

116TH CONGRESS
2D SESSION

S. 3768

To protect older adults and people with disabilities living in nursing homes, intermediate care facilities, and psychiatric hospitals from COVID–19.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2020

Mr. CASEY (for himself, Mr. WHITEHOUSE, Mr. SCHUMER, Mr. JONES, Ms. WARREN, Ms. BALDWIN, Mr. MARKEY, Mrs. SHAHEEN, Mr. MENENDEZ, Mr. REED, Mr. VAN HOLLEN, Mr. BLUMENTHAL, Ms. HIRONO, Ms. CORTEZ MASTO, Ms. ROSEN, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect older adults and people with disabilities living in nursing homes, intermediate care facilities, and psychiatric hospitals from COVID–19.

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 “Nursing Home
5 COVID–19 Protection and Prevention Act of 2020”.

6 **SEC. 2. COVID–19 NURSING HOME PROTECTIONS.**

7 (a) PROGRAM TO SUPPORT COVID–19 RESPONSE.—

1 (1) IN GENERAL.—Not later than 30 days after
2 the date of enactment of this Act, the Secretary
3 shall carry out a program under which payments are
4 made to States and Indian Tribes in order to sup-
5 port cohorting individuals in skilled nursing facili-
6 ties, nursing facilities, intermediate care facilities,
7 and psychiatric hospitals based on COVID–19 sta-
8 tus.

9 (2) APPLICATION.—To be eligible to receive a
10 payment under this subsection, a State or Indian
11 Tribe shall submit to the Secretary an application.
12 Such application shall include evidence that the
13 State or Indian Tribe (and involved skilled nursing
14 facilities, nursing facilities, intermediate care facili-
15 ties, and psychiatric hospitals) are able to cohort in-
16 dividuals in compliance with guidance issued by the
17 Secretary during the emergency period. If feasible,
18 the Secretary shall provide for an expedited applica-
19 tion process.

20 (3) REQUIREMENTS.—To be eligible to receive
21 a payment under this subsection, a State or Indian
22 Tribe shall comply with the following:

23 (A) FOLLOWING GUIDANCE.—The State or
24 Indian Tribe shall follow the guidance estab-
25 lished by the Secretary under paragraph (5)

1 and all other guidance issued by the Secretary
2 during the emergency period.

3 (B) REPORTING.—The State or Indian
4 Tribe shall, as determined appropriate by the
5 Secretary, periodically report to the Secretary
6 on the following:

7 (i) The convening and recommenda-
8 tions of the task force under subparagraph
9 (C), cohorting strategies being used, the
10 use of surge teams, and the technical as-
11 sistance and resources provided under sub-
12 paragraph (D).

13 (ii) The State or Indian Tribe's dis-
14 tribution of the payments received under
15 the program under this subsection and
16 what facilities are using such payments for
17 (as permitted under paragraph (4)(B)).

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

20 (C) TASK FORCE.—

21 (i) IN GENERAL.—The State or In-
22 dian Tribe shall establish a task force to
23 provide advice on the State's or Tribe's use
24 and distribution of payments received
25 under the program under this section, in-

cluding on cohorting strategies, the use of
surge teams, resident rights (particularly
involving discharges and transfers), and
other topics as determined appropriate by
the Secretary.

(ii) MEMBERSHIP.—A task force es-
tablished under clause (i) shall include rep-
resentation from the following:

(I) Consumers, including older
adults age 65 and older, individuals
with disabilities, family caregivers,
and their advocates.

(II) Skilled nursing facilities,
nursing facilities, intermediate care
facilities, and psychiatric hospitals.

(III) Health care providers and
other congregate settings (including
hospitals and permanent or transi-
tional housing facilities) that transfer
residents to and from skilled nursing
facilities, nursing facilities, inter-
mediate care facilities, and psychiatric
hospitals.

1 (IV) Health professionals, such
2 as direct care professionals, physi-
3 cians, nurses, and pharmacists.

