

116TH CONGRESS
2D SESSION

S. 4866

To amend titles XVIII and XIX of the Social Security Act to modernize Federal nursing home protections and to enhance care quality and transparency for nursing home residents and their families.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 19), 2020

Mr. CASEY (for himself and Mr. TOOMEY) 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 modernize Federal nursing home protections and to enhance care quality and transparency for nursing home residents and their families.

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 Reform
5 Modernization Act of 2020”.

1 **SEC. 2. IMPROVEMENTS TO NURSING FACILITIES UNDER**
2 **THE MEDICARE AND MEDICAID PROGRAMS.**

3 (a) ADVISORY COUNCIL ON SKILLED NURSING FA-
4 CILITY RANKINGS UNDER MEDICARE AND NURSING FA-
5 CILITY RANKINGS UNDER MEDICAID.—

6 (1) ESTABLISHMENT.—Not later than 1 year
7 after the date of enactment of this Act, the Sec-
8 retary of Health and Human Services shall establish
9 the Advisory Council on Skilled Nursing Facility
10 Rankings Under Medicare and Nursing Facility
11 Rankings Under Medicaid (in this subsection re-
12 ferred to as the “Advisory Council”).

13 (2) MEMBERSHIP.—The Secretary shall ensure
14 that the membership of the Advisory Council in-
15 cludes equal representation from the following:

16 (A) Consumers with nursing home experi-
17 ence, including adults age 65 and older, individ-
18 uals with disabilities, family caregivers, and
19 their advocates.

20 (B) Skilled nursing facilities and nursing
21 facilities, including nonprofit facilities.

22 (C) Academics with expertise in nursing
23 home oversight.

24 (D) Health professionals with nursing
25 home experience, such as physicians, nurses,

1 pharmacists, certified nursing assistants, and
2 direct care professionals.

3 (E) Professionals with expertise in quality
4 measurement.

5 (F) Professionals with expertise in emer-
6 gency management.

7 (G) State surveying agencies.

8 (H) State long-term care ombudsman pro-
9 grams.

10 (I) The Medicare Payment Advisory Com-
11 mission.

12 (J) The Medicaid and CHIP Payment and
13 Access Commission.

14 (K) The Centers for Medicare & Medicaid
15 Services.

16 (L) Other representatives as the Secretary
17 determines appropriate.

18 (3) DUTIES.—

19 (A) STUDY.—The Advisory Council shall
20 conduct a study of processes for ranking skilled
21 nursing facilities and nursing facilities under
22 paragraph (9) of section 1819(f) of the Social
23 Security Act, as added by subsection (b)(1) and
24 under paragraph (11) of section 1919(f) of

1 such Act, as added by subsection (c)(1). Such
2 study shall include an analysis of—

3 (i) which available, verifiable data
4 sources and measures are best for appro-
5 priately designating facilities in—

6 (I) the high-rated facility pro-
7 gram under paragraph (10) of such
8 section 1819(f) and under paragraph
9 (12) of such section 1919(f); and

10 (II) the low-rated facility pro-
11 gram under paragraph (8) of such
12 section 1819(f) and under paragraph
13 (10) of such section 1919(f);

14 (ii) the appropriate frequency with
15 which to update the rankings for the high-
16 rated and low-rated facility programs de-
17 scribed in clause (i);

18 (iii) how best to ensure that skilled
19 nursing facilities and nursing facilities ap-
20 propriately report adverse events;

21 (iv) how surveyors can clearly provide
22 the rationale for giving deficiencies to such
23 skilled nursing facilities and nursing facili-
24 ties and how this can be done in a timely
25 manner;

1 (v) how to manage suspensions from
2 the high-rated facility program described
3 in clause (i)(I) and the need for additional
4 consumer protections to administer such
5 high-rated facility program;

6 (vi) the availability or potential devel-
7 opment of, or modifications to, measures
8 or verifiable data sources on topics, includ-
9 ing avoidable hospital readmissions, emer-
10 gency room visits, risk-adjusted mortality,
11 discharges to the community, involuntary
12 discharges, situations involving the inap-
13 propriate administration of medications by
14 a facility, and emergency management; and

15 (vii) the development of, or modifica-
16 tions to, data collection, verifiable data
17 sources, and potential measures to assess
18 the financial stability of a facility.

19 (B) FINDINGS AND RECOMMENDATIONS.—

20 (i) IN GENERAL.—Not later than 2
21 years after the date of enactment of this
22 Act, the Advisory Council shall submit to
23 the Secretary the findings of the Advisory
24 Council under the study conducted under
25 subparagraph (A), together with rec-

ommendations for such legislation and administrative action as the Advisory Council determines appropriate.

(ii) PUBLIC AVAILABILITY.—Upon receiving the findings and recommendations under clause (i), the Secretary shall make the findings and recommendations available to the public on the internet website of the Centers for Medicare & Medicaid Services.

