To ensure that Medicaid beneficiaries have the opportunity to receive care in a home and community-based setting.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2014

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To ensure that Medicaid beneficiaries have the opportunity to receive care in a home and community-based setting.

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 “Community Integration Act of 2014”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Supreme Court’s 1999 decision in Olmstead v. L.C., 527 U.S. 581 (1999), held that the unnecessary segregation of individuals with dis-
abilities is a violation of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(2) Under Olmstead, individuals generally have the right to receive their supports and services in home and community-based settings, rather than in institutional settings, if they so choose.

(3) Olmstead envisioned that States would provide appropriate long-term services and supports to individuals with disabilities through home and community-based services and end forced segregation in nursing homes and other institutions.

(4) While there has been progress in rebalancing State spending on individuals with disabilities in institutions as compared to home and community-based settings, more than 75 percent of States continue to spend the majority of their long-term care dollars on nursing homes and other institutional settings, and the number of individuals with disabilities under age 65 in nursing homes increased between 2008 and 2012.

(5) As of June 2013, there were more than 200,000 individuals younger than age 65 in nursing homes—almost 16 percent of the total nursing home population.
(6) Thirty-eight studies published from 2005 to 2012 concluded that providing services in home and community-based settings is less costly than providing care in a nursing home or other institutional setting.

(7) No clear or centralized reporting system exists to compare how effectively States are meeting the Olmstead mandate.

SEC. 3. ENSURING MEDICAID BENEFICIARIES MAY ELECT TO RECEIVE CARE IN A HOME AND COMMUNITY-BASED SETTING.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (80), by striking “and” at the end;

(2) in paragraph (81), by striking the period and inserting “; and”;

(3) by inserting after paragraph (81) the following new paragraph:

“(82) in the case of any individual with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or other similarly restrictive or institutional setting—
“(A) provide the individual with the choice and opportunity to receive such care in a home and community-based setting, including rehabilitative services, assistance and support in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks, and assistance in acquiring, maintaining, or enhancing skills necessary to accomplish such activities, tasks, or services;

“(B) ensure that each such individual has an equal opportunity (when compared to the receipt and availability of nursing facility services) to receive care in a home and community-based setting, if the individual so chooses, by ensuring that the provision of such care in a home and community-based setting is widely available on a statewide basis for all such individuals within the State; and

“(C) meet the requirements of section 1904A (relating to the provision of care in a home and community-based setting).”.

(b) REQUIREMENTS FOR COMMUNITY CARE OPTIONS.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1904 the following new section:
“SEC. 1904A. (a) DEFINITIONS.—For purposes of this section, section 1902(a)(82), and section 1905(a)(4)(A):

“(1) ACTIVITIES OF DAILY LIVING.—The term ‘activities of daily living’ includes, but is not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

“(2) HEALTH-RELATED TASKS.—The term ‘health-related tasks’ means specific tasks related to the needs of an individual, including, but not limited to, bowel or bladder care, wound care, use and care of ventilators and feeding tubes, and the administration of medications and injections, which, in the opinion of the individual’s physician, can be delegated to be performed by an attendant.

“(3) HOME AND COMMUNITY-BASED SETTING.—The term ‘home and community-based setting’ means, with respect to an individual who requires a level of care provided in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or other similarly restrictive or institutional setting, a setting that—
“(A) includes a house, apartment, townhouse, condominium, or similar public or private housing where the individual resides that—

“(i) is owned or leased by the individual or a member of the individual’s family;

“(ii) ensures the individual’s privacy, dignity, respect, and freedom from coercion; and

“(iii) maximizes the individual’s autonomy and independence;

“(B) is integrated in, and provides access to, the general community in which the setting is located so that the individual has access to the community and opportunities to seek employment and work in competitive integrated settings, participate in community life, control and utilize personal resources, benefit from community services, and participate in the community in an overall manner that is comparable to that available to individuals who are not individuals with disabilities; and

“(C) has the services and supports that the individual needs in order to live as independently as possible.
“(4) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term ‘instrumental activities of daily living’ means activities related to living independently in the community and includes, but is not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other items, performing household chores, communicating by phone or other media, and traveling around and participating in the community.

“(5) PUBLIC ENTITY.—The term ‘public entity’ means a public entity as defined in subparagraphs (A) and (B) of section 201(1) of the Americans with Disabilities Act of 1990.

