

114TH CONGRESS
1ST SESSION

S. 2427

To prohibit discrimination against individuals with disabilities who need long-term services and supports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2015

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit discrimination against individuals with disabilities who need long-term 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.**

4 This Act may be cited as the “Disability Integration
5 Act of 2015”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) In enacting the Americans with Disabilities
9 Act of 1990 (referred to in this Act as the “ADA”),
10 Congress—

1 (A) recognized that “historically, society
2 has tended to isolate and segregate individuals
3 with disabilities, and, despite some improve-
4 ments, such forms of discrimination against in-
5 dividuals with disabilities continue to be a seri-
6 ous and pervasive social problem”; and

7 (B) intended that the ADA assure “full
8 participation” and “independent living” for in-
9 dividuals with disabilities by addressing “dis-
10 crimination against individuals with disabilities
11 [that] persists in critical areas”, including insti-
12 tutionalization.

13 (2) While Congress expected that the ADA’s in-
14 tegration mandate would be interpreted in a manner
15 that ensures that individuals who are eligible for in-
16 stitutional placement are able to exercise a right to
17 community-based long-term services and supports,
18 that expectation has not been fulfilled.

19 (3) The holdings of the Supreme Court in
20 *Olmstead v. L.C.*, 527 U.S. 581 (1999), and com-
21 panion cases, have clearly articulated that individ-
22 uals with disabilities have a civil right under the
23 ADA to participate in society as equal citizens. How-
24 ever, many States still do not provide sufficient com-
25 munity-based long-term services and supports to in-

1 individuals with disabilities to end segregation in insti-
2 tutions.

3 (4) The right to live in the community is nec-
4 essary for the exercise of the civil rights that the
5 ADA was intended to secure for all individuals with
6 disabilities. The lack of adequate community-based
7 services and supports has imperiled the civil rights
8 of all individuals with disabilities, and has under-
9 mined the very promise of the ADA. It is, therefore,
10 necessary to recognize in statute a robust and fully
11 articulated right to community living.

12 (5) States, with a few exceptions, continue to
13 approach decisions regarding long-term services and
14 supports from social welfare and budgetary perspec-
15 tives, but for the promise of the ADA to be fully re-
16 alized, States must approach these decisions from a
17 civil rights perspective.

18 (6) States have not consistently planned to en-
19 sure sufficient services and supports for individuals
20 with disabilities, including those with the most sig-
21 nificant disabilities, to enable individuals with dis-
22 abilities to live in the most integrated setting. As a
23 result, many individuals with disabilities who reside
24 in institutions are prevented from residing in the
25 community and individuals with disabilities who are

1 not in institutions find themselves at risk of institu-
2 tional placement.

3 (7) The continuing existence of unfair and un-
4 necessary institutionalization denies individuals with
5 disabilities the opportunity to live and participate on
6 an equal basis in the community and costs the
7 United States billions of dollars in unnecessary
8 spending related to perpetuating dependency and
9 unnecessary confinement.

10 (b) PURPOSES.—The purposes of this Act are—

11 (1) to clarify and strengthen the ADA’s inte-
12 gration mandate in a manner that accelerates State
13 compliance;

14 (2) to clarify that every individual who is eligi-
15 ble for long-term services and supports has a Feder-
16 ally protected right to be meaningfully integrated
17 into that individual’s community and receive commu-
18 nity-based long-term services and supports;

19 (3) to ensure that States provide long-term
20 services and supports to individuals with disabilities
21 in a manner that allows individuals with disabilities
22 to live in the most integrated setting, including the
23 individual’s own home, have maximum control over
24 their services and supports, and ensure that long-
25 term services and supports are provided in a manner

1 that allows individuals with disabilities to lead an
2 independent life;

3 (4) to establish a comprehensive State planning
4 requirement that includes enforceable, measurable
5 objectives that are designed to transition individuals
6 with all types of disabilities at all ages out of institu-
7 tions and into the most integrated setting; and

8 (5) to establish a requirement for clear and uni-
9 form annual public reporting by States that includes
10 reporting about—

11 (A) the number of individuals with disabil-
12 ities who are served in the community and the
13 number who are served in institutions; and

14 (B) the number of individuals with disabil-
15 ities who have transitioned from an institution
16 to a community-based living situation, and the
17 type of community-based living situation into
18 which those individuals have transitioned.

19 **SEC. 3. DEFINITIONS AND RULE.**

20 (a) **DEFINITIONS.**—In this Act:

21 (1) **ACTIVITIES OF DAILY LIVING.**—The term
22 “activities of daily living” has the meaning given the
23 term in section 441.505 of title 42, Code of Federal
24 Regulations (or a successor regulation).

1 (2) ADMINISTRATOR.—The term “Adminis-
2 trator” means—

3 (A) the Administrator of the Administra-
4 tion for Community Living; or

5 (B) another designee of the Secretary of
6 Health and Human Services.

