

116TH CONGRESS
2D SESSION

S. 3644

To amend titles XVIII and XIX of the Social Security Act to improve the quality of care in skilled nursing facilities under the Medicare program and nursing facilities under the Medicare program during the COVID–19 emergency period, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2020

Mr. BOOKER (for himself and Mr. BLUMENTHAL) 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 improve the quality of care in skilled nursing facilities under the Medicare program and nursing facilities under the Medicare program during the COVID–19 emergency period, 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 and Workers During COVID–19 Act
6 of 2020”.

1 **SEC. 2. IMPROVING QUALITY OF CARE IN SKILLED NURS-**
 2 **ING FACILITIES AND NURSING FACILITIES**
 3 **DURING COVID-19 EMERGENCY PERIOD.**

4 (a) **MEDICARE.**—Section 1819 of the Social Security
 5 Act (42 U.S.C. 1395i-3) is amended by adding at the end
 6 the following new subsection:

7 “(k) **ADDITIONAL REQUIREMENTS DURING CERTAIN**
 8 **PUBLIC HEALTH EMERGENCY.**—

9 “(1) **SKILLED NURSING FACILITIES.**—

10 “(A) **IN GENERAL.**—During the portion of
 11 the emergency period defined in paragraph
 12 (1)(B) of section 1135(g) beginning on or after
 13 the date of the enactment of this subsection, a
 14 skilled nursing facility shall comply with the
 15 quality of care requirements described in sub-
 16 paragraph (B), the worker safety requirements
 17 described in subparagraph (C), and the trans-
 18 parency requirements described in subpara-
 19 graph (D).

20 “(B) **QUALITY OF CARE REQUIREMENTS.**—
 21 The quality of care requirements described in
 22 this subparagraph are each of the following:

23 “(i) Employ, on a full-time basis, an
 24 infection preventionist who—

25 “(I) has primary professional
 26 training in nursing, medical tech-

1 nology, microbiology, epidemiology, or
2 other related field;

3 “(II) is qualified by education,
4 training, experience or certification;
5 and

6 “(III) has completed specialized
7 training in infection prevention and
8 control.

9 “(ii) In the case of a resident who
10 elects to reside with a family member of
11 such resident for any portion of the emer-
12 gency period described in subparagraph
13 (A), guarantee the right of such resident to
14 resume residency in the facility at any time
15 during the 180-day period immediately fol-
16 lowing the end of such emergency period.

17 “(iii) Notwithstanding subparagraphs
18 (A) and (B) of subsection (c)(2), permit a
19 resident to remain in the facility and not
20 discharge or transfer the resident from the
21 facility unless—

22 “(I) the State survey agency ap-
23 proves the discharge or transfer;

24 “(II) in the case of a transfer,
25 the transfer is to a facility dedicated

1 to the care of residents who have been
2 diagnosed with COVID–19 if the resi-
3 dent has been diagnosed with
4 COVID–19, or a facility dedicated to
5 the care of residents who have not
6 been diagnosed with COVID–19 if the
7 resident has not been diagnosed with
8 COVID–19;

9 “(III) before effecting the dis-
10 charge or transfer, the facility records
11 the reasons in the resident’s clinical
12 record;

13 “(IV) at least 72 hours in ad-
14 vance of the discharge or transfer, the
15 facility provides a notice of the dis-
16 charge or transfer to the resident (or
17 legal representative of the resident, if
18 applicable), including the reasons
19 therefor and the items described in
20 clause (iii) of subsection (c)(2)(B);
21 and

22 “(V) the resident (or legal rep-
23 resentative of the resident, if applica-
24 ble) acknowledges receipt of the notice
25 described in subclause (IV) and pro-

1 vides written consent to the discharge
2 or transfer.

3 “(iv) Test (on a weekly basis) each
4 resident for COVID–19, or, in the case
5 that the facility does not have a sufficient
6 number of testing kits for COVID–19,
7 screen each resident for symptoms of
8 COVID–19 and report (on a daily basis
9 until the facility has a sufficient number of
10 such testing kits) to the State survey agen-
11 cy that the facility does not have a suffi-
12 cient number of such testing kits and what
13 steps the facility is taking to procure a suf-
14 ficient number of such testing kits.