“(b) REQUIREMENTS FOR PROVIDING SERVICES IN HOME AND COMMUNITY-BASED SETTINGS.—With respect to the availability and provision of services under the State plan under this title, or under any waiver of State plan requirements (subject to section 3(d) of the Community Integration Act of 2014), in a home and community-based setting to any individual who requires a level of care provided in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or other similarly restrictive or institutional setting, any public entity that receives payment under the State plan or
waiver for providing services to such an individual shall not—

“(1) impose or utilize policies, practices, or procedures, such as unnecessary requirements or arbitrary service or cost caps, that limit the availability of services in home and community-based settings to an individual with a disability (including individuals with the most significant disabilities) who need such services;

“(2) impose or utilize policies, practices, or procedures that limit the availability of services in a home and community-based setting (including assistance and support in accomplishing activities of daily living, instrumental activities of daily living, health-related tasks, and rehabilitative services) based on the specific disability of an otherwise eligible individual;

“(3) impose or utilize policies, practices, or procedures that arbitrarily restrict an individual with a disability from full and meaningful participation in community life;

“(4) impose or utilize policies, practices, or procedures that unnecessarily delay or restrict the provision of services in a home and community-based setting to any individual who requires such services;
“(5) fail to establish and utilize adequate payment structures to maintain a sufficient workforce to provide services in home and community-based settings to any individual who requires such services;

“(6) fail to provide information, on an ongoing basis, to help any individual who receives care in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or other similarly restrictive or institutional setting, understand the individual’s right to choose to receive such care in a home and community-based setting; or

“(7) fail to provide information to help any individual that requires the level of care provided in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or other similarly restrictive or institutional setting, prior to the individual’s placement in such a facility or institution, understand the individual’s right to choose to receive such care in a home and community-based setting.

“(c) PLAN TO INCREASE AFFORDABLE AND ACCESSIBLE HOUSING.—Not later than 180 days after the enactment of this section, each State shall develop a statewide plan to increase the availability of affordable and ac-
cessible private and public housing stock for individuals with disabilities (including accessible housing for individuals with physical disabilities and those using mobility devices).

“(d) Availability of Remedies and Procedures.—

“(1) In general.—The remedies and procedures set forth in sections 203 and 505 of the Americans with Disabilities Act of 1990 shall be available to any person aggrieved by the failure of—

“(A) a State to comply with this section or section 1902(a)(82); or

“(B) a public entity (including a State) to comply with the requirements of subsection (b).

“(2) Rule of construction.—Nothing in paragraph (1) shall be construed to limit any remedy or right of action that otherwise is available to an aggrieved person under this title.

“(e) Enforcement by the Secretary.—

“(1) In general.—The Secretary may reduce the Federal matching assistance percentage applicable to the State (as determined under section 1905(b)) if the Secretary determines that the State has violated the requirements of subsection (b).
“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to limit any remedy or right of action that is otherwise available to the Secretary.

“(f) REPORTING REQUIREMENTS.—With respect to fiscal year 2016, and for each fiscal year thereafter, each State shall submit to the Administrator of the Administration for Community Living of the Department of Health and Human Services, not later than April 1 of the succeeding fiscal year, a report, in such form and manner as the Secretary shall require, that includes—

“(1) the total number of individuals enrolled in the State plan or under a waiver of the plan during such fiscal year that required the level of care provided in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or other similarly restrictive or institutional setting, disaggregated by the type of facility or setting;

“(2) with respect to the total number described in paragraph (1), the total number of individuals described in that paragraph who received care in a nursing facility, intermediate care facility for the mentally retarded, institution for mental disease, or
other similarly restrictive or institutional setting, 
disaggregated by the type of facility or setting; and 

“(3) with respect to the total number described 
in paragraph (2), the total number of individuals de-
scribed in that paragraph who were transitioned 
from a nursing facility, intermediate care facility for 
the mentally retarded, institution for mental disease, 
or other similarly restrictive or institutional setting 
to a home and community-based setting, disaggre-
gated by the type of home and community-based set-
ting.”.

(c) INCLUSION AS A MANDATORY SERVICE.—Section 
1905(a)(4)(A) of the Social Security Act (42 U.S.C. 
1396d(a)(4)(A)) is amended by striking “other than” and 
inserting “including similar services such as rehabilitative 
services and assistance and support in accomplishing ac-
tivities of daily living, instrumental activities of daily liv-
ing, and health-related tasks, that are provided, at the in-
dividual’s option, in a home and community-based setting 
(as defined in section 1904A(a)(3)), but not including”.

(d) APPLICATION TO WAIVERS.—Notwithstanding 
section 1904A of the Social Security Act (as added by sub-
section (b)), such section, and sections 1902(a)(82), and 
1905(a)(4)(A) of the Social Security Act (42 U.S.C. 1396 
et seq.), as amended by subsections (a) and (e), respec-
tively, shall not apply to any individuals who are eligible for medical assistance for home and community-based services under a waiver under section 1115 or 1915 of the Social Security Act (42 U.S.C. 1315, 1396n) and who are receiving such services, to the extent such sections (as so added or amended) are inconsistent with any such waiver.

(c) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 2014.

(2) Delay permitted if state legislation required.—In the case of a State plan under section 1902 of the Social Security Act (42 U.S.C. 1396a) which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such section 1902 solely on the basis of the failure of the plan to meet such additional requirements before the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins...
after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.