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1ST SESSION

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

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2017

Mr. SCHUMER (for himself, Mr. CASEY, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Disability Integration
5 Act of 2017”.

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

1 community and supports, for each indi-
2 vidual with an LTSS disability who re-
3 ceives services or supports at the setting—

4 (I) full access to the greater com-
5 munity (including access to opportuni-
6 ties to seek employment and work in
7 competitive integrated settings, en-
8 gage in community life, control per-
9 sonal resources, and receive services
10 in the community); and

11 (II) access to the greater commu-
12 nity to the same extent as access to
13 the community is enjoyed by an indi-
14 vidual who is not receiving long-term
15 services or supports;

16 (ii) that the individual has selected as
17 a meaningful choice from among nonresi-
18 dential setting options, including nondis-
19 ability-specific settings;

20 (iii) in which an individual has rights
21 to privacy, dignity, and respect, and free-
22 dom from coercion and restraint;

23 (iv) that, as a matter of infrastruc-
24 ture, environment, amenities, location,
25 services, and features, optimizes, but does

1 not regiment, individual initiative, auton-
2 omy, and independence in making life
3 choices, including choices about daily ac-
4 tivities, physical environment, and persons
5 with whom the individual interacts; and

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

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

13 (i) that is owned by an individual with
14 an LTSS disability or the individual's fam-
15 ily member;

16 (ii) that is leased to the individual
17 with an LTSS disability under an indi-
18 vidual lease, that has lockable access and
19 egress, and that includes living, sleeping,
20 bathing, and cooking areas over which an
21 individual with an LTSS disability or the
22 individual's family member has domain
23 and control; or

24 (iii) that is a group or shared resi-
25 dence—

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; or

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

11 **SEC. 5. ADMINISTRATION.**

12 (a) **AUTHORITY AND RESPONSIBILITY.**—

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

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

17 (B) enforce section 6(c).

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

21 (A) conduct studies regarding the nature
 22 and extent of institutionalization of individuals
 23 with LTSS disabilities in representative com-
 24 munities, including urban, suburban, and rural
 25 communities, throughout the United States;

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

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

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

14 (iii) recommendations for further leg-
15 islative or executive action;

16 (C) cooperate with, and provide technical
17 assistance to, Federal, State, and local public or
18 private agencies and organizations that are for-
19 mulating or carrying out programs to prevent
20 or eliminate institutionalization of individuals
21 with LTSS disabilities or to promote the provi-
22 sion of community-based long-term services and
23 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 disabili-
18 ties 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-

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

5 (iv) a review of funding sources for
6 community-based long-term services and
7 supports and an analysis of how those
8 funding sources could be organized into a
9 fair, coherent system that affords individ-
10 uals reasonable and timely access to com-
11 munity-based long-term services and sup-
12 ports.

13 (B) PUBLIC ENTITY.—A public entity, in-
14 cluding an LTSS insurance provider that is a
15 public entity, shall—

16 (i) include in the self-evaluation de-
17 scribed in subparagraph (A)—

18 (I) an assessment of the avail-
19 ability of accessible, affordable trans-
20 portation across the State involved
21 and whether transportation barriers
22 prevent individuals from receiving
23 long-term services and supports in the
24 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; and

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

18 (11) ANNUAL REPORTING.—

19 (A) IN GENERAL.—The regulations issued
20 under this section shall establish annual report-
21 ing requirements for each public entity covered
22 by this section.

23 (B) PROGRESS ON OBJECTIVES AND TAR-
24 GETS.—The regulations issued under this sec-
25 tion shall require each public entity that has

1 submitted a transition plan to submit to the
2 Administrator an annual report on the progress
3 the public entity has made during the previous
4 year in meeting the measurable objectives and
5 specific annual targets described in subpara-
6 graphs (A) and (B) of paragraph (10).

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

13 (c) REVIEW OF TRANSITION PLANS.—

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

20 (2) DISAPPROVAL.—If the Administrator deter-
21 mines that a transition plan reviewed under this
22 subsection fails to meet the requirements of this Act,
23 the Administrator shall disapprove the transition
24 plan and notify the public entity that submitted the

1 transition plan of, and the reasons for, such dis-
2 approval.

3 (3) MODIFICATION OF DISAPPROVED PLAN.—

4 Not later than 90 days after the date of disapproval
5 of a transition plan under this subsection, the public
6 entity that submitted the transition plan shall mod-
7 ify the transition plan to meet the requirements of
8 this section and shall submit to the Administrator,
9 and commence implementation of, such modified
10 transition plan.

11 (4) INCENTIVES.—

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

1 plan, the Secretary shall make the increase de-
2 scribed in subparagraph (B).

