



116TH CONGRESS
1ST SESSION

S. 117

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

JANUARY 15, 2019

Mr. SCHUMER (for himself, Mr. GARDNER, Ms. BALDWIN, Mr. BENNET, Mr. BLUMENTHAL, Ms. CANTWELL, Mr. CASEY, Mr. COONS, Ms. DUCKWORTH, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Mr. JONES, Mr. LEAHY, Mr. MARKEY, Mrs. MURRAY, Mr. VAN HOLLEN, Ms. WARREN, Mr. TESTER, Mr. SANDERS, Mr. DURBIN, Mr. BOOKER, Mr. MERKLEY, 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 “Disability Integration
5 Act of 2019”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) **FINDINGS.**—Congress finds the following:

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

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

10 (B) intended that the ADA assure “full
11 participation” and “independent living” for in-
12 dividuals with disabilities by addressing “dis-
13 crimination against individuals with disabilities
14 [that] persists in critical areas”, including insti-
15 tutionalization.

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

22 (3) The holdings of the Supreme Court in
23 *Olmstead v. L.C.*, 527 U.S. 581 (1999), and com-
24 panion cases, have clearly articulated that individ-
25 uals with disabilities have a civil right under the

1 ADA to participate in society as equal citizens. How-
2 ever, many States still do not provide sufficient com-
3 munity-based long-term services and supports to in-
4 dividuals with disabilities to end segregation in insti-
5 tutions.

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

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

21 (6) States have not consistently planned to en-
22 sure sufficient services and supports for individuals
23 with disabilities, including those with the most sig-
24 nificant disabilities, to enable individuals with dis-
25 abilities to live in the most integrated setting. As a

Commented [VOR1]: This is an intentional misreading of Olmstead. The Court ruled that for some individuals “the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk. . . . Some individuals . . . may need institutional care from time to time ‘to stabilize acute psychiatric symptoms’ . . . For other individuals, no placement outside the institution may ever be appropriate..for these persons, institutional settings are needed and must remain available.” -Olmstead v. L. C., 527 U.S. 581, at 604-5.

Commented [VOR2]: There should be a statute recognizing that families have a choice of residential options. This would include family home, group home, own home, intentional community, farmstead, nursing facility, or intermediate care facility, as appropriate to the needs of the individual, determined by t the individual, their families or their guardians.

Commented [VOR3]: Olmstead (1999) at 605. “Each disabled person is entitled to treatment in the most integrated setting possible for that person—recognizing that, on a case-by-case basis, that set- ting may be in an institution.” The Disability Integration Act would violate several key provisions in Olmstead that were deliberately included in the Justice’s decision in order to protect family choice and the needs of persons with severe intellectual disabilities.

1 result, many individuals with disabilities who reside
2 in institutions are prevented from residing in the
3 community and individuals with disabilities who are
4 not in institutions find themselves at risk of institu-
5 tional placement.

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

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

14 (1) to clarify and strengthen the ADA’s inte-
15 gration mandate in a manner that accelerates State
16 compliance;

17 (2) to clarify that every individual who is eligi-
18 ble for long-term services and supports has a feder-
19 ally protected right to be meaningfully integrated
20 into that individual’s community and receive commu-
21 nity-based long-term services and supports;

22 (3) to ensure that States provide long-term
23 services and supports to individuals with disabilities
24 in a manner that allows individuals with disabilities
25 to live in the most integrated setting, including the

Commented [VOR4]: Prejudicial language. It is difficult to get into an ICF. Most people who qualify are told there are no beds. Many are offered HCBS waiver placements instead. The only institutions these individuals are at risk of being placed in are prisons or forensic facilities, if they are arrested for violent acts. This most frequently occurs when people are housed in inappropriate facilities like group homes that provide insufficient care.

Commented [VOR5]: Anecdotal. There are no cost studies backing up this comment. HCBS waiver services may or may not be less costly when all services are totaled, but the level of care, reporting of critical incidents. For the most part, those people who would benefit from HCBS waiver settings have already moved out of ICFs and into the “community”. If anything, people who are not doing well in the community are finding it difficult, if not impossible, to get placement in an ICF/ID.

