

116TH CONGRESS
1ST SESSION

S. 2521

To award grants for the recruitment, retention, and advancement of direct care workers.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2019

Mr. KAINE (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To award grants for the recruitment, retention, and advancement of direct care workers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Direct Creation, Ad-
5 vancement, and Retention of Employment Opportunity
6 Act” or the “Direct CARE Opportunity Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

9 (1) Millions of older individuals and individuals
10 with disabilities in the United States require assist-

1 ance with activities of daily living to live independ-
2 ently and participate in their communities to their
3 fullest extent. The Bureau of the Census projects
4 that by 2060 the population of individuals age 65 or
5 older will double from 49,200,000 in 2016 to
6 94,700,000. According to the Centers for Disease
7 Control and Prevention, 1 in 4 (or 60,000,000)
8 adults in the United States are living with a dis-
9 ability.

10 (2) The assistance of direct care workers allows
11 older individuals and individuals with disabilities to
12 live with dignity and safety, and to exercise their
13 right to live independently in their own homes and
14 communities, in keeping with what is most appro-
15 priate for their needs and preferences. Older individ-
16 uals and individuals with disabilities may also par-
17 ticipate in the direct care workforce, further sup-
18 porting their ability to live independently.

19 (3) According to PHI, direct care workers pro-
20 vide most of the paid, hands-on care for older indi-
21 viduals and individuals with disabilities.

22 (4) According to PHI, 4,500,000 direct care
23 workers provide care across home and community-
24 based settings, nursing facilities, assisted living fa-
25 cilities, group homes, intermediate care facilities,

1 and hospitals to care for the growing population of
2 older individuals and individuals with disabilities.

3 (5) PHI projects that by 2024, 5,200,000 di-
4 rect care workers will be needed across all care set-
5 tings to care for the growing population of older in-
6 dividuals and individuals with disabilities.

7 (6) Many direct care workers lack access to a
8 career pathway or advanced training opportunities.
9 This limits their ability to build competency and ex-
10 pertise in their field that, when gained, may lead to
11 an increase in their earning capacity. According to
12 PHI, more than half of home care workers have
13 completed no formal education beyond high school,
14 making high-quality, transferable training essential
15 to success on the job.

16 (7) As of 2015, the median wage for direct care
17 workers is approximately \$11 an hour; wages and
18 earnings for home care workers are even lower in
19 rural areas. Because of low wages, variable work
20 hours, and the inability to access workplace-based
21 benefits, 19 percent of home care workers live below
22 the Federal poverty level as compared to 9 percent
23 of the general United States workforce. Nearly half
24 of direct care workers rely on some form of public
25 assistance to support themselves and their families.

1 (8) According to PHI, approximately 9 in 10
2 direct care workers are women, more than half are
3 women of color, and one quarter of direct care work-
4 ers are immigrants.

5 (9) The direct care workforce is plagued with
6 high turnover, low job satisfaction, and workforce
7 shortages. These conditions can contribute to re-
8 duced quality of care and threaten the availability of
9 supports for older individuals and individuals with
10 disabilities.

11 (10) Because of the nature of the work, direct
12 care workers suffer from disproportionately high
13 rates of injury. In 2016, the injury rate for nursing
14 assistants was 337 per 10,000 as compared to 100
15 per 10,000 for other occupations.

16 (11) Training has been shown to reduce worker
17 turnover, reduce rates of injury, and lead to in-
18 creased job satisfaction.

19 (12) The Institute of Medicine found that to
20 ensure that the United States is prepared to meet
21 the health care needs of older individuals during the
22 21st century, it is essential that the capacity of the
23 direct care workforce be enhanced in both the num-
24 ber of workers available and their ability to meet
25 their own health care and quality of life needs.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **APPRENTICESHIP PROGRAM.**—The term
4 “apprenticeship program” means an apprenticeship
5 program registered under the Act of August 16,
6 1937 (commonly known as the “National Appren-
7 ticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C.
8 50 et seq.).

9 (2) **DIRECT CARE WORKER.**—The term “direct
10 care worker” has the meaning given the term in sec-
11 tion 799B of the Public Health Service Act (42
12 U.S.C. 295p).

