

116TH CONGRESS
1ST SESSION

S. 2943

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 SENATE OF THE UNITED STATES

NOVEMBER 21, 2019

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

A BILL

To amend titles XVIII and XIX of the Social Security Act to 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

5 (a) **MEDICARE.**—

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

9 (A) in clause (i)—

10 (i) by amending the clause heading to
 11 read as follows: “GENERAL REQUIRE-
 12 MENTS BEFORE 2020”; and

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

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

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

22 “(ii) **GENERAL REQUIREMENTS AFTER**
 23 **2019.**—

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

1 vided on or after January 1, 2020, a
2 skilled nursing facility must—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 services, as determined by the
2 Secretary.

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

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

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

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

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

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

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

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

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

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

1 wise, that a skilled nursing facility does not
2 meet the minimum staffing requirements of
3 clause (ii) of subsection (b)(4)(C) with respect
4 to skilled nursing facility services provided on
5 or after January 1, 2020, the State shall rec-
6 ommend to the Secretary that the Secretary
7 take such actions as described in subclauses (I)
8 and (II) of subparagraph (B)(i).

9 “(B) SECRETARIAL AUTHORITY.—

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

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

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

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

21 “(I) not more than 50 percent; or

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

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

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

5 “(I) REPEAT DEFICIENCIES.—

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

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

24 “(iv) REPEATED NONCOMPLIANCE.—

25 In the case of a skilled nursing facility

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

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

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

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

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

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

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

15 “(I) INTERNET WEBSITE.—The
 16 Secretary shall publish on the internet
 17 website of the Department of Health
 18 and Human Services the names of
 19 skilled nursing facilities that have vio-
 20 lated the minimum staffing require-
 21 ments of clause (ii) of subsection
 22 (b)(4)(C) with respect to skilled nurs-
 23 ing facility services provided on or
 24 after January 1, 2020.

1 “(II) CHANGE OF OWNERSHIP.—

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

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

17 (b) MEDICAID.—

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

21 (A) in clause (i)—

22 (i) in the clause heading, by inserting
23 after “GENERAL REQUIREMENTS” the fol-
24 lowing “BEFORE 2020”;

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

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

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

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

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

14 “(ii) GENERAL REQUIREMENTS AFTER
15 2019.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (B) in paragraph (2)—

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

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

16 (C) in paragraph (3)—

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

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

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

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

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

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

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

20 “(B) SECRETARIAL AUTHORITY.—

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

1 of clause (ii) of subsection (b)(4)(C) with
2 respect to nursing facility services provided
3 on or after January 1, 2020, the Secretary
4 shall—

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

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

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

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

6 “(I) not more than 50 percent; or

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

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

14 “(I) REPEAT DEFICIENCIES.—

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

21 “(II) CERTAIN OTHER DEFICI-
22 CIENCIES.—The Secretary may not
23 reduce the amount of a penalty under
24 clause (ii) if the penalty is imposed on
25 the nursing facility for a deficiency

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

7 “(iv) REPEATED NONCOMPLIANCE.—

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

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

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

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

12 “(III) subject to section
13 1128I(h), terminate the facility’s par-
14 ticipation under this title.

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

21 “(v) PUBLIC NOTICE OF VIOLA-
22 TIONS.—

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

1 and Human Services the names of
2 nursing facilities that have violated
3 the minimum staffing requirements of
4 clause (ii) of subsection (b)(4)(C) with
5 respect to skilled nursing facility serv-
6 ices provided on or after January 1,
7 2020.

8 “(II) CHANGE OF OWNERSHIP.—

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

19 (3) CONFORMING AMENDMENTS.—

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

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

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

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

12 (1) INITIAL STUDY AND REPORT.—

13 (A) IN GENERAL.—Not later than June 1,
14 2021, the Secretary of Health and Human
15 Services shall study and submit to the Com-
16 mittee on Energy and Commerce and the Com-
17 mittee on Ways and Means of the House of
18 Representatives and the Committee on Finance
19 of the Senate a publicly available report—

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) SUBSEQUENT STUDY AND REPORT.—Not
19 later than January 1, 2023, the Secretary of Health
20 and Human Services shall conduct a follow-up study
21 to the study conducted under paragraph (1)(A) and
22 submit to the Committee on Energy and Commerce
23 and the Committee on Ways and Means of the
24 House of Representatives and the Committee on Fi-

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

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

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

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

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

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

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

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

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

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

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

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

4 “(8) INFORMATION ON NURSE STAFFING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (b) MEDICAID.—

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

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

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

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

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

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

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

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

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

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

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

22 (a) MEDICARE.—

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

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

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

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

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

22 (B) in clause (i)—

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

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

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

6 (C) in clause (ii)—

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

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

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

18 (b) MEDICAID.—

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

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

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

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

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

18 (B) in clause (i)—

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

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

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

3 (C) in clause (ii)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(A) Reinstatement.

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

12 “(C) Attorneys’ fees.

13 “(D) Court costs.

14 “(E) Other damages.

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

20 “(A) receive and investigate the complaint;

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

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

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

4 “(6) TOLL-FREE TELEPHONE NUMBER.—

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

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

18 “(7) PROTECTION FOR REPORTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(10) ENFORCEMENT.—

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

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

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

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

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

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

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

23 “(D) CIVIL PENALTIES.—

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

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 “(1) 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 and to
3 Congress a report containing the results of the
4 study conducted under subparagraph (A), to-
5 gether with such recommendations as the
6 Comptroller General determines appropriate.

7 (b) DEVELOPMENT OF MEASURE OF UTILIZATION OF
8 PSYCHOTROPIC DRUGS FOR INCLUSION ON NURSING
9 HOME COMPARE WEBSITE.—

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

12 (A) by redesignating paragraph (3) as
13 paragraph (4); and

14 (B) by inserting after paragraph (2) the
15 following new paragraph:

16 “(3) DEVELOPMENT OF MEASURE OF UTILIZA-
17 TION OF PSYCHOTROPIC DRUGS.—

18 “(A) IN GENERAL.—Not later than the
19 date that is one year after the date of the en-
20 actment of this paragraph, the Secretary shall
21 include a measure of the utilization of psycho-
22 tropic drugs for each skilled nursing facility for
23 inclusion on such website (or a successor
24 website) as part of the quality measures or
25 health inspections measures, or both such meas-

1 ures, under the Five-Star Quality Rating Sys-
2 tem established by the Administrator of the
3 Centers for Medicare & Medicaid Services.

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

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

12 (A) by redesignating paragraph (3) as
13 paragraph (4); and

14 (B) by inserting after paragraph (2) the
15 following new paragraph:

16 “(3) DEVELOPMENT OF MEASURE OF UTILIZA-
17 TION OF PSYCHOTROPIC DRUGS.—

18 “(A) IN GENERAL.—Not later than the
19 date that is one year after the date of the en-
20 actment of this paragraph, the Secretary shall
21 include a measure of the utilization of psycho-
22 tropic drugs for each nursing facility for inclu-
23 sion on such website (or a successor website) as
24 part of the quality measures or health inspec-
25 tions measures, or both such measures, under

1 the Five-Star Quality Rating System estab-
2 lished by the Administrator of the Centers for
3 Medicare & Medicaid Services.

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

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