

117TH CONGRESS  
1ST SESSION

# H. R. 598

To amend titles XVIII and XIX of the Social Security Act to improve the quality of care in skilled nursing facilities under the Medicare program and nursing facilities under the Medicare program during the COVID–19 emergency period, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2021

Ms. SCHAKOWSKY (for herself and Mr. TAKANO) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to improve the quality of care in skilled nursing facilities under the Medicare program and nursing facilities under the Medicare program during the COVID–19 emergency period, 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 “Quality Care for Nurs-  
5       ing Home Residents and Workers During COVID–19 and  
6       Beyond Act”.

1 **TITLE I—ADDRESSING COVID-19**

2 **SEC. 101. IMPROVING QUALITY OF CARE IN SKILLED NURS-**  
3 **ING FACILITIES AND NURSING FACILITIES**  
4 **DURING COVID-19 EMERGENCY PERIOD.**

5 (a) MEDICARE.—Section 1819 of the Social Security  
6 Act (42 U.S.C. 1395i–3) is amended by adding at the end  
7 the following new subsection:

8 “(k) ADDITIONAL REQUIREMENTS DURING CERTAIN  
9 PUBLIC HEALTH EMERGENCY.—

10 “(1) SKILLED NURSING FACILITIES.—

11 “(A) IN GENERAL.—During the portion of  
12 the emergency period defined in paragraph  
13 (1)(B) of section 1135(g) beginning on or after  
14 the date of the enactment of this subsection, a  
15 skilled nursing facility shall comply with the  
16 quality of care requirements described in sub-  
17 paragraph (B), the worker safety requirements  
18 described in subparagraph (C), and the trans-  
19 parency requirements described in subpara-  
20 graph (D).

21 “(B) QUALITY OF CARE REQUIREMENTS.—

22 The quality of care requirements described in  
23 this subparagraph are each of the following:

24 “(i) Employ, on a full-time basis, an  
25 onsite infection preventionist who—

1                   “(I) has primary professional  
2                   training in nursing, medical tech-  
3                   nology, microbiology, epidemiology, or  
4                   other related field;

5                   “(II) is qualified by education,  
6                   training, experience or certification;  
7                   and

8                   “(III) has completed specialized  
9                   training in infection prevention and  
10                  control.

11                  “(ii) In the case of a resident who  
12                  elects to reside with a family member of  
13                  such resident for any portion of the emer-  
14                  gency period described in subparagraph  
15                  (A), guarantee the right of such resident to  
16                  resume residency in the facility at any time  
17                  during the 180-day period immediately fol-  
18                  lowing the end of such emergency period.

19                  “(iii) Notwithstanding subparagraphs  
20                  (A) and (B) of subsection (c)(2), permit a  
21                  resident to remain in the facility and not  
22                  discharge or transfer the resident from the  
23                  facility unless—

24                         “(I) the State survey agency ap-  
25                         proves the discharge or transfer;

1 “(II) in the case of a transfer,  
2 the transfer is to a facility dedicated  
3 to the care of residents who have been  
4 diagnosed with COVID–19 if the resi-  
5 dent has been diagnosed with  
6 COVID–19, or a facility dedicated to  
7 the care of residents who have not  
8 been diagnosed with COVID–19 if the  
9 resident has not been diagnosed with  
10 COVID–19;

11 “(III) before effecting the dis-  
12 charge or transfer, the facility records  
13 the reasons in the resident’s clinical  
14 record;

15 “(IV) at least 72 hours in ad-  
16 vance of the discharge or transfer, the  
17 facility provides a notice of the dis-  
18 charge or transfer to the resident (or  
19 legal representative of the resident, if  
20 applicable), including the reasons  
21 therefor and the items described in  
22 clause (iii) of subsection (c)(2)(B);  
23 and

24 “(V) the resident (or legal rep-  
25 resentative of the resident, if applica-

1           ble) acknowledges receipt of the notice  
2           described in subclause (IV) and pro-  
3           vides written consent to the discharge  
4           or transfer.

5           “(iv) Test (on a weekly basis) each  
6           resident for COVID–19, or, in the case  
7           that the facility does not have a sufficient  
8           number of testing kits for COVID–19,  
9           screen each resident for symptoms of  
10          COVID–19 and report (on a daily basis  
11          until the facility has a sufficient number of  
12          such testing kits) to the State survey agen-  
13          cy that the facility does not have a suffi-  
14          cient number of such testing kits and what  
15          steps the facility is taking to procure a suf-  
16          ficient number of such testing kits.

17          “(v) Ensure there is an adequate  
18          number of employees to assist residents in  
19          communicating with family members and  
20          friends through phone calls, e-mail, and  
21          virtual communications on at least a week-  
22          ly basis, without regard to whether a resi-  
23          dent has been diagnosed with COVID–19.

“(C) WORKER SAFETY REQUIREMENTS.—

The worker safety requirements described in this subparagraph are each of the following:

“(i) In the case the facility is not otherwise subject to the Occupational Safety and Health Act of 1970 (or a State occupational safety and health plan that is approved under section 18(c) of such Act), comply with the Bloodborne Pathogens standard under section 1910.1030 of title 29, Code of Federal Regulations (or a successor regulation).

“(ii) In the case of a predicted shortage of personal protective equipment, report such predicted shortage to the State health department of the State in which the facility is located at least 24 hours in advance of when such predicted shortage is expected to occur.

“(iii) Educate each employee on the transmission of COVID–19.

“(iv) Notwithstanding any other provision of law, provide at least two weeks of paid sick leave to each employee.

1 “(v) Before each employee’s shift, test  
2 the employee for COVID–19, or, in the  
3 case that the facility does not have a suffi-  
4 cient number of testing kits for COVID–  
5 19, screen each employee for symptoms of  
6 COVID–19 and report (on a daily basis  
7 until the facility has a sufficient number of  
8 such testing kits) to the State survey agen-  
9 cy that the facility does not have a suffi-  
10 cient number of such testing kits and what  
11 steps the facility is taking to procure a suf-  
12 ficient number of such testing kits.

13 “(D) TRANSPARENCY REQUIREMENTS.—

14 The transparency requirements described in  
15 this subparagraph are each of the following:

16 “(i) Report (on a daily basis) to the  
17 State survey agency, the Centers for Medi-  
18 care & Medicaid Services, and the Centers  
19 for Disease Control and Prevention each of  
20 the following:

21 “(I) The number of confirmed  
22 and suspected cases of COVID–19  
23 among residents and staff, including  
24 the age and race or ethnicity of such  
25 residents and staff.

1 “(II) The number of deaths re-  
2 lated to COVID–19 among residents  
3 and staff, including the age and race  
4 or ethnicity of such residents and  
5 staff.

6 “(III) The total number of  
7 deaths (without regard to whether a  
8 death is related to COVID–19) among  
9 residents and staff.

10 “(IV) The amount of personal  
11 protective equipment available and  
12 any projected need regarding such  
13 equipment.

14 “(V) Information on staffing lev-  
15 els that would otherwise be required  
16 to be submitted through the Payroll-  
17 Based Journal of the Centers for  
18 Medicare & Medicaid Services.

19 “(VI) The number of residents  
20 and staff who have been tested for  
21 COVID–19.

22 “(ii) In the case that a resident or  
23 employee is diagnosed with COVID–19 or  
24 dies as a result of COVID–19, notify all  
25 residents, legal representatives of residents,



1 and employees not later than 12 hours  
2 after such diagnosis is made or such death  
3 occurs.

4 “(iii) At any time three or more resi-  
5 dents or employees have newly onset  
6 COVID–19 symptoms, notify all residents,  
7 legal representatives of residents, and em-  
8 ployees not later than 72 hours after such  
9 three or more residents or employees are  
10 known to the facility.

11 “(iv) In the case that a resident or  
12 employee is suspected to have or is diag-  
13 nosed with COVID–19, post a notice of  
14 such suspicion or diagnosis at each en-  
15 trance of the facility for the remaining por-  
16 tion of the emergency period described in  
17 subparagraph (A).

18 “(v) For each day of the portion of  
19 the emergency period described in subpara-  
20 graph (A), post a notice at each entrance  
21 of the facility with the information re-  
22 quired under subsection (b)(8) for such  
23 day.

24 “(2) STATES AND FEDERAL GOVERNMENT.—

1           “(A) PUBLIC AVAILABILITY OF INFORMA-  
2           TION.—

3           “(i) IN GENERAL.—As soon as pos-  
4           sible, but not later than 24 hours after re-  
5           ceiving any information required under  
6           paragraph (1)(D)(i), the Administrator of  
7           the Centers for Medicare & Medicaid Serv-  
8           ices, in coordination with the Director of  
9           the Centers for Disease Control and Pre-  
10          vention, shall make such information pub-  
11          licly available on the Nursing Home Com-  
12          pare website of the Centers for Medicare &  
13          Medicaid Services and the COVIDView  
14          website of the Centers for Disease Control  
15          and Prevention.

16          “(ii) HIPAA COMPLIANT INFORMA-  
17          TION ONLY.—Information may only be  
18          made publicly available under clause (i) if  
19          the disclosure of such information would  
20          otherwise be permitted under the Federal  
21          regulations (concerning the privacy of indi-  
22          vidually identifiable health information)  
23          promulgated under section 264(c) of the  
24          Health Insurance Portability and Account-

1 ability Act of 1996 (42 U.S.C. 1320d-2  
2 note).

3 “(B) DESIGNATION OF COVID-19 FACILI-  
4 TIES.—For purposes of paragraph  
5 (1)(B)(iii)(II)—

6 “(i) the Administrator of the Centers  
7 for Medicare & Medicaid Services shall  
8 specify criteria (which shall include the  
9 provision of the services of a registered  
10 nurse on a 24-hour basis) for each State  
11 survey agency to carry out the designation  
12 requirement described in clause (ii) with  
13 respect to skilled nursing facilities; and

14 “(ii) each State survey agency shall  
15 designate a skilled nursing facility in the  
16 State as a facility dedicated to the care of  
17 residents who have been diagnosed with  
18 COVID-19 if such facility meets the cri-  
19 teria specified by the Administrator under  
20 clause (i).

21 “(C) MONITORING AND SURVEYS.—A  
22 State survey agency shall—

23 “(i) provide onsite monitoring (or, if  
24 onsite monitoring is not feasible, remote  
25 monitoring) of all skilled nursing facilities

1 with at least one resident or employee who  
2 has been diagnosed with COVID–19;

3 “(ii) in addition to surveys required  
4 under subsection (g), conduct a survey of  
5 a skilled nursing facility, in the same man-  
6 ner and subject to the same requirements  
7 applicable to standard surveys conducted  
8 under subsection (g), if the facility has a  
9 ratio of the number of deaths resulting  
10 from COVID–19 to the number of  
11 COVID–19 diagnoses that exceeds 5 per-  
12 cent, or the State survey agency receives a  
13 COVID–19 or staffing related immediate  
14 jeopardy complaint regarding the facility;  
15 and

16 “(iii) ensure that each survey team  
17 that conducts a survey under clause (ii)  
18 has adequate personal protective equip-  
19 ment while conducting such survey.

20 “(3) CIVIL MONEY PENALTIES.—The Secretary  
21 shall impose a civil money penalty against the opera-  
22 tors of a skilled nursing facility in an amount equal  
23 to \$10,000 per day for each violation of a require-  
24 ment described in subparagraph (B), (C), or (D) of  
25 paragraph (1) or the reporting of false information

1 under clause (i) of such subparagraph (D). The pro-  
2 visions of section 1128A (other than subsections (a)  
3 and (b)) shall apply to a civil money penalty under  
4 the previous sentence in the same manner as such  
5 provisions apply to a penalty or proceeding under  
6 section 1128A(a).”.

7 (b) MEDICAID.—Section 1919 of the Social Security  
8 Act (42 U.S.C. 1396r) is amended by adding at the end  
9 the following new subsection:

10 “(k) ADDITIONAL REQUIREMENTS DURING CERTAIN  
11 PUBLIC HEALTH EMERGENCY.—

12 “(1) NURSING FACILITIES.—

13 “(A) IN GENERAL.—During the portion of  
14 the emergency period defined in paragraph  
15 (1)(B) of section 1135(g) beginning on or after  
16 the date of the enactment of this subsection, a  
17 nursing facility shall comply with the quality of  
18 care requirements described in subparagraph  
19 (B), the worker safety requirements described  
20 in subparagraph (C), and the transparency re-  
21 quirements described in subparagraph (D).

22 “(B) QUALITY OF CARE REQUIREMENTS.—

23 The quality of care requirements described in  
24 this subparagraph are each of the following:

1 “(i) Employ, on a full-time basis, an  
2 onsite infection preventionist who—

3 “(I) has primary professional  
4 training in nursing, medical tech-  
5 nology, microbiology, epidemiology, or  
6 other related field;

7 “(II) is qualified by education,  
8 training, experience or certification;  
9 and

10 “(III) has completed specialized  
11 training in infection prevention and  
12 control.

13 “(ii) In the case of a resident who  
14 elects to reside with a family member of  
15 such resident for any portion of the emer-  
16 gency period described in subparagraph  
17 (A), guarantee the right of such resident to  
18 resume residency in the facility at any time  
19 during the 180-day period immediately fol-  
20 lowing the end of such emergency period.

21 “(iii) Notwithstanding subparagraphs  
22 (A) and (B) of subsection (c)(2), permit a  
23 resident to remain in the facility and not  
24 discharge or transfer the resident from the  
25 facility unless—

1 “(I) the State survey agency ap-  
2 proves the discharge or transfer;

3 “(II) in the case of a transfer,  
4 the transfer is to a facility dedicated  
5 to the care of residents who have been  
6 diagnosed with COVID–19 if the resi-  
7 dent has been diagnosed with  
8 COVID–19, or a facility dedicated to  
9 the care of residents who have not  
10 been diagnosed with COVID–19 if the  
11 resident has not been diagnosed with  
12 COVID–19;

13 “(III) before effecting the dis-  
14 charge or transfer, the facility records  
15 the reasons in the resident’s clinical  
16 record;

17 “(IV) at least 72 hours in ad-  
18 vance of the discharge or transfer, the  
19 facility provides a notice of the dis-  
20 charge or transfer to the resident (or  
21 legal representative of the resident, if  
22 applicable), including the reasons  
23 therefor and the items described in  
24 clause (iii) of subsection (c)(2)(B);  
25 and

1           “(V) the resident (or legal rep-  
2           resentative of the resident, if applica-  
3           ble) acknowledges receipt of the notice  
4           described in subclause (IV) and pro-  
5           vides written consent to the discharge  
6           or transfer.

