

118TH CONGRESS
1ST SESSION

H. R. 2708

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2023

Mr. COHEN (for himself, Mr. AUCHINCLOSS, Mrs. BEATTY, Mr. BERA, Mr. BISHOP of Georgia, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOWMAN, Mr. BOYLE of Pennsylvania, Mr. BUCK, Mr. CARBAJAL, Ms. CHU, Ms. CLARKE of New York, Mr. CONNOLLY, Ms. CRAIG, Mr. DOGGETT, Mr. EVANS, Mr. GOMEZ, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HUFFMAN, Ms. JACOBS, Mr. KEATING, Mr. KILDEE, Mr. KILMER, Ms. KUSTER, Mr. LIEU, Mr. LYNCH, Mrs. MCBATH, Ms. MENG, Mr. MFUME, Ms. MOORE of Wisconsin, Mr. MOULTON, Mr. NEGUSE, Mr. PASCRELL, Mr. PETERS, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Mr. QUIGLEY, Mr. RUPPERSBERGER, Mr. RYAN, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SMITH of Washington, Ms. STEVENS, Ms. STRICKLAND, Mr. THOMPSON of Mississippi, Ms. TLAIB, Ms. UNDERWOOD, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Ms. WILD, Ms. WILLIAMS of Georgia, Mr. PANETTA, Ms. MATSUI, and Mr. FITZPATRICK) 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,*

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—

8 (1) to clarify and strengthen the integration
9 mandate of the Americans with Disabilities Act of
10 1990, held by the Supreme Court in *Olmstead v.*
11 *L.C.*, 527 U.S. 581 (1999) in a manner that acceler-
12 ates and improves State compliance;

13 (2) to affirm that every individual who is eligi-
14 ble for long-term services and supports has a feder-
15 ally protected right to be meaningfully integrated
16 into that individual’s community and receive commu-
17 nity-based long-term services and supports;

18 (3) to ensure that States provide long-term
19 services and supports to individuals with disabilities
20 in a manner that allows individuals with disabilities
21 to live in the most integrated setting, including the
22 individual’s own home, have maximum control over
23 their services and supports, and ensure that long-
24 term services and supports are provided in a manner

1 that allows individuals with disabilities to lead an
2 independent life;

3 (4) to establish a comprehensive State planning
4 requirement that includes enforceable, measurable
5 objectives that are designed to transition individuals
6 with all types of disabilities at all ages out of institu-
7 tions and into the most integrated setting, if they
8 choose that transition; and

9 (5) to identify and address disparities in the
10 provision of community-based long-term services and
11 supports.

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

13 (a) DEFINITIONS.—In this Act:

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

18 (2) ADMINISTRATOR.—The term “Adminis-
19 trator” means—

20 (A) the Administrator of the Administra-
21 tion for Community Living; or

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

24 (3) COMMUNITY-BASED; SERVICES OR SUP-
25 PORTS.—The term “community-based”, when used

1 in reference to services or supports, means services
2 or supports that are provided to an individual with
3 an LTSS disability to enable that individual to live
4 in the community and lead an independent life, and
5 that are delivered in whichever setting the individual
6 with an LTSS disability has chosen out of the fol-
7 lowing settings with the following qualities:

8 (A) In the case of a dwelling or a nonresi-
9 dential setting (such as a setting in which an
10 individual with an LTSS disability receives day
11 services and supported employment), a dwelling
12 or setting—

13 (i) that, as a matter of infrastructure,
14 environment, amenities, location, services,
15 and features, is integrated into the greater
16 community and supports, for each indi-
17 vidual with an LTSS disability who re-
18 ceives services or supports at the setting—

19 (I) full access to the greater com-
20 munity (including access to opportuni-
21 ties to seek employment and work in
22 competitive integrated settings, en-
23 gage in community life, control per-
24 sonal resources, and receive services
25 in the community); and

1 (II) access to the greater commu-
2 nity to the same extent as access to
3 the community is enjoyed by an indi-
4 vidual who is not receiving long-term
5 services or supports;

6 (ii) that the individual has selected as
7 a meaningful choice from among nonresi-
8 dential setting options, including nondis-
9 ability-specific settings;

