for every per-
8 son in a nursing home.

9 (6) For Medicaid beneficiaries who need long-
10 term care, services provided in an institutional set-
11 ting represent the only guaranteed benefit. Only 30
12 States have adopted the benefit option of providing
13 personal care, or attendant, services under their
14 Medicaid programs.

15 (7) Although every State has chosen to provide
16 certain services under home and community-based
17 waivers, these services are unevenly available within
18 and across States, and reach a small percentage of
19 eligible individuals. Individuals with the most signifi-
20 cant disabilities are usually afforded the least
21 amount of choice, despite advances in medical and
22 assistive technologies and related areas.

23 (8) Despite the more limited funding for home
24 and community-based services, the majority of indi-
25 viduals who use Medicaid long-term services and

1 supports prefer to live in the community, rather
2 than in institutional settings.

3 (9) The goals of the Nation properly include
4 providing families of children with disabilities, work-
5 ing-age adults with disabilities, and older Americans
6 with—

7 (A) a meaningful choice of receiving long-
8 term services and supports in the most inte-
9 grated setting appropriate to the individual's
10 needs;

11 (B) the greatest possible control over the
12 services received and, therefore, their own lives
13 and futures; and

14 (C) quality services that maximize inde-
15 pendence in the home and community.

16 (b) PURPOSES.—The purposes of this Act are the fol-
17 lowing:

18 (1) To reform the Medicaid program estab-
19 lished under title XIX of the Social Security Act (42
20 U.S.C. 1396 et seq.) to provide services in the most
21 integrated setting appropriate to the individual's
22 needs, and to provide equal access to community-
23 based attendant services and supports in order to
24 assist individuals in achieving equal opportunity, full

1 participation, independent living, and economic self-
 2 sufficiency.

3 (2) To provide financial assistance to States as
 4 they reform their long-term care systems to provide
 5 comprehensive statewide long-term services and sup-
 6 ports, including community-based attendant services
 7 and supports that provide consumer choice and di-
 8 rection, in the most integrated setting appropriate.

9 (3) To assist States in meeting the growing de-
 10 mand for community-based attendant services and
 11 supports, as the Nation’s population ages and indi-
 12 viduals with disabilities live longer.

13 (4) To assist States in complying with the U.S.
 14 Supreme Court decision in *Olmstead v. L.C.*, 527
 15 U.S. 581 (1999), and implementing the integration
 16 mandate of the Americans with Disabilities Act.

17 **TITLE I—ESTABLISHMENT OF** 18 **MEDICAID PLAN BENEFIT**

19 **SEC. 101. COVERAGE OF COMMUNITY-BASED ATTENDANT** 20 **SERVICES AND SUPPORTS UNDER THE MED-** 21 **ICAID PROGRAM.**

22 (a) MANDATORY COVERAGE.—Section
 23 1902(a)(10)(D) of the Social Security Act (42 U.S.C.
 24 1396a(a)(10)(D)) is amended—

25 (1) by inserting “(i)” after “(D)”;

1 (2) by adding “and” after the semicolon; and

2 (3) by adding at the end the following new
3 clause:

4 “(ii) subject to section 1943, for the
5 inclusion of community-based attendant
6 services and supports for any individual
7 who—

8 “(I) is eligible for medical assist-
9 ance under the State plan;

10 “(II) with respect to whom there
11 has been a determination that the in-
12 dividual requires the level of care pro-
13 vided in a nursing facility, institution
14 for mental diseases, or an inter-
15 mediate care facility for the mentally
16 retarded (whether or not coverage of
17 such institution or intermediate care
18 facility is provided under the State
19 plan); and

20 “(III) chooses to receive such
21 services and supports;”.

22 (b) COMMUNITY-BASED ATTENDANT SERVICES AND
23 SUPPORTS.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by adding at the end the following new section:

“COMMUNITY-BASED ATTENDANT SERVICES AND
SUPPORTS

“SEC. 1943. (a) REQUIRED COVERAGE.—

“(1) IN GENERAL.—Not later than October 1, 2014, a State shall provide through a plan amendment for the inclusion of community-based attendant services and supports (as defined in subsection (g)(1)) for individuals described in section 1902(a)(10)(D)(ii) in accordance with this section.

“(2) ENHANCED FMAP AND ADDITIONAL FEDERAL FINANCIAL SUPPORT FOR EARLIER COVERAGE.—Notwithstanding section 1905(b), during the period that begins on October 1, 2009, and ends on September 30, 2014, in the case of a State with an approved plan amendment under this section during that period that also satisfies the requirements of subsection (c) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 2105(b) with respect to medical assistance in the form of community-based attendant services and supports provided to individuals described in section 1902(a)(10)(D)(ii) in accordance

1 with this section on or after the date of the approval
 2 of such plan amendment.