Commented [VOR6]: See Olmstead (1999) at 605 (“[T]here may be times [when] a patient can be treated in the community, and others whe[n] an institutional placement is necessary.”); Reply Brief 19 (placement in a community-based treatment program does not mean the State will no longer need to retain hospital accommodations for the person so placed). For other individuals, no placement outside the institution may ever be appropriate. See Brief for American Psychiatric Association et al. as *Amici Curiae* 22–23 (“Some individuals, whether mentally retarded or mentally ill, are not prepared at particular times—perhaps in the short run, perhaps in the long run—for the risks and exposure of the less protective environment of community settings”; for these persons, “institutional settings are needed and must remain available.”); Brief for Voice of the Retarded et al. as *Amici Curiae* 11 (“Each disabled person is entitled to treatment in the most integrated setting possible for that person—recognizing that, on a case-by-case basis, that setting may be in an institution.”);

1 individual’s own home, have maximum control over
2 their services and supports, and ensure that long-
3 term services and supports are provided in a manner
4 that allows individuals with disabilities to lead an
5 independent life;

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

Formatted: Underline

11 (5) to establish a requirement for clear and uni-
12 form annual public reporting by States that includes
13 reporting about—

Commented [VOR7]: This would sanction evicting people who prefer to stay in ICFs. States would be pressured, or perceive that they are being pressured, to do so. This would destroy individual choice and the rights of families and guardians to make their own decisions.

14 (A) the number of individuals with disabil-
15 ities who are served in the community and the
16 number who are served in institutions; and

17 (B) the number of individuals with disabil-
18 ities who have transitioned from an institution
19 to a community-based living situation, and the
20 type of community-based living situation into
21 which those individuals have transitioned.

Commented [VOR8]: There should also be mortality studies that show how many people have died within two years due to unsuccessful transitions or insufficient levels of care.

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

23 (a) **DEFINITIONS.**—In this Act:

24 (1) **ACTIVITIES OF DAILY LIVING.**—The term
25 “activities of daily living” has the meaning given the

Commented [VOR9]: HCBS Settings do not have Active Treatment. ICFs/IID do, and are required to do so by law.

1 term in section 441.505 of title 42, Code of Federal
2 Regulations (or a successor regulation).

3 (2) ADMINISTRATOR.—The term “Adminis-
4 trator” means—

5 (A) the Administrator of the Administra-
6 tion for Community Living; or

7 (B) another designee of the Secretary of
8 Health and Human Services.

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

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

23 (i) that, as a matter of infrastructure,
24 environment, amenities, location, services,
25 and features, is integrated into the greater

community and supports, for each individual with an LTSS disability who receives services or supports at the setting—

(I) full access to the greater community

(including access to opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community); and

(II) access to the greater community

to the same extent as access to the community is enjoyed by an individual who is not receiving long-term services or supports;

(ii) that the individual has selected as a meaningful choice from among nonresidential setting options, including nondisability-specific settings;

(iii) in which an individual has rights to privacy, dignity, and respect, and freedom from coercion and restraint;

(iv) that, as a matter of infrastructure, environment, amenities, location, services, and features, optimizes, but does

Commented [VOR10]: For most people with severe or profound I/DD, this is not the case. Many people find the "Community" settings far more isolating and interact with a smaller number of peers and caregivers without interacting with a higher number of non-disabled people.

Commented [VOR11]: See above comment.

1 not regiment, individual initiative, auton-
2 omy, and independence in making life
3 choices, including choices about daily ac-
4 tivities, physical environment, and persons
5 with whom the individual interacts; and

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

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

13 (i) that is owned by an individual with
14 an LTSS disability or the individual's fam-
15 ily member;

16 (ii) that is leased to the individual
17 with an LTSS disability under an indi-
18 vidual lease, that has lockable access and
19 egress, and that includes living, sleeping,
20 bathing, and cooking areas over which an
21 individual with an LTSS disability or the
22 individual's family member has domain
23 and control; or

24 (iii) that is a group or shared resi-
25 dence—

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(I) in which no more than 4 un-
related individuals with an LTSS dis-
ability 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 respon-
sibilities 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 indi-
vidual’s sleeping unit, including a
lockable entrance door controlled
by the individual;

(bb) shares a sleeping unit
only if such individual and the
individual sharing the unit choose
to do so, and if individuals in the
residence so choose, they also

Commented [VOR12]: Congregate care facilities, including nursing homes, skilled nursing facilities, and intermediate care facilities are communities, too. This definition discriminates against the right to choose anything but a small, isolated setting.

