

116TH CONGRESS  
1ST SESSION

# S. 117

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2019

Mr. SCHUMER (for himself, Mr. GARDNER, Ms. BALDWIN, Mr. BENNET, Mr. BLUMENTHAL, Ms. CANTWELL, Mr. CASEY, Mr. COONS, Ms. DUCKWORTH, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Mr. JONES, Mr. LEAHY, Mr. MARKEY, Mrs. MURRAY, Mr. VAN HOLLEN, Ms. WARREN, Mr. TESTER, Mr. SANDERS, Mr. DURBIN, Mr. BOOKER, Mr. MERKLEY, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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 2019”.

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

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

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

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

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

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

22          (3) The holdings of the Supreme Court in  
23   Olmstead v. L.C., 527 U.S. 581 (1999), and com-  
24   panion cases, have clearly articulated that individ-  
25   uals with disabilities have a civil right under the

1     ADA to participate in society as equal citizens. How-  
2     ever, many States still do not provide sufficient com-  
3     munity-based long-term services and supports to in-  
4     dividuals with disabilities to end segregation in insti-  
5     tutions.

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

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

21          (6) States have not consistently planned to en-  
22    sure sufficient services and supports for individuals  
23    with disabilities, including those with the most sig-  
24    nificant disabilities, to enable individuals with dis-  
25    abilities to live in the most integrated setting. As a

1 result, many individuals with disabilities who reside  
2 in institutions are prevented from residing in the  
3 community and individuals with disabilities who are  
4 not in institutions find themselves at risk of institu-  
5 tional placement.

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

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

14 (1) to clarify and strengthen the ADA’s inte-  
15 gration mandate in a manner that accelerates State  
16 compliance;

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

22 (3) to ensure that States provide long-term  
23 services and supports to individuals with disabilities  
24 in a manner that allows individuals with disabilities  
25 to live in the most integrated setting, including the

1 individual’s own home, have maximum control over  
 2 their services and supports, and ensure that long-  
 3 term services and supports are provided in a manner  
 4 that allows individuals with disabilities to lead an  
 5 independent life;

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

11 (5) to establish a requirement for clear and uni-  
 12 form annual public reporting by States that includes  
 13 reporting about—

14 (A) the number of individuals with disabil-  
 15 ities who are served in the community and the  
 16 number who are served in institutions; and

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

### 22 **SEC. 3. DEFINITIONS AND RULE.**

23 (a) **DEFINITIONS.**—In this Act:

24 (1) **ACTIVITIES OF DAILY LIVING.**—The term  
 25 “activities of daily living” has the meaning given the

1 term in section 441.505 of title 42, Code of Federal  
2 Regulations (or a successor regulation).

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

5 (A) the Administrator of the Administra-  
6 tion for Community Living; or

7 (B) another designee of the Secretary of  
8 Health and Human Services.

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

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

23 (i) that, as a matter of infrastructure,  
24 environment, amenities, location, services,  
25 and features, is integrated into the greater

community and supports, for each individual 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, autonomy, 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 as tenants  
11 have under applicable landlord-tenant  
12 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; and

4 (C) maintenance and use of a gastrostomy  
5 tube, a catheter, or 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 one 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 cognitive, in-  
20 tellectual, mental, or emotional disabilities, in-  
21 cluding support to—

22 (i) help the individual identify and set  
23 goals, overcome fears, and manage transi-  
24 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) provides funds for long-term services  
 24 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—

19 (1) shall be construed—

20 (A) to prevent a public entity or LTSS in-  
 21 surance provider from providing community-  
 22 based long-term services and supports at a level  
 23 that is greater than the level that is required by  
 24 this section; or

1 (B) to limit the rights of an individual with  
 2 a disability under any provision of law other  
 3 than this section;

4 (2) shall be construed to affect the scope of ob-  
 5 ligations imposed by any other provision of law; or

6 (3) shall be construed to prohibit a public entity  
 7 or LTSS insurance provider from using managed  
 8 care techniques, as long as the use of such tech-  
 9 niques does not have the effect of discriminating  
 10 against an individual in the provision of community-  
 11 based long-term services and supports, as prohibited  
 12 by this Act.