7 (3) COMMUNITY-BASED.—The term “commu-
8 nity-based”, when used in reference to services or
9 supports, means services or supports that are pro-
10 vided to an individual with an LTSS disability to en-
11 able that individual to live in the community and
12 lead an independent life, and that are delivered in
13 whichever setting the individual with an LTSS dis-
14 ability has chosen out of the following settings with
15 the following qualities:

16 (A) In the case of a dwelling or a nonresi-
17 dential setting (such as a setting in which an
18 individual with an LTSS disability receives day
19 services and supported employment), a dwelling
20 or setting—

21 (i) that, as a matter of infrastructure,
22 environment, amenities, location, services,
23 and features, is integrated into the greater
24 community and supports, for each indi-

vidual with an LTSS disability who receives services or supports at the setting—

(I) full access to the greater community (including access to opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community); and

(II) access to the greater community to the same extent as access to the community is enjoyed by an individual who is not receiving long-term services or supports;

(ii) that the individual has selected as a meaningful choice from among nonresidential setting options, including nondisability-specific settings;

(iii) in which an individual has rights to privacy, dignity, and respect, and freedom from coercion and restraint;

(iv) that, as a matter of infrastructure, environment, amenities, location, services, and features, optimizes, but does not regiment, individual initiative, auton-

omy, and independence in making life choices, including choices about daily activities, physical environment, and persons with whom the individual interacts; and

(v) that, as a matter of infrastructure, environment, amenities, location, services, and features, facilitates individual choice regarding the provision of services and supports, and who provides those services and supports.

(B) In the case of a dwelling, a dwelling—

(i) that is owned by an individual with an LTSS disability or the individual's family member;

(ii) that is leased to the individual with an LTSS disability under an individual lease, that has lockable access and egress, and that includes living, sleeping, bathing, and cooking areas over which an individual with an LTSS disability or the individual's family member has domain and control; or

(iii) that is a group or shared residence—

1 (I) in which no more than 4 un-
2 related individuals with an LTSS dis-
3 ability reside;

4 (II) for which each individual
5 with an LTSS disability living at the
6 residence owns, rents, or occupies the
7 residence under a legally enforceable
8 agreement under which the individual
9 has, at a minimum, the same respon-
10 sibilities and protections from eviction
11 as tenants have under applicable land-
12 lord-tenant law;

13 (III) in which each individual
14 with an LTSS disability living at the
15 residence—

16 (aa) has privacy in the indi-
17 vidual's sleeping unit, including a
18 lockable entrance door controlled
19 by the individual;

20 (bb) shares a sleeping unit
21 only if such individual and the
22 individual sharing the unit choose
23 to do so, and if individuals in the
24 residence so choose, they also

1 have a choice of roommates with-
2 in the residence;

3 (cc) has the freedom to fur-
4 nish and decorate the individual's
5 sleeping or living unit as per-
6 mitted under the lease or other
7 agreement;

8 (dd) has the freedom and
9 support to control the individ-
10 ual's own schedules and activi-
11 ties; and

12 (ee) is able to have visitors
13 of the individual's choosing at
14 any time; and

15 (IV) that is physically accessible
16 to the individual with an LTSS dis-
17 ability living at the residence.

18 (4) DWELLING.—The term “dwelling” has the
19 meaning given the term in section 802 of the Fair
20 Housing Act (42 U.S.C. 3602).

21 (5) HEALTH-RELATED TASKS.—The term
22 “health-related tasks” means specific nonacute
23 tasks, typically regulated by States as medical or
24 nursing tasks that an individual with a disability
25 may require to live in the community, including—

- 1 (A) administration of medication;
- 2 (B) assistance with use, operation, and
- 3 maintenance of a ventilator;
- 4 (C) maintenance of a catheter; and
- 5 (D) maintenance of a stable ostomy.

6 (6) INDIVIDUAL WITH A DISABILITY.—The term
 7 “individual with a disability” means an individual
 8 who is a person with a disability, as defined in sec-
 9 tion 3 of the Americans with Disabilities Act of
 10 1990 (42 U.S.C. 12102).

11 (7) INDIVIDUAL WITH AN LTSS DISABILITY.—
 12 The term “individual with an LTSS disability”
 13 means an individual with a disability who—

14 (A) in order to live in the community and
 15 lead an independent life requires assistance in
 16 accomplishing—

- 17 (i) activities of daily living;
- 18 (ii) instrumental activities of daily liv-
- 19 ing;
- 20 (iii) health-related tasks; or
- 21 (iv) other functions, tasks, or activi-
- 22 ties related to an activity or task described
- 23 in clause (i), (ii), or (iii); and

24 (B)(i) is currently in an institutional place-
 25 ment; or

1 (ii) is at risk of institutionalization if the
2 individual does not receive community-based
3 long-term services and supports.

4 (8) INSTRUMENTAL ACTIVITIES OF DAILY LIV-
5 ING.—

6 (A) IN GENERAL.—The term “instru-
7 mental activities of daily living” means 1 or
8 more activities related to living independently in
9 the community, including activities related to—

10 (i) nutrition, such as preparing meals
11 or special diets, monitoring to prevent
12 choking or aspiration, or assisting with
13 special utensils;

14 (ii) household chores and environ-
15 mental maintenance tasks;

16 (iii) communication and interpersonal
17 skills, such as—

18 (I) using the telephone or other
19 communications devices;

20 (II) forming and maintaining
21 interpersonal relationships; or

22 (III) securing opportunities to
23 participate in group support or peer-
24 to-peer support arrangements;

1 (iv) travel and community participa-
 2 tion, such as shopping, arranging appoint-
 3 ments, or moving around the community;

4 (v) care of others, such as raising
 5 children, taking care of pets, or selecting
 6 caregivers; or

7 (vi) management of personal property
 8 and personal safety, such as—

9 (I) taking medication;

10 (II) handling or managing
 11 money; or

12 (III) responding to emergent sit-
 13 uations or unscheduled needs requir-
 14 ing an immediate response.