(4) SUNSET.—The Advisory Council shall terminate upon the submission of the report to the Secretary under paragraph (3)(B)(i).

(b) MEDICARE PROGRAM REVISIONS.—

(1) ESTABLISHMENT OF RANKINGS AND HIGH-RATED FACILITY PROGRAM.—

(A) IN GENERAL.—Section 1819(f) of the Social Security Act (42 U.S.C. 1395i–3(f)) is amended by adding at the end the following new paragraphs:

“(9) RANKING PROCESS.—

“(A) PROCESS.—

“(i) ESTABLISHMENT.—The Secretary shall establish a process to rank skilled

nursing facilities based on compliance with the applicable requirements of this Act.

“(ii) DATA.—The process established under clause (i) shall include the use of at least the preceding 3 years of health inspection data, if appropriate, and other data as determined appropriate by the Secretary.

“(iii) FINDINGS AND RECOMMENDATIONS OF THE ADVISORY COUNCIL ON SKILLED NURSING FACILITY RANKINGS UNDER MEDICARE AND NURSING FACILITY RANKINGS UNDER MEDICAID.—In establishing the process under clause (i), the Secretary shall take into account the findings and recommendations of the Advisory Council that are submitted to the Secretary under section 2(a)(3)(B)(i) of the Nursing Home Reform Modernization Act of 2020.

“(B) RANKING.—

“(i) IN GENERAL.—Under the process established under subparagraph (A), the Secretary shall use the rankings of skilled nursing facilities to categorize facilities

into highest and lowest groups for the purposes specified in clause (ii).

“(ii) TIMING AND USE OF RANKINGS.—Not later than 2 years after the date the Secretary receives the findings and recommendations described in subparagraph (A)(iii), the Secretary shall use the rankings under clause (i) for purposes of carrying out—

“(I) the high-rated facility program under paragraph (10); and

“(II) the low-rated facility program under paragraph (8).

“(10) HIGH-RATED FACILITY PROGRAM.—

“(A) ESTABLISHMENT.—

“(i) IN GENERAL.—Not later than 2 years after the date the Secretary receives the findings and recommendations described in paragraph (9)(A)(iii), the Secretary shall establish and implement a high-rated facility program to encourage and reward compliance with the requirements of this Act.

“(ii) REPORT.—In establishing the high-rated facility program, the Secretary

1 shall take into account the findings and
2 recommendations described in paragraph
3 (9)(A)(iii).

4 “(iii) REGULATIONS.—The Secretary
5 shall establish the high-rated facility pro-
6 gram under clause (i) through notice and
7 comment rulemaking.

8 “(B) DESIGNATION.—Under the high-
9 rated facility program, subject to subparagraph
10 (D), the Secretary shall designate the highest
11 rated skilled nursing facilities under the
12 rankings under paragraph (9)(B) as high-rated
13 skilled nursing facilities.

14 “(C) DISTINCTION ON NURSING HOME
15 COMPARE WEBSITE.—A skilled nursing facility
16 that is designated as a high-rated skilled nurs-
17 ing facility under subparagraph (B) shall re-
18 ceive a high-rated distinction on the official
19 Internet website of the Federal Government for
20 comparing nursing homes pursuant to sub-
21 section (i)(1)(C).

22 “(D) SUSPENSION OF HIGH-RATED STA-
23 TUS.—

24 “(i) IN GENERAL.—The Secretary
25 shall suspend a skilled nursing facility’s

1 designation under subparagraph (B) if the
2 Secretary determines that there are cir-
3 cumstances warranting such suspension.

4 “(ii) CIRCUMSTANCES.—In estab-
5 lishing the circumstances under clause (i),
6 the Secretary shall take into account—

7 “(I) findings from Federal sur-
8 veys and investigations;

9 “(II) findings from State surveys
10 conducted under subsection (g)(2)(A);

11 “(III) findings from State inves-
12 tigations and surveys conducted under
13 subsection (g)(4), including a high
14 number of substantiated complaints,
15 the frequency and severity of substan-
16 tiated complaints, and how the com-
17 plaints are handled by the facility;

18 “(IV) situations involving
19 changes of ownership, administration,
20 or management of a skilled nursing
21 facility, or the director of nursing;

22 “(V) situations involving the in-
23 appropriate administration of medica-
24 tions by a facility;

1 “(VI) situations involving invol-
2 untary discharges of residents; and

3 “(VII) other factors determined
4 appropriate by the Secretary.

5 “(iii) NO REINSTATEMENT PRIOR TO
6 NEXT STANDARD SURVEY.—If a skilled
7 nursing facility’s designation is suspended
8 under clause (i), such designation shall not
9 be reinstated prior to a subsequent survey
10 as specified under subsection
11 (g)(2)(A)(iii).”.