3 “(b) DEVELOPMENT AND IMPLEMENTATION OF BEN-
 4 EFIT.—In order for a State plan amendment to be ap-
 5 proved under this section, a State shall provide the Sec-
 6 retary with the following assurances:

7 “(1) ASSURANCE OF DEVELOPMENT AND IM-
 8 PLEMENTATION COLLABORATION.—

9 “(A) IN GENERAL.—That State plan
 10 amendment—

11 “(i) has been developed in collabora-
 12 tion with, and with the approval of, a De-
 13 velopment and Implementation Council es-
 14 tablished by the State that satisfies the re-
 15 quirements of subparagraph (B); and

16 “(ii) will be implemented in collabora-
 17 tion with such Council and on the basis of
 18 public input solicited by the State and the
 19 Council.

20 “(B) DEVELOPMENT AND IMPLEMENTA-
 21 TION COUNCIL REQUIREMENTS.—For purposes
 22 of subparagraph (A), the requirements of this
 23 subparagraph are that—

24 “(i) the majority of the members of
 25 the Development and Implementation

1 Council are individuals with disabilities, el-
 2 derly individuals, and their representatives;
 3 and

4 “(ii) in carrying out its responsibil-
 5 ities, the Council actively collaborates
 6 with—

7 “(I) individuals with disabilities;

8 “(II) elderly individuals;

9 “(III) representatives of such in-
 10 dividuals; and

11 “(IV) providers of, and advocates
 12 for, services and supports for such in-
 13 dividuals.

14 “(2) ASSURANCE OF PROVISION ON A STATE-
 15 WIDE BASIS AND IN MOST INTEGRATED SETTING.—

16 That consumer controlled community-based attend-
 17 ant services and supports will be provided under the
 18 State plan to individuals described in section
 19 1902(a)(10)(D)(ii) on a statewide basis and in a
 20 manner that provides such services and supports in
 21 the most integrated setting appropriate to the indi-
 22 vidual’s needs.

23 “(3) ASSURANCE OF NONDISCRIMINATION.—

24 That the State will provide community-based attend-
 25 ant services and supports to an individual described

1 in section 1902(a)(10)(D)(ii) without regard to the
 2 individual's age, type or nature of disability, severity
 3 of disability, or the form of community-based attend-
 4 ant services and supports that the individual re-
 5 quires in order to lead an independent life.

6 “(4) ASSURANCE OF MAINTENANCE OF EF-
 7 FORT.—That the level of State expenditures for
 8 medical assistance that is provided under section
 9 1905(a), section 1915, section 1115, or otherwise to
 10 individuals with disabilities or elderly individuals for
 11 a fiscal year shall not be less than the level of such
 12 expenditures for the fiscal year preceding the first
 13 full fiscal year in which the State plan amendment
 14 to provide community-based attendant services and
 15 supports in accordance with this section is imple-
 16 mented.

17 “(c) REQUIREMENTS FOR ENHANCED FMAP FOR
 18 EARLY COVERAGE.—In addition to satisfying the other re-
 19 quirements for an approved plan amendment under this
 20 section, in order for a State to be eligible under subsection
 21 (a)(2) during the period described in that subsection for
 22 the enhanced FMAP for early coverage under subsection
 23 (a)(2), the State shall satisfy the following requirements:

24 “(1) SPECIFICATIONS.—With respect to a fiscal
 25 year, the State shall provide the Secretary with the

1 following specifications regarding the provision of
2 community-based attendant services and supports
3 under the plan for that fiscal year:

4 “(A)(i) The number of individuals who are
5 estimated to receive community-based attendant
6 services and supports under the plan during the
7 fiscal year.

8 “(ii) The number of individuals that re-
9 ceived such services and supports during the
10 preceding fiscal year.

11 “(B) The maximum number of individuals
12 who will receive such services and supports
13 under the plan during that fiscal year.

14 “(C) The procedures the State will imple-
15 ment to ensure that the models for delivery of
16 such services and supports are consumer con-
17 trolled (as defined in subsection (g)(2)(B)).

18 “(D) The procedures the State will imple-
19 ment to inform all potentially eligible individ-
20 uals and relevant other individuals of the avail-
21 ability of such services and supports under this
22 title, and of other items and services that may
23 be provided to the individual under this title or
24 title XVIII and other Federal or State long-
25 term service and support programs.

1 “(E) The procedures the State will imple-
2 ment to ensure that such services and supports
3 are provided in accordance with the require-
4 ments of subsection (b)(1).

5 “(F) The procedures the State will imple-
6 ment to actively involve in a systematic, com-
7 prehensive, and ongoing basis, the Development
8 and Implementation Council established in ac-
9 cordance with subsection (b)(1)(A)(ii), individ-
10 uals with disabilities, elderly individuals, and
11 representatives of such individuals in the de-
12 sign, delivery, administration, implementation,
13 and evaluation of the provision of such services
14 and supports under this title.