15 (B) ASSISTANCE.—The term “assistance”
 16 used with respect to instrumental activities of
 17 daily living, includes support provided to an in-
 18 dividual by another person due to confusion, de-
 19 mentia, behavioral symptoms, or mental or
 20 emotional disabilities, including support to—

21 (i) help the individual identify and set
 22 goals, overcome fears, and manage transi-
 23 tions;

1 (ii) help the individual with executive
 2 functioning, decisionmaking, and problem
 3 solving;

4 (iii) provide reassurance to the indi-
 5 vidual; and

6 (iv) help the individual with orienta-
 7 tion, memory, and other activities related
 8 to independent living.

9 (9) LONG-TERM SERVICE OR SUPPORT.—The
 10 terms “long-term service or support” and “LTSS”
 11 mean the assistance provided to an individual with
 12 a disability in accomplishing, acquiring the means or
 13 ability to accomplish, maintaining, or enhancing—

14 (A) activities of daily living;

15 (B) instrumental activities of daily living;

16 (C) health-related tasks; or

17 (D) other functions, tasks, or activities re-
 18 lated to an activity or task described in sub-
 19 paragraph (A), (B), or (C).

20 (10) LTSS INSURANCE PROVIDER.—The term
 21 “LTSS insurance provider” means a public or pri-
 22 vate entity that—

23 (A) either directly provides funds for long-
 24 term services and supports; and

1 (B) is engaged in commerce or in an in-
2 dustry or activity affecting commerce.

3 (11) PUBLIC ENTITY.—

4 (A) IN GENERAL.—The term “public enti-
5 ty” means an entity that—

6 (i) provides or funds institutional
7 placements for individuals with LTSS dis-
8 abilities; and

9 (ii) is—

10 (I) a State or local government;

11 or

12 (II) any department, agency, en-
13 tity administering a special purpose
14 district, or other instrumentality, of a
15 State or local government.

16 (B) INTERSTATE COMMERCE.—For pur-
17 poses of subparagraph (A), a public entity shall
18 be considered to be a person engaged in com-
19 merce or in an industry or activity affecting
20 commerce.

21 (b) RULE OF CONSTRUCTION.—Nothing in sub-
22 section (a)(2) or any other provision of this section shall
23 be construed to preclude an individual with a disability
24 from receiving community-based services and supports in
25 an integrated community setting such as a grocery store,

1 retail establishment, restaurant, bank, park, concert
2 venue, theater, or workplace.

3 **SEC. 4. DISCRIMINATION.**

4 (a) IN GENERAL.—No public entity or LTSS insur-
5 ance provider shall deny an individual with an LTSS dis-
6 ability who is eligible for institutional placement, or other-
7 wise discriminate against that individual in the provision
8 of, community-based long-term services and supports that
9 enable the individual to live in the community and lead
10 an independent life.

11 (b) SPECIFIC PROHIBITIONS.—For purposes of this
12 Act, discrimination by a public entity or LTSS insurance
13 provider includes—

14 (1) the imposition or application of eligibility
15 criteria or another policy that prevents or tends to
16 prevent an individual with an LTSS disability, or
17 any class of individuals with LTSS disabilities, from
18 receiving a community-based long-term service or
19 support;

20 (2) the imposition or application of a policy or
21 other mechanism, such as a service or cost cap, that
22 prevent or tends to prevent an individual with an
23 LTSS disability, or any class of individuals with
24 LTSS disabilities, from receiving a community-based
25 long-term service or support;

1 (3) a failure to provide a specific community-
2 based long-term service or support or a type of com-
3 munity-based long-term service or support needed
4 for an individual with an LTSS disability, or any
5 class of individuals with LTSS disabilities;

6 (4) the imposition or application of a policy,
7 rule, regulation, or restriction that interferes with
8 the opportunity for an individual with an LTSS dis-
9 ability, or any class of individuals with LTSS dis-
10 abilities, to live in the community and lead an inde-
11 pendent life, which may include a requirement that
12 an individual with an LTSS disability receive a serv-
13 ice or support (such as day services or employment
14 services) in a congregate or disability-specific set-
15 ting;

16 (5) the imposition or application of a waiting
17 list or other mechanism that delays or restricts ac-
18 cess of an individual with an LTSS disability to a
19 community-based long-term service or support;

20 (6) a failure to establish an adequate rate or
21 other payment structure that is necessary to ensure
22 the availability of a workforce sufficient to support
23 an individual with an LTSS disability in living in
24 the community and leading an independent life;

1 (7) a failure to provide community-based serv-
2 ices and supports, on an intermittent, short-term, or
3 emergent basis, that assist an individual with an
4 LTSS disability to live in the community and lead
5 an independent life;

6 (8) the imposition or application of a policy,
7 such as a requirement that an individual utilize in-
8 formal support, that restricts, limits, or delays the
9 ability of an individual with an LTSS disability to
10 secure a community-based long-term service or sup-
11 port to live in the community or lead an independent
12 life;

13 (9) a failure to implement a formal procedure
14 and a mechanism to ensure that—

15 (A) individuals with LTSS disabilities are
16 offered the alternative of community-based
17 long-term services and supports prior to institu-
18 tionalization; and

19 (B) if selected by an individual with an
20 LTSS disability, the community-based long-
21 term services and supports described in sub-
22 paragraph (A) are provided;

23 (10) a failure to ensure that each institutional-
24 ized individual with an LTSS disability is regularly
25 notified of the alternative of community-based long-

1 term services and supports and that those commu-
2 nity-based long-term services and supports are pro-
3 vided if the individual with an LTSS disability se-
4 lects such services and supports; and

5 (11) a failure to make a reasonable modifica-
6 tion in a policy, practice, or procedure, when such
7 modification is necessary to allow an individual with
8 an LTSS disability to receive a community-based
9 long-term service or support.