15 “(v) Ensure there is an adequate
16 number of employees to assist residents in
17 communicating with family members and
18 friends through phone calls, email, and vir-
19 tual communications on at least a weekly
20 basis, without regard to whether a resident
21 has been diagnosed with COVID–19.

22 “(C) WORKER SAFETY REQUIREMENTS.—
23 The worker safety requirements described in
24 this subparagraph are each of the following:

1 “(i) In the case the facility is not oth-
2 erwise subject to the Occupational Safety
3 and Health Act of 1970 (or a State occu-
4 pational safety and health plan that is ap-
5 proved under section 18(c) of such Act),
6 comply with the Bloodborne Pathogens
7 standard under section 1910.1030 of title
8 29, Code of Federal Regulations (or a suc-
9 cessor regulation).

10 “(ii) In the case of a predicted short-
11 age of personal protective equipment, re-
12 port such predicted shortage to the State
13 health department of the State in which
14 the facility is located at least 24 hours in
15 advance of when such predicted shortage is
16 expected to occur.

17 “(iii) Educate each employee on the
18 transmission of COVID-19.

19 “(iv) Notwithstanding any other pro-
20 vision of law, provide at least two weeks of
21 paid sick leave to each employee.

22 “(v) Before each employee’s shift, test
23 the employee for COVID-19, or, in the
24 case that the facility does not have a suffi-
25 cient number of testing kits for COVID-

1 19, screen each employee for symptoms of
2 COVID–19 and report (on a daily basis
3 until the facility has a sufficient number of
4 such testing kits) to the State survey agen-
5 cy that the facility does not have a suffi-
6 cient number of such testing kits and what
7 steps the facility is taking to procure a suf-
8 ficient number of such testing kits.

9 “(D) TRANSPARENCY REQUIREMENTS.—

10 The transparency requirements described in
11 this subparagraph are each of the following:

12 “(i) Report (on a daily basis) to the
13 State survey agency, the Centers for Medi-
14 care & Medicaid Services, and the Centers
15 for Disease Control and Prevention each of
16 the following:

17 “(I) The number of confirmed
18 and suspected cases COVID–19
19 among residents and staff, including
20 the age and race or ethnicity of such
21 residents and staff.

22 “(II) The number of deaths re-
23 lated to COVID–19 among residents
24 and staff, including the age and race

1 or ethnicity of such residents and
2 staff.

3 “(III) The total number of
4 deaths (without regard to whether a
5 death is related to COVID–19) among
6 residents and staff.

7 “(IV) The amount of personal
8 protective equipment available and
9 any projected need regarding such
10 equipment.

11 “(V) Information on staffing lev-
12 els that would otherwise be required
13 to be submitted through the Payroll-
14 Based Journal of the Centers for
15 Medicare & Medicaid Services.

16 “(VI) The number of residents
17 and staff who have been tested for
18 COVID–19.

19 “(ii) In the case that a resident or
20 employee is diagnosed with COVID–19 or
21 dies as a result of COVID–19, notify all
22 residents, legal representatives of residents,
23 and employees not later than 12 hours
24 after such diagnosis is made or such death
25 occurs.

1 “(iii) At any time three or more resi-
2 dents or employees have newly onset
3 COVID–19 symptoms, notify all residents,
4 legal representatives of residents, and em-
5 ployees not later than 72 hours after such
6 three or more residents or employees are
7 known to the facility.

8 “(iv) In the case that a resident or
9 employee is suspected to have or is diag-
10 nosed with COVID–19, post a notice of
11 such suspicion or diagnosis at each en-
12 trance of the facility for the remaining por-
13 tion of the emergency period described in
14 subparagraph (A).

15 “(v) For each day of the portion of
16 the emergency period described in subpara-
17 graph (A), post a notice at each entrance
18 of the facility with the information re-
19 quired under subsection (b)(8) for such
20 day.