1 have a choice of roommates with-
2 in the residence;

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

8 (dd) has the freedom and
9 support to control the individ-
10 ual's own schedules and activi-
11 ties; and

12 (ee) is able to have visitors
13 of the individual's choosing at
14 any time; and

15 (IV) that is physically accessible
16 to the individual with an LTSS dis-
17 ability living at the residence.

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

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

- 1 (A) administration of medication;
- 2 (B) assistance with use, operation, and
- 3 maintenance of a ventilator; and
- 4 (C) maintenance and use of a gastrostomy
- 5 tube, a catheter, or a stable ostomy.

6 (6) INDIVIDUAL WITH A DISABILITY.—The term
 7 “individual with a disability” means an individual
 8 who is a person with a disability, as defined in sec-
 9 tion 3 of the Americans with Disabilities Act of
 10 1990 (42 U.S.C. 12102).

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

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

- 17 (i) activities of daily living;
- 18 (ii) instrumental activities of daily liv-
- 19 ing;
- 20 (iii) health-related tasks; or
- 21 (iv) other functions, tasks, or activi-
- 22 ties related to an activity or task described
- 23 in clause (i), (ii), or (iii); and

24 (B)(i) is currently in an institutional place-
 25 ment; or

Commented [VOR13]: Again, this violates the letter and intent of Olmstead.

1 (ii) is at risk of institutionalization if the
2 individual does not receive community-based
3 long-term services and supports.

4 (8) INSTRUMENTAL ACTIVITIES OF DAILY LIV-
5 ING.—

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

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

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

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

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

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

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

Commented [VOR14]: The only risk is to be placed in an improper environment. For those with severe and profound I/DD, that is a setting that does not offer a sufficient degree of care. For higher functioning, less severely impacted individuals, that can be a more restrictive environment. This act only looks after the latter group. It dangerously impacts the needs, the safety, and the civil rights of the people with more severe I/DD.

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, decisionmaking, 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 (9) 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 (10) 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 (11) 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;

Commented [VOR15]: There are not enough beds in ICFs/IID for those who seek them. Many states have no ICF beds available. Some states have no ICFs at all. The waiting lists apply to both groups of individuals, not just those seeking waiver services.

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-

Commented [VOR16]: This is the first acknowledgement of choice that might include an ICF/IID.

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

Commented [VOR17]: In the real world, people in ICFs/IID and their families are constantly pressured, often by court decree, to move into waiver settings. Conversely, people in waiver settings are not given the option of an ICF/IID if they need one. Once you sign the waiver, it is almost impossible to demand your right to placement in an ICF.

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—

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

19 (B) enforce section 6(c).

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

23 (A) conduct studies regarding the nature
24 and extent of institutionalization of individuals
25 with LTSS disabilities in representative com-

1 munities, including urban, suburban, and rural
2 communities, throughout the United States;

3 (B) publish and disseminate reports, rec-
4 ommendations, and information derived from
5 such studies, including an annual report to
6 Congress, specifying—

7 (i) the nature and extent of progress
8 in the United States in eliminating institu-
9 tionalization for individuals with LTSS
10 disabilities in violation of this Act and fur-
11 thering the purposes of this Act;

12 (ii) obstacles that remain in the effort
13 to achieve the provision of community-
14 based long-term services and supports for
15 all individuals with LTSS disabilities; and

16 (iii) recommendations for further leg-
17 islative or executive action;

18 (C) cooperate with, and provide grants for
19 technical assistance to, Federal, State, and local
20 public or private agencies and organizations
21 that are formulating or carrying out programs
22 to prevent or eliminate institutionalization of
23 individuals with LTSS disabilities or to promote
24 the provision of community-based long-term
25 services and supports;

Commented [VOR18]: This provision would ensure that, if passed, the DIA would eliminate ICFs and other specialized congregate care settings for people with I/DD.

Commented [VOR19]: ALL INDIVIDUALS. That means there are to be no exceptions to this rule.