10 (c) ADDITIONAL PROHIBITION.—For purposes of this
11 Act, discrimination by a public entity also includes a fail-
12 ure to ensure that there is sufficient availability of afford-
13 able, accessible, and integrated housing to allow an indi-
14 vidual with an LTSS disability to choose to live in the
15 community and lead an independent life, including the
16 availability of an option to live in housing where the re-
17 ceipt of LTSS is not tied to tenancy.

18 (d) CONSTRUCTION.—Nothing in this section shall be
19 construed so as to prevent a public entity or LTSS insur-
20 ance provider from providing community-based long-term
21 services and supports at a level that is greater than the
22 level that is required by this section.

23 **SEC. 5. ADMINISTRATION.**

24 (a) AUTHORITY AND RESPONSIBILITY.—

1 (1) DEPARTMENT OF JUSTICE.—The Attorney
2 General shall—

3 (A) investigate and take enforcement ac-
4 tion for violations of this Act; and

5 (B) enforce section 6(c).

6 (2) DEPARTMENT OF HEALTH AND HUMAN
7 SERVICES.—The Secretary of Health and Human
8 Services, through the Administrator, shall—

9 (A) conduct studies regarding the nature
10 and extent of institutionalization of individuals
11 with LTSS disabilities in representative com-
12 munities, including urban, suburban, and rural
13 communities, throughout the United States;

14 (B) publish and disseminate reports, rec-
15 ommendations, and information derived from
16 such studies, including an annual report to
17 Congress, specifying—

18 (i) the nature and extent of progress
19 in the United States in eliminating institu-
20 tionalization for individuals with LTSS
21 disabilities in violation of this Act and fur-
22 thering the purposes of this Act;

23 (ii) obstacles that remain in the effort
24 to achieve the provision of community-

1 based long-term services and supports for
2 all individuals with LTSS disabilities; and

3 (iii) recommendations for further leg-
4 islative or executive action;

5 (C) cooperate with, and provide technical
6 assistance to, Federal, State, and local public or
7 private agencies and organizations that are for-
8 mulating or carrying out programs to prevent
9 or eliminate institutionalization of individuals
10 with LTSS disabilities or to promote the provi-
11 sion of community-based long-term services and
12 supports;

13 (D) implement educational and conciliatory
14 activities to further the purposes of this Act;
15 and

16 (E) refer information on violations of this
17 Act to the Attorney General for investigation
18 and enforcement action under this Act.

19 (b) COOPERATION OF EXECUTIVE DEPARTMENTS
20 AND AGENCIES.—Each Federal agency and, in particular,
21 each Federal agency covered by Executive Order 13217
22 (66 Fed. Reg. 33155; relating to community-based alter-
23 natives for individuals with disabilities), shall carry out
24 programs and activities relating to the institutionalization
25 of individuals with LTSS disabilities and the provision of

1 community-based long-term services and supports for indi-
2 viduals with LTSS disabilities in accordance with this Act
3 and shall cooperate with the Attorney General and the Ad-
4 ministrator to further the purposes of this Act.

5 **SEC. 6. REGULATIONS.**

6 (a) **ISSUANCE OF REGULATIONS.**—Not later than 24
7 months after the date of enactment of this Act, the Attor-
8 ney General and the Secretary of Health and Human
9 Services shall issue, in accordance with section 553 of title
10 5, United States Code, final regulations to carry out this
11 Act, which shall include the regulations described in sub-
12 section (b).

13 (b) **REQUIRED CONTENTS OF REGULATIONS.**—

14 (1) **ELIGIBLE RECIPIENTS OF SERVICE.**—The
15 regulations shall require each public entity and
16 LTSS insurance provider to offer, and, if accepted,
17 provide community-based long-term services and
18 supports as required under this Act to any indi-
19 vidual with an LTSS disability who would otherwise
20 qualify for institutional placement provided or fund-
21 ed by the public entity or LTSS insurance provider.

22 (2) **SERVICES TO BE PROVIDED.**—The regula-
23 tions issued under this section shall require each
24 public entity and LTSS insurance provider to pro-
25 vide the Attorney General and the Administrator

1 with an assurance that the public entity or LTSS in-
2 surance provider—

3 (A) ensures that individuals with LTSS
4 disabilities receive, as an alternative to institu-
5 tional placement, assistance through hands-on
6 assistance, training, cueing, and safety moni-
7 toring, including access to backup systems,
8 with—

9 (i) activities of daily living;

10 (ii) instrumental activities of daily liv-
11 ing;

12 (iii) health-related tasks; or

13 (iv) other functions, tasks, or activi-
14 ties related to an activity or task described
15 in clause (i), (ii), or (iii);

16 (B) coordinates, conducts, performs, pro-
17 vides, or funds discharge planning from acute,
18 rehabilitation, and long-term facilities to pro-
19 mote individuals with LTSS disabilities living in
20 the most integrated setting chosen by the indi-
21 viduals;

22 (C) issues, conducts, performs, provides, or
23 funds policies and programs to promote self-di-
24 rection and the provision of consumer-directed

1 services and supports for all populations of indi-
2 viduals with LTSS disabilities served;

3 (D) issues, conducts, performs, provides,
4 or funds policies and programs to support infor-
5 mal caregivers who provide services for individ-
6 uals with LTSS disabilities; and

7 (E) ensures that individuals with all types
8 of LTSS disabilities are able to live in the com-
9 munity and lead an independent life, including
10 ensuring that the individuals have maximum
11 control over the services and supports that the
12 individuals receive, choose the setting in which
13 the individuals receive those services and sup-
14 ports, and exercise control and direction over
15 their own lives to the greatest extent possible.

