

112TH CONGRESS
1ST SESSION

H. R. 2341

To amend the Fair Labor Standards Act with regard to certain exemptions under that Act for direct care workers and to improve the systems for the collection and reporting of data relating to the direct care workforce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Ms. LINDA T. SÁNCHEZ of California (for herself, Mr. BRALEY of Iowa, Ms. DELAURO, Ms. EDWARDS, Mr. FILNER, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. HONDA, Mr. KILDEE, Mr. LANGEVIN, Mr. MCGOVERN, Mr. MICHAUD, Ms. MOORE, Mr. PASCRELL, Mr. PERLMUTTER, Ms. PINGREE of Maine, Ms. RICHARDSON, Ms. ROYBAL-ALLARD, Ms. SCHAKOWSKY, Ms. SUTTON, and Mr. WU) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Fair Labor Standards Act with regard to certain exemptions under that Act for direct care workers and to improve the systems for the collection and reporting of data relating to the direct care workforce, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Direct Care Job Qual-
3 ity Improvement Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) direct care workers are the linchpin of the
7 Nation’s paid long-term care system, providing es-
8 sential care and daily living services to many of the
9 approximately 10 million Americans who are elderly
10 or live with disabilities;

11 (2) over two-thirds of older adults will need
12 some form of long-term care at some point in their
13 lives and by 2020, 15 million Americans are ex-
14 pected to need such care;

15 (3) the ability to meet the Nation’s need for
16 long-term care services and supports depends largely
17 on a strong, stable direct care workforce;

18 (4) the United States faces an impending short-
19 age of qualified direct care workers to provide per-
20 sonal and long-term care and support services;

21 (5) direct care work is demanding, working con-
22 ditions are often difficult, and turnover is high be-
23 cause of low pay, lack of access to health insurance
24 and other benefits, inadequate training, limited op-
25 portunities for advancement, and lack of respect;

1 (6) direct care workers are often underpaid: 45
2 percent of direct care workers live at or below the
3 poverty level, and nearly half live in households that
4 receive one or more public benefits (such as food
5 stamps or Medicaid);

6 (7) the average annual income for direct care
7 workers is \$17,000, and more than 1 in 4 of such
8 workers lack health insurance; and

9 (8) State management information systems are
10 rarely designed to gather and report basic informa-
11 tion about the direct care workforce that could be
12 used assess workforce challenges or monitor changes
13 in the direct care workforce over time.

14 **SEC. 3. LIMITATION TO EXEMPTION UNDER THE FAIR**
15 **LABOR STANDARDS ACT.**

16 (a) HOME CARE WORKERS.—Section 13(a)(15) of
17 the Fair Labor Standards Act of 1938 (29 U.S.C.
18 213(a)(15)) is amended to read as follows:

19 “(15) any employee employed on a casual basis
20 in domestic service employment to provide baby-
21 sitting services or any employee employed on a cas-
22 ual basis in domestic service employment to provide
23 companionship services for individuals who (because
24 of age, infirmity, or disability) are unable to care for

1 themselves (as such terms are defined and delimited
2 by regulations of the Secretary);”.

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

6 “(z) The term ‘casual basis in domestic service em-
7 ployment to provide companionship services’ means em-
8 ployment which is irregular or intermittent, and which is
9 not performed by an individual—

10 “(1) whose vocation is the provision of compan-
11 ionship services; or

12 “(2) who is employed by an employer or agency
13 other than the family or household using their serv-
14 ices.

15 Employment is not on a casual basis if any family or
16 household employer employs an individual performing
17 companionship services for more than five (5) hours per
18 week or has employed the individual for a time period that
19 has extended beyond twelve (12) weeks in a calendar
20 year.”.

21 **SEC. 4. LONG-TERM SERVICES AND SUPPORTS.**

22 (a) DIRECT CARE WORKFORCE MONITORING PRO-
23 GRAM.—

24 (1) IN GENERAL.—The Secretary of Health and
25 Human Services, in cooperation with the heads of

1 other relevant departments, shall develop a program
2 to monitor the capacity and adequacy of the direct
3 care workforce in all relevant, as determined by the
4 Secretary, Federal healthcare programs (as defined
5 under section 1128B(f) of the Social Security Act
6 (42 U.S.C. 1320a–7b(f)).

