

116TH CONGRESS
1ST SESSION

H. R. 5216

To amend titles XVIII and XIX of the Social Security Act to revise minimum nurse staffing requirements for skilled nursing facilities under the Medicare program and for nursing facilities under the Medicaid program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2019

Ms. SCHAKOWSKY (for herself, Mrs. HAYES, Mr. GARAMENDI, Mr. RYAN, Mr. CARSON of Indiana, Ms. MOORE, Ms. ROYBAL-ALLARD, Mrs. CAROLYN B. MALONEY of New York, Mrs. DINGELL, Ms. DELAURO, Ms. BASS, Ms. JOHNSON of Texas, Mr. DANNY K. DAVIS of Illinois, Mr. HASTINGS, Mr. PAYNE, Ms. MATSUI, Ms. UNDERWOOD, Ms. JAYAPAL, Ms. PRESSLEY, Ms. JUDY CHU of California, Ms. CLARKE of New York, Mr. KHANNA, Mr. DEUTCH, Mr. DESAULNIER, Ms. LEE of California, and Mr. TONKO) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XVIII and XIX of the Social Security Act to revise minimum nurse staffing requirements for skilled nursing facilities under the Medicare program and for 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Quality Care for Nurs-
3 ing Home Residents Act of 2019”.

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

8 (a) **MEDICARE.**—

9 (1) **IN GENERAL.**—Subparagraph (C) of section
10 1819(b)(4) of the Social Security Act (42 U.S.C.
11 1395i–3(b)(4)) is amended—

12 (A) in clause (i)—

13 (i) by amending the clause heading to
14 read as follows: “GENERAL REQUIRE-
15 MENTS BEFORE 2020”; and

16 (ii) by striking “Except as provided in
17 clause (ii),” and inserting “Except as pro-
18 vided in clause (iii), with respect to skilled
19 nursing facility services provided before
20 January 1, 2020,”;

21 (B) by redesignating clause (ii) as clause
22 (iii); and

23 (C) by inserting after clause (i) the fol-
24 lowing new clause:

25 “(ii) **GENERAL REQUIREMENTS AFTER**
26 **2019.**—

1 “(I) IN GENERAL.—With respect
2 to skilled nursing facility services pro-
3 vided on or after January 1, 2020, a
4 skilled nursing facility must—

5 “(aa) provide nursing serv-
6 ices that are sufficient to meet
7 the nursing needs of its residents
8 on a 24-hour basis, to be divided
9 into day shifts, evening shifts,
10 and night shifts;

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

15 “(cc) ensure that, in car-
16 rying out items (aa) and (bb), a
17 total minimum of 4.1 hours of
18 care is provided per resident per
19 day, with 0.75 hours of care of
20 such total minimum provided by
21 a registered professional nurse,
22 0.54 hours of care of such total
23 minimum provided by a licensed
24 practical nurse, and 2.81 hours
25 of care of such total minimum

1 provided by a nurse aide (as de-
2 fined in paragraph (5)(F)).

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

6 “(aa) at least 1 registered
7 professional nurse for every 28
8 residents, with a minimum of
9 0.29 hours of care provided per
10 resident during each such shift;

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

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

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

1 “(aa) at least 1 registered
2 professional nurse for every 30
3 residents, with a minimum of
4 0.26 hours of care provided per
5 resident during each such shift;

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

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

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

20 “(aa) at least 1 registered
21 professional nurse for every 40
22 residents, with a minimum of
23 0.20 hours of care provided per
24 resident during such shift;

1 “(bb) at least 1 licensed
2 practical nurse for every 56 resi-
3 dents, with a minimum of 0.14
4 hours of care provided per resi-
5 dent during such shift; and

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

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

24 “(VI) RULE OF CONSTRUCTION
25 REGARDING STATE AUTHORITY TO ES-

1 TABLISH HIGHER MINIMUM NURSE
2 STAFFING LEVELS.—Nothing in this
3 clause may be construed as preventing
4 a State from establishing or requiring
5 skilled nursing facilities in the State
6 to provide for minimum nurse staffing
7 levels that are higher than the levels
8 required under this clause.