10 (iii) in which an individual has rights
11 to privacy, dignity, and respect, and free-
12 dom from coercion and restraint;

13 (iv) that, as a matter of infrastruc-
14 ture, environment, amenities, location,
15 services, and features, optimizes, but does
16 not regiment, individual initiative, auton-
17 omy, and independence in making life
18 choices, including choices about daily ac-
19 tivities, physical environment, and persons
20 with whom the individual interacts; and

21 (v) that, as a matter of infrastructure,
22 environment, amenities, location, services,
23 and features, facilitates individual choice
24 regarding the provision of services and

1 supports, and who provides those services
2 and supports.

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

4 (i) that is owned by an individual with
5 an LTSS disability or the individual's fam-
6 ily member;

7 (ii) that is leased to the individual
8 with an LTSS disability under an indi-
9 vidual lease, that has lockable access and
10 egress, and that includes living, sleeping,
11 bathing, and cooking areas over which an
12 individual with an LTSS disability or the
13 individual's family member has domain
14 and control; or

15 (iii) that is a group or shared resi-
16 dence—

17 (I) in which no more than 4 un-
18 related individuals with an LTSS dis-
19 ability reside;

20 (II) for which each individual
21 with an LTSS disability living at the
22 residence owns, rents, or occupies the
23 residence under a legally enforceable
24 agreement under which the individual
25 has, at a minimum, the same respon-

1 abilities and protections as tenants
2 have under applicable landlord-tenant
3 law;

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

7 (aa) has privacy in the indi-
8 vidual’s sleeping unit, including a
9 lockable entrance door controlled
10 by the individual;

11 (bb) shares a sleeping unit
12 only if such individual and the
13 individual sharing the unit choose
14 to do so, and if individuals in the
15 residence so choose, they also
16 have a choice of roommates with-
17 in the residence;

18 (cc) has the freedom to fur-
19 nish and decorate the individual’s
20 sleeping or living unit as per-
21 mitted under the lease or other
22 agreement;

23 (dd) has the freedom and
24 support to control the individ-

1 ual’s own schedules and activi-
2 ties; and

3 (ee) is able to have visitors
4 of the individual’s choosing at
5 any time; and

6 (IV) that is physically accessible
7 to the individual with an LTSS dis-
8 ability living at the residence.

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

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

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

21 (A) administration of medication;

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

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

1 (7) INDIVIDUAL WITH A DISABILITY.—The term
2 “individual with a disability” means an individual
3 who is a person with a disability, as defined in sec-
4 tion 3 of the Americans with Disabilities Act of
5 1990 (42 U.S.C. 12102).

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

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

12 (i) activities of daily living;

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

15 (iii) health-related tasks; or

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

19 (B)(i) is currently in an institutional place-
20 ment; or

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

24 (9) INSTITUTION; INSTITUTIONALIZATION.—

1 (A) INSTITUTION.—The term “institution”
2 means—

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

6 (ii) a nursing facility (as defined in
7 section 1919(a) of such Act (42 U.S.C.
8 1396r(a)));

9 (iii) a long-term care hospital (as de-
10 scribed in section 1886(d)(1)(B)(iv) of
11 such Act (42 U.S.C.
12 1395ww(d)(1)(B)(iv)));

13 (iv) a facility described in section
14 1905(d) of such Act (42 U.S.C. 1396d(d));

15 (v) an institution which is a psy-
16 chiatric hospital (as defined in section
17 1861(f) of such Act (42 U.S.C. 1395x(f)))
18 or that provides in-patient psychiatric serv-
19 ices in a residential setting specified by the
20 Secretary;

21 (vi) an institution described in section
22 1905(i) of such Act (42 U.S.C. 1396d(i));
23 and

24 (vii) any congregate setting that is not
25 community-based or that has the effect of

1 isolating individuals with disabilities from
2 the community.

3 (B) INSTITUTIONALIZATION.—The term
4 “institutionalization”, used with respect to an
5 individual with an LTSS disability, refers to the
6 individual living or receiving services or sup-
7 ports in a setting that is not community-based.