4 (V) Experts in public health and
5 infectious diseases.

6 (VI) Experts in geriatrics and
7 long-term care medicine.

8 (VII) The State Long-Term Care
9 Ombudsman program (as described in
10 section 712(a)(1) of the Older Ameri-
11 cans Act of 1965 (42 U.S.C.
12 3058g(a)(1))).

13 (VIII) The protection and advo-
14 cacy system (as established under
15 subtitle C of title I of the Develop-
16 mental Disabilities Assistance and Bill
17 of Rights Act (42 U.S.C. 15041 et
18 seq.).

19 (IX) State agencies, including the
20 State surveying agency and the agen-
21 cy that administers the State plan
22 under the Medicaid program under
23 title XIX of the Social Security Act.

24 (X) Other representatives as the
25 Secretary determines appropriate.

(D) PROTOCOL TO EVALUATE.—The State or Indian Tribe shall establish an expedited protocol to evaluate a facility’s ability (including a facility retrofitted under paragraph (4)(B)(i)) to cohort individuals who test positive for COVID–19, individuals who test negative for COVID–19, or individuals with unknown status or who are under observation. Such protocol shall include an infection control self-assessment and an abbreviated survey and may include a standard survey.

(E) TECHNICAL ASSISTANCE AND RESOURCES.—

(i) IN GENERAL.—The State or Indian Tribe shall ensure that skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals receive technical assistance and the necessary resources to—

(I) implement proper infection control protocols and practices;

(II) minimize unnecessary transfers;

(III) ensure adequate staffing, including the use of surge teams;

1 (IV) effectively use and provide
 2 access to testing and personal protec-
 3 tive equipment, including guidance on
 4 how to effectively use personal protec-
 5 tive equipment when access is limited;

6 (V) safely transition residents to
 7 home and community-based settings;
 8 and

9 (VI) other topics, as determined
 10 appropriate by the Secretary.

11 (ii) REQUIREMENT FOR TECHNICAL
 12 ASSISTANCE.—The technical assistance re-
 13 quired under clause (i) shall be provided
 14 by—

15 (I) quality improvement organi-
 16 zations under part B of title XI of the
 17 Social Security Act; or

18 (II) other independent organiza-
 19 tions of a similar type that do not
 20 have conflicts of interest and are
 21 deemed appropriate by the Secretary.

22 (4) USE OF FUNDS.—

23 (A) IN GENERAL.—A State or Indian
 24 Tribe that receives a payment under the pro-
 25 gram under this subsection shall use funds to

1 support skilled nursing facilities, nursing facili-
2 ties, intermediate care facilities, and psychiatric
3 hospitals that cohort, and provide services to,
4 individuals who test positive for COVID–19, in-
5 dividuals who test negative for COVID–19, and
6 individuals with unknown status or who are
7 under observation. Such cohorting shall be in
8 compliance with all guidance issued by the Sec-
9 retary during the emergency period.

10 (B) PERMISSIBLE USES AND AUTHORIZED
11 COSTS.—States and Indian Tribes shall use the
12 payments received under the program under
13 this subsection for the following purposes:

14 (i) To retrofit non-traditional facility-
15 based settings, such as hotels, dormitories,
16 schools, churches, and other temporary or
17 permanent shelters, for temporary use as
18 skilled nursing facilities, nursing facilities,
19 intermediate care facilities, and psychiatric
20 hospitals.

21 (ii) To support skilled nursing facili-
22 ties, nursing facilities, intermediate care
23 facilities, and psychiatric hospitals with the
24 establishment of specialized units within
25 such facilities.

(iii) To provide testing kits or other supplies needed for rapid turnaround to test staff members and residents of skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals for COVID–19.

(iv) To provide personal protective equipment to staff members of skilled nursing facilities, nursing facilities, intermediate care facilities, psychiatric hospitals and, where appropriate, to residents of such facilities.

(v) To safely facilitate necessary transfers to and from skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals.

