116TH CONGRESS
1ST SESSION

S. 260

To assist employers providing employment under special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938 to transform their business and program models, to support individuals with disabilities to transition to competitive integrated employment, to phase out the use of such special certificates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2019

Mr. Casey (for himself and Mr. Van Hollen) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To assist employers providing employment under special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938 to transform their business and program models, to support individuals with disabilities to transition to competitive integrated employment, to phase out the use of such special certificates, 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,
1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Transformation to
3 Competitive Employment Act”.

4 SEC. 2. TABLE OF CONTENTS.

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5 SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) assist employers with special certificates
issued under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to transform
their business and program models to models that
support individuals with intellectual, developmental,
mental health, and other disabilities to find and retain work in competitive integrated employment;

(2) ensure individuals with disabilities, families, local and State governments, and other stakeholders are involved in the transformations described in paragraph (1);

(3) ensure individuals employed in programs using such special certificates transition to competitive integrated employment positions and, as needed, to services that support them as needed in integrated home and community-based settings;

(4) identify models and processes for shifting business and program models from such special certificates to competitive integrated employment models and integrated community participation and wraparound models, and to share that information with other such special certificate holders, State and local entities, and other service providers for those with intellectual, developmental, mental health, and other disabilities; and

(5) support State and local governments as they revise and implement their Olmstead plans to improve integrated employment options and home and community-based services options for all people with disabilities.
TITLE I—COMPETITIVE INTEGRATED EMPLOYMENT TRANSFORMATION GRANT PROGRAMS

SEC. 101. PROGRAM AUTHORIZED.

From the amounts appropriated to carry out this title, the Secretary of Labor shall award grants under sections 102 and 103, on a competitive basis, to States and eligible entities to assist such States and entities to transform their business and program models from providing employment using special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to models that support individuals with intellectual, developmental, and other disabilities by—

(1) operating competitive integrated employment businesses;

(2) assisting such individuals in finding and retaining work in competitive integrated employment; and

(3) providing integrated employment and integrated community participation and wraparound services (in this Act referred to as “integrated services”) for such individuals.

SEC. 102. STATE GRANT PROGRAM.

(a) APPLICATION.—
(1) IN GENERAL.—To be eligible to receive a
grant under this section, a State shall submit an ap-
plication to the Secretary at such time, in such man-
er, and including such information as the Secretary
may reasonably require.

(2) CONTENTS.—Each application submitted
under paragraph (1) shall include—

(A) a description of the status of the em-
ployers in the State providing employment
using special certificates, including—

(i) the number of employers providing
employment using special certificates;

(ii) the number of such employers
that provide competitive integrated emplo-
ment, which shall include employers pro-
viding such employment in combination
with integrated services;

(iii) the number of employees em-
ployed under a special certificate,
disaggregated by employer;

(iv) the average number of hours such
an employee works per week (including the
range and median of hours), disaggregated
by employer, and reported for the State as
a whole; and
(v) the average hourly wage for such an employee (including the range and median wage), disaggregated by employer, and reported for the State as a whole;

(B) a description of activities to be funded under the grant, and the goals of such activities, including—

   (i) the process to be used to identify each employer in the State that will transform its business and program models from providing employment using special certificates to providing competitive integrated employment or a combination of competitive integrated employment and integrated services, which, by the end of the 6-year grant period for the State, results in the discontinuation of employment using special certificates in the State, with the exception that any individual employed under a special certificate as of June 4, 1997, may continue to be employed in the employment setting in which such individual was employed as of the day before the date of enactment of this Act, without regard to whether such setting provides in-
tegrated employment or a combination of
integrated employment and integrated
services;

(ii) the number of such employers in
the State that will carry out a trans-
formation described in clause (i);

(iii) the service delivery infrastructure
that will be implemented in the State to
support individuals who have been em-
ployed under special certificates through
such a transformation;

(iv) the integrated employment and
integrated services that will be imple-
mented in the State to support such indi-
viduals;

(v) the timeline for phasing out em-
ployment using special certificates in the
State;

(vi) a timeline for the expansion of
employers that will provide competitive in-
tegrated employment or a combination of
competitive integrated employment and in-
tegrated services for individuals who have
been employed under special certificates;
(vii) a description of the expanded integrated employment and integrated services to be provided to such individuals as a result of a transformations described in clause (i); and