7           “(iv) Test (on a weekly basis) each  
8           resident for COVID–19, or, in the case  
9           that the facility does not have a sufficient  
10          number of testing kits for COVID–19,  
11          screen each resident for symptoms of  
12          COVID–19 and report (on a daily basis  
13          until the facility has a sufficient number of  
14          such testing kits) to the State survey agen-  
15          cy that the facility does not have a suffi-  
16          cient number of such testing kits and what  
17          steps the facility is taking to procure a suf-  
18          ficient number of such testing kits.

19          “(v) Ensure there is an adequate  
20          number of employees to assist residents in  
21          communicating with family members and  
22          friends through phone calls, e-mail, and  
23          virtual communications on at least a week-  
24          ly basis, without regard to whether a resi-  
25          dent has been diagnosed with COVID–19.



1 “(C) WORKER SAFETY REQUIREMENTS.—

2 The worker safety requirements described in  
3 this subparagraph are each of the following:

4 “(i) In the case the facility is not oth-  
5 erwise subject to the Occupational Safety  
6 and Health Act of 1970 (or a State occu-  
7 pational safety and health plan that is ap-  
8 proved under section 18(c) of such Act),  
9 comply with the Bloodborne Pathogens  
10 standard under section 1910.1030 of title  
11 29, Code of Federal Regulations (or a suc-  
12 cessor regulation).

13 “(ii) In the case of a predicted short-  
14 age of personal protective equipment, re-  
15 port such predicted shortage to the State  
16 health department of the State in which  
17 the facility is located at least 24 hours in  
18 advance of when such predicted shortage is  
19 expected to occur.

20 “(iii) Educate each employee on the  
21 transmission of COVID–19.

22 “(iv) Notwithstanding any other pro-  
23 vision of law, provide at least two weeks of  
24 paid sick leave to each employee.

1 “(v) Before each employee’s shift, test  
2 the employee for COVID–19, or, in the  
3 case that the facility does not have a suffi-  
4 cient number of testing kits for COVID–  
5 19, screen each employee for symptoms of  
6 COVID–19 and report (on a daily basis  
7 until the facility has a sufficient number of  
8 such testing kits) to the State survey agen-  
9 cy that the facility does not have a suffi-  
10 cient number of such testing kits and what  
11 steps the facility is taking to procure a suf-  
12 ficient number of such testing kits.

13 “(D) TRANSPARENCY REQUIREMENTS.—  
14 The transparency requirements described in  
15 this subparagraph are each of the following:

16 “(i) Report (on a daily basis) to the  
17 State survey agency, the Centers for Medi-  
18 care & Medicaid Services, and the Centers  
19 for Disease Control and Prevention each of  
20 the following:

21 “(I) The number of confirmed  
22 and suspected cases of COVID–19  
23 among residents and staff, including  
24 the age and race or ethnicity of such  
25 residents and staff.

1 “(II) The number of deaths re-  
2 lated to COVID–19 among residents  
3 and staff, including the age and race  
4 or ethnicity of such residents and  
5 staff.

6 “(III) The total number of  
7 deaths (without regard to whether a  
8 death is related to COVID–19) among  
9 residents and staff.

10 “(IV) The amount of personal  
11 protective equipment available and  
12 any projected need regarding such  
13 equipment.

14 “(V) Information on staffing lev-  
15 els that would otherwise be required  
16 to be submitted through the Payroll-  
17 Based Journal of the Centers for  
18 Medicare & Medicaid Services.

19 “(VI) The number of residents  
20 and staff who have been tested for  
21 COVID–19.

22 “(ii) In the case that a resident or  
23 employee is diagnosed with COVID–19 or  
24 dies as a result of COVID–19, notify all  
25 residents, legal representatives of residents,

1 and employees not later than 12 hours  
2 after such diagnosis is made or such death  
3 occurs.

4 “(iii) At any time three or more resi-  
5 dents or employees have newly onset  
6 COVID–19 symptoms, notify all residents,  
7 legal representatives of residents, and em-  
8 ployees not later than 72 hours after such  
9 three or more residents or employees are  
10 known to the facility.

11 “(iv) In the case that a resident or  
12 employee is suspected to have or is diag-  
13 nosed with COVID–19, post a notice of  
14 such suspicion or diagnosis at each en-  
15 trance of the facility for the remaining por-  
16 tion of the emergency period described in  
17 subparagraph (A).

18 “(v) For each day of the portion of  
19 the emergency period described in subpara-  
20 graph (A), post a notice at each entrance  
21 of the facility with the information re-  
22 quired under subsection (b)(8) for such  
23 day.

24 “(2) STATES AND FEDERAL GOVERNMENT.—

1           “(A) PUBLIC AVAILABILITY OF INFORMA-  
2           TION.—

3           “(i) IN GENERAL.—As soon as pos-  
4           sible, but not later than 24 hours after re-  
5           ceiving any information required under  
6           paragraph (1)(D)(i), the Administrator of  
7           the Centers for Medicare & Medicaid Serv-  
8           ices, in coordination with the Director of  
9           the Centers for Disease Control and Pre-  
10          vention, shall make such information pub-  
11          licly available on the Nursing Home Com-  
12          pare website of the Centers for Medicare &  
13          Medicaid Services and the COVIDView  
14          website of the Centers for Disease Control  
15          and Prevention.

16          “(ii) HIPAA COMPLIANT INFORMA-  
17          TION ONLY.—Information may only be  
18          made publicly available under clause (i) if  
19          the disclosure of such information would  
20          otherwise be permitted under the Federal  
21          regulations (concerning the privacy of indi-  
22          vidually identifiable health information)  
23          promulgated under section 264(c) of the  
24          Health Insurance Portability and Account-

1 ability Act of 1996 (42 U.S.C. 1320d-2  
2 note).

3 “(B) DESIGNATION OF COVID-19 FACILI-  
4 TIES.—For purposes of paragraph  
5 (1)(B)(iii)(II)—

6 “(i) the Administrator of the Centers  
7 for Medicare & Medicaid Services shall  
8 specify criteria (which shall include the  
9 provision of the services of a registered  
10 nurse on a 24-hour basis) for each State  
11 survey agency to carry out the designation  
12 requirement described in clause (ii) with  
13 respect to nursing facilities; and

14 “(ii) each State survey agency shall  
15 designate a nursing facility in the State as  
16 a facility dedicated to the care of residents  
17 who have been diagnosed with COVID-19  
18 if such facility meets the criteria specified  
19 by the Administrator under clause (i).

20 “(C) MONITORING AND SURVEYS.—A  
21 State survey agency shall—

22 “(i) provide onsite monitoring (or, if  
23 onsite monitoring is impractical, remote  
24 monitoring) of all nursing facilities with at

1 least one resident or employee who has  
2 been diagnosed with COVID–19;

3 “(ii) in addition to surveys required  
4 under subsection (g), conduct a survey of  
5 a nursing facility, in the same manner and  
6 subject to the same requirements applica-  
7 ble to standard surveys conducted under  
8 subsection (g), if the facility has a ratio of  
9 the number of deaths resulting from  
10 COVID–19 to the number of COVID–19  
11 diagnoses that exceeds 5 percent, or the  
12 State survey agency receives a COVID–19  
13 or staffing related immediate jeopardy  
14 complaint regarding the facility; and

15 “(iii) ensure that each survey team  
16 that conducts a survey under clause (ii)  
17 has adequate personal protective equip-  
18 ment while conducting such survey.

19 “(3) CIVIL MONEY PENALTIES.—The Secretary  
20 shall impose a civil money penalty against the opera-  
21 tors of a nursing facility in an amount equal to  
22 \$10,000 per day for each violation of a requirement  
23 described in subparagraph (B), (C), or (D) of para-  
24 graph (1) or the reporting of false information under  
25 clause (i) of such subparagraph (D). The provisions

1 of section 1128A (other than subsections (a) and  
 2 (b)) shall apply to a civil money penalty under the  
 3 previous sentence in the same manner as such provi-  
 4 sions apply to a penalty or proceeding under section  
 5 1128A(a).”.

6 **SEC. 102. FUNDING FOR STATE STRIKE TEAMS FOR RESI-**  
 7 **DENT AND EMPLOYEE SAFETY IN SKILLED**  
 8 **NURSING FACILITIES AND NURSING FACILI-**  
 9 **TIES.**

10 (a) IN GENERAL.—Of the amounts made available  
 11 under subsection (c), the Secretary of Health and Human  
 12 Services (referred to in this section as the “Secretary”)  
 13 shall allocate such amounts among the States, in a man-  
 14 ner that takes into account the percentage of skilled nurs-  
 15 ing facilities and nursing facilities in each State that have  
 16 residents or employees who have been diagnosed with  
 17 COVID–19, for purposes of establishing and implementing  
 18 strike teams in accordance with subsection (b).

19 (b) USE OF FUNDS.—A State that receives funds  
 20 under this section shall use such funds to establish and  
 21 implement a strike team that will be deployed to a skilled  
 22 nursing facility or nursing facility in the State, not later  
 23 than 72 hours after three or more residents or employees  
 24 of the facility are diagnosed with or suspected of having  
 25 COVID–19, to assist the facility in separating residents



1 and employees who have been exposed to COVID–19 from  
2 those residents and employees who have not been so ex-  
3 posed, supervising testing for COVID–19, ensuring any  
4 applicable whistleblower protections are being enforced,  
5 and such other needs as determined necessary by the  
6 strike team. Such strike team shall include members of  
7 the National Guard, public health officials from State and  
8 local health departments, experts in geriatrics and long-  
9 term care medicine, representatives of residents or con-  
10 sumers, and representatives of workers.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—For pur-  
12 poses of carrying out this section, there is authorized to  
13 be appropriated \$500,000,000.

14 (d) DEFINITIONS.—In this section:

15 (1) NURSING FACILITY.—The term “nursing  
16 facility” means a nursing facility under the Medicaid  
17 program under title XIX of the Social Security Act  
18 (42 U.S.C. 1396 et seq.).

19 (2) SKILLED NURSING FACILITY.—The term  
20 “skilled nursing facility” means a skilled nursing fa-  
21 cility under the Medicare program under title XVIII  
22 of the Social Security Act (42 U.S.C. 1395 et seq.).

1 **SEC. 103. REINSTITUTION OF REQUIREMENTS WAIVED FOR**  
2 **SKILLED NURSING FACILITIES AND NURSING**  
3 **FACILITIES DURING COVID-19 EMERGENCY**  
4 **PERIOD.**

5 (a) IN GENERAL.—With respect to requirements that  
6 the Administrator of the Centers for Medicare & Medicaid  
7 Services (referred to in this section as the “Adminis-  
8 trator”) waived for skilled nursing facilities and nursing  
9 facilities under section 1135 or 1812(f) of the Social Secu-  
10 rity Act (42 U.S.C. 1320b–5, 1395d(f)) for the period be-  
11 ginning on March 1, 2020, and ending on the last day  
12 of the emergency period defined in subsection (g)(1)(B)  
13 of such section 1135, the Administrator shall terminate  
14 the waiver of such requirements before the last day of such  
15 emergency period upon the determination that skilled  
16 nursing facilities and nursing facilities have the capacity  
17 to comply with such requirements and that such waiver  
18 is no longer necessary.

19 (b) PLAN FOR CONDUCTING WAIVED OR POSTPONED  
20 SURVEYS.—With respect to any survey under section  
21 1819(g) or 1919(g) of the Social Security Act (42 U.S.C.  
22 1395i–3(g), 1396r(g)) that is waived or postponed during  
23 the period beginning on March 1, 2020, and ending on  
24 the last day of the emergency period described in sub-  
25 section (a), the Administrator shall develop a plan for con-  
26 ducting such survey after such last day.

1       (c) TRAINING AND CERTIFICATION OF NURSE  
2 AIDES.—With respect to any nurse aide with respect to  
3 whom the Administrator waived the application of the re-  
4 quirements under section 483.35(d) of title 42, Code of  
5 Federal Regulations, for the period beginning on March  
6 1, 2020, and ending on the last day of the emergency pe-  
7 riod described in subsection (a), the Administrator shall  
8 prohibit the skilled nursing facility or nursing facility em-  
9 ploying such nurse aide from retaining such nurse aide  
10 after such last day unless such nurse aide satisfies applica-  
11 ble training and certification requirements under such sec-  
12 tion not later than 30 days after such last day. The Ad-  
13 ministrator shall encourage skilled nursing facilities and  
14 nursing facilities to make available applicable trainings to  
15 such aides to satisfy such requirements and provide such  
16 resources as the Administrator determines appropriate to  
17 such skilled nursing facilities and nursing facilities in  
18 order to facilitate the provision of such trainings.

19       (d) DEFINITIONS.—In this section:

20           (1) NURSING FACILITY.—The term “nursing  
21 facility” means a nursing facility under the Medicaid  
22 program under title XIX of the Social Security Act  
23 (42 U.S.C. 1396 et seq.).

24           (2) SKILLED NURSING FACILITY.—The term  
25 “skilled nursing facility” means a skilled nursing fa-

1 facility under the Medicare program under title XVIII  
2 of the Social Security Act (42 U.S.C. 1395 et seq.).

3 **SEC. 104. GUIDANCE FOR CERTAIN RESIDENTIAL CARE FA-**  
4 **CILITIES DURING COVID-19 EMERGENCY PE-**  
5 **RIOD.**

6 Not later than 15 days after the date of the enact-  
7 ment of this Act, the Secretary of Health and Human  
8 Services (referred to in this section as the “Secretary”)  
9 shall issue guidance for long-term health care facilities,  
10 including assisted living facilities, other residential care fa-  
11 cilities, and such facilities that are temporary during the  
12 emergency period defined in section 1135(g)(1)(B) of the  
13 Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)), that  
14 are not subject to oversight by the Centers for Medicare  
15 & Medicaid Services on providing access to virtual visita-  
16 tion during any portion of such emergency period in which  
17 in-person visitation is restricted and ensuring appropriate  
18 infection control and prevention and employee safety dur-  
19 ing such emergency period. Such guidance shall include—

20 (1) steps that health care facilities described in  
21 this subsection should take to provide residents with  
22 access to virtual visitation, including through the  
23 purchase or installation of devices purchased for the  
24 use or benefit of individual or multiple residents,

1 that allows residents to communicate with their fam-  
 2 ilies during such emergency period;

3 (2) options for such facilities in notifying resi-  
 4 dents and resident representatives of such access to  
 5 virtual visitation and how the facility is addressing  
 6 any operational issues related to such access to vir-  
 7 tual visitation; and

8 (3) steps that health care facilities described in  
 9 this subsection should take to provide residents and  
 10 employees with appropriate infection control and  
 11 prevention, based on requirements for skilled nurs-  
 12 ing facilities under subsection (k) of section 1819 of  
 13 the Social Security Act (42 U.S.C. 1395i–3), as  
 14 added by section 2(a), and requirements for nursing  
 15 facilities under subsection (k) of section 1919 of  
 16 such Act (42 U.S.C. 1396r), as added by section  
 17 2(b).