15 “(2) PARTICIPATION IN EVALUATIONS.—The
16 State shall provide the Secretary with such sub-
17 stantive input into, and participation in, the design
18 and conduct of data collection, analyses, and other
19 qualitative or quantitative evaluations of the provi-
20 sion of community-based attendant services and sup-
21 ports under this section as the Secretary deems nec-
22 essary in order to determine the effectiveness of the
23 provision of such services and supports in allowing
24 the individuals receiving such services and supports

1 to lead an independent life to the maximum extent
2 possible.

3 “(d) QUALITY ASSURANCE.—

4 “(1) STATE RESPONSIBILITIES.—In order for a
5 State plan amendment to be approved under this
6 section, a State shall establish and maintain a com-
7 prehensive, continuous quality assurance system
8 with respect to community-based attendant services
9 and supports that provides for the following:

10 “(A) The State shall establish require-
11 ments, as appropriate, for agency-based and
12 other delivery models that include—

13 “(i) minimum qualifications and train-
14 ing requirements for agency-based and
15 other models;

16 “(ii) financial operating standards;
17 and

18 “(iii) an appeals procedure for eligi-
19 bility denials and a procedure for resolving
20 disagreements over the terms of an individ-
21 ualized plan.

22 “(B) The State shall modify the quality as-
23 surance system, as appropriate, to maximize
24 consumer independence and consumer control

1 in both agency-provided and other delivery mod-
2 els.

3 “(C) The State shall provide a system that
4 allows for the external monitoring of the quality
5 of services and supports by entities consisting
6 of consumers and their representatives, dis-
7 ability organizations, providers, families of dis-
8 abled or elderly individuals, members of the
9 community, and others.

10 “(D) The State shall provide for ongoing
11 monitoring of the health and well-being of each
12 individual who receives community-based at-
13 tendant services and supports.

14 “(E) The State shall require that quality
15 assurance mechanisms pertaining to the indi-
16 vidual be included in the individual’s written
17 plan.

18 “(F) The State shall establish a process
19 for the mandatory reporting, investigation, and
20 resolution of allegations of neglect, abuse, or ex-
21 ploitation in connection with the provision of
22 such services and supports.

23 “(G) The State shall obtain meaningful
24 consumer input, including consumer surveys,
25 that measure the extent to which an individual

1 receives the services and supports described in
2 the individual's plan and the individual's satis-
3 faction with such services and supports.

4 “(H) The State shall make available to the
5 public the findings of the quality assurance sys-
6 tem.

7 “(I) The State shall establish an ongoing
8 public process for the development, implementa-
9 tion, and review of the State's quality assurance
10 system.

11 “(J) The State shall develop and imple-
12 ment a program of sanctions for providers of
13 community-based services and supports that
14 violate the terms or conditions for the provision
15 of such services and supports.

16 “(2) FEDERAL RESPONSIBILITIES.—

17 “(A) PERIODIC EVALUATIONS.—The Sec-
18 retary shall conduct a periodic sample review of
19 outcomes for individuals who receive commu-
20 nity-based attendant services and supports
21 under this title.

22 “(B) INVESTIGATIONS.—The Secretary
23 may conduct targeted reviews and investiga-
24 tions upon receipt of an allegation of neglect,
25 abuse, or exploitation of an individual receiving

1 community-based attendant services and sup-
 2 ports under this section.

3 “(C) DEVELOPMENT OF PROVIDER SANC-
 4 TION GUIDELINES.—The Secretary shall de-
 5 velop guidelines for States to use in developing
 6 the sanctions required under paragraph (1)(J).

7 “(e) REPORTS.—The Secretary shall submit to Con-
 8 gress periodic reports on the provision of community-based
 9 attendant services and supports under this section, par-
 10 ticularly with respect to the impact of the provision of
 11 such services and supports on—

12 “(1) individuals eligible for medical assistance
 13 under this title;

14 “(2) States; and

15 “(3) the Federal Government.

16 “(f) NO EFFECT ON ABILITY TO PROVIDE COV-
 17 ERAGE.—

18 “(1) IN GENERAL.—Nothing in this section
 19 shall be construed as affecting the ability of a State
 20 to provide coverage under the State plan for commu-
 21 nity-based attendant services and supports (or simi-
 22 lar coverage) under section 1905(a), section 1915,
 23 section 1115, or otherwise.

