

117TH CONGRESS
1ST SESSION

S. 3417

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

DECEMBER 16, 2021

Mr. BENNET (for himself, Mr. SANDERS, Ms. DUCKWORTH, Mr. TESTER, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Latonya Reeves Free-
5 dom Act of 2021”.

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

1 1990, held by the Supreme Court in *Olmstead v.*
2 *L.C.*, 527 U.S. 581 (1999) in a manner that acceler-
3 ates and improves State compliance;

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

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

19 (4) to identify and address racial, ethnic, geo-
20 graphic, socioeconomic, sexual orientation, gender
21 identity, and other disparities in the provision of
22 community-based long-term services and supports.

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

24 (a) **DEFINITIONS.**—In this Act:

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

5 (2) ADMINISTRATOR.—The term “Adminis-
6 trator” means—

7 (A) the Administrator of the Administra-
8 tion for Community Living; or

9 (B) another designee of the Secretary of
10 Health and Human Services.

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

20 (A) In the case of a dwelling or a nonresi-
21 dential setting (such as a setting in which an
22 individual with an LTSS disability receives day
23 services and supported employment), a dwelling
24 or setting—

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

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

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

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

23 (iii) in which an individual has rights
24 to privacy, dignity, and respect, and free-
25 dom from coercion and restraint;

(iv) that, as a matter of infrastructure, environment, amenities, location, services, and features, optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including choices about daily activities, physical environment, and persons with whom the individual interacts; and

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

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

(i) that is owned by an individual with an LTSS disability or the individual's family member;

(ii) that is leased to the individual with an LTSS disability under an individual lease, that has lockable access and egress, and that includes living, sleeping, bathing, and cooking areas over which an individual with an LTSS disability or the

individual's family member has domain
and control; or

(iii) that is a group or shared residence—

(I) in which no more than 4 unrelated individuals with an LTSS disability reside;

(II) for which each individual with an LTSS disability living at the residence owns, rents, or occupies the residence under a legally enforceable agreement under which the individual has, at a minimum, the same responsibilities and protections as tenants have under applicable landlord-tenant law;

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

(aa) has privacy in the individual's sleeping unit, including a lockable entrance door controlled by the individual;

(bb) shares a sleeping unit only if such individual and the

1 individual sharing the unit choose
 2 to do so, and if individuals in the
 3 residence so choose, they also
 4 have a choice of roommates with-
 5 in the residence;

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

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

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

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

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

24 (5) HEALTH-RELATED TASKS.—The term
 25 “health-related tasks” means specific nonacute

tasks, typically regulated by States as medical or nursing tasks that an individual with a disability may require to live in the community, including—

(A) administration of medication;

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

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

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

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

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

(i) activities of daily living;

(ii) instrumental activities of daily living;

(iii) health-related tasks; or

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

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

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

9 (8) INSTITUTION.—The term “institution”
 10 means—

11 (A) a skilled nursing facility (as defined in
 12 section 1819(a) of the Social Security Act (42
 13 U.S.C. 1395i–3(a)));

14 (B) a nursing facility (as defined in section
 15 1919(a) of such Act (42 U.S.C. 1396r(a)));

16 (C) a long-term care hospital (as described
 17 in section 1886(d)(1)(B)(iv) of such Act (42
 18 U.S.C. 1395ww(d)(1)(B)(iv)));

19 (D) a facility described in section 1905(d)
 20 of such Act (42 U.S.C. 1396d(d));

21 (E) an institution which is a psychiatric
 22 hospital (as defined in section 1861(f) of such
 23 Act (42 U.S.C. 1395x(f))) or that provides in-
 24 patient psychiatric services in a residential set-
 25 ting specified by the Secretary;

1 (F) an institution described in section
 2 1905(i) of such Act (42 U.S.C. 1396d(i)); and

3 (G) any congregate health care services
 4 setting that is not community-based.

5 (9) INSTRUMENTAL ACTIVITIES OF DAILY LIV-
 6 ING.—

7 (A) IN GENERAL.—The term “instru-
 8 mental activities of daily living” means one or
 9 more activities related to living independently in
 10 the community, including activities related to—

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

15 (ii) household chores and environ-
 16 mental maintenance tasks;

17 (iii) communication and interpersonal
 18 skills, such as—

19 (I) using the telephone or other
 20 communications devices;

21 (II) forming and maintaining
 22 interpersonal relationships; or

23 (III) securing opportunities to
 24 participate in group support or peer-
 25 to-peer support arrangements;

1 (iv) travel and community participa-
2 tion, such as shopping, arranging appoint-
3 ments, or moving around the community;

4 (v) care of others, such as raising
5 children, taking care of pets, or selecting
6 caregivers; or

7 (vi) management of personal property
8 and personal safety, such as—

9 (I) taking medication;

10 (II) handling or managing
11 money; or

12 (III) responding to emergent sit-
13 uations or unscheduled needs requir-
14 ing an immediate response.