## 18 **TITLE II—STAFFING AND** 19 **SAFETY**

### 20 **SEC. 201. MINIMUM NURSE STAFFING REQUIREMENTS FOR** 21 **SKILLED NURSING FACILITIES UNDER MEDI-** 22 **CARE PROGRAM AND NURSING FACILITIES** 23 **UNDER MEDICAID PROGRAM.**

24 (a) MEDICARE.—

1 (1) IN GENERAL.—Subparagraph (C) of section  
2 1819(b)(4) of the Social Security Act (42 U.S.C.  
3 1395i–3(b)(4)) is amended—

4 (A) in clause (i)—

5 (i) by amending the clause heading to  
6 read as follows: “GENERAL REQUIRE-  
7 MENTS BEFORE 2023”; and

8 (ii) by striking “Except as provided in  
9 clause (ii),” and inserting “Except as pro-  
10 vided in clause (iii), with respect to skilled  
11 nursing facility services provided before  
12 January 1, 2023,”;

13 (B) by redesignating clause (ii) as clause  
14 (iii); and

15 (C) by inserting after clause (i) the fol-  
16 lowing new clause:

17 “(ii) GENERAL REQUIREMENTS AFTER  
18 2022.—

19 “(I) IN GENERAL.—With respect  
20 to skilled nursing facility services pro-  
21 vided on or after January 1, 2023, a  
22 skilled nursing facility must—

23 “(aa) provide nursing serv-  
24 ices that are sufficient to meet  
25 the nursing needs of its residents

1 on a 24-hour basis, to be divided  
2 into day shifts, evening shifts,  
3 and night shifts;

4 “(bb) provide for minimum  
5 nurse staffing levels with respect  
6 to each such shift, in accordance  
7 with this clause; and

8 “(cc) ensure that, in car-  
9 rying out items (aa) and (bb), a  
10 total minimum of 4.1 hours of  
11 care is provided per resident per  
12 day, with 0.75 hours of care of  
13 such total minimum provided by  
14 a registered professional nurse,  
15 0.54 hours of care of such total  
16 minimum provided by a licensed  
17 practical nurse, and 2.81 hours  
18 of care of such total minimum  
19 provided by a nurse aide (as de-  
20 fined in paragraph (5)(F)).

21 “(II) DAY SHIFTS.—With respect  
22 to a day shift, the skilled nursing fa-  
23 cility must have—

24 “(aa) at least 1 registered  
25 professional nurse for every 28

1 residents, with a minimum of  
2 0.29 hours of care provided per  
3 resident during each such shift;

4 “(bb) at least 1 licensed  
5 practical nurse for every 40 resi-  
6 dents, with a minimum of 0.20  
7 hours of care provided per resi-  
8 dent during each such shift; and

9 “(cc) at least 1 nurse aide  
10 (as defined in paragraph (5)(F))  
11 for every 7 residents, with a min-  
12 imum of 1.14 hours of care pro-  
13 vided per resident during each  
14 such shift.

15 “(III) EVENING SHIFTS.—With  
16 respect to an evening shift, the skilled  
17 nursing facility must have—

18 “(aa) at least 1 registered  
19 professional nurse for every 30  
20 residents, with a minimum of  
21 0.26 hours of care provided per  
22 resident during each such shift;

23 “(bb) at least 1 licensed  
24 practical nurse for every 40 resi-  
25 dents, with a minimum of 0.20



1 hours of care provided per resi-  
2 dent during each such shift; and

3 “(cc) at least 1 nurse aide  
4 (as defined in paragraph (5)(F))  
5 for every 7 residents, with a min-  
6 imum of 1.14 hours of care pro-  
7 vided per resident during each  
8 such shift.

9 “(IV) NIGHT SHIFTS.—With re-  
10 spect to a night shift, the skilled nurs-  
11 ing facility must have—

12 “(aa) at least 1 registered  
13 professional nurse for every 40  
14 residents, with a minimum of  
15 0.20 hours of care provided per  
16 resident during such shift;

17 “(bb) at least 1 licensed  
18 practical nurse for every 56 resi-  
19 dents, with a minimum of 0.14  
20 hours of care provided per resi-  
21 dent during such shift; and

22 “(cc) at least 1 nurse aide  
23 (as defined in paragraph (5)(F))  
24 for every 15 residents, with a  
25 minimum of 0.53 hours of care

1 provided per resident during such  
2 shift.

3 “(V) SECRETARIAL AUTHORITY  
4 TO ESTABLISH HIGHER MINIMUM  
5 NURSE STAFFING LEVELS.—The Sec-  
6 retary may establish and require  
7 skilled nursing facilities (or, at the  
8 Secretary’s discretion, only skilled  
9 nursing facilities that have a higher  
10 percentage of residents with extensive  
11 care needs, as determined by the Sec-  
12 retary) to provide for minimum nurse  
13 staffing levels that are higher than  
14 the levels required under this clause.

15 “(VI) RULE OF CONSTRUCTION  
16 REGARDING STATE AUTHORITY TO ES-  
17 TABLISH HIGHER MINIMUM NURSE  
18 STAFFING LEVELS.—Nothing in this  
19 clause may be construed as preventing  
20 a State from establishing or requiring  
21 skilled nursing facilities in the State  
22 to provide for minimum nurse staffing  
23 levels that are higher than the levels  
24 required under this clause.

1 “(VII) CLARIFICATION WITH RE-  
2 SPECT TO MINIMUM HOURS OF CARE  
3 PROVIDED PER RESIDENT REQUIRE-  
4 MENTS.—In complying with the min-  
5 imum hours of care provided per resi-  
6 dent requirements under this clause, a  
7 skilled nursing facility may not count  
8 any time spent by a registered profes-  
9 sional nurse, licensed practical nurse,  
10 or nurse aide on administrative serv-  
11 ices towards compliance with such re-  
12 quirements.

13 “(VIII) DEFINITIONS.—In this  
14 clause:

15 “(aa) ADMINISTRATIVE  
16 SERVICES.—The term ‘adminis-  
17 trative services’ means food prep-  
18 aration, housekeeping, laundry  
19 services, maintenance services,  
20 and other noncaregiving-related  
21 services, as determined by the  
22 Secretary.

23 “(bb) DAY SHIFT.—The  
24 term ‘day shift’ means, with re-  
25 spect to a day and a skilled nurs-

1 ing facility, an assigned work  
2 shift that is a period of 8 con-  
3 secutive hours, beginning not  
4 sooner than 6 a.m. in the time  
5 zone in which such facility is lo-  
6 cated and not later than 8 a.m.  
7 in such time zone.

8 “(cc) EVENING SHIFT.—The  
9 term ‘evening shift’ means, with  
10 respect to a day and a skilled  
11 nursing facility, an assigned work  
12 shift that is a period of 8 con-  
13 secutive hours, beginning not  
14 sooner than 2 p.m. in the time  
15 zone in which such facility is lo-  
16 cated and not later than 4 p.m.  
17 in such time zone.

18 “(dd) NIGHT SHIFT.—The  
19 term ‘night shift’ means, with re-  
20 spect to a day and a skilled nurs-  
21 ing facility, an assigned work  
22 shift that is a period of 8 con-  
23 secutive hours, beginning not  
24 sooner than 10 p.m. in the time  
25 zone in which such facility is lo-

1 cated and not later than mid-  
2 night in such time zone.”.

3 (2) ENFORCEMENT.—Section 1819(h) of the  
4 Social Security Act (42 U.S.C. 1395i–3(h)) is  
5 amended—

6 (A) in paragraph (1), by striking “If a  
7 State finds, on the basis of a standard” and in-  
8 serting “Subject to paragraph (7), if a State  
9 finds, on the basis of a standard”;

10 (B) in paragraph (2), by striking “With  
11 respect to” and inserting “Subject to paragraph  
12 (7), with respect to”; and

13 (C) by adding at the end the following new  
14 paragraph:

15 “(7) SPECIAL ENFORCEMENT PROCESS WITH  
16 RESPECT TO MINIMUM NURSE STAFFING REQUIRE-  
17 MENTS.—

18 “(A) IN GENERAL.—If a State finds, on  
19 the basis of a standard, extended, or partial ex-  
20 tended survey under subsection (g)(2) or other-  
21 wise, that a skilled nursing facility does not  
22 meet the minimum staffing requirements of  
23 clause (ii) of subsection (b)(4)(C) with respect  
24 to skilled nursing facility services provided on  
25 or after January 1, 2023, the State shall rec-

1 commend to the Secretary that the Secretary  
2 take such actions as described in subclauses (I)  
3 and (II) of subparagraph (B)(i).

4 “(B) SECRETARIAL AUTHORITY.—

5 “(i) IN GENERAL.—With respect to  
6 any skilled nursing facility in a State, if  
7 the Secretary finds, or pursuant to a rec-  
8 ommendation of the State under subpara-  
9 graph (A) finds, that a skilled nursing fa-  
10 cility does not meet the minimum staffing  
11 requirements of clause (ii) of subsection  
12 (b)(4)(C) with respect to skilled nursing  
13 facility services provided on or after Janu-  
14 ary 1, 2023, the Secretary shall—

15 “(I) deny any further payments  
16 under this title with respect to all in-  
17 dividuals entitled to benefits under  
18 this title who are admitted to the fa-  
19 cility after the effective date of the  
20 finding; and

21 “(II) impose a civil money pen-  
22 alty in an amount not to exceed  
23 \$10,000 for each day of noncompli-  
24 ance. The provisions of section 1128A  
25 (other than subsections (a) and (b))

1 shall apply to a civil money penalty  
2 under the previous sentence in the  
3 same manner as such provisions apply  
4 to a penalty or proceeding under sec-  
5 tion 1128A(a).

6 “(ii) REDUCTION OF CIVIL MONEY  
7 PENALTIES IN CERTAIN CIR-  
8 CUMSTANCES.—Subject to clause (iii), in  
9 the case where a skilled nursing facility  
10 self-reports and promptly corrects a defi-  
11 ciency for which a penalty was imposed  
12 under clause (i)(II) not later than 10 cal-  
13 endar days after the date of such imposi-  
14 tion, the Secretary may reduce the amount  
15 of the penalty imposed by—

16 “(I) not more than 50 percent; or

17 “(II) in the case that the facility  
18 was penalized under this subsection  
19 within the three-year period preceding  
20 the date of such imposition, not more  
21 than 25 percent.

22 “(iii) PROHIBITIONS ON REDUCTION  
23 FOR CERTAIN DEFICIENCIES.—

24 “(I) REPEAT DEFICIENCIES.—

25 The Secretary may not reduce the

1 amount of a penalty under clause (ii)  
2 if the Secretary had reduced a penalty  
3 imposed on the skilled nursing facility  
4 in the preceding year under such  
5 clause with respect to a repeat defi-  
6 ciency.

7 “(II) CERTAIN OTHER DEFI-  
8 CIENCIES.—The Secretary may not  
9 reduce the amount of a penalty under  
10 clause (ii) if the penalty is imposed on  
11 the skilled nursing facility for a defi-  
12 ciency that is found to result in a pat-  
13 tern of harm or widespread harm, im-  
14 mediately jeopardizes the health or  
15 safety of a resident or residents of the  
16 facility, or results in the death of a  
17 resident of the facility.

18 “(iv) REPEATED NONCOMPLIANCE.—  
19 In the case of a skilled nursing facility  
20 which, on three consecutive standard sur-  
21 veys conducted under subsection (g)(2),  
22 has been found as not meeting the min-  
23 imum staffing requirements of clause (ii)  
24 of subsection (b)(4)(C) with respect to  
25 skilled nursing facility services provided on



1 or after January 1, 2023, the Secretary  
2 may (regardless of the remedies provided  
3 for under clause (i))—

4 “(I) appoint temporary manage-  
5 ment to oversee the operation of the  
6 facility and to assure the health and  
7 safety of the facility’s residents in ac-  
8 cordance with clause (iii) of para-  
9 graph (2)(B), except that ‘the min-  
10 imum staffing requirements of clause  
11 (ii) of subsection (b)(4)(C)’ shall be  
12 substituted for ‘all the requirements  
13 of subsections (b), (c), and (d)’ under  
14 such clause;

15 “(II) monitor the facility under  
16 subsection (g)(4)(B) with respect to  
17 such minimum staffing requirements  
18 until the facility has demonstrated to  
19 the satisfaction of the Secretary that  
20 the facility is in compliance, and will  
21 remain in compliance, with such min-  
22 imum staffing requirements; or

23 “(III) subject to section  
24 1128I(h), terminate the facility’s par-  
25 ticipation under this title.

1 If the facility’s participation under this  
2 title is terminated under this clause, the  
3 State shall provide for the safe and orderly  
4 transfer of the residents eligible under this  
5 title, consistent with the requirements of  
6 subsection (c)(2) and section 1128I(h).

7 “(v) PUBLIC NOTICE OF VIOLA-  
8 TIONS.—

9 “(I) INTERNET WEBSITE.—The  
10 Secretary shall publish on the internet  
11 website of the Department of Health  
12 and Human Services the names of  
13 skilled nursing facilities that have vio-  
14 lated the minimum staffing require-  
15 ments of clause (ii) of subsection  
16 (b)(4)(C) with respect to skilled nurs-  
17 ing facility services provided on or  
18 after January 1, 2023.

19 “(II) CHANGE OF OWNERSHIP.—

20 With respect to a skilled nursing facil-  
21 ity whose name is published under  
22 subclause (I) and has a change of  
23 ownership, as determined by the Sec-  
24 retary, after the date of such publica-  
25 tion, the Secretary shall remove the

1 name of such facility from the website  
 2 described under such subclause after  
 3 the 1-year period beginning on the  
 4 date of such change of ownership.”.

5 (3) CONFORMING AMENDMENT.—Item (a) of  
 6 section 1819(f)(2)(B)(iii)(I) of the Social Security  
 7 Act (42 U.S.C. 1395i–3(f)(2)(B)(iii)(I)) is amended  
 8 by striking “subsection (b)(4)(C)(ii)(II)” and insert-  
 9 ing “subsection (b)(4)(C)(iii)(II)”.