13 **SEC. 5. ADMINISTRATION.**

14 (a) AUTHORITY AND RESPONSIBILITY.—

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

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

19 (B) enforce section 6(c).

20 (2) DEPARTMENT OF HEALTH AND HUMAN  
 21 SERVICES.—The Secretary of Health and Human  
 22 Services, through the Administrator, shall—

23 (A) conduct studies regarding the nature  
 24 and extent of institutionalization of individuals  
 25 with LTSS disabilities in representative com-

1 communities, including urban, suburban, and rural  
2 communities, throughout the United States;

3 (B) publish and disseminate reports, rec-  
4 ommendations, and information derived from  
5 such studies, including an annual report to  
6 Congress, specifying—

7 (i) the nature and extent of progress  
8 in the United States in eliminating institu-  
9 tionalization for individuals with LTSS  
10 disabilities in violation of this Act and fur-  
11 thering the purposes of this Act;

12 (ii) obstacles that remain in the effort  
13 to achieve the provision of community-  
14 based long-term services and supports for  
15 all individuals with LTSS disabilities; and

16 (iii) recommendations for further leg-  
17 islative or executive action;

18 (C) cooperate with, and provide grants for  
19 technical assistance to, Federal, State, and local  
20 public or private agencies and organizations  
21 that are formulating or carrying out programs  
22 to prevent or eliminate institutionalization of  
23 individuals with LTSS disabilities or to promote  
24 the provision of community-based long-term  
25 services and supports;

1 (D) implement educational and conciliatory  
2 activities to further the purposes of this Act;  
3 and

4 (E) refer information on violations of this  
5 Act to the Attorney General for investigation  
6 and enforcement action under this Act.

7 (b) COOPERATION OF EXECUTIVE DEPARTMENTS  
8 AND AGENCIES.—Each Federal agency and, in particular,  
9 each Federal agency covered by Executive Order 13217  
10 (66 Fed. Reg. 33155; relating to community-based alter-  
11 natives for individuals with disabilities), shall carry out  
12 programs and activities relating to the institutionalization  
13 of individuals with LTSS disabilities and the provision of  
14 community-based long-term services and supports for indi-  
15 viduals with LTSS disabilities in accordance with this Act  
16 and shall cooperate with the Attorney General and the Ad-  
17 ministrator to further the purposes of this Act.

18 **SEC. 6. REGULATIONS.**

19 (a) ISSUANCE OF REGULATIONS.—Not later than 24  
20 months after the date of enactment of this Act, the Attor-  
21 ney General and the Secretary of Health and Human  
22 Services shall issue, in accordance with section 553 of title  
23 5, United States Code, final regulations to carry out this  
24 Act, which shall include the regulations described in sub-  
25 section (b).

1 (b) REQUIRED CONTENTS OF REGULATIONS.—

2 (1) ELIGIBLE RECIPIENTS OF SERVICE.—The  
 3 regulations shall require each public entity and  
 4 LTSS insurance provider to offer, and, if accepted,  
 5 provide community-based long-term services and  
 6 supports as required under this Act to any indi-  
 7 vidual with an LTSS disability who would otherwise  
 8 qualify for institutional placement provided or fund-  
 9 ed by the public entity or LTSS insurance provider.

10 (2) SERVICES TO BE PROVIDED.—The regula-  
 11 tions issued under this section shall require each  
 12 public entity and LTSS insurance provider to pro-  
 13 vide the Attorney General and the Administrator  
 14 with an assurance that the public entity or LTSS in-  
 15 surance provider—

16 (A) ensures that individuals with LTSS  
 17 disabilities receive assistance through hands-on  
 18 assistance, training, cueing, and safety moni-  
 19 toring, including access to backup systems,  
 20 with—

21 (i) activities of daily living;

22 (ii) instrumental activities of daily liv-  
 23 ing;

24 (iii) health-related tasks; or

1 (iv) other functions, tasks, or activi-  
2 ties related to an activity or task described  
3 in clause (i), (ii), or (iii);

4 (B) coordinates, conducts, performs, pro-  
5 vides, or funds discharge planning from acute,  
6 rehabilitation, and long-term facilities to pro-  
7 mote individuals with LTSS disabilities living in  
8 the most integrated setting chosen by the indi-  
9 viduals;