21 “(2) STATES AND FEDERAL GOVERNMENT.—

22 “(A) PUBLIC AVAILABILITY OF INFORMA-
23 TION.—

24 “(i) IN GENERAL.—As soon as pos-
25 sible, but not later than 24 hours after re-

1 ceiving any information required under
2 paragraph (1)(D)(i), the Administrator of
3 the Centers for Medicare & Medicaid Serv-
4 ices, in coordination with the Director of
5 the Centers for Disease Control and Pre-
6 vention, shall make such information pub-
7 licly available on the Nursing Home Com-
8 pare website of the Centers for Medicare &
9 Medicaid Services and the COVIDView
10 website of the Centers for Disease Control
11 and Prevention.

12 “(ii) HIPAA COMPLIANT INFORMA-
13 TION ONLY.—Information may only be
14 made publicly available under clause (i) if
15 the disclosure of such information would
16 otherwise be permitted under the Federal
17 regulations (concerning the privacy of indi-
18 vidualy identifiable health information)
19 promulgated under section 264(c) of the
20 Health Insurance Portability and Account-
21 ability Act of 1996 (42 U.S.C. 1320d–2
22 note).

23 “(B) DESIGNATION OF COVID–19 FACILI-
24 TIES.—For purposes of paragraph
25 (1)(B)(iii)(II)—

1 “(i) the Administrator of the Centers
2 for Medicare & Medicaid Services shall
3 specify criteria (which shall include the
4 provision of the services of a registered
5 nurse on a 24-hours basis) for each State
6 survey agency to carry out the designation
7 requirement described in clause (ii) with
8 respect to skilled nursing facilities; and

9 “(ii) each State survey agency shall
10 designate a skilled nursing facility in the
11 State as a facility dedicated to the care of
12 residents who have been diagnosed with
13 COVID–19 if such facility meets the cri-
14 teria specified by the Administrator under
15 clause (i).

16 “(C) REMOTE MONITORING AND SUR-
17 VEYS.—A State survey agency shall—

18 “(i) remotely monitor all skilled nurs-
19 ing facilities with at least one resident or
20 employee who has been diagnosed with
21 COVID–19;

22 “(ii) in addition to surveys required
23 under subsection (g), conduct a survey of
24 a skilled nursing facility, in the same man-
25 ner and subject to the same requirements

1 applicable to standard surveys conducted
2 under subsection (g), if the facility has a
3 ratio of the number of deaths resulting
4 from COVID-19 to the number of
5 COVID-19 diagnoses that exceeds 5 per-
6 cent, or the State survey agency receives a
7 COVID-19 or staffing related immediate
8 jeopardy complaint regarding the facility;
9 and

10 “(iii) ensure that each survey team
11 that conducts a survey under clause (ii)
12 has adequate personal protective equip-
13 ment while conducting such survey.

14 “(3) CIVIL MONEY PENALTIES.—The Secretary
15 shall impose a civil money penalty against the opera-
16 tors of a skilled nursing facility in an amount equal
17 to \$10,000 per day for each violation of a require-
18 ment described in subparagraph (B), (C), or (D) of
19 paragraph (1) or the reporting of false information
20 under clause (i) of such subparagraph (D). The pro-
21 visions of section 1128A (other than subsections (a)
22 and (b)) shall apply to a civil money penalty under
23 the previous sentence in the same manner as such
24 provisions apply to a penalty or proceeding under
25 section 1128A(a).”.

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

4 “(k) ADDITIONAL REQUIREMENTS DURING CERTAIN
5 PUBLIC HEALTH EMERGENCY.—

6 “(1) NURSING FACILITIES.—

7 “(A) IN GENERAL.—During the portion of
8 the emergency period defined in paragraph
9 (1)(B) of section 1135(g) beginning on or after
10 the date of the enactment of this subsection, a
11 nursing facility shall comply with the quality of
12 care requirements described in subparagraph
13 (B), the worker safety requirements described
14 in subparagraph (C), and the transparency re-
15 quirements described in subparagraph (D).

