

117TH CONGRESS  
1ST SESSION

# S. 315

To amend titles XVIII and XIX of the Social Security Act to ensure quality care for residents of skilled nursing facilities and nursing facilities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2021

Mr. BLUMENTHAL (for himself and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to ensure quality care for residents of skilled nursing facilities and nursing facilities, 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 “Quality Care for Nurs-  
5 ing Home Residents Act”.

1 **SEC. 2. MINIMUM NURSE STAFFING REQUIREMENTS FOR**  
 2 **SKILLED NURSING FACILITIES UNDER MEDI-**  
 3 **CARE PROGRAM AND NURSING FACILITIES**  
 4 **UNDER MEDICAID PROGRAM.**

5 (a) **MEDICARE.**—

6 (1) **IN GENERAL.**—Subparagraph (C) of section  
 7 1819(b)(4) of the Social Security Act (42 U.S.C.  
 8 1395i–3(b)(4)) is amended—

9 (A) in clause (i)—

10 (i) by amending the clause heading to  
 11 read as follows: “GENERAL REQUIRE-  
 12 MENTS BEFORE 2022”; and

13 (ii) by striking “Except as provided in  
 14 clause (ii),” and inserting “Except as pro-  
 15 vided in clause (iii), with respect to skilled  
 16 nursing facility services provided before  
 17 January 1, 2022,”;

18 (B) by redesignating clause (ii) as clause  
 19 (iii); and

20 (C) by inserting after clause (i) the fol-  
 21 lowing new clause:

22 “(ii) **GENERAL REQUIREMENTS AFTER**  
 23 **2021.**—

24 “(I) **IN GENERAL.**—With respect  
 25 to skilled nursing facility services pro-

vided on or after January 1, 2022, a  
skilled nursing facility must—

“(aa) provide nursing services that are sufficient to meet the nursing needs of its residents on a 24-hour basis, to be divided into day shifts, evening shifts, and night shifts;

“(bb) provide for minimum nurse staffing levels with respect to each such shift, in accordance with this clause; and

“(cc) ensure that, in carrying out items (aa) and (bb), a total minimum of 4.1 hours of care is provided per resident per day, with 0.75 hours of care of such total minimum provided by a registered professional nurse, 0.54 hours of care of such total minimum provided by a licensed practical nurse, and 2.81 hours of care of such total minimum provided by a nurse aide (as defined in paragraph (5)(F)).

1                   “(II) DAY SHIFTS.—With respect  
2 to a day shift, the skilled nursing fa-  
3 cility must have—

4                   “(aa) at least 1 registered  
5 professional nurse for every 28  
6 residents, with a minimum of  
7 0.29 hours of care provided per  
8 resident during each such shift;

9                   “(bb) at least 1 licensed  
10 practical nurse for every 40 resi-  
11 dents, with a minimum of 0.20  
12 hours of care provided per resi-  
13 dent during each such shift; and

14                   “(cc) at least 1 nurse aide  
15 (as defined in paragraph (5)(F))  
16 for every 7 residents, with a min-  
17 imum of 1.14 hours of care pro-  
18 vided per resident during each  
19 such shift.

20                   “(III) EVENING SHIFTS.—With  
21 respect to an evening shift, the skilled  
22 nursing facility must have—

23                   “(aa) at least 1 registered  
24 professional nurse for every 30  
25 residents, with a minimum of

1 0.26 hours of care provided per  
2 resident during each such shift;

3 “(bb) at least 1 licensed  
4 practical nurse for every 40 resi-  
5 dents, with a minimum of 0.20  
6 hours of care provided per resi-  
7 dent during each such shift; and

8 “(cc) at least 1 nurse aide  
9 (as defined in paragraph (5)(F))  
10 for every 7 residents, with a min-  
11 imum of 1.14 hours of care pro-  
12 vided per resident during each  
13 such shift.

14 “(IV) NIGHT SHIFTS.—With re-  
15 spect to a night shift, the skilled nurs-  
16 ing facility must have—

17 “(aa) at least 1 registered  
18 professional nurse for every 40  
19 residents, with a minimum of  
20 0.20 hours of care provided per  
21 resident during such shift;

22 “(bb) at least 1 licensed  
23 practical nurse for every 56 resi-  
24 dents, with a minimum of 0.14

1 hours of care provided per resi-  
 2 dent during such shift; and

3 “(cc) at least 1 nurse aide  
 4 (as defined in paragraph (5)(F))  
 5 for every 15 residents, with a  
 6 minimum of 0.53 hours of care  
 7 provided per resident during such  
 8 shift.

9 “(V) SECRETARIAL AUTHORITY  
 10 TO ESTABLISH HIGHER MINIMUM  
 11 NURSE STAFFING LEVELS.—The Sec-  
 12 retary may establish and require  
 13 skilled nursing facilities (or, at the  
 14 Secretary’s discretion, only skilled  
 15 nursing facilities that have a higher  
 16 percentage of residents with extensive  
 17 care needs, as determined by the Sec-  
 18 retary) to provide for minimum nurse  
 19 staffing levels that are higher than  
 20 the levels required under this clause.

21 “(VI) RULE OF CONSTRUCTION  
 22 REGARDING STATE AUTHORITY TO ES-  
 23 TABLISH HIGHER MINIMUM NURSE  
 24 STAFFING LEVELS.—Nothing in this  
 25 clause may be construed as preventing

1 a State from establishing or requiring  
 2 skilled nursing facilities in the State  
 3 to provide for minimum nurse staffing  
 4 levels that are higher than the levels  
 5 required under this clause.

6 “(VII) CLARIFICATION WITH RE-  
 7 SPECT TO MINIMUM HOURS OF CARE  
 8 PROVIDED PER RESIDENT REQUIRE-  
 9 MENTS.—In complying with the min-  
 10 imum hours of care provided per resi-  
 11 dent requirements under this clause, a  
 12 skilled nursing facility may not count  
 13 any time spent by a registered profes-  
 14 sional nurse, licensed practical nurse,  
 15 or nurse aide on administrative serv-  
 16 ices towards compliance with such re-  
 17 quirements.

18 “(VIII) DEFINITIONS.—In this  
 19 clause:

20 “(aa) ADMINISTRATIVE  
 21 SERVICES.—The term ‘adminis-  
 22 trative services’ means food prep-  
 23 aration, housekeeping, laundry  
 24 services, maintenance services,  
 25 and other noncaregiving-related

1 services, as determined by the  
2 Secretary.

3 “(bb) DAY SHIFT.—The  
4 term ‘day shift’ means, with re-  
5 spect to a day and a skilled nurs-  
6 ing facility, an assigned work  
7 shift that is a period of 8 con-  
8 secutive hours, beginning not  
9 sooner than 6 a.m. in the time  
10 zone in which such facility is lo-  
11 cated and not later than 8 a.m.  
12 in such time zone.

13 “(cc) EVENING SHIFT.—The  
14 term ‘evening shift’ means, with  
15 respect to a day and a skilled  
16 nursing facility, an assigned work  
17 shift that is a period of 8 con-  
18 secutive hours, beginning not  
19 sooner than 2 p.m. in the time  
20 zone in which such facility is lo-  
21 cated and not later than 4 p.m.  
22 in such time zone.

23 “(dd) NIGHT SHIFT.—The  
24 term ‘night shift’ means, with re-  
25 spect to a day and a skilled nurs-



1 ing facility, an assigned work  
 2 shift that is a period of 8 con-  
 3 secutive hours, beginning not  
 4 sooner than 10 p.m. in the time  
 5 zone in which such facility is lo-  
 6 cated and not later than mid-  
 7 night in such time zone.”.

8 (2) ENFORCEMENT.—Section 1819(h) of the  
 9 Social Security Act (42 U.S.C. 1395i–3(h)) is  
 10 amended—

11 (A) in paragraph (1), by striking “If a  
 12 State finds, on the basis of a standard” and in-  
 13 serting “Subject to paragraph (7), if a State  
 14 finds, on the basis of a standard”;

15 (B) in paragraph (2), by striking “With  
 16 respect to” and inserting “Subject to paragraph  
 17 (7), with respect to”; and

18 (C) by adding at the end the following new  
 19 paragraph:

20 “(7) SPECIAL ENFORCEMENT PROCESS WITH  
 21 RESPECT TO MINIMUM NURSE STAFFING REQUIRE-  
 22 MENTS.—

23 “(A) IN GENERAL.—If a State finds, on  
 24 the basis of a standard, extended, or partial ex-  
 25 tended survey under subsection (g)(2) or other-

1 wise, that a skilled nursing facility does not  
 2 meet the minimum staffing requirements of  
 3 clause (ii) of subsection (b)(4)(C) with respect  
 4 to skilled nursing facility services provided on  
 5 or after January 1, 2022, the State shall rec-  
 6 ommend to the Secretary that the Secretary  
 7 take such actions as described in subclauses (I)  
 8 and (II) of subparagraph (B)(i).

9 “(B) SECRETARIAL AUTHORITY.—

10 “(i) IN GENERAL.—With respect to  
 11 any skilled nursing facility in a State, if  
 12 the Secretary finds, or pursuant to a rec-  
 13 ommendation of the State under subpara-  
 14 graph (A) finds, that a skilled nursing fa-  
 15 cility does not meet the minimum staffing  
 16 requirements of clause (ii) of subsection  
 17 (b)(4)(C) with respect to skilled nursing  
 18 facility services provided on or after Janu-  
 19 ary 1, 2022, the Secretary shall—

20 “(I) deny any further payments  
 21 under this title with respect to all in-  
 22 dividuals entitled to benefits under  
 23 this title who are admitted to the fa-  
 24 cility after the effective date of the  
 25 finding; and

1 “(II) impose a civil money pen-  
2 alty in an amount not to exceed  
3 \$10,000 for each day of noncompli-  
4 ance. The provisions of section 1128A  
5 (other than subsections (a) and (b))  
6 shall apply to a civil money penalty  
7 under the previous sentence in the  
8 same manner as such provisions apply  
9 to a penalty or proceeding under sec-  
10 tion 1128A(a).

11 “(ii) REDUCTION OF CIVIL MONEY  
12 PENALTIES IN CERTAIN CIR-  
13 CUMSTANCES.—Subject to clause (iii), in  
14 the case where a skilled nursing facility  
15 self-reports and promptly corrects a defi-  
16 ciency for which a penalty was imposed  
17 under clause (i)(II) not later than 10 cal-  
18 endar days after the date of such imposi-  
19 tion, the Secretary may reduce the amount  
20 of the penalty imposed by—

21 “(I) not more than 50 percent; or

22 “(II) in the case that the facility  
23 was penalized under this subsection  
24 within the three-year period preceding

1 the date of such imposition, not more  
 2 than 25 percent.

3 “(iii) PROHIBITIONS ON REDUCTION  
 4 FOR CERTAIN DEFICIENCIES.—

5 “(I) REPEAT DEFICIENCIES.—

6 The Secretary may not reduce the  
 7 amount of a penalty under clause (ii)  
 8 if the Secretary had reduced a penalty  
 9 imposed on the skilled nursing facility  
 10 in the preceding year under such  
 11 clause with respect to a repeat defi-  
 12 ciency.

