

117TH CONGRESS
1ST SESSION

S. 2694

To improve care furnished and to support the workforce in skilled nursing facilities under the Medicare program and in nursing facilities under the Medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 10, 2021

Mr. WYDEN (for himself, Mr. CASEY, Mr. BLUMENTHAL, Mr. BENNET, Mr. WHITEHOUSE, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve care furnished and to support the workforce in skilled nursing facilities under the Medicare program and in nursing facilities under the Medicaid program, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nursing Home Improvement and Accountability Act of
6 2021”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—TRANSPARENCY AND ACCOUNTABILITY

Sec. 101. Improving the accuracy and reliability of certain skilled nursing facility data.

Sec. 102. Ensuring accurate information on cost reports.

Sec. 103. Requiring a surety bond for skilled nursing facilities and nursing facilities.

Sec. 104. Survey improvements.

Sec. 105. Prohibiting pre-dispute arbitration agreements.

Sec. 106. Improvements to the special focus facility program.

TITLE II—STAFFING IMPROVEMENTS

Sec. 201. Nurse staffing requirements.

Sec. 202. Improving Nursing Home Compare staffing data.

Sec. 203. Ensuring the submission of accurate staffing data.

Sec. 204. Requiring 24-hour use of registered professional nurses.

Sec. 205. Provision of infection control services.

Sec. 206. Enhanced funding to support staffing and quality care in nursing facilities.

TITLE III—BUILDING MODIFICATION AND STAFF INVESTMENT DEMONSTRATION PROGRAM

Sec. 301. Establishing a skilled nursing facility building modification and staff investment demonstration program.

1 **TITLE I—TRANSPARENCY AND** 2 **ACCOUNTABILITY**

3 **SEC. 101. IMPROVING THE ACCURACY AND RELIABILITY OF** 4 **CERTAIN SKILLED NURSING FACILITY DATA.**

5 (a) REDUCTION IN PAYMENTS FOR INACCURATE RE-
6 PORTING.—Section 1888(e)(6)(A) of the Social Security
7 Act (42 U.S.C. 1395yy(e)(6)(A)) is amended—

8 (1) in the header, by striking “FOR FAILURE TO
9 REPORT”; and

10 (2) in clause (i)—

11 (A) by striking “For fiscal years” and in-
12 serting the following:

1 “(I) FAILURE TO REPORT.—For
2 fiscal years”; and

3 (B) by adding at the end the following new
4 subclause:

5 “(II) REPORTING OF INAC-
6 CURATE INFORMATION.—For fiscal
7 years beginning with fiscal year 2025,
8 in the case of a skilled nursing facility
9 that submits data under this para-
10 graph, measures under subsection (h),
11 or resident assessment data described
12 in section 1819(b)(3) with respect to
13 such fiscal year that is inaccurate (as
14 determined by the Secretary through
15 the validation process described in
16 section 1888(h)(12) or otherwise),
17 after determining the percentage de-
18 scribed in paragraph (5)(B)(i), and
19 after application of clauses (ii) and
20 (iii) of paragraph (5)(B) and of sub-
21 clause (I) if this clause (if applicable),
22 the Secretary shall reduce such per-
23 centage for payment rates during such
24 fiscal year by 2 percentage points.”.

1 (b) DATA AND MEASURES VALIDATION.—Section
 2 1888(h)(12) of the Social Security Act (42 U.S.C.
 3 1395yy(h)(12)) is amended—

4 (1) in subparagraph (A), by striking “and the
 5 data submitted under subsection (e)(6)” and insert-
 6 ing “, the data submitted under subsection (e)(6),
 7 and, beginning with fiscal year 2024, the resident
 8 assessment data described in section 1819(b)(3)”;
 9 and

10 (2) in subparagraph (B), by striking “of
 11 \$5,000,000” and all that follows through the period
 12 at the end and inserting the following: “of—

13 “(i) \$5,000,000 for each of fiscal
 14 years 2023 through 2025; and

15 “(ii) \$50,000,000 for the period of fis-
 16 cal years 2026 through 2035,

17 to the Centers for Medicare & Medicaid Serv-
 18 ices Program Management Account, to remain
 19 available until expended.”.

20 (c) PROVIDING AUTHORITY TO COLLECT DATA ON
 21 ADDITIONAL MEASURES.—Section 1888(e)(6)(B)(i)(II) of
 22 the Social Security Act (42 U.S.C. 1395yy(e)(6)(B)(i)(II))
 23 is amended by inserting “, and data on any other validated
 24 measure specified by the Secretary” after “under such
 25 subsection (d)(1)”.

1 **SEC. 102. ENSURING ACCURATE INFORMATION ON COST**
2 **REPORTS.**

3 Section 1888(f) of the Social Security Act (42 U.S.C.
4 1395yy(f)) is amended by adding at the end the following
5 new paragraphs:

6 “(5) AUDIT OF COST REPORTS.—

7 “(A) IN GENERAL.—Beginning in 2022,
8 and annually thereafter, the Secretary shall
9 conduct an audit of cost reports submitted
10 under this title for a representative sample of
11 skilled nursing facilities.

12 “(B) FUNDING.—The Secretary shall pro-
13 vide for the transfer, from the Federal Hospital
14 Insurance Trust Fund under section 1817 to
15 the Centers for Medicare & Medicaid Services
16 Program Management Account, of
17 \$250,000,000 for fiscal year 2023 for purposes
18 of carrying out this paragraph. Amounts trans-
19 ferred pursuant to the previous sentence shall
20 remain available until expended.

21 “(6) REVIEW OF RELATIONSHIP BETWEEN
22 COST REPORT DATA AND QUALITY.—

23 “(A) IN GENERAL.—Not later than 2 years
24 after the Secretary completes the first audit de-
25 scribed in paragraph (5), and not less fre-
26 quently than once every 2 years thereafter, the

Inspector General of the Department of Health and Human Services shall conduct an analysis of, and submit to Congress a report on, the relationship between skilled nursing facility expenditures for functional accounts described in paragraph (3) and skilled nursing facility quality (as specified by the Inspector General).

“(B) FUNDING.—The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 to the Inspector General of the Department of Health and Human Services \$25,000,000 for fiscal year 2023 for purposes of carrying out this paragraph. Amounts transferred pursuant to the previous sentence shall remain available until expended”.

SEC. 103. REQUIRING A SURETY BOND FOR SKILLED NURSING FACILITIES AND NURSING FACILITIES.

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

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

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

1 (3) by adding at the end the following new
2 paragraph:

3 “(4) provides the Secretary with a surety bond
4 in a form specified by the Secretary and in an
5 amount that is not less than the minimum of
6 \$500,000, unless the Secretary waives the provision
7 of such surety bond due to such facility providing a
8 comparable surety bond under State law.”.

9 (b) MEDICAID.—Section 1919(a) of the Social Secu-
10 rity Act (42 U.S.C. 1396r(a)) is amended—

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

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

15 (3) by inserting after paragraph (3) the fol-
16 lowing new paragraph:

17 “(4) provides the Secretary with a surety bond
18 in a form specified by the Secretary and in an
19 amount that is not less than the minimum of
20 \$500,000, unless the Secretary waives the provision
21 of such surety bond due to such facility providing a
22 comparable surety bond under State law.”.

