South Dakota (Mr. ROUNDS) were added as cosponsors of S. 39, a bill to provide that Members of Congress may not receive pay after October 1 of any fiscal year in which Congress has not approved a concurrent resolution on the budget and passed the regular appropriations bills.

S. 72

At the request of Mr. SCHATZ, the names of the Senator from Oregon (Mr. MERKLEY), the Senator from New York (Mrs. GILLIBRAND), the Senator from Minnesota (Ms. SMITH), the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Massachusetts (Ms. WARREN), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Alabama (Mr. JONES), the Senator from California (Mrs. FEINSTEIN), the Senator from Rhode Island (Mr. REED) and the Senator from New Mexico (Mr. UDALL) were added as cosponsors of S. 72, a bill to suspend the enforcement of certain civil liabilities of Federal employees and contractors during a lapse in appropriations, and for other purposes.

S. 94

At the request of Mrs. CAPITO, the names of the Senator from New Mexico (Mr. HEINRICH) and the Senator from Louisiana (Mr. CASSIDY) were added as cosponsors of S. 94, a bill to amend the Pittman-Robertson Wildlife Restoration Act to facilitate the establishment of additional or expanded public target ranges in certain States.

S. 104

At the request of Mr. PORTMAN, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 104, a bill to amend title 31, United States Code, to provide for automatic continuing resolutions.

S. 105

At the request of Mrs. BLACKBURN, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 105, a bill to amend title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions, and for other purposes.

S. 109

At the request of Mr. WICKER, the names of the Senator from Arkansas (Mr. BOOZMAN), the Senator from Nebraska (Mrs. FISCHER), the Senator from South Carolina (Mr. GRAHAM), the Senator from North Dakota (Mr. CRAMER) and the Senator from South Dakota (Mr. ROUNDS) were added as cosponsors of S. 109, a bill to prohibit taxpayer funded abortions.

S. 113

At the request of Mr. JOHNSON, the names of the Senator from Missouri (Mr. HAWLEY), the Senator from North Carolina (Mr. TILLIS), the Senator from Kansas (Mr. ROBERTS), the Senator from Wyoming (Mr. BARRASSO) and the Senator from North Dakota (Mr. HOEVEN) were added as cosponsors of S. 113, a bill to appropriate funds for pay and allowances of excepted Federal employees, and for other purposes.

S.J. RES. 3

At the request of Mrs. HYDE-SMITH, the names of the Senator from Idaho (Mr. CRAPO), the Senator from North Dakota (Mr. HOEVEN), the Senator from South Dakota (Mr. ROUNDS) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of S. J. Res. 3, a joint resolution proposing an amendment to the Constitution of the United States relative to balancing the budget.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCHUMER:

S. 115. A bill for the relief of Alemseghed Mussie Tesfamical; to the Committee on the Judiciary.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENT STATUS FOR ALEMSEGHED MUSSIE TESFAMICAL.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) and section 240 of such Act (8 U.S.C. 1229a), Alemseghed Mussie Tesfamical shall be eligible for the issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of such Act (8 U.S.C. 1154) or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Alemseghed Mussie Tesfamical enters the United States before the filing deadline specified in subsection (c), Alemseghed Mussie Tesfamical shall be considered to have entered into and remained lawfully in the United States and, if otherwise eligible, shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) as of the date of the enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or for adjustment of status is filed by Alemseghed Mussie Tesfamical with appropriate fees not later than 2 years after the date of the enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBER.—Upon the granting of an immigrant visa or permanent residence to Alemseghed Mussie Tesfamical, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of Alemseghed Mussie Tesfamical's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) or, if applicable, the total number of immigrant visas that are made available to natives of such country under section 202(e) of such Act (8 U.S.C. 1152(e)).

(e) BUDGETARY EFFECTS.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139), shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the Senate, provided that such statement has been submitted prior to the vote on passage.

By 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):

S. 117. A bill to prohibit discrimination against individuals with disabilities who need long-term services and supports, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Disability Integration Act of 2019''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

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

(A) recognized that ''historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem''; and

(B) intended that the ADA assure ''full participation'' and ''independent living'' for individuals with disabilities by addressing ''discrimination against individuals with disabilities [that] persists in critical areas'', including institutionalization.