10 (C) issues, conducts, performs, provides, or  
11 funds policies and programs to promote self-di-  
12 rection and the provision of consumer-directed  
13 services and supports for all populations of indi-  
14 viduals with LTSS disabilities served;

15 (D) issues, conducts, performs, provides,  
16 or funds policies and programs to support infor-  
17 mal caregivers who provide services for individ-  
18 uals with LTSS disabilities; and

19 (E) ensures that individuals with all types  
20 of LTSS disabilities are able to live in the com-  
21 munity and lead an independent life, including  
22 ensuring that the individuals have maximum  
23 control over the services and supports that the  
24 individuals receive, choose the setting in which  
25 the individuals receive those services and sup-

1 ports, and exercise control and direction over  
2 their own lives.

3 (3) PUBLIC PARTICIPATION.—

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

10 (B) LTSS INSURANCE PROVIDER.—The  
11 regulations issued under this section shall re-  
12 quire each LTSS insurance provider to carry  
13 out a public participation process that involves  
14 holding a public hearing, providing an oppor-  
15 tunity for public comment, and consulting with  
16 individuals with LTSS disabilities, in preparing  
17 the LTSS insurance provider's self-evaluation  
18 under paragraph (5).

19 (C) PROCESS.—In carrying out a public  
20 participation process under subparagraph (A)  
21 or (B), a public entity or LTSS insurance pro-  
22 vider shall ensure that the process meets the re-  
23 quirements of subparagraphs (A) and (C) of  
24 section 1115(d)(2) of the Social Security Act  
25 (42 U.S.C. 1315(d)(2)), except that—

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

3 (ii) the reference to an application  
4 shall be considered to be a reference to the  
5 self-evaluation or plan involved.

6 (4) ADDITIONAL SERVICES AND SUPPORTS.—

7 The regulations issued under this section shall es-  
8 tablish circumstances under which a public entity  
9 shall provide community-based long-term services  
10 and supports under this section beyond the level of  
11 community-based long-term services and supports  
12 which would otherwise be required under this sub-  
13 section.

14 (5) SELF-EVALUATION.—

15 (A) IN GENERAL.—The regulations issued  
16 under this section shall require each public enti-  
17 ty and each LTSS insurance provider, not later  
18 than 30 months after the date of enactment of  
19 this Act, to evaluate current services, policies,  
20 and practices, and the effects thereof, that do  
21 not or may not meet the requirements of this  
22 Act and, to the extent modification of any such  
23 services, policies, and practices is required to  
24 meet the requirements of this Act, make the

1           necessary modifications. The self-evaluation  
2           shall include—

3                   (i) collection of baseline information,  
4                   including the numbers of individuals with  
5                   LTSS disabilities in various institutional  
6                   and community-based settings served by  
7                   the public entity or LTSS insurance pro-  
8                   vider;

9                   (ii) a review of community capacity, in  
10                  communities served by the entity or pro-  
11                  vider, in providing community-based long-  
12                  term services and supports;

13                  (iii) identification of improvements  
14                  needed to ensure that all community-based  
15                  long-term services and supports provided  
16                  by the public entity or LTSS insurance  
17                  provider to individuals with LTSS disabil-  
18                  ities are comprehensive, are accessible, are  
19                  not duplicative of existing (as of the date  
20                  of the identification) services and supports,  
21                  meet the needs of persons who are likely to  
22                  require assistance in order to live, or lead  
23                  a life, as described in section 4(a), and are  
24                  high-quality services and supports, which  
25                  may include identifying system improve-

ments that create an option to self-direct receipt of such services and supports for all populations of such individuals served; and

(iv) a review of funding sources for community-based long-term services and supports and an analysis of how those funding sources could be organized into a fair, coherent system that affords individuals reasonable and timely access to community-based long-term services and supports.

(B) PUBLIC ENTITY.—A public entity, including an LTSS insurance provider that is a public entity, shall—

(i) include in the self-evaluation described in subparagraph (A)—

(I) an assessment of the availability of accessible, affordable transportation across the State involved and whether transportation barriers prevent individuals from receiving long-term services and supports in the most integrated setting; and

1 (II) an assessment of the avail-  
 2 ability of integrated employment op-  
 3 portunities in the jurisdiction served  
 4 by the public entity for individuals  
 5 with LTSS disabilities; and

6 (ii) provide the self-evaluation de-  
 7 scribed in subparagraph (A) to the Attor-  
 8 ney General and the Administrator.