16 “(B) QUALITY OF CARE REQUIREMENTS.—
17 The quality of care requirements described in
18 this subparagraph are each of the following:

19 “(i) Employ, on a full-time basis, an
20 infection preventionist who—

21 “(I) has primary professional
22 training in nursing, medical tech-
23 nology, microbiology, epidemiology, or
24 other related field;

1 “(II) is qualified by education,
2 training, experience or certification;
3 and

4 “(III) has completed specialized
5 training in infection prevention and
6 control.

7 “(ii) In the case of a resident who
8 elects to reside with a family member of
9 such resident for any portion of the emer-
10 gency period described in subparagraph
11 (A), guarantee the right of such resident to
12 resume residency in the facility at any time
13 during the 180-day period immediately fol-
14 lowing the end of such emergency period.

15 “(iii) Notwithstanding subparagraphs
16 (A) and (B) of subsection (c)(2), permit a
17 resident to remain in the facility and not
18 discharge or transfer the resident from the
19 facility unless—

20 “(I) the State survey agency ap-
21 proves the discharge or transfer;

22 “(II) in the case of a transfer,
23 the transfer is to a facility dedicated
24 to the care of residents who have been
25 diagnosed with COVID–19 if the resi-

1 dent has been diagnosed with
2 COVID–19, or a facility dedicated to
3 the care of residents who have not
4 been diagnosed with COVID–19 if the
5 resident has not been diagnosed with
6 COVID–19;

7 “(III) before effecting the dis-
8 charge or transfer, the facility records
9 the reasons in the resident’s clinical
10 record;

11 “(IV) at least 72 hours in ad-
12 vance of the discharge or transfer, the
13 facility provides a notice of the dis-
14 charge or transfer to the resident (or
15 legal representative of the resident, if
16 applicable), including the reasons
17 therefor and the items described in
18 clause (iii) of subsection (c)(2)(B);
19 and

20 “(V) the resident (or legal rep-
21 resentative of the resident, if applica-
22 ble) acknowledges receipt of the notice
23 described in subclause (IV) and pro-
24 vides written consent to the discharge
25 or transfer.

1 “(iv) Test (on a weekly basis) each
2 resident for COVID–19, or, in the case
3 that the facility does not have a sufficient
4 number of testing kits for COVID–19,
5 screen each resident for symptoms of
6 COVID–19 and report (on a daily basis
7 until the facility has a sufficient number of
8 such testing kits) to the State survey agen-
9 cy that the facility does not have a suffi-
10 cient number of such testing kits and what
11 steps the facility is taking to procure a suf-
12 ficient number of such testing kits.

13 “(v) Ensure there is an adequate
14 number of employees to assist residents in
15 communicating with family members and
16 friends through phone calls, email, and vir-
17 tual communications on at least a weekly
18 basis, without regard to whether a resident
19 has been diagnosed with COVID–19.

20 “(C) WORKER SAFETY REQUIREMENTS.—

21 The worker safety requirements described in
22 this subparagraph are each of the following:

23 “(i) In the case the facility is not oth-
24 erwise subject to the Occupational Safety
25 and Health Act of 1970 (or a State occu-

1 pational safety and health plan that is ap-
2 proved under section 18(c) of such Act),
3 comply with the Bloodborne Pathogens
4 standard under section 1910.1030 of title
5 29, Code of Federal Regulations (or a suc-
6 cessor regulation).

7 “(ii) In the case of a predicted short-
8 age of personal protective equipment, re-
9 port such predicted shortage to the State
10 health department of the State in which
11 the facility is located at least 24 hours in
12 advance of when such predicted shortage is
13 expected to occur.

14 “(iii) Educate each employee on the
15 transmission of COVID-19.

16 “(iv) Notwithstanding any other pro-
17 vision of law, provide at least two weeks of
18 paid sick leave to each employee.

19 “(v) Before each employee’s shift, test
20 the employee for COVID-19, or, in the
21 case that the facility does not have a suffi-
22 cient number of testing kits for COVID-
23 19, screen each employee for symptoms of
24 COVID-19 and report (on a daily basis
25 until the facility has a sufficient number of

1 such testing kits) to the State survey agen-
2 cy that the facility does not have a suffi-
3 cient number of such testing kits and what
4 steps the facility is taking to procure a suf-
5 ficient number of such testing kits.