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

21 “(VIII) DEFINITIONS.—In this
22 clause:

23 “(aa) ADMINISTRATIVE
24 SERVICES.—The term ‘adminis-
25 trative services’ means food prep-

1 aration, housekeeping, laundry
2 services, maintenance services,
3 and other noncaregiving-related
4 services, as determined by the
5 Secretary.

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

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

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

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

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

18 (B) in paragraph (2), by striking “With
19 respect to” and inserting “Subject to paragraph
20 (7), with respect to”; and

21 (C) by adding at the end the following new
22 paragraph:

23 “(7) SPECIAL ENFORCEMENT PROCESS WITH
24 RESPECT TO MINIMUM NURSE STAFFING REQUIRE-
25 MENTS.—

1 “(A) IN GENERAL.—If a State finds, on
2 the basis of a standard, extended, or partial ex-
3 tended survey under subsection (g)(2) or other-
4 wise, that a skilled nursing facility does not
5 meet the minimum staffing requirements of
6 clause (ii) of subsection (b)(4)(C) with respect
7 to skilled nursing facility services provided on
8 or after January 1, 2020, the State shall rec-
9 ommend to the Secretary that the Secretary
10 take such actions as described in subclauses (I)
11 and (II) of subparagraph (B)(i).

12 “(B) SECRETARIAL AUTHORITY.—

13 “(i) IN GENERAL.—With respect to
14 any skilled nursing facility in a State, if
15 the Secretary finds, or pursuant to a rec-
16 ommendation of the State under subpara-
17 graph (A) finds, that a skilled nursing fa-
18 cility does not meet the minimum staffing
19 requirements of clause (ii) of subsection
20 (b)(4)(C) with respect to skilled nursing
21 facility services provided on or after Janu-
22 ary 1, 2020, the Secretary shall—

23 “(I) deny any further payments
24 under this title with respect to all in-
25 dividuals entitled to benefits under

1 this title who are admitted to the fa-
2 cility after the effective date of the
3 finding; and

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

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

24 “(I) not more than 50 percent; or

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

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

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

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

1 facility, or results in the death of a
2 resident of the facility.

3 “(iv) REPEATED NONCOMPLIANCE.—

4 In the case of a skilled nursing facility
5 which, on three consecutive standard sur-
6 veys conducted under subsection (g)(2),
7 has been found as not meeting the min-
8 imum staffing requirements of clause (ii)
9 of subsection (b)(4)(C) with respect to
10 skilled nursing facility services provided on
11 or after January 1, 2020, the Secretary
12 may (regardless of the remedies provided
13 for under clause (i))—

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

1 “(II) monitor the facility under
2 subsection (g)(4)(B) with respect to
3 such minimum staffing requirements
4 until the facility has demonstrated to
5 the satisfaction of the Secretary that
6 the facility is in compliance, and will
7 remain in compliance, with such min-
8 imum staffing requirements; or

9 “(III) subject to section
10 1128I(h), terminate the facility’s par-
11 ticipation under this title.

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

18 “(v) PUBLIC NOTICE OF VIOLA-
19 TIONS.—

20 “(I) INTERNET WEBSITE.—The
21 Secretary shall publish on the internet
22 website of the Department of Health
23 and Human Services the names of
24 skilled nursing facilities that have vio-
25 lated the minimum staffing require-

1 ments of clause (ii) of subsection
2 (b)(4)(C) with respect to skilled nurs-
3 ing facility services provided on or
4 after January 1, 2020.

