

116TH CONGRESS
1ST SESSION

S. 2993

To amend titles XVIII and XIX of the Social Security Act with respect to nursing facility requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2019

Mr. WARNER (for himself and Mr. SCOTT of South Carolina) 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 with respect to nursing facility 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 “Ensuring Seniors’ Ac-
5 cess to Quality Care Act”.

6 **SEC. 2. TRAINING AND COMPETENCY EVALUATION PRO-** 7 **GRAMS.**

8 (a) MEDICARE.—Section 1819 of the Social Security
9 Act (42 U.S.C. 1395i–3) is amended—

10 (1) in subsection (f)(2)—

1 (A) in subparagraph (A)(iv)(I), by striking
 2 “(unless the facility is described in subpara-
 3 graph (B)(iii)(I))”;

4 (B) in subparagraph (B)—

5 (i) in clause (i)—

6 (I) by striking “(subject to clause
 7 (iii))”; and

8 (II) by inserting “and” after the
 9 semicolon;

10 (ii) in clause (ii), by striking “; and”
 11 and inserting a period;

12 (iii) by striking clause (iii); and

13 (iv) by striking “A State may not del-
 14 egate (through subcontract or otherwise)
 15 its responsibility under clause (iii)(II) to
 16 the skilled nursing facility.”;

17 (C) by striking subparagraphs (C) and
 18 (D); and

19 (D) by adding at the end the following:

20 “(C) DISAPPROVAL OF NURSE AIDE TRAIN-
 21 ING AND COMPETENCY EVALUATION PROGRAMS
 22 AND NURSE AIDE COMPETENCY EVALUATION
 23 PROGRAMS.—

24 “(i) IN GENERAL.—With respect to a
 25 State, the Secretary shall, in consultation

1 with such State, disapprove, for a period
 2 not to exceed 2 years, a nurse aide train-
 3 ing and competency evaluation program or
 4 a nurse aide competency evaluation pro-
 5 gram offered by or in a skilled nursing fa-
 6 cility if such facility—

7 “(I) has been assessed a civil
 8 monetary penalty under subsection
 9 (h)(2)(B)(ii) or section
 10 1919(h)(2)(A)(ii) of not less than
 11 \$10,697 for providing substandard
 12 quality of care; and

13 “(II) has not, in the determina-
 14 tion of the Secretary, corrected the
 15 deficiencies in quality of care for
 16 which such civil monetary penalty was
 17 assessed.

18 “(ii) RESCISSION OF DISAPPROVAL.—
 19 The Secretary shall rescind a disapproval
 20 under clause (i) upon demonstration by a
 21 skilled nursing facility that—

22 “(I) all deficiencies for which the
 23 civil monetary penalty described in
 24 clause (i)(I) was assessed have been
 25 remedied;

1 “(II) the facility has not received
 2 deficiencies related to direct patient
 3 harm for substandard quality of care
 4 deficiencies in the prior 2 years; and

5 “(III) the Secretary certifies that
 6 the civil monetary penalty assessed
 7 under clause (i)(I) did not result in
 8 immediate jeopardy for direct patient
 9 harm or injury related to an abuse or
 10 neglect deficiency.

11 For purposes of rescinding disapproval
 12 under this clause, the Secretary may re-
 13 quire additional oversight of the skilled
 14 nursing facility for a period not to exceed
 15 the period of disapproval imposed under
 16 clause (i) with respect to such facility.”;
 17 and

18 (2) in subsection (h)(2)(B)(ii)(I), by striking
 19 “\$10,000” and inserting “\$21,393”.

20 (b) MEDICAID.—Section 1919 of the Social Security
 21 Act (42 U.S.C. 1396r) is amended—

22 (1) in subsection (f)(2)—

23 (A) in subparagraph (A)(iv)(I), by striking
 24 “(unless the facility is described in subpara-
 25 graph (B)(iii)(I))”;

1 (B) in subparagraph (B)—

2 (i) in clause (i), by inserting “and”
3 after the semicolon;

4 (ii) in clause (ii), by striking “; and”
5 and inserting a period;

6 (iii) by striking clause (iii); and

7 (iv) by striking “A State may not del-
8 egate (through subcontract or otherwise)
9 its responsibility under clause (iii)(II) to
10 the nursing facility.”;

11 (C) by striking subparagraphs (C) and
12 (D); and

13 (D) by adding at the end the following:

14 “(C) DISAPPROVAL OF NURSE AIDE TRAIN-
15 ING AND COMPETENCY EVALUATION PROGRAMS
16 AND NURSE AIDE COMPETENCY EVALUATION
17 PROGRAMS.—

18 “(i) IN GENERAL.—With respect to a
19 State, the Secretary shall, in consultation
20 with such State, disapprove, for a period
21 not to exceed 2 years, a nurse aide train-
22 ing and competency evaluation program or
23 a nurse aide competency evaluation pro-
24 gram offered by or in a nursing facility if
25 such facility—

1 “(I) has been assessed a civil
2 monetary penalty under section
3 1819(h)(2)(B)(ii) or subsection
4 (h)(2)(A)(ii) of not less than \$10,697
5 for providing substandard quality of
6 care; and

7 “(II) has not, in the determina-
8 tion of the Secretary, corrected the
9 deficiencies in quality of care for
10 which such civil monetary penalty was
11 assessed.