(viii) a description of the process to be used to engage stakeholders in such transformations;

(C) a description of how the activities under the grant will coordinate and align Federal, State, and local programs, agencies, and funding in the transformations described in subparagraph (B)(i);

(D) a description of the State’s evaluation plan to determine the impact of the grant;

(E) assurances that—

(i) the activities carried out under the grant will result in each employer in the State that provides employment using special certificates to transform as described in subparagraph (B)(i);

(ii) individuals with the most significant intellectual and developmental disabilities who will be impacted by such a transformation will be given priority in receiving
the necessary supports and services to succeed during and after such a transformation;

(iii) each individual in the State who is employed under a special certificate will, as a result of such a transformation, be employed in competitive integrated employment or be so employed and receive the integrated services desired by the individual;

(iv) the State agencies responsible for developmental disability services, Medicaid, education, vocational rehabilitation, mental health services, and other supports agree to be partners in the goals of the grant;

(v) the State will comply with requirements of the Secretary with respect to the collection of data and will require employers providing employment under special certificates in the State to comply with such requirements;

(vi) the State will cooperate with the evaluation under title IV by providing all data required and allow the evaluation of activities under the grant;
(vii) the State will create an advisory council described in paragraph (3) to monitor and guide the process of transforming business and program models of employers in the State; and

(viii) the State will cooperate with the nonprofit entity carrying out technical assistance and dissemination activities under title III; and

(F) such other information and assurances as the Secretary may reasonably require.

(3) MEMBERS OF THE ADVISORY COUNCIL.—A State receiving a grant under this section shall create an advisory council composed of the following:

(A) At least 25 percent of the members are individuals with disabilities.

(B) Two family members of individuals with intellectual or developmental disabilities who are employed under a special certificate.

(C) Two employers providing competitive integrated employment.

(D) Two employers providing employment under special certificates.
(E) A representative of a nonprofit agency specializing in competitive integrated employment.

(F) A representative of the State developmental disability agency.

(G) A representative of the State vocational rehabilitation agency, as such term is used under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(H) A representative of an agency in the State described in paragraph (6) or (7) of section 8501 of title 41, United States Code.

(I) A representative of the State independent living centers, as such term is used under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).


(K) A representative of one of the State University Centers for Excellence in Developmental Disabilities Education, Research, and Service, established under subtitle D of title I
of the Developmental Disabilities Assistance
and Bill of Rights Act of 2000 (42 U.S.C.
15061 et seq.).

(L) Representatives of other State agency
and disability organizations (such as the State
Medicaid agencies, State Protection and Advo-
cacy systems as defined in section 102 of the
Developmental Disabilities Assistance and Bill
of Rights Act of 2000 (42 U.S.C. 15002), and
other disability related offices and groups with
expertise in competitive integrated employ-
ment).

(b) Geographic Diversity.—To the extent prac-
ticable, the Secretary shall distribute grant funds under
this section equitably among geographic areas of the
United States, and take into account rural and urban di-
versity.

(c) Duration of Awards.—A grant under this sec-
tion shall be awarded for a period of 6 years.

(d) Limit on Award Number.—A State may only
be awarded 1 grant under this section.

(e) Amount of Awards.—A grant awarded under
this section may not be made in an amount that is less
than $2,000,000, or more than $10,000,000, for the 6-
year grant period.
SEC. 103. CERTIFICATE HOLDER GRANT PROGRAM.

(a) IN GENERAL.—To be eligible to receive a grant under this section, an eligible entity shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(b) CONTENTS.—Each application submitted under subsection (a) shall include—

(1) the status of the eligible entity’s use of special certificates to employ individuals, including—

(A) the number of employees the eligible entity employs using such special certificates;

(B) the average, minimum, maximum, and range of hourly wages paid to employees employed using such special certificates during the previous year;

(C) during the preceding 5-year period, the number of individuals who have been transitioned by the eligible entity from employment under such special certificates to competitive integrated employment; and

(D) a description of the business and program models (including the financial and organizational structure) of the eligible entity that is using the special certificates, including—
(i) the number of employees paid at a wage below the Federal minimum wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) at the time of the application;