24 “(2) ELIGIBILITY FOR ENHANCED MATCH.—In
 25 the case of a State that provides coverage for such

1 services and supports under a waiver, the State shall
 2 not be eligible under subsection (a)(2) for the en-
 3 hanced FMAP for the early provision of such cov-
 4 erage unless the State submits a plan amendment to
 5 the Secretary that meets the requirements of this
 6 section and demonstrates that the State is able to
 7 fully comply with and implement the requirements of
 8 this section.

9 “(g) DEFINITIONS.—In this title:

10 “(1) COMMUNITY-BASED ATTENDANT SERVICES
 11 AND SUPPORTS.—

12 “(A) IN GENERAL.—The term ‘community-
 13 based attendant services and supports’ means
 14 attendant services and supports furnished to an
 15 individual, as needed, to assist in accomplishing
 16 activities of daily living, instrumental activities
 17 of daily living, and health-related tasks through
 18 hands-on assistance, supervision, or cueing—

19 “(i) under a plan of services and sup-
 20 ports that is based on an assessment of
 21 functional need and that is agreed to in
 22 writing by the individual or, as appro-
 23 priate, the individual’s representative;

24 “(ii) in a home or community setting,
 25 which shall include but not be limited to a

1 school, workplace, or recreation or religious
 2 facility, but does not include a nursing fa-
 3 cility, institution for mental diseases, or an
 4 intermediate care facility for the mentally
 5 retarded;

6 “(iii) under an agency-provider model
 7 or other model (as defined in paragraph
 8 (2)(C)); or

9 “(iv) the furnishing of which—

10 “(I) is selected, managed, and
 11 dismissed by the individual, or, as ap-
 12 propriate, with assistance from the in-
 13 dividual’s representative; and

14 “(II) provided by an individual
 15 who is qualified to provide such serv-
 16 ices, including family members (as de-
 17 fined by the Secretary).

18 “(B) INCLUDED SERVICES AND SUP-
 19 PORTS.—Such term includes—

20 “(i) tasks necessary to assist an indi-
 21 vidual in accomplishing activities of daily
 22 living, instrumental activities of daily liv-
 23 ing, and health-related tasks;

24 “(ii) the acquisition, maintenance, and
 25 enhancement of skills necessary for the in-

dividual to accomplish activities of daily living, instrumental activities of daily living, and health-related tasks;

“(iii) backup systems or mechanisms (such as the use of beepers) to ensure continuity of services and supports; and

“(iv) voluntary training on how to select, manage, and dismiss attendants.

“(C) EXCLUDED SERVICES AND SUPPORTS.—Subject to subparagraph (D), such term does not include—

“(i) the provision of room and board for the individual;

“(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

“(iii) assistive technology devices and assistive technology services;

“(iv) durable medical equipment; or

“(v) home modifications.

“(D) FLEXIBILITY IN TRANSITION TO COMMUNITY-BASED HOME SETTING.—Such term may include expenditures for transitional

costs, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility, institution for mental diseases, or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides.

“(2) ADDITIONAL DEFINITIONS.—

“(A) ACTIVITIES OF DAILY LIVING.—The term ‘activities of daily living’ includes eating, toileting, grooming, dressing, bathing, and transferring.

“(B) CONSUMER CONTROLLED.—The term ‘consumer controlled’ means a method of selecting and providing services and supports that allow the individual, or where appropriate, the individual's representative, maximum control of the community-based attendant services and supports, regardless of who acts as the employer of record.

“(C) DELIVERY MODELS.—

“(i) AGENCY-PROVIDER MODEL.—The term ‘agency-provider model’ means, with respect to the provision of community-

1 based attendant services and supports for
2 an individual, subject to clause (iii), a
3 method of providing consumer controlled
4 services and supports under which entities
5 contract for the provision of such services
6 and supports.

7 “(ii) OTHER MODELS.—The term
8 ‘other models’ means, subject to clause
9 (iii), methods, other than an agency-pro-
10 vider model, for the provision of consumer
11 controlled services and supports. Such
12 models may include the provision of vouch-
13 ers, direct cash payments, or use of a fiscal
14 agent to assist in obtaining services.

15 “(iii) COMPLIANCE WITH CERTAIN
16 LAWS.—A State shall ensure that, regard-
17 less of whether the State uses an agency-
18 provider model or other models to provide
19 services and supports under a State plan
20 amendment under this section, such serv-
21 ices and supports are provided in accord-
22 ance with the requirements of the Fair
23 Labor Standards Act of 1938 and applica-
24 ble Federal and State laws regarding—

1 “(I) withholding and payment of
2 Federal and State income and payroll
3 taxes;

4 “(II) the provision of unemploy-
5 ment and workers compensation in-
6 surance;

7 “(III) maintenance of general li-
8 ability insurance; and

9 “(IV) occupational health and
10 safety.