13 “(II) CERTAIN OTHER DEFICI-  
 14 CIENCIES.—The Secretary may not  
 15 reduce the amount of a penalty under  
 16 clause (ii) if the penalty is imposed on  
 17 the skilled nursing facility for a defi-  
 18 ciency that is found to result in a pat-  
 19 tern of harm or widespread harm, im-  
 20 mediately jeopardizes the health or  
 21 safety of a resident or residents of the  
 22 facility, or results in the death of a  
 23 resident of the facility.

24 “(iv) REPEATED NONCOMPLIANCE.—

25 In the case of a skilled nursing facility

1           which, on three consecutive standard sur-  
2           veys conducted under subsection (g)(2),  
3           has been found as not meeting the min-  
4           imum staffing requirements of clause (ii)  
5           of subsection (b)(4)(C) with respect to  
6           skilled nursing facility services provided on  
7           or after January 1, 2022, the Secretary  
8           may (regardless of the remedies provided  
9           for under clause (i))—

10                   “(I) appoint temporary manage-  
11                   ment to oversee the operation of the  
12                   facility and to assure the health and  
13                   safety of the facility’s residents in ac-  
14                   cordance with clause (iii) of para-  
15                   graph (2)(B), except that ‘the min-  
16                   imum staffing requirements of clause  
17                   (ii) of subsection (b)(4)(C)’ shall be  
18                   substituted for ‘all the requirements  
19                   of subsections (b), (c), and (d)’ under  
20                   such clause;

21                   “(II) monitor the facility under  
22                   subsection (g)(4)(B) with respect to  
23                   such minimum staffing requirements  
24                   until the facility has demonstrated to  
25                   the satisfaction of the Secretary that

1 the facility is in compliance, and will  
 2 remain in compliance, with such min-  
 3 imum staffing requirements; or

4 “(III) subject to section  
 5 1128I(h), terminate the facility’s par-  
 6 ticipation under this title.

7 If the facility’s participation under this  
 8 title is terminated under this clause, the  
 9 State shall provide for the safe and orderly  
 10 transfer of the residents eligible under this  
 11 title, consistent with the requirements of  
 12 subsection (c)(2) and section 1128I(h).

13 “(v) PUBLIC NOTICE OF VIOLA-  
 14 TIONS.—

15 “(I) INTERNET WEBSITE.—The  
 16 Secretary shall publish on the internet  
 17 website of the Department of Health  
 18 and Human Services the names of  
 19 skilled nursing facilities that have vio-  
 20 lated the minimum staffing require-  
 21 ments of clause (ii) of subsection  
 22 (b)(4)(C) with respect to skilled nurs-  
 23 ing facility services provided on or  
 24 after January 1, 2022.

1 “(II) CHANGE OF OWNERSHIP.—

2 With respect to a skilled nursing facil-  
 3 ity whose name is published under  
 4 subclause (I) and has a change of  
 5 ownership, as determined by the Sec-  
 6 retary, after the date of such publica-  
 7 tion, the Secretary shall remove the  
 8 name of such facility from the website  
 9 described under such subclause after  
 10 the 1-year period beginning on the  
 11 date of such change of ownership.”.

12 (3) CONFORMING AMENDMENT.—Item (a) of  
 13 section 1819(f)(2)(B)(iii)(I) of the Social Security  
 14 Act (42 U.S.C. 1395i–3(f)(2)(B)(iii)(I)) is amended  
 15 by striking “subsection (b)(4)(C)(ii)(II)” and insert-  
 16 ing “subsection (b)(4)(C)(iii)(II)”.

17 (b) MEDICAID.—

18 (1) IN GENERAL.—Subparagraph (C) of section  
 19 1919(b)(4) of the Social Security Act (42 U.S.C.  
 20 1396r(b)(4)) is amended—

21 (A) in clause (i)—

22 (i) in the clause heading, by inserting  
 23 after “GENERAL REQUIREMENTS” the fol-  
 24 lowing “BEFORE 2022”;

1 (ii) in the matter preceding subclause  
 2 (I), by inserting after “October 1, 1990,”  
 3 the following: “and before January 1,  
 4 2022,”;

5 (iii) in subclause (I), by striking  
 6 “clause (ii)” and inserting “clause (iii)”;  
 7 and

8 (iv) in subclause (II), by striking  
 9 “clause (ii)” and inserting “clause (iii)”;

10 (B) by redesignating clauses (ii) and (iii)  
 11 as clauses (iii) and (iv), respectively; and

12 (C) by inserting after clause (i) the fol-  
 13 lowing new clause:

14 “(ii) GENERAL REQUIREMENTS AFTER  
 15 2021.—

16 “(I) IN GENERAL.—With respect  
 17 to nursing facility services provided on  
 18 or after January 1, 2022, a nursing  
 19 facility must—

20 “(aa) provide nursing serv-  
 21 ices that are sufficient to meet  
 22 the nursing needs of its residents  
 23 on a 24-hour basis, to be divided  
 24 into day shifts, evening shifts,  
 25 and night shifts;



1 “(bb) provide for minimum  
2 nurse staffing levels with respect  
3 to each such shift, in accordance  
4 with this clause; and

5 “(cc) ensure that, in car-  
6 rying out items (aa) and (bb), a  
7 total minimum of 4.1 hours of  
8 care is provided per resident per  
9 day, with 0.75 hours of care of  
10 such total minimum provided by  
11 a registered professional nurse,  
12 0.54 hours of care of such total  
13 minimum provided by a licensed  
14 practical nurse, and 2.81 hours  
15 of care of such total minimum  
16 provided by a nurse aide (as de-  
17 fined in paragraph (5)(F)).

18 “(II) DAY SHIFTS.—With respect  
19 to a day shift, the nursing facility  
20 must have—

21 “(aa) at least 1 registered  
22 professional nurse for every 28  
23 residents, with a minimum of  
24 0.29 hours of care provided per  
25 resident during each such shift;

1           “(bb) at least 1 licensed  
 2           practical nurse for every 40 resi-  
 3           dents, with a minimum of 0.20  
 4           hours of care provided per resi-  
 5           dent during each such shift; and

6           “(cc) at least 1 nurse aide  
 7           (as defined in paragraph (5)(F))  
 8           for every 7 residents, with a min-  
 9           imum of 1.14 hours of care pro-  
 10          vided per resident during each  
 11          such shift.

12          “(III) EVENING SHIFTS.—With  
 13          respect to an evening shift, the nurs-  
 14          ing facility must have—

15               “(aa) at least 1 registered  
 16               professional nurse for every 30  
 17               residents, with a minimum of  
 18               0.26 hours of care provided per  
 19               resident during each such shift;

20               “(bb) at least 1 licensed  
 21               practical nurse for every 40 resi-  
 22               dents, with a minimum of 0.20  
 23               hours of care provided per resi-  
 24               dent during each such shift; and

1                   “(cc) at least 1 nurse aide  
2                   (as defined in paragraph (5)(F))  
3                   for every 7 residents, with a min-  
4                   imum of 1.14 hours of care pro-  
5                   vided per resident during each  
6                   such shift.

7                   “(IV) NIGHT SHIFTS.—With re-  
8                   spect to a night shift, the nursing fa-  
9                   cility must have—

10                   “(aa) at least 1 registered  
11                   professional nurse for every 40  
12                   residents, with a minimum of  
13                   0.20 hours of care provided per  
14                   resident during such shift;

15                   “(bb) at least 1 licensed  
16                   practical nurse for every 56 resi-  
17                   dents, with a minimum of 0.14  
18                   hours of care provided per resi-  
19                   dent during such shift; and

20                   “(cc) at least 1 nurse aide  
21                   (as defined in paragraph (5)(F))  
22                   for every 15 residents, with a  
23                   minimum of 0.53 hours of care  
24                   provided per resident during such  
25                   shift.

1                   “(V) SECRETARIAL AUTHORITY  
2                   TO ESTABLISH HIGHER MINIMUM  
3                   NURSE STAFFING LEVELS.—The Sec-  
4                   retary may establish and require nurs-  
5                   ing facilities (or, at the Secretary’s  
6                   discretion, only nursing facilities that  
7                   have a higher percentage of residents  
8                   with extensive care needs, as deter-  
9                   mined by the Secretary) to provide for  
10                  minimum nurse staffing levels that  
11                  are higher than the levels required  
12                  under this clause.

13                  “(VI) RULE OF CONSTRUCTION  
14                  REGARDING STATE AUTHORITY TO ES-  
15                  TABLISH HIGHER MINIMUM NURSE  
16                  STAFFING LEVELS.—Nothing in this  
17                  clause may be construed as preventing  
18                  a State from establishing or requiring  
19                  nursing facilities in the State to pro-  
20                  vide for minimum nurse staffing levels  
21                  that are higher than the levels re-  
22                  quired under this clause.

23                  “(VII) CLARIFICATION WITH RE-  
24                  SPECT TO MINIMUM HOURS OF CARE  
25                  PROVIDED PER RESIDENT REQUIRE-

1           MENTS.—In complying with the min-  
 2           imum hours of care provided per resi-  
 3           dent requirements under this clause, a  
 4           nursing facility may not count any  
 5           time spent by a registered professional  
 6           nurse, licensed practical nurse, or  
 7           nurse aide on administrative services  
 8           towards compliance with such require-  
 9           ments.

10           “(VIII) DEFINITIONS.—In this  
 11           clause:

12                   “(aa)       ADMINISTRATIVE  
 13           SERVICES.—The term ‘adminis-  
 14           trative services’ means food prep-  
 15           aration, housekeeping, laundry  
 16           services, maintenance services,  
 17           and other noncaregiving-related  
 18           services, as determined by the  
 19           Secretary.

20                   “(bb)   DAY    SHIFT.—The  
 21           term ‘day shift’ means, with re-  
 22           spect to a day and a nursing fa-  
 23           cility, an assigned work shift that  
 24           is a period of 8 consecutive  
 25           hours, beginning not sooner than

1 6 a.m. in the time zone in which  
2 such facility is located and not  
3 later than 8 a.m. in such time  
4 zone.

5 “(cc) EVENING SHIFT.—The  
6 term ‘evening shift’ means, with  
7 respect to a day and a nursing  
8 facility, an assigned work shift  
9 that is a period of 8 consecutive  
10 hours, beginning not sooner than  
11 2 p.m. in the time zone in which  
12 such facility is located and not  
13 later than 4 p.m. in such time  
14 zone.

15 “(dd) NIGHT SHIFT.—The  
16 term ‘night shift’ means, with re-  
17 spect to a day and a nursing fa-  
18 cility, an assigned work shift that  
19 is a period of 8 consecutive  
20 hours, beginning not sooner than  
21 10 p.m. in the time zone in which  
22 such facility is located and not  
23 later than midnight in such time  
24 zone.”.

