

110TH CONGRESS
2D SESSION

S. 3327

To amend title XIX of the Social Security Act to improve the State plan amendment option for providing home and community-based services under the Medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 23), 2008

Mr. KERRY (for himself and Mr. GRASSLEY) 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 improve the State plan amendment option for providing home and community-based services under the Medicaid program, 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 “Empowered at Home Act of 2008”.

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

Sec. 1. Short title; table of contents.

TITLE I—STRENGTHENING THE MEDICAID HOME AND
COMMUNITY-BASED STATE PLAN AMENDMENT OPTION

- Sec. 101. Removal of barriers to providing home and community-based services under State plan amendment option for individuals in need.
- Sec. 102. State option to provide home and community-based services to individuals for whom such services are likely to prevent, delay, or decrease the likelihood of an individual's need for institutionalized care.
- Sec. 103. Implementation assistance grants for States electing to provide home and community-based services under Medicaid through the State plan amendment option.

TITLE II—STATE GRANTS TO FACILITATE HOME AND
COMMUNITY-BASED SERVICES AND PROMOTE HEALTH

- Sec. 201. Reauthorization of medicaid transformation grants and expansion of permissible uses in order to facilitate the provision of home and community-based and other long-term care services.
- Sec. 202. Health promotion grants.

TITLE III—LONG TERM CARE INSURANCE

- Sec. 301. Treatment of premiums on qualified long-term care insurance contracts.
- Sec. 302. Credit for taxpayers with long-term care needs.
- Sec. 303. Treatment of premiums on qualified long-term care insurance contracts.
- Sec. 304. Additional consumer protections for long-term care insurance.

TITLE IV—PROMOTING AND PROTECTING COMMUNITY LIVING

- Sec. 401. Mandatory application of spousal impoverishment protections to recipients of home and community-based services.
- Sec. 402. State authority to elect to exclude up to 6 months of average cost of nursing facility services from assets or resources for purposes of eligibility for home and community-based services.

TITLE V—MISCELLANEOUS

- Sec. 501. Improved data collection.
- Sec. 502. GAO report on Medicaid home health services and the extent of consumer self-direction of such services.

1 **TITLE I—STRENGTHENING THE**
 2 **MEDICAID HOME AND COM-**
 3 **MUNITY-BASED STATE PLAN**
 4 **AMENDMENT OPTION**

5 **SEC. 101. REMOVAL OF BARRIERS TO PROVIDING HOME**
 6 **AND COMMUNITY-BASED SERVICES UNDER**
 7 **STATE PLAN AMENDMENT OPTION FOR INDI-**
 8 **VIDUALS IN NEED.**

9 (a) PARITY WITH INCOME ELIGIBILITY STANDARD
 10 FOR INSTITUTIONALIZED INDIVIDUALS.—Paragraph (1)
 11 of section 1915(i) of the Social Security Act (42 U.S.C.
 12 1396n(i)) is amended by striking “150 percent of the pov-
 13 erty line (as defined in section 2110(c)(5))” and inserting
 14 “300 percent of the supplemental security income benefit
 15 rate established by section 1611(b)(1)”.

16 (b) ADDITIONAL STATE OPTION TO PROVIDE HOME
 17 AND COMMUNITY-BASED SERVICES TO INDIVIDUALS ELI-
 18 GIBLE FOR SERVICES UNDER A WAIVER.—Section
 19 1915(i) of the Social Security Act (42 U.S.C. 1396n(i))
 20 is amended by adding at the end the following new para-
 21 graph:

22 “(6) STATE OPTION TO PROVIDE HOME AND
 23 COMMUNITY-BASED SERVICES TO INDIVIDUALS ELI-
 24 GIBLE FOR SERVICES UNDER A WAIVER.—

1 “(A) IN GENERAL.—A State that provides
2 home and community-based services in accord-
3 ance with this subsection to individuals who
4 satisfy the needs-based criteria for the receipt
5 of such services established under paragraph
6 (1)(A) may, in addition to continuing to provide
7 such services to such individuals, elect to pro-
8 vide home and community-based services in ac-
9 cordance with the requirements of this para-
10 graph to individuals who are eligible for home
11 and community-based services under a waiver
12 approved for the State under subsection (c),
13 (d), or (e) or under section 1115 to provide
14 such services, but only for those individuals
15 whose income does not exceed 300 percent of
16 the supplemental security income benefit rate
17 established by section 1611(b)(1).

18 “(B) APPLICATION OF SAME REQUIRE-
19 MENTS FOR INDIVIDUALS SATISFYING NEEDS-
20 BASED CRITERIA.—Subject to subparagraph
21 (C), a State shall provide home and community-
22 based services to individuals under this para-
23 graph in the same manner and subject to the
24 same requirements as apply under the other
25 paragraphs of this subsection to the provision

1 of home and community-based services to indi-
2 viduals who satisfy the needs-based criteria es-
3 tablished under paragraph (1)(A).

4 “(C) AUTHORITY TO OFFER DIFFERENT
5 TYPE, AMOUNT, DURATION, OR SCOPE OF HOME
6 AND COMMUNITY-BASED SERVICES.—A State
7 may offer home and community-based services
8 to individuals under this paragraph that differ
9 in type, amount, duration, or scope from the
10 home and community-based services offered for
11 individuals who satisfy the needs-based criteria
12 established under paragraph (1)(A), so long as
13 such services are within the scope of services
14 described in paragraph (4)(B) of subsection (c)
15 for which the Secretary has the authority to ap-
16 prove a waiver and do not include room or
17 board.”.

18 (c) REMOVAL OF LIMITATION ON SCOPE OF SERV-
19 ICES.—Paragraph (1) of section 1915(i) of the Social Se-
20 curity Act (42 U.S.C. 1396n(i)), as amended by sub-
21 section (a), is amended by striking “or such other services
22 requested by the State as the Secretary may approve”

23 (d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE
24 FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING

1 HOME AND COMMUNITY-BASED SERVICES UNDER A
2 STATE PLAN AMENDMENT.—

3 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)
4 of the Social Security Act (42 U.S.C.
5 1396a(a)(10)(A)(ii)) is amended—

6 (A) in subclause (XVIII), by striking “or”
7 at the end;

8 (B) in subclause (XIX), by adding “or” at
9 the end; and

10 (C) by inserting after subclause (XIX), the
11 following new subclause:

12 “(XX) who are eligible for home
13 and community-based services under
14 needs-based criteria established under
15 paragraph (1)(A) of section 1915(i),
16 or who are eligible for home and com-
17 munity-based services under para-
18 graph (6) of such section, and who
19 will receive home and community-
20 based services pursuant to a State
21 plan amendment under such sub-
22 section;”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 1903(f)(4) of the Social Secu-
25 rity Act (42 U.S.C. 1396b(f)(4)) is amended in

1 the matter preceding subparagraph (A), by in-
2 serting “1902(a)(10)(A)(ii)(XX),” after
3 “1902(a)(10)(A)(ii)(XIX),”.