11 “(D) HEALTH-RELATED TASKS.—The
12 term ‘health-related tasks’ means specific tasks
13 that can be delegated or assigned by licensed
14 health-care professionals under State law to be
15 performed by an attendant.

16 “(E) INSTRUMENTAL ACTIVITIES OF DAILY
17 LIVING.—The term ‘instrumental activities of
18 daily living’ includes, but is not limited to, meal
19 planning and preparation, managing finances,
20 shopping for food, clothing, and other essential
21 items, performing essential household chores,
22 communicating by phone and other media, and
23 traveling around and participating in the com-
24 munity.

1 “(F) INDIVIDUALS REPRESENTATIVE.—

2 The term ‘individual’s representative’ means a
3 parent, a family member, a guardian, an advo-
4 cate, or other authorized representative of an
5 individual.”.

6 (c) CONFORMING AMENDMENTS.—

7 (1) MANDATORY BENEFIT.—Section
8 1902(a)(10)(A) of the Social Security Act (42
9 U.S.C. 1396a(a)(10)(A)) is amended, in the matter
10 preceding clause (i), by striking “(17) and (21)” and
11 inserting “(17), (21), and (28)”.

12 (2) DEFINITION OF MEDICAL ASSISTANCE.—
13 Section 1905(a) of the Social Security Act (42
14 U.S.C. 1396d) is amended—

15 (A) by striking “and” at the end of para-
16 graph (27);

17 (B) by redesignating paragraph (28) as
18 paragraph (29); and

19 (C) by inserting after paragraph (27) the
20 following:

21 “(28) community-based attendant services and
22 supports (to the extent allowed and as defined in
23 section 1943); and”.

24 (3) IMD/ICFMR REQUIREMENTS.—Section
25 1902(a)(10)(C)(iv) of the Social Security Act (42

1 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting
 2 “and (28)” after “(24)”.

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
 5 graph (2), the amendments made by this section
 6 (other than the amendment made by subsection
 7 (c)(1)) take effect on October 1, 2009, and apply to
 8 medical assistance provided for community-based at-
 9 tendant services and supports described in section
 10 1943 of the Social Security Act furnished on or
 11 after that date.

12 (2) MANDATORY BENEFIT.—The amendment
 13 made by subsection (c)(1) takes effect on October 1,
 14 2014.

15 **SEC. 102. ENHANCED FMAP FOR ONGOING ACTIVITIES OF**
 16 **EARLY COVERAGE STATES THAT ENHANCE**
 17 **AND PROMOTE THE USE OF COMMUNITY-**
 18 **BASED ATTENDANT SERVICES AND SUP-**
 19 **PORTS.**

20 (a) IN GENERAL.—Section 1943 of the Social Secu-
 21 rity Act, as added by section 101(b), is amended—

22 (1) by redesignating subsections (d) through (g)
 23 as subsections (f) through (i), respectively;

24 (2) in subsection (a)(1), by striking “subsection
 25 (g)(1)” and inserting “subsection (i)(1)”;

1 (3) in subsection (a)(2), by inserting “, and
 2 with respect to expenditures described in subsection
 3 (d), the Secretary shall pay the State the amount
 4 described in subsection (d)(1)” before the period;

5 (4) in subsection (c)(1)(C), by striking “sub-
 6 section (g)(2)(B)” and inserting “subsection
 7 (i)(2)(B)”; and

8 (5) by inserting after subsection (c), the fol-
 9 lowing:

10 “(d) INCREASED FEDERAL FINANCIAL PARTICIPA-
 11 TION FOR EARLY COVERAGE STATES THAT MEET CER-
 12 TAIN BENCHMARKS.—

13 “(1) IN GENERAL.—Subject to paragraph (2),
 14 for purposes of subsection (a)(2), the amount and
 15 expenditures described in this subsection are an
 16 amount equal to the Federal medical assistance per-
 17 centage, increased by 10 percentage points, of the
 18 expenditures incurred by the State for the provision
 19 or conduct of the services or activities described in
 20 paragraph (3).

21 “(2) EXPENDITURE CRITERIA.—A State shall—

22 “(A) develop criteria for determining the
 23 expenditures described in paragraph (1) in col-
 24 laboration with the individuals and representa-
 25 tives described in subsection (b)(1); and

1 “(B) submit such criteria for approval by
2 the Secretary.

3 “(3) SERVICES, SUPPORTS AND ACTIVITIES DE-
4 SCRIBED.—For purposes of paragraph (1), the serv-
5 ices, supports and activities described in this sub-
6 paragraph are the following:

7 “(A) One-stop intake, referral, and institu-
8 tional diversion services.

9 “(B) Identifying and remedying gaps and
10 inequities in the State’s current provision of
11 long-term services and supports, particularly
12 those services and supports that are provided
13 based on such factors as age, severity of dis-
14 ability, type of disability, ethnicity, income, in-
15 stitutional bias, or other similar factors.

