

117TH CONGRESS
1ST SESSION

S. 230

To amend titles XVIII and XIX of the Social Security Act to codify certain infection control and emergency preparedness regulations, to prohibit a reduction in the frequency of surveys of skilled nursing facilities and nursing facilities, and to prohibit the waiver of certain reporting requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to codify certain infection control and emergency preparedness regulations, to prohibit a reduction in the frequency of surveys of skilled nursing facilities and nursing facilities, and to prohibit the waiver of certain reporting requirements, 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 “Promoting Restoration
5 of Emergency Preparedness and Advancing Response to

1 Epidemics in Long-Term Care Act” or the “PREPARE
2 LTC Act”.

3 **SEC. 2. CODIFYING INFECTION CONTROL AND EMERGENCY**
4 **PREPAREDNESS REGULATIONS FOR SKILLED**
5 **NURSING FACILITIES AND NURSING FACILI-**
6 **TIES AS A REQUIREMENT FOR PARTICIPA-**
7 **TION UNDER THE MEDICARE AND MEDICAID**
8 **PROGRAMS.**

9 (a) INFECTION CONTROL REGULATIONS.—

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

13 (A) by redesignating subparagraphs (A)
14 and (B) as clauses (i) and (ii), respectively, and
15 moving such clauses 2 ems to the right;

16 (B) by striking “ENVIRONMENT.— A
17 skilled nursing facility must—” and inserting
18 “ENVIRONMENT.—

19 “(A) IN GENERAL.—A skilled nursing fa-
20 cility must—”; and

21 (C) by adding at the end the following new
22 subparagraph:

23 “(B) APPLICATION STATEMENT.—For pur-
24 poses of carrying out this paragraph, the Sec-
25 retary shall apply by reference the provisions of

section 483.80 of title 42, Code of Federal Regulations (as in effect on the date of the enactment of the Promoting Restoration of Emergency Preparedness and Advancing Response to Epidemics in Long-Term Care Act), except in applying subsection (g) of such regulation—

“(i) any reference to COVID–19 shall be treated as a reference to an infectious disease outbreak, as defined in subparagraph (C); and

“(ii) any reference to ventilator capacity shall be treated as a reference to medical equipment and supplies critical to the infectious disease outbreak, including ventilator capacity.

“(C) INFECTIOUS DISEASE OUTBREAK DEFINED.—For purposes of subparagraph (B), the term ‘infectious disease outbreak’ means any of the following periods:

“(i) COVID–19 EMERGENCY PERIOD.—The emergency period described in section 1135(g)(1)(B).

“(ii) OTHER INFECTIOUS DISEASE OUTBREAK PERIODS.—

1 “(I) The period beginning on the
2 date a nationwide emergency related
3 to a public health emergency is de-
4 clared by the President pursuant to
5 the National Emergencies Act or the
6 Robert T. Stafford Disaster Relief
7 and Emergency Assistance Act and
8 ending on the date that is 6 months
9 after the date on which the declara-
10 tion pursuant to the Stafford Act, a
11 Major Disaster Declaration, or the
12 National Emergencies Act, as applica-
13 ble, ends, whichever is the latest.

14 “(II) The period during which
15 there exists a public health emergency
16 related to an infectious disease out-
17 break declared by the Secretary pur-
18 suant to section 319 of the Public
19 Health Service Act.

20 “(III) With respect to a skilled
21 nursing facility in a State with respect
22 to which the Governor has declared an
23 emergency or major disaster (as de-
24 fined by the State) with respect to an
25 infectious disease outbreak, the period

1 for which such declaration is in effect
2 with respect to such State.”.

3 (2) MEDICAID.—Section 1919(d)(3) of the So-
4 cial Security Act (42 U.S.C. 1396r(d)(3)) is amend-
5 ed—

6 (A) by redesignating subparagraphs (A)
7 and (B) as clauses (i) and (ii), respectively, and
8 moving such clauses 2 ems to the right;

9 (B) by striking “ENVIRONMENT.— A nurs-
10 ing facility must—” and inserting “ENVIRON-
11 MENT.—

12 “(A) IN GENERAL.—A nursing facility
13 must—”; and

14 (C) by adding at the end the following new
15 subparagraph:

16 “(B) APPLICATION STATEMENT.—For pur-
17 poses of carrying out this paragraph, the Sec-
18 retary shall apply by reference the provisions of
19 section 483.80 of title 42, Code of Federal Reg-
20 ulations (as in effect on the date of the enact-
21 ment of the Promoting Restoration of Emer-
22 gency Preparedness and Advancing Response to
23 Epidemics in Long-Term Care Act), except in
24 applying subsection (g) of such regulation—

1 “(i) any reference to COVID–19 shall
 2 be treated as a reference to an infectious
 3 disease outbreak, as defined in subpara-
 4 graph (C); and

5 “(ii) any reference to ventilator capac-
 6 ity shall be treated as a reference to med-
 7 ical equipment and supplies critical to the
 8 infectious disease outbreak, including ven-
 9 tilator capacity.

10 “(C) INFECTIOUS DISEASE OUTBREAK DE-
 11 FINED.—The term ‘infectious disease outbreak’
 12 has the meaning given such term in section
 13 1819(d)(3)(C).”.

14 (b) EMERGENCY PREPAREDNESS REGULATIONS.—

15 (1) MEDICARE.—Section 1819(d) of such Act
 16 (42 U.S.C. 1395i–3(d)) is amended by adding at the
 17 end the following new paragraph:

18 “(5) EMERGENCY PREPAREDNESS.—A skilled
 19 nursing facility shall meet the requirements applica-
 20 ble to skilled nursing facilities under the provisions
 21 of section 483.73 of title 42, Code of Federal Regu-
 22 lations (as in effect on the date of the enactment of
 23 the Promoting Restoration of Emergency Prepared-
 24 ness and Advancing Response to Epidemics in Long-
 25 Term Care Act).”.

