

118TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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 _____

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 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.
7 1396d(d));

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

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

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

21 (B) INSTITUTIONALIZATION.—The term
22 “institutionalization”, used with respect to an
23 individual with an LTSS disability, refers to the
24 individual living or receiving services or sup-
25 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, decisionmaking, 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)).