

116TH CONGRESS
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H. R. 555

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2019

Mr. SENSENBRENNER (for himself, Mr. DOGGETT, Ms. NORTON, Mr. WELCH, Mr. FITZPATRICK, Mr. CONNOLLY, Ms. TITUS, Mr. SERRANO, Mr. MORELLE, Mr. ESPAILLAT, Ms. DEAN, Mr. SUOZZI, Mr. CARBAJAL, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. MCGOVERN, Mr. KATKO, Mr. PERLMUTTER, Mr. DELGADO, Mr. HIGGINS of New York, Ms. MATSUI, Ms. WASSERMAN SCHULTZ, Ms. OCASIO-CORTEZ, Ms. DELAURO, Ms. DEGETTE, Mr. RASKIN, Ms. BARRAGÁN, Mr. CUMMINGS, Mr. LANGEVIN, Ms. SCHAKOWSKY, Miss RICE of New York, Mr. RUPPERSBERGER, Ms. STEFANIK, Ms. BONAMICI, Mr. CROW, Mr. ENGEL, Mr. TIPTON, Mr. PETERSON, Mr. CASTRO of Texas, Mrs. LAWRENCE, Mr. NEGUSE, and Mr. BRINDISI) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Disability Integration
3 Act of 2019”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

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

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

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

15 (B) intended that the ADA assure “full
16 participation” and “independent living” for in-
17 dividuals with disabilities by addressing “dis-
18 crimination against individuals with disabilities
19 [that] persists in critical areas”, including insti-
20 tutionalization.

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

1 (3) The holdings of the Supreme Court in
2 Olmstead v. L.C., 527 U.S. 581 (1999), and com-
3 panion cases, have clearly articulated that individ-
4 uals with disabilities have a civil right under the
5 ADA to participate in society as equal citizens. How-
6 ever, many States still do not provide sufficient com-
7 munity-based long-term services and supports to in-
8 dividuals with disabilities to end segregation in insti-
9 tutions.

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

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

1 (6) States have not consistently planned to en-
2 sure sufficient services and supports for individuals
3 with disabilities, including those with the most sig-
4 nificant disabilities, to enable individuals with dis-
5 abilities to live in the most integrated setting. As a
6 result, many individuals with disabilities who reside
7 in institutions are prevented from residing in the
8 community and individuals with disabilities who are
9 not in institutions find themselves at risk of institu-
10 tional placement.

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

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

19 (1) to clarify and strengthen the ADA’s inte-
20 gration mandate in a manner that accelerates State
21 compliance;

22 (2) to clarify that every individual who is eligi-
23 ble for long-term services and supports has a feder-
24 ally protected right to be meaningfully integrated

1 into that individual's community and receive commu-
2 nity-based long-term services and supports;

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

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

17 (5) to establish a requirement for clear and uni-
18 form annual public reporting by States that includes
19 reporting about—

20 (A) the number of individuals with disabil-
21 ities who are served in the community and the
22 number who are served in institutions; and

23 (B) the number of individuals with disabil-
24 ities who have transitioned from an institution
25 to a community-based living situation, and the

1 type of community-based living situation into
2 which those individuals have transitioned.

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

4 (a) DEFINITIONS.—In this Act:

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

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

11 (A) the Administrator of the Administra-
12 tion for Community Living; or

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

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

24 (A) In the case of a dwelling or a nonresi-
25 dential setting (such as a setting in which an

1 individual with an LTSS disability receives day
2 services and supported employment), a dwelling
3 or setting—

4 (i) that, as a matter of infrastructure,
5 environment, amenities, location, services,
6 and features, is integrated into the greater
7 community and supports, for each indi-
8 vidual with an LTSS disability who re-
9 ceives services or supports at the setting—

10 (I) full access to the greater com-
11 munity (including access to opportuni-
12 ties to seek employment and work in
13 competitive integrated settings, en-
14 gage in community life, control per-
15 sonal resources, and receive services
16 in the community); and

17 (II) access to the greater commu-
18 nity to the same extent as access to
19 the community is enjoyed by an indi-
20 vidual who is not receiving long-term
21 services or supports;

22 (ii) that the individual has selected as
23 a meaningful choice from among nonresi-
24 dential setting options, including nondis-
25 ability-specific settings;

