H. R. ____

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

Ms. LINDA T. SÁNCHEZ of California introduced the following bill; which was referred to the Committee on ______________________

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,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Direct Care Workforce
5 Empowerment Act”.

(Original Signature of Member)
SEC. 2. FINDINGS.

Congress finds that—

(1) direct care workers are the linchpin of the Nation’s paid long-term care system, providing essential care and daily living services to more than 13 million elderly and disabled Americans;

(2) the ability to meet the Nation’s long-term care challenges depends largely on a strong, stable direct care workforce;

(3) over 2/3 of older adults will need some form of long-term care at some point in their lives;

(4) the United States is experiencing a severe shortage of qualified direct care workers to provide personal and long-term care and support services;

(5) according to the Bureau of Labor Statistics, direct care workforce occupations consist of nursing aids, home health aides, and personal and home care aides;

(6) direct care work is demanding, working conditions are often difficult, and turnover is high because of low pay, lack of access to health insurance and other benefits, strenuous conditions, limited opportunities for advancement, inadequate training, and lack of respect;
(7) direct care workers are often underpaid, with nearly 1 in 3 living near or below the poverty level, and more than 1 in 4 lacking health insurance;

(8) the average annual income for direct care workers is $17,000, and 40 percent of direct care workers live in households that receive one or more public benefits such as food stamps or Medicaid; and

(9) States have management information systems that are rarely set up to gather and report basic information about the direct care workforce that could be used assess changes and challenges to the workforce.

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

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

“(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age, infirmity, or disability) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary);”.
(b) **DEFINITION.**—Section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203) is amended by adding at the end the following:

“(z) The term ‘casual basis’ means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is the provision of babysitting or companionship services or an individual employed by an employer or agency other than the family or household using their services. Employment is not on a casual basis, whether performed for one or more family or household employers, if such employment for all such employers exceeds 20 hours per week in the aggregate.”.

**SEC. 4. DIRECT CARE WORKFORCE DATA COLLECTION AND MONITORING.**

(a) **IN GENERAL.**—The Secretary of Health and Human Services shall establish a direct care workforce monitoring program to—

(1) facilitate the reporting of data by States about the direct care workforce and the sharing of such data among States, including tracking of best practices and cross-State comparisons;

(2) enable the Centers for Medicare & Medicaid Services to better collect data across all longterm and home care settings for services financed through
title XVIII or XIX of the Social Security Act (Medicare or Medicaid, respectively);

(3) enable the Centers for Medicare & Medicaid Services to provide guidance to States concerning the adequacy and quality of the States’ reporting of data, waiver and renewal applications, and any provisions of or modifications to State plans regarding the direct care workforce, including by revising any data reporting forms and systems to ensure uniform and consistent State reporting; and

(4) include, at a minimum, the collection of direct care workforce data (which may be based on payroll data, taking into account services provided by agency or contract staff) on—

(A) schedule (both location and hours);

(B) turnover;

(C) tenure;

(D) wages; and

(E) benefits.

(b) ADVISORY COUNCIL ON DIRECT CARE WORKFORCE.—

(1) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of the Labor, shall establish a National Advisory Council on the direct care Workforce (referred to in this section as the
“Council”) that shall be composed members to be appointed by the Secretary.

(2) DUTIES.—The Council shall consult with, advise, and make recommendations to the Secretary with respect to the Secretary's administration of the program established under subsection (a).

(3) ADMINISTRATIVE PROVISIONS.—Members of the Council shall serve a term no longer than 5 years and be representative of diverse public and private sector expertise and interests, including representation from individuals with unique expertise on topics related to direct care services or the direct care workforce (including at least 1 individual with experience with providing direct care services in an institutional or facility based setting and 1 individual with experience in providing such services in a home or community-based setting), and from officials from the Department of Health and Human Services, the Department of Labor, and others as the Secretary determines appropriate.