4 (B) Section 1905(a) of the Social Security
5 Act (42 U.S.C. 1396d(a)) is amended in the
6 matter preceding paragraph (1)—

7 (i) in clause (xii), by striking “or” at
8 the end;

9 (ii) in clause (xiii), by adding “or” at
10 the end; and

11 (iii) by inserting after clause (xiii) the
12 following new clause:

13 “(xiv) individuals who are eligible for home and
14 community-based services under needs-based criteria
15 established under paragraph (1)(A) of section
16 1915(i), or who are eligible for home and commu-
17 nity-based services under paragraph (6) of such sec-
18 tion, and who will receive home and community-
19 based services pursuant to a State plan amendment
20 under such subsection,”.

21 (e) ELIMINATION OF OPTION TO LIMIT NUMBER OF
22 ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR
23 GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA
24 IS MODIFIED.—Paragraph (1) of section 1915(i) of such
25 Act (42 U.S.C. 1396n(i)) is amended—

1 (1) by striking subparagraph (C) and inserting
2 the following:

3 “(C) PROJECTION OF NUMBER OF INDI-
4 VIDUALS TO BE PROVIDED HOME AND COMMU-
5 NITY-BASED SERVICES.—The State submits to
6 the Secretary, in such form and manner, and
7 upon such frequency as the Secretary shall
8 specify, the projected number of individuals to
9 be provided home and community-based serv-
10 ices.”; and

11 (2) in subclause (II) of subparagraph (D)(ii),
12 by striking “to be eligible for such services for a pe-
13 riod of at least 12 months beginning on the date the
14 individual first received medical assistance for such
15 services” and inserting “to continue to be eligible for
16 such services after the effective date of the modifica-
17 tion and until such time as the individual no longer
18 meets the standard for receipt of such services under
19 such pre-modified criteria”.

20 (f) ELIMINATION OF OPTION TO WAIVE
21 STATEWIDENESS.—Paragraph (3) of section 1915(i) of
22 such Act (42 U.S.C. 1396n(3)) is amended by striking
23 “section 1902(a)(1) (relating to statewideness) and”.

24 (g) EFFECTIVE DATE.—The amendments made by
25 this section take effect on the first day of the first fiscal

1 year quarter that begins after the date of enactment of
2 this Act.

3 **SEC. 102. STATE OPTION TO PROVIDE HOME AND COMMU-**
4 **NITY-BASED SERVICES TO INDIVIDUALS FOR**
5 **WHOM SUCH SERVICES ARE LIKELY TO PRE-**
6 **VENT, DELAY, OR DECREASE THE LIKELI-**
7 **HOOD OF AN INDIVIDUAL’S NEED FOR INSTI-**
8 **TUTIONALIZED CARE.**

9 (a) STATE PLAN AMENDMENT REQUIRED.—

10 (1) IN GENERAL.—Section 1915 of the Social
11 Security Act (42 U.S.C. 1396n) is amended by add-
12 ing at the end the following new subsection:

13 “(k) STATE PLAN AMENDMENT OPTION TO PROVIDE
14 HOME AND COMMUNITY-BASED SERVICES TO INDIVID-
15 UALS FOR WHOM SUCH SERVICES ARE LIKELY TO PRE-
16 VENT, DELAY, OR DECREASE THE LIKELIHOOD OF AN IN-
17 DIVIDUAL’S NEED FOR INSTITUTIONALIZED CARE.—

18 “(1) IN GENERAL.—Subject to the succeeding
19 provisions of this subsection, a State that has an ap-
20 proved State plan amendment under subsection (i)
21 may provide, through a State plan amendment for
22 the provision of medical assistance for home and
23 community-based services that are within the scope
24 of services described in paragraph (4)(B) of sub-
25 section (c) for which the Secretary has the authority

1 to approve a waiver and do not include room or
2 board to individuals—

3 “(A) who are not otherwise eligible for
4 medical assistance under the State plan or
5 under a waiver of such plan;

6 “(B) whose income does not exceed 300
7 percent of the supplemental security income
8 benefit rate established by section 1611(b)(1);
9 and

10 “(C) who satisfy such needs-based criteria
11 for determining eligibility for medical assistance
12 for such services as the State shall establish in
13 accordance with paragraph (2).

14 “(2) REQUIREMENT FOR NEEDS-BASED CRI-
15 TERIA.—In establishing needs-based criteria for pur-
16 poses of determining eligibility for medical assistance
17 for home and community-based services under this
18 subsection, a State shall specify the specific physical,
19 mental, cognitive, or intellectual impairments, or the
20 inability of an individual to perform 1 or more spe-
21 cific activities of daily living (as defined in section
22 7702B(c)(2)(B) of the Internal Revenue Code of
23 1986) or the need for significant assistance to per-
24 form such activities, for which the State determines
25 that the provision of home and community-based

1 services are reasonably expected to prevent, delay, or
2 decrease the likelihood of an individual's need for in-
3 stitutionalized care.

4 “(3) APPLICATION OF SAME REQUIREMENTS
5 FOR PROVIDING HOME AND COMMUNITY-BASED
6 SERVICES UNDER SUBSECTION (i).—Subject to para-
7 graphs (4) and (5), a State shall provide home and
8 community-based services to individuals under this
9 paragraph in the same manner and subject to the
10 same requirements as apply to the provision of home
11 and community-based services to individuals under
12 subsection (i).

13 “(4) AUTHORITY TO LIMIT NUMBER OF INDI-
14 VIDUALS.—A State may limit the number of individ-
15 uals who are eligible to receive home and commu-
16 nity-based services under this subsection and may
17 establish waiting lists for the receipt of such serv-
18 ices.

19 “(5) AUTHORITY TO OFFER DIFFERENT TYPE,
20 AMOUNT, DURATION, OR SCOPE OF HOME AND COM-
21 MUNITY-BASED SERVICES.—A State may offer home
22 and community-based services to individuals under
23 this subsection that differ in type, amount, duration,
24 or scope from the home and community-based serv-
25 ices offered for individuals under paragraph (1)(A)

1 of subsection (i) and, if applicable, under paragraph
 2 (6) of such subsection.”.