15 (B) ASSISTANCE.—The term “assistance”
16 used with respect to instrumental activities of
17 daily living, includes support provided to an in-
18 dividual by another person due to confusion, de-
19 mentia, behavioral symptoms, or cognitive, in-
20 tellectual, mental, or emotional disabilities, in-
21 cluding support to—

22 (i) help the individual identify and set
23 goals, overcome fears, and manage transi-
24 tions;

1 (ii) help the individual with executive
 2 functioning, decision making, and problem
 3 solving;

4 (iii) provide reassurance to the indi-
 5 vidual; and

6 (iv) help the individual with orienta-
 7 tion, memory, and other activities related
 8 to independent living.

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

14 (A) activities of daily living;

15 (B) instrumental activities of daily living;

16 (C) health-related tasks; or

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

20 (11) LTSS INSURANCE PROVIDER.—The term
 21 “LTSS insurance provider” means a public or pri-
 22 vate entity that—

23 (A) provides funds for long-term services
 24 and supports; and

1 (B) is engaged in commerce or in an in-
 2 dustry or activity affecting commerce.

3 (12) PUBLIC ENTITY.—

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

6 (i) provides or funds institutional
 7 placements for individuals with LTSS dis-
 8 abilities; and

9 (ii) is—

10 (I) a State or local government;

11 or

12 (II) any department, agency, en-
 13 tity administering a special purpose
 14 district, or other instrumentality, of a
 15 State or local government.

16 (B) INTERSTATE COMMERCE.—For pur-
 17 poses of subparagraph (A), a public entity shall
 18 be considered to be a person engaged in com-
 19 merce or in an industry or activity affecting
 20 commerce.

21 (b) RULE OF CONSTRUCTION.—Nothing in sub-
 22 section (a)(2) or any other provision of this section shall
 23 be construed to preclude an individual with a disability
 24 from receiving community-based services and supports in
 25 an integrated community setting such as a grocery store,

1 retail establishment, restaurant, bank, park, concert
2 venue, theater, or workplace.

3 **SEC. 4. DISCRIMINATION.**

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

11 (b) SPECIFIC PROHIBITIONS.—For purposes of this
12 Act, discrimination by a public entity or LTSS insurance
13 provider includes—

14 (1) the imposition or application of eligibility
15 criteria or another policy that prevents or tends to
16 prevent an individual with an LTSS disability, or
17 any class of individuals with LTSS disabilities, from
18 receiving a community-based long-term service or
19 support;

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

1 (3) a failure to provide a specific community-
2 based long-term service or support or a type of com-
3 munity-based long-term service or support needed
4 for an individual with an LTSS disability, or any
5 class of individuals with LTSS disabilities;

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

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

20 (6) a failure to establish an adequate rate or
21 other payment structure that is necessary to ensure
22 the availability of a workforce sufficient to support
23 an individual with an LTSS disability in living in
24 the community and leading an independent life;

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

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

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

15 (A) individuals with LTSS disabilities are
16 offered the alternative of community-based
17 long-term services and supports prior to institu-
18 tionalization; and

19 (B) if selected by an individual with an
20 LTSS disability, the community-based long-
21 term services and supports described in sub-
22 paragraph (A) are provided;

23 (10) a failure to ensure that each institutional-
24 ized individual with an LTSS disability is regularly
25 notified of the alternative of community-based long-

1 term services and supports and that those commu-
 2 nity-based long-term services and supports are pro-
 3 vided if the individual with an LTSS disability se-
 4 lects such services and supports; and

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

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

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

19 (1) shall be construed—

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

1 (B) to limit the rights of an individual with
 2 a disability under any provision of law other
 3 than this section;

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

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

13 **SEC. 5. ADMINISTRATION.**

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

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

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

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

24 (B) establish a task force to assess racial,
 25 ethnic, geographic, socioeconomic, sexual ori-

1 entation, gender identity, and other disparities
2 in the availability and provision of community-
3 based long-term services and supports, which
4 task force shall be responsible for—

5 (i) overseeing studies regarding the
6 nature and extent of racial, ethnic, geo-
7 graphic, socioeconomic, sexual orientation,
8 gender identity, and other disparities in
9 the availability and provision of commu-
10 nity-based long-term services and supports
11 and the impact that those disparities have
12 on the institutionalization of individuals
13 with LTSS disabilities; 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 racial, ethnic, geographic, socio-
18 economic, sexual orientation, gender iden-
19 tity, and other disparities in the avail-
20 ability and provision of community-based
21 long-term services and supports, including
22 recommendations for addressing those dis-
23 parities;

24 (C) establish a task force to identify obsta-
25 cles that prevent individuals with LTSS disabil-

ities from being able to choose community-based alternatives to institutionalization, and to recommend legislative or executive action to address the obstacles; and

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

(b) COOPERATION OF EXECUTIVE DEPARTMENTS AND AGENCIES.—Each Federal agency and, in particular, each Federal agency covered by Executive Order 13217 (66 Fed. Reg. 33155; relating to community-based alternatives for individuals with disabilities), shall carry out programs and activities relating to the institutionalization of individuals with LTSS disabilities and the provision of community-based long-term services and supports for individuals with LTSS disabilities in accordance with this Act and shall cooperate with the Attorney General and the Administrator to further the purposes of this Act.