23 **SEC. 104. SURVEY IMPROVEMENTS.**

24 (a) IN GENERAL.—Section 1128I of the Social Secu-
25 rity Act (42 U.S.C. 1320a–7j) is amended—

(1) in the section heading, by striking “**ACCOUNTABILITY REQUIREMENTS FOR**” and inserting “**ADDITIONAL REQUIREMENTS WITH RESPECT TO**”; and

(2) by adding at the end the following new subsection:

“(i) SURVEY IMPROVEMENTS.—

“(1) REVIEW.—The Secretary shall review (and, as appropriate, identify plans to improve) the following:

“(A) The extent to which surveys conducted under subsection (g) of sections 1819 and 1919 and the enforcement process under subsection (h) of sections 1819 and 1919 result in increased compliance with requirements under sections 1819 and 1919 and subpart B of part 483 of title 42, Code of Federal Regulations, with respect to facilities.

“(B) The timeliness and thoroughness of State agency verification of deficiency corrections at facilities.

“(C) The appropriateness of the scoping and substantiation of cited deficiencies at facilities.

1 “(D) The accuracy of the identification
2 and appropriateness of the scoping of life safe-
3 ty, infection control, and emergency prepared-
4 ness deficiencies at facilities.

5 “(E) The timeliness of State agency inves-
6 tigations of—

7 “(i) complaints at facilities; and

8 “(ii) reported allegations of abuse, ne-
9 glect, and exploitation at facilities.

10 “(F) The consistency of facility reporting
11 of substantiated complaints to law enforcement.

12 “(G) The ability of the State agency to
13 sufficiently hire, train, and retain individuals
14 who conduct surveys.

15 “(H) Any other area related to surveys of
16 facilities, or the individuals conducting such
17 surveys, determined appropriate by the Sec-
18 retary.

19 “(2) REPORT.—Not later than 3 years after the
20 date of enactment of this subsection, the Secretary
21 shall submit to Congress a report on the review con-
22 ducted under paragraph (1), together with rec-
23 ommendations for such legislation and administra-
24 tive action as the Secretary determines to be appro-
25 prium.

1 “(3) SUPPORT.—If determined appropriate by
 2 the Secretary, based on the review under paragraph
 3 (1), the Secretary shall provide training, tools, tech-
 4 nical assistance, and financial support to State agen-
 5 cies that perform surveys of facilities for the purpose
 6 of improving the surveys conducted under subsection
 7 (g) and the enforcement process under subsection
 8 (h) with respect to the areas reviewed under para-
 9 graph (1).

10 “(4) FUNDING.—There is appropriated to the
 11 Secretary, out of any monies in the Treasury not
 12 otherwise appropriated, \$570,000,000, to remain
 13 available until expended, for purposes of carrying
 14 out this subsection.”.

15 **SEC. 105. PROHIBITING PRE-DISPUTE ARBITRATION**
 16 **AGREEMENTS.**

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

20 “(7) PROHIBITION ON USE OF PRE-DISPUTE
 21 ARBITRATION AGREEMENTS.—

22 “(A) IN GENERAL.—A skilled nursing fa-
 23 cility may not enter into a pre-dispute arbitra-
 24 tion agreement with an individual applying to
 25 reside or residing in the facility (or a legal rep-

1 representative of such resident), and may not enter
2 into an agreement for services with an entity or
3 individual that enters into a pre-dispute arbitra-
4 tion agreement with an individual applying to
5 reside or residing in the facility (or a legal rep-
6 resentative of such resident).

7 “(B) NO VALIDITY OR ENFORCEMENT.—A
8 skilled nursing facility shall not enforce a pre-
9 dispute arbitration agreement against a resi-
10 dent or former resident of a skilled nursing fa-
11 cility (or a legal representative of such resi-
12 dent), without regard to whether the agreement
13 was made prior to or after the effective date of
14 this paragraph.

15 “(C) DEFINITION OF PRE-DISPUTE ARBI-
16 TRATION AGREEMENT.—In this paragraph, the
17 term ‘pre-dispute arbitration agreement’ means
18 any agreement to arbitrate a potential dispute
19 that, as of the date on which such agreement
20 is entered into, has not yet arisen.

21 “(D) JUDICIAL REVIEW.—A determination
22 as to whether and how this paragraph applies
23 to a pre-dispute arbitration agreement shall be
24 determined under Federal law by a court of
25 competent jurisdiction, rather than an arbi-

1 trator, without regard to whether the party op-
 2 posing arbitration challenges such agreement
 3 specifically or in conjunction with any other
 4 term of the contract containing such agree-
 5 ment.”.

6 (b) MEDICAID.—

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

12 “(l) PROHIBITING PRE-DISPUTE ARBITRATION
 13 AGREEMENTS.—

14 “(1) IN GENERAL.—For home and community-
 15 based services or home health care services provided
 16 under a waiver under this section, section
 17 1902(a)(10)(D), or any other provision authorizing
 18 the provision of home and community-based services
 19 or home health care services under this title, the
 20 provider of such services (and any employee, agent,
 21 related entity, or affiliate of such provider) may not
 22 enter into a pre-dispute arbitration agreement with
 23 an individual receiving such services (or a legal rep-
 24 resentative of such individual). A provider of such
 25 services (and any employee, agent, related entity, or

1 affiliate of such provider) shall not enforce a pre-dis-
 2 pute arbitration agreement against an individual re-
 3 ceiving such services, or who formerly received such
 4 services (or a legal representative of such indi-
 5 vidual), without regard to whether such agreement
 6 was made prior to the effective date of this sub-
 7 section.

8 “(2) DEFINITION OF PRE-DISPUTE ARBITRA-
 9 TION AGREEMENT.—In this subsection, the term
 10 ‘pre-dispute arbitration agreement’ means any
 11 agreement to arbitrate a potential dispute that, as of
 12 the date on which such agreement is entered into,
 13 has not yet arisen.

14 “(3) JUDICIAL REVIEW.—A determination as to
 15 whether and how this subsection applies to a pre-dis-
 16 pute arbitration agreement shall be determined
 17 under Federal law by a court of competent jurisdic-
 18 tion, rather than an arbitrator, without regard to
 19 whether the party opposing arbitration challenges
 20 such agreement specifically or in conjunction with
 21 any other term of the contract containing such
 22 agreement.”.

23 (2) NURSING FACILITIES.—Section 1919(c) of
 24 the Social Security Act (42 U.S.C. 1396r(c)) is

1 amended by adding at the end the following new
2 paragraph:

3 “(9) PROHIBITION ON USE OF PRE-DISPUTE
4 ARBITRATION AGREEMENTS.—

5 “(A) IN GENERAL.—A nursing facility may
6 not enter into a pre-dispute arbitration agree-
7 ment with an individual applying to reside or
8 residing in the facility (or a legal representative
9 of such resident), and may not enter into an
10 agreement for services with an entity or indi-
11 vidual that enters into a pre-dispute arbitration
12 agreement with an individual applying to reside
13 or residing in the facility (or a legal representa-
14 tive of such resident).

15 “(B) NO VALIDITY OR ENFORCEMENT.—A
16 nursing facility shall not enforce a pre-dispute
17 arbitration agreement against a resident or
18 former resident of a nursing facility (or a legal
19 representative of such resident), without regard
20 to whether the agreement was made prior to or
21 after the effective date of this paragraph.

22 “(C) DEFINITION OF PRE-DISPUTE ARBI-
23 TRATION AGREEMENT.—In this paragraph, the
24 term ‘pre-dispute arbitration agreement’ means
25 any agreement to arbitrate a potential dispute

1 that, as of the date on which such agreement
2 is entered into, has not yet arisen.

3 “(D) JUDICIAL REVIEW.—A determination
4 as to whether and how this paragraph applies
5 to a pre-dispute arbitration agreement shall be
6 determined under Federal law by a court of
7 competent jurisdiction, rather than an arbi-
8 trator, without regard to whether the party op-
9 posing arbitration challenges such agreement
10 specifically or in conjunction with any other
11 term of the contract containing such agree-
12 ment.”.