(2) While Congress expected that the ADA's integration mandate would be interpreted in a manner that ensures that individuals who are eligible for institutional placement are able to exercise a right to community-based long-term services and supports, that expectation has not been fulfilled.

(3) The holdings of the Supreme Court in Olmstead v. L.C., 527 U.S. 581 (1999), and companion cases, have clearly articulated that individuals with disabilities have a civil right under the ADA to participate in society as equal citizens. However, many States still do not provide sufficient community-based long-term services and supports to individuals with disabilities to end segregation in institutions.

(4) The right to live in the community is necessary for the exercise of the civil rights that the ADA was intended to secure for all individuals with disabilities. The lack of adequate community-based services and supports has imperiled the civil rights of all individuals with disabilities, and has undermined the very promise of the ADA. It is, therefore, necessary to recognize in statute a robust and fully articulated right to community living.

(5) States, with a few exceptions, continue to approach decisions regarding long-term services and supports from social welfare and budgetary perspectives, but for the promise of the ADA to be fully realized, States must approach these decisions from a civil rights perspective.

(6) States have not consistently planned to ensure sufficient services and supports for individuals with disabilities, including those with the most significant disabilities, to enable individuals with disabilities to live in the most integrated setting. As a result, many individuals with disabilities who reside in institutions are prevented from residing in the community and individuals with disabilities who are not in institutions find themselves at risk of institutional placement.

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

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

(1) to clarify and strengthen the ADA's integration mandate in a manner that accelerates State compliance;

(2) to clarify that every individual who is eligible for long-term services and supports has a federally protected right to be meaningfully integrated into that individual's community and receive community-based long-term services and supports;

(3) to ensure that States provide long-term services and supports to individuals with disabilities in a manner that allows individuals with disabilities to live in the most integrated setting, including the individual's own home, have maximum control over their services and supports, and ensure that long-term services and supports are provided in a manner that allows individuals with disabilities to lead an independent life;

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

(5) to establish a requirement for clear and uniform annual public reporting by States that includes reporting about—

(A) the number of individuals with disabilities who are served in the community and the number who are served in institutions; and

(B) the number of individuals with disabilities who have transitioned from an institution to a community-based living situation, and the type of community-based living situation into which those individuals have transitioned.

SEC. 3. DEFINITIONS AND RULE.

(a) DEFINITIONS.—In this Act:

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

(2) ADMINISTRATOR.—The term ''Administrator'' means—

(A) the Administrator of the Administration for Community Living; or

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

(3) COMMUNITY-BASED.—The term ''community-based'', when used in reference to services or supports, means services or supports that are provided to an individual with an LTSS disability to enable that individual to live in the community and lead an independent life, and that are delivered in whichever setting the individual with an LTSS disability has chosen out of the following settings with the following qualities:

(A) In the case of a dwelling or a nonresidential setting (such as a setting in which an individual with an LTSS disability receives day services and supported employment), a dwelling or setting—

(i) that, as a matter of infrastructure, environment, amenities, location, services, 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—

(I) in which no more than 4 unrelated individuals with an LTSS disability reside;

(II) for which each individual with an LTSS disability living at the residence owns, rents, or occupies the residence under a legally enforceable agreement under which the individual has, at a minimum, the same responsibilities and protections as tenants have under applicable landlord-tenant law;

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

(aa) has privacy in the individual's sleeping unit, including a lockable entrance door controlled by the individual;

(bb) shares a sleeping unit only if such individual and the individual sharing the unit choose to do so, and if individuals in the residence so choose, they also have a choice of roommates within the residence;

(cc) has the freedom to furnish and decorate the individual's sleeping or living unit as permitted under the lease or other agreement;

(dd) has the freedom and support to control the individual's own schedules and activities; and

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

(IV) that is physically accessible to the individual with an LTSS disability living at the residence.

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

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

(A) administration of medication;

(B) assistance with use, operation, and maintenance of a ventilator; and

(C) maintenance and use of a gastrostomy tube, a catheter, or a stable ostomy.