SEC. 6. REGULATIONS.

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

1 (b) REQUIRED CONTENTS OF REGULATIONS.—

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

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

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

22 (i) activities of daily living;

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

25 (iii) health-related tasks; or

1 (iv) other functions, tasks, or activi-
2 ties related to an activity or task described
3 in clause (i), (ii), or (iii);

4 (B) coordinates, conducts, performs, pro-
5 vides, or funds discharge planning from acute,
6 rehabilitation, and long-term facilities to pro-
7 mote individuals with LTSS disabilities living in
8 the most integrated setting chosen by the indi-
9 viduals;

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

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

19 (E) ensures that individuals with all types
20 of LTSS disabilities are able to live in the com-
21 munity and lead an independent life, including
22 ensuring that the individuals have maximum
23 control over the services and supports that the
24 individuals receive, choose the setting in which
25 the individuals receive those services and sup-

ports, and exercise control and direction over
their own lives.

(3) PUBLIC PARTICIPATION.—

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

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

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

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

3 (ii) the reference to an application
4 shall be considered to be a reference to the
5 self-evaluation or plan involved.

6 (4) ADDITIONAL SERVICES AND SUPPORTS.—

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

14 (5) SELF-EVALUATION.—

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

1 necessary modifications. The self-evaluation
2 shall include—

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

9 (I) specifies whether the individ-
10 uals are women, veterans, or minori-
11 ties; and

12 (II) is disaggregated by race in a
13 manner that captures all the racial
14 groups specified in the American
15 Community Survey conducted by the
16 Bureau of the Census;

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

21 (iii) identification of improvements
22 needed to ensure that all community-based
23 long-term services and supports provided
24 by the public entity or LTSS insurance
25 provider to individuals with LTSS disabil-

ities are comprehensive, are accessible, are not duplicative of existing (as of the date of the identification) services and supports, meet the needs of persons who are likely to require assistance in order to live, or lead a life, as described in section 4(a), and are culturally competent, high-quality services and supports, which may include identifying system improvements that create an option to self-direct receipt of such services and supports for all populations of such individuals served; and

(iv) a review of funding sources for community-based long-term services and supports and an analysis of how those funding sources could be organized into a fair, coherent system that affords individuals reasonable and timely access to culturally competent, community-based long-term services and supports.

(B) PUBLIC ENTITY.—A public entity, including an LTSS insurance provider that is a public entity, shall—

(i) include in the self-evaluation described in subparagraph (A)—

1 (I) an assessment of the avail-
 2 ability of accessible, affordable trans-
 3 portation across the State involved
 4 and whether transportation barriers
 5 prevent individuals from receiving
 6 long-term services and supports in the
 7 most integrated setting; and

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

13 (ii) provide the self-evaluation de-
 14 scribed in subparagraph (A) to the Attor-
 15 ney General; and

16 (iii) make the self-evaluation described
 17 in subparagraph (A) available on the pub-
 18 lic internet website of the public entity.

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

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

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

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

23 (i) in the case of such a housing agen-
24 cy, establish relationships with State and
25 local housing authorities; and

1 (ii) in the case of the public entity, es-
 2 tablish relationships with State and local
 3 housing agencies, including housing au-
 4 thorities;

5 (C) establish, where needed, necessary
 6 preferences and set-asides in housing programs
 7 for individuals with LTSS disabilities who are
 8 transitioning from or avoiding institutional
 9 placement;

10 (D) establish a process to fund necessary
 11 home modifications so that individuals with
 12 LTSS disabilities can live independently; and

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

24 (7) DESIGNATION OF RESPONSIBLE EM-
 25 PLOYEE.—The regulations issued under this section

1 shall require each public entity and LTSS insurance
2 provider to designate at least one employee to co-
3 ordinate the entity's or provider's efforts to comply
4 with and carry out the entity or provider's respon-
5 sibilities under this Act, including the investigation
6 of any complaint communicated to the entity or pro-
7 vider that alleges a violation of this Act. Each public
8 entity and LTSS insurance provider shall make
9 available to all interested individuals the name, of-
10 fice address, and telephone number of the employee
11 designated pursuant to this paragraph.