16 (3) PUBLIC PARTICIPATION.—

17 (A) PUBLIC ENTITY.—The regulations
18 issued under this section shall require each pub-
19 lic entity to carry out an extensive public par-
20 ticipation process in preparing the public enti-
21 ty's self-evaluation under paragraph (5) and
22 transition plan under paragraph (10).

23 (B) LTSS INSURANCE PROVIDER.—The
24 regulations issued under this section shall re-
25 quire each LTSS insurance provider to carry

1 out a public participation process that involves
 2 holding a public hearing, providing an oppor-
 3 tunity for public comment, and consulting with
 4 individuals with LTSS disabilities, in preparing
 5 the LTSS insurance provider’s self-evaluation
 6 under paragraph (5).

7 (C) PROCESS.—In carrying out a public
 8 participation process under subparagraph (A)
 9 or (B), a public entity or LTSS insurance pro-
 10 vider shall ensure that the process meets the re-
 11 quirements of subparagraphs (A) and (C) of
 12 section 1115(d)(2) of the Social Security Act
 13 (42 U.S.C. 1315(d)(2)), except that—

14 (i) the reference to “at the State
 15 level” shall be disregarded; and

16 (ii) the reference to an application
 17 shall be considered to be a reference to the
 18 self-evaluation or plan involved.

19 (4) ADDITIONAL SERVICES AND SUPPORTS.—

20 The regulations issued under this section shall es-
 21 tablish circumstances under which a public entity
 22 shall provide community-based long-term services
 23 and supports under this section beyond the level of
 24 community-based long-term services and supports

1 which would otherwise be required under this sub-
2 section.

3 (5) SELF-EVALUATION.—

4 (A) IN GENERAL.—The regulations issued
5 under this section shall require each public enti-
6 ty and each LTSS insurance provider, not later
7 than 30 months after the date of enactment of
8 this Act, to evaluate current services, policies,
9 and practices, and the effects thereof, that do
10 not or may not meet the requirements of this
11 Act and, to the extent modification of any such
12 services, policies, and practices is required to
13 meet the requirements of this Act, make the
14 necessary modifications. The self-evaluation
15 shall include—

16 (i) collection of baseline information,
17 including the numbers of individuals with
18 LTSS disabilities in various institutional
19 and community-based settings served by
20 the public entity or LTSS insurance pro-
21 vider;

22 (ii) a review of community capacity, in
23 communities served by the entity or pro-
24 vider, in providing community-based long-
25 term services and supports;

1 (iii) identification of improvements
2 needed to ensure that all community-based
3 long-term services and supports provided
4 by the public entity or LTSS insurance
5 provider to individuals with LTSS disabili-
6 ties are comprehensive, are accessible, are
7 not duplicative of existing (as of the date
8 of the identification) services and supports,
9 meet the needs of persons who are likely to
10 require assistance in order to live, or lead
11 a life, as described in section 4(a), and are
12 high-quality services and supports, which
13 may include identifying system improve-
14 ments that create an option to self-direct
15 receipt of such services and supports for
16 all populations of such individuals served;
17 and

18 (iv) a review of funding sources for
19 community-based long-term services and
20 supports and an analysis of how those
21 funding sources could be organized into a
22 fair, coherent system that affords individ-
23 uals reasonable and timely access to com-
24 munity-based long-term services and sup-
25 ports.

1 (B) PUBLIC ENTITY.—A public entity, in-
 2 cluding a LTSS insurance provider that is a
 3 public entity, shall—

4 (i) include in the self-evaluation de-
 5 scribed in subparagraph (A)—

6 (I) an assessment of the avail-
 7 ability of accessible, affordable trans-
 8 portation across the State involved
 9 and whether transportation barriers
 10 prevent individuals from receiving
 11 long-term services and supports in the
 12 most integrated setting; and

13 (II) an assessment of the avail-
 14 ability of integrated employment op-
 15 portunities in the jurisdiction served
 16 by the public entity for individuals
 17 with LTSS disabilities; and

18 (ii) provide the self-evaluation de-
 19 scribed in subparagraph (A) to the Attor-
 20 ney General and the Administrator.

21 (C) LTSS INSURANCE PROVIDER.—A
 22 LTSS insurance provider shall keep the self-
 23 evaluation described in subparagraph (A) on
 24 file, and may be required to produce such self-

1 evaluation in the event of a review, investiga-
2 tion, or action described in section 8.