16 “(C) Establishment of consumer participa-
17 tion and consumer governance mechanisms,
18 such as cooperatives and regional service au-
19 thorities, that are managed and controlled by
20 individuals with significant disabilities who use
21 community-based services and supports or their
22 representatives.

23 “(D) Activities designed to enhance the
24 skills, earnings, benefits, supply, career, and fu-

1 ture prospects of workers who provide commu-
2 nity-based attendant services and supports.

3 “(E) Continuous, comprehensive quality
4 improvement activities that are designed to en-
5 sure and enhance the health and well-being of
6 individuals who rely on community-based at-
7 tendant services and supports, particularly ac-
8 tivities involving or initiated by consumers of
9 such services and supports or their representa-
10 tives.

11 “(F) Family support services to augment
12 the efforts of families and friends to enable in-
13 dividuals with disabilities of all ages to live in
14 their own homes and communities.

15 “(G) Health promotion and wellness serv-
16 ices and activities.

17 “(H) Provider recruitment and enhance-
18 ment activities, particularly such activities that
19 encourage the development and maintenance of
20 consumer controlled cooperatives or other small
21 businesses or micro-enterprises that provide
22 community-based attendant services and sup-
23 ports or related services.

24 “(I) Activities designed to ensure service
25 and systems coordination.

1 “(J) Any other services or activities that
2 the Secretary deems appropriate.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) take effect on October 1, 2009.

5 **SEC. 103. INCREASED FEDERAL FINANCIAL PARTICIPATION**
6 **FOR CERTAIN EXPENDITURES.**

7 (a) IN GENERAL.—Section 1943 of the Social Secu-
8 rity Act, as added by section 101(b) and amended by sec-
9 tion 102, is amended by inserting after subsection (d) the
10 following:

11 “(e) INCREASED FEDERAL FINANCIAL PARTICIPA-
12 TION FOR CERTAIN EXPENDITURES.—

13 “(1) ELIGIBILITY FOR PAYMENT.—

14 “(A) IN GENERAL.—In the case of a State
15 that the Secretary determines satisfies the re-
16 quirements of subparagraph (B), the Secretary
17 shall pay the State the amounts described in
18 paragraph (2) in addition to any other pay-
19 ments provided for under section 1903 or this
20 section for the provision of community-based at-
21 tendant services and supports.

22 “(B) REQUIREMENTS.—The requirements
23 of this subparagraph are the following:

24 “(i) The State has an approved plan
25 amendment under this section.

1 “(ii) The State has incurred expendi-
 2 tures described in paragraph (2).

3 “(iii) The State develops and submits
 4 to the Secretary criteria to identify and se-
 5 lect such expenditures in accordance with
 6 the requirements of paragraph (3).

7 “(iv) The Secretary determines that
 8 payment of the applicable percentage of
 9 such expenditures (as determined under
 10 paragraph (2)(B)) would enable the State
 11 to provide a meaningful choice of receiving
 12 community-based services and supports to
 13 individuals with disabilities and elderly in-
 14 dividuals who would otherwise only have
 15 the option of receiving institutional care.

16 “(2) AMOUNTS AND EXPENDITURES DE-
 17 SCRIBED.—

18 “(A) EXPENDITURES IN EXCESS OF 150
 19 PERCENT OF BASELINE AMOUNT.—The
 20 amounts and expenditures described in this
 21 paragraph are an amount equal to the applica-
 22 ble percentage, as determined by the Secretary
 23 in accordance with subparagraph (B), of the ex-
 24 penditures incurred by the State for the provi-
 25 sion of community-based attendant services and

1 supports to an individual that exceed 150 per-
 2 cent of the average cost of providing nursing fa-
 3 cility services to an individual who resides in
 4 the State and is eligible for such services under
 5 this title, as determined in accordance with cri-
 6 teria established by the Secretary.

7 “(B) APPLICABLE PERCENTAGE.—The
 8 Secretary shall establish a payment scale for
 9 the expenditures described in subparagraph (A)
 10 so that the Federal financial participation for
 11 such expenditures gradually increases from 70
 12 percent to 90 percent as such expenditures in-
 13 crease.

14 “(3) SPECIFICATION OF ORDER OF SELECTION
 15 FOR EXPENDITURES.—In order to receive the
 16 amounts described in paragraph (2), a State shall—

17 “(A) develop, in collaboration with the in-
 18 dividuals and representatives described in sub-
 19 section (b)(1) and pursuant to guidelines estab-
 20 lished by the Secretary, criteria to identify and
 21 select the expenditures submitted under that
 22 paragraph; and

23 “(B) submit such criteria to the Sec-
 24 retary.”.