13 **SEC. 106. IMPROVEMENTS TO THE SPECIAL FOCUS FACIL-**
14 **ITY PROGRAM.**

15 (a) APPROPRIATE PARTICIPATION.—

16 (1) MEDICARE.—Section 1819(f)(8) of the So-
17 cial Security Act (42 U.S.C. 1395i–3(f)(8)) is
18 amended—

19 (A) in subparagraph (A), by striking “The
20 Secretary” and inserting “Subject to the suc-
21 ceeding provisions of this subsection, the Sec-
22 retary”; and

23 (B) by adding at the end the following new
24 subparagraph:

1 “(C) APPROPRIATE PARTICIPATION.—Not
 2 later than October 1, 2022, the Secretary shall
 3 ensure that the number of facilities partici-
 4 pating in the special focus facility program is
 5 not less than 5 percent of all skilled nursing fa-
 6 cilities.”.

7 (2) MEDICAID.—Section 1919(f)(10) of the So-
 8 cial Security Act (42 U.S.C. 1395r(f)(10)) is amend-
 9 ed—

10 (A) in subparagraph (A), by striking “The
 11 Secretary” and inserting “Subject to the suc-
 12 ceeding provisions of this subsection, the Sec-
 13 retary”; and

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

16 “(C) APPROPRIATE PARTICIPATION.—Not
 17 later than October 1, 2022, the Secretary shall
 18 ensure that the number of facilities partici-
 19 pating in the special focus facility program is
 20 not less than 5 percent of all nursing facili-
 21 ties.”.

22 (b) COMPLIANCE ASSISTANCE PROGRAMS.—

23 (1) MEDICARE.—Section 1819(f)(8) of the So-
 24 cial Security Act (42 U.S.C. 1395i–3(f)(8)), as

1 amended by subsection (a)(1), is amended by adding
 2 at the end the following new subparagraph:

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

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

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

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

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

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

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

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

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

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

10 (2) MEDICAID.—Section 1919(f)(10) of the So-
 11 cial Security Act (42 U.S.C. 1395r(f)(10)), as
 12 amended by subsection (a)(2), is amended by adding
 13 at the end the following new subsection:

14 “(D) COMPLIANCE ASSISTANCE PRO-
 15 GRAMS.—

16 “(i) ON-SITE CONSULTATION AND
 17 EDUCATIONAL PROGRAMMING.—

18 “(I) IN GENERAL.—The Sec-
 19 retary shall establish on-site consulta-
 20 tion and educational programming for
 21 nursing facilities participating in the
 22 special focus facility program with re-
 23 spect to compliance with the applica-
 24 ble requirements under this Act.

1 “(II) ENTITY.—The on-site con-
2 sultation and educational program-
3 ming described in subclause (I) shall
4 be carried out by quality improvement
5 organizations under part B of title XI
6 or other independent organizations of
7 a similar type that do not have con-
8 flicts of interest and are deemed ap-
9 propriate by the Secretary.

10 “(III) REQUIRED PARTICIPA-
11 TION.—A nursing facility partici-
12 pating in the special focus facility pro-
13 gram shall participate in any con-
14 sultations and educational program-
15 ming described in subclause (I) con-
16 ducted at the facility.

17 “(ii) CONSULTATION INDEPENDENT
18 OF ENFORCEMENT.—

19 “(I) IN GENERAL.—Subject to
20 subclause (II), on-site consultations
21 and educational programming de-
22 scribed in clause (i) shall be con-
23 ducted independently of any enforce-
24 ment activity.

1 “(II) EXCEPTION.—Subclause (I)
2 shall not apply in the case where a
3 triggering event at the nursing facility
4 is observed in the course of providing
5 on-site consultations and educational
6 programming described in clause (i).
7 In establishing such on-site consulta-
8 tions and educational programming,
9 the Secretary shall determine the trig-
10 gering events for which the use of
11 necessary enforcement actions is per-
12 mitted notwithstanding the limitation
13 under subclause (I). Such triggering
14 events shall include events that are re-
15 quired to be reported under State and
16 Federal law and a pattern of defi-
17 ciencies or problems that the quality
18 improvement organization or other or-
19 ganization has identified for correc-
20 tion but which are consistently not
21 corrected.”.

22 (c) FUNDING FOR THE SPECIAL FOCUS FACILITY
23 PROGRAM, INCLUDING COMPLIANCE ASSISTANCE PRO-
24 GRAMS.—Section 1819(f)(8) of the Social Security Act (42
25 U.S.C. 1395i–3(f)(8)), as amended by subsections (a)(1)

1 and (b)(1), is amended by adding at the end the following
 2 new subparagraph:

3 “(E) For purposes of carrying out this
 4 paragraph and section 1919(f)(10), there is ap-
 5 propriated to the Secretary, out of any monies
 6 in the Treasury not otherwise appropriated,
 7 \$14,800,000 for fiscal year 2022 and each sub-
 8 sequent fiscal year, to remain available until ex-
 9 pended.”.

10 **TITLE II—STAFFING** 11 **IMPROVEMENTS**

12 **SEC. 201. NURSE STAFFING REQUIREMENTS.**

13 (a) IN GENERAL.—Title XI of the Social Security Act
 14 (42 U.S.C. 1301 et seq.) is amended by inserting after
 15 section 1128K the following new section:

16 **“SEC. 1128L. NURSE STAFFING REQUIREMENTS FOR FA-** 17 **CILITIES.**

18 “(a) STUDY.—Not later than 3 years after the date
 19 of the enactment of this section, and not less frequently
 20 than once every 5 years thereafter, the Secretary shall
 21 conduct a study and submit to Congress a report on the
 22 appropriateness of establishing minimum staff to resident
 23 ratios for nursing staff for skilled nursing facilities (as de-
 24 fined in section 1819(a)) and nursing facilities (as defined
 25 in section 1919(a)). Each such report shall include—

1 “(1) with respect to the first such report, rec-
 2 ommendations regarding appropriate minimum ra-
 3 tios of registered nurses (and, if practicable, licensed
 4 practical nurses (or licensed vocational nurses) and
 5 certified nursing assistants) to residents at such
 6 skilled nursing facilities and such nursing facilities;
 7 and

8 “(2) with respect to each subsequent such re-
 9 port, recommendations regarding appropriate min-
 10 imum ratios of registered nurses, licensed practical
 11 nurses (or licensed vocational nurses), and certified
 12 nursing assistants to residents at such skilled nurs-
 13 ing facilities and such nursing facilities.

14 “(b) PROMULGATION OF REGULATIONS.—

15 “(1) IN GENERAL.—Not later than 2 years
 16 after the Secretary first submits a report under sub-
 17 section (a), the Secretary shall—

18 “(A) specify through regulations, con-
 19 sistent with such report, appropriate minimum
 20 ratios (if any) of registered nurses (and, if
 21 practicable, licensed practical nurses (or li-
 22 censed vocational nurses) and certified nursing
 23 assistants) to residents at skilled nursing facili-
 24 ties and nursing facilities; and

1 “(B) subject to any waiver in effect under
 2 section 1819(b)(9)(B) or 1919(b)(9)(B), re-
 3 quire such skilled nursing facilities and such
 4 nursing facilities to comply with such ratios.

5 “(2) UPDATE.—Not later than 2 years after the
 6 submission of each subsequent report under sub-
 7 section (a), the Secretary shall, consistent with such
 8 report, update the regulations described in para-
 9 graph (1)(A) to reflect appropriate minimum ratios
 10 (if any) of registered nurses, licensed practical
 11 nurses (or licensed vocational nurses), and certified
 12 nursing assistants to residents at skilled nursing fa-
 13 cilities and nursing facilities.