3 (B) INCREASE IN FMAP.—On making the
4 determination described in subparagraph (A)
5 for a public entity (including a State), the Sec-
6 retary of Health and Human Services shall, as
7 described in subparagraph (C), increase by 5
8 percentage points the FMAP for the State in
9 which the public entity is located for amounts
10 expended by the State for medical assistance
11 consisting of home and community-based serv-
12 ices furnished under the State Medicaid plan
13 under title XIX of the Social Security Act (42
14 U.S.C. 1396 et seq.) or a waiver of such plan—

15 (i) that—

16 (I) are identified by a public enti-
17 ty or LTSS insurance provider under
18 subsection (b)(5)(A)(iii);

19 (II) resulted from shifts in fund-
20 ing identified by a public entity under
21 subsection (b)(10)(B); or

22 (III) are environmental modifica-
23 tions to achieve the affordable, acces-
24 sible, integrated housing identified by

1 a public entity under subsection
2 (b)(6)(E); and

3 (ii) are described by the State in a re-
4 quest to the Secretary of Health and
5 Human Services for the increase.

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

9 (i) beginning with the first quarter
10 that begins after the date of the deter-
11 mination; and

12 (ii) ending with the quarter in which
13 the next annual determination under sub-
14 paragraph (A) occurs.

15 (D) DEFINITIONS.—In this paragraph:

16 (i) FMAP.—The term “FMAP”
17 means the Federal medical assistance per-
18 centage for a State determined under sec-
19 tion 1905(b) of the Social Security Act (42
20 U.S.C. 1396d(b)) without regard to any in-
21 creases in that percentage applicable under
22 other subsections of that section or any
23 other provision of law, including this sec-
24 tion.

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

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

12 (II) Home health care services.

13 (III) Personal care services.

14 (IV) Services described in section
15 1905(a)(26) of the Social Security Act
16 (42 U.S.C. 1396d(a)(26)) (relating to
17 PACE program services).

18 (V) Self-directed personal assist-
19 ance services provided in accordance
20 with section 1915(j) of the Social Se-
21 curity Act (42 U.S.C. 1396n(j)).

22 (VI) Community-based attendant
23 services and supports provided in ac-
24 cordance with section 1915(k) of the

1 Social Security Act (42 U.S.C.
2 1396n(k)).

3 (VII) Rehabilitative services,
4 within the meaning of section
5 1905(a)(13) of the Social Security Act
6 (42 U.S.C. 1396d(a)(13)).

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

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

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

19 **SEC. 8. ENFORCEMENT.**

20 (a) CIVIL ACTION.—

21 (1) IN GENERAL.—A civil action for preventive
22 relief, including an application for a permanent or
23 temporary injunction, restraining order, or other
24 order, may be instituted by an individual described

1 in paragraph (2) in an appropriate Federal district
2 court.

3 (2) AGGRIEVED INDIVIDUAL.—

4 (A) IN GENERAL.—The remedies and pro-
5 cedures set forth in this section are the rem-
6 edies and procedures this Act provides to any
7 individual who is being subjected to a violation
8 of this Act, or who has reasonable grounds for
9 believing that such individual is about to be
10 subjected to such a violation.

11 (B) STANDING.—An individual with a dis-
12 ability shall have standing to institute a civil ac-
13 tion under this subsection if the individual
14 makes a prima facie showing that the indi-
15 vidual—

16 (i) is an individual with an LTSS dis-
17 ability; and

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

21 (3) APPOINTMENT OF ATTORNEY; NO FEES,
22 COSTS, OR SECURITY.—Upon application by the
23 complainant described in paragraph (2) and in such
24 circumstances as the court may determine to be just,
25 the court may appoint an attorney for the complain-

1 ant and may authorize the commencement of such
2 civil action without the payment of fees, costs, or se-
3 curity.

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

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

14 (1) actual and punitive damages;

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

17 (3) as the court determines to be appropriate,
18 any permanent or temporary injunction (including
19 an order to immediately provide or maintain commu-
20 nity-based long-term services or supports for an in-
21 dividual to prevent institutionalization or further in-
22 stitutionalization), temporary restraining order, or
23 other order (including an order enjoining the defend-
24 ant from engaging in a practice that violates this

1 Act or ordering such affirmative action as may be
2 appropriate); and

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

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

14 (d) ENFORCEMENT BY ATTORNEY GENERAL.—

15 (1) DENIAL OF RIGHTS.—

16 (A) DUTY TO INVESTIGATE.—The Attor-
17 ney General shall investigate alleged violations
18 of this Act, and shall undertake periodic reviews
19 of the compliance of public entities and LTSS
20 insurance providers under this Act.

21 (B) POTENTIAL VIOLATION.—The Attor-
22 ney General may commence a civil action in any
23 appropriate Federal district court if the Attor-
24 ney General has reasonable cause to believe
25 that—

1 (i) any public entity or LTSS insur-
2 ance provider, including a group of public
3 entities or LTSS insurance providers, is
4 engaged in a pattern or practice of viola-
5 tions of this Act; or

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

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

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

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

17 (ii) requiring the modification of a
18 policy, practice, or procedure, or the provi-
19 sion of an alternative method of providing
20 LTSS;

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

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

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

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

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

15 **SEC. 9. CONSTRUCTION.**

16 For purposes of construing this Act—

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

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

1 (3) section 7 shall be construed in a manner
2 that takes into account its similarities with section
3 807(a) of the Civil Rights Act of 1968 (42 U.S.C.
4 3607(a));

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

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

○