3 (6) ADDITIONAL REQUIREMENT FOR PUBLIC
4 ENTITIES.—The regulations issued under this sec-
5 tion shall require a public entity, in conjunction with
6 the housing agencies serving the jurisdiction served
7 by the public entity, to review and improve commu-
8 nity capacity, in all communities throughout the en-
9 tirety of that jurisdiction, in providing affordable,
10 accessible, and integrated housing, including an eval-
11 uation of available units, unmet need, and other
12 identifiable barriers to the provision of that housing.
13 In carrying out that improvement, the public entity,
14 in conjunction with such housing agencies, shall—

15 (A) ensure, and assure the Attorney Gen-
16 eral that there is, sufficient availability of af-
17 fordable, accessible, and integrated housing in a
18 setting that is not a disability-specific residen-
19 tial setting or a setting where services are tied
20 to tenancy, in order to provide individuals with
21 LTSS disabilities a meaningful choice in their
22 housing;

23 (B) in order to address the need for af-
24 fordable, accessible, and integrated housing—

1 (i) in the case of such a housing agen-
2 cy, establish relationships with State and
3 local housing authorities; and

4 (ii) in the case of the public entity, es-
5 tablish relationships with State and local
6 housing agencies, including housing au-
7 thorities;

8 (C) establish, where needed, necessary
9 preferences and set-asides in housing programs
10 for individuals with LTSS disabilities who are
11 transitioning from or avoiding institutional
12 placement;

13 (D) establish a process to fund necessary
14 home modifications so that individuals with
15 LTSS disabilities can live independently; and

16 (E) ensure, and assure the Attorney Gen-
17 eral, that funds and programs implemented or
18 overseen by the public entity or in the public
19 entity's jurisdiction are targeted toward afford-
20 able, accessible, integrated housing for individ-
21 uals with an LTSS disability who have the low-
22 est income levels in the jurisdiction as a priority
23 over any other development until capacity bar-
24 riers for such housing are removed or unmet
25 needs for such housing have been met.

1 (7) DESIGNATION OF RESPONSIBLE EM-
2 PLOYEE.—The regulations issued under this section
3 shall require each public entity and LTSS insurance
4 provider to designate at least one employee to co-
5 ordinate the entity’s or provider’s efforts to comply
6 with and carry out the entity or provider’s respon-
7 sibilities under this Act, including the investigation
8 of any complaint communicated to the entity or pro-
9 vider that alleges a violation of this Act. Each public
10 entity and LTSS insurance provider shall make
11 available to all interested individuals the name, of-
12 fice address, and telephone number of the employee
13 designated pursuant to this paragraph.

14 (8) GRIEVANCE PROCEDURES.—The regulations
15 issued under this section shall require public entities
16 and LTSS insurance providers to adopt and publish
17 grievance procedures providing for prompt and equi-
18 table resolution of complaints alleging a violation of
19 this Act.

20 (9) PROVISION OF SERVICE BY OTHERS.—The
21 regulations issued under this section shall require
22 each public entity submitting a self-evaluation under
23 paragraph (5) to identify, as part of the transition
24 plan described in paragraph (10), any other entity
25 that is, or acts as, an agent, subcontractor, or other

1 instrumentality of the public entity with regards to
2 a service, support, policy, or practice described in
3 such plan or self-evaluation.

4 (10) TRANSITION PLANS.—The regulations
5 issued under this section shall require each public
6 entity, not later than 42 months after the date of
7 enactment of this Act, to submit to the Adminis-
8 trator, and begin implementing, a transition plan for
9 carrying out this Act that establishes the achieve-
10 ment of the requirements of this Act, as soon as
11 practicable, but in no event later than 12 years after
12 the date of enactment of this Act. The transition
13 plan shall—

14 (A) establish measurable objectives to ad-
15 dress the barriers to community living identified
16 in the self-evaluation under paragraph (5);

17 (B) establish specific annual targets for
18 the transition of individuals with LTSS disabil-
19 ities, and shifts in funding, from institutional
20 settings to integrated community-based services
21 and supports, and related programs; and

22 (C) describe the manner in which the pub-
23 lic entity has obtained or plans to obtain nec-
24 essary funding and resources needed for imple-
25 mentation of the plan (regardless of whether

1 the entity began carrying out the objectives of
2 this Act prior to the date of enactment of this
3 Act).

4 (11) ANNUAL REPORTING.—

5 (A) IN GENERAL.—The regulations issued
6 under this section shall establish annual report-
7 ing requirements for each public entity covered
8 by this section.

9 (B) PROGRESS ON OBJECTIVES AND TAR-
10 GETS.—The regulations issued under this sec-
11 tion shall require each public entity that has
12 submitted a transition plan to submit to the
13 Administrator an annual report on the progress
14 the public entity has made during the previous
15 year in meeting the measurable objectives and
16 specific annual targets described in subpara-
17 graphs (A) and (B) of paragraph (10).

18 (12) OTHER PROVISIONS.—The regulations
19 issued under this section shall include such other
20 provisions and requirements as the Attorney General
21 and the Secretary of Health and Human Services
22 determine are necessary to carry out the objectives
23 of this Act.

24 (c) REVIEW OF TRANSITION PLANS.—

1 (1) GENERAL RULE.—The Administrator shall
2 review a transition plan submitted in accordance
3 with subsection (b)(10) for the purpose of deter-
4 mining whether such plan meets the requirements of
5 this Act, including the regulations issued under this
6 section.

7 (2) DISAPPROVAL.—If the Administrator deter-
8 mines that a transition plan reviewed under this
9 subsection fails to meet the requirements of this Act,
10 the Administrator shall disapprove the transition
11 plan and notify the public entity that submitted the
12 transition plan of, and the reasons for, such dis-
13 approval.