3 (2) OPTIONAL CATEGORICALLY NEEDY GROUP;
 4 STATE OPTION TO LIMIT BENEFITS TO HOME AND
 5 COMMUNITY-BASED SERVICES OR TO PROVIDE FULL
 6 MEDICAL ASSISTANCE.—

7 (A) IN GENERAL.—Section 1902(a)(10) of
 8 the Social Security Act (42 U.S.C.
 9 1396a(a)(10)) is amended—

10 (i) in subparagraph (A)(ii), as amend-
 11 ed by section 101(d)(1)—

12 (I) in subclause (XIX), by strik-
 13 ing “or” at the end;

14 (II) in subclause (XX), by adding
 15 “or” at the end; and

16 (III) by inserting after subclause
 17 (XX), the following new subclause:

18 “(XXI) who are eligible for home
 19 and community-based services under
 20 section 1915(k) and who will receive
 21 home and community-based services
 22 pursuant to a State plan amendment
 23 under such subsection;”;

24 (ii) in the matter following subpara-
 25 graph (G)—

1 (I) by striking “and (XIV)” and
 2 inserting “(XIV)”; and

3 (II) by inserting “, and (XV) at
 4 the option of the State, the medical
 5 assistance made available to an indi-
 6 vidual described in section 1915 (k)
 7 who is eligible for medical assistance
 8 only because of subparagraph
 9 (A)(ii)(XXI) may be limited to med-
 10 ical assistance for home and commu-
 11 nity-based services described in a
 12 State plan amendment submitted
 13 under that section” before the semi-
 14 colon.

15 (B) CONFORMING AMENDMENTS.—

16 (i) Section 1903(f)(4) of the Social
 17 Security Act (42 U.S.C. 1396b(f)(4)), as
 18 amended by section 101(d)(2)(A), is
 19 amended in the matter preceding subpara-
 20 graph (A), by inserting
 21 “1902(a)(10)(A)(ii)(XXI),” after
 22 “1902(a)(10)(A)(ii)(XX),”.

23 (ii) Section 1905(a) of the Social Se-
 24 curity Act (42 U.S.C. 1396d(a)), as
 25 amended by section 101(d)(2)(B), is

1 amended in the matter preceding para-
2 graph (1)—

3 (I) in clause (xiii), by striking
4 “or” at the end;

5 (II) in clause (xiv), by adding
6 “or” at the end; and

7 (iii) by inserting after clause (xiv) the
8 following new clause:

9 “(xv) who are eligible for home and community-
10 based services under section 1915(k) and who will
11 receive home and community-based services pursu-
12 ant to a State plan amendment under such sub-
13 section,”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section take effect on the first day of the first fiscal
16 year quarter that begins after the date of enactment of
17 this Act.

18 **SEC. 103. IMPLEMENTATION ASSISTANCE GRANTS FOR**
19 **STATES ELECTING TO PROVIDE HOME AND**
20 **COMMUNITY-BASED SERVICES UNDER MED-**
21 **ICAID THROUGH THE STATE PLAN AMEND-**
22 **MENT OPTION.**

23 (a) AUTHORITY TO AWARD GRANTS.—The Secretary
24 of Health and Human Services (in this section referred
25 to as the “Secretary”) shall award grants to eligible States

1 to provide incentives to States for the implementation of
2 State plan amendments that meet the requirements of sec-
3 tion 1915(i) of the Social Security Act (42 U.S.C.
4 1396n(i)).

5 (b) ELIGIBLE STATE.—For purposes of this section,
6 an eligible State is a State that—

7 (1) has an approved State plan amendment de-
8 scribed in subsection (a); and

9 (2) submits an application to the Secretary, in
10 such form and manner as the Secretary shall re-
11 quire, specifying the costs the State will incur in im-
12 plementing such amendment and such additional in-
13 formation as the Secretary may require.

14 (c) AMOUNT AND DURATION OF GRANTS.—

15 (1) AMOUNT.—The Secretary shall determine
16 the amount to be awarded all eligible States under
17 this section for a fiscal year based on the applica-
18 tions submitted by such States and the amount
19 available for such fiscal year under subsection (d).

20 (2) LIMITATION ON DURATION OF AWARD.—A
21 State may receive a grant under this section for not
22 more than 3 consecutive fiscal years.

23 (d) APPROPRIATIONS.—There are appropriated, from
24 any funds in the Treasury not otherwise appropriated,
25 \$40,000,000 for each of fiscal years 2009 through 2013

1 for making grants to States under this section. Funds ap-
 2 propriated under this subsection for a fiscal year shall re-
 3 main available for expenditure through September 30,
 4 2013.

5 **TITLE II—STATE GRANTS TO FA-**
 6 **CILITATE HOME AND COMMU-**
 7 **NITY-BASED SERVICES AND**
 8 **PROMOTE HEALTH**

9 **SEC. 201. REAUTHORIZATION OF MEDICAID TRANS-**
 10 **FORMATION GRANTS AND EXPANSION OF**
 11 **PERMISSIBLE USES IN ORDER TO FACILI-**
 12 **TATE THE PROVISION OF HOME AND COMMU-**
 13 **NITY-BASED AND OTHER LONG-TERM CARE**
 14 **SERVICES.**

15 (a) 2-YEAR REAUTHORIZATION; INCREASED FUND-
 16 ING.—Section 1903(z)(4)(A) of the Social Security Act
 17 (42 U.S.C. 1396b(z)(4)(A)) is amended—

18 (1) in clause (i), by striking “and” at the end;

19 (2) in clause (ii), by striking the period at the
 20 end and inserting “; and”; and

21 (3) by inserting after clause (ii), the following
 22 new clauses:

23 “(iii) \$150,000,000 for fiscal year
 24 2009; and

1 “(iv) \$150,000,000 for fiscal year
2 2010.”.

3 (b) EXPANSION OF PERMISSIBLE USES.—Section
4 1903(z)(2) of the Social Security Act (42 U.S.C.
5 1396b(z)(2)) is amended by adding at the end the fol-
6 lowing new subparagraphs:

7 “(G)(i) Methods for ensuring the avail-
8 ability and accessibility of home and commu-
9 nity-based services in the State, recognizing
10 multiple delivery options that take into account
11 differing needs of individuals, through the cre-
12 ation or designation (in consultation with orga-
13 nizations representing elderly individuals and
14 individuals of all ages with physical, mental,
15 cognitive, or intellectual impairments, and orga-
16 nizations representing the long-term care work-
17 force, including organized labor, and health
18 care and direct service providers) of one or
19 more statewide or regional public entities or
20 non-profit organizations (such as fiscal inter-
21 mediaries, agencies with choice, home care com-
22 missions, public authorities, worker associa-
23 tions, consumer-owned and controlled organiza-
24 tions (including representatives of individuals
25 with severe intellectual or cognitive impair-

1 ment), area agencies on aging, independent liv-
2 ing centers, aging and disability resource cen-
3 ters, or other disability organizations) which
4 may—

5 “(I) develop programs where qualified
6 individuals provide home- and community-
7 based services while solely or jointly em-
8 ployed by recipients of such services;

9 “(II) facilitate the training and re-
10 cruitment of qualified health and direct
11 service professionals and consumers who
12 use services;

13 “(III) recommend or develop a system
14 to set wages and benefits, and recommend
15 commensurate reimbursement rates;

16 “(IV) with meaningful ongoing in-
17 volvement from consumers and workers (or
18 their respective representatives), develop
19 procedures for the appropriate screening of
20 workers, create a registry or registries of
21 available workers, including policies and
22 procedures to ensure no interruption of
23 care for eligible individuals;