6 “(D) TRANSPARENCY REQUIREMENTS.—

7 The transparency requirements described in
8 this subparagraph are each of the following:

9 “(i) Report (on a daily basis) to the
10 State survey agency, the Centers for Medi-
11 care & Medicaid Services, and the Centers
12 for Disease Control and Prevention each of
13 the following:

14 “(I) The number of confirmed
15 and suspected cases COVID-19
16 among residents and staff, including
17 the age and race or ethnicity of such
18 residents and staff.

19 “(II) The number of deaths re-
20 lated to COVID-19 among residents
21 and staff, including the age and race
22 or ethnicity of such residents and
23 staff.

24 “(III) The total number of
25 deaths (without regard to whether a

1 death is related to COVID–19) among
2 residents and staff.

3 “(IV) The amount of personal
4 protective equipment available and
5 any projected need regarding such
6 equipment.

7 “(V) Information on staffing lev-
8 els that would otherwise be required
9 to be submitted through the Payroll-
10 Based Journal of the Centers for
11 Medicare & Medicaid Services.

12 “(VI) The number of residents
13 and staff who have been tested for
14 COVID–19.

15 “(ii) In the case that a resident or
16 employee is diagnosed with COVID–19 or
17 dies as a result of COVID–19, notify all
18 residents, legal representatives of residents,
19 and employees not later than 12 hours
20 after such diagnosis is made or such death
21 occurs.

22 “(iii) At any time three or more resi-
23 dents or employees have newly onset
24 COVID–19 symptoms, notify all residents,
25 legal representatives of residents, and em-

1 employees not later than 72 hours after such
2 three or more residents or employees are
3 known to the facility.

4 “(iv) In the case that a resident or
5 employee is suspected to have or is diag-
6 nosed with COVID-19, post a notice of
7 such suspicion or diagnosis at each en-
8 trance of the facility for the remaining por-
9 tion of the emergency period described in
10 subparagraph (A).

11 “(v) For each day of the portion of
12 the emergency period described in subpara-
13 graph (A), post a notice at each entrance
14 of the facility with the information re-
15 quired under subsection (b)(8) for such
16 day.

17 “(2) STATES AND FEDERAL GOVERNMENT.—

18 “(A) PUBLIC AVAILABILITY OF INFORMA-
19 TION.—

20 “(i) IN GENERAL.—As soon as pos-
21 sible, but not later than 24 hours after re-
22 ceiving any information required under
23 paragraph (1)(D)(i), the Administrator of
24 the Centers for Medicare & Medicaid Serv-
25 ices, in coordination with the Director of

1 the Centers for Disease Control and Pre-
2 vention, shall make such information pub-
3 licly available on the Nursing Home Com-
4 pare website of the Centers for Medicare &
5 Medicaid Services and the COVIDView
6 website of the Centers for Disease Control
7 and Prevention.

8 “(ii) HIPAA COMPLIANT INFORMA-
9 TION ONLY.—Information may only be
10 made publicly available under clause (i) if
11 the disclosure of such information would
12 otherwise be permitted under the Federal
13 regulations (concerning the privacy of indi-
14 vidualy identifiable health information)
15 promulgated under section 264(e) of the
16 Health Insurance Portability and Account-
17 ability Act of 1996 (42 U.S.C. 1320d–2
18 note).

19 “(B) DESIGNATION OF COVID–19 FACILI-
20 TIES.—For purposes of paragraph
21 (1)(B)(iii)(II)—

22 “(i) the Administrator of the Centers
23 for Medicare & Medicaid Services shall
24 specify criteria (which shall include the
25 provision of the services of a registered

1 nurse on a 24-hours basis) for each State
2 survey agency to carry out the designation
3 requirement described in clause (ii) with
4 respect to nursing facilities; and

5 “(ii) each State survey agency shall
6 designate a nursing facility in the State as
7 a facility dedicated to the care of residents
8 who have been diagnosed with COVID–19
9 if such facility meets the criteria specified
10 by the Administrator under clause (i).