(2) ENFORCEMENT.—Section 1919(h) of the Social Security Act (42 U.S.C. 1396r(h)) is amended—

(A) in paragraph (1), by striking “If a State finds, on the basis of a standard” and inserting “Subject to paragraph (10), if a State finds, on the basis of a standard”;

(B) in paragraph (2)—

(i) in subparagraph (C), by striking “If a nursing facility” and inserting “Subject to paragraph (10), if a nursing facility”; and

(ii) in subparagraph (D), by striking “In the case of” and inserting “Subject to paragraph (10), in the case of”;

(C) in paragraph (3)—

(i) in subparagraph (A), by inserting before the period the following: “and the remedies described in paragraph (10)(B)”;

and

(ii) in subparagraph (B), by striking “With respect to” and inserting “Subject to paragraph (10), with respect to”; and

(D) by adding at the end the following new paragraph:

1           “(10) SPECIAL ENFORCEMENT PROCESS WITH  
2           RESPECT TO MINIMUM NURSE STAFFING REQUIRE-  
3           MENTS.—

4           “(A) IN GENERAL.—If a State finds, on  
5           the basis of a standard, extended, or partial ex-  
6           tended survey under subsection (g)(2) or other-  
7           wise, that a nursing facility does not meet the  
8           minimum staffing requirements of clause (ii) of  
9           subsection (b)(4)(C) with respect to nursing fa-  
10          cility services provided on or after January 1,  
11          2022, the State shall—

12           “(i) deny any further payments under  
13           the State plan with respect to all individ-  
14           uals enrolled under such plan who are ad-  
15           mitted to the facility after the effective  
16           date of the finding; and

17           “(ii) recommend to the Secretary that  
18           the Secretary impose the civil money pen-  
19           alty described in subparagraph (B).

20           “(B) SECRETARIAL AUTHORITY.—

21           “(i) IN GENERAL.—With respect to  
22           any nursing facility in a State other than  
23           a State nursing facility, if the Secretary  
24           finds that such a nursing facility does not  
25           meet the minimum staffing requirements



1 of clause (ii) of subsection (b)(4)(C) with  
 2 respect to nursing facility services provided  
 3 on or after January 1, 2022, the Secretary  
 4 shall—

5 “(I) deny any further payments  
 6 to the State for medical assistance  
 7 furnished by the facility to all individ-  
 8 uals enrolled under the State plan  
 9 who are admitted to the facility after  
 10 the effective date of the finding; and

11 “(II) impose a civil money pen-  
 12 alty in an amount not to exceed  
 13 \$10,000 for each day of noncompli-  
 14 ance. The provisions of section 1128A  
 15 (other than subsections (a) and (b))  
 16 shall apply to a civil money penalty  
 17 under the previous sentence in the  
 18 same manner as such provisions apply  
 19 to a penalty or proceeding under sec-  
 20 tion 1128A(a).

21 “(ii) REDUCTION OF CIVIL MONEY  
 22 PENALTIES IN CERTAIN CIR-  
 23 CUMSTANCES.—Subject to clause (iii), in  
 24 the case where a nursing facility self-re-  
 25 ports and promptly corrects a deficiency

for which a penalty was imposed under clause (i)(II) not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by—

“(I) not more than 50 percent; or

“(II) in the case that the facility was penalized under this subsection within the three-year period preceding the date of such imposition, not more than 25 percent.

“(iii) PROHIBITIONS ON REDUCTION FOR CERTAIN DEFICIENCIES.—

“(I) REPEAT DEFICIENCIES.—

The Secretary may not reduce the amount of a penalty under clause (ii) if the Secretary had reduced a penalty imposed on the nursing facility in the preceding year under such clause with respect to a repeat deficiency.

“(II) CERTAIN OTHER DEFICIENCIES.—The Secretary may not reduce the amount of a penalty under clause (ii) if the penalty is imposed on the nursing facility for a deficiency

1           that is found to result in a pattern of  
2           harm or widespread harm, imme-  
3           diately jeopardizes the health or safe-  
4           ty of a resident or residents of the fa-  
5           cility, or results in the death of a resi-  
6           dent of the facility.

7           “(iv) REPEATED NONCOMPLIANCE.—

8           In the case of a nursing facility which, on  
9           three consecutive standard surveys con-  
10          ducted under subsection (g)(2), has been  
11          found as not meeting the minimum staff-  
12          ing requirements of clause (ii) of sub-  
13          section (b)(4)(C) with respect to nursing  
14          facility services provided on or after Janu-  
15          ary 1, 2022, the Secretary may (regardless  
16          of the remedies provided for under clause  
17          (i))—

18               “(I) appoint temporary manage-  
19               ment to oversee the operation of the  
20               facility and to assure the health and  
21               safety of the facility’s residents in ac-  
22               cordance with clause (iii) of para-  
23               graph (3)(C), except that ‘the min-  
24               imum staffing requirements of clause  
25               (ii) of subsection (b)(4)(C)’ shall be

substituted for ‘all the requirements of subsections (b), (c), and (d)’ under such clause;

“(II) monitor the facility under subsection (g)(4)(B) with respect to such minimum staffing requirements until the facility has demonstrated to the satisfaction of the Secretary that the facility is in compliance, and will remain in compliance, with such minimum staffing requirements; or

“(III) subject to section 1128I(h), terminate the facility’s participation under this title.

If the facility’s participation under this title is terminated under this clause, the State shall provide for the safe and orderly transfer of the residents eligible under this title, consistent with the requirements of subsection (c)(2) and section 1128I(h).

“(v) PUBLIC NOTICE OF VIOLATIONS.—

“(I) INTERNET WEBSITE.—The Secretary shall publish on the internet website of the Department of Health

1 and Human Services the names of  
 2 nursing facilities that have violated  
 3 the minimum staffing requirements of  
 4 clause (ii) of subsection (b)(4)(C) with  
 5 respect to skilled nursing facility serv-  
 6 ices provided on or after January 1,  
 7 2022.

8 “(II) CHANGE OF OWNERSHIP.—

9 With respect to a nursing facility  
 10 whose name is published under sub-  
 11 clause (I) and has a change of owner-  
 12 ship, as determined by the Secretary,  
 13 after the date of such publication, the  
 14 Secretary shall remove the name of  
 15 such facility from the website de-  
 16 scribed under such subclause after the  
 17 1-year period beginning on the date of  
 18 such change of ownership.”.

19 (3) CONFORMING AMENDMENTS.—

20 (A) Clause (iii) of section 1919(b)(4)(C) of  
 21 the Social Security Act (42 U.S.C.  
 22 1396r(b)(4)(C)), as redesignated by paragraph  
 23 (1)(B), is amended by striking “subject to  
 24 clause (iii)” and inserting “subject to clause  
 25 (iv)”.

1                   (B)           Item           (a)           of           section  
 2           1919(f)(2)(B)(iii)(I) of the Social Security Act  
 3           (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended  
 4           by striking “subsection (b)(4)(C)(ii)” and in-  
 5           serting “subsection (b)(4)(C)(iii)”.

6                   (C) Paragraph (9) of section 1919(f) of  
 7           the Social Security Act (42 U.S.C. 1396r(f)) is  
 8           amended by striking “subsection (b)(4)(C)(ii)”  
 9           and inserting “subsection (b)(4)(C)(iii)”.

10           (c) STUDIES AND REPORTS REGARDING IMPACT OF  
 11   MINIMUM NURSE STAFFING REQUIREMENTS.—

12                   (1) INITIAL STUDY AND REPORT.—

13                   (A) IN GENERAL.—Not later than June 1,  
 14           2023, the Secretary of Health and Human  
 15           Services shall study and submit to the Com-  
 16           mittee on Energy and Commerce and the Com-  
 17           mittee on Ways and Means of the House of  
 18           Representatives and the Committee on Finance  
 19           of the Senate a publicly available report—

20                           (i) on the impact of the minimum  
 21                   nurse staffing requirements added by sub-  
 22                   section (a) on the reimbursement levels of  
 23                   skilled nursing facilities under the Medi-  
 24                   care program under title XVIII of the So-  
 25                   cial Security Act (42 U.S.C. 1395 et seq.)

1 and the adequacy of personnel numbers in  
2 such skilled nursing facilities to meet such  
3 minimum nurse staffing requirements;

4 (ii) on the impact of the minimum  
5 nurse staffing requirements added by sub-  
6 section (b) on the reimbursement levels of  
7 nursing facilities under the Medicaid pro-  
8 gram under title XIX of the Social Secu-  
9 rity Act (42 U.S.C. 1396 et seq.) and the  
10 adequacy of personnel numbers in such  
11 nursing facilities to meet such minimum  
12 nurse staffing requirements; and

13 (iii) including recommendations on the  
14 steps that such skilled nursing facilities  
15 and nursing facilities can take to ensure  
16 that adequate personnel are available in  
17 such skilled nursing facilities and nursing  
18 facilities to meet the minimum nurse staff-  
19 ing requirements added by subsections (a)  
20 and (b) for such skilled nursing facilities  
21 and nursing facilities, respectively, includ-  
22 ing methods for attracting and retaining  
23 such personnel.

24 (B) CONSIDERATIONS.—In conducting the  
25 study required under subparagraph (A), the

1 Secretary of Health and Human Services shall  
2 take into consideration—

3 (i) the benefits of any increase in  
4 nurse staffing levels, including with respect  
5 to workforce training and retention;

6 (ii) any decrease in the rate of work-  
7 place injuries;

8 (iii) any changes in medical care costs  
9 for residents of skilled nursing facilities  
10 and nursing facilities;

11 (iv) any decrease in hospitalization  
12 rates for such residents;

13 (v) any changes in personnel and ad-  
14 ministrative costs for skilled nursing facili-  
15 ties and nursing facilities; and

16 (vi) any changes in recruiting and  
17 training costs.

18 (2) SUBSEQUENT STUDY AND REPORT.—Not  
19 later than January 1, 2025, the Secretary of Health  
20 and Human Services shall conduct a follow-up study  
21 to the study conducted under paragraph (1)(A) and  
22 submit to the Committee on Energy and Commerce  
23 and the Committee on Ways and Means of the  
24 House of Representatives and the Committee on Fi-



1 nance of the Senate a publicly available report on  
 2 such follow-up study.

3 **SEC. 3. DISCLOSURE OF NURSE STAFFING LEVELS AT**  
 4 **SKILLED NURSING FACILITIES UNDER MEDI-**  
 5 **CARE PROGRAM AND NURSING FACILITIES**  
 6 **UNDER MEDICAID PROGRAM.**

7 (a) MEDICARE.—Paragraph (8) of section 1819(b) of  
 8 the Social Security Act (42 U.S.C. 1395i–3(b)) is amend-  
 9 ed to read as follows:

10 “(8) INFORMATION ON NURSE STAFFING.—

11 “(A) IN GENERAL.—Each day, a skilled  
 12 nursing facility shall post for each shift notices  
 13 with—

14 “(i) a description of the nurse staffing  
 15 requirements applicable with respect to the  
 16 facility and day under paragraph (4)(C);

17 “(ii) information on the number of  
 18 registered professional nurses, licensed  
 19 practical nurses, and nurse aides (as de-  
 20 fined in paragraph (5)(F)) assigned to pro-  
 21 vide direct care services to residents in the  
 22 facility during the shift, disaggregated by  
 23 units in the facility; and

24 “(iii) a statement that the facility is  
 25 required, upon request, to provide any

1 nurse staffing information (as described in  
2 this subparagraph) of the facility from the  
3 preceding 12-month period.