12 (B) ASSESSMENT OF HIGH-RATED DES-
13 IGNATION IN SPECIAL SURVEYS.—Section
14 1819(g)(2)(A)(iii)(II) of the Social Security Act
15 (42 U.S.C. 1395i–3(g)(2)(A)(iii)(II)) is amend-
16 ed—

17 (i) by inserting “(or, in the case of a
18 facility that is designated as a high-rated
19 skilled nursing facility under subsection
20 (f)(10), shall be conducted)” after “may be
21 conducted”; and

22 (ii) by adding at the end the following
23 new sentence: “On and after the date the
24 Secretary implements the high-rated facil-
25 ity program under subsection (f)(10), any

1 survey conducted, pursuant to the pre-
 2 ceding sentence, of a facility that is des-
 3 ignated as a high-rated skilled nursing fa-
 4 cility under such subsection shall include
 5 an assessment of whether such designation
 6 should continue or be suspended under
 7 subparagraph (D) of such subsection.”.

8 (2) IMPROVEMENTS TO THE SPECIAL FOCUS
 9 FACILITY PROGRAM.—

10 (A) APPROPRIATE PARTICIPATION.—Sec-
 11 tion 1819(f)(8) of the Social Security Act (42
 12 U.S.C. 1395i–3(f)(8)) is amended—

13 (i) in subparagraph (A), by striking
 14 “The Secretary” and inserting “Subject to
 15 the succeeding provisions of this sub-
 16 section, the Secretary”; and

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

19 “(C) APPROPRIATE PARTICIPATION.—Not
 20 later than 1 year after the date of enactment of
 21 the Nursing Home Reform Modernization Act
 22 of 2020, the Secretary shall ensure that the
 23 number of facilities participating in the special
 24 focus facility program is not less than 3.5 per-
 25 cent of all skilled nursing facilities.”.

(B) CONVERSION OF THE SPECIAL FOCUS FACILITY PROGRAM TO THE LOW-RATED FACILITY PROGRAM AND ADDITIONAL REQUIREMENTS.—Section 1819(f)(8) of the Social Security Act (42 U.S.C. 1395i–3(f)(8)), as amended by subparagraph (A), is amended—

(i) in subparagraph (B), by inserting the following before the period at the end: “(or, on and after the date the Secretary makes the conversion described in subparagraph (D), at a frequency determined appropriate by the Secretary (but in no case less than once every 6 months))”; and

(ii) by adding at the end the following new subparagraphs:

“(D) CONVERSION TO THE LOW-RATED FACILITY PROGRAM.—

“(i) IN GENERAL.—On the same date that the Secretary implements the high-rated facility program under paragraph (10), the Secretary shall convert the special focus facility program under this subsection to the low-rated facility program.

“(ii) REGULATIONS.—The Secretary shall carry out the conversion under clause

1 (i) through notice and comment rule-
2 making.

3 “(iii) ADDITIONAL REQUIREMENTS
4 FOR THE LOW-RATED FACILITY PRO-
5 GRAM.—In addition to the provisions that
6 apply to the low-rated facility program
7 through the conversion from the special
8 focus facility program, the succeeding pro-
9 visions of this subsection shall also apply
10 to the low-rated facility program.

11 “(E) PARTICIPATION.—Subject to the min-
12 imum participation requirement under subpara-
13 graph (C), the Secretary shall designate the
14 lowest rated skilled nursing facilities under the
15 rankings under paragraph (9)(B) for participa-
16 tion in the low-rated facility program.

17 “(F) PROGRESSIVE ENFORCEMENT AC-
18 TIONS.—The Secretary, in consultation with
19 States, shall utilize progressive enforcement ac-
20 tions, of increasing severity, to ensure facilities
21 participating in the low-rated facility program
22 meet the applicable requirements under this
23 Act.

24 “(G) ENFORCEMENT FOR PATTERNS OF
25 DEFICIENCY.—The Secretary may utilize en-

1 enforcement actions specified in subsection (h)(2)
 2 to remedy patterns of deficiencies cited across
 3 multiple surveys.

4 “(H) COMPLIANCE ASSISTANCE PRO-
 5 GRAMS.—

6 “(i) ON-SITE CONSULTATION AND
 7 EDUCATIONAL PROGRAMMING.—

8 “(I) IN GENERAL.—The Sec-
 9 retary shall establish on-site consulta-
 10 tion and educational programming for
 11 skilled nursing facilities participating
 12 in the low-rated facility program with
 13 respect to compliance with the appli-
 14 cable requirements under this Act.

15 “(II) ENTITY.—The on-site con-
 16 sultation and educational program-
 17 ming described in subclause (I) shall
 18 be carried out by quality improvement
 19 organizations under part B of title XI
 20 or other independent organizations of
 21 a similar type that do not have con-
 22 flicts of interest and are deemed ap-
 23 propriate by the Secretary.

24 “(III) REQUIRED PARTICIPA-
 25 TION.—A skilled nursing facility par-

1 ticipating in the low-rated facility pro-
 2 gram shall participate in any con-
 3 sultations and educational program-
 4 ming described in subclause (I) con-
 5 ducted at the facility.

