

118TH CONGRESS  
1ST SESSION

# S. 1193

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 19, 2023

Mr. BENNET (for himself, Mr. BOOKER, Mr. MARKEY, Mr. WHITEHOUSE, Mr. SCHUMER, Ms. STABENOW, Mr. REED, Mr. HEINRICH, Ms. WARREN, Ms. CORTEZ MASTO, Mr. HICKENLOOPER, Ms. KLOBUCHAR, Ms. BALDWIN, Mrs. GILLIBRAND, Mr. CARPER, Ms. HIRONO, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Latonya Reeves Free-  
5 dom Act of 2023”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1           (1) to clarify and strengthen the integration  
2           mandate of the Americans with Disabilities Act of  
3           1990, held by the Supreme Court in *Olmstead v.*  
4           *L.C.*, 527 U.S. 581 (1999) in a manner that acceler-  
5           ates and improves State compliance;

6           (2) to affirm that every individual who is eligi-  
7           ble for long-term services and supports has a feder-  
8           ally protected right to be meaningfully integrated  
9           into that individual's community and receive commu-  
10          nity-based long-term services and supports;

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

20          (4) to establish a comprehensive State planning  
21          requirement that includes enforceable, measurable  
22          objectives that are designed to transition individuals  
23          with all types of disabilities at all ages out of institu-  
24          tions and into the most integrated setting, if they  
25          choose that transition; and

1           (5) to identify and address disparities in the  
2           provision of community-based long-term services and  
3           supports.

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

5           (a) DEFINITIONS.—In this Act:

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

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

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

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

16          (3) COMMUNITY-BASED; SERVICES OR SUP-  
17          PORTS.—The term “community-based”, when used  
18          in reference to services or supports, means services  
19          or supports that are provided to an individual with  
20          an LTSS disability to enable that individual to live  
21          in the community and lead an independent life, and  
22          that are delivered in whichever setting the individual  
23          with an LTSS disability has chosen out of the fol-  
24          lowing settings with the following qualities:

1 (A) In the case of a dwelling or a nonresi-  
2 dential setting (such as a setting in which an  
3 individual with an LTSS disability receives day  
4 services and supported employment), a dwelling  
5 or setting—

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

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

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

24 (ii) that the individual has selected as  
25 a meaningful choice from among nonresi-

1           dential setting options, including nondis-  
2           ability-specific settings;

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

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

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

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

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

24           (ii) that is leased to the individual  
25           with an LTSS disability under an indi-

1           vidual lease, that has lockable access and  
2           egress, and that includes living, sleeping,  
3           bathing, and cooking areas over which an  
4           individual with an LTSS disability or the  
5           individual's family member has domain  
6           and control; or

7           (iii) that is a group or shared resi-  
8           dence—

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

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

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

24                           (aa) has privacy in the indi-  
25                           vidual's sleeping unit, including a

1 lockable entrance door controlled  
2 by the individual;

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

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

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

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

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

1           (4) COMMUNITY-BASED; SETTING.—The term  
2 “community-based”, when used in reference to a set-  
3 ting, means a setting described in subparagraph (A)  
4 or (B) of paragraph (3).

5           (5) DWELLING.—The term “dwelling” has the  
6 meaning given the term in section 802 of the Fair  
7 Housing Act (42 U.S.C. 3602).

8           (6) HEALTH-RELATED TASKS.—The term  
9 “health-related tasks” means specific nonacute  
10 tasks, typically regulated by States as medical or  
11 nursing tasks that an individual with a disability  
12 may require to live in the community, including—

13                   (A) administration of medication;

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

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

18           (7) INDIVIDUAL WITH A DISABILITY.—The term  
19 “individual with a disability” means an individual  
20 who is a person with a disability, as defined in sec-  
21 tion 3 of the Americans with Disabilities Act of  
22 1990 (42 U.S.C. 12102).

