

116TH CONGRESS  
2D SESSION

# S. 4184

To require States to meet assisted living facility reporting requirements to qualify for future COVID–19 response funds.

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IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Ms. WARREN (for herself and Mr. MARKEY) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To require States to meet assisted living facility reporting requirements to qualify for future COVID–19 response funds.

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 “Assisted Living Facil-  
5 ity Coronavirus Reporting Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ASSISTED LIVING FACILITY.**—The term  
9 “assisted living facility” means—

10 (A) an adult care facility that—

1 (i) is licensed and regulated by the  
2 State in which the facility is located (or, if  
3 there is no State law providing for such li-  
4 censing and regulation by the State, by the  
5 municipality or other political subdivision  
6 in which the facility is located);

7 (ii) makes available to residents sup-  
8 portive services to assist the residents in  
9 carrying out activities of daily living, such  
10 as bathing, dressing, eating, getting in and  
11 out of bed or chairs, walking, going out-  
12 doors, using the toilet, laundry, home man-  
13 agement, preparing meals, shopping for  
14 personal items, obtaining and taking medi-  
15 cation, managing money, using the tele-  
16 phone, or performing light or heavy house-  
17 work, and which may make available to  
18 residents home health care services, such  
19 as nursing and therapy; and

20 (iii) provides dwelling units for resi-  
21 dents, each of which may contain a full  
22 kitchen and bathroom, and which includes  
23 common rooms and other facilities appro-  
24 priate for the provision of supportive serv-  
25 ices to the residents of the facility;

1 (B) an adult care facility that—

2 (i) is—

3 (I) licensed and regulated by the  
4 State in which the facility is located  
5 (or, if there is no State law providing  
6 for such licensing and regulation by  
7 the State, by the municipality or other  
8 political subdivision in which the facil-  
9 ity is located); and

10 (II) similar to a skilled nursing  
11 facility, (as defined in section 1819(a)  
12 of the Social Security Act (42 U.S.C.  
13 1395i–3(a))), a nursing facility (as  
14 defined in section 1919(a) of the So-  
15 cial Security Act (42 U.S.C.  
16 1396r(a))), or a board and care facil-  
17 ity (as defined in section 1616(e) of  
18 the Social Security Act (42 U.S.C.  
19 1382e(e))); or

20 (ii) is subject to the identification, in-  
21 vestigation, and resolution of complaints  
22 by, or otherwise subject to the activities of,  
23 a State Long-Term Care Ombudsman pro-  
24 gram established under section 712 of the

1           Older Americans Act of 1965 (42 U.S.C.  
2           3058g); or

3           (C) an adult care facility receiving Federal  
4           funds through a State Medicaid program under  
5           title XIX of the Social Security Act (42 U.S.C.  
6           1396 et seq.), including through any waiver re-  
7           lating to such a program granted under such  
8           title or title XI of such Act (42 U.S.C. 1301 et  
9           seq.).

10           (2) SECRETARY.—The term “Secretary” means  
11           the Secretary of Health and Human Services.

12   **SEC. 3. STATE REPORTING REQUIREMENTS FOR ASSISTED**  
13                           **LIVING FACILITIES AND COVID-19.**

14           (a) IN GENERAL.—As a condition of receiving fund-  
15           ing to combat the coronavirus pandemic under Federal  
16           legislation enacted on or after the date of enactment of  
17           this Act which designates such funding as being for emer-  
18           gency requirements pursuant to section 251(b)(2)(A)(i) of  
19           the Balanced Budget and Emergency Deficit Control Act  
20           of 1985 (2 U.S.C. 901(b)(2)(A)(i)), a State shall do the  
21           following:

22           (1) Within 30 days of the passage of this Act,  
23           begin weekly reporting of the following information  
24           for each assisted living facility located in the State  
25           to the Centers for Disease Control and Prevention,

1 disaggregated by race, ethnicity, primary language,  
2 sex, sexual orientation, gender identity, age, and dis-  
3 ability status:

4 (A) The number of suspected and con-  
5 firmed active cases of Coronavirus Disease  
6 2019 (COVID–19) among residents and the  
7 number of suspected and confirmed active cases  
8 of COVID–19 among staff of the facility.

9 (B) The number of residents and staff of  
10 the facility, respectively, who, since the last re-  
11 port under this paragraph, contracted severe  
12 respiratory infections related to COVID–19  
13 that resulted in hospitalization and the number  
14 that resulted in death, including deaths that oc-  
15 curred outside of the facility.

16 (C) The number of COVID–19 diagnostic  
17 tests conducted weekly on residents and staff of  
18 the facility, respectively, and the percentage of  
19 those tests that are positive among residents  
20 and staff of the facility, respectively.

21 (D) The average time between testing a  
22 resident and receiving the results of the test.

23 (E) The personal protective equipment,  
24 hand hygiene supplies, ventilators, and medical  
25 supplies in the facility.

1           (F) The total number of resident beds at,  
2           residents living in, and staff employed by the  
3           facility.