1 (iii) in which an individual has rights
2 to privacy, dignity, and respect, and free-
3 dom from coercion and restraint;

4 (iv) that, as a matter of infrastruc-
5 ture, environment, amenities, location,
6 services, and features, optimizes, but does
7 not regiment, individual initiative, auton-
8 omy, and independence in making life
9 choices, including choices about daily ac-
10 tivities, physical environment, and persons
11 with whom the individual interacts; and

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

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

19 (i) that is owned by an individual with
20 an LTSS disability or the individual's fam-
21 ily member;

22 (ii) that is leased to the individual
23 with an LTSS disability under an indi-
24 vidual lease, that has lockable access and
25 egress, and that includes living, sleeping,

1 bathing, and cooking areas over which an
2 individual with an LTSS disability or the
3 individual's family member has domain
4 and control; or

5 (iii) that is a group or shared resi-
6 dence—

7 (I) in which no more than 4 un-
8 related individuals with an LTSS dis-
9 ability reside;

10 (II) for which each individual
11 with an LTSS disability living at the
12 residence owns, rents, or occupies the
13 residence under a legally enforceable
14 agreement under which the individual
15 has, at a minimum, the same respon-
16 sibilities and protections as tenants
17 have under applicable landlord-tenant
18 law;

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

22 (aa) has privacy in the indi-
23 vidual's sleeping unit, including a
24 lockable entrance door controlled
25 by the individual;

1 (bb) shares a sleeping unit
2 only if such individual and the
3 individual sharing the unit choose
4 to do so, and if individuals in the
5 residence so choose, they also
6 have a choice of roommates with-
7 in the residence;

8 (cc) has the freedom to fur-
9 nish and decorate the individual's
10 sleeping or living unit as per-
11 mitted under the lease or other
12 agreement;

13 (dd) has the freedom and
14 support to control the individ-
15 ual's own schedules and activi-
16 ties; and

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

20 (IV) that is physically accessible
21 to the individual with an LTSS dis-
22 ability living at the residence.

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

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

6 (A) administration of medication;

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

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

11 (6) INDIVIDUAL WITH A DISABILITY.—The term
12 “individual with a disability” means an individual
13 who is a person with a disability, as defined in sec-
14 tion 3 of the Americans with Disabilities Act of
15 1990 (42 U.S.C. 12102).

16 (7) INDIVIDUAL WITH AN LTSS DISABILITY.—
17 The term “individual with an LTSS disability”
18 means an individual with a disability who—

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

22 (i) activities of daily living;

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

25 (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); and

4 (B)(i) is currently in an institutional place-
5 ment; or

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

9 (8) INSTRUMENTAL ACTIVITIES OF DAILY LIV-
10 ING.—

11 (A) IN GENERAL.—The term “instru-
12 mental activities of daily living” means one or
13 more activities related to living independently in
14 the community, including activities related to—

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

19 (ii) household chores and environ-
20 mental maintenance tasks;

21 (iii) communication and interpersonal
22 skills, such as—

23 (I) using the telephone or other
24 communications devices;

1 (II) forming and maintaining
2 interpersonal relationships; or

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

6 (iv) travel and community participa-
7 tion, such as shopping, arranging appoint-
8 ments, or moving around the community;

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

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

14 (I) taking medication;

15 (II) handling or managing
16 money; or

17 (III) responding to emergent
18 situations or unscheduled needs re-
19 quiring an immediate response.

20 (B) ASSISTANCE.—The term “assistance”
21 used with respect to instrumental activities of
22 daily living, includes support provided to an in-
23 dividual by another person due to confusion, de-
24 mentia, behavioral symptoms, or cognitive, in-

1 tellectual, mental, or emotional disabilities, in-
2 cluding support to—

3 (i) help the individual identify and set
4 goals, overcome fears, and manage transi-
5 tions;

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

9 (iii) provide reassurance to the indi-
10 vidual; and

11 (iv) help the individual with orienta-
12 tion, memory, and other activities related
13 to independent living.

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

19 (A) activities of daily living;

20 (B) instrumental activities of daily living;

21 (C) health-related tasks; or

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

1 (10) LTSS INSURANCE PROVIDER.—The term
2 “LTSS insurance provider” means a public or pri-
3 vate entity that—

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

6 (B) is engaged in commerce or in an in-
7 dustry or activity affecting commerce.