5 “(II) CHANGE OF OWNERSHIP.—

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

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

21 (b) MEDICAID.—

22 (1) IN GENERAL.—Subparagraph (C) of section
23 1919(b)(4) of the Social Security Act (42 U.S.C.
24 1396r(b)(4)) is amended—

25 (A) in clause (i)—

1 (i) in the clause heading, by inserting
2 after “GENERAL REQUIREMENTS” the fol-
3 lowing “BEFORE 2020”;

4 (ii) in the matter preceding subclause
5 (I), by inserting after “October 1, 1990,”
6 the following: “and before January 1,
7 2020,”;

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

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

13 (B) by redesignating clauses (ii) and (iii)
14 as clauses (iii) and (iv), respectively; and

15 (C) by inserting after clause (i) the fol-
16 lowing new clause:

17 “(ii) GENERAL REQUIREMENTS AFTER
18 2019.—

19 “(I) IN GENERAL.—With respect
20 to nursing facility services provided on
21 or after January 1, 2020, a nursing
22 facility must—

23 “(aa) provide nursing serv-
24 ices that are sufficient to meet
25 the nursing needs of its residents

1 on a 24-hour basis, to be divided
2 into day shifts, evening shifts,
3 and night shifts;

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

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

21 “(II) DAY SHIFTS.—With respect
22 to a day shift, the nursing facility
23 must have—

24 “(aa) at least 1 registered
25 professional nurse for every 28

1 residents, with a minimum of
2 0.29 hours of care provided per
3 resident during each such shift;

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

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

15 “(III) EVENING SHIFTS.—With
16 respect to an evening shift, the nurs-
17 ing facility must have—

18 “(aa) at least 1 registered
19 professional nurse for every 30
20 residents, with a minimum of
21 0.26 hours of care provided per
22 resident during each such shift;

23 “(bb) at least 1 licensed
24 practical nurse for every 40 resi-
25 dents, with a minimum of 0.20

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

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

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

12 “(aa) at least 1 registered
13 professional nurse for every 40
14 residents, with a minimum of
15 0.20 hours of care provided per
16 resident during such shift;

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

22 “(cc) at least 1 nurse aide
23 (as defined in paragraph (5)(F))
24 for every 15 residents, with a
25 minimum of 0.53 hours of care

1 provided per resident during such
2 shift.

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

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

1 “(VII) CLARIFICATION WITH RE-
2 SPECT TO MINIMUM HOURS OF CARE
3 PROVIDED PER RESIDENT REQUIRE-
4 MENTS.—In complying with the min-
5 imum hours of care provided per resi-
6 dent requirements under this clause, a
7 nursing facility may not count any
8 time spent by a registered professional
9 nurse, licensed practical nurse, or
10 nurse aide on administrative services
11 towards compliance with such require-
12 ments.

13 “(VIII) DEFINITIONS.—In this
14 clause:

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

23 “(bb) DAY SHIFT.—The
24 term ‘day shift’ means, with re-
25 spect to a day and a nursing fa-

1 cility, an assigned work shift that
2 is a period of 8 consecutive
3 hours, beginning not sooner than
4 6 a.m. in the time zone in which
5 such facility is located and not
6 later than 8 a.m. in such time
7 zone.

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

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

1 later than midnight in such time
2 zone.”.

3 (2) ENFORCEMENT.—Section 1919(h) of the
4 Social Security Act (42 U.S.C. 1396r(h)) is amend-
5 ed—

6 (A) in paragraph (1), by striking “If a
7 State finds, on the basis of a standard” and in-
8 serting “Subject to paragraph (10), if a State
9 finds, on the basis of a standard”;

10 (B) in paragraph (2)—

11 (i) in subparagraph (C), by striking
12 “If a nursing facility” and inserting “Sub-
13 ject to paragraph (10), if a nursing facil-
14 ity”; and

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

18 (C) in paragraph (3)—

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

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

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

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

6 “(A) IN GENERAL.—If a State finds, on
7 the basis of a standard, extended, or partial ex-
8 tended survey under subsection (g)(2) or other-
9 wise, that a nursing facility does not meet the
10 minimum staffing requirements of clause (ii) of
11 subsection (b)(4)(C) with respect to nursing fa-
12 cility services provided on or after January 1,
13 2020, the State shall—