9 (C) LTSS INSURANCE PROVIDER.—An  
 10 LTSS insurance provider shall keep the self-  
 11 evaluation described in subparagraph (A) on  
 12 file, and may be required to produce such self-  
 13 evaluation in the event of a review, investiga-  
 14 tion, or action described in section 8.

15 (6) ADDITIONAL REQUIREMENT FOR PUBLIC  
 16 ENTITIES.—The regulations issued under this sec-  
 17 tion shall require a public entity, in conjunction with  
 18 the housing agencies serving the jurisdiction served  
 19 by the public entity, to review and improve commu-  
 20 nity capacity, in all communities throughout the en-  
 21 tirety of that jurisdiction, in providing affordable,  
 22 accessible, and integrated housing, including an eval-  
 23 uation of available units, unmet need, and other  
 24 identifiable barriers to the provision of that housing.

1       In carrying out that improvement, the public entity,  
2       in conjunction with such housing agencies, shall—

3               (A) ensure, and assure the Administrator  
4               and the Attorney General that there is, suffi-  
5               cient availability of affordable, accessible, and  
6               integrated housing in a setting that is not a dis-  
7               ability-specific residential setting or a setting  
8               where services are tied to tenancy, in order to  
9               provide individuals with LTSS disabilities a  
10              meaningful choice in their housing;

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

13                      (i) in the case of such a housing agen-  
14                      cy, establish relationships with State and  
15                      local housing authorities; and

16                      (ii) in the case of the public entity, es-  
17                      tablish relationships with State and local  
18                      housing agencies, including housing au-  
19                      thorities;

20              (C) establish, where needed, necessary  
21              preferences and set-asides in housing programs  
22              for individuals with LTSS disabilities who are  
23              transitioning from or avoiding institutional  
24              placement;

1 (D) establish a process to fund necessary  
 2 home modifications so that individuals with  
 3 LTSS disabilities can live independently; and

4 (E) ensure, and assure the Administrator  
 5 and the Attorney General, that funds and pro-  
 6 grams implemented or overseen by the public  
 7 entity or in the public entity's jurisdiction are  
 8 targeted toward affordable, accessible, inte-  
 9 grated housing for individuals with an LTSS  
 10 disability who have the lowest income levels in  
 11 the jurisdiction as a priority over any other de-  
 12 velopment until capacity barriers for such hous-  
 13 ing are removed or unmet needs for such hous-  
 14 ing have been met.

15 (7) DESIGNATION OF RESPONSIBLE EM-  
 16 PLOYEE.—The regulations issued under this section  
 17 shall require each public entity and LTSS insurance  
 18 provider to designate at least one employee to co-  
 19 ordinate the entity's or provider's efforts to comply  
 20 with and carry out the entity or provider's respon-  
 21 sibilities under this Act, including the investigation  
 22 of any complaint communicated to the entity or pro-  
 23 vider that alleges a violation of this Act. Each public  
 24 entity and LTSS insurance provider shall make  
 25 available to all interested individuals the name, of-

1        fice address, and telephone number of the employee  
2        designated pursuant to this paragraph.

3            (8) GRIEVANCE PROCEDURES.—The regulations  
4        issued under this section shall require public entities  
5        and LTSS insurance providers to adopt and publish  
6        grievance procedures providing for prompt and equi-  
7        table resolution of complaints alleging a violation of  
8        this Act.

9            (9) PROVISION OF SERVICE BY OTHERS.—The  
10       regulations issued under this section shall require  
11       each public entity submitting a self-evaluation under  
12       paragraph (5) to identify, as part of the transition  
13       plan described in paragraph (10), any other entity  
14       that is, or acts as, an agent, subcontractor, or other  
15       instrumentality of the public entity with regards to  
16       a service, support, policy, or practice described in  
17       such plan or self-evaluation.