(ii) the number and type of contracts the entity has entered into during the preceding 3 fiscal years;

(iii) the budget and the funding structure for the preceding 3 fiscal years;

(iv) the human resource structure; and

(v) the community partners described in subsection (h)(2) that have partnered with the eligible entity;

(2) a description of activities to be funded under the grant, and the goals of the grant activities, including—

(A) a description of the business and program models of competitive integrated employment or a combination of competitive integrated employment and integrated services into which the models of the eligible entity will transform, including the business plan, employment structure, and leadership organization;
(B) a description of the evidence-based, integrated services—

(i) to be provided by the eligible entity; or

(ii) the eligible entity’s process for referring an individual requiring such services to a provider of such services to ensure that the individual receives such services;

(C) after the transformation of the eligible entity’s business and program models as described in subparagraph (A), the number of employees that will be employed under such models;

(D) the date on which the eligible entity will discontinue using special certificates, and the funding structure the eligible entity will use to provide competitive integrated employment or a combination of such employment and integrated services; and

(E) the process to be used for the transformation of the eligible entity’s business and program models as described in subparagraph (A), including—

(i) redesign of contracts;
(ii) any changes in funding sources;

(iii) staff training on inclusive employment practices;

(iv) input from key stakeholders, including individuals with disabilities, their families, and other local stakeholders; and

(v) a description of the individuals who will be responsible for the development and implementation of such process;

(3) a timeline of activities to be implemented and goals to be reached on at least a quarterly basis during the 3-year grant period;

(4) a description of how the activities under the grant will coordinate and align Federal, State, and local programs, agencies, and funding in the transformation described in paragraph (2)(A);

(5) assurances that—

(A) the activities carried out under the grant will result in the transformation described in paragraph (2)(A);

(B) individuals who are employed by the eligible entity under special certificates will be employed in competitive integrated employment or be so employed and receive the integrated services desired by the individual;
(C) the eligible entity will comply with the requirements of the Secretary with respect to the collection of data;

(D) the eligible entity will cooperate with the evaluation described in title IV by providing all data required and allow evaluation of the activities under the grant; and

(E) the eligible entity will cooperate with the nonprofit entity carrying out technical assistance and dissemination required under title III;

(6) a description of the eligible entity’s evaluation plan to determine the impact of the grant;

(7) assurances of collaboration and support from all State entities (including the State Medicaid agency, the State developmental disability agency, and the State vocational rehabilitation agency) for whom the eligible entity is an approved provider of services; and

(8) such other information and assurances as the Secretary may reasonably require.

(c) GEOGRAPHIC DIVERSITY.—To the extent practicable, the Secretary shall distribute grant funds under this section equitably among geographic areas of the
United States, and shall take into account rural and urban diversity.

(d) Program Size.—To the extent practicable, the Secretary shall distribute grant funds under this section equitably among eligible entities providing employment using special certificates serving different numbers of individuals.

(e) Duration of Awards.—

(1) Grant Period.—A grant awarded under this section shall be awarded for a period of 3 years.

(2) Grant Cycles.—Grants shall be awarded under this section in 2 grant cycles. Grants for the second grant cycle shall be awarded upon the expiration of the first 3-year grant period under this section.

(f) Limit on Award Number.—An eligible entity may only be awarded 1 grant under this section.

(g) Amount of Awards.—A grant awarded under this section may not be made in an amount that is less than $100,000, or more than $500,000, for the 3-year grant period.

(h) Eligible Entity Defined.—In this title, the term “eligible entity” means an entity that—
(1) employs individuals under special certificates and is located in a State that did not receive a grant under section 102; and

(2) partners with at least 2 entities with experience providing support to individuals with disabilities in competitive integrated employment, such as—

   (A) an employer providing competitive integrated employment;

   (B) a State developmental disability agency;

   (C) a State mental health services agency;

   (D) a representative of an agency described in paragraph (6) or (7) of section 8501 of title 41, United States Code;

   (E) a representative of the State Council on Developmental Disabilities, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002);

   (F) a representative of the State vocational rehabilitation agency, as such term is used under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);
(G) a representative of the State independent living centers, as such term is used under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(H) a representative of one of the State University Centers for Excellence in Developmental Disabilities Education, Research, and Service, established under subtitle D of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15061 et seq.); and

(I) a nonprofit agency specializing in competitive integrated employment.