10 (b) MEDICAID.—

11 (1) IN GENERAL.—Subparagraph (C) of section  
 12 1919(b)(4) of the Social Security Act (42 U.S.C.  
 13 1396r(b)(4)) is amended—

14 (A) in clause (i)—

15 (i) in the clause heading, by inserting  
 16 after “GENERAL REQUIREMENTS” the fol-  
 17 lowing “BEFORE 2023”;

18 (ii) in the matter preceding subclause  
 19 (I), by inserting after “October 1, 1990,”  
 20 the following: “and before January 1,  
 21 2023,”;

22 (iii) in subclause (I), by striking  
 23 “clause (ii)” and inserting “clause (iii)”;  
 24 and

1 (iv) in subclause (II), by striking  
2 “clause (ii)” and inserting “clause (iii)”;

3 (B) by redesignating clauses (ii) and (iii)  
4 as clauses (iii) and (iv), respectively; and

5 (C) by inserting after clause (i) the fol-  
6 lowing new clause:

7 “(ii) GENERAL REQUIREMENTS AFTER  
8 2022.—

9 “(I) IN GENERAL.—With respect  
10 to nursing facility services provided on  
11 or after January 1, 2023, a nursing  
12 facility must—

13 “(aa) provide nursing serv-  
14 ices that are sufficient to meet  
15 the nursing needs of its residents  
16 on a 24-hour basis, to be divided  
17 into day shifts, evening shifts,  
18 and night shifts;

19 “(bb) provide for minimum  
20 nurse staffing levels with respect  
21 to each such shift, in accordance  
22 with this clause; and

23 “(cc) ensure that, in car-  
24 rying out items (aa) and (bb), a  
25 total minimum of 4.1 hours of

1 care is provided per resident per  
2 day, with 0.75 hours of care of  
3 such total minimum provided by  
4 a registered professional nurse,  
5 0.54 hours of care of such total  
6 minimum provided by a licensed  
7 practical nurse, and 2.81 hours  
8 of care of such total minimum  
9 provided by a nurse aide (as de-  
10 fined in paragraph (5)(F)).

11 “(II) DAY SHIFTS.—With respect  
12 to a day shift, the nursing facility  
13 must have—

14 “(aa) at least 1 registered  
15 professional nurse for every 28  
16 residents, with a minimum of  
17 0.29 hours of care provided per  
18 resident during each such shift;

19 “(bb) at least 1 licensed  
20 practical nurse for every 40 resi-  
21 dents, with a minimum of 0.20  
22 hours of care provided per resi-  
23 dent during each such shift; and

24 “(cc) at least 1 nurse aide  
25 (as defined in paragraph (5)(F))

1 for every 7 residents, with a min-  
2 imum of 1.14 hours of care pro-  
3 vided per resident during each  
4 such shift.

5 “(III) EVENING SHIFTS.—With  
6 respect to an evening shift, the nurs-  
7 ing facility must have—

8 “(aa) at least 1 registered  
9 professional nurse for every 30  
10 residents, with a minimum of  
11 0.26 hours of care provided per  
12 resident during each such shift;

13 “(bb) at least 1 licensed  
14 practical nurse for every 40 resi-  
15 dents, with a minimum of 0.20  
16 hours of care provided per resi-  
17 dent during each such shift; and

18 “(cc) at least 1 nurse aide  
19 (as defined in paragraph (5)(F))  
20 for every 7 residents, with a min-  
21 imum of 1.14 hours of care pro-  
22 vided per resident during each  
23 such shift.

1                   “(IV) NIGHT SHIFTS.—With re-  
2                   spect to a night shift, the nursing fa-  
3                   cility must have—

4                   “(aa) at least 1 registered  
5                   professional nurse for every 40  
6                   residents, with a minimum of  
7                   0.20 hours of care provided per  
8                   resident during such shift;

9                   “(bb) at least 1 licensed  
10                  practical nurse for every 56 resi-  
11                  dents, with a minimum of 0.14  
12                  hours of care provided per resi-  
13                  dent during such shift; and

14                  “(cc) at least 1 nurse aide  
15                  (as defined in paragraph (5)(F))  
16                  for every 15 residents, with a  
17                  minimum of 0.53 hours of care  
18                  provided per resident during such  
19                  shift.

20                  “(V) SECRETARIAL AUTHORITY  
21                  TO ESTABLISH HIGHER MINIMUM  
22                  NURSE STAFFING LEVELS.—The Sec-  
23                  retary may establish and require nurs-  
24                  ing facilities (or, at the Secretary’s  
25                  discretion, only nursing facilities that

1 have a higher percentage of residents  
2 with extensive care needs, as deter-  
3 mined by the Secretary) to provide for  
4 minimum nurse staffing levels that  
5 are higher than the levels required  
6 under this clause.

7 “(VI) RULE OF CONSTRUCTION  
8 REGARDING STATE AUTHORITY TO ES-  
9 TABLISH HIGHER MINIMUM NURSE  
10 STAFFING LEVELS.—Nothing in this  
11 clause may be construed as preventing  
12 a State from establishing or requiring  
13 nursing facilities in the State to pro-  
14 vide for minimum nurse staffing levels  
15 that are higher than the levels re-  
16 quired under this clause.

17 “(VII) CLARIFICATION WITH RE-  
18 SPECT TO MINIMUM HOURS OF CARE  
19 PROVIDED PER RESIDENT REQUIRE-  
20 MENTS.—In complying with the min-  
21 imum hours of care provided per resi-  
22 dent requirements under this clause, a  
23 nursing facility may not count any  
24 time spent by a registered professional  
25 nurse, licensed practical nurse, or



1 nurse aide on administrative services  
2 towards compliance with such require-  
3 ments.

4 “(VIII) DEFINITIONS.—In this  
5 clause:

6 “(aa) ADMINISTRATIVE  
7 SERVICES.—The term ‘adminis-  
8 trative services’ means food prep-  
9 aration, housekeeping, laundry  
10 services, maintenance services,  
11 and other noncaregiving-related  
12 services, as determined by the  
13 Secretary.

14 “(bb) DAY SHIFT.—The  
15 term ‘day shift’ means, with re-  
16 spect to a day and a nursing fa-  
17 cility, an assigned work shift that  
18 is a period of 8 consecutive  
19 hours, beginning not sooner than  
20 6 a.m. in the time zone in which  
21 such facility is located and not  
22 later than 8 a.m. in such time  
23 zone.

24 “(cc) EVENING SHIFT.—The  
25 term ‘evening shift’ means, with

1 respect to a day and a nursing  
2 facility, an assigned work shift  
3 that is a period of 8 consecutive  
4 hours, beginning not sooner than  
5 2 p.m. in the time zone in which  
6 such facility is located and not  
7 later than 4 p.m. in such time  
8 zone.

9 “(dd) NIGHT SHIFT.—The  
10 term ‘night shift’ means, with re-  
11 spect to a day and a nursing fa-  
12 cility, an assigned work shift that  
13 is a period of 8 consecutive  
14 hours, beginning not sooner than  
15 10 p.m. in the time zone in which  
16 such facility is located and not  
17 later than midnight in such time  
18 zone.”.

19 (2) ENFORCEMENT.—Section 1919(h) of the  
20 Social Security Act (42 U.S.C. 1396r(h)) is amend-  
21 ed—

22 (A) in paragraph (1), by striking “If a  
23 State finds, on the basis of a standard” and in-  
24 serting “Subject to paragraph (10), if a State  
25 finds, on the basis of a standard”;

1 (B) in paragraph (2)—

2 (i) in subparagraph (C), by striking  
3 “If a nursing facility” and inserting “Sub-  
4 ject to paragraph (10), if a nursing facil-  
5 ity”; and

6 (ii) in subparagraph (D), by striking  
7 “In the case of” and inserting “Subject to  
8 paragraph (10), in the case of”;

9 (C) in paragraph (3)—

10 (i) in subparagraph (A), by inserting  
11 before the period the following: “and the  
12 remedies described in paragraph (10)(B)”;  
13 and

14 (ii) in subparagraph (B), by striking  
15 “With respect to” and inserting “Subject  
16 to paragraph (10), with respect to”; and

17 (D) by adding at the end the following new  
18 paragraph:

19 “(10) SPECIAL ENFORCEMENT PROCESS WITH  
20 RESPECT TO MINIMUM NURSE STAFFING REQUIRE-  
21 MENTS.—

22 “(A) IN GENERAL.—If a State finds, on  
23 the basis of a standard, extended, or partial ex-  
24 tended survey under subsection (g)(2) or other-  
25 wise, that a nursing facility does not meet the

1 minimum staffing requirements of clause (ii) of  
2 subsection (b)(4)(C) with respect to nursing fa-  
3 cility services provided on or after January 1,  
4 2023, the State shall—

5 “(i) deny any further payments under  
6 the State plan with respect to all individ-  
7 uals enrolled under such plan who are ad-  
8 mitted to the facility after the effective  
9 date of the finding; and

10 “(ii) recommend to the Secretary that  
11 the Secretary impose the civil money pen-  
12 alty described in subparagraph (B).

13 “(B) SECRETARIAL AUTHORITY.—

14 “(i) IN GENERAL.—With respect to  
15 any nursing facility in a State other than  
16 a State nursing facility, if the Secretary  
17 finds that such a nursing facility does not  
18 meet the minimum staffing requirements  
19 of clause (ii) of subsection (b)(4)(C) with  
20 respect to nursing facility services provided  
21 on or after January 1, 2023, the Secretary  
22 shall—

23 “(I) deny any further payments  
24 to the State for medical assistance  
25 furnished by the facility to all individ-

1 uals enrolled under the State plan  
2 who are admitted to the facility after  
3 the effective date of the finding; and

4 “(II) impose a civil money pen-  
5 alty in an amount not to exceed  
6 \$10,000 for each day of noncompli-  
7 ance. The provisions of section 1128A  
8 (other than subsections (a) and (b))  
9 shall apply to a civil money penalty  
10 under the previous sentence in the  
11 same manner as such provisions apply  
12 to a penalty or proceeding under sec-  
13 tion 1128A(a).

14 “(ii) REDUCTION OF CIVIL MONEY  
15 PENALTIES IN CERTAIN CIR-  
16 CUMSTANCES.—Subject to clause (iii), in  
17 the case where a nursing facility self-re-  
18 ports and promptly corrects a deficiency  
19 for which a penalty was imposed under  
20 clause (i)(II) not later than 10 calendar  
21 days after the date of such imposition, the  
22 Secretary may reduce the amount of the  
23 penalty imposed by—

24 “(I) not more than 50 percent; or

1 “(II) in the case that the facility  
2 was penalized under this subsection  
3 within the three-year period preceding  
4 the date of such imposition, not more  
5 than 25 percent.

6 “(iii) PROHIBITIONS ON REDUCTION  
7 FOR CERTAIN DEFICIENCIES.—

8 “(I) REPEAT DEFICIENCIES.—  
9 The Secretary may not reduce the  
10 amount of a penalty under clause (ii)  
11 if the Secretary had reduced a penalty  
12 imposed on the nursing facility in the  
13 preceding year under such clause with  
14 respect to a repeat deficiency.

15 “(II) CERTAIN OTHER DEFICI-  
16 CIENCIES.—The Secretary may not  
17 reduce the amount of a penalty under  
18 clause (ii) if the penalty is imposed on  
19 the nursing facility for a deficiency  
20 that is found to result in a pattern of  
21 harm or widespread harm, imme-  
22 diately jeopardizes the health or safe-  
23 ty of a resident or residents of the fa-  
24 cility, or results in the death of a resi-  
25 dent of the facility.

1 “(iv) REPEATED NONCOMPLIANCE.—

2 In the case of a nursing facility which, on  
3 three consecutive standard surveys con-  
4 ducted under subsection (g)(2), has been  
5 found as not meeting the minimum staff-  
6 ing requirements of clause (ii) of sub-  
7 section (b)(4)(C) with respect to nursing  
8 facility services provided on or after Janu-  
9 ary 1, 2023, the Secretary may (regardless  
10 of the remedies provided for under clause  
11 (i))—

12 “(I) appoint temporary manage-  
13 ment to oversee the operation of the  
14 facility and to assure the health and  
15 safety of the facility’s residents in ac-  
16 cordance with clause (iii) of para-  
17 graph (3)(C), except that ‘the min-  
18 imum staffing requirements of clause  
19 (ii) of subsection (b)(4)(C)’ shall be  
20 substituted for ‘all the requirements  
21 of subsections (b), (c), and (d)’ under  
22 such clause;

23 “(II) monitor the facility under  
24 subsection (g)(4)(B) with respect to  
25 such minimum staffing requirements

1           until the facility has demonstrated to  
2           the satisfaction of the Secretary that  
3           the facility is in compliance, and will  
4           remain in compliance, with such min-  
5           imum staffing requirements; or

6                   “(III)     subject     to     section  
7           1128I(h), terminate the facility’s par-  
8           ticipation under this title.

9           If the facility’s participation under this  
10          title is terminated under this clause, the  
11          State shall provide for the safe and orderly  
12          transfer of the residents eligible under this  
13          title, consistent with the requirements of  
14          subsection (c)(2) and section 1128I(h).

15                   “(v)   PUBLIC NOTICE OF VIOLA-  
16          TIONS.—

17                   “(I) INTERNET WEBSITE.—The  
18          Secretary shall publish on the internet  
19          website of the Department of Health  
20          and Human Services the names of  
21          nursing facilities that have violated  
22          the minimum staffing requirements of  
23          clause (ii) of subsection (b)(4)(C) with  
24          respect to skilled nursing facility serv-



ices provided on or after January 1,  
2023.

“(II) CHANGE OF OWNERSHIP.—

With respect to a nursing facility  
whose name is published under sub-  
clause (I) and has a change of owner-  
ship, as determined by the Secretary,  
after the date of such publication, the  
Secretary shall remove the name of  
such facility from the website de-  
scribed under such subclause after the  
1-year period beginning on the date of  
such change of ownership.”.

(3) CONFORMING AMENDMENTS.—

(A) Clause (iii) of section 1919(b)(4)(C) of  
the Social Security Act (42 U.S.C.  
1396r(b)(4)(C)), as redesignated by paragraph  
(1)(B), is amended by striking “subject to  
clause (iii)” and inserting “subject to clause  
(iv)”.

(B) Item (a) of section  
1919(f)(2)(B)(iii)(I) of the Social Security Act  
(42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended  
by striking “subsection (b)(4)(C)(ii)” and in-  
serting “subsection (b)(4)(C)(iii)”.

1           (C) Paragraph (9) of section 1919(f) of  
2           the Social Security Act (42 U.S.C. 1396r(f)) is  
3           amended by striking “subsection (b)(4)(C)(ii)”  
4           and inserting “subsection (b)(4)(C)(iii)”.