24 “(V) assist consumers in identifying
25 workers;

1 “(VI) act as a fiscal intermediary;

2 “(VII) assist workers in finding em-
3 ployment, including consumer-directed em-
4 ployment;

5 “(VIII) provide funding for disability
6 organizations, aging organizations, or
7 other organizations, to assume roles that
8 promote consumers’ ability to acquire the
9 necessary skills for directing their own
10 services and financial resources; or

11 “(IX) create workforce development
12 plans on a regional or statewide basis (or
13 both), to ensure a sufficient supply of
14 qualified home and community-based serv-
15 ices workers, including reviews and anal-
16 yses of actual and potential worker short-
17 ages, training and retention programs for
18 home and community-based services work-
19 ers (which may include, as determined ap-
20 propriate by the State, allowing participa-
21 tion in such training to count as an allow-
22 able work activity under the State tem-
23 porary assistance for needy families pro-
24 gram funded under part A of title IV), and

1 plans to assist consumers with finding and
2 retaining qualified workers.

3 “(ii) Nothing in clause (i) shall be con-
4 strued as prohibiting the use of funds made
5 available to carry out this subparagraph for
6 start-up costs associated with any of the activi-
7 ties described in subclauses (I) through (IX), as
8 requiring any consumer to hire workers who are
9 listed in a worker registry developed with such
10 funds, or to limit the ability of consumers to
11 hire or fire their own workers.

12 “(H) Methods for providing an integrated
13 and efficient system of long-term care through
14 a review of the Federal, State, local, and pri-
15 vate long-term care resources, services, and
16 supports available to elderly individuals and in-
17 dividuals of all ages with physical, mental, cog-
18 nitive, or intellectual impairments and the de-
19 velopment and implementation of a plan to fully
20 integrate such resources, services, and supports
21 by aggregating such resources, services, and
22 supports to create a consumer-centered and
23 cost-effective resource and delivery system and
24 expanding the availability of home and commu-
25 nity-based services, and that is designed to re-

1 sult in administrative savings, consolidation of
2 common activities, and the elimination of re-
3 dundant processes.”.

4 (c) ALLOCATION OF FUNDS.—

5 (1) ELIMINATION OF CURRENT LAW REQUIRE-
6 MENTS FOR ALLOCATION OF FUNDS.—Section
7 1903(z)(4)(B) of the Social Security Act (42 U.S.C.
8 1396b(z)(4)(B)) is amended by striking the second
9 and third sentences.

10 (2) ASSURANCE OF FUNDS TO FACILITATE THE
11 PROVISION OF HOME AND COMMUNITY-BASED SERV-
12 ICES AND INTEGRATED SYSTEMS OF LONG-TERM
13 CARE.—Section 1903(z)(4)(B) of the Social Security
14 Act (42 U.S.C. 1396b(z)(4)(B)), as amended by
15 paragraph (1), is amended by inserting after the
16 first sentence the following new sentence: “Such
17 method shall provide that 50 percent of such funds
18 shall be allocated among States that design pro-
19 grams to adopt the innovative methods described in
20 subparagraph (G) or (H) (or both) of paragraph
21 (2).”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section take effect on October 1, 2008.

24 **SEC. 202. HEALTH PROMOTION GRANTS.**

25 (a) DEFINITIONS.—In this section:

1 (1) ELIGIBLE MEDICAID BENEFICIARY.—The
2 term “eligible Medicaid beneficiary” means an indi-
3 vidual who is enrolled in the State Medicaid plan
4 under title XIX of the Social Security Act and—

5 (A) has attained the age of 60 and is not
6 a resident of a nursing facility; or

7 (B) is an adult with a physical, mental,
8 cognitive, or intellectual impairment.

9 (2) ELIGIBLE STATE.—The term “eligible
10 State” means a State that submits an application to
11 the Secretary for a grant under this section, in such
12 form and manner as the Secretary shall require.

13 (3) EVIDENCE- AND COMMUNITY-BASED
14 HEALTH PROMOTION PROGRAM.—The term
15 “evidence- and community-based health promotion
16 program” means a community-based program (such
17 as a program for chronic disease self-management,
18 physical or mental activity, falls prevention, smoking
19 cessation, or dietary modification) that has been ob-
20 jectively evaluated and found to improve health out-
21 comes or meet health promotion goals by preventing,
22 delaying, or decreasing the severity of physical, men-
23 tal, cognitive, or intellectual impairment and that
24 meets generally accepted standards for best profes-
25 sional practice.

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

3 (b) AUTHORITY TO CONDUCT DEMONSTRATION
4 PROJECT.—The Secretary shall award grants on a com-
5 petitive basis to eligible States to conduct in accordance
6 with this section an evidence- and community-based health
7 promotion program that is designed to achieve the fol-
8 lowing objectives with respect to eligible Medicaid bene-
9 ficiaries:

10 (1) LIFESTYLE CHANGES.—To empower eligible
11 Medicaid beneficiaries to take more control over
12 their own health through lifestyle changes that have
13 proven effective in reducing the effects of chronic
14 disease and slowing the progression of disability.

15 (2) DIFFUSION.—To mobilize the Medicaid,
16 aging, disability, public health, and nonprofit net-
17 works at the State and local levels to accelerate the
18 translation of credible research into practice through
19 the deployment of low-cost evidence-based health
20 promotion and disability prevention programs at the
21 community level.

22 (c) SELECTION AND AMOUNT OF GRANT AWARDS.—
23 In awarding grants to eligible States under this section
24 and determining the amount of the awards, the Secretary
25 shall—

1 (1) take into consideration the manner and ex-
2 tent to which the eligible State proposes to achieve
3 the objectives specified in subsection (b); and

4 (2) give preference to eligible States pro-
5 posing—

6 (A) programs through public service pro-
7 vider organizations or other organizations with
8 expertise in serving eligible Medicaid bene-
9 ficiaries;

10 (B) strong State-level collaboration across,
11 Medicaid agencies, State units on aging, State
12 independent living councils, State associations
13 of Area Agencies on Aging, and State agencies
14 responsible for public health; or

15 (C) interventions that have already dem-
16 onstrated effectiveness and replicability in a
17 community-based, non-medical setting.

18 (d) USE OF FUNDS.—An eligible State awarded a
19 grant under this section shall use the funds awarded to
20 develop, implement, and sustain high quality evidence- and
21 community-based health promotion programs. As a condi-
22 tion of being awarded such a grant, an eligible State shall
23 agree to—

24 (1) implement such programs in at least 3 geo-
25 graphic areas of the State; and

1 (2) develop the infrastructure and partnerships
2 that will be necessary over the long-term to effec-
3 tively embed evidence-and community-based health
4 promotion programs for eligible Medicaid bene-
5 ficiaries within the statewide health, aging, dis-
6 ability, and long-term care systems.