14 “(c) FUNDING.—The Secretary shall provide for the
 15 transfer, from the Federal Hospital Insurance Trust Fund
 16 under section 1817 to the Centers for Medicare & Med-
 17 icaid Services Program Management Account, of
 18 \$50,000,000 for fiscal year 2022 for purposes of carrying
 19 out this section. Amounts transferred pursuant to the pre-
 20 vious sentence shall remain available until expended.”.

21 (b) IMPOSITION OF REQUIREMENTS.—

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

25 “(9) NURSE STAFFING REQUIREMENT.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), a skilled nursing facility shall com-
3 ply with any minimum staffing ratios for reg-
4 istered nurses, licensed practical nurses (or li-
5 censed vocational nurses), or certified nurse as-
6 sistants specified by the Secretary for such a
7 facility in regulations promulgated under sec-
8 tion 1128L(b) or, if greater, as specified by the
9 State involved for such a facility.

10 “(B) WAIVER.—

11 “(i) IN GENERAL.—The Secretary
12 may waive the application of subparagraph
13 (A) with respect to a skilled nursing facil-
14 ity if the Secretary finds that—

15 “(I) the facility is located in a
16 rural area and the supply of skilled
17 nursing facility services in such area
18 is not sufficient to meet the needs of
19 individuals residing therein;

20 “(II) the Secretary provides no-
21 tice of the waiver to the State long-
22 term care ombudsman (established
23 under section 307(a)(12) of the Older
24 Americans Act of 1965) and the pro-
25 tection and advocacy system in the

1 State for the mentally ill and the
2 mentally retarded; and

3 “(III) the facility that is granted
4 such a waiver notifies residents of the
5 facility (or, where appropriate, the
6 guardians or legal representatives of
7 such residents) and members of their
8 immediate families of the waiver.

9 “(ii) RENEWAL.—Any waiver in effect
10 under this subparagraph shall be subject to
11 annual renewal.”.

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

15 “(9) NURSE STAFFING REQUIREMENT.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), a nursing facility shall comply with
18 any minimum staffing ratios for registered
19 nurses, licensed practical nurses (or licensed vo-
20 cational nurses), or certified nurse assistants
21 specified by the Secretary for such a facility in
22 regulations promulgated under section
23 1128L(b) or, if greater, as specified by the
24 State involved for such a facility.

25 “(B) WAIVER.—

1 “(i) IN GENERAL.—The Secretary
2 may waive the application of subparagraph
3 (A) with respect to a nursing facility if the
4 Secretary finds that—

5 “(I) the facility is located in a
6 rural area and the supply of nursing
7 facility services in such area is not
8 sufficient to meet the needs of individ-
9 uals residing therein;

10 “(II) the Secretary provides no-
11 tice of the waiver to the State long-
12 term care ombudsman (established
13 under section 307(a)(12) of the Older
14 Americans Act of 1965) and the pro-
15 tection and advocacy system in the
16 State for the mentally ill and the
17 mentally retarded; and

18 “(III) the facility that is granted
19 such a waiver notifies residents of the
20 facility (or, where appropriate, the
21 guardians or legal representatives of
22 such residents) and members of their
23 immediate families of the waiver.

1 “(ii) RENEWAL.—Any waiver in effect
 2 under this subparagraph shall be subject to
 3 annual renewal.”.

4 **SEC. 202. IMPROVING NURSING HOME COMPARE STAFFING**
 5 **DATA.**

6 (a) MEDICARE.—Section 1819(i)(1)(A)(i) of the So-
 7 cial Security Act (42 U.S.C. 1395i–3(i)(1)(A)(i)) is
 8 amended by inserting “(excluding, with respect to such
 9 data provided on or after October 1, 2022, any hours
 10 spent on administrative duties by licensed nurse staff)
 11 and, beginning October 1, 2022, data on the hours of care
 12 provided per resident per weekend day” after “per resi-
 13 dent per day”.

14 (b) MEDICAID.—Section 1919(i)(1)(A)(i) of the So-
 15 cial Security Act (42 U.S.C. 1396r(i)(1)(A)(i)) is amended
 16 by inserting “(excluding, with respect to such data pro-
 17 vided on or after October 1, 2022, any hours spent on
 18 administrative duties by licensed nurse staff) and, begin-
 19 ning October 1, 2022, data on the hours of care provided
 20 per resident per weekend day” after “per resident per
 21 day”.

22 **SEC. 203. ENSURING THE SUBMISSION OF ACCURATE**
 23 **STAFFING DATA.**

24 Section 1128I(g) of the Social Security Act (42
 25 U.S.C. 1320a–7j(g)) is amended—

1 (1) by redesignating paragraphs (1) through
 2 (4) as subparagraphs (A) through (D), respectively,
 3 and adjusting the margins accordingly;

4 (2) in subparagraph (D), as so redesignated, by
 5 striking “paragraph (1)” and inserting “subpara-
 6 graph (A)”;

7 (3) by moving the flush matter following sub-
 8 paragraph (D), as so redesignated, 2 ems to the
 9 right;

10 (4) by striking “Beginning not later than” and
 11 inserting the following:

12 “(1) IN GENERAL.—Beginning not later than”;
 13 and

14 (5) by adding at the end the following new
 15 paragraph:

16 “(2) PENALTY FOR SUBMISSION OF INAC-
 17 CULATE INFORMATION.—Any facility that submits
 18 inaccurate information to the Secretary under para-
 19 graph (1) may be subject to a civil monetary penalty
 20 not to exceed \$10,000 for each such submission. The
 21 provisions of section 1128A (other than subsections
 22 (a) and (b) of such section) shall apply to a civil
 23 money penalty under the preceding sentence in the
 24 same manner as such provisions apply to a penalty
 25 or proceeding under section 1128A(a).”.

1 **SEC. 204. REQUIRING 24-HOUR USE OF REGISTERED PRO-**
 2 **FESSIONAL NURSES.**

3 (a) **MEDICARE.**—Section 1819(b)(4)(C)(i) of the So-
 4 cial Security Act (42 U.S.C. 1395i–3(b)(4)(C)(i)) is
 5 amended by striking “registered professional nurse” and
 6 all that follows through the period at the end and inserting
 7 the following: “registered professional nurse, with respect
 8 to such services furnished—

9 “(I) before October 1, 2023, at
 10 least 8 consecutive hours a day, 7
 11 days a week; and

12 “(II) on or after such date, 24
 13 hours a day, 7 days a week.”.

14 (b) **MEDICAID.**—Section 1919(b)(4)(C)(i)(II) of the
 15 Social Security Act (42 U.S.C. 1396r(b)(4)(C)(i)(II)) is
 16 amended by striking “registered professional nurse” and
 17 all that follows through the period at the end and inserting
 18 the following: “registered professional nurse, with respect
 19 to such services furnished—

20 “(aa) before October 1,
 21 2023, at least 8 consecutive
 22 hours a day, 7 days a week; and

23 “(bb) on or after such date,
 24 24 hours a day, 7 days a week.”.