6 “(ii) CONSULTATION INDEPENDENT
 7 OF ENFORCEMENT.—

8 “(I) IN GENERAL.—Subject to
 9 subclause (II), on-site consultations
 10 and educational programming de-
 11 scribed in clause (i) shall be con-
 12 ducted independently of any enforce-
 13 ment activity.

14 “(II) EXCEPTION.—Subclause (I)
 15 shall not apply in the case where a
 16 triggering event at the skilled nursing
 17 facility is observed in the course of
 18 providing on-site consultations and
 19 educational programming described in
 20 clause (i). In establishing such on-site
 21 consultations and educational pro-
 22 gramming, the Secretary shall deter-
 23 mine the triggering events for which
 24 the use of necessary enforcement ac-
 25 tions is permitted notwithstanding the

1 limitation under subclause (I). Such
 2 triggering events shall include events
 3 that are required to be reported under
 4 State and Federal law and a pattern
 5 of deficiencies or problems that the
 6 quality improvement organization or
 7 other organization has identified for
 8 correction but which are consistently
 9 not corrected.

10 “(I) PUBLIC AVAILABILITY.—

11 “(i) IN GENERAL.—The Secretary
 12 shall ensure that a skilled nursing facility’s
 13 participation in the low-rated facility pro-
 14 gram is publicly announced, including to—

15 “(I) resident family councils;

16 “(II) resident attending physi-
 17 cians;

18 “(III) the State board respon-
 19 sible for the licensing of the skilled
 20 nursing facility administrator at the
 21 facility;

22 “(IV) State Long-Term Care
 23 Ombudsman programs (as described
 24 in section 712(a)(1) of the Older
 25 Americans Act of 1965); and

1 “(V) the community at large.

2 “(ii) WRITTEN NOTIFICATION.—The
3 Secretary shall ensure that, in the case of
4 a skilled nursing facility that is partici-
5 pating in the low-rated facility program,
6 residents of such facility and family or
7 legal representatives are furnished with in-
8 dividualized written notice of such partici-
9 pation. Such notice shall be provided to
10 current residents and to new residents
11 prior to admission.

12 “(J) REQUIREMENT FOR REMOVAL.—The
13 Secretary shall require that a skilled nursing fa-
14 cility show improvement prior to removal from
15 the low-rated facility program.”.

16 (C) USE OF CIVIL MONEY PENALTIES.—
17 Section 1819(h)(2)(B)(ii)(IV)(ff) of the Social
18 Security Act (42 U.S.C. 1395i-
19 3(h)(2)(B)(ii)(IV)(ff)) is amended—

20 (i) by striking “and facility improve-
21 ment initiatives” and inserting “facility
22 improvement initiatives”; and

23 (ii) by inserting the following before
24 the period at the end: “, and, on and after
25 the date the Secretary makes the conver-

sion described in subsection (f)(8)(D), consultation, education, and other activities to foster improvement and remedy root causes contributing to deficiencies cited across multiple surveys among facilities in the low-rated facility program under subsection (f)(8)’’.

(3) INFORMATION ON HIGH-RATED AND LOW-RATED FACILITIES ON NURSING HOME COMPARE MEDICARE WEBSITE.—Section 1819(i)(1) of the Social Security Act (42 U.S.C. 1395i–3(i)(1)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

“(vi) On and after the date the Secretary implements the high-rated facility program under subsection (f)(10) and makes the conversion under subsection (f)(8)(D), consistent with subparagraph (C)—

“(I) for each skilled nursing facility that is designated as a high-rated skilled nursing facility under subsection (f)(10), the date the facility was so designated; and

1 “(II) for each skilled nursing fa-
2 cility participating in the low-rated fa-
3 cility program under subsection (f)(8),
4 the date the facility was identified for
5 inclusion in such program.”; and

6 (B) by adding at the end the following new
7 subparagraphs:

8 “(C) DISTINCTIONS FOR HIGH-RATED AND
9 LOW-RATED FACILITIES.—On and after the
10 date the Secretary implements the high-rated
11 facility program under subsection (f)(10) and
12 makes the conversion under subsection
13 (f)(8)(D), the Secretary shall ensure that
14 graphics, including an appropriate explanation
15 of such graphics, are prominently displayed on
16 the website described in subparagraph (A) in
17 order to distinguish each of the following:

18 “(i) Skilled nursing facilities that are
19 designated as high-rated skilled nursing fa-
20 cilities under subsection (f)(10).

21 “(ii) Skilled nursing facilities that are
22 participating in the low-rated facility pro-
23 gram under subsection (f)(8), with infor-
24 mation on facilities that have been placed
25 in such program more than one time over

1 the course of the last 10 years (including
 2 the number of times such skilled nursing
 3 facilities have been placed in the program).