4 The information in such notices shall be written  
5 in a uniform manner, printed in an easily read-  
6 able 14-point type font, and made available in  
7 appropriate languages, as determined by the  
8 Secretary. The skilled nursing facility shall  
9 make such notices available at each nurses' sta-  
10 tion in the facility and other areas in each unit  
11 of the facility, as determined appropriate by the  
12 facility, and shall keep and maintain each such  
13 notice for at least three years after the date on  
14 which each such notice is posted in the facility.

15 “(B) PUBLIC AVAILABILITY OF INFORMA-  
16 TION.—A skilled nursing facility shall, upon re-  
17 quest, make available to the public any nurse  
18 staffing information (as described in subpara-  
19 graph (A)) of the facility from the preceding  
20 12-month period. In the case that the facility  
21 makes such information available as a paper  
22 copy, such facility may not charge for such copy  
23 an amount greater than the cost of making  
24 such copy.”.

1       (b) MEDICAID.—Paragraph (8) of section 1919(b) of  
 2 the Social Security Act (42 U.S.C. 1396r(b)) is amended  
 3 to read as follows:

4           “(8) INFORMATION ON NURSE STAFFING.—

5           “(A) IN GENERAL.—Each day, a skilled  
 6 nursing facility shall post for each shift notices  
 7 with—

8           “(i) a description of the nurse staffing  
 9 requirements applicable with respect to the  
 10 facility and day under paragraph (4)(C);

11          “(ii) information on the number of  
 12 registered professional nurses, licensed  
 13 practical nurses, and nurse aides (as de-  
 14 fined in paragraph (5)(F)) assigned to pro-  
 15 vide direct care services to residents in the  
 16 facility during the shift, disaggregated by  
 17 units in the facility; and

18          “(iii) a statement that the facility is  
 19 required, upon request, to provide any  
 20 nurse staffing information (as described in  
 21 this subparagraph) of the facility from the  
 22 preceding 12-month period.

23       The information in such notices shall be written  
 24 in a uniform manner, printed in an easily read-  
 25 able 14-point type font, and made available in

1 appropriate languages, as determined by the  
2 Secretary. The skilled nursing facility shall  
3 make such notices available at each nurses' sta-  
4 tion in the facility and other areas in each unit  
5 of the facility, as determined appropriate by the  
6 facility, and shall keep and maintain each such  
7 notice for at least three years after the date on  
8 which each such notice is posted in the facility.

9 “(B) PUBLIC AVAILABILITY OF INFORMA-  
10 TION.—A skilled nursing facility shall, upon re-  
11 quest, make available to the public any nurse  
12 staffing information (as described in subpara-  
13 graph (A)) of the facility from the preceding  
14 12-month period.”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section take effect on the date of enactment of this  
17 Act and apply with respect to nurse staffing information  
18 posted or requested on or after the date that is one year  
19 after such date of enactment.

1 **SEC. 4. ADMINISTRATIVE STAFFING REQUIREMENTS FOR**  
 2 **SKILLED NURSING FACILITIES UNDER MEDI-**  
 3 **CARE PROGRAM AND NURSING FACILITIES**  
 4 **UNDER MEDICAID PROGRAM.**

5 (a) **MEDICARE.**—Paragraph (1) of section 1819(d) of  
 6 the Social Security Act (42 U.S.C. 1395i–3(d)) is amend-  
 7 ed—

8 (1) by redesignating the second subparagraph  
 9 (C) as subparagraph (E); and

10 (2) by inserting after the first subparagraph  
 11 (C) the following new subparagraph:

12 “(D) **NURSING MANAGEMENT PER-**  
 13 **SONNEL.**—

14 “(i) **IN GENERAL.**—A skilled nursing  
 15 facility must employ nursing management  
 16 personnel in accordance with this subpara-  
 17 graph.

18 “(ii) **DIRECTOR OF NURSING SERV-**  
 19 **ICES.**—A skilled nursing facility must em-  
 20 ploy a registered professional nurse to  
 21 serve full-time as the director of nursing  
 22 services of the facility. Such director of  
 23 nursing services shall be responsible for de-  
 24 termining the number and types of nursing  
 25 personnel needed to sufficiently meet the  
 26 nursing needs of the residents of the facil-

1           ity (as required under subsection  
2           (b)(4)(C)).

3           “(iii) ASSISTANT DIRECTOR OF NURS-  
4           ING SERVICES.—A skilled nursing facility  
5           must employ a registered professional  
6           nurse to serve full-time as the assistant di-  
7           rector of nursing services of the facility,  
8           except that in the case of a skilled nursing  
9           facility that has fewer than 100 beds, such  
10          facility may employ a registered profes-  
11          sional nurse to serve part-time as the as-  
12          sistant director of nursing services of the  
13          facility. A registered professional nurse  
14          who serves as the assistant director of  
15          nursing services of a skilled nursing facility  
16          may also serve as a supervisor for direct  
17          clinical nursing care for such facility.

18          “(iv) DIRECTOR OF IN-SERVICE EDU-  
19          CATION.—A skilled nursing facility must  
20          employ a registered professional nurse to  
21          serve full-time as the director of in-service  
22          education of the facility, except that in the  
23          case of a skilled nursing facility that has  
24          fewer than 100 beds, such facility may em-  
25          ploy a registered professional nurse to

1           serve part-time as the director of in-service  
 2           education of the facility. In carrying out  
 3           the previous sentence, a skilled nursing fa-  
 4           cility must, to the extent practicable and  
 5           appropriate, employ a registered profes-  
 6           sional nurse who has received training in  
 7           adult education and gerontology.”.

8           (b) MEDICAID.—

9           (1) IN GENERAL.—Paragraph (1) of section  
 10          1919(d) of the Social Security Act (42 U.S.C.  
 11          1396r(d)) is amended by inserting after subpara-  
 12          graph (C) the following new subparagraph:

13                   “(D)    NURSING    MANAGEMENT    PER-  
 14                   SONNEL.—

15                   “(i) IN GENERAL.—A nursing facility  
 16                   must employ nursing management per-  
 17                   sonnel in accordance with this subpara-  
 18                   graph.

19                   “(ii) DIRECTOR OF NURSING SERV-  
 20                   ICES.—A nursing facility must employ a  
 21                   registered professional nurse to serve full-  
 22                   time as the director of nursing services of  
 23                   the facility. Such director of nursing serv-  
 24                   ices shall be responsible for determining  
 25                   the number and types of nursing personnel

1 needed to sufficiently meet the nursing  
2 needs of the residents of the facility (as re-  
3 quired under subsection (b)(4)(C)).

4 “(iii) ASSISTANT DIRECTOR OF NURS-  
5 ING SERVICES.—A nursing facility must  
6 employ a registered professional nurse to  
7 serve full-time as the assistant director of  
8 nursing services of the facility, except that  
9 in the case of a nursing facility that has  
10 fewer than 100 beds, such facility may em-  
11 ploy a registered professional nurse to  
12 serve part-time as the assistant director of  
13 nursing services of the facility. A reg-  
14 istered professional nurse who serves as  
15 the assistant director of nursing services of  
16 a nursing facility may also serve as a su-  
17 pervisor for direct clinical nursing care for  
18 such facility.

19 “(iv) DIRECTOR OF IN-SERVICE EDU-  
20 CATION.—A nursing facility must employ a  
21 registered professional nurse to serve full-  
22 time as the director of in-service education  
23 of the facility, except that in the case of a  
24 nursing facility that has fewer than 100  
25 beds, such facility may employ a registered



1 professional nurse to serve part-time as the  
 2 director of in-service education of the facil-  
 3 ity. In carrying out the previous sentence,  
 4 a nursing facility must, to the extent prac-  
 5 ticable and appropriate, employ a reg-  
 6 istered professional nurse who has received  
 7 training in adult education and geron-  
 8 tology.”.

9 (2) TECHNICAL AMENDMENT.—Paragraph (1)  
 10 of section 1919(d) of the Social Security Act (42  
 11 U.S.C. 1396r(d)) is amended by redesignating sub-  
 12 paragraph (V) as subparagraph (E).

13 (c) EFFECTIVE DATE.—The amendments made by  
 14 this section take effect on the date of enactment of this  
 15 Act and apply with respect to the administration of skilled  
 16 nursing facilities and nursing facilities on or after the date  
 17 that is one year after such date of enactment.

18 **SEC. 5. NURSE TRAINING REQUIREMENTS WITH RESPECT**  
 19 **TO SKILLED NURSING FACILITIES UNDER**  
 20 **MEDICARE PROGRAM AND NURSING FACILI-**  
 21 **TIES UNDER MEDICAID PROGRAM.**

22 (a) MEDICARE.—

23 (1) ORIENTATION FOR REGISTERED PROFES-  
 24 SIONAL NURSES, LICENSED PRACTICAL NURSES, AND  
 25 NURSE AIDES.—Section 1819(d) of the Social Secu-

1        rity Act (42 U.S.C. 1395i–3(d)) is amended by add-  
 2        ing at the end the following new paragraph:

3            “(5) ORIENTATIONS.—A skilled nursing facility  
 4        must provide to registered professional nurses, li-  
 5        censed practical nurses, and nurse aides, before such  
 6        registered professional nurses, licensed practical  
 7        nurses, and nurse aides are assigned to provide di-  
 8        rect care services to residents in the facility, orienta-  
 9        tions providing education on the policies and emer-  
 10      gency procedures of the facility and on residents’  
 11      rights under this section.”.

12           (2) REQUIREMENTS FOR NURSE AIDE TRAINING  
 13      AND COMPETENCY EVALUATION PROGRAMS AND FOR  
 14      NURSE AIDE COMPETENCY EVALUATION PRO-  
 15      GRAMS.—Subparagraph (A) of section 1819(f)(2) of  
 16      the Social Security Act (42 U.S.C. 1395i–3(f)(2)) is  
 17      amended—

18           (A) in the matter preceding clause (i), by  
 19      inserting after “1988” the following: “, and up-  
 20      date, as determined necessary by the Sec-  
 21      retary”;

22           (B) in clause (i)—

23           (i) by inserting after “care of cog-  
 24      nitively impaired residents,” the following:  
 25      “care of older adults,”;

1 (ii) by striking “patient abuse preven-  
 2 tion training,” and inserting “patient  
 3 abuse prevention training),”; and

4 (iii) by striking “75 hours” and in-  
 5 serting “120 hours”; and

6 (C) in clause (ii)—

7 (i) by striking “requirement relating  
 8 to” and inserting “requirements relating to  
 9 (I)”;

10 (ii) by inserting after “care of cog-  
 11 nitively impaired residents,” the following:  
 12 “care of older adults,”; and

13 (iii) by striking “and procedures” and  
 14 inserting “(II) minimum hours of initial  
 15 and ongoing training and retraining (in-  
 16 cluding not less than 120 hours in the case  
 17 of initial training), and (III) procedures”.