5           (c) STUDIES AND REPORTS REGARDING IMPACT OF  
6   MINIMUM NURSE STAFFING REQUIREMENTS.—

7           (1) INITIAL STUDY AND REPORT.—

8           (A) IN GENERAL.—Not later than June 1,  
9           2023, the Secretary of Health and Human  
10          Services shall study and submit to the Com-  
11          mittee on Energy and Commerce and the Com-  
12          mittee on Ways and Means of the House of  
13          Representatives and the Committee on Finance  
14          of the Senate a publicly available report—

15               (i) on the impact of the minimum  
16               nurse staffing requirements added by sub-  
17               section (a) on the reimbursement levels of  
18               skilled nursing facilities under the Medi-  
19               care program under title XVIII of the So-  
20               cial Security Act (42 U.S.C. 1395 et seq.)  
21               and the adequacy of personnel numbers in  
22               such skilled nursing facilities to meet such  
23               minimum nurse staffing requirements;

24               (ii) on the impact of the minimum  
25               nurse staffing requirements added by sub-

1 section (b) on the reimbursement levels of  
2 nursing facilities under the Medicaid pro-  
3 gram under title XIX of the Social Secu-  
4 rity Act (42 U.S.C. 1396 et seq.) and the  
5 adequacy of personnel numbers in such  
6 nursing facilities to meet such minimum  
7 nurse staffing requirements; and

8 (iii) including recommendations on the  
9 steps that such skilled nursing facilities  
10 and nursing facilities can take to ensure  
11 that adequate personnel are available in  
12 such skilled nursing facilities and nursing  
13 facilities to meet the minimum nurse staff-  
14 ing requirements added by subsections (a)  
15 and (b) for such skilled nursing facilities  
16 and nursing facilities, respectively, includ-  
17 ing methods for attracting and retaining  
18 such personnel.

19 (B) CONSIDERATIONS.—In conducting the  
20 study required under subparagraph (A), the  
21 Secretary of Health and Human Services shall  
22 take into consideration—

23 (i) the benefits of any increase in  
24 nurse staffing levels, including with respect  
25 to workforce training and retention;

- 1 (ii) any decrease in the rate of work-
- 2 place injuries;
- 3 (iii) any changes in medical care costs
- 4 for residents of skilled nursing facilities
- 5 and nursing facilities;
- 6 (iv) any decrease in hospitalization
- 7 rates for such residents;
- 8 (v) any changes in personnel and ad-
- 9 ministrative costs for skilled nursing facili-
- 10 ties and nursing facilities; and
- 11 (vi) any changes in recruiting and
- 12 training costs.

13 (2) SUBSEQUENT STUDY AND REPORT.—Not  
14 later than January 1, 2025, the Secretary of Health  
15 and Human Services shall conduct a follow-up study  
16 to the study conducted under paragraph (1)(A) and  
17 submit to the Committee on Energy and Commerce  
18 and the Committee on Ways and Means of the  
19 House of Representatives and the Committee on Fi-  
20 nance of the Senate a publicly available report on  
21 such follow-up study.

1 **SEC. 202. DISCLOSURE OF NURSE STAFFING LEVELS AT**  
2 **SKILLED NURSING FACILITIES UNDER MEDI-**  
3 **CARE PROGRAM AND NURSING FACILITIES**  
4 **UNDER MEDICAID PROGRAM.**

5 (a) **MEDICARE.**—Paragraph (8) of section 1819(b) of  
6 the Social Security Act (42 U.S.C. 1395i–3(b)) is amend-  
7 ed to read as follows:

8 “(8) **INFORMATION ON NURSE STAFFING.**—

9 “(A) **IN GENERAL.**—Each day, a skilled  
10 nursing facility shall post for each shift notices  
11 with—

12 “(i) a description of the nurse staffing  
13 requirements applicable with respect to the  
14 facility and day under paragraph (4)(C);

15 “(ii) information on the number of  
16 registered professional nurses, licensed  
17 practical nurses, and nurse aides (as de-  
18 fined in paragraph (5)(F)) assigned to pro-  
19 vide direct care services to residents in the  
20 facility during the shift, disaggregated by  
21 units in the facility; and

22 “(iii) a statement that the facility is  
23 required, upon request, to provide any  
24 nurse staffing information (as described in  
25 this subparagraph) of the facility from the  
26 preceding 12-month period.

1           The information in such notices shall be written  
2           in a uniform manner, printed in an easily read-  
3           able 14-point type font, and made available in  
4           appropriate languages, as determined by the  
5           Secretary. The skilled nursing facility shall  
6           make such notices available at each nurses' sta-  
7           tion in the facility and other areas in each unit  
8           of the facility, as determined appropriate by the  
9           facility, and shall keep and maintain each such  
10          notice for at least three years after the date on  
11          which each such notice is posted in the facility.

12                 “(B) PUBLIC AVAILABILITY OF INFORMA-  
13          TION.—A skilled nursing facility shall, upon re-  
14          quest, make available to the public any nurse  
15          staffing information (as described in subpara-  
16          graph (A)) of the facility from the preceding  
17          12-month period. In the case that the facility  
18          makes such information available as a paper  
19          copy, such facility may not charge for such copy  
20          an amount greater than the cost of making  
21          such copy.”.

22           (b) MEDICAID.—Paragraph (8) of section 1919(b) of  
23   the Social Security Act (42 U.S.C. 1396r(b)) is amended  
24   to read as follows:

25                 “(8) INFORMATION ON NURSE STAFFING.—

1           “(A) IN GENERAL.—Each day, a skilled  
2 nursing facility shall post for each shift notices  
3 with—

4                   “(i) a description of the nurse staffing  
5 requirements applicable with respect to the  
6 facility and day under paragraph (4)(C);

7                   “(ii) information on the number of  
8 registered professional nurses, licensed  
9 practical nurses, and nurse aides (as de-  
10 fined in paragraph (5)(F)) assigned to pro-  
11 vide direct care services to residents in the  
12 facility during the shift, disaggregated by  
13 units in the facility; and

14                   “(iii) a statement that the facility is  
15 required, upon request, to provide any  
16 nurse staffing information (as described in  
17 this subparagraph) of the facility from the  
18 preceding 12-month period.

19           The information in such notices shall be written  
20 in a uniform manner, printed in an easily read-  
21 able 14-point type font, and made available in  
22 appropriate languages, as determined by the  
23 Secretary. The skilled nursing facility shall  
24 make such notices available at each nurses’ sta-  
25 tion in the facility and other areas in each unit

1 of the facility, as determined appropriate by the  
 2 facility, and shall keep and maintain each such  
 3 notice for at least three years after the date on  
 4 which each such notice is posted in the facility.

5 “(B) PUBLIC AVAILABILITY OF INFORMA-  
 6 TION.—A skilled nursing facility shall, upon re-  
 7 quest, make available to the public any nurse  
 8 staffing information (as described in subpara-  
 9 graph (A)) of the facility from the preceding  
 10 12-month period.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
 12 this section take effect on the date of enactment of this  
 13 Act and apply with respect to nurse staffing information  
 14 posted or requested on or after the date that is one year  
 15 after such date of enactment.

16 **SEC. 203. ADMINISTRATIVE STAFFING REQUIREMENTS FOR**  
 17 **SKILLED NURSING FACILITIES UNDER MEDI-**  
 18 **CARE PROGRAM AND NURSING FACILITIES**  
 19 **UNDER MEDICAID PROGRAM.**

20 (a) MEDICARE.—Paragraph (1) of section 1819(d) of  
 21 the Social Security Act (42 U.S.C. 1395i–3(d)) is amend-  
 22 ed—

23 (1) by redesignating the second subparagraph  
 24 (C) as subparagraph (E); and



1           (2) by inserting after the first subparagraph  
2       (C) the following new subparagraph:

3                   “(D)    NURSING    MANAGEMENT    PER-  
4       SONNEL.—

5                   “(i) IN GENERAL.—A skilled nursing  
6       facility must employ nursing management  
7       personnel in accordance with this subpara-  
8       graph.

9                   “(ii) DIRECTOR OF NURSING SERV-  
10      ICES.—A skilled nursing facility must em-  
11      ploy a registered professional nurse to  
12      serve full-time as the director of nursing  
13      services of the facility. Such director of  
14      nursing services shall be responsible for de-  
15      termining the number and types of nursing  
16      personnel needed to sufficiently meet the  
17      nursing needs of the residents of the facil-  
18      ity (as required under subsection  
19      (b)(4)(C)).

20                   “(iii) ASSISTANT DIRECTOR OF NURS-  
21      ING SERVICES.—A skilled nursing facility  
22      must employ a registered professional  
23      nurse to serve full-time as the assistant di-  
24      rector of nursing services of the facility,  
25      except that in the case of a skilled nursing

1 facility that has fewer than 100 beds, such  
2 facility may employ a registered profes-  
3 sional nurse to serve part-time as the as-  
4 sistant director of nursing services of the  
5 facility. A registered professional nurse  
6 who serves as the assistant director of  
7 nursing services of a skilled nursing facility  
8 may also serve as a supervisor for direct  
9 clinical nursing care for such facility.

10 “(iv) DIRECTOR OF IN-SERVICE EDU-  
11 CATION.—A skilled nursing facility must  
12 employ a registered professional nurse to  
13 serve full-time as the director of in-service  
14 education of the facility, except that in the  
15 case of a skilled nursing facility that has  
16 fewer than 100 beds, such facility may em-  
17 ploy a registered professional nurse to  
18 serve part-time as the director of in-service  
19 education of the facility. In carrying out  
20 the previous sentence, a skilled nursing fa-  
21 cility must, to the extent practicable and  
22 appropriate, employ a registered profes-  
23 sional nurse who has received training in  
24 adult education and gerontology.”.

25 (b) MEDICAID.—

1           (1) IN GENERAL.—Paragraph (1) of section  
2       1919(d) of the Social Security Act (42 U.S.C.  
3       1396r(d)) is amended by inserting after subpara-  
4       graph (C) the following new subparagraph:

5                   “(D)    NURSING    MANAGEMENT    PER-  
6       SONNEL.—

7                   “(i) IN GENERAL.—A nursing facility  
8       must employ nursing management per-  
9       sonnel in accordance with this subpara-  
10      graph.

11                  “(ii) DIRECTOR OF NURSING SERV-  
12      ICES.—A nursing facility must employ a  
13      registered professional nurse to serve full-  
14      time as the director of nursing services of  
15      the facility. Such director of nursing serv-  
16      ices shall be responsible for determining  
17      the number and types of nursing personnel  
18      needed to sufficiently meet the nursing  
19      needs of the residents of the facility (as re-  
20      quired under subsection (b)(4)(C)).

21                  “(iii) ASSISTANT DIRECTOR OF NURS-  
22      ING SERVICES.—A nursing facility must  
23      employ a registered professional nurse to  
24      serve full-time as the assistant director of  
25      nursing services of the facility, except that

1 in the case of a nursing facility that has  
2 fewer than 100 beds, such facility may em-  
3 ploy a registered professional nurse to  
4 serve part-time as the assistant director of  
5 nursing services of the facility. A reg-  
6 istered professional nurse who serves as  
7 the assistant director of nursing services of  
8 a nursing facility may also serve as a su-  
9 pervisor for direct clinical nursing care for  
10 such facility.

11 “(iv) DIRECTOR OF IN-SERVICE EDU-  
12 CATION.—A nursing facility must employ a  
13 registered professional nurse to serve full-  
14 time as the director of in-service education  
15 of the facility, except that in the case of a  
16 nursing facility that has fewer than 100  
17 beds, such facility may employ a registered  
18 professional nurse to serve part-time as the  
19 director of in-service education of the facil-  
20 ity. In carrying out the previous sentence,  
21 a nursing facility must, to the extent prac-  
22 ticable and appropriate, employ a reg-  
23 istered professional nurse who has received  
24 training in adult education and geron-  
25 tology.”.

1           (2) TECHNICAL AMENDMENT.—Paragraph (1)  
 2           of section 1919(d) of the Social Security Act (42  
 3           U.S.C. 1396r(d)) is amended by redesignating sub-  
 4           paragraph (V) as subparagraph (E).

5           (c) EFFECTIVE DATE.—The amendments made by  
 6           this section take effect on the date of enactment of this  
 7           Act and apply with respect to the administration of skilled  
 8           nursing facilities and nursing facilities on or after the date  
 9           that is one year after such date of enactment.

10   **SEC. 204. NURSE TRAINING REQUIREMENTS WITH RESPECT**  
 11                           **TO SKILLED NURSING FACILITIES UNDER**  
 12                           **MEDICARE PROGRAM AND NURSING FACILI-**  
 13                           **TIES UNDER MEDICAID PROGRAM.**

14           (a) MEDICARE.—

15           (1) ORIENTATION FOR REGISTERED PROFES-  
 16           SIONAL NURSES, LICENSED PRACTICAL NURSES, AND  
 17           NURSE AIDES.—Section 1819(d) of the Social Secu-  
 18           rity Act (42 U.S.C. 1395i–3(d)) is amended by add-  
 19           ing at the end the following new paragraph:

20           “(5) ORIENTATIONS.—A skilled nursing facility  
 21           must provide to registered professional nurses, li-  
 22           censed practical nurses, and nurse aides, before such  
 23           registered professional nurses, licensed practical  
 24           nurses, and nurse aides are assigned to provide di-  
 25           rect care services to residents in the facility, orienta-

tions providing education on the policies and emergency procedures of the facility and on residents' rights under this section.”.

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—Subparagraph (A) of section 1819(f)(2) of the Social Security Act (42 U.S.C. 1395i–3(f)(2)) is amended—

(A) in the matter preceding clause (i), by inserting after “1988” the following: “, and update, as determined necessary by the Secretary”;

(B) in clause (i)—

(i) by inserting after “care of cognitively impaired residents,” the following: “care of older adults,”;

(ii) by striking “patient abuse prevention training,” and inserting “patient abuse prevention training),”; and

(iii) by striking “75 hours” and inserting “120 hours”; and

(C) in clause (ii)—

1 (i) by striking “requirement relating  
2 to” and inserting “requirements relating to  
3 (I)”;

4 (ii) by inserting after “care of cog-  
5 nitively impaired residents,” the following:  
6 “care of older adults,”; and

7 (iii) by striking “and procedures” and  
8 inserting “(II) minimum hours of initial  
9 and ongoing training and retraining (in-  
10 cluding not less than 120 hours in the case  
11 of initial training), and (III) procedures”.

12 (b) MEDICAID.—

13 (1) ORIENTATION FOR REGISTERED PROFES-  
14 SIONAL NURSES, LICENSED PRACTICAL NURSES, AND  
15 NURSE AIDES.—Section 1919(d) of the Social Secu-  
16 rity Act (42 U.S.C. 1396r(d)) is amended by adding  
17 at the end the following new paragraph:

18 “(5) ORIENTATIONS.—A nursing facility must  
19 provide to registered professional nurses, licensed  
20 practical nurses, and nurse aides, before such reg-  
21 istered professional nurses, licensed practical nurses,  
22 and nurse aides are assigned to provide direct care  
23 services to residents in the facility, orientations pro-  
24 viding education on the policies and emergency pro-

cedures of the facility and on residents' rights under this section.”.