14 (3) MODIFICATION OF DISAPPROVED PLAN.—
15 Not later than 90 days after the date of disapproval
16 of a transition plan under this subsection, the public
17 entity that submitted the transition plan shall mod-
18 ify the transition plan to meet the requirements of
19 this section and shall submit to the Administrator,
20 and commence implementation of, such modified
21 transition plan.

22 (4) INCENTIVES.—

23 (A) DETERMINATION.—For 10 years after
24 the issuance of the regulations described in sub-
25 section (a), the Secretary of Health and Human

1 Services shall annually determine whether each
2 State, or each other public entity in the State,
3 is complying with the transition plan or modi-
4 fied transition plan the State or other public
5 entity submitted, and obtained approval for,
6 under this section. Notwithstanding any other
7 provision of law, if the Secretary of Health and
8 Human Services determines under this subpara-
9 graph that the State or other public entity is
10 complying with the corresponding transition
11 plan, the Secretary shall make the increase de-
12 scribed in subparagraph (B).

13 (B) INCREASE IN FMAP.—On making the
14 determination described in subparagraph (A)
15 for a public entity (including a State), the Sec-
16 retary of Health and Human Services shall, as
17 described in subparagraph (C), increase by 5
18 percentage points the FMAP for the State in
19 which the public entity is located for amounts
20 expended by the State for medical assistance
21 consisting of home and community-based serv-
22 ices furnished under the State Medicaid plan
23 under title XIX of the Social Security Act (42
24 U.S.C. 1396 et seq.) or a waiver of such plan—

25 (i) that—

1 (I) are identified by a public enti-
 2 ty or LTSS insurance provider under
 3 subsection(b)(5)(A)(iii);

4 (II) resulted from shifts in fund-
 5 ing identified by a public entity under
 6 subsection (b)(10)(B); or

7 (III) are environmental modifica-
 8 tions to achieve the affordable, acces-
 9 sible, integrated housing identified by
 10 a public entity under subsection
 11 (b)(6)(E); and

12 (ii) are described by the State in a re-
 13 quest to the Secretary of Health and
 14 Human Services for the increase.

15 (C) PERIOD OF INCREASE.—The Secretary
 16 of Health and Human Services shall increase
 17 the FMAP described in subparagraph (B)—

18 (i) beginning with the first quarter
 19 that begins after the date of the deter-
 20 mination; and

21 (ii) ending with the quarter in which
 22 the next annual determination under sub-
 23 paragraph (A) occurs.

24 (D) DEFINITIONS.—In this paragraph:

1 (i) FMAP.—The term “FMAP”
 2 means the Federal medical assistance per-
 3 centage for a State determined under sec-
 4 tion 1905(b) of the Social Security Act (42
 5 U.S.C. 1396d(b)) without regard to any in-
 6 creases in that percentage applicable under
 7 other subsections of that section or any
 8 other provision of law, including this sec-
 9 tion.

10 (ii) HOME AND COMMUNITY-BASED
 11 SERVICES DEFINED.—The term “home and
 12 community-based services” means any of
 13 the following services provided under a
 14 State Medicaid plan under title XIX of the
 15 Social Security Act (42 U.S.C. 1396 et
 16 seq.) or a waiver of such plan:

17 (I) Home and community-based
 18 services provided under subsection (c),
 19 (d), or (i) of section 1915 of the So-
 20 cial Security Act (42 U.S.C. 1396n).

21 (II) Home health care services.

22 (III) Personal care services.

23 (IV) Services described in section
 24 1905(a)(26) of the Social Security Act

1 (42 U.S.C. 1395d(a)(26)) (relating to
2 PACE program services).

3 (V) Self-directed personal assist-
4 ance services provided in accordance
5 with section 1915(j) of the Social Se-
6 curity Act (42 U.S.C. 1396n(j)).

7 (VI) Community-based attendant
8 services and supports provided in ac-
9 cordance with section 1915(k) of the
10 Social Security Act (42 U.S.C.
11 1396n(k)).

12 (d) RULE OF CONSTRUCTION.—Nothing in sub-
13 section (b)(10) or (c) or any other provision of this Act
14 shall be construed to modify the requirements of any other
15 Federal law, relating to integration of individuals with dis-
16 abilities into the community and enabling those individuals
17 to live in the most integrated setting.

18 **SEC. 7. EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS.**

19 This Act shall not prohibit a religious organization,
20 association, or society from giving preference in providing
21 community-based long-term services and supports to indi-
22 viduals of a particular religion connected with the beliefs
23 of such organization, association, or society.

24 **SEC. 8. ENFORCEMENT.**

25 (a) CIVIL ACTION.—

1 (1) IN GENERAL.—A civil action for preventive
2 relief, including an application for a permanent or
3 temporary injunction, restraining order, or other
4 order, may be instituted by an individual described
5 in paragraph (2) in an appropriate Federal district
6 court.

7 (2) AGGRIEVED INDIVIDUAL.—The remedies
8 and procedures set forth in this section are the rem-
9 edies and procedures this Act provides to any indi-
10 vidual who is being subjected to a violation of this
11 Act, or who has reasonable grounds for believing
12 that such individual is about to be subjected to such
13 a violation.