18 (b) MEDICAID.—

19 (1) ORIENTATION FOR REGISTERED PROFES-  
 20 SIONAL NURSES, LICENSED PRACTICAL NURSES, AND  
 21 NURSE AIDES.—Section 1919(d) of the Social Secu-  
 22 rity Act (42 U.S.C. 1396r(d)) is amended by adding  
 23 at the end the following new paragraph:

24 “(5) ORIENTATIONS.—A nursing facility must  
 25 provide to registered professional nurses, licensed

1 practical nurses, and nurse aides, before such reg-  
 2 istered professional nurses, licensed practical nurses,  
 3 and nurse aides are assigned to provide direct care  
 4 services to residents in the facility, orientations pro-  
 5 viding education on the policies and emergency pro-  
 6 cedures of the facility and on residents' rights under  
 7 this section.”.

8 (2) REQUIREMENTS FOR NURSE AIDE TRAINING  
 9 AND COMPETENCY EVALUATION PROGRAMS AND FOR  
 10 NURSE AIDE COMPETENCY EVALUATION PRO-  
 11 GRAMS.—Subparagraph (A) of section 1919(f)(2) of  
 12 the Social Security Act (42 U.S.C. 1396r(f)(2)) is  
 13 amended—

14 (A) in the matter preceding clause (i), by  
 15 inserting after “1988” the following: “, and up-  
 16 date, as determined necessary by the Sec-  
 17 retary”;

18 (B) in clause (i)—

19 (i) by inserting after “care of cog-  
 20 nitively impaired residents,” the following:  
 21 “care of older adults,”;

22 (ii) by striking “patient abuse preven-  
 23 tion training,” and inserting “patient  
 24 abuse prevention training),”; and

1 (iii) by striking “75 hours” and in-  
 2 serting “120 hours”; and

3 (C) in clause (ii)—

4 (i) by striking “requirement relating  
 5 to” and inserting “requirements relating to  
 6 (I)”;

7 (ii) by inserting after “care of cog-  
 8 nitively impaired residents,” the following:  
 9 “care of older adults,”; and

10 (iii) by striking “and procedures” and  
 11 inserting “(II) minimum hours of initial  
 12 and ongoing training and retraining (in-  
 13 cluding not less than 120 hours in the case  
 14 of initial training), and (III) procedures”.

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section take effect on the date of enactment of this  
 17 Act and shall apply with respect to nurse aide training  
 18 and competency evaluation programs, nurse aide com-  
 19 petency evaluation programs, and nurse orientations con-  
 20 ducted on or after the date that is one year after such  
 21 date of enactment.

22 **SEC. 6. WHISTLEBLOWER AND RESIDENT PROTECTIONS.**

23 (a) MEDICARE.—Section 1819 of the Social Security  
 24 Act (42 U.S.C. 1395i–3) is amended by adding at the end  
 25 the following new subsection:

1       “(k) WHISTLEBLOWER AND RESIDENT PROTEC-  
2 TIONS.—

3               “(1) STATEMENT REGARDING PROFESSIONAL  
4 OBLIGATION AND RIGHTS.—All nurses employed by  
5 a skilled nursing facility have a duty and right to act  
6 based on their professional judgment in accordance  
7 with the nursing laws and regulations of the State  
8 in which such facility is located, to provide nursing  
9 care in the exclusive interests of the residents of the  
10 facility, and to act as the residents’ advocate.

11              “(2) OBJECTION TO OR REFUSAL OF WORK AS-  
12 SIGNMENT.—A nurse may object to, or refuse to  
13 participate in, any activity, policy, practice, assign-  
14 ment, or task (referred to in this subsection as a  
15 ‘work assignment’) if—

16                   “(A) the nurse reasonably believes such  
17 work assignment to be in violation of the min-  
18 imum nurse staffing requirements of clause (ii)  
19 of subsection (b)(4)(C); or

20                   “(B) the nurse reasonably believes that the  
21 nurse is not prepared by education, training, or  
22 experience to perform or comply with such work  
23 assignment without compromising the safety of  
24 a resident or jeopardizing the license of the  
25 nurse.

1           “(3) RETALIATION FOR OBJECTION TO OR RE-  
2       FUSAL OF WORK ASSIGNMENT BARRED.—

3           “(A) NO DISCHARGE, DISCRIMINATION, OR  
4       RETALIATION.—No skilled nursing facility may  
5       discharge, retaliate, discriminate, or otherwise  
6       take adverse action in any manner with respect  
7       to any aspect of a nurse’s employment with the  
8       facility, including discharge, promotion, com-  
9       pensation, or terms, conditions, or privileges of  
10      employment, based on the nurse’s objection to,  
11      or refusal of, a work assignment under para-  
12      graph (2).

13          “(B) NO FILING OF COMPLAINT.—No  
14      skilled nursing facility may file a complaint or  
15      a report against a nurse with a State profes-  
16      sional disciplinary agency because of the nurse’s  
17      objection to, or refusal of, a work assignment  
18      under paragraph (2).

19          “(4) CAUSE OF ACTION.—Any nurse (or a col-  
20      lective bargaining representative or legal representa-  
21      tive of such nurse) against whom a skilled nursing  
22      facility has taken an adverse action in violation of  
23      paragraph (3)(A), or against whom such facility has  
24      filed a complaint or report in violation of paragraph  
25      (3)(B), may (without regard to whether a complaint

1 has been filed under paragraph (5) or (10)(B))  
 2 bring a cause of action in an appropriate district  
 3 court of the United States. The legal burdens of  
 4 proof specified in section 1221(e) of title 5, United  
 5 States Code, shall be controlling for the purposes of  
 6 any cause of action brought under this paragraph.  
 7 A nurse who prevails on the cause of action may be  
 8 entitled to one or more of the following:

9 “(A) Reinstatement.

10 “(B) Reimbursement of lost wages, com-  
 11 pensation, and benefits.

12 “(C) Attorneys’ fees.

13 “(D) Court costs.

14 “(E) Other damages.

15 “(5) COMPLAINT TO SECRETARY.—Any indi-  
 16 vidual may file a complaint with the Secretary  
 17 against a skilled nursing facility that violates a re-  
 18 quirement described in paragraph (3). For any com-  
 19 plaint filed, the Secretary shall—

20 “(A) receive and investigate the complaint;

21 “(B) determine whether a violation of such  
 22 paragraph, as alleged in the complaint, has oc-  
 23 curred; and

24 “(C) in the case that the Secretary deter-  
 25 mines that such a violation has occurred, issue



1 an order that the complaining individual may  
2 not suffer any adverse action prohibited by  
3 paragraph (3) or (7).

4 “(6) TOLL-FREE TELEPHONE NUMBER.—

5 “(A) IN GENERAL.—The Secretary shall  
6 provide for the establishment of a toll-free tele-  
7 phone hotline to provide information regarding  
8 the minimum nurse staffing requirements of  
9 clause (ii) of subsection (b)(4)(C) and to receive  
10 reports of violations of such requirements.

11 “(B) NOTICE TO RESIDENTS.—A skilled  
12 nursing facility shall provide each resident ad-  
13 mitted to the facility with the telephone number  
14 of the hotline described in subparagraph (A)  
15 and give notice to each such resident that such  
16 hotline may be used to report inadequate staff-  
17 ing.

18 “(7) PROTECTION FOR REPORTING.—

19 “(A) PROHIBITION ON RETALIATION OR  
20 DISCRIMINATION.—A skilled nursing facility  
21 may not retaliate or discriminate in any manner  
22 against any resident, employee, or contract em-  
23 ployee of the facility, or any other individual, on  
24 the basis that such resident, employee, contract  
25 employee, or individual (individually or in con-

1           junction with another individual) has, in good  
2           faith—

3                   “(i) presented a grievance or com-  
4                   plaint;

5                   “(ii) initiated or cooperated in any in-  
6                   vestigation or proceeding of any govern-  
7                   mental entity, regulatory agency, or private  
8                   accreditation body;

9                   “(iii) made a civil claim or demand; or

10                   “(iv) filed an action relating to the  
11                   care, services, or conditions of the facility.

12                   “(B) GOOD FAITH DEFINED.—For pur-  
13                   poses of this paragraph, an individual shall be  
14                   deemed to be acting in good faith if the indi-  
15                   vidual reasonably believes—

16                   “(i) the information reported or dis-  
17                   closed is true; and

18                   “(ii) a violation of the minimum nurse  
19                   staffing requirements of clause (ii) of sub-  
20                   section (b)(4)(C) has occurred or may  
21                   occur.

22                   “(8) PROHIBITION ON INTERFERENCE WITH  
23                   RIGHTS.—

24                   “(A) EXERCISE OF RIGHTS.—A skilled  
25                   nursing facility may not—

1 “(i) interfere with, restrain, or deny  
 2 the exercise, or attempt to exercise, by any  
 3 individual of any right, procedure, or rem-  
 4 edy provided or protected under this sub-  
 5 section; or

6 “(ii) coerce or intimidate any indi-  
 7 vidual regarding the exercise, or attempt to  
 8 exercise, such right.

9 “(B) OPPOSITION TO UNLAWFUL POLICIES  
 10 OR PRACTICES.—A skilled nursing facility may  
 11 not retaliate or discriminate against any indi-  
 12 vidual for opposing any policy, practice, or ac-  
 13 tion of the facility which is alleged to violate,  
 14 breach, or fail to comply with any provision of  
 15 the minimum nurse staffing requirements of  
 16 clause (ii) of subsection (b)(4)(C).

17 “(C) PROHIBITION ON INTERFERENCE  
 18 WITH PROTECTED COMMUNICATIONS.—A skilled  
 19 nursing facility may not make, adopt, or en-  
 20 force any rule, regulation, policy, or practice  
 21 which in any manner directly or indirectly pro-  
 22 hibits, impedes, or discourages a nurse from, or  
 23 intimidates, coerces, or induces a nurse regard-  
 24 ing, engaging in free speech activities or dis-

1 closing information as provided under this sub-  
2 section.

3 “(D) PROHIBITION ON INTERFERENCE  
4 WITH COLLECTIVE ACTION.—A skilled nursing  
5 facility may not in any way interfere with the  
6 rights of nurses to organize, bargain collec-  
7 tively, and engage in concerted activity under  
8 section 7 of the National Labor Relations Act  
9 (29 U.S.C. 157).

10 “(9) NOTICE.—A skilled nursing facility shall  
11 post in an appropriate location in each unit a con-  
12 spicuous notice, in a form specified by the Secretary,  
13 that—

14 “(A) explains the rights of nurses, resi-  
15 dents, and other individuals under this sub-  
16 section;

17 “(B) includes a statement that a nurse,  
18 resident, or other individual may file a com-  
19 plaint with the Secretary against the facility for  
20 a violation of a requirement or a prohibition of  
21 this subsection; and

22 “(C) provides instructions on how to file  
23 such a complaint.

24 “(10) ENFORCEMENT.—

1           “(A) IN GENERAL.—The Secretary shall  
2           enforce the requirements and prohibitions of  
3           this subsection in accordance with this para-  
4           graph.

5           “(B) PROCEDURES FOR RECEIVING AND  
6           INVESTIGATING COMPLAINTS.—The Secretary  
7           shall establish procedures under which—

8                   “(i) any individual may file a com-  
9                   plaint alleging that a skilled nursing facil-  
10                  ity has violated a requirement or a prohibi-  
11                  tion of this subsection; and

12                   “(ii) any such complaint shall be in-  
13                  vestigated by the Secretary.