8 (11) PUBLIC ENTITY.—

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

11 (i) provides or funds institutional
12 placements for individuals with LTSS dis-
13 abilities; and

14 (ii) is—

15 (I) a State or local government;

16 or

17 (II) any department, agency, en-
18 tity administering a special purpose
19 district, or other instrumentality, of a
20 State or local government.

21 (B) INTERSTATE COMMERCE.—For pur-
22 poses of subparagraph (A), a public entity shall
23 be considered to be a person engaged in com-
24 merce or in an industry or activity affecting
25 commerce.

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

8 **SEC. 4. DISCRIMINATION.**

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

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

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

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

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

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

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

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

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

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

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

20 (A) individuals with LTSS disabilities are
21 offered the alternative of community-based
22 long-term services and supports prior to institu-
23 tionalization; and

24 (B) if selected by an individual with an
25 LTSS disability, the community-based long-

1 term services and supports described in sub-
2 paragraph (A) are provided;

3 (10) a failure to ensure that each institutional-
4 ized individual with an LTSS disability is regularly
5 notified of the alternative of community-based long-
6 term services and supports and that those commu-
7 nity-based long-term services and supports are pro-
8 vided if the individual with an LTSS disability se-
9 lects such services and supports; and

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

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

23 (d) CONSTRUCTION.—Nothing in this section—

24 (1) shall be construed—

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

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

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

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

18 **SEC. 5. ADMINISTRATION.**

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

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

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

24 (B) enforce section 6(c).

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

4 (A) conduct studies regarding the nature
5 and extent of institutionalization of individuals
6 with LTSS disabilities in representative com-
7 munities, including urban, suburban, and rural
8 communities, throughout the United States;

9 (B) publish and disseminate reports, rec-
10 ommendations, and information derived from
11 such studies, including an annual report to
12 Congress, specifying—

13 (i) the nature and extent of progress
14 in the United States in eliminating institu-
15 tionalization for individuals with LTSS
16 disabilities in violation of this Act and fur-
17 thering the purposes of this Act;

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

22 (iii) recommendations for further leg-
23 islative or executive action;

24 (C) cooperate with, and provide grants for
25 technical assistance to, Federal, State, and local

1 public or private agencies and organizations
2 that are formulating or carrying out programs
3 to prevent or eliminate institutionalization of
4 individuals with LTSS disabilities or to promote
5 the provision of community-based long-term
6 services and supports;

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

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

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

1 **SEC. 6. REGULATIONS.**

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

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

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

18 (2) **SERVICES TO BE PROVIDED.**—The regula-
19 tions issued under this section shall require each
20 public entity and LTSS insurance provider to pro-
21 vide the Attorney General and the Administrator
22 with an assurance that the public entity or LTSS in-
23 surance provider—

24 (A) ensures that individuals with LTSS
25 disabilities receive assistance through hands-on
26 assistance, training, cueing, and safety moni-

1 toring, including access to backup systems,
2 with—

3 (i) activities of daily living;

4 (ii) instrumental activities of daily liv-
5 ing;

6 (iii) health-related tasks; or

7 (iv) other functions, tasks, or activi-
8 ties related to an activity or task described
9 in clause (i), (ii), or (iii);

10 (B) coordinates, conducts, performs, pro-
11 vides, or funds discharge planning from acute,
12 rehabilitation, and long-term facilities to pro-
13 mote individuals with LTSS disabilities living in
14 the most integrated setting chosen by the indi-
15 viduals;

16 (C) issues, conducts, performs, provides, or
17 funds policies and programs to promote self-di-
18 rection and the provision of consumer-directed
19 services and supports for all populations of indi-
20 viduals with LTSS disabilities served;

21 (D) issues, conducts, performs, provides,
22 or funds policies and programs to support infor-
23 mal caregivers who provide services for individ-
24 uals with LTSS disabilities; and

1 (E) ensures that individuals with all types
2 of LTSS disabilities are able to live in the com-
3 munity and lead an independent life, including
4 ensuring that the individuals have maximum
5 control over the services and supports that the
6 individuals receive, choose the setting in which
7 the individuals receive those services and sup-
8 ports, and exercise control and direction over
9 their own lives.

