

BACKGROUND

Americans with Disabilities Act (ADA): The ADA was enacted in 1990 with the goal of eliminating discrimination against individuals with disabilities. The ADA is a civil rights law that prohibits discrimination based on disability. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. This landmark law greatly expanded the scope of protections and remains the greatest legislative victory for people with disabilities.

Community Living: Medicaid is the main—and often only—funding source for long term supports and services that individuals with disabilities need to stay in the community. While Medicaid is a federally administered program, states retain authority and flexibility in providing services to targeted populations on condition that they meet basic Medicaid requirements. Medicaid funds both mandatory services, which states are required to provide under federal law, and optional services that states may opt to cover. Home and Community Based Services (HCBS) are optional services or subject to federally-approved waivers. The fact that HCBS are optional or waived services is why there are often long waiting lists for participation in Medicaid-funded, community-based supports and services. Steps must be taken to remove the institutional bias of federal programs, waiting lists must be addressed, and Congress should strengthen the right to a full life in the community.

KEY ISSUES

H.R. 620, the ADA Education and Reform Act of 2017, and Similar Bills:

H.R. 620 or any bill that adds “Notice and Cure” requirements to the ADA, would significantly weaken the Americans with Disabilities Act (ADA), an important civil rights law. This bill prevents lawsuits over architectural barriers violating the Americans with Disabilities Act (ADA) unless an individual provides “specific enough” notice and allows 120 days for a business to correct that barrier. The bill’s supporters believe that the ADA has led to “frivolous lawsuits” where plaintiffs and attorneys intentionally seek barriers in order to extract funds. However, the ADA does not allow courts to award monetary damages to plaintiffs. Where those damages are available, it is through state law. Furthermore, there are already laws on the books that allow punishment of attorneys who represent clients in frivolous lawsuits. Instead, this bill effectively eliminates incentives for businesses to comply with federal law until 120 days after a person with a disability asks them to do so.

Rebalancing: Rebalancing of long-term supports and services (LTSS) is a broad effort by states and the federal government to provide supports and services to seniors and people with disabilities in appropriate, permanent, integrated, community-based settings instead of more costly, congregate, institutional settings. Rebalancing continues to be a focus of federal and state governments, but additional investments and changes to Medicaid law to remove existing institutional bias would allow investment in community services to grow. One program that has supported the rebalancing efforts of states is the Money Follows the Person (MFP) program. MFP incentivizes investment in HCBS by providing federal funding for transitional services for individuals who wish to leave a nursing home or other institution.

LTSS Crisis: Much more needs to be done to address the looming need for an affordable and accessible system of LTSS that complements the Medicaid program. People should not have to become impoverished in order to become eligible to receive needed LTSS. Finding ways to address the need for LTSS before people become impoverished can save Medicaid dollars.

HCBS Settings Rule: The HCBS Settings Rule, released by the Centers for Medicare & Medicaid Services (CMS) in January 2014, requires that Medicaid-funded HCBS programs be faithful to the original intent of the program and support settings that maximize opportunities to live, work, and receive services in integrated, community settings where people with disabilities and older adults can fully engage in community life. In so doing, the Rule defines minimum standards for residential and non-residential settings to be considered “home and community-based”. The purpose and impact of the Rule is to ensure that individuals receiving HCBS have full access to the benefits of community living; to enhance the quality and availability of HCBS; and to provide basic protections to participants.

RECOMMENDATIONS

- Congress should protect the Americans with Disabilities Act
- Congress should pass the EMPOWER Care Act (S. 2227, H.R. 5306) to extend the Money Follows the Person Program
- Members of Congress should act to remove the institutional bias of federal programs and eliminate waiting lists
- Congress should protect the integrity of the Home and Community-Based Services (HCBS) Rule.
- Congress should address the nation’s need for an affordable, accessible system of long term supports and services.
- Congress should act to ensure that an individual with a disability has a right to community living.

RELEVANT COMMITTEES

House Energy and Commerce Committee

Senate Finance Committee

Senate Health, Education, Labor, and Pensions Committee

For more information, please contact The Arc at (202) 783-2229, Association of University Centers on Disabilities at (301) 588-8252, American Association on Intellectual and Developmental Disabilities at (202) 387-1968, National Association of Councils on Developmental Disabilities at (202) 506-5813, Self Advocates Becoming Empowered at SABEnation@gmail.com, or United Cerebral Palsy at (202) 973-7185.

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