(vi) To safely facilitate voluntary discharges to home and community-based settings from skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals.

(vii) To provide additional staffing (including the use of surge teams) associated with the COVID–19 pandemic for skilled nursing facilities, nursing facilities,

1 intermediate care facilities, and psychiatric
 2 hospitals, which may include providing pre-
 3 mium or hazard pay, overtime pay, en-
 4 hanced payment rates, paid sick and fam-
 5 ily medical leave, childcare, temporary
 6 housing, transportation, and other sup-
 7 portive services for staff members.

8 (viii) To provide support for individ-
 9 uals who have no other mechanism to pay
 10 for their care at skilled nursing facilities,
 11 nursing facilities, intermediate care facili-
 12 ties, and psychiatric hospitals and are un-
 13 able to pay.

14 (ix) Other purposes relating to the
 15 cohorting described in subparagraph (A).

16 (5) ADDITIONAL GUIDANCE.—For purposes of
 17 the program under this subsection, not later than 30
 18 days after the date of enactment of this Act (and
 19 prior to making any payments to States or Indian
 20 Tribes under the program) the Secretary shall estab-
 21 lish guidance on the following:

22 (A) Which skilled nursing facilities, nurs-
 23 ing facilities, intermediate care facilities, and
 24 psychiatric hospitals are permitted to cohort in-
 25 dividuals who test positive for COVID–19, indi-

1 individuals who test negative for COVID–19, and
2 individuals with unknown status or who are
3 under observation. Such guidance shall account
4 for—

5 (i) the facility’s history of compliance
6 with the requirements of participation
7 under titles XVIII and XIX of the Social
8 Security Act, including requirements relat-
9 ing to infection control and emergency pre-
10 paredness;

11 (ii) the facility’s current or past affili-
12 ation (as either a candidate or participant)
13 with the special focus facility program
14 under section 1819(f)(8) of such Act (42
15 U.S.C. 1395i–3(f)(8)) and section
16 1919(f)(10) of such Act (42 U.S.C.
17 1396r(f)(10)); and

18 (iii) the facility’s ability to treat high-
19 severity residents, as applicable.

20 (B) Consumer protections for residents of
21 skilled nursing facilities, nursing facilities, in-
22 termediate care facilities, and psychiatric hos-
23 pitals affected by COVID–19 cohorting policies,
24 including by—

1 (i) prohibiting facilities from dis-
2 charging residents for failure to pay for
3 services; and

4 (ii) requiring written notification to be
5 provided to residents and their family and
6 legal representatives at least 72 hours
7 prior to discharge or transfers, with such
8 notice containing—

9 (I) information on the rights of
10 the resident;

11 (II) contact information for the
12 State Long-Term Care Ombudsman
13 program (as described in section
14 712(a)(1) of the Older Americans Act
15 of 1965 (42 U.S.C. 3058g(a)(1)));
16 and

17 (III) contact information for the
18 protection and advocacy system (as
19 established under subtitle C of title I
20 of the Developmental Disabilities As-
21 sistance and Bill of Rights Act (42
22 U.S.C. 15041 et seq.).

23 (C) Strategies to effectively cohort resi-
24 dents of skilled nursing facilities, nursing facili-
25 ties, intermediate care facilities, and psychiatric

hospitals based on COVID–19 status, including—

(i) the temporary utilization of non-traditional facility-based settings, such as hotels, dormitories, schools, churches, and other temporary or permanent shelters, as skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals;

(ii) how to safely and effectively move, shelter in place, and cohort within facilities;

(iii) how to establish separate facilities for individuals who test positive for COVID–19;

(iv) how to establish separate facilities for individuals who test negative for COVID–19;

(v) proper procedures for conducting COVID–19 testing, sending tests to be analyzed, and effective use of COVID–19 testing;

(vi) adequate staffing, with contingency plans during shortages, including the use of—

- 1 (I) separate staffing according to
2 COVID–19 status; and
3 (II) surge teams;
4 (vii) effective use of personal protec-
5 tive equipment, including in cases where
6 access to an adequate supply of personal
7 protective equipment is limited;
8 (viii) how to minimize resident trans-
9 fers to and from the facilities;
10 (ix) how to safely effectuate resident
11 transfers to home and community-based
12 settings from the facilities; and
13 (x) how to uphold resident rights in
14 accordance with titles XVIII and XIX of
15 the Social Security Act.