10 (3) PUBLIC PARTICIPATION.—

11 (A) PUBLIC ENTITY.—The regulations
12 issued under this section shall require each pub-
13 lic entity to carry out an extensive public par-
14 ticipation process in preparing the public enti-
15 ty’s self-evaluation under paragraph (5) and
16 transition plan under paragraph (10).

17 (B) LTSS INSURANCE PROVIDER.—The
18 regulations issued under this section shall re-
19 quire each LTSS insurance provider to carry
20 out a public participation process that involves
21 holding a public hearing, providing an oppor-
22 tunity for public comment, and consulting with
23 individuals with LTSS disabilities, in preparing
24 the LTSS insurance provider’s self-evaluation
25 under paragraph (5).

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

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

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

13 (4) ADDITIONAL SERVICES AND SUPPORTS.—

14 The regulations issued under this section shall es-
15 tablish circumstances under which a public entity
16 shall provide community-based long-term services
17 and supports under this section beyond the level of
18 community-based long-term services and supports
19 which would otherwise be required under this sub-
20 section.

21 (5) SELF-EVALUATION.—

22 (A) IN GENERAL.—The regulations issued
23 under this section shall require each public enti-
24 ty and each LTSS insurance provider, not later
25 than 30 months after the date of enactment of

1 this Act, to evaluate current services, policies,
2 and practices, and the effects thereof, that do
3 not or may not meet the requirements of this
4 Act and, to the extent modification of any such
5 services, policies, and practices is required to
6 meet the requirements of this Act, make the
7 necessary modifications. The self-evaluation
8 shall include—

9 (i) collection of baseline information,
10 including the numbers of individuals with
11 LTSS disabilities in various institutional
12 and community-based settings served by
13 the public entity or LTSS insurance pro-
14 vider;

15 (ii) a review of community capacity, in
16 communities served by the entity or pro-
17 vider, in providing community-based long-
18 term services and supports;

19 (iii) identification of improvements
20 needed to ensure that all community-based
21 long-term services and supports provided
22 by the public entity or LTSS insurance
23 provider to individuals with LTSS disabil-
24 ities are comprehensive, are accessible, are
25 not duplicative of existing (as of the date

1 of the identification) services and supports,
2 meet the needs of persons who are likely to
3 require assistance in order to live, or lead
4 a life, as described in section 4(a), and are
5 high-quality services and supports, which
6 may include identifying system improve-
7 ments that create an option to self-direct
8 receipt of such services and supports for
9 all populations of such individuals served;
10 and

11 (iv) a review of funding sources for
12 community-based long-term services and
13 supports and an analysis of how those
14 funding sources could be organized into a
15 fair, coherent system that affords individ-
16 uals reasonable and timely access to com-
17 munity-based long-term services and sup-
18 ports.

19 (B) PUBLIC ENTITY.—A public entity, in-
20 cluding an LTSS insurance provider that is a
21 public entity, shall—

22 (i) include in the self-evaluation de-
23 scribed in subparagraph (A)—

24 (I) an assessment of the avail-
25 ability of accessible, affordable trans-

1 portation across the State involved
2 and whether transportation barriers
3 prevent individuals from receiving
4 long-term services and supports in the
5 most integrated setting; and

6 (II) an assessment of the avail-
7 ability of integrated employment op-
8 portunities in the jurisdiction served
9 by the public entity for individuals
10 with LTSS disabilities; and

11 (ii) provide the self-evaluation de-
12 scribed in subparagraph (A) to the Attor-
13 ney General and the Administrator.