18           (10) TRANSITION PLANS.—The regulations  
19       issued under this section shall require each public  
20       entity, not later than 42 months after the date of  
21       enactment of this Act, to submit to the Adminis-  
22       trator, and begin implementing, a transition plan for  
23       carrying out this Act that establishes the achieve-  
24       ment of the requirements of this Act, as soon as  
25       practicable, but in no event later than 12 years after

1 the date of enactment of this Act. The transition  
2 plan shall—

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

6 (B) establish specific annual targets for  
7 the transition of individuals with LTSS disabil-  
8 ities, and shifts in funding, from institutional  
9 settings to integrated community-based services  
10 and supports, and related programs;

11 (C) describe specific efforts to support in-  
12 dividuals with LTSS disabilities to avoid un-  
13 wanted institutionalization through the provi-  
14 sion of LTSS; and

15 (D) describe the manner in which the pub-  
16 lic entity has obtained or plans to obtain nec-  
17 essary funding and resources needed for imple-  
18 mentation of the plan (regardless of whether  
19 the entity began carrying out the objectives of  
20 this Act prior to the date of enactment of this  
21 Act).

22 (11) ANNUAL REPORTING.—

23 (A) IN GENERAL.—The regulations issued  
24 under this section shall establish annual report-

1           ing requirements for each public entity covered  
2           by this section.

3                   (B) PROGRESS ON OBJECTIVES, TARGETS,  
4           AND EFFORTS.—The regulations issued under  
5           this section shall require each public entity that  
6           has submitted a transition plan to submit to the  
7           Administrator an annual report on the progress  
8           the public entity has made during the previous  
9           year in meeting the measurable objectives, spe-  
10          cific annual targets, and specific efforts de-  
11          scribed in paragraph (10).

12               (12) OTHER PROVISIONS.—The regulations  
13          issued under this section shall include such other  
14          provisions and requirements as the Attorney General  
15          and the Secretary of Health and Human Services  
16          determine are necessary to carry out the objectives  
17          of this Act.

18          (c) REVIEW OF TRANSITION PLANS.—

19               (1) GENERAL RULE.—The Administrator shall  
20          review a transition plan submitted in accordance  
21          with subsection (b)(10) for the purpose of deter-  
22          mining whether such plan meets the requirements of  
23          this Act, including the regulations issued under this  
24          section.

1           (2) DISAPPROVAL.—If the Administrator deter-  
2           mines that a transition plan reviewed under this  
3           subsection fails to meet the requirements of this Act,  
4           the Administrator shall disapprove the transition  
5           plan and notify the public entity that submitted the  
6           transition plan of, and the reasons for, such dis-  
7           approval.

8           (3) MODIFICATION OF DISAPPROVED PLAN.—  
9           Not later than 90 days after the date of disapproval  
10          of a transition plan under this subsection, the public  
11          entity that submitted the transition plan shall mod-  
12          ify the transition plan to meet the requirements of  
13          this section and shall submit to the Administrator,  
14          and commence implementation of, such modified  
15          transition plan.

16          (4) INCENTIVES.—

17                (A) DETERMINATION.—For 10 years after  
18                the issuance of the regulations described in sub-  
19                section (a), the Secretary of Health and Human  
20                Services shall annually determine whether each  
21                State, or each other public entity in the State,  
22                is complying with the transition plan or modi-  
23                fied transition plan the State or other public  
24                entity submitted, and obtained approval for,  
25                under this section. Notwithstanding any other

1 provision of law, if the Secretary of Health and  
 2 Human Services determines under this subpara-  
 3 graph that the State or other public entity is  
 4 complying with the corresponding transition  
 5 plan, the Secretary shall make the increase de-  
 6 scribed in subparagraph (B).

7 (B) INCREASE IN FMAP.—On making the  
 8 determination described in subparagraph (A)  
 9 for a public entity (including a State), the Sec-  
 10 retary of Health and Human Services shall, as  
 11 described in subparagraph (C), increase by 5  
 12 percentage points the FMAP (but shall in no  
 13 event increase the FMAP above 100 percent)  
 14 for the State in which the public entity is lo-  
 15 cated for amounts expended by the State for  
 16 medical assistance consisting of home and com-  
 17 munity-based services furnished under the State  
 18 Medicaid plan under title XIX of the Social Se-  
 19 curity Act (42 U.S.C. 1396 et seq.) or a waiver  
 20 of such plan—

21 (i) that—

22 (I) are identified by a public enti-  
 23 ty or LTSS insurance provider under  
 24 subsection (b)(5)(A)(iii);

1 (II) resulted from shifts in fund-  
 2 ing identified by a public entity under  
 3 subsection (b)(10)(B); or

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

9 (ii) are described by the State in a re-  
 10 quest to the Secretary of Health and  
 11 Human Services for the increase.

