

116TH CONGRESS
2D SESSION

H. R. 8568

To amend title XVIII and title 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, to prohibit the waiver of certain reporting requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2020

Mr. PASCRELL (for himself, Ms. SHERRILL, Mrs. WATSON COLEMAN, Mr. BEYER, Mr. PAYNE, Mr. DOGGETT, Ms. SHALALA, Ms. JUDY CHU of California, and Mr. KILDEE) 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

A BILL

To amend title XVIII and title 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, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Promoting Restoration
3 of Emergency Preparedness and Advancing Response to
4 Epidemics in Long-Term Care Act” or the “PREPARE
5 LTC Act”.

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

12 (a) INFECTION CONTROL REGULATIONS.—

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

16 (A) by redesignating subparagraphs (A)
17 and (B) as clauses (i) and (ii), respectively, and
18 moving such clauses 2 ems to the right;

19 (B) by striking “ENVIRONMENT.— A
20 skilled nursing facility must—” and inserting
21 “ENVIRONMENT.—

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

24 (C) by adding at the end the following new
25 subparagraph:

1 “(B) APPLICATION STATEMENT.—For pur-
2 poses of carrying out this paragraph, the Sec-
3 retary shall apply by reference the provisions of
4 section 483.80 of title 42, Code of Federal Reg-
5 ulations (as in effect on the date of the enact-
6 ment of the Promoting Restoration of Emer-
7 gency Preparedness and Advancing Response to
8 Epidemics in Long-Term Care Act), except in
9 applying subsection (g) of such regulation—

10 “(i) any reference to COVID-19 shall
11 be treated as a reference to an infectious
12 disease outbreak, as defined in subpara-
13 graph (C); and

14 “(ii) any reference to ventilator capac-
15 ity shall be treated as a reference to med-
16 ical equipment and supplies critical to the
17 infectious disease outbreak, including ven-
18 tilator capacity.

19 “(C) INFECTIOUS DISEASE OUTBREAK DE-
20 FINED.—For purposes of subparagraph (B),
21 the term ‘infectious disease outbreak’ means
22 any of the following periods:

23 “(i) COVID-19 EMERGENCY PERIOD.—
24 The emergency period described in section

1135(g)(1)(B) of the Social Security Act
(42 U.S.C. 1320b–5(g)(1)(B)).

“(ii) OTHER INFECTIOUS DISEASE
OUTBREAK PERIODS.—

“(I) The period beginning on the
date a nationwide emergency related
to a public health emergency is de-
clared pursuant to the Stafford Act, a
Major Disaster Declaration, or the
National Emergencies Act and ending
on the date that is 6 months after the
date on which the declaration pursu-
ant to the Stafford Act, a Major Dis-
aster Declaration, or the National
Emergencies Act, as applicable, ends,
whichever is the latest.

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

“(III) With respect to a skilled
nursing facility in a State with respect
to which the Governor has declared an

1 emergency or major disaster (as de-
2 fined by the State) with respect to an
3 infectious disease outbreak, the period
4 for which such declaration is in effect
5 with respect to such State.”.

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

9 (A) by redesignating subparagraphs (A)
10 and (B) as clauses (i) and (ii), respectively, and
11 moving such clauses 2 ems to the right;

12 (B) by striking “ENVIRONMENT.— A nurs-
13 ing facility must—” and inserting “ENVIRON-
14 MENT.—

15 “(A) IN GENERAL.—A nursing facility
16 must—”; and

17 (C) by adding at the end the following new
18 subparagraph:

19 “(B) APPLICATION STATEMENT.—For pur-
20 poses of carrying out this paragraph, the Sec-
21 retary shall apply by reference the provisions of
22 section 483.80 of title 42, Code of Federal Reg-
23 ulations (as in effect on the date of the enact-
24 ment of the Promoting Restoration of Emer-
25 gency 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.—The term ‘infectious disease outbreak’ has the meaning given such term in section 1819(d)(3)(C).”.

(b) EMERGENCY PREPAREDNESS REGULATIONS.—

(1) MEDICARE.—Section 1819(d) is amended by adding at the end the following new paragraph:

“(5) EMERGENCY PREPAREDNESS.—A skilled nursing facility shall meet the requirements applicable to skilled nursing facilities under the provisions of section 483.73 of title 42, Code of Federal Regulations (as in effect on the date of the enactment of the Restoring Safety and Transparency for Long-Term Care Residents Act).”.

1 (2) MEDICAID.—Section 1919(d) is amended by
2 adding at the end the following new paragraph:

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

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

16 (d) PUBLIC AVAILABILITY OF DATA ON DEFICI-
17 ENCIES IN INFECTION CONTROL AND DIRECT CARE
18 STAFFING IN SKILLED NURSING FACILITIES.—Not later
19 than 2 weeks after the beginning of a period of an infec-
20 tious disease outbreak (as defined in subparagraph (C) of
21 subsection (d)(3) of section 1819 of the Social Security
22 Act (42 U.S.C. 1395i–3), as added by subsection (a)(1)),
23 (or, in the case of the COVID-19 emergency period de-
24 scribed in section 1135(g)(1)(B) of such Act (42 U.S.C.
25 1320b–5(g)(1)(B)), not later than 60 days after the date

1 of the enactment of this Act), the Administrator of the
 2 Centers for Medicare & Medicaid Services shall make pub-
 3 licly available on the internet website of the Centers for
 4 Medicare & Medicaid Services data on deficiencies identi-
 5 fied during the survey process described under subsection
 6 (g) of such section, with respect to infection control and
 7 direct care staffing in a skilled nursing facility (as defined
 8 in subsection (a) of such section). Such data so posted,
 9 with respect to an infectious disease outbreak (as defined
 10 in subparagraph (C) of such subsection (d)(3)), shall be
 11 updated every two weeks until the end of the period of
 12 such outbreak.

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

15 (a) **MEDICARE.**—Section 1819(g)(2)(A)(iii) is
 16 amended by adding at the end the following new sub-
 17 clause:

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) is amend-
 2 ed by adding at the end the following new subclause:

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

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

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

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

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

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

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

24 (4) by adding at the end the following new sen-
 25 tence: “The Secretary shall not waive the require-

1 ments of this subsection in the case of an infectious
2 disease outbreak (as defined in section
3 1819(d)(3)(C)).”.

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

5 Not later than one year after the end of the COVID-
6 19 emergency period (as described in section
7 1135(g)(1)(B) of the Social Security Act (42 U.S.C.
8 1320b–5(g)(1)(B)), the Comptroller General of the United
9 States shall submit to the Committee on Ways and Means
10 of the House of Representatives and the Committee on
11 Finance of the Senate a report analyzing deficiencies dur-
12 ing such period in infection control measures and direct
13 care staffing requirements for skilled nursing facilities (as
14 defined in section 1819(a) of the Social Security Act (42
15 U.S.C. 1395i–3(a))), as reported by the Administrator
16 under section 2(d)(1).

17 **SEC. 6. EFFECTIVE DATE.**

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

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