7 (2) MONITORING AND EVALUATION.—Under
8 the program under paragraph (1), the Secretary
9 shall monitor and evaluate—

10 (A) the quality of services provided by di-
11 rect care workers through Federal healthcare
12 programs, including in home and community-
13 based settings and in long-term care settings;
14 and

15 (B) the adequacy of the direct care work-
16 force to provide services through such pro-
17 grams, including—

18 (i) the stability of such workforce, in-
19 cluding turnover rates;

20 (ii) an evaluation of geographic vari-
21 ation in the adequacy of such workforce;
22 and

23 (iii) the adequacy of such workforce to
24 meet the current and future demand for

1 long-term services and supports under such
2 programs.

3 (3) DATA SHARING.—For purposes of improv-
4 ing the adequacy of the direct care workforce and
5 quality of services provided by such workforce
6 through Federal healthcare programs, the Secretary
7 shall—

8 (A) facilitate the sharing of data on such
9 workforce between relevant Federal depart-
10 ments and between States;

11 (B) prepare cross-State comparisons of
12 such data and share such comparisons with
13 States; and

14 (C) share with States and Federal depart-
15 ments best practices for developing an adequate
16 workforce that provides high quality direct care
17 services.

18 (b) REPORTING ON WORKFORCE ADEQUACY UNDER
19 MEDICAID.—

20 (1) IN GENERAL.—Section 1902(a) of the So-
21 cial Security Act (42 U.S.C. 1396a(a)) is amend-
22 ed—

23 (A) by striking “and” at the end of para-
24 graph (82);

1 (B) by striking the period at the end of
2 paragraph (83) and inserting “; and”; and

3 (C) by inserting the following after para-
4 graph (83):

5 “(84) provide that the State shall submit to the
6 Secretary an annual report that, with respect to
7 both the current and future needs of individuals who
8 are enrolled in the State plan for long term care
9 services and supports, details the capacity and ade-
10 quacy of the direct care workforce (as such term is
11 defined in subsection (ll)) in the State (including
12 specifying the number of full-time and part-time di-
13 rect care workers, the turnover rate for such work-
14 ers, the number of vacancies for such workers, the
15 average wage for such workers; the typical benefits
16 package offered to such workers, and any other
17 types of data related to the direct care workforce in
18 the State that the Secretary requires).”.

19 (2) DEFINITIONS AND EXCEPTION FROM WAIV-
20 ER.—Section 1902 of the Social Security Act is fur-
21 ther amended by adding at the end the following:

22 “(ll) DIRECT CARE WORKERS.—

23 “(1) DEFINITIONS.—For purposes of this sub-
24 section and subsection (a)(84):

1 “(A) DIRECT CARE WORKER.—The term
2 ‘direct care worker’ has the meaning given each
3 of the following terms in the 2010 Standard
4 Occupational Classifications of the Department
5 of Labor: Home Health Aides [31–1011], Psy-
6 chiatric Aides [31–1013], Nursing Assistants
7 [31–1014], and Personal Care Aides [39–
8 9021].

9 “(B) DIRECT CARE WORKFORCE.—The
10 term ‘direct care workforce’ means the work-
11 force made up of direct care workers.

12 “(2) EXEMPTION FROM WAIVER.—In the case
13 of any State which is providing medical assistance to
14 its residents under a waiver granted under section
15 1115 or section 1915, the Secretary shall require the
16 State submit the report required under subsection
17 (a)(84) in the same manner as the State would be
18 required to submit such report if the State had in
19 effect a plan approved under this title.”.

20 (3) EFFECTIVE DATE.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), the amendments made by
23 this subsection shall take effect 6 months after
24 the date of the enactment of this Act.

1 (B) RULE FOR CHANGES REQUIRING
2 STATE LEGISLATION.—In the case of a State
3 plan for medical assistance under title XIX of
4 the Social Security Act which the Secretary of
5 Health and Human Services determines re-
6 quires State legislation (other than legislation
7 appropriating funds) in order for the plan to
8 meet the additional requirement imposed by the
9 amendments made by this subsection, the State
10 plan shall not be regarded as failing to comply
11 with the requirements of such title solely on the
12 basis of its failure to meet this additional re-
13 quirement before the first day of the first cal-
14 endar quarter beginning after the close of the
15 first regular session of the State legislature that
16 begins after the date of the enactment of this
17 Act. For purposes of the previous sentence, in
18 the case of a State that has a 2-year legislative
19 session, each year of such session shall be
20 deemed to be a separate regular session of the
21 State legislature.