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—Subparagraph (A) of section 1919(f)(2) of the Social Security Act (42 U.S.C. 1396r(f)(2)) is amended—

(A) in the matter preceding clause (i), by inserting after “1988” the following: “, and update, as determined necessary by the Secretary”;

(B) in clause (i)—

(i) by inserting after “care of cognitively impaired residents,” the following: “care of older adults,”;

(ii) by striking “patient abuse prevention training,” and inserting “patient abuse prevention training),”; and

(iii) by striking “75 hours” and inserting “120 hours”; and

(C) in clause (ii)—

(i) by striking “requirement relating to” and inserting “requirements relating to (I)”;



1 (ii) by inserting after “care of cog-  
 2 nitively impaired residents,” the following:  
 3 “care of older adults,”; and

4 (iii) by striking “and procedures” and  
 5 inserting “(II) minimum hours of initial  
 6 and ongoing training and retraining (in-  
 7 cluding not less than 120 hours in the case  
 8 of initial training), and (III) procedures”.

9 (c) EFFECTIVE DATE.—The amendments made by  
 10 this section take effect on the date of enactment of this  
 11 Act and shall apply with respect to nurse aide training  
 12 and competency evaluation programs, nurse aide com-  
 13 petency evaluation programs, and nurse orientations con-  
 14 ducted on or after the date that is one year after such  
 15 date of enactment.

16 **SEC. 205. WHISTLEBLOWER AND RESIDENT PROTECTIONS.**

17 (a) MEDICARE.—Section 1819 of the Social Security  
 18 Act (42 U.S.C. 1395i–3) is amended by adding at the end  
 19 the following new subsection:

20 “(1) WHISTLEBLOWER AND RESIDENT PROTEC-  
 21 TIONS.—

22 “(1) STATEMENT REGARDING PROFESSIONAL  
 23 OBLIGATION AND RIGHTS.—All nurses employed by  
 24 a skilled nursing facility have a duty and right to act  
 25 based on their professional judgment in accordance

1 with the nursing laws and regulations of the State  
2 in which such facility is located, to provide nursing  
3 care in the exclusive interests of the residents of the  
4 facility, and to act as the residents' advocate.

5 “(2) OBJECTION TO OR REFUSAL OF WORK AS-  
6 SIGNMENT.—A nurse may object to, or refuse to  
7 participate in, any activity, policy, practice, assign-  
8 ment, or task (referred to in this subsection as a  
9 ‘work assignment’) if—

10 “(A) the nurse reasonably believes such  
11 work assignment to be in violation of the min-  
12 imum nurse staffing requirements of clause (ii)  
13 of subsection (b)(4)(C); or

14 “(B) the nurse reasonably believes that the  
15 nurse is not prepared by education, training, or  
16 experience to perform or comply with such work  
17 assignment without compromising the safety of  
18 a resident or jeopardizing the license of the  
19 nurse.

20 “(3) RETALIATION FOR OBJECTION TO OR RE-  
21 FUSAL OF WORK ASSIGNMENT BARRED.—

22 “(A) NO DISCHARGE, DISCRIMINATION, OR  
23 RETALIATION.—No skilled nursing facility may  
24 discharge, retaliate, discriminate, or otherwise  
25 take adverse action in any manner with respect

1 to any aspect of a nurse's employment with the  
2 facility, including discharge, promotion, com-  
3 pensation, or terms, conditions, or privileges of  
4 employment, based on the nurse's objection to,  
5 or refusal of, a work assignment under para-  
6 graph (2).

7 “(B) NO FILING OF COMPLAINT.—No  
8 skilled nursing facility may file a complaint or  
9 a report against a nurse with a State profes-  
10 sional disciplinary agency because of the nurse's  
11 objection to, or refusal of, a work assignment  
12 under paragraph (2).

13 “(4) CAUSE OF ACTION.—Any nurse (or a col-  
14 lective bargaining representative or legal representa-  
15 tive of such nurse) against whom a skilled nursing  
16 facility has taken an adverse action in violation of  
17 paragraph (3)(A), or against whom such facility has  
18 filed a complaint or report in violation of paragraph  
19 (3)(B), may (without regard to whether a complaint  
20 has been filed under paragraph (5) or (10)(B))  
21 bring a cause of action in an appropriate district  
22 court of the United States. The legal burdens of  
23 proof specified in section 1221(e) of title 5, United  
24 States Code, shall be controlling for the purposes of  
25 any cause of action brought under this paragraph.

1 A nurse who prevails on the cause of action may be  
2 entitled to one or more of the following:

3 “(A) Reinstatement.

4 “(B) Reimbursement of lost wages, com-  
5 pensation, and benefits.

6 “(C) Attorneys’ fees.

7 “(D) Court costs.

8 “(E) Other damages.

9 “(5) COMPLAINT TO SECRETARY.—Any indi-  
10 vidual may file a complaint with the Secretary  
11 against a skilled nursing facility that violates a re-  
12 quirement described in paragraph (3). For any com-  
13 plaint filed, the Secretary shall—

14 “(A) receive and investigate the complaint;

15 “(B) determine whether a violation of such  
16 paragraph, as alleged in the complaint, has oc-  
17 curred; and

18 “(C) in the case that the Secretary deter-  
19 mines that such a violation has occurred, issue  
20 an order that the complaining individual may  
21 not suffer any adverse action prohibited by  
22 paragraph (3) or (7).

23 “(6) TOLL-FREE TELEPHONE NUMBER.—

24 “(A) IN GENERAL.—The Secretary shall  
25 provide for the establishment of a toll-free tele-

1 phone hotline to provide information regarding  
2 the minimum nurse staffing requirements of  
3 clause (ii) of subsection (b)(4)(C) and to receive  
4 reports of violations of such requirements.

5 “(B) NOTICE TO RESIDENTS.—A skilled  
6 nursing facility shall provide each resident ad-  
7 mitted to the facility with the telephone number  
8 of the hotline described in subparagraph (A)  
9 and give notice to each such resident that such  
10 hotline may be used to report inadequate staff-  
11 ing.

12 “(7) PROTECTION FOR REPORTING.—

13 “(A) PROHIBITION ON RETALIATION OR  
14 DISCRIMINATION.—A skilled nursing facility  
15 may not retaliate or discriminate in any manner  
16 against any resident, employee, or contract em-  
17 ployee of the facility, or any other individual, on  
18 the basis that such resident, employee, contract  
19 employee, or individual (individually or in con-  
20 junction with another individual) has, in good  
21 faith—

22 “(i) presented a grievance or com-  
23 plaint;

24 “(ii) initiated or cooperated in any in-  
25 vestigation or proceeding of any govern-

1           mental entity, regulatory agency, or private  
2           accreditation body;

3           “(iii) made a civil claim or demand; or

4           “(iv) filed an action relating to the  
5           care, services, or conditions of the facility.

6           “(B) GOOD FAITH DEFINED.—For pur-  
7           poses of this paragraph, an individual shall be  
8           deemed to be acting in good faith if the indi-  
9           vidual reasonably believes—

10           “(i) the information reported or dis-  
11           closed is true; and

12           “(ii) a violation of the minimum nurse  
13           staffing requirements of clause (ii) of sub-  
14           section (b)(4)(C) has occurred or may  
15           occur.

16           “(8) PROHIBITION ON INTERFERENCE WITH  
17           RIGHTS.—

18           “(A) EXERCISE OF RIGHTS.—A skilled  
19           nursing facility may not—

20           “(i) interfere with, restrain, or deny  
21           the exercise, or attempt to exercise, by any  
22           individual of any right, procedure, or rem-  
23           edy provided or protected under this sub-  
24           section; or

1           “(ii) coerce or intimidate any indi-  
2           vidual regarding the exercise, or attempt to  
3           exercise, such right.

4           “(B) OPPOSITION TO UNLAWFUL POLICIES  
5           OR PRACTICES.—A skilled nursing facility may  
6           not retaliate or discriminate against any indi-  
7           vidual for opposing any policy, practice, or ac-  
8           tion of the facility which is alleged to violate,  
9           breach, or fail to comply with any provision of  
10          the minimum nurse staffing requirements of  
11          clause (ii) of subsection (b)(4)(C).

12          “(C) PROHIBITION ON INTERFERENCE  
13          WITH PROTECTED COMMUNICATIONS.—A skilled  
14          nursing facility may not make, adopt, or en-  
15          force any rule, regulation, policy, or practice  
16          which in any manner directly or indirectly pro-  
17          hibits, impedes, or discourages a nurse from, or  
18          intimidates, coerces, or induces a nurse regard-  
19          ing, engaging in free speech activities or dis-  
20          closing information as provided under this sub-  
21          section.

22          “(D) PROHIBITION ON INTERFERENCE  
23          WITH COLLECTIVE ACTION.—A skilled nursing  
24          facility may not in any way interfere with the  
25          rights of nurses to organize, bargain collec-

1           tively, and engage in concerted activity under  
2           section 7 of the National Labor Relations Act  
3           (29 U.S.C. 157).

4           “(9) NOTICE.—A skilled nursing facility shall  
5           post in an appropriate location in each unit a con-  
6           spicuous notice, in a form specified by the Secretary,  
7           that—

8                   “(A) explains the rights of nurses, resi-  
9                   dents, and other individuals under this sub-  
10                  section;

11                  “(B) includes a statement that a nurse,  
12                  resident, or other individual may file a com-  
13                  plaint with the Secretary against the facility for  
14                  a violation of a requirement or a prohibition of  
15                  this subsection; and

16                  “(C) provides instructions on how to file  
17                  such a complaint.

18           “(10) ENFORCEMENT.—

19                  “(A) IN GENERAL.—The Secretary shall  
20                  enforce the requirements and prohibitions of  
21                  this subsection in accordance with this para-  
22                  graph.

23                  “(B) PROCEDURES FOR RECEIVING AND  
24                  INVESTIGATING COMPLAINTS.—The Secretary  
25                  shall establish procedures under which—



1 “(i) any individual may file a com-  
2 plaint alleging that a skilled nursing facil-  
3 ity has violated a requirement or a prohibi-  
4 tion of this subsection; and

5 “(ii) any such complaint shall be in-  
6 vestigated by the Secretary.

7 “(C) REMEDIES.—If the Secretary deter-  
8 mines that a skilled nursing facility has violated  
9 a requirement or prohibition of this subsection,  
10 the Secretary—

11 “(i) shall require the facility to estab-  
12 lish a corrective action plan to prevent the  
13 recurrence of such violation; and

14 “(ii) may impose civil money penalties  
15 as described in subparagraph (D).

16 “(D) CIVIL PENALTIES.—

17 “(i) IN GENERAL.—In addition to any  
18 other penalties prescribed by law, the Sec-  
19 retary may impose civil penalties as fol-  
20 lows:

21 “(I) SKILLED NURSING FACILITY  
22 LIABILITY.—The Secretary may im-  
23 pose on a skilled nursing facility  
24 found to be in violation of this sub-  
25 section a civil money penalty of—

1                   “(aa) not more than  
2                   \$25,000 for the first knowing  
3                   violation of this subsection by  
4                   such facility; and

5                   “(bb) not more than  
6                   \$50,000 for any subsequent  
7                   knowing violation of this sub-  
8                   section by such facility.

9                   “(II) INDIVIDUAL LIABILITY.—  
10                  The Secretary may impose on an indi-  
11                  vidual who—

12                   “(aa) is employed by a  
13                   skilled nursing facility; and

14                   “(bb) is found by the Sec-  
15                   retary to have knowingly violated  
16                   this subsection on behalf of the  
17                   facility,

18                   a civil money penalty of not more  
19                   than \$20,000 for each such violation  
20                   by the individual.

21                   “(ii) PROCEDURES.—The provisions  
22                   of section 1128A of the Social Security Act  
23                   (other than subsections (a) and (b)) shall  
24                   apply with respect to a civil money penalty  
25                   or proceeding under this subparagraph in

1 the same manner as such provisions apply  
2 with respect to a civil money penalty or  
3 proceeding under such section 1128A.

4 “(E) PUBLIC NOTICE OF VIOLATIONS.—

5 “(i) INTERNET WEBSITE.—The Sec-  
6 retary shall publish on the internet website  
7 of the Department of Health and Human  
8 Services the names of skilled nursing facili-  
9 ties on which a civil money penalty has  
10 been imposed under this subsection, the  
11 violation for which such penalty was im-  
12 posed, and such additional information as  
13 the Secretary determines appropriate.

14 “(ii) CHANGE OF OWNERSHIP.—With  
15 respect to a skilled nursing facility that  
16 had a change of ownership, as determined  
17 by the Secretary, penalties imposed on the  
18 facility while under previous ownership  
19 shall no longer be published by the Sec-  
20 retary pursuant to clause (i) after the 1-  
21 year period beginning on the date of such  
22 change of ownership.

23 “(F) USE OF FUNDS.—Funds collected by  
24 the Secretary pursuant to this subsection are  
25 authorized to be appropriated to implement the

1 minimum nurse staffing requirements of clause  
2 (ii) of subsection (b)(4)(C).

3 “(11) NURSE DEFINED.—In this subsection,  
4 the term ‘nurse’ means a registered professional  
5 nurse, a licensed practical nurse, and a nurse aide.”.

6 (b) MEDICAID.—Section 1919 of the Social Security  
7 Act (42 U.S.C. 1396r) is amended by adding at the end  
8 the following new subsection:

9 “(l) WHISTLEBLOWER AND RESIDENT PROTEC-  
10 TIONS.—

11 “(1) STATEMENT REGARDING PROFESSIONAL  
12 OBLIGATION AND RIGHTS.—All nurses employed by  
13 a nursing facility have a duty and right to act based  
14 on their professional judgment in accordance with  
15 the nursing laws and regulations of the State in  
16 which such facility is located, to provide nursing care  
17 in the exclusive interests of the residents of the facil-  
18 ity, and to act as the residents’ advocate.

19 “(2) OBJECTION TO OR REFUSAL OF WORK AS-  
20 SIGNMENT.—A nurse may object to, or refuse to  
21 participate in, any activity, policy, practice, assign-  
22 ment, or task (referred to in this subsection as a  
23 ‘work assignment’) if—

24 “(A) the nurse reasonably believes such  
25 work assignment to be in violation of the min-

1           imum nurse staffing requirements of clause (ii)  
2           of subsection (b)(4)(C); or

3           “(B) the nurse reasonably believes that the  
4           nurse is not prepared by education, training, or  
5           experience to perform or comply with such work  
6           assignment without compromising the safety of  
7           a resident or jeopardizing the license of the  
8           nurse.