14           “(C) REMEDIES.—If the Secretary deter-  
15           mines that a skilled nursing facility has violated  
16           a requirement or prohibition of this subsection,  
17           the Secretary—

18                   “(i) shall require the facility to estab-  
19                   lish a corrective action plan to prevent the  
20                  recurrence of such violation; and

21                   “(ii) may impose civil money penalties  
22                  as described in subparagraph (D).

23           “(D) CIVIL PENALTIES.—

24                   “(i) IN GENERAL.—In addition to any  
25                  other penalties prescribed by law, the Sec-

retary may impose civil penalties as follows:

“(I) SKILLED NURSING FACILITY LIABILITY.—The Secretary may impose on a skilled nursing facility found to be in violation of this subsection a civil money penalty of—

“(aa) not more than \$25,000 for the first knowing violation of this subsection by such facility; and

“(bb) not more than \$50,000 for any subsequent knowing violation of this subsection by such facility.

“(II) INDIVIDUAL LIABILITY.—The Secretary may impose on an individual who—

“(aa) is employed by a skilled nursing facility; and

“(bb) is found by the Secretary to have knowingly violated this subsection on behalf of the facility,

1 a civil money penalty of not more  
2 than \$20,000 for each such violation  
3 by the individual.

4 “(ii) PROCEDURES.—The provisions  
5 of section 1128A of the Social Security Act  
6 (other than subsections (a) and (b)) shall  
7 apply with respect to a civil money penalty  
8 or proceeding under this subparagraph in  
9 the same manner as such provisions apply  
10 with respect to a civil money penalty or  
11 proceeding under such section 1128A.

12 “(E) PUBLIC NOTICE OF VIOLATIONS.—

13 “(i) INTERNET WEBSITE.—The Sec-  
14 retary shall publish on the internet website  
15 of the Department of Health and Human  
16 Services the names of skilled nursing facili-  
17 ties on which a civil money penalty has  
18 been imposed under this subsection, the  
19 violation for which such penalty was im-  
20 posed, and such additional information as  
21 the Secretary determines appropriate.

22 “(ii) CHANGE OF OWNERSHIP.—With  
23 respect to a skilled nursing facility that  
24 had a change of ownership, as determined  
25 by the Secretary, penalties imposed on the

1 facility while under previous ownership  
 2 shall no longer be published by the Sec-  
 3 retary pursuant to clause (i) after the 1-  
 4 year period beginning on the date of such  
 5 change of ownership.

6 “(F) USE OF FUNDS.—Funds collected by  
 7 the Secretary pursuant to this subsection are  
 8 authorized to be appropriated to implement the  
 9 minimum nurse staffing requirements of clause  
 10 (ii) of subsection (b)(4)(C).

11 “(11) NURSE DEFINED.—In this subsection,  
 12 the term ‘nurse’ means a registered professional  
 13 nurse, a licensed practical nurse, and a nurse aide.”.

14 (b) MEDICAID.—Section 1919 of the Social Security  
 15 Act (42 U.S.C. 1396r) is amended by adding at the end  
 16 the following new subsection:

17 “(k) WHISTLEBLOWER AND RESIDENT PROTEC-  
 18 TIONS.—

19 “(1) STATEMENT REGARDING PROFESSIONAL  
 20 OBLIGATION AND RIGHTS.—All nurses employed by  
 21 a nursing facility have a duty and right to act based  
 22 on their professional judgment in accordance with  
 23 the nursing laws and regulations of the State in  
 24 which such facility is located, to provide nursing care



1 in the exclusive interests of the residents of the facil-  
 2 ity, and to act as the residents' advocate.

3 “(2) OBJECTION TO OR REFUSAL OF WORK AS-  
 4 SIGNMENT.—A nurse may object to, or refuse to  
 5 participate in, any activity, policy, practice, assign-  
 6 ment, or task (referred to in this subsection as a  
 7 ‘work assignment’) if—

8 “(A) the nurse reasonably believes such  
 9 work assignment to be in violation of the min-  
 10 imum nurse staffing requirements of clause (ii)  
 11 of subsection (b)(4)(C); or

12 “(B) the nurse reasonably believes that the  
 13 nurse is not prepared by education, training, or  
 14 experience to perform or comply with such work  
 15 assignment without compromising the safety of  
 16 a resident or jeopardizing the license of the  
 17 nurse.

18 “(3) RETALIATION FOR OBJECTION TO OR RE-  
 19 FUSAL OF WORK ASSIGNMENT BARRED.—

20 “(A) NO DISCHARGE, DISCRIMINATION, OR  
 21 RETALIATION.—No nursing facility may dis-  
 22 charge, retaliate, discriminate, or otherwise take  
 23 adverse action in any manner with respect to  
 24 any aspect of a nurse's employment with the fa-  
 25 cility, including discharge, promotion, com-

1           pensation, or terms, conditions, or privileges of  
 2           employment, based on the nurse’s objection to,  
 3           or refusal of, a work assignment under para-  
 4           graph (2).

5           “(B) NO FILING OF COMPLAINT.—No  
 6           nursing facility may file a complaint or a report  
 7           against a nurse with a State professional dis-  
 8           ciplinary agency because of the nurse’s objec-  
 9           tion to, or refusal of, a work assignment under  
 10          paragraph (2).

11          “(4) CAUSE OF ACTION.—Any nurse (or a col-  
 12          lective bargaining representative or legal representa-  
 13          tive of such nurse) against whom a nursing facility  
 14          has taken an adverse action in violation of para-  
 15          graph (3)(A), or against whom such facility has filed  
 16          a complaint or report in violation of paragraph  
 17          (3)(B), may (without regard to whether a complaint  
 18          has been filed under paragraph (5) or (10)(B))  
 19          bring a cause of action in an appropriate district  
 20          court of the United States. The legal burdens of  
 21          proof specified in section 1221(e) of title 5, United  
 22          States Code, shall be controlling for the purposes of  
 23          any cause of action brought under this paragraph.  
 24          A nurse who prevails on the cause of action may be  
 25          entitled to one or more of the following:

1 “(A) Reinstatement.

2 “(B) Reimbursement of lost wages, com-  
3 pensation, and benefits.

4 “(C) Attorneys’ fees.

5 “(D) Court costs.

6 “(E) Other damages.

7 “(5) COMPLAINT TO SECRETARY.—Any indi-  
8 vidual may file a complaint with the Secretary  
9 against a nursing facility that violates a requirement  
10 described in paragraph (3). For any complaint filed,  
11 the Secretary shall—

12 “(A) receive and investigate the complaint;

13 “(B) determine whether a violation of such  
14 paragraph, as alleged in the complaint, has oc-  
15 curred; and

16 “(C) in the case that the Secretary deter-  
17 mines that such a violation has occurred, issue  
18 an order that the complaining individual may  
19 not suffer any adverse action prohibited by  
20 paragraph (3) or (7).

21 “(6) TOLL-FREE TELEPHONE NUMBER.—

22 “(A) IN GENERAL.—The Secretary shall  
23 provide for the establishment of a toll-free tele-  
24 phone hotline to provide information regarding  
25 the minimum nurse staffing requirements of

1 clause (ii) of subsection (b)(4)(C) and to receive  
2 reports of violations of such requirements.

3 “(B) NOTICE TO RESIDENTS.—A nursing  
4 facility shall provide each resident admitted to  
5 the facility with the telephone number of the  
6 hotline described in subparagraph (A) and give  
7 notice to each such resident that such hotline  
8 may be used to report inadequate staffing or  
9 care.

10 “(7) PROTECTION FOR REPORTING.—

11 “(A) PROHIBITION ON RETALIATION OR  
12 DISCRIMINATION.—A nursing facility may not  
13 retaliate or discriminate in any manner against  
14 any resident, employee, or contract employee of  
15 the facility, or any other individual, on the basis  
16 that such resident, employee, contract employee,  
17 or individual (individually or in conjunction  
18 with another individual) has, in good faith—

19 “(i) presented a grievance or com-  
20 plaint;

21 “(ii) initiated or cooperated in any in-  
22 vestigation or proceeding of any govern-  
23 mental entity, regulatory agency, or private  
24 accreditation body;

25 “(iii) made a civil claim or demand; or

1                   “(iv) filed an action relating to the  
2                   care, services, or conditions of the facility.

3                   “(B) GOOD FAITH DEFINED.—For pur-  
4                   poses of this paragraph, an individual shall be  
5                   deemed to be acting in good faith if the indi-  
6                   vidual reasonably believes—

7                   “(i) the information reported or dis-  
8                   closed is true; and

9                   “(ii) a violation of the minimum nurse  
10                  staffing requirements of clause (ii) of sub-  
11                  section (b)(4)(C) has occurred or may  
12                  occur.

13                  “(8) PROHIBITION ON INTERFERENCE WITH  
14                  RIGHTS.—

15                  “(A) EXERCISE OF RIGHTS.—A nursing  
16                  facility may not—

17                  “(i) interfere with, restrain, or deny  
18                  the exercise, or attempt to exercise, by any  
19                  individual of any right, procedure, or rem-  
20                  edy provided or protected under this sub-  
21                  section; or

22                  “(ii) coerce or intimidate any indi-  
23                  vidual regarding the exercise, or attempt to  
24                  exercise, such right.

1           “(B) OPPOSITION TO UNLAWFUL POLICIES  
2           OR PRACTICES.—A nursing facility may not re-  
3           taliate or discriminate against any individual  
4           for opposing any policy, practice, or action of  
5           the facility which is alleged to violate, breach,  
6           or fail to comply with any provision of the min-  
7           imum nurse staffing requirements of clause (ii)  
8           of subsection (b)(4)(C).

9           “(C) PROHIBITION ON INTERFERENCE  
10          WITH PROTECTED COMMUNICATIONS.—A nurs-  
11          ing facility may not make, adopt, or enforce any  
12          rule, regulation, policy, or practice which in any  
13          manner directly or indirectly prohibits, impedes,  
14          or discourages a nurse from, or intimidates, co-  
15          erces, or induces a nurse regarding, engaging in  
16          free speech activities or disclosing information  
17          as provided under this subsection.

18          “(D) PROHIBITION ON INTERFERENCE  
19          WITH COLLECTIVE ACTION.—A nursing facility  
20          may not in any way interfere with the rights of  
21          nurses to organize, bargain collectively, and en-  
22          gage in concerted activity under section 7 of the  
23          National Labor Relations Act (29 U.S.C. 157).

1           “(9) NOTICE.—A nursing facility shall post in  
2           an appropriate location in each unit a conspicuous  
3           notice, in a form specified by the Secretary, that—

4                   “(A) explains the rights of nurses, resi-  
5                   dents, and other individuals under this sub-  
6                   section;

7                   “(B) includes a statement that a nurse,  
8                   resident, or other individual may file a com-  
9                   plaint with the Secretary against the facility for  
10                  a violation of a requirement or a prohibition of  
11                  this subsection; and

12                  “(C) provides instructions on how to file  
13                  such a complaint.

14           “(10) ENFORCEMENT.—

15                   “(A) IN GENERAL.—The Secretary shall  
16                   enforce the requirements and prohibitions of  
17                   this subsection in accordance with this para-  
18                   graph.