14 (3) APPOINTMENT OF ATTORNEY; NO FEES,
15 COSTS, OR SECURITY.—Upon application by the
16 complainant described in paragraph (2) and in such
17 circumstances as the court may determine to be just,
18 the court may appoint an attorney for the complain-
19 ant and may authorize the commencement of such
20 civil action without the payment of fees, costs, or se-
21 curity.

22 (4) FUTILE GESTURE NOT REQUIRED.—Noth-
23 ing in this section shall require an individual with an
24 LTSS disability to engage in a futile gesture if such
25 person has actual notice that a public entity or

1 LTSS insurance provider does not intend to comply
2 with the provisions of this Act.

3 (b) DAMAGES AND INJUNCTIVE RELIEF.—If the
4 court finds that a violation of this Act has occurred or
5 is about to occur, the court may award to the complain-
6 ant—

7 (1) actual and punitive damages;

8 (2) immediate injunctive relief to prevent insti-
9 tutionalization;

10 (3) as the court determines to be appropriate,
11 any permanent or temporary injunction (including
12 an order to immediately provide or maintain commu-
13 nity-based long-term services or supports for an in-
14 dividual to prevent institutionalization or further in-
15 stitutionalization), temporary restraining order, or
16 other order (including an order enjoining the defend-
17 ant from engaging in a practice that violates this
18 Act or ordering such affirmative action as may be
19 appropriate); and

20 (4) in an appropriate case, injunctive relief to
21 require the modification of a policy, practice, or pro-
22 cedure, or the provision of an alternative method of
23 providing LTSS, to the extent required by this Act.

24 (c) ATTORNEY'S FEES; LIABILITY OF UNITED
25 STATES FOR COSTS.—In any action commenced pursuant

1 to this Act, the court, in its discretion, may allow the party
 2 bringing a claim or counterclaim under this Act, other
 3 than the United States, a reasonable attorney's fee as part
 4 of the costs, and the United States shall be liable for costs
 5 to the same extent as a private person.

6 (d) ENFORCEMENT BY ATTORNEY GENERAL.—

7 (1) DENIAL OF RIGHTS.—

8 (A) DUTY TO INVESTIGATE.—The Attor-
 9 ney General shall investigate alleged violations
 10 of this Act, and shall undertake periodic reviews
 11 of the compliance of public entities and LTSS
 12 insurance providers under this Act.

13 (B) POTENTIAL VIOLATION.—The Attor-
 14 ney General may commence a civil action in any
 15 appropriate Federal district court if the Attor-
 16 ney General has reasonable cause to believe
 17 that—

18 (i) any public entity or LTSS insur-
 19 ance provider, including a group of public
 20 entities or LTSS insurance providers, is
 21 engaged in a pattern or practice of viola-
 22 tions of this Act; or

23 (ii) any individual, including a group,
 24 has been subjected to a violation of this

1 Act and the violation raises an issue of
2 general public importance.

3 (2) AUTHORITY OF COURT.—In a civil action
4 under paragraph (1)(B), the court—

5 (A) may grant any equitable relief that
6 such court considers to be appropriate, includ-
7 ing, to the extent required by this Act—

8 (i) granting temporary, preliminary,
9 or permanent relief; and

10 (ii) requiring the modification of a
11 policy, practice, or procedure, or the provi-
12 sion of an alternative method of providing
13 LTSS;

14 (B) may award such other relief as the
15 court considers to be appropriate, including
16 damages to individuals described in subsection
17 (a)(2), when requested by the Attorney General;
18 and

19 (C) may, to vindicate the public interest,
20 assess a civil penalty against the public entity
21 or LTSS insurance provider in an amount—

22 (i) not exceeding \$100,000 for a first
23 violation; and

24 (ii) not exceeding \$200,000 for any
25 subsequent violation.

1 (3) SINGLE VIOLATION.—For purposes of para-
 2 graph (2)(C), in determining whether a first or sub-
 3 sequent violation has occurred, a determination in a
 4 single action, by judgment or settlement, that the
 5 public entity or LTSS insurance provider has en-
 6 gaged in more than one violation of this Act shall be
 7 counted as a single violation.

8 **SEC. 9. CONSTRUCTION.**

9 For purposes of construing this Act—

10 (1) section 4(b)(11) shall be construed in a
 11 manner that takes into account its similarities with
 12 section 302(b)(2)(A)(ii) of the Americans with Dis-
 13 abilities Act of 1990 (42 U.S.C. 12182(b)(2)(A)(ii));

14 (2) the first sentence of section 6(b)(5)(A) shall
 15 be construed in a manner that takes into account its
 16 similarities with section 35.105(a) of title 28, Code
 17 of Federal Regulations (as in effect on the day be-
 18 fore the date of enactment of this Act), or a suc-
 19 cessor regulation;

20 (3) section 7 shall be construed in a manner
 21 that takes into account its similarities with section
 22 807(a) of the Civil Rights Act of 1968 (42 U.S.C.
 23 3607(a));

24 (4) section 8(a)(2) shall be construed in a man-
 25 ner that takes into account its similarities with sec-

1 tion 308(a)(1) of the Americans with Disabilities
2 Act of 1990 (42 U.S.C. 12188(a)(1)); and
3 (5) section 8(d)(1)(B) shall be construed in a
4 manner that takes into account its similarities with
5 section 308(b)(1)(B) of the Americans with Disabil-
6 ities Act of 1990 (42 U.S.C. 12188(b)(1)(B)).

○