16 (6) REPORT.—Not later than 2 years after the
17 date of the enactment of this section, the Secretary
18 shall submit to the appropriate Committees of Con-
19 gress a report on the program under this section, to-
20 gether with recommendations for such legislation
21 and administrative action as the Secretary deter-
22 mines appropriate.

23 (7) FUNDING.—Out of any monies in the
24 Treasury of the United States not otherwise appro-
25 priated, there are appropriated to the Secretary

1 \$20,000,000,000 for fiscal year 2020 for making
 2 payments to States and Indian Tribes under this
 3 subsection. Amounts appropriated under the pre-
 4 ceding sentence shall remain available until ex-
 5 pended.

6 (b) COVID–19 DATA COLLECTION AND DISCLO-
 7 SURE.—

8 (1) DATA COLLECTION AND PUBLICATION BY
 9 THE SECRETARY.—

10 (A) IN GENERAL.—Beginning after the
 11 date of enactment of this Act and continuing
 12 through the end of the emergency period, or
 13 through a later date determined appropriate by
 14 the Secretary, the Secretary shall make publicly
 15 available on the Nursing Home Compare
 16 websites described in sections 1819(i) and
 17 1919(i) of the Social Security Act (42 U.S.C.
 18 1395i–3(i); 42 U.S.C. 1396r(i)) and on the
 19 internet website of the Centers for Medicare &
 20 Medicaid Services information, within each
 21 State, Indian Tribe, and each skilled nursing
 22 facility, nursing facility, intermediate care facil-
 23 ity, and psychiatric hospitals, on the following:

24 (i) The number of suspected and con-
 25 firmed COVID–19 cases among residents

1 in skilled nursing facilities, nursing facili-
2 ties, intermediate care facilities, and psy-
3 chiatric hospitals.

4 (ii) The number of suspected and con-
5 firmed COVID–19 cases among staff per-
6 sons in skilled nursing facilities, nursing
7 facilities, intermediate care facilities, and
8 psychiatric hospitals.

9 (iii) The number of total deaths and
10 COVID–19 deaths (among both residents
11 and staff persons, including by age, gen-
12 der, race, and ethnicity) in skilled nursing
13 facilities, nursing facilities, intermediate
14 care facilities, and psychiatric hospitals.

15 (iv) Personal protective equipment
16 and hand hygiene supplies in skilled nurs-
17 ing facilities, nursing facilities, inter-
18 mediate care facilities, and psychiatric hos-
19 pitals.

20 (v) Ventilator capacity and supplies
21 available in skilled nursing facilities, nurs-
22 ing facilities, intermediate care facilities,
23 and psychiatric hospitals.

24 (vi) Resident beds and census in
25 skilled nursing facilities, nursing facilities,

1 intermediate care facilities, and psychiatric
2 hospitals.

3 (vii) Access to testing in skilled nurs-
4 ing facilities, nursing facilities, inter-
5 mediate care facilities, and psychiatric hos-
6 pitals.

7 (viii) Staffing shortages in skilled
8 nursing facilities, nursing facilities, inter-
9 mediate care facilities, and psychiatric hos-
10 pitals.

11 (ix) Other items determined appro-
12 priate by the Secretary.

13 (B) UPDATE.—The data described in sub-
14 paragraph (A) shall be updated not less fre-
15 quently than on a daily basis.