7 (e) TECHNICAL ASSISTANCE.—The Secretary shall
8 provide assistance to eligible States awarded grants under
9 this section, sub-grantees and their partners, program or-
10 ganizers, and others in developing evidence- and commu-
11 nity-based health promotion programs.

12 (f) PAYMENTS TO ELIGIBLE STATES; CARRYOVER OF
13 UNUSED GRANT AMOUNTS.—

14 (1) PAYMENTS.—For each calendar quarter of
15 a fiscal year that begins during the period for which
16 an eligible State is awarded a grant under this sec-
17 tion, the Secretary shall pay to the State from its
18 grant award for such fiscal year an amount equal to
19 the lesser of—

20 (A) the amount of qualified expenditures
21 made by the State for such quarter; or

22 (B) the total amount remaining in such
23 grant award for such fiscal year (taking into
24 account the application of paragraph (2)).

1 (2) CARRYOVER OF UNUSED AMOUNTS.—Any
2 portion of a State grant award for a fiscal year
3 under this section remaining available at the end of
4 such fiscal year shall remain available for making
5 payments to the State for the next 4 fiscal years,
6 subject to paragraph (3).

7 (3) REAWARDING OF CERTAIN UNUSED
8 AMOUNTS.—In the case of a State that the Sec-
9 retary determines has failed to meet the conditions
10 for continuation of a demonstration project under
11 this section in a succeeding year, the Secretary shall
12 rescind the grant award for each succeeding year,
13 together with any unspent portion of an award for
14 prior years, and shall add such amounts to the ap-
15 propriation for the immediately succeeding fiscal
16 year for grants under this section.

17 (4) PREVENTING DUPLICATION OF PAYMENT.—
18 The payment under a demonstration project with re-
19 spect to qualified expenditures shall be in lieu of any
20 payment with respect to such expenditures that
21 would otherwise be paid to the State under section
22 1903(a) of the Social Security Act (42 U.S.C.
23 1396a(a)). Nothing in the previous sentence shall be
24 construed as preventing a State from being paid
25 under such section for expenditures in a grant year

1 for which payment is available under such section
2 1903(a) after amounts available to pay for such ex-
3 penditures under the grant awarded to the State
4 under this section for the fiscal year have been ex-
5 hausted.

6 (g) EVALUATION.—Not later than 3 years after the
7 date on which the first grant is awarded to an eligible
8 State under this section, the Secretary shall, by grant,
9 contract, or interagency agreement, conduct an evaluation
10 of the demonstration projects carried out under this sec-
11 tion that measures the health-related, quality of life, and
12 cost outcomes for eligible Medicaid beneficiaries and in-
13 cludes information relating to the quality, infrastructure,
14 sustainability, and effectiveness of such projects.

15 (h) APPROPRIATIONS.—There are appropriated, from
16 any funds in the Treasury not otherwise appropriated, the
17 following amounts to carry out this section:

18 (1) GRANTS TO STATES.—For grants to States,
19 to remain available until expended—

20 (A) \$4,000,000 for fiscal year 2009;

21 (B) \$6,000,000 for fiscal year 2010;

22 (C) \$8,000,000 for fiscal year 2011;

23 (D) \$10,000,000 for fiscal year 2012; and

24 (E) \$12,000,000 for fiscal year 2013.

1 (2) TECHNICAL ASSISTANCE.—For the provi-
2 sion of technical assistance through such center in
3 accordance with subsection (e)—

4 (A) \$800,000 for fiscal year 2009;

5 (B) \$1,200,000 for fiscal year 2010;

6 (C) \$1,600,000 for fiscal year 2011;

7 (D) \$2,000,000 for fiscal year 2012; and

8 (E) \$2,400,000 for fiscal year 2013.

9 (3) EVALUATION.—For conducting the evalua-
10 tion required under subsection (g), \$4,000,000 for
11 fiscal year 2011.

12 **TITLE III—LONG TERM CARE** 13 **INSURANCE**

14 **SEC. 301. TREATMENT OF PREMIUMS ON QUALIFIED LONG-** 15 **TERM CARE INSURANCE CONTRACTS.**

16 (a) IN GENERAL.—Part VII of subchapter B of chap-
17 ter 1 of the Internal Revenue Code of 1986 (relating to
18 additional itemized deductions) is amended by redesi-
19 gnating section 224 as section 225 and by inserting after
20 section 223 the following new section:

21 **“SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-** 22 **SURANCE CONTRACTS.**

23 “(a) IN GENERAL.—In the case of an individual,
24 there shall be allowed as a deduction an amount equal to
25 the applicable percentage of the amount of eligible long-

1 term care premiums (as defined in section 213(d)(10))
 2 paid during the taxable year for coverage for the taxpayer
 3 and the taxpayer’s spouse and dependents under a quali-
 4 fied long-term care insurance contract (as defined in sec-
 5 tion 7702B(b)).

6 “(b) APPLICABLE PERCENTAGE.—For purposes of
 7 subsection (a), the applicable percentage shall be deter-
 8 mined in accordance with the following table:

For taxable years beginning in calendar year—	The ap- plicable percent- age is—
2010 or 2011	25
2012	35
2013	65
2014 or thereafter	100.

9 “(c) COORDINATION WITH OTHER DEDUCTIONS.—
 10 Any amount paid by a taxpayer for any qualified long-
 11 term care insurance contract to which subsection (a) ap-
 12 plies shall not be taken into account in computing the
 13 amount allowable to the taxpayer as a deduction under
 14 section 162(l) or 213(a).”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 62(a) of the Internal Revenue Code
 17 of 1986 is amended by inserting before the last sen-
 18 tence at the end the following new paragraph:

19 “(22) PREMIUMS ON QUALIFIED LONG-TERM
 20 CARE INSURANCE CONTRACTS.—The deduction al-
 21 lowed by section 224.”.

1 “(2) APPLICABLE CREDIT AMOUNT.—For pur-
 2 poses of paragraph (1), the applicable credit amount
 3 shall be determined in accordance with the following
 4 table:

“For taxable years beginning in calendar year—	The ap- plicable credit amount is—
2010	\$1,000
2011	1,500
2012	2,000
2013	2,500
2014 or thereafter	3,000.

5 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-
 6 COME.—

7 “(1) IN GENERAL.—The amount of the credit
 8 allowable under subsection (a) shall be reduced (but
 9 not below zero) by \$100 for each \$1,000 (or fraction
 10 thereof) by which the taxpayer’s modified adjusted
 11 gross income exceeds the threshold amount. For
 12 purposes of the preceding sentence, the term ‘modi-
 13 fied adjusted gross income’ means adjusted gross in-
 14 come increased by any amount excluded from gross
 15 income under section 911, 931, or 933.