Commented [VOR20]: This would, in effect, reward Federal and States organizations with grant funds to carry out programs aimed at closing admissions to ICFs/IID

1 (D) implement educational and conciliatory
2 activities to further the purposes of this Act;
3 and

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

7 (b) COOPERATION OF EXECUTIVE DEPARTMENTS
8 AND AGENCIES.—Each Federal agency and, in particular,
9 each Federal agency covered by Executive Order 13217
10 (66 Fed. Reg. 33155; relating to community-based alter-
11 natives for individuals with disabilities), shall carry out
12 programs and activities relating to the institutionalization
13 of individuals with LTSS disabilities and the provision of
14 community-based long-term services and supports for indi-
15 viduals with LTSS disabilities in accordance with this Act
16 and shall cooperate with the Attorney General and the Ad-
17 ministrator to further the purposes of this Act.

18 **SEC. 6. REGULATIONS.**

19 (a) ISSUANCE OF REGULATIONS.—Not later than 24
20 months after the date of enactment of this Act, the Attor-
21 ney General and the Secretary of Health and Human
22 Services shall issue, in accordance with section 553 of title
23 5, United States Code, final regulations to carry out this
24 Act, which shall include the regulations described in sub-
25 section (b).

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

Commented [VOR21]: Everything in the following section will be required, if this bill is enacted.

2 (1) **ELIGIBLE RECIPIENTS OF SERVICE.—**The
 3 regulations shall require each public entity and
 4 LTSS insurance provider to offer, and, if accepted,
 5 provide community-based long-term services and
 6 supports as required under this Act to any indi-
 7 vidual with an LTSS disability who would otherwise
 8 qualify for institutional placement provided or fund-
 9 ed by the public 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 with an assurance that the public entity or LTSS in-
 15 surance provider—

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

- 21 (i) activities of daily living;
- 22 (ii) instrumental activities of daily liv-
 23 ing;
- 24 (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-

Commented [VOR22]: Does this choice include the choice of an ICF/IID, or is this just a choice among non-ICF settings?

Commented [VOR23]: See Above

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

3 (3) PUBLIC PARTICIPATION.—

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

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

19 (C) PROCESS.—In carrying out a public
20 participation process under subparagraph (A)
21 or (B), a public entity or LTSS insurance pro-
22 vider shall ensure that the process meets the re-
23 quirements of subparagraphs (A) and (C) of
24 section 1115(d)(2) of the Social Security Act
25 (42 U.S.C. 1315(d)(2)), except that—

Commented [VOR24]: This would, in effect, take away family choice and promote the participation of outside agencies, organizations, and advocacy groups, most of whom have never met the individual or visited the facility they currently call home.

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

Commented [VOR25]: Intermediate Care Facilities already do this. It is part of the process and requirements of running an ICF. The privately operated group home system does not meet the same high standards.

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;

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

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

1 ments that create an option to self-direct
2 receipt of such services and supports for
3 all populations of such individuals served;
4 and

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

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

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

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

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

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

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

1 In carrying out that improvement, the public entity,
2 in conjunction with such housing agencies, shall—

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

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

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

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

20 (C) establish, where needed, necessary
21 preferences and set-asides in housing programs
22 for individuals with LTSS disabilities who are
23 transitioning from or avoiding institutional
24 placement;

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

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

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

1 fice address, and telephone number of the employee
2 designated pursuant to this paragraph.

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

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

18 (10) TRANSITION PLANS.—The regulations
19 issued under this section shall require each public
20 entity, not later than 42 months after the date of
21 enactment of this Act, to submit to the Adminis-
22 trator, and **begin implementing, a transition plan for**
23 **carrying out this Act that establishes the achieve-**
24 **ment of the requirements of this Act, as soon as**
25 **practicable, but in no event later than 12 years** after

Commented [VOR26]: See comment on next page

1 the date of enactment of this Act. The transition
2 plan shall—

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

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

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

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

22 (11) ANNUAL REPORTING.—

23 (A) IN GENERAL.—The regulations issued
24 under this section shall establish annual report-

Commented [VOR27]: Defunding ICFs/IID in order to force closure.

1 ing requirements for each public entity covered
2 by this section.

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

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

18 (c) REVIEW OF TRANSITION PLANS.—

19 (1) GENERAL RULE.—The Administrator shall
20 review a transition plan submitted in accordance
21 with subsection (b)(10) for the purpose of deter-
22 mining whether such plan meets the requirements of
23 this Act, including the regulations issued under this
24 section.

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 to the Administrator,
 14 and commence implementation of, such modified
 15 transition plan.