(c) REPORTS.—Not later than 3 years after the date of the enactment of this section, and periodically thereafter, as determined by the Secretary, the Secretary shall prepare and submit to the appropriate committees of Congress a report that—
(1) analyzes the existing direct care workforce
data infrastructure;

(2) analyzes the current and projected needs for
the direct care workforce, including information on
turnover and retention of workers;

(3) makes recommendations for new or addi-
tional uniform data elements across regions and
States that is necessary to track supply, demand,
and workforce shortages related to the population
served by direct care workers;

(4) makes recommendations for improvement in
the competency, education, and training standards
for direct care workers; and

(5) includes any other topics requested by the
Secretary.

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

(a) Grants Authorized.—

(1) In General.—The Secretary of Health and
Human Services shall award grants to States and
other eligible entities to improve the recruitment, re-
tention, and education of the direct care workforce.

(2) Types of Grants.—Of the amounts au-
thorized under subsection (k), the Secretary shall
award grants as follows:
(A) $100,000 for the period of fiscal years 2011 through 2013 to each State to assist the State in developing its State direct care workforce plan.

(B) The remainder of such amounts to States and other eligible entities on a competitive basis for the purposes described in subsection (b).

(b) USE OF FUNDS.—An eligible entity receiving a grant under this subsection (a)(2)(B) may use the grant to—

(1) expand and upgrade training programs and infrastructure for direct care workers;

(2) implement or improve systems for the monitoring of and collection of data relating to the direct care workforce;

(3) establish or expand recruitment and retention programs for direct care workers, including initiatives which improve the wages and benefits offered such workers; and

(4) develop or expand programs that promote the role of direct care workers in new cost-effective models of providing care to people with chronic health conditions, disabilities, and other extended
support needs, and include approaches such as remote monitoring, wellness, and prevention.

(c) **Grant Period.**—The Secretary may award grants under this section for periods of not more than 3 years. The Secretary may extend the period of a grant under this section. Each such extension shall be for a period of not more than 3 years.

(d) **Application.**—

(1) **In General.**—To apply for a grant under this section, an eligible entity shall submit an application to the Secretary in such form, in such manner, and containing such information as the Secretary may require.

(2) **Contents.**—At a minimum, the Secretary shall require each such application to outline how the eligible entity will establish baseline measures and benchmarks that meet the Secretary’s requirements to evaluate program outcomes.

(e) **Uniform Baseline Measures.**—The Secretary shall require each grantee to establish uniform baseline measures in order to properly evaluate the impact of the work performed by the grantee under this section.

(f) **Supplement, Not Supplant.**—Amounts provided to an eligible entity under this section shall be used to supplement and not supplant other Federal, State, and
local public funds expended to improve the recruitment,
retention, and education of the direct care workforce.

(g) TERMINATION AUTHORITY.—The Secretary may
terminate selection of a grantee under this section for
good cause. Such good cause shall include a determination
that the grantee—

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

(2) has failed to make adequate progress to-
ward accomplishing any goal set by the Secretary or
included in the grantee’s application.

(h) DEFINITIONS.—In this section—

(1) the term “eligible entity” means a State or
political subdivision of a State or any organization
that is committed to accomplishing tasks set forth in
subsection (b), whether in cooperation with a State,
on its own initiative, or in partnership with any
other organization; and

(2) the term “direct care worker” means a
worker (including a nursing aide, home health aide,
or personal and home care aide) who provides care
and personal assistance to people who are elderly,
infirm, or living with a disability.

(i) REPORTS AND AUDITS.—Each eligible entity re-
eiving a grant under this section shall submit to the Sec-
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1 Secretary of Health and Human Services a report of the ac-
2 tivities carried out with grant funds. The Secretary may
3 conduct periodic audits and request periodic spending re-
4 ports of States receiving grants under this section.

(j) REPORT.—Not later than 3 years after the date
5 of making initial grants under this section, the Secretary
6 shall prepare and submit to Congress a report that de-
7 scribes the effectiveness of the grants awarded under this
8 section in achieving specific State goals, including the ef-
9 fectiveness of the programs funded by grants in reducing
10 turnover rates in the direct care workforce.

(k) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary of
13 Health and Human Services $25,000,000 for each of fis-
14 cal years 2011 through 2016, to carry out this section.