13 (3) **ELIGIBLE ENTITY.**—The term “eligible enti-
14 ty” means—

15 (A) a State;

16 (B) a nonprofit organization, a labor orga-
17 nization, or an entity with shared labor-man-
18 agement oversight—

19 (i) with an established record of re-
20 cruiting or providing training to direct care
21 workers; or

22 (ii) that establishes a training pro-
23 gram in consultation with an organization
24 with an established record of providing
25 training to direct care workers;

26 (C) a local board;

1 (D) a nonprofit entity carrying out an ap-
2 prenticeship program;

3 (E) an Indian tribe or tribal organization;
4 or

5 (F) a consortium of entities listed in sub-
6 paragraph (A), (B), (C), (D), or (E) that may
7 also include an institution of higher education.

8 (4) EMPLOY; EMPLOYER.—The terms “employ”
9 and “employer” have the meanings given the terms
10 in section 3 of the Fair Labor Standards Act (29
11 U.S.C. 203 et seq.).

12 (5) INDIAN TRIBE; TRIBAL ORGANIZATION.—
13 The terms “Indian tribe” and “tribal organization”
14 have the meanings given such terms in section 4 of
15 the Indian Self-Determination and Education Assist-
16 ance Act (25 U.S.C. 5304).

17 (6) INSTITUTION OF HIGHER EDUCATION.—The
18 term “institution of higher education” has the
19 meaning given the term in section 101 of the Higher
20 Education Act of 1965 (20 U.S.C. 1001).

21 (7) SECRETARY.—The term “Secretary” means
22 the Secretary of Labor, except as otherwise specified
23 in this Act.

24 (8) STATE.—The term “State” has the mean-
25 ing given the term in section 3 of the Carl D. Per-

1 kins Career and Technical Education Act of 2006
2 (20 U.S.C. 2302).

3 (9) WORKFORCE INNOVATION AND OPPOR-
4 TUNITY ACT TERMS.—The terms “career pathway”,
5 “career planning”, “in-demand industry sector or
6 occupation”, “individual with a barrier to employ-
7 ment”, “individual with a disability”, “local board”,
8 “older individual”, “one-stop center”, “on-the-job
9 training”, “recognized postsecondary credential”,
10 “region”, “State board”, and “supportive services”
11 have the meanings given such terms in section 3 of
12 the Workforce Innovation and Opportunity Act (29
13 U.S.C. 3102).

14 (10) WORK-BASED LEARNING.—The term
15 “work-based learning” has the meaning given the
16 term in section 3 of the Carl D. Perkins Career and
17 Technical Education Act of 2006 (20 U.S.C. 2302).

18 **SEC. 4. AUTHORITY TO AWARD GRANTS; DURATION.**

19 (a) AUTHORITY TO AWARD GRANTS.—Not later than
20 12 months after the date of enactment of this Act, the
21 Secretary, in consultation with the Secretary of Health
22 and Human Services, shall award grants—

23 (1) to not fewer than 15 eligible entities to de-
24 velop and carry out projects for purposes of recruit-

1 ing, retaining, or providing advancement opportuni-
 2 ties to direct care workers; and

3 (2) 5 of which shall be awarded for projects
 4 that focus on providing such advancement opportu-
 5 nities.

6 (b) TREATMENT OF CONTINUATION ACTIVITIES.—

7 An eligible entity that carries out activities for purposes
 8 of recruiting, retaining, or providing advancement oppor-
 9 tunities to direct care workers prior to receipt of a grant
 10 under this Act may use such grant to continue carrying
 11 out such activities, and shall be treated as an eligible enti-
 12 ty carrying out a project described in subsection (a)(1).

13 (c) DURATION.—

14 (1) GRANT PERIOD.—A grant under this Act
 15 shall be for not less than 5 years.

16 (2) LENGTH OF PROJECT.—A project assisted
 17 with a grant awarded under this Act shall be carried
 18 out for not less than 3 years.

19 **SEC. 5. PROJECT PLANS; CONSULTATION.**

20 (a) PROJECT PLANS.—

21 (1) IN GENERAL.—To receive a grant under
 22 this Act, an eligible entity shall submit to the Sec-
 23 retary a project plan for each project to be developed
 24 and carried out (or for activities to be continued)
 25 with the grant at such time and in such manner as

1 the Secretary may determine, and which shall con-
2 tain the information described in paragraph (2).

3 (2) CONTENTS.—A project plan submitted by
4 an eligible entity under paragraph (1) shall include
5 a description of each of the following:

6 (A) Current or projected job openings for,
7 or relevant labor market information related to,
8 direct care workers in the State or region to be
9 served by the project, and the geographic scope
10 of the workforce to be served by the project.