16 “(2) THRESHOLD AMOUNT.—For purposes of
 17 paragraph (1), the term ‘threshold amount’ means—

18 “(A) \$150,000 in the case of a joint re-
 19 turn, and

20 “(B) \$75,000 in any other case.

1 “(3) INDEXING.—In the case of any taxable
2 year beginning in a calendar year after 2010, each
3 dollar amount contained in paragraph (2) shall be
4 increased by an amount equal to the product of—

5 “(A) such dollar amount, and

6 “(B) the medical care cost adjustment de-
7 termined under section 213(d)(10)(B)(ii) for
8 the calendar year in which the taxable year be-
9 gins, determined by substituting ‘August 2009’
10 for ‘August 1996’ in subclause (II) thereof.

11 If any increase determined under the preceding sen-
12 tence is not a multiple of \$50, such increase shall
13 be rounded to the next lowest multiple of \$50.

14 “(c) DEFINITIONS.—For purposes of this section—

15 “(1) APPLICABLE INDIVIDUAL.—

16 “(A) IN GENERAL.—The term ‘applicable
17 individual’ means, with respect to any taxable
18 year, any individual who has been certified, be-
19 fore the due date for filing the return of tax for
20 the taxable year (without extensions), by a phy-
21 sician (as defined in section 1861(r)(1) of the
22 Social Security Act) as being an individual with
23 long-term care needs described in subparagraph
24 (B) for a period—

1 “(i) which is at least 180 consecutive
2 days, and

3 “(ii) a portion of which occurs within
4 the taxable year.

5 Notwithstanding the preceding sentence, a cer-
6 tification shall not be treated as valid unless it
7 is made within the 39½ month period ending
8 on such due date (or such other period as the
9 Secretary prescribes).

10 “(B) INDIVIDUALS WITH LONG-TERM CARE
11 NEEDS.—An individual is described in this sub-
12 paragraph if the individual meets any of the fol-
13 lowing requirements:

14 “(i) The individual is at least 6 years
15 of age and—

16 “(I) is unable to perform (with-
17 out substantial assistance from an-
18 other individual) at least 3 activities
19 of daily living (as defined in section
20 7702B(c)(2)(B)) due to a loss of
21 functional capacity, or

22 “(II) requires substantial super-
23 vision to protect such individual from
24 threats to health and safety due to se-
25 vere cognitive impairment and is un-

1 able to perform, without reminding or
2 cuing assistance, at least 1 activity of
3 daily living (as so defined) or to the
4 extent provided in regulations pre-
5 scribed by the Secretary (in consulta-
6 tion with the Secretary of Health and
7 Human Services), is unable to engage
8 in age appropriate activities.

9 “(ii) The individual is at least 2 but
10 not 6 years of age and is unable due to a
11 loss of functional capacity to perform
12 (without substantial assistance from an-
13 other individual) at least 2 of the following
14 activities: eating, transferring, or mobility.

15 “(iii) The individual is under 2 years
16 of age and requires specific durable med-
17 ical equipment by reason of a severe health
18 condition or requires a skilled practitioner
19 trained to address the individual’s condi-
20 tion to be available if the individual’s par-
21 ents or guardians are absent.

22 “(2) ELIGIBLE CAREGIVER.—

23 “(A) IN GENERAL.—A taxpayer shall be
24 treated as an eligible caregiver for any taxable
25 year with respect to the following individuals:

1 “(i) The taxpayer.

2 “(ii) The taxpayer’s spouse.

3 “(iii) An individual with respect to
4 whom the taxpayer is allowed a deduction
5 under section 151(c) for the taxable year.

6 “(iv) An individual who would be de-
7 scribed in clause (iii) for the taxable year
8 if section 151(c) were applied by sub-
9 stituting for the exemption amount an
10 amount equal to the sum of the exemption
11 amount, the standard deduction under sec-
12 tion 63(c)(2)(C), and any additional stand-
13 ard deduction under section 63(c)(3) which
14 would be applicable to the individual if
15 clause (iii) applied.

16 “(v) An individual who would be de-
17 scribed in clause (iii) for the taxable year
18 if—

19 “(I) the requirements of clause
20 (iv) are met with respect to the indi-
21 vidual, and

22 “(II) the requirements of sub-
23 paragraph (B) are met with respect to
24 the individual in lieu of the support

1 test under subsection (c)(1)(D) or
2 (d)(1)(C) of section 152.

3 “(B) RESIDENCY TEST.—The require-
4 ments of this subparagraph are met if an indi-
5 vidual has as his principal place of abode the
6 home of the taxpayer and—

7 “(i) in the case of an individual who
8 is an ancestor or descendant of the tax-
9 payer or the taxpayer’s spouse, is a mem-
10 ber of the taxpayer’s household for over
11 half the taxable year, or

12 “(ii) in the case of any other indi-
13 vidual, is a member of the taxpayer’s
14 household for the entire taxable year.

15 “(C) SPECIAL RULES WHERE MORE THAN
16 1 ELIGIBLE CAREGIVER.—

17 “(i) IN GENERAL.—If more than 1 in-
18 dividual is an eligible caregiver with re-
19 spect to the same applicable individual for
20 taxable years ending with or within the
21 same calendar year, a taxpayer shall be
22 treated as the eligible caregiver if each
23 such individual (other than the taxpayer)
24 files a written declaration (in such form
25 and manner as the Secretary may pre-

1 scribe) that such individual will not claim
2 such applicable individual for the credit
3 under this section.

4 “(ii) NO AGREEMENT.—If each indi-
5 vidual required under clause (i) to file a
6 written declaration under clause (i) does
7 not do so, the individual with the highest
8 adjusted gross income shall be treated as
9 the eligible caregiver.

10 “(iii) MARRIED INDIVIDUALS FILING
11 SEPARATELY.—In the case of married indi-
12 viduals filing separately, the determination
13 under this subparagraph as to whether the
14 husband or wife is the eligible caregiver
15 shall be made under the rules of clause (ii)
16 (whether or not one of them has filed a
17 written declaration under clause (i)).

18 “(d) IDENTIFICATION REQUIREMENT.—No credit
19 shall be allowed under this section to a taxpayer with re-
20 spect to any applicable individual unless the taxpayer in-
21 cludes the name and taxpayer identification number of
22 such individual, and the identification number of the phy-
23 sician certifying such individual, on the return of tax for
24 the taxable year.

1 “(e) TAXABLE YEAR MUST BE FULL TAXABLE
2 YEAR.—Except in the case of a taxable year closed by rea-
3 son of the death of the taxpayer, no credit shall be allow-
4 able under this section in the case of a taxable year cov-
5 ering a period of less than 12 months.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 6213(g)(2) of the Internal Revenue
8 Code of 1986 is amended by striking “and” at the
9 end of subparagraph (L), by striking the period at
10 the end of subparagraph (M) and inserting “, and”,
11 and by inserting after subparagraph (M) the fol-
12 lowing new subparagraph:

13 “(N) an omission of a correct TIN or phy-
14 sician identification required under section
15 25E(d) (relating to credit for taxpayers with
16 long-term care needs) to be included on a re-
17 turn.”.