(6) INDIVIDUAL WITH A DISABILITY.—The term ''individual with a disability'' means an individual who is a person with a disability, as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

(7) INDIVIDUAL WITH AN LTSS DISABILITY.—The term ''individual with an LTSS disability'' means an individual with a disability who—

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

(i) activities of daily living;

(ii) instrumental activities of daily living;

(iii) health-related tasks; or

(iv) other functions, tasks, or activities related to an activity or task described in clause (i), (ii), or (iii); and

(B)(i) is currently in an institutional placement; or

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

(8) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—

(A) IN GENERAL.—The term ''instrumental activities of daily living'' means one or more activities related to living independently in the community, including activities related to—

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

(ii) household chores and environmental maintenance tasks;

(iii) communication and interpersonal skills, such as—

(I) using the telephone or other communications devices;

(II) forming and maintaining interpersonal relationships; or

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

(iv) travel and community participation, such as shopping, arranging appointments, or moving around the community;

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

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

(I) taking medication;

(II) handling or managing money; or

(III) responding to emergent situations or unscheduled needs requiring an immediate response.

(B) ASSISTANCE.—The term ''assistance'' used with respect to instrumental activities of daily living, includes support provided to an individual by another person due to confusion, dementia, behavioral symptoms, or cognitive, intellectual, mental, or emotional disabilities, including support to—

(i) help the individual identify and set goals, overcome fears, and manage transitions;

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

(iii) provide reassurance to the individual; and

(iv) help the individual with orientation, memory, and other activities related to independent living.

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

(A) activities of daily living;

(B) instrumental activities of daily living;

(C) health-related tasks; or

(D) other functions, tasks, or activities related to an activity or task described in subparagraph (A), (B), or (C).

(10) LTSS INSURANCE PROVIDER.—The term ''LTSS insurance provider'' means a public or private entity that—

(A) provides funds for long-term services and supports; and

(B) is engaged in commerce or in an industry or activity affecting commerce.

(11) PUBLIC ENTITY.—

(A) IN GENERAL.—The term ''public entity'' means an entity that—

(i) provides or funds institutional placements for individuals with LTSS disabilities; and

(ii) is—

(I) a State or local government; or

(II) any department, agency, entity administering a special purpose district, or other instrumentality, of a State or local government.

(B) INTERSTATE COMMERCE.—For purposes of subparagraph (A), a public entity shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a)(2) or any other provision of this section shall be construed to preclude an individual with a disability from receiving community-based services and supports in an integrated community setting such as a grocery store, retail establishment, restaurant, bank, park, concert venue, theater, or workplace.

SEC. 4. DISCRIMINATION.

(a) IN GENERAL.—No public entity or LTSS insurance provider shall deny an individual with an LTSS disability who is eligible for institutional placement, or otherwise discriminate against that individual in the provision of, community-based long-term services and supports that enable the individual to live in the community and lead an independent life.

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

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

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

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

(4) the imposition or application of a policy, rule, regulation, or restriction that interferes with the opportunity for an individual with an LTSS disability, or any class of individuals with LTSS disabilities, to live in the community and lead an independent life, which may include a requirement that an individual with an LTSS disability receive a service or support (such as day services or employment services) in a congregate or disability-specific setting;

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

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

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

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

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

(A) individuals with LTSS disabilities are offered the alternative of community-based long-term services and supports prior to institutionalization; and

(B) if selected by an individual with an LTSS disability, the community-based long-term services and supports described in subparagraph (A) are provided;

(10) a failure to ensure that each institutionalized individual with an LTSS disability is regularly notified of the alternative of community-based long-term services and supports and that those community-based long-term services and supports are provided if the individual with an LTSS disability selects such services and supports; and

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

(c) ADDITIONAL PROHIBITION.—For purposes of this Act, discrimination by a public entity also includes a failure to ensure that there is sufficient availability of affordable, accessible, and integrated housing to allow an individual with an LTSS disability to choose to live in the community and lead an independent life, including the availability of an option to live in housing where the receipt of LTSS is not tied to tenancy.