8 (10) INSTRUMENTAL ACTIVITIES OF DAILY LIV-
9 ING.—The term “instrumental activities of daily liv-
10 ing” means one or more activities related to living
11 independently in the community, including activities
12 related to—

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

16 (B) household chores and environmental
17 maintenance tasks;

18 (C) communication and interpersonal
19 skills, such as—

20 (i) using the telephone or other com-
21 munications devices;

22 (ii) forming and maintaining inter-
23 personal relationships; or

1 (iii) securing opportunities to partici-
2 pate in group support or peer-to-peer sup-
3 port arrangements;

4 (D) travel and community participation,
5 such as shopping, arranging appointments, or
6 moving around the community;

7 (E) care of others, such as raising chil-
8 dren, taking care of pets, or selecting care-
9 givers; or

10 (F) management of personal property and
11 personal safety, such as—

12 (i) taking medication;

13 (ii) handling or managing money; or

14 (iii) responding to emergent situations
15 or unscheduled needs requiring an imme-
16 diate response.

17 (11) LONG-TERM SERVICE OR SUPPORT.—

18 (A) IN GENERAL.—The terms “long-term
19 service or support” and “LTSS” mean the as-
20 sistance provided to an individual with a dis-
21 ability in accomplishing, acquiring the means or
22 ability to accomplish, maintaining, or enhance-
23 ing—

24 (i) activities of daily living;

1 (ii) instrumental activities of daily liv-
2 ing;

3 (iii) health-related tasks; or

4 (iv) other functions, tasks, or activi-
5 ties related to an activity or task described
6 in clause (i), (ii), or (iii).

7 (B) ASSISTANCE.—In subparagraph (A),
8 the term “assistance” includes support provided
9 to an individual by another person due to con-
10 fusion, dementia, behavioral symptoms, or cog-
11 nitive, intellectual, mental, or emotional disabil-
12 ities, including support to—

13 (i) help the individual identify and set
14 goals, communicate needs, overcome fears,
15 and manage transitions;

16 (ii) help the individual with executive
17 functioning, decision making, self-expres-
18 sion, and problemsolving;

19 (iii) provide reassurance to the indi-
20 vidual; and

21 (iv) help the individual with orienta-
22 tion, memory, and other activities related
23 to independent living.

1 (12) 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 (13) 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) or any other provision of this section shall be
3 construed to preclude an individual with a disability from
4 receiving community-based services and supports in an in-
5 tegrated community setting such as a grocery store, retail
6 establishment, restaurant, bank, park, concert venue, the-
7 ater, 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;

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

9 (C) to require that an individual with an
10 LTSS disability live or receive services or sup-
11 ports in a more integrated setting if the indi-
12 vidual chooses a less integrated setting;

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

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

22 **SEC. 5. ADMINISTRATION.**

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

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

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

7 (A) review, and approve or disapprove,
8 transition plans submitted by public entities,
9 under section 6(b)(10);

10 (B) establish a task force to identify socio-
11 demographic, geographic, and other factors that
12 are barriers that prevent individuals with LTSS
13 disabilities from receiving community-based
14 long-term services and supports or from being
15 able to choose alternatives in the community to
16 institutionalization and identify other dispari-
17 ties in the availability and provision of commu-
18 nity-based long-term services and supports,
19 which task force shall be responsible for—

20 (i) overseeing studies regarding the
21 nature and extent of those barriers and
22 disparities and the impact that those bar-
23 riers and disparities have on the institu-
24 tionalization of individuals with LTSS dis-
25 abilities; and

1 (ii) submitting to Congress not later
2 than 2 years after the date of enactment
3 of this Act a report on the nature and ex-
4 tent of those barriers and disparities, in-
5 cluding a description of legislative or exec-
6 utive action to address the barriers and
7 disparities; and

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

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

22 **SEC. 6. REGULATIONS.**

23 (a) ISSUANCE OF REGULATIONS.—Not later than 2
24 years after the date of enactment of this Act, the Attorney
25 General shall issue, in accordance with section 553 of title

1 5, United States Code, final regulations to carry out this
2 Act, which shall include the regulations described in sub-
3 section (b).