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

3 **TITLE II—PROMOTION OF SYS-**
 4 **TEMS CHANGE AND CAPACITY**
 5 **BUILDING**

6 **SEC. 201. GRANTS TO PROMOTE SYSTEMS CHANGE AND CA-**
 7 **PACITY BUILDING.**

8 (a) AUTHORITY TO AWARD GRANTS.—

9 (1) IN GENERAL.—The Secretary of Health and
 10 Human Services (in this section referred to as the
 11 “Secretary”) shall award grants to eligible States to
 12 carry out the activities described in subsection (b).

13 (2) APPLICATION.—In order to be eligible for a
 14 grant under this section, a State shall submit to the
 15 Secretary an application in such form and manner,
 16 and that contains such information, as the Secretary
 17 may require.

18 (b) PERMISSIBLE ACTIVITIES.—A State that receives
 19 a grant under this section may use funds provided under
 20 the grant for any of the following activities, focusing on
 21 areas of need identified by the State and the Consumer
 22 Task Force established under subsection (c):

23 (1) The development and implementation of the
 24 provision of community-based attendant services and
 25 supports under section 1943 of the Social Security

1 Act (as added by section 101(b) and amended by
2 sections 102 and 103) through active collaboration
3 with—

4 (A) individuals with disabilities;

5 (B) elderly individuals;

6 (C) representatives of such individuals; and

7 (D) providers of, and advocates for, serv-
8 ices and supports for such individuals.

9 (2) Substantially involving individuals with sig-
10 nificant disabilities and representatives of such indi-
11 viduals in jointly developing, implementing, and con-
12 tinually improving a mutually acceptable comprehen-
13 sive, effectively working statewide plan for pre-
14 venting and alleviating unnecessary institutionaliza-
15 tion of such individuals.

16 (3) Engaging in system change and other ac-
17 tivities deemed necessary to achieve any or all of the
18 goals of such statewide plan.

19 (4) Identifying and remedying disparities and
20 gaps in services to classes of individuals with disabil-
21 ities and elderly individuals who are currently expe-
22 riencing or who face substantial risk of unnecessary
23 institutionalization.

24 (5) Building and expanding system capacity to
25 offer quality consumer controlled community-based

1 services and supports to individuals with disabilities
2 and elderly individuals, including by—

3 (A) seeding the development and effective
4 use of community-based attendant services and
5 supports cooperatives, Independent Living Cen-
6 ters, small businesses, micro-enterprises, micro-
7 boards, and similar joint ventures owned and
8 controlled by individuals with disabilities or rep-
9 resentatives of such individuals and community-
10 based attendant services and supports workers;

11 (B) enhancing the choice and control indi-
12 viduals with disabilities and elderly individuals
13 exercise, including through their representa-
14 tives, with respect to the personal assistance
15 and supports they rely upon to lead inde-
16 pendent, self-directed lives;

17 (C) enhancing the skills, earnings, benefits,
18 supply, career, and future prospects of workers
19 who provide community-based attendant serv-
20 ices and supports;

21 (D) engaging in a variety of needs assess-
22 ment and data gathering;

23 (E) developing strategies for modifying
24 policies, practices, and procedures that result in
25 unnecessary institutional bias or the over-

1 medicalization of long-term services and sup-
 2 ports;

3 (F) engaging in interagency coordination
 4 and single point of entry activities;

5 (G) providing training and technical assist-
 6 ance with respect to the provision of commu-
 7 nity-based attendant services and supports;

8 (H) engaging in—

9 (i) public awareness campaigns;

10 (ii) facility-to-community transitional
 11 activities; and

12 (iii) demonstrations of new ap-
 13 proaches; and

14 (I) engaging in other systems change ac-
 15 tivities necessary for developing, implementing,
 16 or evaluating a comprehensive statewide system
 17 of community-based attendant services and sup-
 18 ports.

19 (6) Ensuring that the activities funded by the
 20 grant are coordinated with other efforts to increase
 21 personal attendant services and supports, includ-
 22 ing—

23 (A) programs funded under or amended by
 24 the Ticket to Work and Work Incentives Im-

1 provement Act of 1999 (Public Law 106–170;
2 113 Stat. 1860);

3 (B) grants funded under the Families of
4 Children With Disabilities Support Act of 2000
5 (42 U.S.C. 15091 et seq.); and

6 (C) other initiatives designed to enhance
7 the delivery of community-based services and
8 supports to individuals with disabilities and el-
9 derly individuals.

10 (7) Engaging in transition partnership activities
11 with nursing facilities and intermediate care facili-
12 ties for the mentally retarded that utilize and build
13 upon items and services provided to individuals with
14 disabilities or elderly individuals under the Medicaid
15 program under title XIX of the Social Security Act,
16 or by Federal, State, or local housing agencies, Inde-
17 pendent Living Centers, and other organizations
18 controlled by consumers or their representatives.