4 “(D) FOCUS GROUPS AND CONSUMER
 5 TESTING.—In order to help limit confusion,
 6 particularly among older adults, individuals
 7 with disabilities, and family caregivers, the Sec-
 8 retary shall utilize focus groups and other con-
 9 sumer testing methods prior to including the
 10 additional information under subparagraph
 11 (A)(vi) and implementing the distinctions under
 12 subparagraph (C).”.

13 (c) MEDICAID PROGRAM REVISIONS.—

14 (1) ESTABLISHMENT OF RANKINGS AND HIGH-
 15 RATED FACILITY PROGRAM.—

16 (A) IN GENERAL.—Section 1919(f) of the
 17 Social Security Act (42 U.S.C. 1396r(f)) is
 18 amended by adding at the end the following
 19 new paragraphs:

20 “(11) RANKING PROCESS.—

21 “(A) PROCESS.—

22 “(i) ESTABLISHMENT.—The Secretary
 23 shall establish a process to rank nursing
 24 facilities based on compliance with the ap-
 25 plicable requirements of this Act.

1 “(ii) DATA.—The process established
2 under clause (i) shall include the use of at
3 least the preceding 3 years of health in-
4 spection data, if appropriate, and other
5 data as determined appropriate by the Sec-
6 retary.

7 “(iii) FINDINGS AND RECOMMENDA-
8 TIONS OF THE ADVISORY COUNCIL ON
9 SKILLED NURSING FACILITY RANKINGS
10 UNDER MEDICARE AND NURSING FACILITY
11 RANKINGS UNDER MEDICAID.—In estab-
12 lishing the process under clause (i), the
13 Secretary shall take into account the find-
14 ings and recommendations of the Advisory
15 Council that are submitted to the Sec-
16 retary under section 2(a)(3)(B)(i) of the
17 Nursing Home Reform Modernization Act
18 of 2020.

19 “(B) RANKING.—

20 “(i) IN GENERAL.—Under the process
21 established under subparagraph (A), the
22 Secretary shall use the rankings of nursing
23 facilities to categorize facilities into highest
24 and lowest groups for the purposes speci-
25 fied in clause (ii).

1 “(ii) TIMING AND USE OF
 2 RANKINGS.—Not later than 2 years after
 3 the date the Secretary receives the findings
 4 and recommendations described in sub-
 5 paragraph (A)(iii), the Secretary shall use
 6 the rankings under clause (i) for purposes
 7 of carrying out—

8 “(I) the high-rated facility pro-
 9 gram under paragraph (12); and

10 “(II) the low-rated facility pro-
 11 gram under paragraph (10).

12 “(12) HIGH-RATED FACILITY PROGRAM.—

13 “(A) ESTABLISHMENT.—

14 “(i) IN GENERAL.—Not later than 2
 15 years after the date the Secretary receives
 16 the findings and recommendations de-
 17 scribed in paragraph (11)(A)(iii), the Sec-
 18 retary shall establish and implement a
 19 high-rated facility program to encourage
 20 and reward compliance with the require-
 21 ments of this Act.

22 “(ii) REPORT.—In establishing the
 23 high-rated facility program, the Secretary
 24 shall take into account the findings and

1 recommendations described in paragraph
2 (11)(A)(iii).

3 “(iii) REGULATIONS.—The Secretary
4 shall establish the high-rated facility pro-
5 gram under clause (i) through notice and
6 comment rulemaking.

7 “(B) DESIGNATION.—Under the high-
8 rated facility program, subject to subparagraph
9 (D), the Secretary shall designate the highest
10 rated nursing facilities under the rankings
11 under paragraph (11)(B) as high-rated nursing
12 facilities.

13 “(C) DISTINCTION ON NURSING HOME
14 COMPARE WEBSITE.—A nursing facility that is
15 designated as a high-rated nursing facility
16 under subparagraph (B) shall receive a high-
17 rated distinction on the official Internet website
18 of the Federal Government for comparing nurs-
19 ing homes pursuant to subsection (i)(1)(C).

20 “(D) SUSPENSION OF HIGH-RATED STA-
21 TUS.—

22 “(i) IN GENERAL.—The Secretary
23 shall suspend a nursing facility’s designa-
24 tion under subparagraph (B) if the Sec-

1 retary determines that there are cir-
2 cumstances warranting such suspension.

3 “(ii) CIRCUMSTANCES.—In estab-
4 lishing the circumstances under clause (i),
5 the Secretary shall take into account—

6 “(I) findings from Federal sur-
7 veys and investigations;

8 “(II) findings from State surveys
9 conducted under subsection (g)(2)(A);

10 “(III) findings from State inves-
11 tigations and surveys conducted under
12 subsection (g)(4), including a high
13 number of substantiated complaints,
14 the frequency and severity of substan-
15 tiated complaints, and how the com-
16 plaints are handled by the facility;

17 “(IV) situations involving
18 changes of ownership, administration,
19 or management of a nursing facility,
20 or the director of nursing;

21 “(V) situations involving the in-
22 appropriate administration of medica-
23 tions by a facility;

24 “(VI) situations involving invol-
25 untary discharges of residents; and

1 “(VII) other factors determined
2 appropriate by the Secretary.