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

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

22 “(B) SECRETARIAL AUTHORITY.—

23 “(i) IN GENERAL.—With respect to
24 any nursing facility in a State other than
25 a State nursing facility, if the Secretary

1 finds that such a nursing facility does not
2 meet the minimum staffing requirements
3 of clause (ii) of subsection (b)(4)(C) with
4 respect to nursing facility services provided
5 on or after January 1, 2020, the Secretary
6 shall—

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

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

23 “(ii) REDUCTION OF CIVIL MONEY
24 PENALTIES IN CERTAIN CIR-
25 CUMSTANCES.—Subject to clause (iii), in

1 the case where a nursing facility self-re-
2 ports and promptly corrects a deficiency
3 for which a penalty was imposed under
4 clause (i)(II) not later than 10 calendar
5 days after the date of such imposition, the
6 Secretary may reduce the amount of the
7 penalty imposed by—

8 “(I) not more than 50 percent; or

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

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

16 “(I) REPEAT DEFICIENCIES.—

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

23 “(II) CERTAIN OTHER DEFICI-
24 CIENCIES.—The Secretary may not
25 reduce the amount of a penalty under

1 clause (ii) if the penalty is imposed on
2 the nursing facility for a deficiency
3 that is found to result in a pattern of
4 harm or widespread harm, imme-
5 diately jeopardizes the health or safe-
6 ty of a resident or residents of the fa-
7 cility, or results in the death of a resi-
8 dent of the facility.

9 “(iv) REPEATED NONCOMPLIANCE.—

10 In the case of a nursing facility which, on
11 three consecutive standard surveys con-
12 ducted under subsection (g)(2), has been
13 found as not meeting the minimum staff-
14 ing requirements of clause (ii) of sub-
15 section (b)(4)(C) with respect to nursing
16 facility services provided on or after Janu-
17 ary 1, 2020, the Secretary may (regardless
18 of the remedies provided for under clause
19 (i))—

20 “(I) appoint temporary manage-
21 ment to oversee the operation of the
22 facility and to assure the health and
23 safety of the facility’s residents in ac-
24 cordance with clause (iii) of para-
25 graph (3)(C), except that ‘the min-

1 imum staffing requirements of clause
2 (ii) of subsection (b)(4)(C)’ shall be
3 substituted for ‘all the requirements
4 of subsections (b), (c), and (d)’ under
5 such clause;

6 “(II) monitor the facility under
7 subsection (g)(4)(B) with respect to
8 such minimum staffing requirements
9 until the facility has demonstrated to
10 the satisfaction of the Secretary that
11 the facility is in compliance, and will
12 remain in compliance, with such min-
13 imum staffing requirements; or

14 “(III) subject to section
15 1128I(h), terminate the facility’s par-
16 ticipation under this title.

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

23 “(v) PUBLIC NOTICE OF VIOLA-
24 TIONS.—

1 “(I) INTERNET WEBSITE.—The
2 Secretary shall publish on the internet
3 website of the Department of Health
4 and Human Services the names of
5 nursing facilities that have violated
6 the minimum staffing requirements of
7 clause (ii) of subsection (b)(4)(C) with
8 respect to skilled nursing facility serv-
9 ices provided on or after January 1,
10 2020.

11 “(II) CHANGE OF OWNERSHIP.—
12 With respect to a nursing facility
13 whose name is published under sub-
14 clause (I) and has a change of owner-
15 ship, as determined by the Secretary,
16 after the date of such publication, the
17 Secretary shall remove the name of
18 such facility from the website de-
19 scribed under such subclause after the
20 1-year period beginning on the date of
21 such change of ownership.”.

22 (3) CONFORMING AMENDMENTS.—

23 (A) Clause (iii) of section 1919(b)(4)(C) of
24 the Social Security Act (42 U.S.C.
25 1396r(b)(4)(C)), as redesignated by paragraph

1 (1)(B), is amended by striking “subject to
2 clause (iii)” and inserting “subject to clause
3 (iv)”.