4 (b) REQUIRED CONTENTS OF REGULATIONS.—

5 (1) PROTECTED INDIVIDUALS.—The regula-
6 tions shall require each public entity and LTSS in-
7 surance provider to offer, and, if accepted, provide
8 community-based long-term services and supports as
9 required under this Act to any individual with an
10 LTSS disability who would otherwise qualify for in-
11 stitutional placement provided or funded by the pub-
12 lic entity or LTSS insurance provider.

13 (2) SERVICES TO BE PROVIDED.—The regula-
14 tions issued under this section shall require each
15 public entity and LTSS insurance provider to pro-
16 vide the Attorney General and the Administrator
17 (for purposes of enabling the Attorney General to
18 consult with the Administrator) with an assurance
19 that the public entity or LTSS insurance provider—

20 (A) ensures that individuals with LTSS
21 disabilities receive assistance through hands-on
22 assistance, training, cueing, and safety moni-
23 toring, including access to backup systems,
24 with—

25 (i) activities of daily living;

1 (ii) instrumental activities of daily liv-
2 ing;

3 (iii) health-related tasks; or

4 (iv) other functions, tasks, or activi-
5 ties related to an activity or task described
6 in clause (i), (ii), or (iii);

7 (B) coordinates, conducts, performs, pro-
8 vides, or funds discharge planning from acute
9 and rehabilitation facilities, and other institu-
10 tions, to promote individuals with LTSS disabil-
11 ities living in the most integrated setting chosen
12 by the individuals;

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

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

22 (E) ensures that individuals with all types
23 of LTSS disabilities are able to live in the com-
24 munity and lead an independent life, including
25 ensuring that the individuals have maximum

1 control over the services and supports that the
2 individuals receive, choose the setting in which
3 the individuals receive those services and sup-
4 ports, and exercise control and direction over
5 their own lives.

6 (3) PUBLIC PARTICIPATION.—

7 (A) PUBLIC ENTITY.—The regulations
8 issued under this section shall require each pub-
9 lic entity to carry out a public participation
10 process in preparing the public entity’s self-
11 evaluation under paragraph (5) and transition
12 plan under paragraph (10).

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

22 (C) PROCESS.—In carrying out a public
23 participation process under subparagraph (A)
24 or (B), a public entity or LTSS insurance pro-
25 vider shall ensure that the process meets the re-

1 requirements of subparagraphs (A) and (C) of
2 section 1115(d)(2) of the Social Security Act
3 (42 U.S.C. 1315(d)(2)), except that—

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

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

9 (4) ADDITIONAL SERVICES AND SUPPORTS.—

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

17 (5) SELF-EVALUATION.—

18 (A) IN GENERAL.—The regulations issued
19 under this section shall require each public enti-
20 ty and each LTSS insurance provider, not later
21 than 30 months after the date of enactment of
22 this Act, to evaluate current services, policies,
23 and practices, and the effects thereof, that do
24 not or may not meet the requirements of this
25 Act and, to the extent modification of any such

1 services, policies, and practices is required to
2 meet the requirements of this Act, make the
3 necessary modifications. The self-evaluation
4 shall include—

5 (i) collection of baseline information,
6 including the numbers of individuals with
7 LTSS disabilities in various institutional
8 and community-based settings served by
9 the public entity or LTSS insurance pro-
10 vider, including demographic data that—

11 (I) specifies whether the individ-
12 uals are women, veterans, or members
13 of a racial and ethnic minority group,
14 as defined in section 1707 of the Pub-
15 lic Health Service Act (42 U.S.C.
16 300u-6); and

17 (II) is disaggregated by race in a
18 manner that captures all the racial
19 groups specified in the American
20 Community Survey conducted by the
21 Bureau of the Census;

22 (ii) a review of community capacity, in
23 communities served by the entity or pro-
24 vider, in providing community-based long-
25 term services and supports;

1 (iii) identification of improvements
2 needed to ensure that all community-based
3 long-term services and supports provided
4 by the public entity or LTSS insurance
5 provider to individuals with LTSS disabili-
6 ties are comprehensive, are accessible, are
7 not duplicative of existing (as of the date
8 of the identification) services and supports,
9 meet the needs of persons who are likely to
10 require assistance in order to live, or lead
11 a life, as described in section 4(a), and are
12 culturally competent, high-quality services
13 and supports, which may include identi-
14 fying system improvements that create an
15 option to self-direct receipt of such services
16 and supports for all populations of such in-
17 dividuals served; and

18 (iv) a review of funding sources for
19 community-based long-term services and
20 supports and an analysis of how those
21 funding sources could be organized into a
22 fair, coherent system that affords individ-
23 uals reasonable and timely access to cul-
24 turally competent, community-based long-
25 term services and supports.

