

117TH CONGRESS
1ST SESSION

H. R. 2114

To amend titles XVIII and XIX of the Social Security Act to require skilled nursing facilities, nursing facilities, and intermediate care facilities for the intellectually disabled to permit certain essential caregiver visitors during a public health emergency under the Medicare and Medicaid programs.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2021

Ms. TENNEY introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 titles XVIII and XIX of the Social Security Act to require skilled nursing facilities, nursing facilities, and intermediate care facilities for the intellectually disabled to permit certain essential caregiver visitors during a public health emergency under the Medicare and Medicaid programs.

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 “Essential Caregivers
3 Act of 2021”.

4 **SEC. 2. REQUIRING CERTAIN FACILITIES TO PERMIT ES-**
5 **SENTIAL CAREGIVER VISITORS DURING A**
6 **PUBLIC HEALTH EMERGENCY.**

7 (a) SKILLED NURSING FACILITIES; NURSING FA-
8 CILITIES.—Section 1819(c) and 1919(c) of the Social Se-
9 curity Act (42 U.S.C. 1395i–3(c), 1396r(c)) are each
10 amended—

11 (1) in paragraph (3)—

12 (A) in subparagraph (D), by striking
13 “and” at the end;

14 (B) in subparagraph (E), by striking the
15 period and inserting “; and”; and

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

18 “(F) establish and maintain, during the
19 period beginning on the date of the enactment
20 of this subparagraph and ending on the last day
21 of the emergency period described in section
22 1135(g)(1)(B), the essential caregiver visitor
23 program described in paragraph (7).”; and

24 (2) by adding at the end the following new
25 paragraph:

1 “(7) ESSENTIAL CAREGIVER VISITOR PRO-
2 GRAM.—

3 “(A) IN GENERAL.—For purposes sub-
4 paragraph (F) of paragraph (3), the essential
5 caregiver visitor program described in this para-
6 graph is a program established by a facility de-
7 scribed in such paragraph under which such fa-
8 cility—

9 “(i) allows each resident of such facil-
10 ity to elect not more than 2 essential care-
11 givers (as defined in subparagraph (C)) to
12 visit such resident at such facility;

13 “(ii) permits each such caregiver so
14 elected by such resident to provide care to
15 such resident at such facility for up to 8
16 hours every day; and

17 “(iii) enforces each agreement de-
18 scribed in subparagraph (C)(iv) with re-
19 spect to an essential caregiver.

20 “(B) PRESUMPTION OF ELECTION.—For
21 purposes of subparagraph (A), in the case of a
22 resident who is unable, by reason of physical or
23 mental disability, to make an election described
24 in such subparagraph, 2 of the following indi-
25 viduals who are essential caregivers (as defined

1 in subparagraph (C)), as selected by the legal
2 guardian of such resident, shall be deemed to
3 have been so elected by such resident:

4 “(i) A relative of such resident.

5 “(ii) The power of attorney of such
6 resident.

7 “(iii) The health care proxy of such
8 resident.

9 “(C) ESSENTIAL CAREGIVER DEFINED.—

10 For purposes of this paragraph, the term ‘es-
11 sential caregiver’ means, with respect to a resi-
12 dent of a facility described in subparagraph
13 (A), an individual who—

14 “(i) furnished care to such resident
15 prior to the first day of the emergency pe-
16 riod described in section 1135(g)(1)(B);

17 “(ii) will provide activities of daily liv-
18 ing (as determined appropriate by the fa-
19 cility) or emotional support to such resi-
20 dent, in accordance with the care plan of
21 such resident;

22 “(iii) the facility approves to furnish
23 such activities or support;

24 “(iv) agrees to—

1 “(I) follow all safety protocols es-
2 tablished by such facility (including
3 the use of personal protective equip-
4 ment and any mandatory COVID–19-
5 related training);

6 “(II) provide proof of a negative
7 COVID–19 test prior to entry to such
8 facility for the first time, and then
9 weekly thereafter;

10 “(III) only visit with such resi-
11 dent in a private room and maintain
12 distance from other residents and
13 staff; and

14 “(IV) undergo screening for
15 COVID–19 in the same manner as
16 staff of such facility; and

17 “(v) provides a signed waiver to such
18 facility agreeing not to hold such facility
19 liable for any transmission of COVID–19
20 to the individual that may occur at such
21 facility.”.

22 (b) INTERMEDIATE CARE FACILITIES FOR THE IN-
23 TELLECTUALLY DISABLED.—Section 1905(d) of the So-
24 cial Security Act (42 U.S.C. 1396d(d)) is amended—

1 (1) in paragraph (2), by striking “and” at the
2 end;

3 (2) in paragraph (3), by striking the period and
4 inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(4) the institution established and maintains,
8 during the period beginning on the date of the en-
9 actment of this paragraph and ending on the last
10 day of the emergency period described in section
11 1135(g)(1)(B), the essential caregiver program de-
12 scribed in section 1919(c)(7) in the same manner as
13 if such institution were a nursing facility.”.

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