4           (G) Other information specified by the  
5           Secretary.

6           (2) Within 30 days of the passage of this Act,  
7           report for each assisted living facility in the State to  
8           the Centers for Disease Control and Prevention, the  
9           information specified in subparagraphs (A) through  
10          (G) of paragraph (1) for the period of time between  
11          January 1, 2020, and the passage of this Act,  
12          disaggregated by race, ethnicity, primary language,  
13          sex, sexual orientation, gender identity, age, and dis-  
14          ability status.

15          (3) Within 30 days of the passage of this Act,  
16          require each assisted living facility in the State to  
17          inform the Centers for Medicare & Medicaid Serv-  
18          ices, the Centers for Disease Control and Preven-  
19          tion, State and local health officials, residents, their  
20          representatives, and families of those residing in fa-  
21          cilities by 5 p.m. the next calendar day following the  
22          occurrence of either a single confirmed infection of  
23          COVID–19 among the residents or staff of the facil-  
24          ity or 3 or more residents or staff of the facility pre-

1       senting new-onset of respiratory symptoms within 72  
2       hours of each other. This information shall—

3               (A) not include personally identifiable in-  
4       formation;

5               (B) include information on mitigating ac-  
6       tions implemented to prevent or reduce the risk  
7       of transmission, including if normal operations  
8       of the facility will be altered; and

9               (C) include any cumulative updates for  
10       residents, their representatives, and families at  
11       least weekly or by 5 p.m. the next calendar day  
12       following the subsequent occurrence of—

13               (i) the identification of a confirmed  
14       infection of COVID–19 among the resi-  
15       dents or staff of the facility; or

16               (ii) 3 or more residents or staff pre-  
17       senting new onset of respiratory symptoms  
18       within 72 hours of each other.

19       (b) SUNSET.—The requirements of subsection (a)  
20       shall terminate if and when the circumstances which led  
21       to the public health emergency period described in section  
22       1135(g)(1)(B) of the Social Security Act (42 U.S.C.  
23       1320b–5(g)(1)(B)) (relating to the coronavirus pandemic)  
24       cease to exist and are unlikely to recur.

1           (c) GUIDANCE.—Within 15 days of the date of enact-  
2 ment of this Act, the Secretary shall issue guidance to  
3 States to ensure the information reported in (a) is re-  
4 ported in an electronic, standardized format that matches,  
5 to the extent practicable, the format applicable to informa-  
6 tion reported to the Department of Health and Human  
7 Services by skilled nursing facilities and nursing facilities  
8 on COVID–19 under section 483.30(g) of title 42, Code  
9 of Federal Regulations (as amended by the interim final  
10 rule of the Centers for Medicare & Medicaid Services pub-  
11 lished on May 8, 2020 (85 Fed. Reg. 27550)), to enable  
12 the comparison of COVID–19 outbreaks across congregate  
13 care settings.

14           (d) PUBLICATION OF INFORMATION.—The Secretary  
15 shall publicly post on the website of the Department of  
16 Health and Human Services, the information received by  
17 the Department under section (a), and shall update such  
18 information on a weekly basis.

19           (e) EXTENSIONS.—The Secretary may grant, at the  
20 request of a State, a 30-day extension for the State report  
21 the information required under paragraphs (1) and (2) of  
22 subsection (a) to allow the State to develop the reporting  
23 infrastructure necessary to gather such information from  
24 assisted living facilities.

1 **SEC. 4. APPLICATION OF NURSING FACILITY REPORTING**  
2 **REQUIREMENTS TO ASSISTED LIVING FACILI-**  
3 **TIES.**

4 The Secretary shall provide that any COVID–19 re-  
5 porting requirement that applies to skilled nursing facili-  
6 ties (as defined in section 1819(a) of the Social Security  
7 Act (42 U.S.C. 1395i–3(a))) or nursing facilities (as de-  
8 fined in section 1919(a) of the Social Security Act (42  
9 U.S.C. 1396r(a))) and is imposed on or after the date of  
10 enactment of this Act under title XVIII or XIX of the  
11 Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.)  
12 or under a regulation promulgated under such title shall  
13 apply in the same manner to assisted living facilities,  
14 which shall report such information through the States  
15 unless complying with such reporting requirement is not  
16 practicable in the assisted living facility setting.

17 **SEC. 5. GAO REPORT.**

18 Not later than 2 years after the date of enactment  
19 of this Act, the Comptroller General of the United States  
20 shall conduct an evaluation, and submit to Congress, a  
21 report including—

22 (1) what is known about how required reporting  
23 of COVID–19 data on residents in nursing homes  
24 during the pandemic was used to prevent or control  
25 COVID–19 cases or deaths, and how this compares

1 to the experience of other congregate care facilities  
2 without required reporting of this data; and

3 (2) any lessons learned from required reporting  
4 of COVID–19 cases or deaths in nursing homes that  
5 could be applied to other congregate care facilities  
6 during the COVID–19 pandemic, if it continues, and  
7 similar public health emergencies in the future.

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