1 (B) PUBLIC ENTITY.—A public entity, in-
2 cluding an LTSS insurance provider that is a
3 public entity, shall—

4 (i) include in the self-evaluation de-
5 scribed in subparagraph (A)—

6 (I) an assessment of the avail-
7 ability of accessible, affordable trans-
8 portation across the State involved
9 and whether transportation barriers
10 prevent individuals from receiving
11 long-term services and supports in the
12 most integrated setting; and

13 (II) an assessment of the avail-
14 ability of integrated employment op-
15 portunities in the jurisdiction served
16 by the public entity for individuals
17 with LTSS disabilities;

18 (ii) provide the self-evaluation de-
19 scribed in subparagraph (A) to the Attor-
20 ney General; and

21 (iii) make the self-evaluation described
22 in subparagraph (A) available on the pub-
23 lic internet website of the public entity.

24 (C) LTSS INSURANCE PROVIDER.—An
25 LTSS insurance provider shall keep the self-

1 evaluation described in subparagraph (A) on
2 file, and may be required to produce such self-
3 evaluation in the event of a review, investiga-
4 tion, or action described in section 8.

5 (6) ADDITIONAL REQUIREMENT FOR PUBLIC
6 ENTITIES.—The regulations issued under this sec-
7 tion shall require a public entity, in conjunction with
8 the housing agencies serving the jurisdiction served
9 by the public entity, to review and improve commu-
10 nity capacity, in all communities throughout the en-
11 tirety of that jurisdiction, in providing affordable,
12 accessible, and integrated housing, including an eval-
13 uation of available units, unmet need, and other
14 identifiable barriers to the provision of that housing.
15 In carrying out that improvement, the public entity,
16 in conjunction with such housing agencies, shall—

17 (A) ensure, and assure the Attorney Gen-
18 eral and the Administrator that there is, suffi-
19 cient availability of affordable, accessible, and
20 integrated housing in a setting that is not a dis-
21 ability-specific residential setting or a setting
22 where services are tied to tenancy, in order to
23 provide individuals with LTSS disabilities a
24 meaningful choice in their housing;

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

3 (i) in the case of such a housing agen-
4 cy, establish relationships with State and
5 local housing authorities; and

6 (ii) in the case of the public entity, es-
7 tablish relationships with State and local
8 housing agencies, including housing au-
9 thorities;

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

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

18 (E) ensure, and assure the Attorney Gen-
19 eral and the Administrator, that funds and pro-
20 grams implemented or overseen by the public
21 entity or in the public entity's jurisdiction are
22 targeted toward affordable, accessible, inte-
23 grated housing for individuals with an LTSS
24 disability who have the lowest income levels in
25 the jurisdiction as a priority over any other de-

1 velopment until capacity barriers for such hous-
2 ing are removed or unmet needs for such hous-
3 ing have been met.

4 (7) DESIGNATION OF RESPONSIBLE EM-
5 PLOYEE.—The regulations issued under this section
6 shall require each public entity and LTSS insurance
7 provider to designate at least one employee to co-
8 ordinate the entity’s or provider’s efforts to comply
9 with and carry out the entity or provider’s respon-
10 sibilities under this Act, including the investigation
11 of any complaint communicated to the entity or pro-
12 vider that alleges a violation of this Act. Each public
13 entity and LTSS insurance provider shall make
14 available to all interested individuals the name, of-
15 fice address, and telephone number of the employee
16 designated pursuant to this paragraph.