(d) CONSTRUCTION.—Nothing in this section—

(1) shall be construed—

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

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

(2) shall be construed to affect the scope of obligations imposed by any other provision of law; or

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

SEC. 5. ADMINISTRATION.

(a) AUTHORITY AND RESPONSIBILITY.—

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

(A) investigate and take enforcement action for violations of this Act; and

(B) enforce section 6(c).

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

(A) conduct studies regarding the nature and extent of institutionalization of individuals with LTSS disabilities in representative communities, including urban, suburban, and rural communities, throughout the United States;

(B) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to Congress, specifying—

(i) the nature and extent of progress in the United States in eliminating institutionalization for individuals with LTSS disabilities in violation of this Act and furthering the purposes of this Act;

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

(iii) recommendations for further legislative or executive action;

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

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

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

(b) COOPERATION OF EXECUTIVE DEPARTMENTS AND AGENCIES.—Each Federal agency and, in particular, each Federal agency covered by Executive Order 13217 (66 Fed. Reg. 33155; relating to community-based alternatives for individuals with disabilities), shall carry out programs and activities relating to the institutionalization of individuals with LTSS disabilities and the provision of community-based long-term services and supports for individuals with LTSS disabilities in accordance with this Act and shall cooperate with the Attorney General and the Administrator to further the purposes of this Act.

SEC. 6. REGULATIONS.

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

(b) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations shall require each public entity and LTSS insurance provider to offer, and, if accepted, provide community-based long-term services and supports as required under this Act to any individual with an LTSS disability who would otherwise qualify for institutional placement provided or funded by the public entity or LTSS insurance provider.

(2) SERVICES TO BE PROVIDED.—The regulations issued under this section shall require each public entity and LTSS insurance provider to provide the Attorney General and the Administrator with an assurance that

the public entity or LTSS insurance provider—

(A) ensures that individuals with LTSS disabilities receive assistance through hands-on assistance, training, cueing, and safety monitoring, including access to backup systems, with—

(i) activities of daily living;

(ii) instrumental activities of daily living;

(iii) health-related tasks; or

(iv) other functions, tasks, or activities related to an activity or task described in clause (i), (ii), or (iii);

(B) coordinates, conducts, performs, provides, or funds discharge planning from acute, rehabilitation, and long-term facilities to promote individuals with LTSS disabilities living in the most integrated setting chosen by the individuals;

(C) issues, conducts, performs, provides, or funds policies and programs to promote self-direction and the provision of consumer-directed services and supports for all populations of individuals with LTSS disabilities served;

(D) issues, conducts, performs, provides, or funds policies and programs to support informal caregivers who provide services for individuals with LTSS disabilities; and

(E) ensures that individuals with all types of LTSS disabilities are able to live in the community and lead an independent life, including ensuring that the individuals have maximum control over the services and supports that the individuals receive, choose the setting in which the individuals receive those services and supports, and exercise control and direction over their own lives.

(3) PUBLIC PARTICIPATION.—

(A) PUBLIC ENTITY.—The regulations issued under this section shall require each public entity to carry out an extensive public participation process in preparing the public entity's self-evaluation under paragraph (5) and transition plan under paragraph (10).

(B) LTSS INSURANCE PROVIDER.—The regulations issued under this section shall require each LTSS insurance provider to carry out a public participation process that involves holding a public hearing, providing an opportunity for public comment, and consulting with individuals with LTSS disabilities, in preparing the LTSS insurance provider's self-evaluation under paragraph (5).

(C) PROCESS.—In carrying out a public participation process under subparagraph (A) or (B), a public entity or LTSS insurance provider shall ensure that the process meets the requirements of subparagraphs (A) and (C) of section 1115(d)(2) of the Social Security Act (42 U.S.C. 1315(d)(2)), except that—

(i) the reference to ''at the State level'' shall be disregarded; and

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

(4) ADDITIONAL SERVICES AND SUPPORTS.—The regulations issued under this section shall establish circumstances under which a public entity shall provide community-based long-term services and supports under this section beyond the level of community-based long-term services and supports which would otherwise be required under this subsection.