1 **SEC. 205. PROVISION OF INFECTION CONTROL SERVICES.**

2 (a) MEDICARE.—Section 1819(d)(3) of the Social Se-
3 curity Act (42 U.S.C. 1395i–3(d)(3)) is amended—

4 (1) by redesignating subparagraphs (A) and
5 (B) as clauses (i) and (ii) respectively, and moving
6 such clauses 2 ems to the right;

7 (2) by striking “ENVIRONMENT.—A skilled”
8 and inserting “ENVIRONMENT.—

9 “(A) IN GENERAL.—A skilled”;

10 (3) in subparagraph (A), as amended by para-
11 graphs (1) and (2)—

12 (A) in clause (i), by striking “, and” at the
13 end and inserting a semicolon;

14 (B) in clause (ii), by striking the period at
15 the end and inserting “; and”; and

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

18 “(iii) provide, directly or under ar-
19 rangements with others, for infection con-
20 trol services overseen by an infection
21 preventionist for a minimum number of
22 hours per week as determined appropriate
23 by the Secretary (but, subject to subpara-
24 graph (B), not less than 40 hours per
25 week).”; and

(4) by adding at the end the following new subparagraph:

“(B) REDUCTION IN REQUIRED NUMBER OF HOURS FOR INFECTION CONTROL SERVICES OVERSEEN BY AN INFECTION PREVENTIONIST.—

“(i) IN GENERAL.—The Secretary may grant a waiver to a skilled nursing facility under which the number of hours per week that infection control services overseen by an infection preventionist at the facility are required under subparagraph (A)(iii) are reduced if the Secretary finds that—

“(I) the facility—

“(aa) is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein; or

“(bb) is of a size that necessitates a lower requirement;

“(II) the Secretary provides notice of the waiver to the State Long-

1 Term Care Ombudsman (supported
 2 under title III or chapter 2 of subtitle
 3 A of title VII of the Older Americans
 4 Act of 1965) and the protection and
 5 advocacy system (as defined in section
 6 102 of the Developmental Disabilities
 7 Assistance and Bill of Rights Act of
 8 2000) in the State; and

9 “(III) the facility that is granted
 10 the waiver notifies residents of the fa-
 11 cility (or, where appropriate, the
 12 guardians or legal representatives of
 13 such residents) and members of their
 14 immediate families of the waiver.

15 “(ii) ANNUAL REVIEW.—A waiver
 16 under this subparagraph shall be subject to
 17 annual review by the Secretary.”.

18 (b) MEDICAID.—Section 1919(d)(3) of the Social Se-
 19 curity Act (42 U.S.C. 1396r(d)(3)) is amended—

20 (1) by redesignating subparagraphs (A) and
 21 (B) as clauses (i) and (ii) respectively, and moving
 22 such clauses 2 ems to the right;

23 (2) by striking “ENVIRONMENT.—A nursing fa-
 24 cility” and inserting “ENVIRONMENT.—

25 “(A) IN GENERAL.—A nursing facility”;

(3) in subparagraph (A), as amended by paragraphs (1) and (2)—

(A) in clause (i), by striking “, and” at the end and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new clause:

“(iii) provide, directly or under arrangements with others, for infection control services overseen by an infection preventionist for a minimum number of hours per week as determined appropriate by the Secretary (but, subject to subparagraph (B), not less than 40 hours per week).”; and

(4) by adding at the end the following new subparagraph:

“(B) REDUCTION IN REQUIRED NUMBER OF HOURS FOR INFECTION CONTROL SERVICES OVERSEEN BY AN INFECTION PREVENTIONIST.—

“(i) IN GENERAL.—A State may grant a waiver to a nursing facility under which the number of hours per week that

1 infection control services overseen by an in-
2 fection preventionist at the facility are re-
3 quired under subparagraph (A)(iii) are re-
4 duced if—

5 “(I) the facility demonstrates to
6 the satisfaction of the State that the
7 facility has been unable, despite dili-
8 gent efforts (including offering wages
9 at the community prevailing rate for
10 nursing facilities), to recruit appro-
11 priate personnel;

12 “(II) the State determines that
13 the waiver will not endanger the
14 health or safety of individuals staying
15 in the facility;

16 “(III) the State agency granting
17 the waiver provides notice of the waiv-
18 er to the State Long-Term Care Om-
19 budsman (supported under title III or
20 chapter 2 of subtitle A of title VII of
21 the Older Americans Act of 1965) and
22 the protection and advocacy system
23 (as defined in section 102 of the De-
24 velopmental Disabilities Assistance
25 and Bill of Rights Act of 2000); and

1 “(IV) the nursing facility that is
2 granted the waiver by a State notifies
3 residents of the facility (or, where ap-
4 propriate, the guardians or legal rep-
5 resentatives of such residents) and
6 members of their immediate families
7 of the waiver.

8 “(ii) ANNUAL REVIEW.—A waiver
9 under this subparagraph shall be subject to
10 annual review by the State agency and to
11 the review of the Secretary and subject to
12 clause (iii) shall be accepted by the Sec-
13 retary for purposes of this title to the same
14 extent as is the State’s certification of the
15 facility. In granting or renewing a waiver,
16 a State may require the facility to use
17 other qualified, licensed personnel to meet
18 the staffing requirements under subpara-
19 graph (A)(iii).

20 “(iii) ASSUMPTION OF WAIVER AU-
21 THORITY BY SECRETARY.—If the Secretary
22 determines that a State has shown a clear
23 pattern and practice of allowing waivers in
24 the absence of diligent efforts by facilities
25 to meet the staffing requirements under

1 subparagraph (A)(iii), the Secretary shall
 2 assume and exercise the authority of the
 3 State to grant waivers.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall take effect on October 1, 2022.

6 **SEC. 206. ENHANCED FUNDING TO SUPPORT STAFFING**
 7 **AND QUALITY CARE IN NURSING FACILITIES.**

8 (a) FMAP INCREASE.—

9 (1) IN GENERAL.—Notwithstanding subsection
 10 (b) or (ff) of section 1905 of the Social Security Act
 11 (42 U.S.C. 1396d), in the case of a State that meets
 12 the requirements described in subsection (c), the
 13 Federal medical assistance percentage determined
 14 for the State under subsection (b) of section 1905
 15 of such Act (or subsection (ff) of such section, if ap-
 16 plicable) and, if applicable, as increased under sub-
 17 section (y), (z), (aa), or (ii) of such section or sec-
 18 tion 6008 of the Families First Coronavirus Re-
 19 sponse Act (Public Law 116–127), or any other pro-
 20 vision of law, shall be increased by the applicable
 21 number of percentage points specified in paragraph
 22 (2) (but not to exceed 95 percent) with respect to
 23 amounts expended by the State Medicaid program
 24 for medical assistance for nursing facility services
 25 provided for each calendar quarter that occurs dur-

1 ing the applicable period and for which the Secretary
 2 determines that the State meets such requirements.
 3 Any payment made to Puerto Rico, the Virgin Is-
 4 lands, Guam, the Northern Mariana Islands, or
 5 American Samoa for expenditures on medical assist-
 6 ance that are subject to the Federal medical assist-
 7 ance percentage increase specified under the first
 8 sentence of this paragraph shall not be taken into
 9 account for purposes of applying payment limits
 10 under subsections (f) and (g) of section 1108 of the
 11 Social Security Act (42 U.S.C. 1308).

12 (2) APPLICABLE NUMBER OF PERCENTAGE
 13 POINTS.—For purposes of paragraph (1), the appli-
 14 cable number of percentage points specified in this
 15 paragraph is—

16 (A) in the case of a calendar quarter that
 17 occurs within the 16-quarter period that begins
 18 on the 1st day of the applicable period, 3 per-
 19 centage points;

20 (B) in the case of a calendar quarter that
 21 occurs within the 4-quarter period immediately
 22 succeeding such 16-quarter period, 2 percentage
 23 points; and

24 (C) in the case of a calendar quarter that
 25 occurs within the 4-quarter period immediately

1 succeeding the 4-quarter period described in
2 subparagraph (B), 1 percentage point.