16 (4) INCENTIVES.—

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

Commented [VOR28]: Without specifically stating that the goal of this bill is to close ICFs/IID, it is the implicit goal, and the language in this bill suggests that federal and state officials must comply.

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

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

21 (i) that—

22 (I) are identified by a public enti-
23 ty or LTSS insurance provider under
24 subsection (b)(5)(A)(iii);

1 (II) resulted from shifts in fund-
2 ing identified by a public entity under
3 subsection (b)(10)(B); or

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

9 (ii) are described by the State in a re-
10 quest to the Secretary of Health and
11 Human Services for the increase.

12 (C) PERIOD OF INCREASE.—The Secretary
13 of Health and Human Services shall increase
14 the FMAP described in subparagraph (B)—

15 (i) beginning with the first quarter
16 that begins after the date of the deter-
17 mination; and

18 (ii) ending with the quarter in which
19 the next annual determination under sub-
20 paragraph (A) occurs.

21 (D) ADDITIONAL CONDITION FOR PAY-
22 MENT.—

23 (i) STATE REPORT.—As a condition
24 for the receipt of a payment based on an
25 increase described in subparagraph (B)

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

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

22 (E) DEFINITIONS.—In this paragraph:

23 (i) FMAP.—The term “FMAP”
 24 means the Federal medical assistance per-
 25 centage for a State determined under sec-

Commented [VOR29]: States are herein being forced to reduce funding to ICFs/IID and increase funding to HCBS waiver facilities, regardless of their budgets and with no regard for the civil rights of the people living in the ICFs.

1 tion 1905(b) of the Social Security Act (42
2 U.S.C. 1396d(b)) without regard to any in-
3 creases in that percentage applicable under
4 other subsections of that section or any
5 other provision of law, including this sec-
6 tion.

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

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

18 (II) Home health care services.

19 (III) Personal care services.

20 (IV) Services described in section
21 1905(a)(26) of the Social Security Act
22 (42 U.S.C. 1396d(a)(26)) (relating to
23 PACE program services).

24 (V) Self-directed personal assist-
25 ance services provided in accordance

1 with section 1915(j) of the Social Se-
2 curity Act (42 U.S.C. 1396n(j)).

3 (VI) Community-based attendant
4 services and supports provided in ac-
5 cordance with section 1915(k) of the
6 Social Security Act (42 U.S.C.
7 1396n(k)).

8 (VII) Rehabilitative services,
9 within the meaning of section
10 1905(a)(13) of the Social Security Act
11 (42 U.S.C. 1396d(a)(13)).

12 (iii) REPORTING YEAR.—The term
13 “reporting year” means the most recent
14 fiscal year preceding the date of a report
15 under subparagraph (D)(i).

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

23 SEC. 7. EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS.

24 This Act shall not prohibit a religious organization,
25 association, or society from giving preference in providing

Commented [VOR30]: This entire act is in violation of the right to care in an ICF/IID as written in the ADA and reinforced under Olmstead.

1 community-based long-term services and supports to indi-
2 viduals of a particular religion connected with the beliefs
3 of such organization, association, or society.

4 **SEC. 8. ENFORCEMENT.**

5 (a) CIVIL ACTION.—

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

12 (2) AGGRIEVED INDIVIDUAL.—

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

20 (B) STANDING.—An individual with a dis-
21 ability shall have standing to institute a civil ac-
22 tion under this subsection if the individual
23 makes a prima facie showing that the indi-
24 vidual—

Commented [VOR31]: The language in the following section is deliberately vague, and allows opponents of congregate care too much latitude in using the provisions of this bill to claim grounds for legal action.

1 (i) is an individual with an LTSS dis-
2 ability; and

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

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

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

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

24 (1) actual and punitive damages;

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

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

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

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

24 (d) **ENFORCEMENT BY ATTORNEY GENERAL.—**

25 (1) DENIAL OF RIGHTS.—

Commented [VOR32]: There should be a commensurate clause to guarantee that a person or their guardian can sue the state if they deprive an individual with I/DD from residential care in an ICF if they so desire, or from being forced out of the ICF by an act of closure by the state.

Commented [VOR33]: Again, the language in the following section is deliberately vague, and allows opponents of congregate care too much latitude in using the provisions of this bill to claim grounds for legal action.

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

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

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

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

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

22 (A) may grant any equitable relief that
23 such court considers to be appropriate, includ-
24 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)).

Æ