(5) SELF-EVALUATION.—

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

(i) collection of baseline information, including the numbers of individuals with LTSS disabilities in various institutional and community-based settings served by the public entity or LTSS insurance provider;

(ii) a review of community capacity, in communities served by the entity or provider, in providing community-based long-term services and supports;

(iii) identification of improvements needed to ensure that all community-based long-term services and supports provided by the public entity or LTSS insurance provider to individuals with LTSS disabilities are comprehensive, are accessible, are not duplicative of existing (as of the date of the identification) services and supports, meet the needs of persons who are likely to require assistance in order to live, or lead a life, as described in section 4(a), and are high-quality services and supports, which may include identifying system improvements 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

(II) an assessment of the availability of integrated employment opportunities in the jurisdiction served by the public entity for individuals with LTSS disabilities; and

(ii) provide the self-evaluation described in subparagraph (A) to the Attorney General and the Administrator.

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

(6) ADDITIONAL REQUIREMENT FOR PUBLIC ENTITIES.—The regulations issued under this section shall require a public entity, in conjunction with the housing agencies serving the jurisdiction served by the public entity, to review and improve community capacity, in all communities throughout the entirety of that jurisdiction, in providing affordable, accessible, and integrated housing, including an evaluation of available units, unmet need, and other identifiable barriers to the provision of that housing. In carrying out that improvement, the public entity, in conjunction with such housing agencies, shall—

(A) ensure, and assure the Administrator and the Attorney General that there is, sufficient availability of affordable, accessible, and integrated housing in a setting that is not a disability-specific residential setting or a setting where services are tied to tenancy, in order to provide individuals with LTSS disabilities a meaningful choice in their housing;

(B) in order to address the need for affordable, accessible, and integrated housing—

(i) in the case of such a housing agency, establish relationships with State and local housing authorities; and

(ii) in the case of the public entity, establish relationships with State and local housing agencies, including housing authorities;

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

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

(E) ensure, and assure the Administrator and the Attorney General, that funds and programs implemented or overseen by the public entity or in the public entity's jurisdiction are targeted toward affordable, accessible, integrated housing for individuals with an LTSS disability who have the lowest income levels in the jurisdiction as a priority over any other development until capacity barriers for such housing are removed or unmet needs for such housing have been met.

(7) DESIGNATION OF RESPONSIBLE EMPLOYEE.—The regulations issued under this section shall require each public entity and LTSS insurance provider to designate at least one employee to coordinate the entity's or provider's efforts to comply with and carry out the entity or provider's responsibilities under this Act, including the investigation of any complaint communicated to the entity or provider that alleges a violation of this Act. Each public entity and LTSS insurance provider shall make available to all interested individuals the name, office address, and telephone number of the employee designated pursuant to this paragraph.

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

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

(10) TRANSITION PLANS.—The regulations issued under this section shall require each public entity, not later than 42 months after the date of enactment of this Act, to submit to the Administrator, and begin implementing, a transition plan for carrying out this Act that establishes the achievement of the requirements of this Act, as soon as practicable, but in no event later than 12 years after the date of enactment of this Act. The transition plan shall—

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

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

(C) describe specific efforts to support individuals with LTSS disabilities to avoid unwanted institutionalization through the provision of LTSS; and

(D) describe the manner in which the public entity has obtained or plans to obtain necessary funding and resources needed for implementation of the plan (regardless of whether the entity began carrying out the objectives of this Act prior to the date of enactment of this Act).

(11) ANNUAL REPORTING.—

(A) IN GENERAL.—The regulations issued under this section shall establish annual reporting requirements for each public entity covered by this section.

(B) PROGRESS ON OBJECTIVES, TARGETS, AND EFFORTS.—The regulations issued under this section shall require each public entity that has submitted a transition plan to submit to the Administrator an annual report on the progress the public entity has made during the previous year in meeting the measurable objectives, specific annual targets, and specific efforts described in paragraph (10).