9           “(3) RETALIATION FOR OBJECTION TO OR RE-  
10          FUSAL OF WORK ASSIGNMENT BARRED.—

11           “(A) NO DISCHARGE, DISCRIMINATION, OR  
12          RETALIATION.—No nursing facility may dis-  
13          charge, retaliate, discriminate, or otherwise take  
14          adverse action in any manner with respect to  
15          any aspect of a nurse’s employment with the fa-  
16          cility, including discharge, promotion, com-  
17          pensation, or terms, conditions, or privileges of  
18          employment, based on the nurse’s objection to,  
19          or refusal of, a work assignment under para-  
20          graph (2).

21           “(B) NO FILING OF COMPLAINT.—No  
22          nursing facility may file a complaint or a report  
23          against a nurse with a State professional dis-  
24          ciplinary agency because of the nurse’s objec-

tion to, or refusal of, a work assignment under paragraph (2).

“(4) CAUSE OF ACTION.—Any nurse (or a collective bargaining representative or legal representative of such nurse) against whom a nursing facility has taken an adverse action in violation of paragraph (3)(A), or against whom such facility has filed a complaint or report in violation of paragraph (3)(B), may (without regard to whether a complaint has been filed under paragraph (5) or (10)(B)) bring a cause of action in an appropriate district court of the United States. The legal burdens of proof specified in section 1221(e) of title 5, United States Code, shall be controlling for the purposes of any cause of action brought under this paragraph. A nurse who prevails on the cause of action may be entitled to one or more of the following:

“(A) Reinstatement.

“(B) Reimbursement of lost wages, compensation, and benefits.

“(C) Attorneys’ fees.

“(D) Court costs.

“(E) Other damages.

“(5) COMPLAINT TO SECRETARY.—Any individual may file a complaint with the Secretary

1       against a nursing facility that violates a requirement  
2       described in paragraph (3). For any complaint filed,  
3       the Secretary shall—

4               “(A) receive and investigate the complaint;

5               “(B) determine whether a violation of such  
6       paragraph, as alleged in the complaint, has oc-  
7       curred; and

8               “(C) in the case that the Secretary deter-  
9       mines that such a violation has occurred, issue  
10       an order that the complaining individual may  
11       not suffer any adverse action prohibited by  
12       paragraph (3) or (7).

13       “(6) TOLL-FREE TELEPHONE NUMBER.—

14               “(A) IN GENERAL.—The Secretary shall  
15       provide for the establishment of a toll-free tele-  
16       phone hotline to provide information regarding  
17       the minimum nurse staffing requirements of  
18       clause (ii) of subsection (b)(4)(C) and to receive  
19       reports of violations of such requirements.

20               “(B) NOTICE TO RESIDENTS.—A nursing  
21       facility shall provide each resident admitted to  
22       the facility with the telephone number of the  
23       hotline described in subparagraph (A) and give  
24       notice to each such resident that such hotline

1           may be used to report inadequate staffing or  
2           care.

3           “(7) PROTECTION FOR REPORTING.—

4                   “(A) PROHIBITION ON RETALIATION OR  
5           DISCRIMINATION.—A nursing facility may not  
6           retaliate or discriminate in any manner against  
7           any resident, employee, or contract employee of  
8           the facility, or any other individual, on the basis  
9           that such resident, employee, contract employee,  
10          or individual (individually or in conjunction  
11          with another individual) has, in good faith—

12                   “(i) presented a grievance or com-  
13           plaint;

14                   “(ii) initiated or cooperated in any in-  
15           vestigation or proceeding of any govern-  
16           mental entity, regulatory agency, or private  
17           accreditation body;

18                   “(iii) made a civil claim or demand; or

19                   “(iv) filed an action relating to the  
20           care, services, or conditions of the facility.

21           “(B) GOOD FAITH DEFINED.—For pur-  
22           poses of this paragraph, an individual shall be  
23           deemed to be acting in good faith if the indi-  
24           vidual reasonably believes—



1 “(i) the information reported or dis-  
2 closed is true; and

3 “(ii) a violation of the minimum nurse  
4 staffing requirements of clause (ii) of sub-  
5 section (b)(4)(C) has occurred or may  
6 occur.

7 “(8) PROHIBITION ON INTERFERENCE WITH  
8 RIGHTS.—

9 “(A) EXERCISE OF RIGHTS.—A nursing  
10 facility may not—

11 “(i) interfere with, restrain, or deny  
12 the exercise, or attempt to exercise, by any  
13 individual of any right, procedure, or rem-  
14 edy provided or protected under this sub-  
15 section; or

16 “(ii) coerce or intimidate any indi-  
17 vidual regarding the exercise, or attempt to  
18 exercise, such right.

19 “(B) OPPOSITION TO UNLAWFUL POLICIES  
20 OR PRACTICES.—A nursing facility may not re-  
21 taliate or discriminate against any individual  
22 for opposing any policy, practice, or action of  
23 the facility which is alleged to violate, breach,  
24 or fail to comply with any provision of the min-

imum nurse staffing requirements of clause (ii) of subsection (b)(4)(C).

“(C) PROHIBITION ON INTERFERENCE WITH PROTECTED COMMUNICATIONS.—A nursing facility may not make, adopt, or enforce any rule, regulation, policy, or practice which in any manner directly or indirectly prohibits, impedes, or discourages a nurse from, or intimidates, coerces, or induces a nurse regarding, engaging in free speech activities or disclosing information as provided under this subsection.

“(D) PROHIBITION ON INTERFERENCE WITH COLLECTIVE ACTION.—A nursing facility may not in any way interfere with the rights of nurses to organize, bargain collectively, and engage in concerted activity under section 7 of the National Labor Relations Act (29 U.S.C. 157).

“(9) NOTICE.—A nursing facility shall post in an appropriate location in each unit a conspicuous notice, in a form specified by the Secretary, that—

“(A) explains the rights of nurses, residents, and other individuals under this subsection;

“(B) includes a statement that a nurse, resident, or other individual may file a com-

1           plaint with the Secretary against the facility for  
2           a violation of a requirement or a prohibition of  
3           this subsection; and

4                 “(C) provides instructions on how to file  
5           such a complaint.

6           “(10) ENFORCEMENT.—

7                 “(A) IN GENERAL.—The Secretary shall  
8           enforce the requirements and prohibitions of  
9           this subsection in accordance with this para-  
10          graph.

11                “(B) PROCEDURES FOR RECEIVING AND  
12          INVESTIGATING COMPLAINTS.—The Secretary  
13          shall establish procedures under which—

14                   “(i) any individual may file a com-  
15                  plaint alleging that a nursing facility has  
16                  violated a requirement or a prohibition of  
17                  this subsection; and

18                   “(ii) any such complaint shall be in-  
19                  vestigated by the Secretary.

20                 “(C) REMEDIES.—If the Secretary deter-  
21          mines that a nursing facility has violated a re-  
22          quirement or prohibition of this subsection, the  
23          Secretary—

1 “(i) shall require the facility to estab-  
2 lish a corrective action plan to prevent the  
3 recurrence of such violation; and

4 “(ii) may impose civil money penalties  
5 as described in subparagraph (D).

6 “(D) CIVIL PENALTIES.—

7 “(i) IN GENERAL.—In addition to any  
8 other penalties prescribed by law, the Sec-  
9 retary may impose civil penalties as fol-  
10 lows:

11 “(I) NURSING FACILITY LIABIL-  
12 ITY.—The Secretary may impose on a  
13 nursing facility found to be in viola-  
14 tion of this subsection a civil money  
15 penalty of—

16 “(aa) not more than  
17 \$25,000 for the first knowing  
18 violation of this subsection by  
19 such facility; and

20 “(bb) not more than  
21 \$50,000 for any subsequent  
22 knowing violation of this sub-  
23 section by such facility.

1 “(II) INDIVIDUAL LIABILITY.—

2 The Secretary may impose on an indi-  
3 vidual who—

4 “(aa) is employed by a nurs-  
5 ing facility; and

6 “(bb) is found by the Sec-  
7 retary to have knowingly violated  
8 this subsection on behalf of the  
9 facility,

10 a civil money penalty of not more  
11 than \$20,000 for each such violation  
12 by the individual.

13 “(ii) PROCEDURES.—The provisions  
14 of section 1128A of the Social Security Act  
15 (other than subsections (a) and (b)) shall  
16 apply with respect to a civil money penalty  
17 or proceeding under this subparagraph in  
18 the same manner as such provisions apply  
19 with respect to a civil money penalty or  
20 proceeding under such section 1128A.

21 “(E) PUBLIC NOTICE OF VIOLATIONS.—

22 “(i) INTERNET WEBSITE.—The Sec-  
23 retary shall publish on the internet website  
24 of the Department of Health and Human  
25 Services the names of nursing facilities on

1           which a civil money penalty has been im-  
2           posed under this subsection, the violation  
3           for which such penalty was imposed, and  
4           such additional information as the Sec-  
5           retary determines appropriate.

6           “(ii) CHANGE OF OWNERSHIP.—With  
7           respect to a nursing facility that had a  
8           change of ownership, as determined by the  
9           Secretary, penalties imposed on the facility  
10          while under previous ownership shall no  
11          longer be published by the Secretary pur-  
12          suant to clause (i) after the 1-year period  
13          beginning on the date of such change of  
14          ownership.

15          “(F) USE OF FUNDS.—Funds collected by  
16          the Secretary pursuant to this subsection are  
17          authorized to be appropriated to implement the  
18          minimum nurse staffing requirements of clause  
19          (ii) of subsection (b)(4)(C).

20          “(11) NURSE DEFINED.—In this subsection,  
21          the term ‘nurse’ means a registered professional  
22          nurse, a licensed practical nurse, and a nurse aide.”.

23          “(c) EFFECTIVE DATE.—The amendments made by  
24          this section take effect on the date of enactment of this  
25          Act and shall apply with respect to objections to or refus-

1 als of work assignments, complaints, retaliations and  
 2 other adverse actions, and interferences with rights that  
 3 occur on or after the date that is one year after such date  
 4 of enactment and with respect to notices provided on or  
 5 after the date that is one year after such date of enact-  
 6 ment.

7 **SEC. 206. PROHIBITING PRE-DISPUTE ARBITRATION**  
 8 **AGREEMENTS.**

9 (a) **MEDICARE.**—Section 1819(c) of the Social Secu-  
 10 rity Act (42 U.S.C. 1395i–3(c)) is amended by adding at  
 11 the end the following new paragraph:

12 “(7) **PROHIBITION ON USE OF PRE-DISPUTE**  
 13 **ARBITRATION AGREEMENTS.**—

14 “(A) **IN GENERAL.**—A skilled nursing fa-  
 15 cility may not require, solicit, accept, or move  
 16 to enforce a pre-dispute arbitration agreement  
 17 from or on behalf of any resident, whether the  
 18 agreement is made before, during, or after the  
 19 resident’s admission to the facility, or from or  
 20 on behalf of any employee, or contract employee  
 21 of the facility, or any other individual if such  
 22 individual is alleged to be engaged in conduct  
 23 protected under subsection (l).

24 “(B) **APPLICATION.**—This paragraph shall  
 25 apply to the skilled nursing facility and to any

1 other business or person providing or respon-  
2 sible for providing skilled nursing services to  
3 the resident.

4 “(C) NO VALIDITY OR ENFORCEMENT.—A  
5 pre-dispute arbitration agreement shall not be  
6 valid or specifically enforceable against a resi-  
7 dent or former resident of a skilled nursing fa-  
8 cility, without regard to whether the agreement  
9 was made prior to or after the effective date of  
10 this paragraph.

11 “(D) DEFINITION OF PRE-DISPUTE ARBI-  
12 TRATION AGREEMENT.—In this paragraph, the  
13 term ‘pre-dispute arbitration agreement’ means  
14 any agreement to arbitrate a dispute when the  
15 dispute has arisen after such agreement has  
16 been made.

17 “(E) JUDICIAL REVIEW.—A determination  
18 as to whether and how this paragraph applies  
19 to an arbitration agreement shall be determined  
20 under Federal law by a court of competent ju-  
21 risdiction, rather than an arbitrator, without re-  
22 gard to whether the party opposing arbitration  
23 challenges such agreement specifically or in  
24 conjunction with any other term of the contract  
25 containing such agreement.”.



1 (b) MEDICAID.—

2 (1) HOME AND COMMUNITY-BASED SERVICES  
3 AND HOME HEALTH CARE SERVICES.—Section 1915  
4 of the Social Security Act (42 U.S.C. 1396n) is  
5 amended by adding at the end the following new  
6 subsection:

7 “(m) PROHIBITING PRE-DISPUTE ARBITRATION  
8 AGREEMENTS.—

9 “(1) IN GENERAL.—For home and community-  
10 based services or home health care services provided  
11 under a waiver under this section, section  
12 1902(a)(10)(D), or any other provision authorizing  
13 the provision of home and community-based services  
14 or home health care services under this title, the  
15 provider of such services (and any employee, agent,  
16 related entity, or affiliate of such provider) shall not  
17 require, solicit, or accept a pre-dispute arbitration  
18 agreement from or on behalf of any individual re-  
19 ceiving such services, whether the agreement is made  
20 before, during, or after the first date on which serv-  
21 ices are received, or from or on behalf of any em-  
22 ployee, or contract employee of the provider, or any  
23 other individual if such individual is alleged to be  
24 engaged in conduct protected under section 1919(l).  
25 A pre-dispute arbitration agreement between such a

1 provider (or entity or person) and an individual re-  
 2 ceiving services (or who formerly received services)  
 3 shall not be valid or enforceable, without regard to  
 4 whether such agreement was made prior to the effec-  
 5 tive date of this subsection.

6 “(2) DEFINITION OF PRE-DISPUTE ARBITRA-  
 7 TION AGREEMENT.—The term ‘pre-dispute arbitra-  
 8 tion agreement’ means any agreement to arbitrate a  
 9 dispute when the dispute has arisen after such  
 10 agreement has been made.

11 “(3) JUDICIAL REVIEW.—A determination as to  
 12 whether and how this subsection applies to an arbi-  
 13 tration agreement shall be determined under Federal  
 14 law by a court of competent jurisdiction, rather than  
 15 an arbitrator, without regard to whether the party  
 16 opposing arbitration challenges such agreement spe-  
 17 cifically or in conjunction with any other term of the  
 18 contract containing such agreement.”.