11 “(C) REMOTE MONITORING AND SUR-
12 VEYS.—A State survey agency shall—

13 “(i) remotely monitor all nursing fa-
14 cilities with at least one resident or em-
15 ployee who has been diagnosed with
16 COVID–19;

17 “(ii) in addition to surveys required
18 under subsection (g), conduct a survey of
19 a nursing facility, in the same manner and
20 subject to the same requirements applica-
21 ble to standard surveys conducted under
22 subsection (g), if the facility has a ratio of
23 the number of deaths resulting from
24 COVID–19 to the number of COVID–19
25 diagnoses that exceeds 5 percent, or the

1 State survey agency receives a COVID–19
 2 or staffing related immediate jeopardy
 3 complaint regarding the facility; and

4 “(iii) ensure that each survey team
 5 that conducts a survey under clause (ii)
 6 has adequate personal protective equip-
 7 ment while conducting such survey.

8 “(3) CIVIL MONEY PENALTIES.—The Secretary
 9 shall impose a civil money penalty against the opera-
 10 tors of a nursing facility in an amount equal to
 11 \$10,000 per day for each violation of a requirement
 12 described in subparagraph (B), (C), or (D) of para-
 13 graph (1) or the reporting of false information under
 14 clause (i) of such subparagraph (D). The provisions
 15 of section 1128A (other than subsections (a) and
 16 (b)) shall apply to a civil money penalty under the
 17 previous sentence in the same manner as such provi-
 18 sions apply to a penalty or proceeding under section
 19 1128A(a).”.

20 **SEC. 3. FUNDING FOR STATE STRIKE TEAMS FOR RESI-**
 21 **DENT AND EMPLOYEE SAFETY IN SKILLED**
 22 **NURSING FACILITIES AND NURSING FACILI-**
 23 **TIES.**

24 (a) IN GENERAL.—Of the amounts made available
 25 under subsection (c), the Secretary of Health and Human

1 Services (referred to in this section as the “Secretary”)
2 shall allocate such amounts among the States, in a man-
3 ner that takes into account the percentage of skilled nurs-
4 ing facilities and nursing facilities in each State that have
5 residents or employees who have been diagnosed with
6 COVID–19, for purposes of establishing and implementing
7 strike teams in accordance with subsection (b).

8 (b) USE OF FUNDS.—A State that receives funds
9 under this section shall use such funds to establish and
10 implement a strike team that will be deployed to a skilled
11 nursing facility or nursing facility in the State, not later
12 than 72 hours after three or more residents or employees
13 of the facility are diagnosed with or suspected of having
14 COVID–19, to assist the facility in separating residents
15 and employees who have been exposed to COVID–19 from
16 those residents and employees who have not been so ex-
17 posed, supervising testing for COVID–19, ensuring any
18 applicable whistleblower protections are being enforced,
19 and such other needs as determined necessary by the
20 strike team. Such strike team shall include members of
21 the National Guard, public health officials from State and
22 local health departments, experts in geriatrics and long-
23 term care medicine, representatives of residents or con-
24 sumers, and representatives of workers.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—For pur-
 2 poses of carrying out this section, there is authorized to
 3 be appropriated \$500,000,000.

4 (d) DEFINITIONS.—In this section:

5 (1) NURSING FACILITY.—The term “nursing
 6 facility” means a nursing facility under the Medicaid
 7 program under title XIX of the Social Security Act
 8 (42 U.S.C. 1396 et seq.).

9 (2) SKILLED NURSING FACILITY.—The term
 10 “skilled nursing facility” means a skilled nursing fa-
 11 cility under the Medicare program under title XVIII
 12 of the Social Security Act (42 U.S.C. 1395 et seq.).

