

110TH CONGRESS  
1ST SESSION

# S. 799

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2007

Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. INOUE, Mr. SALAZAR, Mr. BIDEN, Mr. LIEBERMAN, Mrs. CLINTON, Mr. SCHUMER, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 2007”.

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 ability 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) Research on the provision of long-term serv-  
13 ices and supports under the Medicaid program (con-  
14 ducted by and on behalf of the Department of  
15 Health and Human Services) has revealed a signifi-  
16 cant funding and programmatic bias toward institu-  
17 tional care. Only about 37 percent of long-term care

1 funds expended under the Medicaid program, and  
2 only about 12.5 percent of all funds expended under  
3 that program, pay for services and supports in home  
4 and community-based settings.

5 (3) In the case of Medicaid beneficiaries who  
6 need long-term care, the only long-term care service  
7 currently guaranteed by Federal law in every State  
8 are services related to nursing home care. Only 30  
9 States have adopted the benefit option of providing  
10 personal care services under the Medicaid program.  
11 Although every State has chosen to provide certain  
12 services under home and community-based waivers,  
13 these services are unevenly available within and  
14 across States, and reach a small percentage of eligi-  
15 ble individuals. In fiscal year 2003, only 7 States  
16 spent 50 percent or more of their Medicaid long-  
17 term care funds under the Medicaid program on  
18 home and community-based care. Individuals with  
19 the most significant disabilities are usually afforded  
20 the least amount of choice, despite advances in med-  
21 ical and assistive technologies and related areas.

22 (4) Despite the more limited funding for com-  
23 munity services, the majority of individuals who use  
24 Medicaid long-term services and supports are in the

1 community, indicating that community services is a  
2 more cost effective alternative to institutional care.

3 (5) 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, including  
16 in the workplace.

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

19 (1) To reform the Medicaid program estab-  
20 lished under title XIX of the Social Security Act (42  
21 U.S.C. 1396 et seq.) to provide services in the most  
22 integrated setting appropriate to the individual's  
23 needs, and to provide equal access to community-  
24 based attendant services and supports in order to  
25 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 addressing the decision  
14 of the Supreme Court 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 1939, 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.—

24 (1) IN GENERAL.—Title XIX of the Social Se-  
25 curity Act (42 U.S.C. 1396 et seq.) is amended—

1 (A) by redesignating section 1939 as sec-  
2 tion 1940; and

3 (B) by inserting after section 1938 the fol-  
4 lowing:

5 “COMMUNITY-BASED ATTENDANT SERVICES AND  
6 SUPPORTS

7 “SEC. 1939. (a) REQUIRED COVERAGE.—

8 “(1) IN GENERAL.—Not later than October 1,  
9 2012, a State shall provide through a plan amend-  
10 ment for the inclusion of community-based attendant  
11 services and supports (as defined in subsection  
12 (g)(1)) for individuals described in section  
13 1902(a)(10)(D)(ii) in accordance with this section.

14 “(2) ENHANCED FMAP AND ADDITIONAL FED-  
15 ERAL FINANCIAL SUPPORT FOR EARLIER COV-  
16 ERAGE.—Notwithstanding section 1905(b), during  
17 the period that begins on October 1, 2007, and ends  
18 on September 30, 2012, in the case of a State with  
19 an approved plan amendment under this section dur-  
20 ing that period that also satisfies the requirements  
21 of subsection (c) the Federal medical assistance per-  
22 centage shall be equal to the enhanced FMAP de-  
23 scribed in section 2105(b) with respect to medical  
24 assistance in the form of community-based attendant  
25 services and supports provided to individuals de-  
26 scribed 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));

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-

1 individual to accomplish activities of daily  
2 living, instrumental activities of daily liv-  
3 ing, and health-related tasks;

4 “(iii) backup systems or mechanisms  
5 (such as the use of beepers) to ensure con-  
6 tinuity of services and supports; and

7 “(iv) voluntary training on how to se-  
8 lect, manage, and dismiss attendants.

9 “(C) EXCLUDED SERVICES AND SUP-  
10 PORTS.—Subject to subparagraph (D), such  
11 term does not include—

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

14 “(ii) special education and related  
15 services provided under the Individuals  
16 with Disabilities Education Act and voca-  
17 tional rehabilitation services provided  
18 under the Rehabilitation Act of 1973;

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

21 “(iv) durable medical equipment; or

22 “(v) home modifications.

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

1 costs, such as rent and utility deposits, first  
2 month's rent and utilities, bedding, basic kitch-  
3 en supplies, and other necessities required for  
4 an individual to make the transition from a  
5 nursing facility, institution for mental diseases,  
6 or intermediate care facility for the mentally re-  
7 tarded to a community-based home setting  
8 where the individual resides.

9 “(2) ADDITIONAL DEFINITIONS.—

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

14 “(B) CONSUMER CONTROLLED.—The term  
15 ‘consumer controlled’ means a method of select-  
16 ing and providing services and supports that  
17 allow the individual, or where appropriate, the  
18 individual’s representative, maximum control of  
19 the community-based attendant services and  
20 supports, regardless of who acts as the em-  
21 ployer of record.

22 “(C) DELIVERY MODELS.—

23 “(i) AGENCY-PROVIDER MODEL.—The  
24 term ‘agency-provider model’ means, with  
25 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 1939); 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, 2007, and apply to  
 8 medical assistance provided for community-based at-  
 9 tendant services and supports described in section  
 10 1939 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 2012.

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 1939 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) 1-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, 2007.

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

7           (a) IN GENERAL.—Section 1939 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, 2007.

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 1939 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 2008 through 2010.

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.

○