16 (C) DATA SHARING AND TRANSFER.—The
17 Secretary shall share the data described in sub-
18 paragraph (A) with—

19 (i) the Department of Veterans Af-
20 fairs;

21 (ii) the Federal Emergency Manage-
22 ment Agency;

23 (iii) States;

24 (iv) Indian Tribes; and

1 (v) other entities determined appro-
 2 priate by the Secretary.

3 (D) PRIVACY.—The Secretary shall take
 4 all necessary steps to protect the privacy of in-
 5 dividual residents and staff persons associated
 6 with the affected skilled nursing facility, nurs-
 7 ing facility, intermediate care facility, or psy-
 8 chiatric hospital.

9 (2) DISCLOSURE BY FACILITIES.—

10 (A) IN GENERAL.—Beginning after the
 11 date of enactment of this Act and continuing
 12 through the end of the emergency period, or
 13 through a later date determined appropriate by
 14 the Secretary, the Secretary shall ensure that
 15 skilled nursing facilities, nursing facilities, in-
 16 termediate care facilities, and psychiatric hos-
 17 pitals provide notification when a case of
 18 COVID-19 is confirmed among a resident or
 19 staff person or when 3 or more residents or
 20 staff exhibit the new-onset of respiratory symp-
 21 toms occurring within 72 hours of each other to
 22 the following:

23 (i) Residents of such facility and resi-
 24 dents' family or legal representative.

1 (ii) State Long-Term Care Ombuds-
2 man programs (as described in section
3 712(a)(1) of the Older Americans Act of
4 1965 (42 U.S.C. 3058g(a)(1))).

5 (iii) The protection and advocacy sys-
6 tem (as established under subtitle C of
7 title I of the Developmental Disabilities
8 Assistance and Bill of Rights Act (42
9 U.S.C. 15041 et seq.).

10 (B) TIMING.—The notification required
11 under subparagraph (A) shall be provided—

12 (i) within 12 hours of the confirma-
13 tion of a COVID–19 case or the confirma-
14 tion of 3 or more residents or staff persons
15 exhibiting new-onset respiratory symptoms
16 with 72 hours of each other; and

17 (ii) in the most expedient manner
18 available, to be followed-up with written
19 notification to residents of the facility and
20 residents’ family or legal representative.

21 (3) HHS STUDY AND REPORT ON COVID–19
22 OUTBREAKS.—

23 (A) STUDY.—

24 (i) IN GENERAL.—The Secretary shall
25 conduct a study on COVID–19 outbreaks

1 in skilled nursing facilities, nursing facili-
2 ties, intermediate care facilities, and psy-
3 chiatric hospitals. Such study shall include
4 an analysis of—

5 (I) the characteristics of skilled
6 nursing facilities, nursing facilities, in-
7 termediate care facilities, and psy-
8 chiatric hospitals that experienced
9 COVID–19 outbreaks;

10 (II) the size of the outbreaks;

11 (III) the number of deaths of
12 residents and staff persons from
13 COVID–19; and

14 (IV) the total number of deaths
15 of residents.

16 (ii) CHARACTERISTICS.—The charac-
17 teristics described in clause (i) shall in-
18 clude—

19 (I) the facility’s history of com-
20 pliance with the requirements of par-
21 ticipation under titles XVIII and XIX
22 of the Social Security Act, including
23 requirements relating to infection con-
24 trol and emergency preparedness;

1 (II) the facility's current or past
2 affiliation (as either a candidate or
3 participant) with the special focus fa-
4 cility program under section
5 1819(f)(8) of such Act (42 U.S.C.
6 1395i-3(f)(8)) and section
7 1919(f)(10) of such Act (42 U.S.C.
8 1396r(f)(10));

9 (III) the facility's resident size,
10 including the number of occupied
11 beds;

12 (IV) the facility's geographic lo-
13 cation; and

14 (V) the facility's for-profit or
15 non-profit status.