23           (8) INDIVIDUAL WITH AN LTSS DISABILITY.—  
24 The term “individual with an LTSS disability”  
25 means an individual with a disability who—



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

4 (i) activities of daily living;

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

7 (iii) health-related tasks; or

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

11 (B)(i) is currently in an institutional place-  
12 ment; or

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

16 (9) INSTITUTION; INSTITUTIONALIZATION.—

17 (A) INSTITUTION.—The term “institution”  
18 means—

19 (i) a skilled nursing facility (as de-  
20 fined in section 1819(a) of the Social Secu-  
21 rity Act (42 U.S.C. 1395i–3(a)));

22 (ii) a nursing facility (as defined in  
23 section 1919(a) of such Act (42 U.S.C.  
24 1396r(a)));

1 (iii) a long-term care hospital (as de-  
2 scribed in section 1886(d)(1)(B)(iv) of  
3 such Act (42 U.S.C.  
4 1395ww(d)(1)(B)(iv)));

5 (iv) a facility described in section  
6 1905(d) of such Act (42 U.S.C. 1396d(d));

7 (v) an institution which is a psy-  
8 chiatric hospital (as defined in section  
9 1861(f) of such Act (42 U.S.C. 1395x(f)))  
10 or that provides in-patient psychiatric serv-  
11 ices in a residential setting specified by the  
12 Secretary;

13 (vi) an institution described in section  
14 1905(i) of such Act (42 U.S.C. 1396d(i));  
15 and

16 (vii) any congregate setting that is not  
17 community-based or that has the effect of  
18 isolating individuals with disabilities from  
19 the community.

20 (B) INSTITUTIONALIZATION.—The term  
21 “institutionalization”, used with respect to an  
22 individual with an LTSS disability, refers to the  
23 individual living or receiving services or sup-  
24 ports in a setting that is not community-based.

1           (10) INSTRUMENTAL ACTIVITIES OF DAILY LIV-  
2           ING.—The term “instrumental activities of daily liv-  
3           ing” means one or more activities related to living  
4           independently in the community, including activities  
5           related to—

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

9                   (B) household chores and environmental  
10                  maintenance tasks;

11                  (C) communication and interpersonal  
12                  skills, such as—

13                          (i) using the telephone or other com-  
14                          munications devices;

15                          (ii) forming and maintaining inter-  
16                          personal relationships; or

17                          (iii) securing opportunities to partici-  
18                          pate in group support or peer-to-peer sup-  
19                          port arrangements;

20                  (D) travel and community participation,  
21                  such as shopping, arranging appointments, or  
22                  moving around the community;

23                  (E) care of others, such as raising chil-  
24                  dren, taking care of pets, or selecting care-  
25                  givers; or

1 (F) management of personal property and  
2 personal safety, such as—

3 (i) taking medication;

4 (ii) handling or managing money; or

5 (iii) responding to emergent situations

6 or unscheduled needs requiring an imme-

7 diate response.

8 (11) LONG-TERM SERVICE OR SUPPORT.—

9 (A) IN GENERAL.—The terms “long-term  
10 service or support” and “LTSS” mean the as-  
11 sistance provided to an individual with a dis-  
12 ability in accomplishing, acquiring the means or  
13 ability to accomplish, maintaining, or enhanc-  
14 ing—

15 (i) activities of daily living;

16 (ii) instrumental activities of daily liv-  
17 ing;

18 (iii) health-related tasks; or

19 (iv) other functions, tasks, or activi-  
20 ties related to an activity or task described  
21 in clause (i), (ii), or (iii).

22 (B) ASSISTANCE.—In subparagraph (A),  
23 the term “assistance” includes support provided  
24 to an individual by another person due to con-  
25 fusion, dementia, behavioral symptoms, or cog-

1           nitive, intellectual, mental, or emotional disabil-  
2           ities, including support to—

3                   (i) help the individual identify and set  
4                   goals, communicate needs, overcome fears,  
5                   and manage transitions;

6                   (ii) help the individual with executive  
7                   functioning, decision making, self-expres-  
8                   sion, and problemsolving;

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           (12) LTSS INSURANCE PROVIDER.—The term  
15           “LTSS insurance provider” means a public or pri-  
16           vate entity that—

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

19                   (B) is engaged in commerce or in an in-  
20                   dustry or activity affecting commerce.

21           (13) PUBLIC ENTITY.—

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

1 (i) provides or funds institutional  
 2 placements for individuals with LTSS dis-  
 3 abilities; and

4 (ii) is—

5 (I) a State or local government;

6 or

7 (II) any department, agency, en-  
 8 tity administering a special purpose  
 9 district, or other instrumentality, of a  
 10 State or local government.

11 (B) INTERSTATE COMMERCE.—For pur-  
 12 poses of subparagraph (A), a public entity shall  
 13 be considered to be a person engaged in com-  
 14 merce or in an industry or activity affecting  
 15 commerce.