3 (b) DEFINITIONS.—In this section:

4 (1) APPLICABLE PERIOD.—The term “applica-
5 ble period” means the period that—

6 (A) begins on the 1st day of the 1st cal-
7 endar quarter that begins on or after the date
8 that is 1 year after the date of enactment of
9 this section; and

10 (B) ends on the last day of the succeeding
11 24th calendar quarter.

12 (2) NURSING FACILITY STAFF.—The term
13 “nursing facility staff” includes a registered nurse,
14 licensed practical nurse, licensed nursing assistant,
15 certified nursing assistant, nursing assistant, and
16 any other relevant staff, as determined by the Sec-
17 retary, who provide care to Medicaid beneficiaries
18 who are residents in a nursing facility.

19 (3) MEDICAID BENEFICIARY.—The term “Med-
20 icaid beneficiary” means an individual who is eligible
21 for, and enrolled in, a State Medicaid program.

22 (4) MEDICAID PROGRAM.—The term “Medicaid
23 program” means, with respect to a State, the State
24 program under title XIX of the Social Security Act
25 (42 U.S.C. 1396 et seq.) (including any waiver or

1 demonstration under such title or under section
 2 1115 of such Act (42 U.S.C. 1315) relating to such
 3 title).

4 (5) NURSING FACILITY.—The term “nursing
 5 facility”—

6 (A) has the meaning given such term in
 7 section 1919(a) of the Social Security Act (42
 8 U.S.C. 1396r(a)); and

9 (B) includes a skilled nursing facility, as
 10 defined in section 1819(a) of the Social Secu-
 11 rity Act (42 U.S.C. 1395i–3(a)), that is a par-
 12 ticipating provider in the Medicaid program of
 13 the State in which the facility is located or oth-
 14 erwise furnishes items or services for which
 15 medical assistance is available under the Med-
 16 icaid program of the State in which the facility
 17 is located.

18 (6) NURSING FACILITY SERVICES.—

19 (A) IN GENERAL.—Subject to subpara-
 20 graphs (B) and (C), the term “nursing facility
 21 services” has the meaning given such term
 22 under section 1905(f) of the Social Security Act
 23 (42 U.S.C. 1396d(f)).

24 (B) STATE MEDICAID PROGRAM.—With re-
 25 spect to a State, such term includes those serv-

ices (including any limitations on the provision of, or payment for, such services) that are specified as nursing facility services for purposes of the Medicaid program of the State in which the nursing facility furnishing such services is located.

(C) INDIVIDUAL PLAN OF CARE.—Notwithstanding subparagraph (A) or (B), such term includes items or services that are specified in the individual plan of care for a resident of a nursing facility and are furnished to the resident in accordance with the requirements of such plan.

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

(8) STATE.—The term “State” has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(c) REQUIREMENTS.—As a condition for receipt of the increase under subsection (a) to the Federal medical assistance percentage determined for a State under subsection (b) of section 1905 of the Social Security Act (42 U.S.C. 1396d) for a calendar quarter, the State shall demonstrate to the satisfaction of the Secretary the following:

1 (1) USE OF ADDITIONAL FEDERAL FUNDS.—

2 The State agrees to—

3 (A) use the Federal funds attributable to
4 the increase under subsection (a) only for the
5 purposes specified in subsection (d); and

6 (B) not use such Federal funds to satisfy
7 any State contribution required under the State
8 Medicaid program.

9 (2) PLAN FOR STAFFING AND SERVICE IM-
10 PROVEMENTS AND REPORTING.—The State has a
11 reasonable plan for achieving the purposes specified
12 in subsection (d), including with respect to—

13 (A) carrying out the staffing and service
14 improvements specified in subsection (e) to
15 strengthen nursing facility staff workforce and
16 improve the quality and safety of care for Med-
17 icaid beneficiaries; and

18 (B) collecting and reporting the informa-
19 tion required under subsection (f).

20 (3) SUPPLEMENT, NOT SUPPLANT.—The State
21 agrees to use the Federal funds attributable to the
22 increase under subsection (a) to supplement, and not
23 supplant, the level of State funds expended as of Oc-
24 tober 1, 2021, for nursing facility services, including
25 with respect to efforts to strengthen the nursing fa-

1 cility staff workforce and improve the quality and
2 safety of care for Medicaid beneficiaries, under the
3 State Medicaid program.

4 (4) REPORTING AND OVERSIGHT.—The State
5 agrees to—

6 (A) annually report the information speci-
7 fied in subsection (f) to the Secretary in such
8 form and manner as the Secretary shall require;
9 and

10 (B) provide such data and information as
11 is necessary for the evaluation required under
12 subsection (g).

13 (d) USE OF FUNDS.—A State may use the Federal
14 funds attributable to the increase under subsection (a)
15 only for expenditures eligible for payment under the State
16 Medicaid program that are attributable to State efforts
17 to achieve both of the following purposes:

18 (1) To expand and improve nursing facility
19 staffing, including by increasing payments for nurs-
20 ing facility services to improve staff wages and bene-
21 fits, support retention and recruitment, and reduce
22 staff turnover, consistent with the improvements
23 specified in paragraphs (1) and (2) of subsection (e).

24 (2) To support and improve the quality and
25 safety of care provided to Medicaid beneficiaries in

1 nursing facilities, including through efforts to ex-
2 pand the use of person-centered models of care, and
3 incentives or payments related to the provision of
4 care for Medicaid beneficiaries in private rooms.

5 (e) STAFFING AND SERVICE IMPROVEMENTS.—The
6 staffing and service improvements specified in this sub-
7 section are the following:

8 (1) The State makes such changes to processes
9 for determining payment rates for nursing facility
10 services as are necessary to ensure that—

11 (A) such payment rates are reviewed and
12 updated every 2 years during the applicable pe-
13 riod to support the recruitment and retention of
14 nursing facility staff, and reduce turnover in
15 such staff through a transparent process that
16 involves meaningful input from stakeholders;
17 and

18 (B) increases to such payment rates are, at
19 a minimum, used to proportionally increase
20 wages and benefits for nursing facility staff.

21 (2) The State updates, develops, and adopts
22 training opportunities and resources for nursing fa-
23 cility staff, including training for providing person-
24 centered care.

1 (3) The State improves and streamlines edu-
2 cation and options counseling services for Medicaid
3 beneficiaries, potential Medicaid beneficiaries, and
4 family members of such beneficiaries and potential
5 beneficiaries, with respect to eligibility and options
6 for institutional and non-institutional long term
7 care.

8 (f) ANNUALLY REPORTED INFORMATION.—The in-
9 formation required to be annually reported to the Sec-
10 retary by a State with respect to such reporting periods
11 as the Secretary shall specify is the following:

12 (1) The number of Medicaid beneficiaries who
13 received during the reporting period or, as of the
14 date of the report, are receiving, nursing facility
15 services in the State, disaggregated by race, eth-
16 nicity, gender, geography, age, and income.

17 (2) A description of how the State spent the
18 Federal funds attributable to the increase under
19 subsection (a) during the reporting period.

20 (3) Changes to payment rates for nursing facil-
21 ity services under the State Medicaid program dur-
22 ing the reporting period.

23 (4) The staffing information and employee
24 turnover and tenure information in nursing facilities
25 in the State during the reporting period, based on

1 submissions to the Payroll-Based Journal system of
2 the Centers for Medicare & Medicaid Services under
3 section 1128I(g) of the Social Security Act (42
4 U.S.C. 1320a–7j(g)).

5 (5) The wages and benefits provided to nursing
6 facility staff in nursing facilities in the State during
7 the reporting period.

8 (6) A description of the health status of, and
9 quality of care provided to, Medicaid beneficiaries
10 who are residents of nursing facilities in the State
11 during the reporting period, in the manner deter-
12 mined by the Secretary.