12 (C) PERIOD OF INCREASE.—The Secretary  
 13 of Health and Human Services shall increase  
 14 the FMAP described in subparagraph (B)—

15 (i) beginning with the first quarter  
 16 that begins after the date of the deter-  
 17 mination; and

18 (ii) ending with the quarter in which  
 19 the next annual determination under sub-  
 20 paragraph (A) occurs.

21 (D) ADDITIONAL CONDITION FOR PAY-  
 22 MENT.—

23 (i) STATE REPORT.—As a condition  
 24 for the receipt of a payment based on an  
 25 increase described in subparagraph (B)

1 with respect to amounts to be expended by  
 2 the State for medical assistance consisting  
 3 of home and community-based services de-  
 4 scribed in subparagraph (B), the State  
 5 shall report to the Secretary, for the re-  
 6 porting year, the amount of funds ex-  
 7 pended by the State for home and commu-  
 8 nity-based services (as defined in subpara-  
 9 graph (E)(ii)) in that year. The State shall  
 10 make the report in a format developed or  
 11 approved by the Secretary.

12 (ii) REDUCTION IN PAYMENT IF FAIL-  
 13 URE TO MAINTAIN EFFORT.—If the  
 14 amount reported under clause (i) by a  
 15 State with respect to a reporting year is  
 16 less than the amount reported under clause  
 17 (i) with respect to the previous fiscal year  
 18 or fiscal year 2019, whichever was the  
 19 greater reported amount, the Secretary  
 20 shall provide for a reduction in the pay-  
 21 ment to the State based on the increase.

22 (E) DEFINITIONS.—In this paragraph:

23 (i) FMAP.—The term “FMAP”  
 24 means the Federal medical assistance per-  
 25 centage for a State determined under sec-

tion 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) without regard to any increases in that percentage applicable under other subsections of that section or any other provision of law, including this section.

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

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

(II) Home health care services.

(III) Personal care services.

(IV) Services described in section 1905(a)(26) of the Social Security Act (42 U.S.C. 1396d(a)(26)) (relating to PACE program services).

(V) Self-directed personal assistance services provided in accordance

1 with section 1915(j) of the Social Se-  
2 curity Act (42 U.S.C. 1396n(j)).

3 (VI) Community-based attendant  
4 services and supports provided in ac-  
5 cordance with section 1915(k) of the  
6 Social Security Act (42 U.S.C.  
7 1396n(k)).

8 (VII) Rehabilitative services,  
9 within the meaning of section  
10 1905(a)(13) of the Social Security Act  
11 (42 U.S.C. 1396d(a)(13)).

12 (iii) REPORTING YEAR.—The term  
13 “reporting year” means the most recent  
14 fiscal year preceding the date of a report  
15 under subparagraph (D)(i).

16 (d) RULE OF CONSTRUCTION.—Nothing in sub-  
17 section (b)(10) or (c) or any other provision of this Act  
18 shall be construed to limit the rights, protections, or re-  
19 quirements of any other Federal law, relating to integra-  
20 tion of individuals with disabilities into the community and  
21 enabling those individuals to live in the most integrated  
22 setting.

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

24 This Act shall not prohibit a religious organization,  
25 association, or society from giving preference in providing

1 community-based long-term services and supports to indi-  
2 viduals of a particular religion connected with the beliefs  
3 of such organization, association, or society.

4 **SEC. 8. ENFORCEMENT.**

5 (a) CIVIL ACTION.—

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

12 (2) AGGRIEVED INDIVIDUAL.—

13 (A) IN GENERAL.—The remedies and pro-  
14 cedures set forth in this section are the rem-  
15 edies and procedures this Act provides to any  
16 individual who is being subjected to a violation  
17 of this Act, or who has reasonable grounds for  
18 believing that such individual is about to be  
19 subjected to such a violation.