3 “(iii) NO REINSTATEMENT PRIOR TO
4 NEXT STANDARD SURVEY.—If a nursing
5 facility’s designation is suspended under
6 clause (i), such designation shall not be re-
7 instated prior to a subsequent survey as
8 specified under subsection (g)(2)(A)(iii).”.

9 (B) ASSESSMENT OF HIGH-RATED DES-
10 IGNATION IN SPECIAL SURVEYS.—Section
11 1919(g)(2)(A)(iii)(II) of the Social Security Act
12 (42 U.S.C. 1396r(g)(2)(A)(iii)(II)) is amend-
13 ed—

14 (i) by inserting “(or, in the case of a
15 facility that is designated as a high-rated
16 nursing facility under subsection (f)(12),
17 shall be conducted)” after “may be con-
18 ducted”; and

19 (ii) by adding at the end the following
20 new sentence: “On and after the date the
21 Secretary implements the high-rated facil-
22 ity program under subsection (f)(12), any
23 survey conducted, pursuant to the pre-
24 ceding sentence, of a facility that is des-
25 ignated as a high-rated nursing facility

1 under such subsection shall include an as-
 2 sessment of whether such designation
 3 should continue or be suspended under
 4 subparagraph (D) of such subsection.”.

5 (2) IMPROVEMENTS TO THE SPECIAL FOCUS
 6 FACILITY PROGRAM.—

7 (A) APPROPRIATE PARTICIPATION.—Sec-
 8 tion 1919(f)(10) of the Social Security Act (42
 9 U.S.C. 1395r(f)(10)) is amended—

10 (i) in subparagraph (A), by striking
 11 “The Secretary” and inserting “Subject to
 12 the succeeding provisions of this sub-
 13 section, the Secretary”; and

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

16 “(C) APPROPRIATE PARTICIPATION.—Not
 17 later than 1 year after the date of enactment of
 18 the Nursing Home Reform Modernization Act
 19 of 2020, the Secretary shall ensure that the
 20 number of facilities participating in the special
 21 focus facility program is not less than 3.5 per-
 22 cent of all nursing facilities.”.

23 (B) CONVERSION OF THE SPECIAL FOCUS
 24 FACILITY PROGRAM TO THE LOW-RATED FACIL-
 25 ITY PROGRAM AND ADDITIONAL REQUIRE-

1 MENTS.—Section 1919(f)(10) of the Social Se-
 2 curity Act (42 U.S.C. 1395i-3(f)(10)), as
 3 amended by subparagraph (A), is amended—

4 (i) in subparagraph (B), by inserting
 5 the following before the period at the end:
 6 “(or, on and after the date the Secretary
 7 makes the conversion described in subpara-
 8 graph (D), at a frequency determined ap-
 9 propriate by the Secretary (but in no case
 10 less than once every 6 months))”; and

11 (ii) by adding at the end the following
 12 new subparagraphs:

13 “(D) CONVERSION TO THE LOW-RATED
 14 FACILITY PROGRAM.—

15 “(i) IN GENERAL.—On the same date
 16 that the Secretary implements the high-
 17 rated facility program under paragraph
 18 (12), the Secretary shall convert the spe-
 19 cial focus facility program under this sub-
 20 section to the low-rated facility program.

21 “(ii) REGULATIONS.—The Secretary
 22 shall carry out the conversion under clause
 23 (i) through notice and comment rule-
 24 making.

1 “(iii) ADDITIONAL REQUIREMENTS
2 FOR THE LOW-RATED FACILITY PRO-
3 GRAM.—In addition to the provisions that
4 apply to the low-rated facility program
5 through the conversion from the special
6 focus facility program, the succeeding pro-
7 visions of this subsection shall also apply
8 to the low-rated facility program.

9 “(E) PARTICIPATION.—Subject to the min-
10 imum participation requirement under subpara-
11 graph (C), the Secretary shall designate the
12 lowest rated nursing facilities under the
13 rankings under paragraph (11)(B) for partici-
14 pation in the low-rated facility program.

15 “(F) PROGRESSIVE ENFORCEMENT AC-
16 TIONS.—The Secretary, in consultation with
17 States, shall utilize progressive enforcement ac-
18 tions, of increasing severity, to ensure facilities
19 participating in the low-rated facility program
20 meet the applicable requirements under this
21 Act.

22 “(G) ENFORCEMENT FOR PATTERNS OF
23 DEFICIENCY.—The Secretary may utilize en-
24 forcement actions specified in subsection (h)(2)

1 to remedy patterns of deficiencies cited across
 2 multiple surveys.