11 (B) Specific efforts and strategies that the
12 project will undertake to reduce barriers to re-
13 cruitment, retention, or advancement of direct
14 care workers, including an assurance that such
15 efforts will include—

16 (i) an assessment of the wages or
17 other compensation or benefits necessary
18 to recruit and retain direct care workers;
19 and

20 (ii) a description of the project's pro-
21 jected wages and other compensation or
22 benefits for direct care workers at the
23 State or local level, including a comparison
24 of such projected wages to regional and
25 national wages.

1 (C) In the case of a project offering an
2 education and training program, a description
3 of such program (including any curricula, mod-
4 els, and standards used under the program, and
5 any associated recognized postsecondary creden-
6 tials for which the program provides prepara-
7 tion, as applicable), which shall include an as-
8 surance that such program will provide—

9 (i) an apprenticeship program, work-
10 based learning, or on-the-job training op-
11 portunities;

12 (ii) supervision or mentoring; and

13 (iii) a progressively increasing, clearly
14 defined schedule of wages to be paid to the
15 direct care worker that—

16 (I) is consistent with skill gains
17 or attainment of a recognized postsec-
18 ondary credential; and

19 (II) ensures the entry wage is not
20 less than the greater of—

21 (aa) the minimum wage re-
22 quired under section 6(a) of the
23 Fair Labor Standards Act of
24 1938 (29 U.S.C. 206(a)); or

1 (bb) the applicable wage re-
2 quired by other applicable Fed-
3 eral or State law, or a collective
4 bargaining agreement.

5 (D) If applicable, any other innovative
6 models or processes the eligible entity will im-
7 plement to support the retention of direct care
8 workers.

9 (E) The supportive services and benefits to
10 be provided to direct care workers to support
11 the retention of employment of direct care
12 workers.

13 (F) How the eligible entity will make use
14 of career planning to support the identification
15 of advancement opportunities and career path-
16 ways for direct care workers in the State or re-
17 gion to be served by the project.

18 (G) How the eligible entity will collect and
19 submit to the Secretary workforce data and
20 outcomes of the project.

21 (H) How the project will—

22 (i) provide adequate and safe equip-
23 ment, and facilities for training and super-
24 vision, including a safe work environment
25 free from discrimination;

1 (ii) provide safety training for direct
2 care workers as part of the education and
3 training program described in subpara-
4 graph (C), as applicable; and

5 (iii) provide adequate training for
6 mentors and qualified instructors to ensure
7 compliance with clause (i) and, as applica-
8 ble, clause (ii).

9 (I) How the eligible entity will consult on
10 the implementation of the project, or coordinate
11 the project with, each of the following entities,
12 to the extent that each such entity is not a part
13 of the eligible entity:

14 (i) The State agency responsible for
15 administering the State plan under title
16 XIX of the Social Security Act (42 U.S.C.
17 1396 et seq.) (or waiver of the plan), or
18 the State agency with primary responsi-
19 bility for providing services and supports
20 for individuals with intellectual disabilities
21 and individuals with developmental disabili-
22 ties, for the State to be served by the
23 project.

1 (ii) The local board and State board
2 for the State or for each region to be
3 served by the project.

4 (iii) A nonprofit organization with
5 demonstrated experience with respect to di-
6 rect care workers.

7 (iv) In the case of a project that car-
8 ries out an education and training pro-
9 gram, a nonprofit organization with dem-
10 onstrated experience in the development or
11 delivery of curricula or coursework.

12 (v) A nonprofit organization that fos-
13 ters the professional development and col-
14 lective engagement of direct care workers,
15 including labor organizations.

16 (vi) A nonprofit organization with ex-
17 pertise in identifying and addressing the
18 care needs of older individuals and individ-
19 uals with disabilities and their caregivers
20 (including area agencies on aging, as de-
21 fined in section 102 of the Older Ameri-
22 cans Act of 1965 (42 U.S.C. 3002), and
23 centers for independent living, as described
24 in part C of title VII of the Rehabilitation
25 Act of 1973 (29 U.S.C. 796f et seq.).

1 (vii) A nonprofit State provider asso-
2 ciation that represents providers who em-
3 ploy direct care workers, where such asso-
4 ciations exist.

5 (viii) An entity that employs direct
6 care workers.

7 (J) An assurance that any benefit or serv-
8 ice provided under the project will be provided
9 at no cost to a direct care worker or individuals
10 assisted by such workers.

11 (K) How the eligible entity will consult
12 with individuals employed as direct care work-
13 ers, representatives of such workers, individuals
14 assisted by such workers, and the families of
15 such individuals throughout the project.