22 **SEC. 5. PRIORITIZING ANALYSIS BY NATIONAL HEALTH**
23 **CARE WORKFORCE COMMISSION.**

24 (a) ADDITIONAL HIGH PRIORITY AREA.—Subpara-
25 graph (A) of section 5101(d)(4) of the Patient Protection

1 and Affordable Care Act (42 U.S.C. 294q(d)(4)) is
2 amended by adding at the end the following:

3 “(vi) With respect to the direct care
4 workforce—

5 “(I) a review of current and pro-
6 jected workforce supply and demand,
7 including a review of workforce size,
8 employment settings, turnover, com-
9 pensation, and benefits;

10 “(II) an analysis of the adequacy
11 of existing workforce data, data collec-
12 tion, and monitoring infrastructure;
13 and

14 “(III) recommendations for new
15 or additional uniform data elements
16 across regions and States that are
17 necessary to track workforce supply,
18 demand, and shortages.”.

19 (b) APPLICATION.—The amendment made by para-
20 graph (1) applies beginning with the reports required by
21 section 5101(d)(2) of the Patient Protection and Afford-
22 able Care Act (42 U.S.C. 294q(d)(2)) for 2011.

1 **SEC. 6. GRANTS AND TECHNICAL ASSISTANCE FOR DATA**
2 **COLLECTION AND MONITORING.**

3 (a) IN GENERAL.—The Secretary of Health and
4 Human Services shall award grants to States, Indian
5 tribes, and tribal organizations for the purpose of devel-
6 oping comprehensive data collection and monitoring sys-
7 tems to assess the adequacy and stability of the direct care
8 workforce of the State or Indian tribe, as applicable, to
9 meet current and future demand for long-term services
10 and supports.

11 (b) USE OF FUNDS.—A State, Indian tribe, or tribal
12 organization receiving a grant under subsection (a) shall
13 use the grant for—

14 (1) an assessment of current data sources and
15 data gaps on the volume, stability, and compensation
16 of the State or tribe’s direct care workforce across
17 all settings and programs;

18 (2) consultation with all agencies of the State,
19 Indian tribe, or tribal organization that collect data
20 on the direct care workforce, or data on programs
21 under which services are provided in connection with
22 the direct care workforce, in order to streamline
23 data collection;

24 (3) the development of an implementation plan
25 for establishing a comprehensive and ongoing pro-

1 gram for monitoring the volume, stability, and com-
2 pensation of the direct care workforce;

3 (4) the implementation of such program;

4 (5) the sharing of information on best practices
5 on data collection and monitoring with other States,
6 Indian tribes, or tribal organizations; and

7 (6) the formulation of recommendations for ap-
8 propriate steps to reduce State, local, or tribal bar-
9 riers to comprehensive direct care workforce data
10 collection and monitoring systems, including any
11 necessary changes in State, local, or tribal policies.

12 (c) DISTRIBUTION OF GRANTS.—

13 (1) NUMBER OF GRANTS.—In carrying out sub-
14 section (a) the Secretary shall award grants to not
15 fewer than 5 States each year.

16 (2) GEOGRAPHIC AND DEMOGRAPHIC DIVER-
17 SITY.—In selecting grant recipients under subsection
18 (a), the Secretary shall ensure that grants are
19 awarded to a diversity of grantees in terms of geog-
20 raphy and demographics.

21 (3) PREFERENCE.—In selecting grant recipi-
22 ents under subsection (a), the Secretary shall give
23 preference to States, Indian tribes, and tribal orga-
24 nizations with a relatively higher percentage of resi-

1 dents who require publicly financed long-term serv-
2 ices.

3 (d) APPLICATION.—To apply for a grant under this
4 section, an entity shall submit an application to the Sec-
5 retary in such form, in such manner, and containing such
6 information as the Secretary may require. At a minimum,
7 each such application shall include a description of the ac-
8 tivities for which funds are sought and a budget for use
9 of the funds.

10 (e) TECHNICAL ASSISTANCE.—The Secretary shall
11 provide technical assistance to States, Indian tribes, and
12 tribal organizations to develop comprehensive data collec-
13 tion and monitoring systems to assess the adequacy and
14 stability of the State’s direct care workforce under sub-
15 section (b)(1).

16 (f) STATE DEFINED.—For purposes of this section:

17 (1) Subject to paragraph (2), the term “State”
18 means any of the 50 States, the District of Colum-
19 bia, Puerto Rico, Guam, the United States Virgin
20 Islands, American Samoa, and the Commonwealth of
21 the Northern Mariana Islands.

22 (2) The term “State” includes, in lieu of any
23 State listed in paragraph (1), an entity designated
24 by such State to apply for a grant under this sec-
25 tion.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section for each of fiscal years
4 2012 through 2016.

5 **SEC. 7. DIRECT CARE WORKER RECRUITMENT, RETENTION,**
6 **AND EDUCATION GRANT PROGRAM.**

7 (a) IN GENERAL.—The Secretary shall award grants
8 on a competitive basis to States and other eligible entities
9 for the purpose of improving the recruitment, retention,
10 and education of direct care workers.