TITLE II—PHASE OUT OF SPECIAL CERTIFICATES UNDER SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT OF 1938

SEC. 201. TRANSITION TO FAIR WAGES FOR INDIVIDUALS WITH DISABILITIES.

Subparagraph (A) of section 14(c)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)(1)) is amended to read as follows:

“(A) at a rate that equals, or exceeds, the greater of—
“(i)(I) 50 percent of the wage rate in effect under section 6(a)(1), beginning 6 months after the date of enactment of the Transformation to Competitive Employment Act;

“(II) 60 percent of the wage rate in effect under section 6(a)(1), beginning 2 years after such date;

“(III) 70 percent of the wage rate in effect under section 6(a)(1), beginning 3 years after such date;

“(IV) 80 percent of the wage rate in effect under section 6(a)(1), beginning 4 years after such date;

“(V) 90 percent of the wage rate in effect under section 6(a)(1), beginning 5 years after such date; and

“(VI) the wage rate in effect under section 6(a)(1), on the date that is 6 years after the date of enactment of the Transformation to Competitive Employment Act; or

“(ii) the wage rate in effect on the day before the date of enactment of the Transformation to Competitive Employ-
ment Act for the employment, under a special certificate issued under this paragraph, of the individual for whom the wage rate is determined under this paragraph.”.

SEC. 202. PROHIBITION ON NEW SPECIAL CERTIFICATES; SUNSET.

Section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) (as amended by section 201), is further amended by adding at the end the following:

“(6) PROHIBITION ON NEW SPECIAL CERTIFICATES.—Notwithstanding paragraph (1), the Secretary shall not issue a special certificate under this subsection to an employer that was not issued a special certificate under this subsection before the date of enactment of the Transformation to Competitive Employment Act.

“(7) SUNSET.—Beginning on the day after the date on which the wage rate described in paragraph (1)(A)(i)(VI) takes effect, the authority to issue special certificates under paragraph (1) shall expire, and no special certificates issued under paragraph (1) shall have any legal effect.”.
TITLE III—TECHNICAL ASSISTANCE AND DISSEMINATION

SEC. 301. GRANT AUTHORIZED.

From the amounts appropriated for this title, the Secretary (acting through the Office of Disability Employment Policy) shall award a grant to a nonprofit entity to—

(1) provide technical assistance to employers transforming their business and program models from providing employment for individuals with disabilities under special certificates to providing competitive integrated employment to such individuals; and

(2) collect and disseminate learned practices on such transformations.

SEC. 302. APPLICATION.

(a) IN GENERAL.—To be eligible to receive a grant under this section, a nonprofit entity shall submit an application to the Secretary at such time, in such manner, and including such information that the Secretary may reasonably require.

(b) CONTENTS.—Each application submitted under subsection (a) shall include—

(1) a description of the nonprofit entity’s expertise in providing technical assistance that shall include evidence of—
(A) knowledge of transforming business and program models providing employment using special certificates to models providing competitive integrated employment;

(B) knowledge of methods for supporting employers, including employers not receiving a grant under title I, to transform as described in subparagraph (A);

(C) experience working with nonprofit, for-profit, local, State, and Federal agencies focusing on employment of youth and adults with disabilities; and

(D) experience working with individuals with disabilities and their families; and

(2) a description of the nonprofit entity’s expertise in providing, collecting, compiling, communicating, and disseminating information about program and systems change for programs serving individuals with disabilities that shall include—

(A) expertise documenting program change;

(B) experience compiling recommended practices related to program transformations;
(C) expertise regarding competitive integrated employment for youth and adults with disabilities;

(D) expertise working with individuals with disabilities and their families through systems change procedures;

(E) expertise creating products to disseminate learned information, including through web-based means;

(F) experience creating websites to disseminate information; and

(G) experience working with nonprofit, for-profit, local, State, and Federal agencies focusing on employment of youth and adults with disabilities.

(e) Key Personnel.—A description of the individuals at the nonprofit entity who will be responsible for carrying out the activities of this title.

(d) Duration of Award.—A grant under this section shall be awarded for a period of 6 years, and shall be non-renewable.