4 (B) Item (a) of section
5 1919(f)(2)(B)(iii)(I) of the Social Security Act
6 (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended
7 by striking “subsection (b)(4)(C)(ii)” and in-
8 serting “subsection (b)(4)(C)(iii)”.

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

13 (c) STUDIES AND REPORTS REGARDING IMPACT OF
14 MINIMUM NURSE STAFFING REQUIREMENTS.—

15 (1) INITIAL STUDY AND REPORT.—

16 (A) IN GENERAL.—Not later than June 1,
17 2021, the Secretary of Health and Human
18 Services shall study and submit to the Com-
19 mittee on Energy and Commerce and the Com-
20 mittee on Ways and Means of the House of
21 Representatives and the Committee on Finance
22 of the Senate a publicly available report—

23 (i) on the impact of the minimum
24 nurse staffing requirements added by sub-
25 section (a) on the reimbursement levels of

1 skilled nursing facilities under the Medi-
2 care program under title XVIII of the So-
3 cial Security Act (42 U.S.C. 1395 et seq.)
4 and the adequacy of personnel numbers in
5 such skilled nursing facilities to meet such
6 minimum nurse staffing requirements;

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

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

1 ing methods for attracting and retaining
2 such personnel.

3 (B) CONSIDERATIONS.—In conducting the
4 study required under subparagraph (A), the
5 Secretary of Health and Human Services shall
6 take into consideration—

7 (i) the benefits of any increase in
8 nurse staffing levels, including with respect
9 to workforce training and retention;

10 (ii) any decrease in the rate of work-
11 place injuries;

12 (iii) any changes in medical care costs
13 for residents of skilled nursing facilities
14 and nursing facilities;

15 (iv) any decrease in hospitalization
16 rates for such residents;

17 (v) any changes in personnel and ad-
18 ministrative costs for skilled nursing facili-
19 ties and nursing facilities; and

20 (vi) any changes in recruiting and
21 training costs.

22 (2) SUBSEQUENT STUDY AND REPORT.—Not
23 later than January 1, 2023, the Secretary of Health
24 and Human Services shall conduct a follow-up study
25 to the study conducted under paragraph (1)(A) and

1 submit to the Committee on Energy and Commerce
2 and the Committee on Ways and Means of the
3 House of Representatives and the Committee on Fi-
4 nance of the Senate a publicly available report on
5 such follow-up study.

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

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

13 “(8) **INFORMATION ON NURSE STAFFING.**—

14 “(A) **IN GENERAL.**—Each day, a skilled
15 nursing facility shall post for each shift notices
16 with—

17 “(i) a description of the nurse staffing
18 requirements applicable with respect to the
19 facility and day under paragraph (4)(C);

20 “(ii) information on the number of
21 registered professional nurses, licensed
22 practical nurses, and nurse aides (as de-
23 fined in paragraph (5)(F)) assigned to pro-
24 vide direct care services to residents in the

1 facility during the shift, disaggregated by
2 units in the facility; and

3 “(iii) a statement that the facility is
4 required, upon request, to provide any
5 nurse staffing information (as described in
6 this subparagraph) of the facility from the
7 preceding 12-month period.

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

19 “(B) PUBLIC AVAILABILITY OF INFORMA-
20 TION.—A skilled nursing facility shall, upon re-
21 quest, make available to the public any nurse
22 staffing information (as described in subpara-
23 graph (A)) of the facility from the preceding
24 12-month period. In the case that the facility
25 makes such information available as a paper

1 copy, such facility may not charge for such copy
2 an amount greater than the cost of making
3 such copy.”.