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

18 (9) PROVISION OF SERVICE BY OTHERS.—The
19 regulations issued under this section shall require
20 each public entity submitting a self-evaluation under
21 paragraph (5) to identify, as part of the transition
22 plan described in paragraph (10), any other entity
23 that is, or acts as, an agent, subcontractor, or other
24 instrumentality of the public entity with regards to

1 a service, support, policy, or practice described in
2 such plan or self-evaluation.

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

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

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

21 (C) describe specific efforts to support in-
22 dividuals with LTSS disabilities to avoid un-
23 wanted institutionalization through the provi-
24 sion of LTSS;

(D) describe the manner in which the public entity has obtained or plans to obtain necessary funding and resources needed for implementation of the plan (regardless of whether the entity began carrying out the objectives of this Act prior to the date of enactment of this Act); and

(E) describe the steps taken to ensure that the transition plan addresses the needs of communities of color and lesbian, gay, bisexual, and transgender, and other underrepresented individuals.

(11) ANNUAL REPORTING.—

(A) IN GENERAL.—The regulations issued under this section shall establish annual reporting requirements for each public entity covered by this section.

(B) PROGRESS ON OBJECTIVES, TARGETS, AND EFFORTS.—The regulations issued under this section shall require each public entity that has submitted a transition plan, to make publicly available on the entity's website an annual report on the progress the public entity has made during the previous year in meeting the

1 measurable objectives, specific annual targets,
2 and specific efforts described in paragraph (10).

3 (c) REVIEW OF TRANSITION PLANS.—

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

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

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

1 review the plan and, on approval by the Adminis-
2 trator, the public entity shall begin implementing the
3 plan.

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

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

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

17 **SEC. 8. ENFORCEMENT.**

18 (a) CIVIL ACTION.—

19 (1) IN GENERAL.—A civil action for preventive
20 relief, including an application for a permanent or
21 temporary injunction, restraining order, or other
22 order, may be instituted by an individual described
23 in paragraph (2) in an appropriate Federal district
24 court.

25 (2) AGGRIEVED INDIVIDUAL.—

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

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

13 (i) is an individual with an LTSS dis-
 14 ability; and

15 (ii) is being subjected to, or about to
 16 be subjected to, such a violation (including
 17 a violation of section 4(b)(11)).

18 (3) APPOINTMENT OF ATTORNEY; NO FEES,
 19 COSTS, OR SECURITY.—Upon application by the
 20 complainant described in paragraph (2) and in such
 21 circumstances as the court may determine to be just,
 22 the court may appoint an attorney for the complain-
 23 ant and may authorize the commencement of such
 24 civil action without the payment of fees, costs, or se-
 25 curity.

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

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

11 (1) actual and punitive damages;

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

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

24 (4) in an appropriate case, injunctive relief to
 25 require the modification of a policy, practice, or pro-

1 cedure, or the provision of an alternative method of
 2 providing LTSS, to the extent required by this Act.

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

10 (d) ENFORCEMENT BY ATTORNEY GENERAL.—

11 (1) DENIAL OF RIGHTS.—

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

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

22 (i) any public entity or LTSS insur-
 23 ance provider, including a group of public
 24 entities or LTSS insurance providers, is

1 engaged in a pattern or practice of viola-
 2 tions of this Act; or

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

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

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

12 (i) granting temporary, preliminary,
 13 or permanent relief; and

14 (ii) requiring the modification of a
 15 policy, practice, or procedure, or the provi-
 16 sion of an alternative method of providing
 17 LTSS;

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

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

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

3 (ii) not exceeding \$200,000 for any
4 subsequent violation.

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

12 **SEC. 9. TECHNICAL ASSISTANCE.**

13 (a) IN GENERAL.—The Administrator shall provide
14 technical assistance to public entities for purposes of cre-
15 ating and implementing transition plans in accordance
16 with section 6(b)(10).

17 (b) APPROPRIATIONS.—In addition to amounts other-
18 wise available, there is appropriated to the Administrator
19 for fiscal year 2022, out of any money in the Treasury
20 not otherwise appropriated, \$10,000,000, to remain avail-
21 able until expended, to carry out this section.

22 **SEC. 10. CONSTRUCTION.**

23 For purposes of construing this Act—

24 (1) section 4(b)(11) shall be construed in a
25 manner that takes into account its similarities with

1 section 302(b)(2)(A)(ii) of the Americans with Dis-
2 abilities Act of 1990 (42 U.S.C. 12182(b)(2)(A)(ii));

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

8 (3) section 7 shall be construed in a manner
9 that takes into account its similarities with section
10 807(a) of the Civil Rights Act of 1968 (42 U.S.C.
11 3607(a));

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

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

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