11 (b) USE OF FUNDS.—A State or other eligible entity
12 receiving a grant under subsection (a) shall use the grant
13 to—

14 (1) establish, expand, or upgrade training pro-
15 grams and infrastructure for direct care workers;

16 (2) establish or expand recruitment and reten-
17 tion programs for direct care workers, including ini-
18 tiatives which—

19 (A) improve the wages and benefits offered
20 to direct care workers; and

21 (B) create and implement career ladders
22 for such workers; and

23 (3) develop or expand programs that—

24 (A) promote the role of direct care workers
25 in new cost-effective models of providing serv-

1 ices to persons with disabilities and to persons
2 with chronic health conditions and other ex-
3 tended support needs; and

4 (B) include approaches such as remote
5 monitoring, wellness, and prevention.

6 (c) DIVERSITY.—In selecting grant recipients under
7 subsection (a), the Secretary shall ensure that grants are
8 awarded to States or other eligible entities in a manner
9 that ensures that grant funds are used to enhance the di-
10 rect care workforce—

11 (1) in urban and rural communities; and

12 (2) that serves a diverse patient population, in-
13 cluding with respect to—

14 (A) age;

15 (B) income level;

16 (C) race and ethnicity; and

17 (D) disability status.

18 (d) GRANT PERIOD.—The Secretary—

19 (1) may award grants under this section for pe-
20 riods of not more than 3 years; and

21 (2) may extend the period of a grant under this
22 section by not more than 3 years.

23 (e) APPLICATION.—To apply for a grant under this
24 section, an entity shall submit an application to the Sec-

1 retary in such form, in such manner, and containing such
2 information as the Secretary may require.

3 (f) BASELINE MEASURES AND BENCHMARKS.—As a
4 condition on the receipt of a grant under this section, the
5 Secretary shall require each grantee to establish baseline
6 measures and benchmarks (meeting such requirements as
7 the Secretary may determine) in order to properly evaluate
8 the impact of the work performed by the grantee through
9 the grant.

10 (g) SUPPLEMENT, NOT SUPPLANT.—The Secretary
11 shall ensure that amounts provided to a grantee under this
12 section are used to supplement and not supplant other
13 Federal, State, or local public funds expended to improve
14 the recruitment, retention, and education of the direct
15 care workforce.

16 (h) TERMINATION AUTHORITY.—The Secretary may
17 terminate a grant agreement under this section for good
18 cause. Such good cause shall include a determination that
19 the grantee—

20 (1) has misappropriated funds provided under
21 this section; or

22 (2) has failed to make adequate progress to-
23 ward accomplishing any benchmark established pur-
24 suant to subsection (f).

1 (i) REPORTS AND AUDITS.—As a condition on the re-
2 ceipt of a grant under this section, the Secretary shall re-
3 quire each grantee to agree—

4 (1) to report to the Secretary on the activities
5 carried out with the grant, including, at the request
6 of the Secretary, periodic spending reports; and

7 (2) to allow the Secretary to conduct periodic
8 audits pertaining to funding received through the
9 grant.

10 (j) ELIGIBLE ENTITY.—For purposes of this section,
11 the term “eligible entity” means—

12 (1) a State or political subdivision of a State;
13 or

14 (2) any organization, including a labor-manage-
15 ment partnership, that is committed to carrying out
16 the activities set forth in subsection (b), whether in
17 cooperation with a State, on its own initiative, or in
18 partnership with any other organization.

19 **SEC. 8. REPORTS BY SECRETARY.**

20 Not later than 3 years after the date of awarding the
21 first grant under section 6 or section 7, the Secretary of
22 Health and Human Services shall prepare and submit to
23 the Congress a report that describes the effectiveness of
24 grants awarded under such sections in achieving the pur-
25 poses of such grants, including the effectiveness of the

1 programs funded by such grants in reducing turnover
2 rates in the direct care workforce.

3 **SEC. 9. DEFINITIONS.**

4 For purposes of this Act:

5 (1) **DIRECT CARE WORKER.**—The term “direct
6 care worker” has the meaning given each of the fol-
7 lowing terms in the 2010 Standard Occupational
8 Classifications of the Department of Labor: Home
9 Health Aides [31–1011], Psychiatric Aides [31–
10 1013], Nursing Assistants [31–1014], and Personal
11 Care Aides [39–9021].

12 (2) **DIRECT CARE WORKFORCE.**—The term “di-
13 rect care workforce” means the workforce made up
14 of direct care workers.

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

○