13 **SEC. 4. REINSTITUTION OF REQUIREMENTS WAIVED FOR**
 14 **SKILLED NURSING FACILITIES AND NURSING**
 15 **FACILITIES DURING COVID-19 EMERGENCY**
 16 **PERIOD.**

17 (a) IN GENERAL.—With respect to requirements that
 18 the Administrator of the Centers for Medicare & Medicaid
 19 Services (referred to in this section as the “Adminis-
 20 trator”) waived for skilled nursing facilities and nursing
 21 facilities under section 1135 or 1812(f) of the Social Secu-
 22 rity Act (42 U.S.C. 1320b-5, 1395d(f)) for the period be-
 23 ginning on March 1, 2020, and ending on the last day
 24 of the emergency period defined in subsection (g)(1)(B)
 25 of such section 1135, the Administrator shall terminate

1 the waiver of such requirements before the last day of such
2 emergency period upon the determination that skilled
3 nursing facilities and nursing facilities have the capacity
4 to comply with such requirements and that such waiver
5 is no longer necessary.

6 (b) PLAN FOR CONDUCTING WAIVED OR POSTPONED
7 SURVEYS.—With respect to any survey under section
8 1819(g) or 1919(g) of the Social Security Act (42 U.S.C.
9 1395i–3(g), 1396r(g)) that is waived or postponed during
10 the period beginning on March 1, 2020, and ending on
11 the last day of the emergency period described in sub-
12 section (a), the Administrator shall develop a plan for con-
13 ducting such survey after such last day.

14 (c) TRAINING AND CERTIFICATION OF NURSE
15 AIDES.—With respect to any nurse aide with respect to
16 whom the Administrator waived the application of the re-
17 quirements under section 483.35(d) of title 42, Code of
18 Federal Regulations, for the period beginning on March
19 1, 2020, and ending on the last day of the emergency pe-
20 riod described in subsection (a), the Administrator shall
21 prohibit the skilled nursing facility or nursing facility em-
22 ploying such nurse aide from retaining such nurse aide
23 after such last day unless such nurse aide satisfies applica-
24 ble training and certification requirements under such sec-
25 tion not later than 15 days after such last day.

1 (d) DEFINITIONS.—In this section:

2 (1) NURSING FACILITY.—The term “nursing
3 facility” means a nursing facility under the Medicaid
4 program under title XIX of the Social Security Act
5 (42 U.S.C. 1396 et seq.).

6 (2) SKILLED NURSING FACILITY.—The term
7 “skilled nursing facility” means a skilled nursing fa-
8 cility under the Medicare program under title XVIII
9 of the Social Security Act (42 U.S.C. 1395 et seq.).

10 **SEC. 5. GUIDANCE FOR CERTAIN RESIDENTIAL CARE FA-**
11 **CILITIES DURING COVID-19 EMERGENCY PE-**
12 **RIOD.**

13 Not later than 15 days after the date of the enact-
14 ment of this Act, the Secretary of Health and Human
15 Services (referred to in this section as the “Secretary”)
16 shall issue guidance for long-term health care facilities,
17 including assisted living facilities, other residential care fa-
18 cilities, and such facilities that are temporary during the
19 emergency period defined in section 1135(g)(1)(B) of the
20 Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)), that
21 are not subject to oversight by the Centers for Medicare
22 & Medicaid Services on providing access to virtual visita-
23 tion during any portion of such emergency period in which
24 in-person visitation is restricted and ensuring appropriate

1 infection control and prevention and employee safety dur-
2 ing such emergency period. Such guidance shall include—

3 (1) steps that health care facilities described in
4 this subsection should take to provide residents with
5 access to virtual visitation, including through the
6 purchase or installation of devices purchased for the
7 use or benefit of individual or multiple residents,
8 that allows residents to communicate with their fam-
9 ilies during such emergency period;

10 (2) options for such facilities in notifying resi-
11 dents and resident representatives of such access to
12 virtual visitation and how the facility is addressing
13 any operational issues related to such access to vir-
14 tual visitation; and

15 (3) steps that health care facilities described in
16 this subsection should take to provide residents and
17 employees with appropriate infection control and
18 prevention, based on requirements for skilled nurs-
19 ing facilities under subsection (k) of section 1819 of
20 the Social Security Act (42 U.S.C. 1395i-3), as
21 added by section 2(a), and requirements for nursing
22 facilities under subsection (k) of section 1919 of
23 such Act (42 U.S.C. 1396r), as added by section
24 2(b).

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