3 “(H) COMPLIANCE ASSISTANCE PRO-
 4 GRAMS.—

5 “(i) ON-SITE CONSULTATION AND
 6 EDUCATIONAL PROGRAMMING.—

7 “(I) IN GENERAL.—The Sec-
 8 retary shall establish on-site consulta-
 9 tion and educational programming for
 10 nursing facilities participating in the
 11 low-rated facility program with re-
 12 spect to compliance with the applica-
 13 ble requirements under this Act.

14 “(II) ENTITY.—The on-site con-
 15 sultation and educational program-
 16 ming described in subclause (I) shall
 17 be carried out by quality improvement
 18 organizations under part B of title XI
 19 or other independent organizations of
 20 a similar type that do not have con-
 21 flicts of interest and are deemed ap-
 22 propriate by the Secretary.

23 “(III) REQUIRED PARTICIPA-
 24 TION.—A nursing facility partici-
 25 pating in the low-rated facility pro-

1 gram shall participate in any con-
2 sultations and educational program-
3 ming described in subclause (I) con-
4 ducted at the facility.

5 “(ii) CONSULTATION INDEPENDENT
6 OF ENFORCEMENT.—

7 “(I) IN GENERAL.—Subject to
8 subclause (II), on-site consultations
9 and educational programming de-
10 scribed in clause (i) shall be con-
11 ducted independently of any enforce-
12 ment activity.

13 “(II) EXCEPTION.—Subclause (I)
14 shall not apply in the case where a
15 triggering event at the nursing facility
16 is observed in the course of providing
17 on-site consultations and educational
18 programming described in clause (i).
19 In establishing such on-site consulta-
20 tions and educational programming,
21 the Secretary shall determine the trig-
22 gering events for which the use of
23 necessary enforcement actions is per-
24 mitted notwithstanding the limitation
25 under subclause (I). Such triggering

1 events shall include events that are re-
2 quired to be reported under State and
3 Federal law and a pattern of defi-
4 ciencies or problems that the quality
5 improvement organization or other or-
6 ganization has identified for correc-
7 tion but which are consistently not
8 corrected.

9 “(I) PUBLIC AVAILABILITY.—

10 “(i) IN GENERAL.—The Secretary
11 shall ensure that a nursing facility’s par-
12 ticipation in the low-rated facility program
13 is publicly announced, including to—

14 “(I) resident family councils;

15 “(II) resident attending physi-
16 cians;

17 “(III) the State board respon-
18 sible for the licensing of the nursing
19 facility administrator at the facility;

20 “(IV) State Long-Term Care
21 Ombudsman programs (as described
22 in section 712(a)(1) of the Older
23 Americans Act of 1965); and

24 “(V) the community at large.

1 “(ii) WRITTEN NOTIFICATION.—The
 2 Secretary shall ensure that, in the case of
 3 a nursing facility that is participating in
 4 the low-rated facility program, residents of
 5 such facility and family or legal represent-
 6 atives are furnished with individualized
 7 written notice of such participation. Such
 8 notice shall be provided to current resi-
 9 dents and to new residents prior to admis-
 10 sion.

11 “(J) REQUIREMENT FOR REMOVAL.—The
 12 Secretary shall require that a nursing facility
 13 show improvement prior to removal from the
 14 low-rated facility program.”.

15 (C) USE OF CIVIL MONEY PENALTIES.—
 16 Section 1919(h)(3)(C)(ii)(IV)(ff) of the Social
 17 Security Act (42 U.S.C.
 18 1396r(h)(3)(C)(ii)(IV)(ff)) is amended—

19 (i) by striking “and facility improve-
 20 ment initiatives” and inserting “facility
 21 improvement initiatives”; and

22 (ii) by inserting the following before
 23 the period at the end: “, and, on and after
 24 the date the Secretary makes the conver-
 25 sion described in subsection (f)(10)(D),

1 consultation, education, and other activities
 2 to foster improvement and remedy root
 3 causes contributing to deficiencies cited
 4 across multiple surveys among facilities in
 5 the low-rated facility program under sub-
 6 section (f)(10)’’.

7 (3) INFORMATION ON HIGH-RATED AND LOW-
 8 RATED FACILITIES ON NURSING HOME COMPARE
 9 MEDICARE WEBSITE.—Section 1919(i)(1) of the So-
 10 cial Security Act (42 U.S.C. 1396r(i)(1)) is amend-
 11 ed—

12 (A) in subparagraph (A), by adding at the
 13 end the following new clause:

14 “(vi) On and after the date the Sec-
 15 retary implements the high-rated facility
 16 program under subsection (f)(12) and
 17 makes the conversion under subsection
 18 (f)(10)(D), consistent with subparagraph
 19 (C)—

20 “(I) for each nursing facility that
 21 is designated as a high-rated nursing
 22 facility under subsection (f)(12), the
 23 date the facility was so designated;
 24 and