16 (b) RULE OF CONSTRUCTION.—Nothing in sub-  
 17 section (a) or any other provision of this section shall be  
 18 construed to preclude an individual with a disability from  
 19 receiving community-based services and supports in an in-  
 20 tegrated community setting such as a grocery store, retail  
 21 establishment, restaurant, bank, park, concert venue, the-  
 22 ater, or workplace.

23 **SEC. 4. DISCRIMINATION.**

24 (a) IN GENERAL.—No public entity or LTSS insur-  
 25 ance provider shall deny an individual with an LTSS dis-

1 ability who is eligible for institutional placement, or other-  
2 wise discriminate against that individual in the provision  
3 of, community-based long-term services and supports that  
4 enable the individual to live in the community and lead  
5 an independent life.

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

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

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

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

1           (4) the imposition or application of a policy,  
2 rule, regulation, or restriction that interferes with  
3 the opportunity for an individual with an LTSS dis-  
4 ability, or any class of individuals with LTSS dis-  
5 abilities, to live in the community and lead an inde-  
6 pendent life, which may include a requirement that  
7 an individual with an LTSS disability receive a serv-  
8 ice or support (such as day services or employment  
9 services) in a congregate or disability-specific set-  
10 ting;

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

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

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



1           (8) the imposition or application of a policy,  
2           such as a requirement that an individual utilize in-  
3           formal support, that restricts, limits, or delays the  
4           ability of an individual with an LTSS disability to  
5           secure a community-based long-term service or sup-  
6           port to live in the community or lead an independent  
7           life;

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

10                   (A) individuals with LTSS disabilities are  
11                   offered the alternative of community-based  
12                   long-term services and supports prior to institu-  
13                   tionalization; and

14                   (B) if selected by an individual with an  
15                   LTSS disability, the community-based long-  
16                   term services and supports described in sub-  
17                   paragraph (A) are provided;

18           (10) a failure to ensure that each institutional-  
19           ized individual with an LTSS disability is regularly  
20           notified of the alternative of community-based long-  
21           term services and supports and that those commu-  
22           nity-based long-term services and supports are pro-  
23           vided if the individual with an LTSS disability se-  
24           lects such services and supports; and

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

6           (c) ADDITIONAL PROHIBITION.—For purposes of this  
7           Act, discrimination by a public entity also includes a fail-  
8           ure to ensure that there is sufficient availability of afford-  
9           able, accessible, and integrated housing to allow an indi-  
10          vidual with an LTSS disability to choose to live in the  
11          community and lead an independent life, including the  
12          availability of an option to live in housing where the re-  
13          ceipt of LTSS is not tied to tenancy.

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

15                 (1) shall be construed—

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

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

24                         (C) to require that an individual with an  
25                         LTSS disability live or receive services or sup-

1           ports in a more integrated setting if the indi-  
2           vidual chooses a less integrated setting;

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

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

12 **SEC. 5. ADMINISTRATION.**

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

14           (1) **DEPARTMENT OF JUSTICE.**—The Attorney  
15          General shall investigate and take enforcement ac-  
16          tion for violations of this Act.

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

20           (A) review, and approve or disapprove,  
21          transition plans submitted by public entities,  
22          under section 6(b)(10);

23           (B) establish a task force to identify socio-  
24          demographic, geographic, and other factors that  
25          are barriers that prevent individuals with LTSS

1 disabilities from receiving community-based  
2 long-term services and supports or from being  
3 able to choose alternatives in the community to  
4 institutionalization and identify other dispari-  
5 ties in the availability and provision of commu-  
6 nity-based long-term services and supports,  
7 which task force shall be responsible for—

8 (i) overseeing studies regarding the  
9 nature and extent of those barriers and  
10 disparities and the impact that those bar-  
11 riers and disparities have on the institu-  
12 tionalization of individuals with LTSS dis-  
13 abilities; and

14 (ii) submitting to Congress not later  
15 than 2 years after the date of enactment  
16 of this Act a report on the nature and ex-  
17 tent of those barriers and disparities, in-  
18 cluding a description of legislative or exec-  
19 utive action to address the barriers and  
20 disparities; and

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

24 (b) COOPERATION OF EXECUTIVE DEPARTMENTS  
25 AND AGENCIES.—Each Federal agency and, in particular,

1 each Federal agency covered by Executive Order 13217  
2 (66 Fed. Reg. 33155; relating to community-based alter-  
3 natives for individuals with disabilities), shall carry out  
4 programs and activities relating to the institutionalization  
5 of individuals with LTSS disabilities and the provision of  
6 community-based long-term services and supports for indi-  
7 viduals with LTSS disabilities in accordance with this Act  
8 and shall cooperate with the Attorney General and the Ad-  
9 ministrator to further the purposes of this Act.