19 (2) NURSING FACILITIES.—Section 1919(c) of  
 20 the Social Security Act (42 U.S.C. 1396r(c)) is  
 21 amended by adding at the end the following new  
 22 paragraph:

23 “(9) PROHIBITION ON USE OF PRE-DISPUTE  
 24 ARBITRATION AGREEMENTS.—

1           “(A) IN GENERAL.—A nursing facility may  
2           not require, solicit, accept, or move to enforce  
3           a pre-dispute arbitration agreement from or on  
4           behalf of any resident, whether the agreement  
5           is made before, during, or after the resident’s  
6           admission to the facility, or from or on behalf  
7           of any employee, or contract employee of the fa-  
8           cility, or any other individual if such individual  
9           is alleged to be engaged in conduct protected  
10          under subsection (l).

11          “(B) APPLICATION.—This paragraph shall  
12          apply to the nursing facility and to any other  
13          business or person providing or responsible for  
14          providing nursing services to the resident.

15          “(C) NO VALIDITY OR ENFORCEMENT.—A  
16          pre-dispute arbitration agreement shall not be  
17          valid or specifically enforceable against a resi-  
18          dent or former resident of a nursing facility,  
19          without regard to whether the agreement was  
20          made prior to or after the effective date of this  
21          paragraph.

22          “(D) DEFINITION OF PRE-DISPUTE ARBI-  
23          TRATION AGREEMENT.—In this paragraph, the  
24          term ‘pre-dispute arbitration agreement’ means  
25          any agreement to arbitrate a dispute when the

1           dispute has arisen after such agreement has  
2           been made.

3                   “(E) JUDICIAL REVIEW.—A determination  
4           as to whether and how this paragraph applies  
5           to an arbitration agreement shall be determined  
6           under Federal law by a court of competent ju-  
7           risdiction, rather than an arbitrator, without re-  
8           gard to whether the party opposing arbitration  
9           challenges such agreement specifically or in  
10          conjunction with any other term of the contract  
11          containing such agreement.”.

12 **SEC. 207. STANDARDIZED PROTOCOL FOR OBTAINING IN-**  
13 **FORMED CONSENT FROM RESIDENTS PRIOR**  
14 **TO PRESCRIBING PSYCHOTROPIC DRUGS.**

15       (a) STANDARDIZED PROTOCOL.—

16           (1) SKILLED NURSING FACILITIES.—Section  
17       1819(b) of the Social Security Act (42 U.S.C.  
18       1395i–3(b)) is amended by adding at the end the  
19       following new paragraph:

20                   “(9) STANDARDIZED PROTOCOL FOR OBTAIN-  
21       ING INFORMED CONSENT FROM A RESIDENT PRIOR  
22       TO PRESCRIBING PSYCHOTROPIC DRUGS FOR A USE  
23       NOT APPROVED BY THE FOOD AND DRUG ADMINIS-  
24       TRATION.—

1           “(A) PROTOCOL.—Not later than the date  
2           that is one year after the date of the enactment  
3           of this paragraph, the Secretary, taking into ac-  
4           count the results of the study conducted by the  
5           Comptroller General of the United States under  
6           section 8(a)(3) of the Quality Care for Nursing  
7           Home Residents and Workers During COVID–  
8           19 and Beyond Act and in consultation with  
9           stakeholder groups (including residents of  
10          skilled nursing facilities, family members of  
11          such residents, advocates for such residents,  
12          long-term care ombudsmen, and providers),  
13          shall develop a standardized protocol for skilled  
14          nursing facilities to obtain written informed  
15          consent, in accordance with this paragraph,  
16          from a resident (or, if applicable, the resident’s  
17          designated health care agent or other surrogate  
18          under State law or regulation) prior to pre-  
19          scribing a psychotropic drug to the resident for  
20          a use not approved by the Food and Drug Ad-  
21          ministration.

22          “(B) REQUIREMENTS.—The standardized  
23          protocol developed under subparagraph (A)  
24          shall include the following:

1 “(i) A requirement, with respect to a  
2 resident, that—

3 “(I) the facility, with the involve-  
4 ment of the prescriber, inform the  
5 resident (or, if applicable, the resi-  
6 dent’s designated health care agent or  
7 other surrogate under State law or  
8 regulation) of—

9 “(aa) possible side effects  
10 and risks associated with the psy-  
11 chotropic drug, including the  
12 mention of any ‘black box warn-  
13 ing’;

14 “(bb) treatment modalities  
15 that were attempted prior to the  
16 use of the psychotropic drug; and

17 “(cc) any other information  
18 the Secretary determines appro-  
19 priate;

20 “(II) the resident (or, if applica-  
21 ble, the resident’s designated health  
22 care agent or other surrogate under  
23 State law or regulation) provide writ-  
24 ten informed consent to the adminis-  
25 tration of the psychotropic drug; and

1                   “(III) the administration of the  
2                   psychotropic drug is in accordance  
3                   with any plan of care that the resi-  
4                   dent has in place, including non-phar-  
5                   macological interventions as appro-  
6                   priate that can effectively address un-  
7                   derlying medical and environmental  
8                   causes of behavioral disorders.

9                   “(ii) An alternative protocol for ob-  
10                  taining such written informed consent—

11                   “(I) in the case of emergencies;  
12                  and

13                   “(II) in the absence of a clearly  
14                  identified designated health care agent  
15                  or other surrogate under State law or  
16                  regulation.

17                   “(iii) Other items determined appro-  
18                  priate by the Secretary.

19                   “(C) TIMING OF INFORMED CONSENT.—

20                  Under the standardized protocol, a skilled nurs-  
21                  ing facility shall obtain the written informed  
22                  consent described in subparagraph (A), with re-  
23                  spect to a psychotropic drug and a resident of  
24                  the facility—

1 “(i) prior to the initial prescribing of  
2 such psychotropic drug to such resident if  
3 such resident does not have a current pre-  
4 scription for such psychotropic drug at the  
5 time such resident is admitted to the facil-  
6 ity; and

7 “(ii) at least once a month to the ex-  
8 tent that the administration of such psy-  
9 chotropic drug to such resident is in ac-  
10 cordance with the plan of care that the  
11 resident has in place.

12 “(D) COMPLIANCE.—Effective beginning  
13 on the date that is one year and 180 days after  
14 the date of the enactment of this paragraph, a  
15 skilled nursing facility shall comply with the  
16 standardized protocol developed under subpara-  
17 graph (A).

18 “(E) NO PREEMPTION.—Nothing in this  
19 paragraph shall preempt any provision of State  
20 or Federal law that provides broader rights  
21 with respect to written informed consent for  
22 residents of facilities.”.

23 (2) NURSING FACILITIES.—Section 1919(b) of  
24 the Social Security Act (42 U.S.C. 1396r(b)) is



1       amended by adding at the end the following new  
2       paragraph:

3               “(9) STANDARDIZED PROTOCOL FOR OBTAIN-  
4       ING INFORMED CONSENT FROM A RESIDENT PRIOR  
5       TO PRESCRIBING PSYCHOTROPIC DRUGS FOR A USE  
6       NOT APPROVED BY THE FOOD AND DRUG ADMINIS-  
7       TRATION.—

8               “(A) PROTOCOL.—Not later than the date  
9       that is one year after the date of the enactment  
10       of this paragraph, the Secretary, taking into ac-  
11       count the results of the study conducted by the  
12       Comptroller General of the United States under  
13       section 8(a)(3) of the Quality Care for Nursing  
14       Home Residents and Workers During COVID–  
15       19 and Beyond Act and in consultation with  
16       stakeholder groups (including residents of  
17       skilled nursing facilities, family members of  
18       such residents, advocates for such residents,  
19       long-term care ombudsmen, and providers),  
20       shall develop a standardized protocol for nurs-  
21       ing facilities to obtain written informed consent,  
22       in accordance with this paragraph, from a resi-  
23       dent (or, if applicable, the resident’s designated  
24       health care agent or other surrogate under  
25       State law or regulation) prior to prescribing a

1           psychotropic drug to the resident for a use not  
2           approved by the Food and Drug Administra-  
3           tion.

4           “(B) REQUIREMENTS.—The standardized  
5           protocol developed under subparagraph (A)  
6           shall include the following:

7                   “(i) A requirement, with respect to a  
8                   resident, that—

9                           “(I) the facility, with the involve-  
10                           ment of the prescriber, inform the  
11                           resident (or, if applicable, the resi-  
12                           dent’s designated health care agent or  
13                           other surrogate under State law or  
14                           regulation) of—

15                                   “(aa) possible side effects  
16                                   and risks associated with the psy-  
17                                   chotropic drug, including the  
18                                   mention of any ‘black box warn-  
19                                   ing’;

20                                   “(bb) treatment modalities  
21                                   that were attempted prior to the  
22                                   use of the psychotropic drug; and

23                                   “(cc) any other information  
24                                   the Secretary determines appro-  
25                                   priate;

1 “(II) the resident (or, if applica-  
2 ble, the resident’s designated health  
3 care agent or other surrogate under  
4 State law or regulation) provide writ-  
5 ten informed consent to the adminis-  
6 tration of the psychotropic drug; and

7 “(III) the administration of the  
8 psychotropic drug is in accordance  
9 with any plan of care that the resi-  
10 dent has in place, including non-phar-  
11 macological interventions as appro-  
12 priate that can effectively address un-  
13 derlying medical and environmental  
14 causes of behavioral disorders.

15 “(ii) An alternative protocol for ob-  
16 taining such written informed consent—

17 “(I) in the case of emergencies;  
18 and

19 “(II) in the absence of a clearly  
20 identified designated health care agent  
21 or other surrogate under State law or  
22 regulation.

23 “(iii) Other items determined appro-  
24 priate by the Secretary.

1           “(C) TIMING OF INFORMED CONSENT.—

2           Under the standardized protocol, a nursing fa-  
3           cility shall obtain the written informed consent  
4           described in subparagraph (A), with respect to  
5           a psychotropic drug and a resident of the facil-  
6           ity—

7                   “(i) prior to the initial prescribing of  
8                   such psychotropic drug to such resident if  
9                   such resident does not have a current pre-  
10                  scription for such psychotropic drug at the  
11                  time such resident is admitted to the facil-  
12                  ity; and

13                   “(ii) at least once a month to the ex-  
14                   tent that the administration of such psy-  
15                   chotropic drug to such resident is in ac-  
16                   cordance with the plan of care that the  
17                   resident has in place.

18           “(D) COMPLIANCE.—Effective beginning  
19           on the date that is one year and 180 days after  
20           the date of the enactment of this paragraph, a  
21           nursing facility shall comply with the standard-  
22           ized protocol developed under subparagraph  
23           (A).

24           “(E) NO PREEMPTION.—Nothing in this  
25           paragraph shall preempt any provision of State

1 or Federal law that provides broader rights  
2 with respect to written informed consent for  
3 residents of facilities.”.

4 (3) GAO STUDY AND REPORT ON INFORMED  
5 CONSENT LAWS WITH RESPECT TO PRESCRIBING OF  
6 PSYCHOTROPIC DRUGS.—

7 (A) STUDY.—The Comptroller General of  
8 the United States (in this paragraph referred to  
9 as the “Comptroller General”) shall conduct a  
10 study of State laws and regulations concerning  
11 informed consent with respect to the adminis-  
12 tration of a psychotropic drug with regard to  
13 the effectiveness of such laws and practices in  
14 changing the frequency of prescribing of psy-  
15 chotropic drugs to older adults. The study shall  
16 include an analysis as to whether in the case of  
17 States that have not enacted such informed  
18 consent laws, such States have developed other  
19 mechanisms to guide appropriate prescribing of  
20 psychotropic drugs in older adults with demen-  
21 tia.

22 (B) REPORT.—Not later than 180 days  
23 after the date of enactment of this Act, the  
24 Comptroller General shall submit to the Sec-  
25 retary of Health and Human Services, the

1 Committees on Energy and Commerce and  
 2 Ways and Means of the House of Representa-  
 3 tives, and the Committee on Finance of the  
 4 Senate a report containing the results of the  
 5 study conducted under subparagraph (A), to-  
 6 gether with such recommendations as the  
 7 Comptroller General determines appropriate.

8 (b) DEVELOPMENT OF MEASURE OF UTILIZATION OF  
 9 PSYCHOTROPIC DRUGS FOR INCLUSION ON NURSING  
 10 HOME COMPARE WEBSITE.—

11 (1) MEDICARE.—Section 1819(i) of the Social  
 12 Security Act (42 U.S.C. 1395i–3(i)) is amended—

13 (A) by redesignating paragraph (3) as  
 14 paragraph (4); and

15 (B) by inserting after paragraph (2) the  
 16 following new paragraph:

17 “(3) DEVELOPMENT OF MEASURE OF UTILIZA-  
 18 TION OF PSYCHOTROPIC DRUGS.—

19 “(A) IN GENERAL.—Not later than the  
 20 date that is one year after the date of the en-  
 21 actment of this paragraph, the Secretary shall  
 22 include a measure of the utilization of psycho-  
 23 tropic drugs for each skilled nursing facility for  
 24 inclusion on such website (or a successor  
 25 website) as part of the quality measures or

1 health inspections measures, or both such meas-  
2 ures, under the Five-Star Quality Rating Sys-  
3 tem established by the Administrator of the  
4 Centers for Medicare & Medicaid Services.

5 “(B) CONSIDERATIONS.—In developing the  
6 measure under subparagraph (A), the Secretary  
7 shall take into account special patient popu-  
8 lations, special care units, appropriate diag-  
9 noses, and other factors, as determined appro-  
10 priate by the Secretary.”.

11 (2) MEDICAID.—Section 1919(i) of the Social  
12 Security Act (42 U.S.C. 1396r(i)) is amended—

13 (A) by redesignating paragraph (3) as  
14 paragraph (4); and

15 (B) by inserting after paragraph (2) the  
16 following new paragraph:

17 “(3) DEVELOPMENT OF MEASURE OF UTILIZA-  
18 TION OF PSYCHOTROPIC DRUGS.—

19 “(A) IN GENERAL.—Not later than the  
20 date that is one year after the date of the en-  
21 actment of this paragraph, the Secretary shall  
22 include a measure of the utilization of psycho-  
23 tropic drugs for each nursing facility for inclu-  
24 sion on such website (or a successor website) as  
25 part of the quality measures or health inspec-

1           tions measures, or both such measures, under  
2           the Five-Star Quality Rating System estab-  
3           lished by the Administrator of the Centers for  
4           Medicare & Medicaid Services.

5           “(B) CONSIDERATIONS.—In developing the  
6           measure under subparagraph (A), the Secretary  
7           shall take into account special patient popu-  
8           lations, special care units, appropriate diag-  
9           noses, and other factors, as determined appro-  
10          priate by the Secretary.”.

○