1 “(II) for each nursing facility
2 participating in the low-rated facility
3 program under subsection (f)(10), the
4 date the facility was identified for in-
5 clusion in such program.”; and

6 (B) by adding at the end the following new
7 subparagraphs:

8 “(C) DISTINCTIONS FOR HIGH-RATED AND
9 LOW-RATED FACILITIES.—On and after the
10 date the Secretary implements the high-rated
11 facility program under subsection (f)(12) and
12 makes the conversion under subsection
13 (f)(10)(D), the Secretary shall ensure that
14 graphics, including an appropriate explanation
15 of such graphics, are prominently displayed on
16 the website described in subparagraph (A) in
17 order to distinguish each of the following:

18 “(i) Nursing facilities that are des-
19 ignated as high-rated nursing facilities
20 under subsection (f)(12).

21 “(ii) Nursing facilities that are par-
22 ticipating in the low-rated facility program
23 under subsection (f)(10), with information
24 on facilities that have been placed in such
25 program more than one time over the

1 course of the last 10 years (including the
 2 number of times such nursing facilities
 3 have been placed in the program).

4 “(D) FOCUS GROUPS AND CONSUMER
 5 TESTING.—In order to help limit confusion,
 6 particularly among older adults, individuals
 7 with disabilities, and family caregivers, the Sec-
 8 retary shall utilize focus groups and other con-
 9 sumer testing methods prior to including the
 10 additional information under subparagraph
 11 (A)(vi) and implementing the distinctions under
 12 subparagraph (C).”.

13 (d) GAO STUDY AND REPORT.—

14 (1) STUDY.—The Comptroller General of the
 15 United States (in this section referred to as the
 16 “Comptroller General”) shall conduct a study on the
 17 quality of items and services furnished by skilled
 18 nursing facilities under title XVIII of the Social Se-
 19 curity Act and nursing facilities under title XIX of
 20 such Act, and such facilities’ compliance with the
 21 applicable requirements under such titles. Such
 22 study shall include analysis of the following:

23 (A) The effectiveness of the low-rated facil-
 24 ity program established under paragraph (8) of
 25 section 1819(f) of the Social Security Act (42

1 U.S.C. 1395i–3(f)), as amended by subsection
 2 (b)(2), and under paragraph (10) of section
 3 1919(f) of such Act (42 U.S.C. 1396r(f)), as
 4 amended by subsection (c)(2).

5 (B) Other areas determined appropriate by
 6 the Comptroller General.

7 (2) REPORT.—Not later than 6 years after the
 8 date of enactment of this Act, the Comptroller Gen-
 9 eral shall submit to the appropriate Committees of
 10 Congress a report containing the results of the study
 11 conducted under paragraph (1), together with rec-
 12 ommendations for such legislation and administra-
 13 tive action as the Comptroller General determines
 14 appropriate.

15 (e) RULES OF CONSTRUCTION.—

16 (1) SURVEYS.—Nothing in the provisions of, or
 17 the amendments made by, this section shall be con-
 18 strued to allow the Secretary to modify or deviate
 19 from—

20 (A) a survey schedule that requires unan-
 21 nounced and unanticipated surveying of skilled
 22 nursing facilities under subsection (g)(2)(A)(i)
 23 of section 1819 of the Social Security Act (42
 24 U.S.C. 1395i–3(g)) or under subsection

1 (g)(2)(A)(i) of section 1919 of the Social Secu-
 2 rity Act (42 U.S.C. 1396r(g));

3 (B) the surveying frequency specified
 4 under subsection (g)(2)(A)(iii) of such section
 5 1819 or under subsection (g)(2)(A)(iii) of such
 6 section 1919; or

7 (C) surveys and investigations as required
 8 under subsection (g)(4) of such section 1819 or
 9 under subsection (g)(4) of such section 1919.

10 (2) ACCOUNTABILITY AND STATE LAW.—Noth-
 11 ing in the provisions of, or the amendments made
 12 by, this section shall be construed to impact the abil-
 13 ity of a resident, the family of a resident, or a suc-
 14 cessor in interest to hold a skilled nursing facility or
 15 nursing facility accountable or change protections
 16 granted under State law.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) APPROPRIATE COMMITTEES OF CON-
 20 GRESS.—The term “appropriate Committee of Con-
 21 gress” means—

22 (A) the Committee on Finance of the Sen-
 23 ate;

24 (B) the Committee on Health, Education,
 25 Labor, and Pensions of the Senate;

1 (C) the Special Committee on Aging of the
2 Senate;

3 (D) the Committee on Ways and Means of
4 the House of Representatives; and

5 (E) the Committee on Energy and Com-
6 merce of the House of Representatives.

7 (2) 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 (3) SKILLED NURSING FACILITY.—The term
12 “skilled nursing facility” has the meaning given that
13 term in section 1819(a) of the Social Security Act
14 (42 U.S.C. 1395i–3(a)).

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

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