10 **SEC. 6. REGULATIONS.**

11 (a) **ISSUANCE OF REGULATIONS.**—Not later than 2  
12 years after the date of enactment of this Act, the Attorney  
13 General shall issue, in accordance with section 553 of title  
14 5, United States Code, final regulations to carry out this  
15 Act, which shall include the regulations described in sub-  
16 section (b).

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

18 (1) **PROTECTED INDIVIDUALS.**—The regula-  
19 tions shall require each public entity and LTSS in-  
20 surance provider to offer, and, if accepted, provide  
21 community-based long-term services and supports as  
22 required under this Act to any individual with an  
23 LTSS disability who would otherwise qualify for in-  
24 stitutional placement provided or funded by the pub-  
25 lic entity or LTSS insurance provider.

1           (2) SERVICES TO BE PROVIDED.—The regula-  
2           tions issued under this section shall require each  
3           public entity and LTSS insurance provider to pro-  
4           vide the Attorney General and the Administrator  
5           (for purposes of enabling the Attorney General to  
6           consult with the Administrator) with an assurance  
7           that the public entity or LTSS insurance provider—

8                   (A) ensures that individuals with LTSS  
9                   disabilities receive assistance through hands-on  
10                  assistance, training, cueing, and safety moni-  
11                  toring, including access to backup systems,  
12                  with—

13                           (i) activities of daily living;

14                           (ii) instrumental activities of daily liv-  
15                           ing;

16                           (iii) health-related tasks; or

17                           (iv) other functions, tasks, or activi-  
18                           ties related to an activity or task described  
19                           in clause (i), (ii), or (iii);

20                   (B) coordinates, conducts, performs, pro-  
21                   vides, or funds discharge planning from acute  
22                   and rehabilitation facilities, and other institu-  
23                   tions, to promote individuals with LTSS disabil-  
24                   ities living in the most integrated setting chosen  
25                   by the individuals;

1 (C) issues, conducts, performs, provides, or  
2 funds policies and programs to promote self-di-  
3 rection and the provision of consumer-directed  
4 services and supports for all populations of indi-  
5 viduals with LTSS disabilities served;

6 (D) issues, conducts, performs, provides,  
7 or funds policies and programs to support infor-  
8 mal caregivers who provide services for individ-  
9 uals with LTSS disabilities; and

10 (E) ensures that individuals with all types  
11 of LTSS disabilities are able to live in the com-  
12 munity and lead an independent life, including  
13 ensuring that the individuals have maximum  
14 control over the services and supports that the  
15 individuals receive, choose the setting in which  
16 the individuals receive those services and sup-  
17 ports, and exercise control and direction over  
18 their own lives.

19 (3) PUBLIC PARTICIPATION.—

20 (A) PUBLIC ENTITY.—The regulations  
21 issued under this section shall require each pub-  
22 lic entity to carry out a public participation  
23 process in preparing the public entity's self-  
24 evaluation under paragraph (5) and transition  
25 plan under paragraph (10).

1 (B) LTSS INSURANCE PROVIDER.—The  
2 regulations issued under this section shall re-  
3 quire each LTSS insurance provider to carry  
4 out a public participation process that involves  
5 holding a public hearing, providing an oppor-  
6 tunity for public comment, and consulting with  
7 individuals with LTSS disabilities, in preparing  
8 the LTSS insurance provider’s self-evaluation  
9 under paragraph (5).

10 (C) PROCESS.—In carrying out a public  
11 participation process under subparagraph (A)  
12 or (B), a public entity or LTSS insurance pro-  
13 vider shall ensure that the process meets the re-  
14 quirements of subparagraphs (A) and (C) of  
15 section 1115(d)(2) of the Social Security Act  
16 (42 U.S.C. 1315(d)(2)), except that—

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

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

22 (4) ADDITIONAL SERVICES AND SUPPORTS.—  
23 The regulations issued under this section shall es-  
24 tablish circumstances under which a public entity  
25 shall provide community-based long-term services



1 and supports under this section beyond the level of  
2 community-based long-term services and supports  
3 which would otherwise be required under this sub-  
4 section.