19                   “(B) PROCEDURES FOR RECEIVING AND  
20                   INVESTIGATING COMPLAINTS.—The Secretary  
21                   shall establish procedures under which—

22                           “(i) any individual may file a com-  
23                           plaint alleging that a nursing facility has  
24                           violated a requirement or a prohibition of  
25                           this subsection; and

1                   “(ii) any such complaint shall be in-  
2                   vestigated by the Secretary.

3                   “(C) REMEDIES.—If the Secretary deter-  
4                   mines that a nursing facility has violated a re-  
5                   quirement or prohibition of this subsection, the  
6                   Secretary—

7                   “(i) shall require the facility to estab-  
8                   lish a corrective action plan to prevent the  
9                   recurrence of such violation; and

10                  “(ii) may impose civil money penalties  
11                  as described in subparagraph (D).

12                  “(D) CIVIL PENALTIES.—

13                  “(i) IN GENERAL.—In addition to any  
14                  other penalties prescribed by law, the Sec-  
15                  retary may impose civil penalties as fol-  
16                  lows:

17                         “(I) NURSING FACILITY LIABIL-  
18                         ITY.—The Secretary may impose on a  
19                         nursing facility found to be in viola-  
20                         tion of this subsection a civil money  
21                         penalty of—

22                                 “(aa) not more than  
23                                 \$25,000 for the first knowing  
24                                 violation of this subsection by  
25                                 such facility; and



1 “(bb) not more than  
2 \$50,000 for any subsequent  
3 knowing violation of this sub-  
4 section by such facility.

5 “(II) INDIVIDUAL LIABILITY.—  
6 The Secretary may impose on an indi-  
7 vidual who—

8 “(aa) is employed by a nurs-  
9 ing facility; and

10 “(bb) is found by the Sec-  
11 retary to have knowingly violated  
12 this subsection on behalf of the  
13 facility,

14 a civil money penalty of not more  
15 than \$20,000 for each such violation  
16 by the individual.

17 “(ii) PROCEDURES.—The provisions  
18 of section 1128A of the Social Security Act  
19 (other than subsections (a) and (b)) shall  
20 apply with respect to a civil money penalty  
21 or proceeding under this subparagraph in  
22 the same manner as such provisions apply  
23 with respect to a civil money penalty or  
24 proceeding under such section 1128A.

25 “(E) PUBLIC NOTICE OF VIOLATIONS.—

1           “(i) INTERNET WEBSITE.—The Sec-  
2           retary shall publish on the internet website  
3           of the Department of Health and Human  
4           Services the names of nursing facilities on  
5           which a civil money penalty has been im-  
6           posed under this subsection, the violation  
7           for which such penalty was imposed, and  
8           such additional information as the Sec-  
9           retary determines appropriate.

10          “(ii) CHANGE OF OWNERSHIP.—With  
11          respect to a nursing facility that had a  
12          change of ownership, as determined by the  
13          Secretary, penalties imposed on the facility  
14          while under previous ownership shall no  
15          longer be published by the Secretary pur-  
16          suant to clause (i) after the 1-year period  
17          beginning on the date of such change of  
18          ownership.

19          “(F) USE OF FUNDS.—Funds collected by  
20          the Secretary pursuant to this subsection are  
21          authorized to be appropriated to implement the  
22          minimum nurse staffing requirements of clause  
23          (ii) of subsection (b)(4)(C).

1           “(11) NURSE DEFINED.—In this subsection,  
2           the term ‘nurse’ means a registered professional  
3           nurse, a licensed practical nurse, and a nurse aide.”.

4           (c) EFFECTIVE DATE.—The amendments made by  
5 this section take effect on the date of enactment of this  
6 Act and shall apply with respect to objections to or refus-  
7 als of work assignments, complaints, retaliations and  
8 other adverse actions, and interferences with rights that  
9 occur on or after the date that is one year after such date  
10 of enactment and with respect to notices provided on or  
11 after the date that is one year after such date of enact-  
12 ment.

13 **SEC. 7. PROHIBITING PRE-DISPUTE ARBITRATION AGREE-**  
14 **MENTS.**

15           (a) MEDICARE.—Section 1819(c) of the Social Secu-  
16 rity Act (42 U.S.C. 1395i–3(c)) is amended by adding at  
17 the end the following new paragraph:

18           “(7) PROHIBITION ON USE OF PRE-DISPUTE  
19           ARBITRATION AGREEMENTS.—

20           “(A) IN GENERAL.—A skilled nursing fa-  
21           cility may not require, solicit, accept, or move  
22           to enforce a pre-dispute arbitration agreement  
23           from or on behalf of any resident, whether the  
24           agreement is made before, during, or after the  
25           resident’s admission to the facility, or from or

1 on behalf of any employee, or contract employee  
2 of the facility, or any other individual if such  
3 individual is alleged to be engaged in conduct  
4 protected under subsection (k).

5 “(B) APPLICATION.—This paragraph shall  
6 apply to the skilled nursing facility and to any  
7 other business or person providing or respon-  
8 sible for providing skilled nursing services to  
9 the resident.

10 “(C) NO VALIDITY OR ENFORCEMENT.—A  
11 pre-dispute arbitration agreement shall not be  
12 valid or specifically enforceable against a resi-  
13 dent or former resident of a skilled nursing fa-  
14 cility, without regard to whether the agreement  
15 was made prior to or after the effective date of  
16 this paragraph.

17 “(D) DEFINITION OF PRE-DISPUTE ARBI-  
18 TRATION AGREEMENT.—In this paragraph, the  
19 term ‘pre-dispute arbitration agreement’ means  
20 any agreement to arbitrate a dispute when the  
21 dispute has arisen after such agreement has  
22 been made.

23 “(E) JUDICIAL REVIEW.—A determination  
24 as to whether and how this paragraph applies  
25 to an arbitration agreement shall be determined

under Federal law by a court of competent jurisdiction, rather than an arbitrator, without regard to whether the party opposing arbitration challenges such agreement specifically or in conjunction with any other term of the contract containing such agreement.”.

(b) MEDICAID.—

(1) HOME AND COMMUNITY-BASED SERVICES AND HOME HEALTH CARE SERVICES.—Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

“(m) PROHIBITING PRE-DISPUTE ARBITRATION AGREEMENTS.—

“(1) IN GENERAL.—For home and community-based services or home health care services provided under a waiver under this section, section 1902(a)(10)(D), or any other provision authorizing the provision of home and community-based services or home health care services under this title, the provider of such services (and any employee, agent, related entity, or affiliate of such provider) shall not require, solicit, or accept a pre-dispute arbitration agreement from or on behalf of any individual receiving such services, whether the agreement is made

1 before, during, or after the first date on which serv-  
2 ices are received, or from or on behalf of any em-  
3 ployee, or contract employee of the provider, or any  
4 other individual if such individual is alleged to be  
5 engaged in conduct protected under section 1919(k).  
6 A pre-dispute arbitration agreement between such a  
7 provider (or entity or person) and an individual re-  
8 ceiving services (or who formerly received services)  
9 shall not be valid or enforceable, without regard to  
10 whether such agreement was made prior to the effec-  
11 tive date of this subsection.

12 “(2) DEFINITION OF PRE-DISPUTE ARBITRA-  
13 TION AGREEMENT.—The term ‘pre-dispute arbitra-  
14 tion agreement’ means any agreement to arbitrate a  
15 dispute when the dispute has arisen after such  
16 agreement has been made.

17 “(3) JUDICIAL REVIEW.—A determination as to  
18 whether and how this subsection applies to an arbi-  
19 tration agreement shall be determined under Federal  
20 law by a court of competent jurisdiction, rather than  
21 an arbitrator, without regard to whether the party  
22 opposing arbitration challenges such agreement spe-  
23 cifically or in conjunction with any other term of the  
24 contract containing such agreement.”.

1           (2) NURSING FACILITIES.—Section 1919(c) of  
2       the Social Security Act (42 U.S.C. 1396r(c)) is  
3       amended by adding at the end the following new  
4       paragraph:

5           “(9) PROHIBITION ON USE OF PRE-DISPUTE  
6       ARBITRATION AGREEMENTS.—

7           “(A) IN GENERAL.—A nursing facility may  
8       not require, solicit, accept, or move to enforce  
9       a pre-dispute arbitration agreement from or on  
10      behalf of any resident, whether the agreement  
11      is made before, during, or after the resident’s  
12      admission to the facility, or from or on behalf  
13      of any employee, or contract employee of the fa-  
14      cility, or any other individual if such individual  
15      is alleged to be engaged in conduct protected  
16      under subsection (k).

17          “(B) APPLICATION.—This paragraph shall  
18      apply to the nursing facility and to any other  
19      business or person providing or responsible for  
20      providing nursing services to the resident.

21          “(C) NO VALIDITY OR ENFORCEMENT.—A  
22      pre-dispute arbitration agreement shall not be  
23      valid or specifically enforceable against a resi-  
24      dent or former resident of a nursing facility,  
25      without regard to whether the agreement was

made prior to or after the effective date of this paragraph.

“(D) DEFINITION OF PRE-DISPUTE ARBITRATION AGREEMENT.—In this paragraph, the term ‘pre-dispute arbitration agreement’ means any agreement to arbitrate a dispute when the dispute has arisen after such agreement has been made.

“(E) JUDICIAL REVIEW.—A determination as to whether and how this paragraph applies to an arbitration agreement shall be determined under Federal law by a court of competent jurisdiction, rather than an arbitrator, without regard to whether the party opposing arbitration challenges such agreement specifically or in conjunction with any other term of the contract containing such agreement.”.

**SEC. 8. STANDARDIZED PROTOCOL FOR OBTAINING INFORMED CONSENT FROM RESIDENTS PRIOR TO PRESCRIBING PSYCHOTROPIC DRUGS.**

(a) STANDARDIZED PROTOCOL.—

(1) SKILLED NURSING FACILITIES.—Section 1819(b) of the Social Security Act (42 U.S.C. 1395i–3(b)) is amended by adding at the end the following new paragraph:



1           “(9) STANDARDIZED PROTOCOL FOR OBTAIN-  
2           ING INFORMED CONSENT FROM A RESIDENT PRIOR  
3           TO PRESCRIBING PSYCHOTROPIC DRUGS FOR A USE  
4           NOT APPROVED BY THE FOOD AND DRUG ADMINIS-  
5           TRATION.—

6           “(A) PROTOCOL.—Not later than the date  
7           that is one year after the date of the enactment  
8           of this paragraph, the Secretary, taking into ac-  
9           count the results of the study conducted by the  
10          Comptroller General of the United States under  
11          section 8(a)(3) of the Quality Care for Nursing  
12          Home Residents Act and in consultation with  
13          stakeholder groups (including residents of  
14          skilled nursing facilities, family members of  
15          such residents, advocates for such residents,  
16          long-term care ombudsmen, and providers),  
17          shall develop a standardized protocol for skilled  
18          nursing facilities to obtain written informed  
19          consent, in accordance with this paragraph,  
20          from a resident (or, if applicable, the resident’s  
21          designated health care agent or other surrogate  
22          under State law or regulation) prior to pre-  
23          scribing a psychotropic drug to the resident for  
24          a use not approved by the Food and Drug Ad-  
25          ministration.