17 (8) GRIEVANCE PROCEDURES.—The regulations
18 issued under this section shall require public entities
19 and LTSS insurance providers to adopt and publish
20 grievance procedures providing for prompt and equi-
21 table resolution of complaints alleging a violation of
22 this Act.

23 (9) PROVISION OF SERVICE BY OTHERS.—The
24 regulations issued under this section shall require
25 each public entity submitting a self-evaluation under

1 paragraph (5) to identify, as part of the transition
2 plan described in paragraph (10), any other entity
3 that is, or acts as, an agent, subcontractor, or other
4 instrumentality of the public entity with regards to
5 a service, support, policy, or practice described in
6 such plan or self-evaluation.

7 (10) TRANSITION PLANS.—The regulations
8 issued under this section shall require each public
9 entity, not later than 42 months after the date of
10 enactment of this Act, to submit to the Adminis-
11 trator and, on approval by the Administrator, begin
12 implementing a transition plan for carrying out this
13 Act that establishes the achievement of the require-
14 ments of this Act, as soon as practicable, but in no
15 event later than 12 years after the date of enact-
16 ment of this Act. The transition plan shall—

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

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

1 (C) describe specific efforts to support in-
2 dividuals with LTSS disabilities to avoid un-
3 wanted institutionalization through the provi-
4 sion of LTSS;

5 (D) describe the manner in which the pub-
6 lic entity has obtained or plans to obtain nec-
7 essary funding and resources needed for imple-
8 mentation of the plan (regardless of whether
9 the entity began carrying out the objectives of
10 this Act prior to the date of enactment of this
11 Act); and

12 (E) describe the steps taken to ensure that
13 the transition plan addresses the needs of indi-
14 viduals from all socio-demographic and geo-
15 graphic backgrounds.

16 (11) ANNUAL REPORTING.—

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

21 (B) PROGRESS ON OBJECTIVES, TARGETS,
22 AND EFFORTS.—The regulations issued under
23 this section shall require each public entity that
24 has submitted a transition plan, to make pub-
25 licly available on the entity’s website an annual

1 report on the progress the public entity has
2 made during the previous year in meeting the
3 measurable objectives, specific annual targets,
4 and specific efforts described in paragraph (10).

5 (c) REVIEW OF TRANSITION PLANS.—

6 (1) GENERAL RULE.—The Administrator shall
7 review a transition plan submitted in accordance
8 with subsection (b)(10), not later than 90 days after
9 receiving the plan, for the purpose of determining
10 whether such plan meets the requirements of this
11 Act, including the regulations issued under this sec-
12 tion.

13 (2) DISAPPROVAL.—If the Administrator deter-
14 mines that a transition plan reviewed under this
15 subsection fails to meet the requirements of this Act,
16 the Administrator shall disapprove the transition
17 plan and notify the public entity that submitted the
18 transition plan of, and the reasons for, such dis-
19 approval.

20 (3) MODIFICATION OF DISAPPROVED PLAN.—
21 Not later than 90 days after the date of disapproval
22 of a transition plan under this subsection, the public
23 entity that submitted the transition plan shall mod-
24 ify the transition plan to meet the requirements of
25 this section and shall submit the modified plan to

1 the Administrator. Not later than 90 days after re-
2 ceiving the modified plan, the Administrator shall
3 review the plan and, on approval by the Adminis-
4 trator, the public entity shall begin implementing the
5 plan.

6 (d) **RULE OF CONSTRUCTION.**—Nothing in sub-
7 section (b)(10) or (c) or any other provision of this Act
8 shall be construed to limit the rights, protections, or re-
9 quirements of any other Federal law, relating to integra-
10 tion of individuals with disabilities into the community and
11 enabling those individuals to live in the most integrated
12 setting.

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

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

19 **SEC. 8. ENFORCEMENT.**

20 (a) **CIVIL ACTION.**—

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

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

3 (2) AGGRIEVED INDIVIDUAL.—

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

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

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

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

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

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

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

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

14 (1) actual and punitive damages;

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

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

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

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

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

14 (d) ENFORCEMENT BY ATTORNEY GENERAL.—

15 (1) DENIAL OF RIGHTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 9. CONSTRUCTION.**

16 For purposes of construing this Act—

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

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

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

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

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

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