16 (B) REPORT.—Not later than 6 months
17 after the end of the emergency period, and
18 every 6 months thereafter through the end of
19 the 2-year period that begins at the end of the
20 emergency period, the Secretary shall submit to
21 the appropriate Committees of Congress a re-
22 port containing the results of the study con-
23 ducted under paragraph (1), together with rec-
24 ommendations for such legislation and adminis-

1 trative action as the Secretary determines ap-
2 propriate.

3 (c) MONTHLY BRIEFINGS ON THE COVID-19 RE-
4 SPONSE.—

5 (1) MONTHLY BRIEFINGS.— Not later than 15
6 days after the date of enactment of this Act, and at
7 least once every 30 days thereafter through the end
8 of the emergency period, the Secretary shall brief
9 the appropriate Committees of Congress (including
10 all members of such Committees) on the COVID-19
11 outbreak in skilled nursing facilities, nursing facili-
12 ties, intermediate care facilities, and psychiatric hos-
13 pitals and the response by the Secretary to such out-
14 break.

15 (2) REPORT.—Not later than 1 year after the
16 date of enactment of this Act, the Inspector General
17 of the Department of Health and Human Services
18 shall submit to Congress a report that evaluates the
19 response of the Secretary to the COVID-19 out-
20 break in skilled nursing facilities, nursing facilities,
21 intermediate care facilities, and psychiatric hospitals
22 such as guidance, rules, or waivers established by
23 the Secretary.

24 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to affect the requirements or condi-

1 tions of participation under titles XVIII and XIX of the
 2 Social Security Act with respect to skilled nursing facili-
 3 ties, nursing facilities, intermediate care facilities, and
 4 psychiatric hospitals.

5 (e) DEFINITIONS.—In this section:

6 (1) APPROPRIATE COMMITTEES OF CON-
 7 GRESS.—The term “appropriate Committee of Con-
 8 gress” means—

9 (A) the Committee on Finance of the Sen-
 10 ate;

11 (B) the Committee on Health, Education,
 12 Labor, and Pensions of the Senate;

13 (C) the Special Committee on Aging of the
 14 Senate;

15 (D) the Committee on Ways and Means of
 16 the House of Representatives; and

17 (E) the Committee on Energy and Com-
 18 merce of the House of Representatives.

19 (2) EMERGENCY PERIOD.—The term “Emer-
 20 gency period” means the emergency period described
 21 in section 1135(g)(1)(B) of the Social Security Act
 22 (42 U.S.C. 1395b–5(g)(1)(B)).

23 (3) INDIAN TRIBE.—The term “Indian Tribe”
 24 has the meaning given that term in section 4 of the

1 Indian Self-Determination and Education Assistance
2 Act (25 U.S.C. 5304).

3 (4) INTERMEDIATE CARE FACILITY.—The term
4 “intermediate care facility” means an intermediate
5 care facility described in section 1905(d) of the So-
6 cial Security Act (42 U.S.C. 1396d(d)).

7 (5) NURSING FACILITY.—The term “nursing
8 facility” has the meaning given that term in section
9 1919(a) of the Social Security Act (42 U.S.C.
10 1396r(a)).

11 (6) PSYCHIATRIC HOSPITAL.—The term “psy-
12 chiatric hospital” has the meaning given that term
13 in section 1861(f) of the Social Security Act (42
14 U.S.C. 1395x(f)).

15 (7) SECRETARY.—The term “Secretary” means
16 the Secretary of Health and Human Services.

17 (8) SKILLED NURSING FACILITY.—The term
18 “skilled nursing facility” has the meaning given that
19 term in section 1819(a) of the Social Security Act
20 (42 U.S.C. 1395i–3(a)).

21 (9) STATE.—The term “State” means the 50
22 States, the District of Columbia, the Commonwealth
23 of Puerto Rico, the United States Virgin Islands,
24 Guam, the Commonwealth of the Northern Mariana
25 Islands, and American Samoa.

- 1 (10) SURGE TEAM.—The term “surge team”
2 means a short-term staffing team.