1 (2) MEDICAID.—Section 1919(d) of such Act
 2 (42 U.S.C. 1396r(d)) is amended by adding at the
 3 end the following new paragraph:

4 “(5) EMERGENCY PREPAREDNESS.—A nursing
 5 facility shall meet the requirements applicable to
 6 nursing facilities under the provisions of section
 7 483.73 of title 42, Code of Federal Regulations (as
 8 in effect on the date of the enactment of the Pro-
 9 moting Restoration of Emergency Preparedness and
 10 Advancing Response to Epidemics in Long-Term
 11 Care Act).”.

12 (c) REQUIREMENT TO ISSUE GUIDANCE.—Not later
 13 than 90 days after the date of the enactment of this Act,
 14 the Secretary of Health and Human Services shall issue
 15 guidance to carry out the amendments made by this sec-
 16 tion.

17 (d) PUBLIC AVAILABILITY OF DATA ON DEFICI-
 18 ENCIES IN INFECTION CONTROL AND DIRECT CARE
 19 STAFFING IN SKILLED NURSING FACILITIES.—Not later
 20 than 2 weeks after the beginning of a period of an infec-
 21 tious disease outbreak (as defined in subparagraph (C) of
 22 subsection (d)(3) of section 1819 of the Social Security
 23 Act (42 U.S.C. 1395i–3), as added by subsection (a)(1)),
 24 (or, in the case of the COVID–19 emergency period de-
 25 scribed in section 1135(g)(1)(B) of such Act (42 U.S.C.

1 1320b–5(g)(1)(B)), not later than 60 days after the date
 2 of the enactment of this Act), the Administrator of the
 3 Centers for Medicare & Medicaid Services shall make pub-
 4 licly available on the internet website of the Centers for
 5 Medicare & Medicaid Services data on deficiencies identi-
 6 fied during the survey process described under subsection
 7 (g) of such section 1819, with respect to infection control
 8 and direct care staffing in a skilled nursing facility (as
 9 defined in subsection (a) of such section 1819). Such data
 10 so posted, with respect to an infectious disease outbreak
 11 (as so defined), shall be updated every two weeks until
 12 the end of the period of such outbreak.

13 **SEC. 3. PROHIBITION ON REDUCING FREQUENCY OF**
 14 **STANDARD SURVEYS.**

15 (a) **MEDICARE.**—Section 1819(g)(2)(A)(iii) of such
 16 Act (42 U.S.C. 1395i–3(g)(2)(A)(iii)) is amended by add-
 17 ing at the end the following new subclause:

18 “(III) **PROHIBITION ON REDUC-**
 19 **ING FREQUENCY OF SURVEYS CON-**
 20 **DUCTED DURING AN INFECTIOUS DIS-**
 21 **EASE OUTBREAK.**—The Secretary
 22 shall not reduce the frequency of sur-
 23 veys conducted under this section dur-
 24 ing an infectious disease outbreak (as
 25 defined in subsection (d)(3)(C)).”.

1 (b) MEDICAID.—Section 1919(g)(2)(A)(iii) of such
 2 Act (42 U.S.C. 1396r(g)(2)(A)(iii)) is amended by adding
 3 at the end the following new subclause:

4 “(I) PROHIBITION ON REDUCING
 5 FREQUENCY OF SURVEYS CONDUCTED
 6 DURING AN INFECTIOUS DISEASE
 7 OUTBREAK.—The Secretary shall not
 8 reduce the frequency of surveys con-
 9 ducted under this section during an
 10 infectious disease outbreak (as defined
 11 in section 1819(d)(3)(C)).”.

12 **SEC. 4. PROHIBITION ON WAIVING SUBMISSIONS OF DI-**
 13 **RECT CARE STAFFING INFORMATION.**

14 Section 1128I(g) of the Social Security Act (42
 15 U.S.C. 1320a–7j(g)) is amended—

16 (1) in paragraph (3), by striking “and” at the
 17 end;

18 (2) in paragraph (4), by striking the period and
 19 inserting “; and”;

20 (3) by inserting after paragraph (4) the fol-
 21 lowing new paragraph:

22 “(5) shall be submitted not less frequently than
 23 quarterly, on a schedule specified by the Secretary.”;
 24 and

1 (4) by adding at the end the following new sen-
 2 tence: “The Secretary shall not waive the require-
 3 ments of this subsection in the case of an infectious
 4 disease outbreak (as defined in section
 5 1819(d)(3)(C)).”.

6 **SEC. 5. GAO STUDY AND REPORT.**

7 Not later than one year after the end of the COVID–
 8 19 emergency period (as described in section
 9 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
 10 1320b–5(g)(1)(B))), the Comptroller General of the
 11 United States shall submit to the Committee on Ways and
 12 Means of the House of Representatives and the Committee
 13 on Finance of the Senate a report analyzing deficiencies
 14 during such period in infection control measures and di-
 15 rect care staffing requirements for skilled nursing facilities
 16 (as defined in section 1819(a) of the Social Security Act
 17 (42 U.S.C. 1395i–3(a))), as reported by the Administrator
 18 under section 2(d).

19 **SEC. 6. EFFECTIVE DATE.**

20 The amendments made by this Act shall apply with
 21 respect to skilled nursing facilities and nursing facilities
 22 beginning on the date of the enactment of this Act.

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