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

(c) REVIEW OF TRANSITION PLANS.—

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

(2) DISAPPROVAL.—If the Administrator determines that a transition plan reviewed under this subsection fails to meet the requirements of this Act, the Administrator shall disapprove the transition plan and notify the public entity that submitted the transition plan of, and the reasons for, such disapproval.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a transition plan under this subsection, the public entity that submitted the transition plan shall modify the transition plan to meet the requirements of this section and shall submit to the Administrator, and commence implementation of, such modified transition plan.

(4) INCENTIVES.—

(A) DETERMINATION.—For 10 years after the issuance of the regulations described in subsection (a), the Secretary of Health and Human Services shall annually determine whether each State, or each other public entity in the State, is complying with the transition plan or modified transition plan the State or other public entity submitted, and obtained approval for, under this section. Notwithstanding any other provision of law, if the Secretary of Health and Human Services determines under this subparagraph that the State or other public entity is complying with the corresponding transition plan, the Secretary shall make the increase described in subparagraph (B).

(B) INCREASE IN FMAP.—On making the determination described in subparagraph (A) for a public entity (including a State), the Secretary of Health and Human Services shall, as described in subparagraph (C), increase by 5 percentage points the FMAP (but shall in no event increase the FMAP above 100 percent) for the State in which the public entity is located for amounts expended by the State for medical assistance consisting of home and community-based services furnished under the 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) that—

(I) are identified by a public entity or LTSS insurance provider under subsection (b)(5)(A)(iii);

(II) resulted from shifts in funding identified by a public entity under subsection (b)(10)(B); or

(III) are environmental modifications to achieve the affordable, accessible, integrated housing identified by a public entity under subsection (b)(6)(E); and

(ii) are described by the State in a request to the Secretary of Health and Human Services for the increase.

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

(i) beginning with the first quarter that begins after the date of the determination; and

(ii) ending with the quarter in which the next annual determination under subparagraph (A) occurs.

(D) ADDITIONAL CONDITION FOR PAYMENT.—

(i) STATE REPORT.—As a condition for the receipt of a payment based on an increase described in subparagraph (B) with respect to amounts to be expended by the State for medical assistance consisting of home and community-based services described in subparagraph (B), the State shall report to the Secretary, for the reporting year, the amount of funds expended by the State for home and community-based services (as defined in subparagraph (E)(ii)) in that year. The State shall make the report in a format developed or approved by the Secretary.

(ii) REDUCTION IN PAYMENT IF FAILURE TO MAINTAIN EFFORT.—If the amount reported under clause (i) by a State with respect to a reporting year is less than the amount reported under clause (i) with respect to the previous fiscal year or fiscal year 2019, whichever was the greater reported amount, the Secretary shall provide for a reduction in the payment to the State based on the increase.

(E) DEFINITIONS.—In this paragraph:

(i) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage for a State determined under section 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 with section 1915(j) of the Social Security Act (42 U.S.C. 1396n(j)).

(VI) Community-based attendant services and supports provided in accordance with section 1915(k) of the Social Security Act (42 U.S.C. 1396n(k)).

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

(iii) REPORTING YEAR.—The term ''reporting year'' means the most recent fiscal year preceding the date of a report under subparagraph (D)(i).

(d) RULE OF CONSTRUCTION.—Nothing in subsection (b)(10) or (c) or any other provision of this Act shall be construed to limit the rights, protections, or requirements of any other Federal law, relating to integration of individuals with disabilities into the community and enabling those individuals to live in the most integrated setting.

SEC. 7. EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS.

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

SEC. 8. ENFORCEMENT.

(a) CIVIL ACTION.—

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

(2) AGGRIEVED INDIVIDUAL.—

(A) IN GENERAL.—The remedies and procedures set forth in this section are the remedies and procedures this Act provides to any individual who is being subjected to a violation of this Act, or who has reasonable grounds for believing that such individual is about to be subjected to such a violation.

(B) STANDING.—An individual with a disability shall have standing to institute a civil action under this subsection if the individual makes a prima facie showing that the individual—

(i) is an individual with an LTSS disability; and

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

(3) APPOINTMENT OF ATTORNEY; NO FEES, COSTS, OR SECURITY.—Upon application by the complainant described in paragraph (2) and in such circumstances as the court may determine to be just, the court may appoint an attorney for the complainant and may authorize the commencement of such civil action without the payment of fees, costs, or security.