16 (L) Outreach efforts to individuals for par-
17 ticipation in such project, including targeted
18 outreach efforts to—

19 (i) individuals who are recipients of
20 assistance under a State program funded
21 under part A of title IV of the Social Secu-
22 rity Act (42 U.S.C. 601 et seq.) or individ-
23 uals who are eligible for such assistance;
24 and

1 (ii) individuals with barriers to em-
2 ployment.

3 (3) CONSIDERATIONS.—In selecting eligible en-
4 tities to receive a grant under this Act, the Secretary
5 shall—

6 (A) ensure—

7 (i) equitable geographic and demo-
8 graphic diversity, including rural and
9 urban areas; and

10 (ii) that selected eligible entities will
11 serve areas where direct care, or a related
12 occupation, is an in-demand industry sec-
13 tor or occupation; and

14 (B) give priority to eligible entities pro-
15 posing to predominantly serve the individuals
16 described in clauses (i) and (ii) of paragraph
17 (2)(L).

18 (b) CONSULTATION.—The Secretary shall encourage
19 each eligible entity receiving a grant under this Act, in
20 developing and carrying out a project, to consult with—

21 (1) institutions of higher education;

22 (2) the State Apprenticeship Agency recognized
23 under the Act of August 16, 1937 (commonly known
24 as the “National Apprenticeship Act”; 50 Stat. 664,
25 chapter 663; 29 U.S.C. 50 et seq.), for the State or

1 region to be served by the eligible entity or, if no
2 such agency has been recognized in the State or re-
3 gion, the Office of Apprenticeship of the Department
4 of Labor; and

5 (3) one-stop centers.

6 **SEC. 6. USES OF FUNDS; SUPPLEMENT, NOT SUPPLANT.**

7 (a) USES OF FUNDS.—

8 (1) IN GENERAL.—Each eligible entity receiving
9 a grant under this Act shall use such funds to carry
10 out at least 1 project or to continue activities com-
11 menced prior to receipt of such grant that—

12 (A) develop and implement a strategy for
13 the recruitment, retention, or advancement of
14 direct care workers, which includes the activi-
15 ties described in section 5(a)(2); and

16 (B) provide compensation to each eligible
17 direct care worker for any training received
18 under the project or activities.

19 (2) ADMINISTRATIVE COSTS.—Each eligible en-
20 tity receiving a grant under this Act shall not use
21 more than 5 percent of the funds of such grant for
22 costs associated with the administration of activities
23 under this Act.

24 (3) DIRECT SUPPORT.—Each eligible entity re-
25 ceiving a grant under this Act shall use not less than

1 5 percent of the funds of such grant to provide di-
2 rect financial assistance, such as supportive services,
3 to direct care workers to support the financial needs
4 of such workers to enter, remain enrolled in, and
5 complete the project (or activities) assisted with such
6 grant.

7 (b) SUPPLEMENT, NOT SUPPLANT.—An eligible enti-
8 ty receiving a grant under this Act shall use such grant
9 only to supplement, and not supplant, the amount of funds
10 that, in the absence of such grant, would be available to
11 address the recruitment, retention, or advancement of di-
12 rect care workers in the State or region served by the eligi-
13 ble entity.

14 **SEC. 7. EVALUATIONS AND REPORTS.**

15 (a) REPORTS.—

16 (1) ELIGIBLE ENTITIES.—

17 (A) IN GENERAL.—Each eligible entity re-
18 ceiving a grant under this Act shall submit to
19 the Secretary and the Secretary of Health and
20 Human Services, with respect to each project
21 assisted with such grant—

22 (i) for each year of the grant period,
23 an annual report on the progress and out-
24 comes of the project; and

1 (ii) not later 6 months after the com-
2 pletion of such project, a final report on
3 the progress and outcomes of the project.

4 (B) DISAGGREGATION.—Each report sub-
5 mitted under paragraph (A) shall—

6 (i) include the information described
7 in subparagraph (C); and

8 (ii) disaggregate such information in
9 the manner described in subparagraph
10 (D).

11 (C) CONTENTS.—Each report submitted
12 under subparagraph (A) shall include each of
13 the following:

14 (i) The number of individuals served
15 by the project, including—

16 (I) the number of individuals re-
17 cruited to be employed as a direct
18 care worker; and

19 (II) the number of individuals
20 who attained employment as a direct
21 care worker.

22 (ii) The number of individuals or fam-
23 ilies assisted by direct care workers.

24 (iii) The number of direct care work-
25 ers who participated in and completed—

- 1 (I) work-based learning;
- 2 (II) on-the-job training;
- 3 (III) an apprenticeship program;
- 4 or
- 5 (IV) a professional development
- 6 or mentoring program.