(e) Nonprofit Entity Defined.—In this title, the term “nonprofit entity” means a nonprofit entity with expertise in collecting, compiling, communicating, and dis-
seminating information about program and systems change for programs serving individuals with disabilities.

**TITLE IV—REPORTING AND EVALUATION**

**SEC. 401. IMPACT EVALUATION AND REPORTING.**

(a) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Secretary shall enter into a contract with a nonprofit entity with experience in conducting evaluations of program and systems change efforts to—

(1) conduct a multi-year evaluation on the impact of this Act, including the amendments made by this Act, with respect to individuals with disabilities (including individuals receiving a wage rate under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), as amended by title II of this Act); and

(2) prepare the reports described in subsection (c).

(b) **EVALUATION.**—In carrying out subsection (a)(1), the nonprofit entity awarded a contract under this section shall evaluate—

(1) changes in wages and employment for individuals described in subsection (a)(1); and
(2) actions taken by employers and States to comply with the amendments made by title II and, in the case of an employer or State receiving funds under title I, to comply with the transformation requirements under such title.

(c) REPORTS.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives, the following reports on the evaluation conducted under subsection (a)(1):

(1) An interim report on the evaluation, not later than 3 years after the evaluation commences under subsection (a)(1).

(2) A final report on such evaluation, not later than 18 months after the date on which the legal effect of special certificates expire pursuant to paragraph (7) of section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), as added by title II of this Act.

SEC. 402. WAGE AND HOUR REPORT.

For each year of the 6-year period described in section 14(c)(1)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)(1)(A)), as amended by title II of this Act, the Secretary (acting through the Administrator of the Wage and Hour Division of Department of Labor)
shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives, an annual report summarizing practices of employers providing employment using special certificates which, with respect to the preceding year, shall include—

(1) the number of employees paid a wage that is below the minimum wage specified under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a));

(2) the type of employment setting (such as segregated employment, competitive integrated employment, non-employment, or seeking employment) and the integrated services provided by such employers;

(3) the average hourly wage, minimum and maximum hourly wage, and average hours worked per week, disaggregated by employer and by State; and

(4) the number of employees who have transitioned from employment provided under a special certificate to competitive integrated employment, disaggregated by employer and by State.
TITIE V—GENERAL PROVISIONS

SEC. 501. DEFINITIONS.

In this Act:

(1) COMPETITIVE INTEGRATED EMPLOYMENT.—The term “competitive integrated employment” has the meaning given the term in section 7(5) of the Rehabilitation Act of 1973 (29 U.S.C. 705(5)).

(2) INTEGRATED COMMUNITY PARTICIPATION AND WRAPAROUND SERVICES; INTEGRATED SERVICES.—

(A) IN GENERAL.—The terms “integrated community participation and wraparound services” or “integrated services” mean services—

(i) designed to assist individuals with disabilities in acquiring, retaining, and improving skills necessary to reside successfully in home and community-based settings;

(ii) provided consistent with written plans of care; and

(iii) that meet the following requirements with respect to the setting in which the services are provided:
(I) The services are provided to an individual in a setting that is in the community, which allows the individual to engage in community life, receive the services in the community, and have the same access to the community as an individual not receiving the services.

(II) Multiple service settings are provided as options to the individual receiving the services.

(III) The service setting optimizes individual initiative, autonomy, and independence.

(IV) The service setting facilitates choice regarding services and supports, and choice regarding who provides the services.

(B) Exclusions.—The following settings do not meet the requirements described in subparagraph (A)(iii):

(i) A nursing facility.

(ii) An institution for mental diseases.

(iii) An intermediate care facility for individuals with intellectual disabilities.
(3) **INTEGRATED EMPLOYMENT.**—The term “integrated employment” has the meaning given the term “competitive integrated employment” in subparagraphs (B) and (C) of section 7(5) of the Rehabilitation Act of 1973 (29 U.S.C. 705(5)).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Labor.

(5) **SPECIAL CERTIFICATE.**—The term “special certificate” means a special certificate issued under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)).

(6) **STATE.**—The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territory of Guam.

**SEC. 502. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this Act, $300,000,000 for fiscal years 2020 through 2025.