1           “(B) REQUIREMENTS.—The standardized  
2           protocol developed under subparagraph (A)  
3           shall include the following:

4                   “(i) A requirement, with respect to a  
5           resident, that—

6                           “(I) the facility, with the involve-  
7                           ment of the prescriber, inform the  
8                           resident (or, if applicable, the resi-  
9                           dent’s designated health care agent or  
10                          other surrogate under State law or  
11                          regulation) of—

12                                   “(aa) possible side effects  
13                                   and risks associated with the psy-  
14                                   chotropic drug, including the  
15                                   mention of any ‘black box warn-  
16                                   ing’;

17                                   “(bb) treatment modalities  
18                                   that were attempted prior to the  
19                                   use of the psychotropic drug; and

20                                   “(cc) any other information  
21                                   the Secretary determines appro-  
22                                   priate;

23                           “(II) the resident (or, if applica-  
24                           ble, the resident’s designated health  
25                           care agent or other surrogate under

1 State law or regulation) provide writ-  
2 ten informed consent to the adminis-  
3 tration of the psychotropic drug; and

4 “(III) the administration of the  
5 psychotropic drug is in accordance  
6 with any plan of care that the resi-  
7 dent has in place, including non-phar-  
8 macological interventions as appro-  
9 priate that can effectively address un-  
10 derlying medical and environmental  
11 causes of behavioral disorders.

12 “(ii) An alternative protocol for ob-  
13 taining such written informed consent—

14 “(I) in the case of emergencies;  
15 and

16 “(II) in the absence of a clearly  
17 identified designated health care agent  
18 or other surrogate under State law or  
19 regulation.

20 “(iii) Other items determined appro-  
21 priate by the Secretary.

22 “(C) TIMING OF INFORMED CONSENT.—

23 Under the standardized protocol, a skilled nurs-  
24 ing facility shall obtain the written informed  
25 consent described in subparagraph (A), with re-

1           spect to a psychotropic drug and a resident of  
2           the facility—

3                   “(i) prior to the initial prescribing of  
4                   such psychotropic drug to such resident if  
5                   such resident does not have a current pre-  
6                   scription for such psychotropic drug at the  
7                   time such resident is admitted to the facil-  
8                   ity; and

9                   “(ii) at least once a month to the ex-  
10                  tent that the administration of such psy-  
11                  chotropic drug to such resident is in ac-  
12                  cordance with the plan of care that the  
13                  resident has in place.

14               “(D) COMPLIANCE.—Effective beginning  
15               on the date that is one year and 180 days after  
16               the date of the enactment of this paragraph, a  
17               skilled nursing facility shall comply with the  
18               standardized protocol developed under subpara-  
19               graph (A).

20               “(E) NO PREEMPTION.—Nothing in this  
21               paragraph shall preempt any provision of State  
22               or Federal law that provides broader rights  
23               with respect to written informed consent for  
24               residents of facilities.”.

1           (2) NURSING FACILITIES.—Section 1919(b) of  
 2           the Social Security Act (42 U.S.C. 1396r(b)) is  
 3           amended by adding at the end the following new  
 4           paragraph:

5           “(9) STANDARDIZED PROTOCOL FOR OBTAIN-  
 6           ING INFORMED CONSENT FROM A RESIDENT PRIOR  
 7           TO PRESCRIBING PSYCHOTROPIC DRUGS FOR A USE  
 8           NOT APPROVED BY THE FOOD AND DRUG ADMINIS-  
 9           TRATION.—

10           “(A) PROTOCOL.—Not later than the date  
 11           that is one year after the date of the enactment  
 12           of this paragraph, the Secretary, taking into ac-  
 13           count the results of the study conducted by the  
 14           Comptroller General of the United States under  
 15           section 8(a)(3) of the Quality Care for Nursing  
 16           Home Residents Act and in consultation with  
 17           stakeholder groups (including residents of  
 18           skilled nursing facilities, family members of  
 19           such residents, advocates for such residents,  
 20           long-term care ombudsmen, and providers),  
 21           shall develop a standardized protocol for nurs-  
 22           ing facilities to obtain written informed consent,  
 23           in accordance with this paragraph, from a resi-  
 24           dent (or, if applicable, the resident’s designated  
 25           health care agent or other surrogate under

1 State law or regulation) prior to prescribing a  
2 psychotropic drug to the resident for a use not  
3 approved by the Food and Drug Administra-  
4 tion.

5 “(B) REQUIREMENTS.—The standardized  
6 protocol developed under subparagraph (A)  
7 shall include the following:

8 “(i) A requirement, with respect to a  
9 resident, that—

10 “(I) the facility, with the involve-  
11 ment of the prescriber, inform the  
12 resident (or, if applicable, the resi-  
13 dent’s designated health care agent or  
14 other surrogate under State law or  
15 regulation) of—

16 “(aa) possible side effects  
17 and risks associated with the psy-  
18 chotropic drug, including the  
19 mention of any ‘black box warn-  
20 ing’;

21 “(bb) treatment modalities  
22 that were attempted prior to the  
23 use of the psychotropic drug; and

1                   “(cc) any other information  
 2                   the Secretary determines appro-  
 3                   priate;

4                   “(II) the resident (or, if applica-  
 5                   ble, the resident’s designated health  
 6                   care agent or other surrogate under  
 7                   State law or regulation) provide writ-  
 8                   ten informed consent to the adminis-  
 9                   tration of the psychotropic drug; and

10                  “(III) the administration of the  
 11                  psychotropic drug is in accordance  
 12                  with any plan of care that the resi-  
 13                  dent has in place, including non-phar-  
 14                  macological interventions as appro-  
 15                  priate that can effectively address un-  
 16                  derlying medical and environmental  
 17                  causes of behavioral disorders.

18                  “(ii) An alternative protocol for ob-  
 19                  taining such written informed consent—

20                         “(I) in the case of emergencies;  
 21                         and

22                         “(II) in the absence of a clearly  
 23                         identified designated health care agent  
 24                         or other surrogate under State law or  
 25                         regulation.

1                   “(iii) Other items determined appro-  
2                   priate by the Secretary.

3                   “(C) TIMING OF INFORMED CONSENT.—  
4                   Under the standardized protocol, a nursing fa-  
5                   cility shall obtain the written informed consent  
6                   described in subparagraph (A), with respect to  
7                   a psychotropic drug and a resident of the facil-  
8                   ity—

9                   “(i) prior to the initial prescribing of  
10                  such psychotropic drug to such resident if  
11                  such resident does not have a current pre-  
12                  scription for such psychotropic drug at the  
13                  time such resident is admitted to the facil-  
14                  ity; and

15                  “(ii) at least once a month to the ex-  
16                  tent that the administration of such psy-  
17                  chotropic drug to such resident is in ac-  
18                  cordance with the plan of care that the  
19                  resident has in place.

20                  “(D) COMPLIANCE.—Effective beginning  
21                  on the date that is one year and 180 days after  
22                  the date of the enactment of this paragraph, a  
23                  nursing facility shall comply with the standard-  
24                  ized protocol developed under subparagraph  
25                  (A).



1           “(E) NO PREEMPTION.—Nothing in this  
 2           paragraph shall preempt any provision of State  
 3           or Federal law that provides broader rights  
 4           with respect to written informed consent for  
 5           residents of facilities.”.

6           (3) GAO STUDY AND REPORT ON INFORMED  
 7           CONSENT LAWS WITH RESPECT TO PRESCRIBING OF  
 8           PSYCHOTROPIC DRUGS.—

9           (A) STUDY.—The Comptroller General of  
 10          the United States (in this paragraph referred to  
 11          as the “Comptroller General”) shall conduct a  
 12          study of State laws and regulations concerning  
 13          informed consent with respect to the adminis-  
 14          tration of a psychotropic drug with regard to  
 15          the effectiveness of such laws and practices in  
 16          changing the frequency of prescribing of psy-  
 17          chotropic drugs to older adults. The study shall  
 18          include an analysis as to whether in the case of  
 19          States that have not enacted such informed  
 20          consent laws, such States have developed other  
 21          mechanisms to guide appropriate prescribing of  
 22          psychotropic drugs in older adults with demen-  
 23          tia.

24          (B) REPORT.—Not later than 180 days  
 25          after the date of enactment of this Act, the

1 Comptroller General shall submit to the Sec-  
 2 retary of Health and Human Services, the  
 3 Committees on Energy and Commerce and  
 4 Ways and Means of the House of Representa-  
 5 tives, and the Committee on Finance of the  
 6 Senate a report containing the results of the  
 7 study conducted under subparagraph (A), to-  
 8 gether with such recommendations as the  
 9 Comptroller General determines appropriate.

10 (b) DEVELOPMENT OF MEASURE OF UTILIZATION OF  
 11 PSYCHOTROPIC DRUGS FOR INCLUSION ON NURSING  
 12 HOME COMPARE WEBSITE.—

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

15 (A) by redesignating paragraph (3) as  
 16 paragraph (4); and

17 (B) by inserting after paragraph (2) the  
 18 following new paragraph:

19 “(3) DEVELOPMENT OF MEASURE OF UTILIZA-  
 20 TION OF PSYCHOTROPIC DRUGS.—

21 “(A) IN GENERAL.—Not later than the  
 22 date that is one year after the date of the en-  
 23 actment of this paragraph, the Secretary shall  
 24 include a measure of the utilization of psycho-  
 25 tropic drugs for each skilled nursing facility for

1 inclusion on such website (or a successor  
 2 website) as part of the quality measures or  
 3 health inspections measures, or both such meas-  
 4 ures, under the Five-Star Quality Rating Sys-  
 5 tem established by the Administrator of the  
 6 Centers for Medicare & Medicaid Services.

7 “(B) CONSIDERATIONS.—In developing the  
 8 measure under subparagraph (A), the Secretary  
 9 shall take into account special patient popu-  
 10 lations, special care units, appropriate diag-  
 11 noses, and other factors, as determined appro-  
 12 priate by the Secretary.”.

13 (2) MEDICAID.—Section 1919(i) of the Social  
 14 Security Act (42 U.S.C. 1396r(i)) is amended—

15 (A) by redesignating paragraph (3) as  
 16 paragraph (4); and

17 (B) by inserting after paragraph (2) the  
 18 following new paragraph:

19 “(3) DEVELOPMENT OF MEASURE OF UTILIZA-  
 20 TION OF PSYCHOTROPIC DRUGS.—

21 “(A) IN GENERAL.—Not later than the  
 22 date that is one year after the date of the en-  
 23 actment of this paragraph, the Secretary shall  
 24 include a measure of the utilization of psycho-  
 25 tropic drugs for each nursing facility for inclu-

1 sion on such website (or a successor website) as  
2 part of the quality measures or health inspec-  
3 tions measures, or both such measures, under  
4 the Five-Star Quality Rating System estab-  
5 lished by the Administrator of the Centers for  
6 Medicare & Medicaid Services.

7 “(B) CONSIDERATIONS.—In developing the  
8 measure under subparagraph (A), the Secretary  
9 shall take into account special patient popu-  
10 lations, special care units, appropriate diag-  
11 noses, and other factors, as determined appro-  
12 priate by the Secretary.”.

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