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

7 “(8) INFORMATION ON NURSE STAFFING.—

8 “(A) IN GENERAL.—Each day, a skilled
9 nursing facility shall post for each shift notices
10 with—

11 “(i) a description of the nurse staffing
12 requirements applicable with respect to the
13 facility and day under paragraph (4)(C);

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

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

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

12 “(B) PUBLIC AVAILABILITY OF INFORMA-
13 TION.—A skilled nursing facility shall, upon re-
14 quest, make available to the public any nurse
15 staffing information (as described in subpara-
16 graph (A)) of the facility from the preceding
17 12-month period.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section take effect on the date of enactment of this
20 Act and apply with respect to nurse staffing information
21 posted or requested on or after the date that is one year
22 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-

1 retary may impose civil penalties as fol-
2 lows:

3 “(I) SKILLED NURSING FACILITY
4 LIABILITY.—The Secretary may im-
5 pose on a skilled nursing facility
6 found to be in violation of this sub-
7 section a civil money penalty of—

8 “(aa) not more than
9 \$25,000 for the first knowing
10 violation of this subsection by
11 such facility; and

12 “(bb) not more than
13 \$50,000 for any subsequent
14 knowing violation of this sub-
15 section by such facility.

16 “(II) INDIVIDUAL LIABILITY.—
17 The Secretary may impose on an indi-
18 vidual who—

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

21 “(bb) is found by the Sec-
22 retary to have knowingly violated
23 this subsection on behalf of the
24 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

1 under Federal law by a court of competent ju-
2 risdiction, rather than an arbitrator, without re-
3 gard to whether the party opposing arbitration
4 challenges such agreement specifically or in
5 conjunction with any other term of the contract
6 containing such agreement.”.

7 (b) MEDICAID.—

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

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

15 “(1) IN GENERAL.—For home and community-
16 based services or home health care services provided
17 under a waiver under this section, section
18 1902(a)(10)(D), or any other provision authorizing
19 the provision of home and community-based services
20 or home health care services under this title, the
21 provider of such services (and any employee, agent,
22 related entity, or affiliate of such provider) shall not
23 require, solicit, or accept a pre-dispute arbitration
24 agreement from or on behalf of any individual re-
25 ceiving 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

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

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

9 “(E) JUDICIAL REVIEW.—A determination
10 as to whether and how this paragraph applies
11 to an arbitration agreement shall be determined
12 under Federal law by a court of competent ju-
13 risdiction, rather than an arbitrator, without re-
14 gard to whether the party opposing arbitration
15 challenges such agreement specifically or in
16 conjunction with any other term of the contract
17 containing such agreement.”.

18 **SEC. 8. STANDARDIZED PROTOCOL FOR OBTAINING IN-**
19 **FORMED CONSENT FROM RESIDENTS PRIOR**
20 **TO PRESCRIBING PSYCHOTROPIC DRUGS.**

21 (a) STANDARDIZED PROTOCOL.—

22 (1) SKILLED NURSING FACILITIES.—Section
23 1819(b) of the Social Security Act (42 U.S.C.
24 1395i–3(b)) is amended by adding at the end the
25 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 of 2019 and in consulta-
13 tion with stakeholder groups (including resi-
14 dents of skilled nursing facilities, family mem-
15 bers of such residents, advocates for such resi-
16 dents, long-term care ombudsmen, and pro-
17 viders), shall develop a standardized protocol
18 for skilled nursing facilities to obtain written in-
19 formed consent, in accordance with this para-
20 graph, from a resident (or, if applicable, the
21 resident’s designated health care agent or other
22 surrogate under State law or regulation) prior
23 to prescribing a psychotropic drug to the resi-
24 dent for a use not approved by the Food and
25 Drug Administration.

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 of 2019 and in consulta-
17 tion with stakeholder groups (including resi-
18 dents of skilled nursing facilities, family mem-
19 bers of such residents, advocates for such resi-
20 dents, long-term care ombudsmen, and pro-
21 viders), shall develop a standardized protocol
22 for nursing facilities to obtain written informed
23 consent, in accordance with this paragraph,
24 from a resident (or, if applicable, the resident’s
25 designated health care agent or other surrogate

1 under State law or regulation) prior to pre-
2 scribing a psychotropic drug to the resident for
3 a use not approved by the Food and Drug Ad-
4 ministration.

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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