18 (2) The table of sections for subpart A of part
19 IV of subchapter A of chapter 1 of such Code is
20 amended by inserting after the item relating to sec-
21 tion 25D the following new item:

“Sec. 25E. Credit for taxpayers with long-term care needs.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2009.

1 **SEC. 303. TREATMENT OF PREMIUMS ON QUALIFIED LONG-**
2 **TERM CARE INSURANCE CONTRACTS.**

3 (a) IN GENERAL.—

4 (1) CAFETERIA PLANS.—The last sentence of
5 section 125(f) of the Internal Revenue Code of 1986
6 (defining qualified benefits) is amended by inserting
7 before the period at the end “; except that such term
8 shall include the payment of premiums for any quali-
9 fied long-term care insurance contract (as defined in
10 section 7702B) to the extent the amount of such
11 payment does not exceed the eligible long-term care
12 premiums (as defined in section 213(d)(10)) for
13 such contract”.

14 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
15 Section 106 of such Code (relating to contributions
16 by an employer to accident and health plans) is
17 amended by striking subsection (c) and redesign-
18 ating subsection (d) as subsection (c).

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 6041 of the Internal Revenue Code
21 of 1986 is amended by adding at the end the fol-
22 lowing new subsection:

23 “(h) FLEXIBLE SPENDING ARRANGEMENT DE-
24 FINED.—For purposes of this section, a flexible spending
25 arrangement is a benefit program which provides employ-
26 ees with coverage under which—

1 (B) of section 7702B(g)(2) of the Internal Revenue Code
2 of 1986 (relating to requirements of model regulation and
3 Act) are amended to read as follows:

4 “(A) IN GENERAL.—The requirements of
5 this paragraph are met with respect to any con-
6 tract if such contract meets—

7 “(i) MODEL REGULATION.—The fol-
8 lowing requirements of the model regula-
9 tion:

10 “(I) Section 6A (relating to guar-
11 anteed renewal or noncancellability),
12 other than paragraph (5) thereof, and
13 the requirements of section 6B of the
14 model Act relating to such section 6A.

15 “(II) Section 6B (relating to pro-
16 hibitions on limitations and exclu-
17 sions) other than paragraph (7) there-
18 of.

19 “(III) Section 6C (relating to ex-
20 tension of benefits).

21 “(IV) Section 6D (relating to
22 continuation or conversion of cov-
23 erage).

1 “(V) Section 6E (relating to dis-
2 continuance and replacement of poli-
3 cies).

4 “(VI) Section 7 (relating to unin-
5 tentional lapse).

6 “(VII) Section 8 (relating to dis-
7 closure), other than sections 8F, 8G,
8 8H, and 8I thereof.

9 “(VIII) Section 11 (relating to
10 prohibitions against post-claims un-
11 derwriting).

12 “(IX) Section 12 (relating to
13 minimum standards).

14 “(X) Section 13 (relating to re-
15 quirement to offer inflation protec-
16 tion).

17 “(XI) Section 25 (relating to pro-
18 hibition against preexisting conditions
19 and probationary periods in replace-
20 ment policies or certificates).

21 “(XII) The provisions of section
22 28 relating to contingent nonforfeiture
23 benefits, if the policyholder declines
24 the offer of a nonforfeiture provision

1 described in paragraph (4) of this
2 subsection.

3 “(ii) MODEL ACT.—The following re-
4 quirements of the model Act:

5 “(I) Section 6C (relating to pre-
6 existing conditions).

7 “(II) Section 6D (relating to
8 prior hospitalization).

9 “(III) The provisions of section 8
10 relating to contingent nonforfeiture
11 benefits, if the policyholder declines
12 the offer of a nonforfeiture provision
13 described in paragraph (4) of this
14 subsection.

15 “(B) DEFINITIONS.—For purposes of this
16 paragraph—

17 “(i) MODEL REGULATION.—The term
18 ‘model regulation’ means the long-term
19 care insurance model regulation promul-
20 gated by the National Association of Insur-
21 ance Commissioners (as adopted as of De-
22 cember 2006).

23 “(ii) MODEL ACT.—The term ‘model
24 Act’ means the long-term care insurance
25 model Act promulgated by the National

1 Association of Insurance Commissioners
2 (as adopted as of December 2006).

3 “(iii) COORDINATION.—Any provision
4 of the model regulation or model Act listed
5 under clause (i) or (ii) of subparagraph
6 (A) shall be treated as including any other
7 provision of such regulation or Act nec-
8 essary to implement the provision.

9 “(iv) DETERMINATION.—For pur-
10 poses of this section and section 4980C,
11 the determination of whether any require-
12 ment of a model regulation or the model
13 Act has been met shall be made by the
14 Secretary.”.

15 (b) EXCISE TAX.—Paragraph (1) of section
16 4980C(c) of the Internal Revenue Code of 1986 (relating
17 to requirements of model provisions) is amended to read
18 as follows:

19 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

20 “(A) MODEL REGULATION.—The following
21 requirements of the model regulation must be
22 met:

23 “(i) Section 9 (relating to required
24 disclosure of rating practices to consumer).

1 “(ii) Section 14 (relating to applica-
2 tion forms and replacement coverage).

3 “(iii) Section 15 (relating to reporting
4 requirements).

5 “(iv) Section 22 (relating to filing re-
6 quirements for marketing).

7 “(v) Section 23 (relating to standards
8 for marketing), including inaccurate com-
9 pletion of medical histories, other than
10 paragraphs (1), (6), and (9) of section
11 23C.

12 “(vi) Section 24 (relating to suit-
13 ability).

14 “(vii) Section 26 (relating to policy-
15 holder notifications).

16 “(viii) Section 27 (relating to the
17 right to reduce coverage and lower pre-
18 miums).

19 “(ix) Section 31 (relating to standard
20 format outline of coverage).

21 “(x) Section 32 (relating to require-
22 ment to deliver shopper’s guide).

23 “(B) MODEL ACT.—The following require-
24 ments of the model Act must be met:

1 “(i) Section 6F (relating to right to
2 return).

3 “(ii) Section 6G (relating to outline of
4 coverage).

5 “(iii) Section 6H (relating to require-
6 ments for certificates under group plans).

7 “(iv) Section 6J (relating to policy
8 summary).

9 “(v) Section 6K (relating to monthly
10 reports on accelerated death benefits).

11 “(vi) Section 7 (relating to incontest-
12 ability period).

13 “(vii) Section 9 (relating to producer
14 training requirements).

15 “(C) DEFINITIONS.—For purposes of this
16 paragraph, the terms ‘model regulation’ and
17 ‘model Act’ have the meanings given such terms
18 by section 7702B(g)(2)(B).”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to policies issued more than 1 year
21 after the date of the enactment of this Act.