20 (B) STANDING.—An individual with a dis-  
21 ability shall have standing to institute a civil ac-  
22 tion under this subsection if the individual  
23 makes a prima facie showing that the indi-  
24 vidual—

1 (i) is an individual with an LTSS dis-  
 2 ability; and

3 (ii) is being subjected to, or about to  
 4 be subjected to, such a violation (including  
 5 a violation of section 4(b)(11)).

6 (3) APPOINTMENT OF ATTORNEY; NO FEES,  
 7 COSTS, OR SECURITY.—Upon application by the  
 8 complainant described in paragraph (2) and in such  
 9 circumstances as the court may determine to be just,  
 10 the court may appoint an attorney for the complain-  
 11 ant and may authorize the commencement of such  
 12 civil action without the payment of fees, costs, or se-  
 13 curity.

14 (4) FUTILE GESTURE NOT REQUIRED.—Noth-  
 15 ing in this section shall require an individual with an  
 16 LTSS disability to engage in a futile gesture if such  
 17 person has actual notice that a public entity or  
 18 LTSS insurance provider does not intend to comply  
 19 with the provisions of this Act.

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

24 (1) actual and punitive damages;

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

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

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

17          (c) ATTORNEY’S FEES; LIABILITY OF UNITED  
18 STATES FOR COSTS.—In any action commenced pursuant  
19 to this Act, the court, in its discretion, may allow the party  
20 bringing a claim or counterclaim under this Act, other  
21 than the United States, a reasonable attorney’s fee as part  
22 of the costs, and the United States shall be liable for costs  
23 to the same extent as a private person.

24          (d) ENFORCEMENT BY ATTORNEY GENERAL.—

25               (1) DENIAL OF RIGHTS.—

1           (A) DUTY TO INVESTIGATE.—The Attor-  
 2           ney General shall investigate alleged violations  
 3           of this Act, and shall undertake periodic reviews  
 4           of the compliance of public entities and LTSS  
 5           insurance providers under this Act.

6           (B) POTENTIAL VIOLATION.—The Attor-  
 7           ney General may commence a civil action in any  
 8           appropriate Federal district court if the Attor-  
 9           ney General has reasonable cause to believe  
 10          that—

11                 (i) any public entity or LTSS insur-  
 12                 ance provider, including a group of public  
 13                 entities or LTSS insurance providers, is  
 14                 engaged in a pattern or practice of viola-  
 15                 tions of this Act; or

16                 (ii) any individual, including a group,  
 17                 has been subjected to a violation of this  
 18                 Act and the violation raises an issue of  
 19                 general public importance.

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

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

1 (i) granting temporary, preliminary,  
2 or permanent relief; and

3 (ii) requiring the modification of a  
4 policy, practice, or procedure, or the provi-  
5 sion of an alternative method of providing  
6 LTSS;

7 (B) may award such other relief as the  
8 court considers to be appropriate, including  
9 damages to individuals described in subsection  
10 (a)(2), when requested by the Attorney General;  
11 and

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

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

17 (ii) not exceeding \$200,000 for any  
18 subsequent violation.

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

1 **SEC. 9. CONSTRUCTION.**

2 For purposes of construing this Act—

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

7 (2) the first sentence of section 6(b)(5)(A) shall  
 8 be construed in a manner that takes into account its  
 9 similarities with section 35.105(a) of title 28, Code  
 10 of Federal Regulations (as in effect on the day be-  
 11 fore the date of enactment of this Act);

12 (3) section 7 shall be construed in a manner  
 13 that takes into account its similarities with section  
 14 807(a) of the Civil Rights Act of 1968 (42 U.S.C.  
 15 3607(a));

16 (4) section 8(a)(2) shall be construed in a man-  
 17 ner that takes into account its similarities with sec-  
 18 tion 308(a)(1) of the Americans with Disabilities  
 19 Act of 1990 (42 U.S.C. 12188(a)(1)); and

20 (5) section 8(d)(1)(B) shall be construed in a  
 21 manner that takes into account its similarities with  
 22 section 308(b)(1)(B) of the Americans with Disabil-  
 23 ities Act of 1990 (42 U.S.C. 12188(b)(1)(B)).

○