(4) FUTILE GESTURE NOT REQUIRED.—Nothing in this section shall require an individual with an LTSS disability to engage in a futile gesture if such person has actual notice that a public entity or LTSS insurance provider does not intend to comply with the provisions of this Act.

(b) DAMAGES AND INJUNCTIVE RELIEF.—If the court finds that a violation of this Act has occurred or is about to occur, the court may award to the complainant—

(1) actual and punitive damages;

(2) immediate injunctive relief to prevent institutionalization;

(3) as the court determines to be appropriate, any permanent or temporary injunction (including an order to immediately provide or maintain community-based long-term services or supports for an individual to prevent institutionalization or further institutionalization), temporary restraining order, or other order (including an order enjoining the defendant from engaging in a practice that violates this Act or ordering such affirmative action as may be appropriate); and

(4) in an appropriate case, injunctive relief to require the modification of a policy, practice, or procedure, or the provision of an alternative method of providing LTSS, to the extent required by this Act.

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

(d) ENFORCEMENT BY ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—The Attorney General shall investigate alleged violations of this Act, and shall undertake periodic reviews of the compliance of public entities and LTSS insurance providers under this Act.

(B) POTENTIAL VIOLATION.—The Attorney General may commence a civil action in any

appropriate Federal district court if the Attorney General has reasonable cause to believe that—

(i) any public entity or LTSS insurance provider, including a group of public entities or LTSS insurance providers, is engaged in a pattern or practice of violations of this Act; or

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

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

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this Act—

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

(ii) requiring the modification of a policy, practice, or procedure, or the provision of an alternative method of providing LTSS;

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

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

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

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

(3) SINGLE VIOLATION.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the public entity or LTSS insurance provider has engaged in more than one violation of this Act shall be counted as a single violation.

SEC. 9. CONSTRUCTION.

For purposes of construing this Act—

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

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

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

(4) section 8(a)(2) shall be construed in a manner that takes into account its similarities with section 308(a)(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12188(a)(1)); and

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

By Mrs. FEINSTEIN (for herself, Ms. HARRIS, Ms. WARREN, Mr. MENENDEZ, and Mr. MARKEY):

S. 127. A bill to direct the Secretary of Veterans Affairs to seek to enter into an agreement with the city of Vallejo, California, for the transfer of Mare Island Naval Cemetery in Vallejo, California, and for other purposes; to the Committee on Veterans' Affairs.

Mrs. FEINSTEIN. Mr. President, today I am proud to reintroduce the Mare Island Naval Cemetery Transfer Act, which would transfer control of the Mare Island Naval Cemetery from the City of Vallejo in California to the Department of Veterans Affairs (VA) where it belongs.

The Mare Island Naval Cemetery is the oldest military cemetery on the West Coast. Opened in 1856, it was originally part of Mare Island Naval Shipyard, the first U.S. naval base established on the Pacific Ocean. The historic cemetery is the final resting place for 860 veterans and their loved ones, including three Medal of Honor recipients. Anna Arnold Key, the daughter of Francis Scott Key, is also buried there, next to her husband who fought in the War of 1812. After the base closed in 1996, the nearby City of Vallejo assumed control of the naval property and cemetery.

Unfortunately, the city doesn't have the necessary funds to properly care for the cemetery. The city is also ineligible for VA support since it's not part of the State or Federal government. The maintenance, therefore, is left to volunteers with limited resources who lack the expertise necessary to maintain this historic cemetery.

The cemetery has fallen into disrepair and is no longer a fitting tribute to the brave men and women buried there. Gravestones are toppled over, broken, or sinking into the ground. Plants and weeds are overgrown, and water is pooling due to the lack of proper drainage. The cemetery's current condition requires urgent action to restore the gravestones and grounds to a respectable condition. Our bill would accomplish this by transferring control to the VA's National Cemetery Administration.