13 (g) EVALUATION.—The Secretary shall engage an ex-
14 ternal contractor to conduct an independent evaluation of
15 the impact of this section on—

16 (1) the quality and safety of care provided in
17 nursing facilities to Medicaid beneficiaries who are
18 residents of nursing facilities;

19 (2) the capacity of the nursing facility staff
20 workforce to provide quality, safe care for Medicaid
21 beneficiaries who are residents of nursing facilities;
22 and

23 (3) the wages, benefits, and turnover of nursing
24 facility staff.

25 (h) INTERIM AND FINAL REPORTS TO CONGRESS.—

1 (1) IN GENERAL.—The Secretary shall submit
2 an interim report to Congress on the implementation
3 of this section 4 years after the date of enactment
4 of this section, and a final report on the implemen-
5 tation of this section 8 years after such date.

6 (2) REQUIRED INFORMATION.—

7 (A) INTERIM AND FINAL REPORTS.—The
8 interim and final reports submitted under this
9 subsection shall include the following informa-
10 tion:

11 (i) The number of States that received
12 an increase to the Federal medical assist-
13 ance percentage of the State under sub-
14 section (a) during the applicable period.

15 (ii) The State activities funded by the
16 Federal funds attributable to the increase
17 under subsection (a).

18 (B) FINAL REPORT.—The final report sub-
19 mitted under this section shall include, in addi-
20 tion to the information required under subpara-
21 graph (A), the results of the independent eval-
22 uation conducted pursuant to subsection (g).

1 **TITLE III—BUILDING MODIFICA-**
 2 **TION AND STAFF INVEST-**
 3 **MENT DEMONSTRATION PRO-**
 4 **GRAM**

5 **SEC. 301. ESTABLISHING A SKILLED NURSING FACILITY**
 6 **BUILDING MODIFICATION AND STAFF IN-**
 7 **VESTMENT DEMONSTRATION PROGRAM.**

8 Part A of title XVIII of the Social Security Act (42
 9 U.S.C. 1395c et seq.) is amended by inserting after sec-
 10 tion 1819 the following new section:

11 **“SEC. 1819A. COMMUNITY-BASED LIVING MODIFICATIONS**
 12 **AND STAFF INVESTMENT DEMONSTRATION**
 13 **PROGRAM.**

14 “(a) ESTABLISHMENT.—Not later than January 1,
 15 2023, the Secretary shall establish a demonstration pro-
 16 gram to test the impact of providing skilled nursing facili-
 17 ties (as defined in section 1819(a)) selected by the Sec-
 18 retary under subsection (b) funding to modify the built
 19 environments of such facilities (or portions of such facili-
 20 ties) and invest in individuals providing resident care in
 21 such facilities (or in portions of such facilities) in order
 22 to, with respect to residents of such facilities, improve
 23 health outcomes relative to residents of facilities not so
 24 selected.

1 “(b) APPLICATION AND SELECTION OF FACILI-
2 TIES.—

3 “(1) APPLICATION.—

4 “(A) IN GENERAL.—A skilled nursing fa-
5 cility shall only be eligible to receive funding
6 under the demonstration program established
7 under subsection (a) if such facility submits an
8 application at such time and in such manner as
9 specified by the Secretary that contains—

10 “(i) a description of modifications and
11 investments described in subsection (a)
12 that will be made by the facility using such
13 funds, including the estimated costs of
14 such modifications and investments;

15 “(ii) an agreement that such facility
16 (or, in the case such modifications and in-
17 vestments are to be made only with respect
18 to a portion of such facility, such portion
19 of such facility)—

20 “(I) will meet the requirements
21 described in subparagraph (B) not
22 later than the date that is 2 years
23 after such facility first receives funds
24 for such modifications and invest-
25 ments under such program; and

1 “(II) will continue to meet such
2 requirements for the 5-year period be-
3 ginning on the date that is 2 years
4 after such facilities first receives such
5 funds;

6 “(iii) an agreement that, in the case
7 such facility (or such portion of such facil-
8 ity, as applicable) fails to meet such re-
9 quirements in accordance with clause (ii),
10 such facility will—

11 “(I) repay such funds to the Sec-
12 retary in an amount determined ap-
13 propriate by the Secretary under sub-
14 section (d); and

15 “(II) notify each resident of such
16 facility (or each resident of such por-
17 tion of such facility, as applicable) of
18 the failure of such facility or such
19 portion, as applicable, to meet such
20 requirements;

21 “(iv) an agreement that, if such facil-
22 ity is selected by the Secretary under para-
23 graph (2), the facility will notify each resi-
24 dent of such facility (or each resident of
25 such portion of such facility, as applicable),

1 of such selection and include in such notifi-
2 cation a description of the program estab-
3 lished under subsection (a), including any
4 modifications and investments to be made
5 with respect to such facility (or with re-
6 spect to such portion of such facility, as
7 applicable); and

8 “(v) in the case such modifications
9 and investments are to be made only with
10 respect to a portion of such facility, an
11 agreement that such facility will not dis-
12 criminate in the selection of residents who
13 may reside in such portion based on
14 whether payment is being made to such fa-
15 cility with respect to such resident under
16 this title, a State plan (or waiver of such
17 plan) under title XIX, or otherwise.

18 “(B) REQUIREMENTS.—For purposes of
19 subparagraph (A), the requirements described
20 in this subparagraph with respect to a skilled
21 nursing facility (or a portion of such facility)
22 are the following:

23 “(i) The facility (or portion) main-
24 tains beds for no less than 5 and no more
25 than 14 residents.

1 “(ii) The facility (or portion) incor-
2 porates universal design (defined in section
3 3(19) of the Assistive Technology Act of
4 1998)) to ensure such facility (or portion)
5 is accessible to all residents, regardless of
6 age or disability, including by providing for
7 the following:

8 “(I) Private rooms and bath-
9 rooms (unless such facility determines
10 that the provision of private rooms
11 and bathrooms at such facility would
12 adversely affect the availability of
13 skilled nursing facility services in the
14 area in which such facility is located
15 and the Secretary concurs with such
16 determination).

17 “(II) Shared space, including a
18 central living area, as defined by the
19 Secretary, with a communal dining
20 table and accessible kitchen.

21 “(III) Accessible outdoor space,
22 including a protected garden space for
23 use by residents and their visitors.

24 “(iii) The facility (or portion) provides
25 a clinical team that consists of a full-time

1 registered professional nurse or licensed
2 practical nurse (or licensed vocational
3 nurse) who works in partnership with cer-
4 tified nursing assistants in a team-based,
5 collaborative model.

6 “(iv) The facility (or portion) has a li-
7 censed practical nurse (or licensed voca-
8 tional nurse) on site at all times.

9 “(v) The facility (or portion) facili-
10 tates a standing resident council run by
11 residents, and a standing family council
12 run by family members of residents, that
13 meets such requirements as may be speci-
14 fied by the Secretary.

15 “(vi) The facility (or portion) solicits
16 resident input on facility policies (or poli-
17 cies relating to such portion of such facil-
18 ity), including with respect to programs
19 and scheduling, and, in the case of an in-
20 capacitated resident, solicits such input
21 from an individual recognized by State law
22 to act on behalf of such resident.

23 “(vii) In addition to the resident as-
24 sessment under section 1819(b)(3), the fa-
25 cility (or portion) conducts an assessment

1 of residents' care preferences (or, in the
2 case of an incapacitated resident, such
3 preferences as expressed by an individual
4 recognized by State law to act on behalf of
5 such resident) not later than 14 days after
6 the resident is admitted to such facility or
7 portion of such facility (or, in the case of
8 a resident residing at such facility at the
9 time such facility receives funding under
10 the program established under paragraph
11 (1), not later than 14 days after the date
12 of such receipt) to ensure care is person-
13 directed.