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

20 (6) ADDITIONAL REQUIREMENT FOR PUBLIC
21 ENTITIES.—The regulations issued under this sec-
22 tion shall require a public entity, in conjunction with
23 the housing agencies serving the jurisdiction served
24 by the public entity, to review and improve commu-
25 nity capacity, in all communities throughout the en-

1 tirety of that jurisdiction, in providing affordable,
2 accessible, and integrated housing, including an eval-
3 uation of available units, unmet need, and other
4 identifiable barriers to the provision of that housing.
5 In carrying out that improvement, the public entity,
6 in conjunction with such housing agencies, shall—

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

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

17 (i) in the case of such a housing agen-
18 cy, establish relationships with State and
19 local housing authorities; and

20 (ii) in the case of the public entity, es-
21 tablish relationships with State and local
22 housing agencies, including housing au-
23 thorities;

24 (C) establish, where needed, necessary
25 preferences and set-asides in housing programs

1 for individuals with LTSS disabilities who are
2 transitioning from or avoiding institutional
3 placement;

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

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

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

1 vider that alleges a violation of this Act. Each public
2 entity and LTSS insurance provider shall make
3 available to all interested individuals the name, of-
4 fice address, and telephone number of the employee
5 designated pursuant to this paragraph.

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

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

21 (10) TRANSITION PLANS.—The regulations
22 issued under this section shall require each public
23 entity, not later than 42 months after the date of
24 enactment of this Act, to submit to the Adminis-
25 trator, and begin implementing, a transition plan for

1 carrying out this Act that establishes the achieve-
2 ment of the requirements of this Act, as soon as
3 practicable, but in no event later than 12 years after
4 the date of enactment of this Act. The transition
5 plan shall—

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

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

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

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

25 (11) ANNUAL REPORTING.—

1 (A) IN GENERAL.—The regulations issued
2 under this section shall establish annual report-
3 ing requirements for each public entity covered
4 by this section.

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

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

20 (c) REVIEW OF TRANSITION PLANS.—

21 (1) GENERAL RULE.—The Administrator shall
22 review a transition plan submitted in accordance
23 with subsection (b)(10) for the purpose of deter-
24 mining whether such plan meets the requirements of

1 this Act, including the regulations issued under this
2 section.

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

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

18 (4) INCENTIVES.—

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

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

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

23 (i) that—

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

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

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

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

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

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

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

24 (D) ADDITIONAL CONDITION FOR PAY-
25 MENT.—

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

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

25 (E) DEFINITIONS.—In this paragraph:

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

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

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

21 (II) Home health care services.

22 (III) Personal care services.

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

1 (42 U.S.C. 1396d(a)(26)) (relating to
2 PACE program services).

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

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

12 (VII) Rehabilitative services,
13 within the meaning of section
14 1905(a)(13) of the Social Security Act
15 (42 U.S.C. 1396d(a)(13)).

16 (iii) REPORTING YEAR.—The term
17 “reporting year” means the most recent
18 fiscal year preceding the date of a report
19 under subparagraph (D)(i).

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

1 enabling those individuals to live in the most integrated
2 setting.

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

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

9 **SEC. 8. ENFORCEMENT.**

10 (a) CIVIL ACTION.—

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

17 (2) AGGRIEVED INDIVIDUAL.—

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

1 (B) STANDING.—An individual with a dis-
2 ability shall have standing to institute a civil ac-
3 tion under this subsection if the individual
4 makes a prima facie showing that the indi-
5 vidual—

6 (i) is an individual with an LTSS dis-
7 ability; and

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

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

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

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

5 (1) actual and punitive damages;

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

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

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

22 (c) ATTORNEY'S FEES; LIABILITY OF UNITED
23 STATES FOR COSTS.—In any action commenced pursuant
24 to this Act, the court, in its discretion, may allow the party
25 bringing a claim or counterclaim under this Act, other

1 than the United States, a reasonable attorney’s fee as part
2 of the costs, and the United States shall be liable for costs
3 to the same extent as a private person.

4 (d) ENFORCEMENT BY ATTORNEY GENERAL.—

5 (1) DENIAL OF RIGHTS.—

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

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

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

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

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

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

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

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

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

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

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

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

24 (3) SINGLE VIOLATION.—For purposes of para-
25 graph (2)(C), in determining whether a first or sub-

1 sequent violation has occurred, a determination in a
2 single action, by judgment or settlement, that the
3 public entity or LTSS insurance provider has en-
4 gaged in more than one violation of this Act shall be
5 counted as a single violation.

6 **SEC. 9. CONSTRUCTION.**

7 For purposes of construing this Act—

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

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

17 (3) section 7 shall be construed in a manner
18 that takes into account its similarities with section
19 807(a) of the Civil Rights Act of 1968 (42 U.S.C.
20 3607(a));

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

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

○