7 (iv) Other services, benefits, or sup-
8 ports (other than the services, benefits, or
9 supports described in clause (iii)) provided
10 to assist in the recruitment, retention, or
11 advancement of direct care workers, the
12 number of individuals who accessed such
13 services, benefits, or supports, and the im-
14 pact of such services, benefits, or supports.

15 (v) How the project assessed satisfac-
16 tion with respect to—

17 (I) direct care workers assisted
18 by the project;

19 (II) individuals receiving services
20 delivered by such workers, including
21 any impact on the health or health
22 outcomes of such individuals; and

23 (III) employers of such workers,
24 as determined in accordance with sec-
25 tion 116(b)(2)(A)(i)(VI) of the Work-

1 force Innovation and Opportunity Act
2 (29 U.S.C. 3141(b)(2)(A)(i)(VI)).

3 (vi) The performance of the eligible
4 entity with respect to the indicators of per-
5 formance on unsubsidized employment, me-
6 dian earnings, credential attainment, meas-
7 urable skill gains, and employer satisfac-
8 tion, as described under section
9 116(b)(2)(A)(i) of the Workforce Innova-
10 tion and Opportunity Act (29 U.S.C.
11 3141(b)(2)(A)(i)).

12 (vii) Any other information with re-
13 spect to outcomes of the project.

14 (D) DISAGGREGATION.—The information
15 described under subparagraph (C) shall be
16 disaggregated by race, ethnicity, sex, and age in
17 accordance with section 116(d)(2)(B) of the
18 Workforce Innovation and Opportunity Act (29
19 U.S.C. 3141(d)(2)), by each population listed in
20 section 3(24) of the Workforce Innovation and
21 Opportunity Act (29 U.S.C. 3102(24)), and by
22 the individuals described in clauses (i) and (ii)
23 of section 5(a)(2)(L).

24 (2) SECRETARIES.—

1 (A) ANNUAL PERFORMANCE REVIEW.—

2 The Secretary, in consultation with the Sec-
3 retary of Health and Human Services, shall an-
4 nually conduct a performance review of each
5 project carried out by an eligible entity receiv-
6 ing a grant under this Act, including—

7 (i) the performance of the project with
8 respect to the indicators of performance
9 described in paragraph (1)(C)(vi), and
10 disaggregated in the manner described in
11 paragraph (1)(D); and

12 (ii) the efficacy of the project plan
13 submitted under section 5(a)—

14 (I) for recruiting, retaining, or
15 providing advancement opportunities
16 for direct care workers; and

17 (II) on the methods used to re-
18 cruit, retain, or provide advancement
19 opportunities to direct care workers.

20 (B) REPORT TO CONGRESS.—Not later
21 than 1 year after the completion of each project
22 assisted with a grant under this Act, the Sec-
23 retary, in consultation with the Secretary of
24 Health and Human Services, shall prepare and

1 submit to Congress, and make publicly avail-
2 able, a report containing—

3 (i) the progress and outcomes of the
4 project as identified in the final report sub-
5 mitted by the eligible entity under para-
6 graph (1)(A)(ii);

7 (ii) an analysis of the workforce sup-
8 ply, current and projected shortages, and
9 distribution of direct care workers at the
10 national, regional, and State levels; and

11 (iii) recommendations for such legisla-
12 tive or administrative action, as the Sec-
13 retary determines appropriate.

14 (3) GAO REPORT.—Not later than 1 year after
15 the completion of each project assisted with a grant
16 under this Act, the Comptroller General of the
17 United States shall conduct a study and submit to
18 Congress a report including—

19 (A) an assessment of how the project as-
20 sisted in the recruitment, retention, or advance-
21 ment of direct care workers; and

22 (B) recommendations for such legislative
23 or administrative actions, as the Comptroller
24 General determines appropriate.

1 (b) TECHNICAL ASSISTANCE.—Not later than 15
2 months after the date of enactment of this Act, the Sec-
3 retary shall provide technical assistance to eligible entities
4 receiving a grant under this Act, for purposes of compli-
5 ance with subsection (a)(1) of this section, on—

6 (1) the disaggregation requirements of section
7 116(d)(2)(B) of the Workforce Innovation and Op-
8 portunity Act (29 U.S.C. 3141(d)(2)); and

9 (2) the data collection requirements of section
10 116(b)(2)(A)(i) of such Act (29 U.S.C.
11 3141(b)(2)(A)(i)).

12 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
14 as may be necessary to carry out this Act for each of fiscal
15 years 2021 through 2025.

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