14 “(viii) The facility (or portion) offers
15 daily activities, such as art, music, edu-
16 cational activities, or other activities based
17 on resident preferences.

18 “(C) TIMEFRAME.—The Secretary shall
19 develop the application described in subpara-
20 graph (A) and begin accepting such applica-
21 tions not later than July 1, 2023. The Sec-
22 retary shall accept such applications during the
23 2-year period beginning on the date such appli-
24 cations are first accepted.

25 “(2) SELECTION.—

1 “(A) IN GENERAL.—Not later than 2 years
 2 after the date the Secretary first accepts appli-
 3 cations under paragraph (1), the Secretary
 4 shall select a number of skilled nursing facilities
 5 determined appropriate by the Secretary to re-
 6 ceive funding under the program established
 7 under subsection (a).

8 “(B) PREFERENCE.—In selecting skilled
 9 nursing facilities under this paragraph, the Sec-
 10 retary shall—

11 “(i) give preference to facilities that—

12 “(I) are located in medically un-
 13 derserved areas (as defined in section
 14 330(b)(3)(A) of the Public Health
 15 Service Act); and

16 “(II) house a majority of resi-
 17 dents who are receiving medical as-
 18 sistance consisting of nursing facility
 19 services under a State plan (or waiver
 20 of such plan) under title XIX;

21 “(ii) give preference to facilities that
 22 demonstrate the greatest likelihood of
 23 meeting the requirements described in
 24 paragraph (1)(B) within 2 years of receiv-

1 ing funding under the program established
2 under subsection (a);

3 “(iii) give preference to facilities that
4 offer staff training beyond such training
5 required under section 1819 (as deter-
6 mined through payroll based journal data);
7 and

8 “(iv) so select such facilities in a man-
9 ner that ensures geographic diversity, to
10 the extent practicable.

11 “(c) FUNDS.—

12 “(1) IN GENERAL.—Subject to paragraph (3)
13 and subsection (h), the Secretary shall provide funds
14 to each skilled nursing facility selected under sub-
15 section (b)(2) in an amount equal to not more than
16 the costs specified by such facility pursuant to sub-
17 section (b)(1)(A)(i).

18 “(2) USE OF FUNDS.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), funds provided under paragraph (1)
21 may only be used by a skilled nursing facility
22 for modifications and investments specified by
23 such facility pursuant to subsection
24 (b)(1)(A)(i).

1 “(B) EXCEPTION.—A skilled nursing facil-
 2 ity may use funds provided under paragraph
 3 (1) for modifications and investments described
 4 in subsection (a) but not specified by such facil-
 5 ity pursuant to subsection (b)(1)(A)(i) if—

6 “(i) such facility submits a request to
 7 the Secretary containing a description of
 8 such modifications and investments; and

9 “(ii) the Secretary determines that
 10 such modifications and investments will as-
 11 sist such facility (or a portion of such facil-
 12 ity, as applicable) in complying with the
 13 requirements specified in subsection
 14 (b)(1)(B).

15 “(3) FORM OF PROVISION OF FUNDS.—The
 16 Secretary may provide funding under paragraph (1)
 17 in the form of a single upfront payment or in up to
 18 3 installment payments, spaced out across the first
 19 3 fiscal years beginning with the fiscal year in which
 20 the first such payment is made.

21 “(4) LIMITATION OF PROVISION OF FUND-
 22 ING.—No skilled nursing facility may receive more
 23 than 3 percent of the total monies appropriated
 24 under paragraph (5).

1 “(5) APPROPRIATION.—In addition to any
2 amounts otherwise available, there is appropriated to
3 the Secretary, out of any monies in the Treasury not
4 otherwise appropriated, \$1,300,000,000, to remain
5 available until expended, for purposes of providing
6 funds to skilled nursing facilities under paragraph
7 (1).

8 “(d) FAILURE TO MEET REQUIREMENTS.—

9 “(1) IN GENERAL.—Subject to paragraph (2),
10 in the case of a facility (or a portion of such facility,
11 as applicable) that fails to meet the requirements de-
12 scribed in subsection (b)(1)(B) in accordance with
13 the agreement described in subsection (b)(1)(A)(ii),
14 the Secretary may recoup any funds provided to
15 such facility under subsection (c)(1) in an amount
16 determined appropriate by the Secretary. In deter-
17 mining such amount, the Secretary shall take into
18 account the extent of the compliance of such facility
19 (or portion of such facility, as applicable) with such
20 requirements.

21 “(2) EXCEPTION.—The Secretary may suspend
22 any recoupment described in paragraph (1) with re-
23 spect to a facility (or a portion of such facility, as
24 applicable) described in such paragraph for a period
25 of time determined appropriate by the Secretary if

1 the Secretary finds that such facility (or such por-
 2 tion) will likely be in compliance with the require-
 3 ments described in such paragraph within a reason-
 4 able time specified by the Secretary.

5 “(e) EVALUATION OF PROGRAM.—

6 “(1) IN GENERAL.—The Secretary shall evalu-
 7 ate each skilled nursing facility receiving funds
 8 under the program established under subsection (a)
 9 to assess whether, relative to similarly situated
 10 skilled nursing facilities not receiving funds under
 11 such program and residents of such facilities, modi-
 12 fications and investments described in subsection (a)
 13 made at skilled nursing facilities using such funds
 14 resulted in, with respect to residents of such facili-
 15 ties (or, in the case such modifications and invest-
 16 ments are made only with respect to a portion of
 17 such facility, residents of such portion of such facil-
 18 ity)—

19 “(A) a reduction in preventable hos-
 20 pitalizations;

21 “(B) a reduction in hospital readmissions;

22 “(C) a reduction in emergency room visits;

23 “(D) greater improvement in functional
 24 status;

25 “(E) an improvement in infection control;

1 “(F) a reduction in nursing staff turnover
2 rates;

3 “(G) an increase in resident and family
4 caregiver satisfaction;

5 “(H) other improvements in resident qual-
6 ity of life as may be specified by the Secretary;

7 “(I) a reduction in expenditures under this
8 part (excluding funds provided under subsection
9 (c)(1)); or

10 “(J) any other outcomes specified by the
11 Secretary.

12 “(2) REPORTS TO CONGRESS.—Based on eval-
13 uations described in paragraph (1), the Secretary
14 shall, not later than July 1, 2031, and again not
15 later than July 1, 2035, submit to Congress a report
16 on such program. Each such report shall include an
17 analysis of the demonstration program’s effect on
18 the outcomes described in paragraph (1).

19 “(f) IMPLEMENTATION.—Chapter 35 of title 44,
20 United States Code, shall not apply to this section.

21 “(g) AUTHORITY TO EXPAND TO CERTAIN NURSING
22 FACILITIES.—The Secretary may, subject to subsection
23 (h), enter into agreements with States to include nursing
24 facilities (as defined in section 1919(a)) that are not
25 skilled nursing facilities (as defined in section 1819(a))

1 in the demonstration program established under sub-
2 section (a) and may modify the requirements of the pre-
3 vious provisions of this section as appropriate to be appli-
4 cable to such facilities.

5 “(h) FUNDING.—The Secretary shall provide for the
6 transfer, from the Federal Hospital Insurance Trust Fund
7 under 1817 to the Centers for Medicare & Medicaid Serv-
8 ices Program Management Account, of \$30,000,000 for
9 fiscal year 2023 for purposes of carrying out this section
10 (other than for purposes of making payments under sub-
11 section (c)(1)). Amounts transferred pursuant to the pre-
12 vious sentence shall remain available until expended.”.

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