The transfer would not only allow the VA to restore the cemetery, but also ensure it's maintained for future generations to pay their respects to the heroes buried there. I want to thank Congressman MIKE THOMPSON (D–CA) for leading this effort in the House. Passing this bill would be a small, but important, token of our gratitude to the veterans to whom we owe so much.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 18—AUTHORIZING THE SENATE LEGAL COUNSEL TO REPRESENT THE SENATE IN TEXAS V. UNITED STATES NO. 4:18–CV–00167–O (N.D. TEX.)

Mr. MANCHIN (for himself, Ms. ROSEN, Mr. CASEY, Mr. TESTER, Mr. BROWN, Ms. CORTEZ MASTO, Mr. WARNER, Mr. VAN HOLLEN, Ms. BALDWIN, Ms. CANTWELL, Mr. WHITEHOUSE, Mr. REED, Ms. HARRIS, Ms. HIRONO, Ms. DUCKWORTH, Mr. WYDEN, Ms. HASSAN, Mr. KING, Mr. MARKEY, Mr. SCHUMER, Mr. LEAHY, Mrs. MURRAY, Mr. UDALL, Mr. DURBIN, Ms. SMITH, Mr. BOOKER, Mr. BLUMENTHAL, Mr. BENNET, Ms. KLOBUCHAR, Mr. COONS, Mr. SCHATZ, Mr. MENENDEZ, Mr. JONES, Mr. HEINRICH, Ms. STABENOW, Ms. WARREN, Mr. MURPHY, Mr. KAINE, Mr. SANDERS, Mrs. GILLIBRAND, Mrs. SHAHEEN, Mr. MERKLEY, Mr. PETERS, Mr. CARDIN, Mrs. FEINSTEIN, Ms. SINEMA, and Mr. CARPER) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 18

Whereas Texas, Wisconsin, Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Paul LePage (Governor of Maine), Mississippi (by and through Governor Phil Bryant), Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah, West Virginia, and individual plaintiffs have filed suit in the United States District Court for the Northern District of Texas, arguing that the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152; 124 Stat. 1029) are unconstitutional and should be enjoined, by asserting that the requirement under those Acts to maintain minimum essential coverage (commonly known as the ''individual responsibility provision'') in section 5000A of the Internal Revenue Code of 1986 is unconstitutional following the amendment of that provision by the Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (Public Law 115–97; 131 Stat. 2054) (commonly known as the ''Tax Cuts and Jobs Act'');

Whereas these State and individual plaintiffs also seek to strike down the entire Patient Protection and Affordable Care Act as not severable from the individual responsibility provision;

Whereas, on June 7, 2018, the Department of Justice refused to defend the constitutionality of the amended individual responsibility provision, despite the well-established duty of the Department to defend Federal statutes where reasonable arguments can be made in their defense;

Whereas the Department of Justice not only refused to defend the amended individual responsibility provision, but it affirmatively argued that this provision is unconstitutional and that the provisions of the Patient Protection and Affordable Care Act guaranteeing issuance of insurance coverage regardless of health status or pre-existing conditions (commonly known as the ''guaranteed issue provision''), sections 2702, 2704, and 2705(a) of the Public Health Service Act (42 U.S.C. 300gg–1, 300gg–3, 300gg–4(a)), and prohibiting discriminatory premium rates (commonly known as the ''community rating provision''), sections 2701 and 2705(b) of the Public Health Service Act (42 U.S.C. 300gg(a)(1), 300gg–4(b)), must now be struck down as not severable from the individual responsibility provision; and

Whereas the district court in Texas v. United States, No. 4:18–cv–00167–O (N.D. Tex.) issued an order on December 14, 2018 declaring that the individual responsibility provision in section 5000A of the Internal Revenue Code of 1986 is unconstitutional and that all the provisions of the Patient Protection and Affordable Care Act are not severable and therefore are invalid: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the Senate in Texas v. United States, No. 4:18–cv–00167–O (N.D. Tex.), including seeking to—

(1) intervene as a party in the matter and any appellate or related proceedings; and

(2) defend all provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, the amendments made by those Acts to other provisions of law, and any amendments to such provisions, including