19 (c) CONSUMER TASK FORCE.—

20 (1) ESTABLISHMENT AND DUTIES.—To be eli-
21 gible to receive a grant under this section, each
22 State shall establish a Consumer Task Force (re-
23 ferred to in this subsection as the “Task Force”) to
24 assist the State in the development, implementation,

1 and evaluation of real choice systems change initia-
2 tives.

3 (2) APPOINTMENT.—Members of the Task
4 Force shall be appointed by the Chief Executive Of-
5 ficer of the State in accordance with the require-
6 ments of paragraph (3), after the solicitation of rec-
7 ommendations from representatives of organizations
8 representing a broad range of individuals with dis-
9 abilities, elderly individuals, representatives of such
10 individuals, and organizations interested in individ-
11 uals with disabilities and elderly individuals.

12 (3) COMPOSITION.—

13 (A) IN GENERAL.—The Task Force shall
14 represent a broad range of individuals with dis-
15 abilities from diverse backgrounds and shall in-
16 clude representatives from Developmental Dis-
17 abilities Councils, Mental Health Councils,
18 State Independent Living Centers and Councils,
19 Commissions on Aging, organizations that pro-
20 vide services to individuals with disabilities and
21 consumers of long-term services and supports.

22 (B) INDIVIDUALS WITH DISABILITIES.—A
23 majority of the members of the Task Force
24 shall be individuals with disabilities or rep-
25 resentatives of such individuals.

1 (C) LIMITATION.—The Task Force shall
2 not include employees of any State agency pro-
3 viding services to individuals with disabilities
4 other than employees of entities described in
5 the Developmental Disabilities Assistance and
6 Bill of Rights Act of 2000 (42 U.S.C. 15001 et
7 seq.).

8 (d) ANNUAL REPORT.—

9 (1) STATES.—A State that receives a grant
10 under this section shall submit an annual report to
11 the Secretary on the use of funds provided under the
12 grant in such form and manner as the Secretary
13 may require.

14 (2) SECRETARY.—The Secretary shall submit
15 to Congress an annual report on the grants made
16 under this section.

17 (e) AUTHORIZATION OF APPROPRIATIONS.—

18 (1) IN GENERAL.—There is authorized to be
19 appropriated to carry out this section, \$50,000,000
20 for each of fiscal years 2010 through 2012.

21 (2) AVAILABILITY.—Amounts appropriated to
22 carry out this section shall remain available without
23 fiscal year limitation.

1 **SEC. 202. DEMONSTRATION PROJECT TO ENHANCE CO-**
2 **ORDINATION OF CARE UNDER THE MEDI-**
3 **CARE AND MEDICAID PROGRAMS FOR DUAL**
4 **ELIGIBLE INDIVIDUALS.**

5 (a) DEFINITIONS.—In this section:

6 (1) DUALY ELIGIBLE INDIVIDUAL.—The term
7 “dually eligible individual” means an individual who
8 is enrolled in the Medicare and Medicaid programs
9 established under Titles XVIII and XIX, respec-
10 tively, of the Social Security Act (42 U.S.C. 1395 et
11 seq., 1396 et seq.).

12 (2) PROJECT.—The term “project” means the
13 demonstration project authorized to be conducted
14 under this section.

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

17 (b) AUTHORITY TO CONDUCT PROJECT.—The Sec-
18 retary shall conduct a project under this section for the
19 purpose of evaluating service coordination and cost-shar-
20 ing approaches with respect to the provision of commu-
21 nity-based services and supports to dually eligible individ-
22 uals.

23 (c) REQUIREMENTS.—

24 (1) NUMBER OF PARTICIPANTS.—Not more
25 than 5 States may participate in the project.

1 (2) APPLICATION.—A State that desires to par-
2 ticipate in the project shall submit an application to
3 the Secretary, at such time and in such form and
4 manner as the Secretary shall specify.

5 (3) DURATION.—The project shall be conducted
6 for at least 5, but not more than 10 years.

7 (d) EVALUATION AND REPORT.—

8 (1) EVALUATION.—Not later than 1 year prior
9 to the termination date of the project, the Secretary,
10 in consultation with States participating in the
11 project, representatives of dually eligible individuals,
12 and others, shall evaluate the impact and effective-
13 ness of the project.

14 (2) REPORT.—The Secretary shall submit a re-
15 port to Congress that contains the findings of the
16 evaluation conducted under paragraph (1) along
17 with recommendations regarding whether the project
18 should be extended or expanded, and any other legis-
19 lative or administrative actions that the Secretary
20 considers appropriate as a result of the project.

21 (e) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as are nec-
23 essary to carry out this section.

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