1 **TITLE IV—PROMOTING AND**
 2 **PROTECTING COMMUNITY**
 3 **LIVING**

4 **SEC. 401. MANDATORY APPLICATION OF SPOUSAL IMPROV-**
 5 **ERISHMENT PROTECTIONS TO RECIPIENTS**
 6 **OF HOME AND COMMUNITY-BASED SERVICES.**

7 (a) IN GENERAL.—Section 1924(h)(1)(A) of the So-
 8 cial Security Act (42 U.S.C. 1396r–5(h)(1)(A)) is amend-
 9 ed by striking “(at the option of the State)is described
 10 in section 1902(a)(10)(A)(ii)(VI)” and inserting “is eligi-
 11 ble for medical assistance for home and community-based
 12 services under subsection (c), (d), (e), (i), or (k) of section
 13 1915”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 subsection (a) takes effect on October 1, 2008.

16 **SEC. 402. STATE AUTHORITY TO ELECT TO EXCLUDE UP TO**
 17 **6 MONTHS OF AVERAGE COST OF NURSING**
 18 **FACILITY SERVICES FROM ASSETS OR RE-**
 19 **SOURCES FOR PURPOSES OF ELIGIBILITY**
 20 **FOR HOME AND COMMUNITY-BASED SERV-**
 21 **ICES.**

22 (a) IN GENERAL.—Section 1917 of the Social Secu-
 23 rity Act (42 U.S.C. 1396p) is amended by adding at the
 24 end the following new subsection:

1 “(i) STATE AUTHORITY TO EXCLUDE UP TO 6
2 MONTHS OF AVERAGE COST OF NURSING FACILITY
3 SERVICES FROM HOME AND COMMUNITY-BASED SERV-
4 ICES ELIGIBILITY DETERMINATIONS.—Nothing in this
5 section or any other provision of this title, shall be con-
6 strued as prohibiting a State from excluding from any de-
7 termination of an individual’s assets or resources for pur-
8 poses of determining the eligibility of the individual for
9 medical assistance for home and community-based services
10 under subsection (c), (d), (e), (i), or (k) of section 1915
11 (if a State imposes an limitation on assets or resources
12 for purposes of eligibility for such services), an amount
13 equal to the product of the amount applicable under sub-
14 section (c)(1)(E)(ii)(II) (at the time such determination
15 is made) and such number, not to exceed 6, as the State
16 may elect.”.

17 (b) RULE OF CONSTRUCTION.—Nothing in the
18 amendment made by subsection (a) shall be construed as
19 affecting a State’s option to apply less restrictive meth-
20 odologies under section 1902(r)(2) for purposes of deter-
21 mining income and resource eligibility for individuals spec-
22 ified in that section.

23 (c) EFFECTIVE DATE.—The amendment made by
24 subsection (a) takes effect on October 1, 2008.

1 **TITLE V—MISCELLANEOUS**

2 **SEC. 501. IMPROVED DATA COLLECTION.**

3 (a) SECRETARIAL REQUIREMENT TO REVISE DATA
4 REPORTING FORMS AND SYSTEMS TO ENSURE UNIFORM
5 AND CONSISTENT REPORTING BY STATES.—Not later
6 than 6 months after the date of enactment of this Act,
7 the Secretary of Health and Human Services, acting
8 through the Administrator of the Centers for Medicare &
9 Medicaid Services, shall revise CMS Form 372, CMS
10 Form 64, and CMS Form 64.9 (or any successor forms)
11 and the Medicaid Statistical Information Statistics
12 (MSIS) claims processing system to ensure that, with re-
13 spect to any State that provides medical assistance to indi-
14 viduals under a waiver or State plan amendment approved
15 under subsection (c), (d), (e), (i), (j), or (k) of section
16 1915 of the Social Security Act (42 U.S.C. 1396n), the
17 State reports to the Secretary, not less than annually and
18 in a manner that is consistent and uniform for all States
19 (and, in the case of medical assistance provided under a
20 waiver or State plan amendment under any such sub-
21 section for home and community-based services, in a man-
22 ner that is consistent and uniform with the data required
23 to be reported for purposes of monitoring or evaluating
24 the provision of such services under the State plan or
25 under a waiver approved under section 1115 of the Social

1 Security Act (42 U.S.C. 1315) to provide such services)
2 the following data:

3 (1) The total number of individuals provided
4 medical assistance for such services under each waiv-
5 er to provide such services conducted by the State
6 and each State plan amendment option to provide
7 such services elected by the State.

8 (2) The total amount of expenditures incurred
9 for such services under each such waiver and State
10 plan amendment option, disaggregated by expendi-
11 tures for medical assistance and administrative or
12 other expenditures.

13 (3) The types of such services provided by the
14 State under each such waiver and State plan amend-
15 ment option.

16 (4) The number of individuals on a waiting list
17 (if any) to be enrolled under each such waiver and
18 State plan amendment option or to receive services
19 under each such waiver and State plan amendment
20 option.

21 (5) With respect to home health services, pri-
22 vate duty nursing services, case management serv-
23 ices, and rehabilitative services provided under each
24 such waiver and State plan amendment option, the
25 total number of individuals provided each type of

1 such services, the total amount of expenditures in-
2 curred for each type of services, and whether each
3 such service was provided for long-term care or
4 acute care purposes.

5 (b) PUBLIC AVAILABILITY.—Not later than 6 months
6 after the date of enactment of this Act, the Secretary of
7 Health and Human Services, acting through the Adminis-
8 trator of the Centers for Medicare & Medicaid Services,
9 shall make publicly available, in a State identifiable man-
10 ner, the data described in subsection (a) through an Inter-
11 net website and otherwise as the Secretary determines ap-
12 propriate.

13 **SEC. 502. GAO REPORT ON MEDICAID HOME HEALTH SERV-**
14 **ICES AND THE EXTENT OF CONSUMER SELF-**
15 **DIRECTION OF SUCH SERVICES.**

16 (a) STUDY.—The Comptroller General of the United
17 States shall study the provision of home health services
18 under State Medicaid plans under title XIX of the Social
19 Security Act. Such study shall include an examination of
20 the extent to which there are variations among the States
21 with respect to the provision of home health services in
22 general under State Medicaid plans, including the extent
23 to which such plans impose limits on the types of services
24 that a home health aide may provide a Medicaid bene-
25 ficiary and the extent to which States offer consumer self-

1 direction of such services or allow for other consumer-ori-
2 ented policies with respect to such services.

3 (b) REPORT.—Not later than 1 year after the date
4 of enactment of this Act, the Comptroller General shall
5 submit a report to Congress on the results of the study
6 conducted under subsection (a), together with such rec-
7 ommendations for legislative or administrative changes as
8 the Comptroller General determines appropriate in order
9 to provide home health services under State Medicaid
10 plans in accordance with identified best practices for the
11 provision of such services.

○