12 “(ii) RESCISSION OF DISAPPROVAL.—
13 The Secretary shall rescind a disapproval
14 under clause (i) upon demonstration by a
15 nursing facility that—

16 “(I) all deficiencies for which the
17 civil monetary penalty described in
18 clause (i)(I) was assessed have been
19 remedied;

20 “(II) the facility has not received
21 deficiencies related to direct patient
22 harm for substandard quality of care
23 deficiencies in the prior 2 years; and

24 “(III) the Secretary certifies that
25 the civil monetary penalty assessed

1 under clause (i)(I) did not result in
2 immediate jeopardy for direct patient
3 harm or injury related to an abuse or
4 neglect deficiency.

5 For purposes of rescinding disapproval
6 under this clause, the Secretary may re-
7 quire additional oversight of the nursing
8 facility for a period not to exceed the pe-
9 riod of disapproval imposed under clause
10 (i) with respect to such facility.”; and

11 (2) in subsection (h)(3)(C)(ii)(I), by striking
12 “\$10,000” and inserting “\$21,393”.

13 (c) REGULATIONS.—Not later than 180 days after
14 the date of enactment of this Act, the Secretary of Health
15 and Human Services shall promulgate regulations as nec-
16 essary to implement the amendments made by this section.

17 (d) APPLICABILITY.—

18 (1) IN GENERAL.—

19 (A) TIMING OF DETERMINATIONS.—The
20 amendments made by subsections (a)(1)(D) and
21 (b)(1)(D) of this section shall apply only to a
22 civil monetary penalty if the relevant covered
23 determination was made on or after the date of
24 enactment of this Act.

1 (B) COVERED DETERMINATION DE-
 2 FINED.—The term “covered determination”
 3 means, with respect to a skilled nursing facility
 4 or a nursing facility in a State, a determination
 5 by the State or the Secretary of Health and
 6 Human Services that the facility has provided
 7 a substandard quality of care for which a civil
 8 monetary penalty described in section
 9 1819(f)(2)(C)(i)(I) or 1919(f)(2)(C)(i)(I) of the
 10 Social Security Act (as such sections have been
 11 amended by this Act) may be assessed.

12 (2) PREVIOUSLY PROHIBITED PROGRAMS.—

13 (A) WAIVER.—With respect to a skilled
 14 nursing facility or a nursing facility subject, on
 15 the day before the date of enactment of this
 16 Act, to a prohibition under item (a) of either
 17 section 1819(f)(2)(B)(iii)(I) or section
 18 1919(f)(2)(B)(iii)(I) of the Social Security Act
 19 (as in effect on the day before such date of en-
 20 actment), such prohibition shall no longer apply
 21 to the facility on or after such date of enact-
 22 ment.

23 (B) SURVEY OR CIVIL MONETARY PEN-
 24 ALTY.—With respect to a skilled nursing facil-
 25 ity or a nursing facility subject, on the day be-

1 fore the date of enactment of this Act, to a pro-
 2 hibition under item (b) or (c) of either section
 3 1819(f)(2)(B)(iii)(I) or section
 4 1919(f)(2)(B)(iii)(I) of the Social Security Act
 5 (as in effect on the day before such date of en-
 6 actment), such prohibition shall no longer apply
 7 to the facility on or after such date of enact-
 8 ment upon a determination by the Secretary of
 9 Health and Human Services that the facility
 10 has corrected the issue that resulted in such
 11 prohibition.

12 **SEC. 3. PERMITTING MEDICARE AND MEDICAID PRO-**
 13 **VIDERS TO ACCESS THE NATIONAL PRACTI-**
 14 **TIONER DATA BANK TO CONDUCT EMPLOYEE**
 15 **BACKGROUND CHECKS.**

16 Section 1921(b)(6) of the Social Security Act (42
 17 U.S.C. 1396r–2(b)(6)) is amended—

18 (1) by striking “and other health care entities
 19 (as defined in section 431 of the Health Care Qual-
 20 ity Improvement Act of 1986)” and inserting “,
 21 other health care entities (as defined in section 431
 22 of the Health Care Quality Improvement Act of
 23 1986), providers of services (as defined in section
 24 1861(u)), suppliers (as defined in section 1861(d)),

1 and providers of items or services under a State plan
2 under this title (or a waiver of such a plan)”; and
3 (2) by striking “such hospitals or other health
4 care entities” and inserting “such hospitals, health
5 care entities, providers, or suppliers”.

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