5 (5) SELF-EVALUATION.—

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

18 (i) collection of baseline information,  
19 including the numbers of individuals with  
20 LTSS disabilities in various institutional  
21 and community-based settings served by  
22 the public entity or LTSS insurance pro-  
23 vider, including demographic data that—

24 (I) specifies whether the individ-  
25 uals are women, veterans, or members

1 of a racial and ethnic minority group,  
2 as defined in section 1707 of the Pub-  
3 lic Health Service Act (42 U.S.C.  
4 300u-6); and

5 (II) is disaggregated by race in a  
6 manner that captures all the racial  
7 groups specified in the American  
8 Community Survey conducted by the  
9 Bureau of the Census;

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

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

1 and supports, which may include identi-  
2 fying system improvements that create an  
3 option to self-direct receipt of such services  
4 and supports for all populations of such in-  
5 dividuals served; and

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

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

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

19 (I) an assessment of the avail-  
20 ability of accessible, affordable trans-  
21 portation across the State involved  
22 and whether transportation barriers  
23 prevent individuals from receiving  
24 long-term services and supports in the  
25 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;

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

9 (iii) make the self-evaluation described  
10 in subparagraph (A) available on the pub-  
11 lic internet website of the public entity.

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

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

1 uation of available units, unmet need, and other  
2 identifiable barriers to the provision of that housing.  
3 In carrying out that improvement, the public entity,  
4 in conjunction with such housing agencies, shall—

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

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

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

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

22 (C) establish, where needed, necessary  
23 preferences and set-asides in housing programs  
24 for individuals with LTSS disabilities who are

1           transitioning from or avoiding institutional  
2           placement;

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

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

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

1 entity and LTSS insurance provider shall make  
2 available to all interested individuals the name, of-  
3 fice address, and telephone number of the employee  
4 designated pursuant to this paragraph.

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

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

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

1 Act that establishes the achievement of the require-  
2 ments of this Act, as soon as practicable, but in no  
3 event later than 12 years after the date of enact-  
4 ment of this Act. The transition plan shall—

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

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

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

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

24 (E) describe the steps taken to ensure that  
25 the transition plan addresses the needs of indi-



1           viduals from all socio-demographic and geo-  
2           graphic backgrounds.

3           (11) ANNUAL REPORTING.—

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

8                 (B) PROGRESS ON OBJECTIVES, TARGETS,  
9           AND EFFORTS.—The regulations issued under  
10          this section shall require each public entity that  
11          has submitted a transition plan, to make pub-  
12          licly available on the entity’s website an annual  
13          report on the progress the public entity has  
14          made during the previous year in meeting the  
15          measurable objectives, specific annual targets,  
16          and specific efforts described in paragraph (10).

17          (c) REVIEW OF TRANSITION PLANS.—

18                 (1) GENERAL RULE.—The Administrator shall  
19          review a transition plan submitted in accordance  
20          with subsection (b)(10), not later than 90 days after  
21          receiving the plan, for the purpose of determining  
22          whether such plan meets the requirements of this  
23          Act, including the regulations issued under this sec-  
24          tion.

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

8           (3) MODIFICATION OF DISAPPROVED PLAN.—  
9 Not later than 90 days after the date of disapproval  
10 of a transition plan under this subsection, the public  
11 entity that submitted the transition plan shall mod-  
12 ify the transition plan to meet the requirements of  
13 this section and shall submit the modified plan to  
14 the Administrator. Not later than 90 days after re-  
15 ceiving the modified plan, the Administrator shall  
16 review the plan and, on approval by the Adminis-  
17 trator, the public entity shall begin implementing the  
18 plan.

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

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

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

7 **SEC. 8. ENFORCEMENT.**

8 (a) CIVIL ACTION.—

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

15 (2) AGGRIEVED INDIVIDUAL.—

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

23 (B) STANDING.—An individual with a dis-  
24 ability shall have standing to institute a civil ac-  
25 tion under this subsection if the individual

1 makes a prima facie showing that the indi-  
2 vidual—

3 (i) is an individual with an LTSS dis-  
4 ability; and

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

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

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

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

1 (1) actual and punitive damages;

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

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

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

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

25 (d) ENFORCEMENT BY ATTORNEY GENERAL.—

1 (1) DENIAL OF RIGHTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 9. CONSTRUCTION.**

2 For purposes of construing this Act—

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

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

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

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

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

○