

117TH CONGRESS
1ST SESSION

H. R. 5169

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 3, 2021

Mr. NEAL (for himself and Mr. PALLONE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nursing Home Im-
5 provement and Accountability Act of 2021”.

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

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

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

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

10 (2) in clause (i)—

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

13 “(I) FAILURE TO REPORT.—For
14 fiscal years”; and

15 (B) by adding at the end the following new
16 subclause:

17 “(II) REPORTING OF INAC-
18 CULATE INFORMATION.—For fiscal
19 years beginning with fiscal year 2025,
20 in the case of a skilled nursing facility
21 that submits data under this para-
22 graph, measures under subsection (h),
23 or resident assessment data described
24 in section 1819(b)(3) with respect to
25 such fiscal year that is inaccurate (as

1 determined by the Secretary through
2 the validation process described in
3 section 1888(h)(12) or otherwise),
4 after determining the percentage de-
5 scribed in paragraph (5)(B)(i), and
6 after application of clauses (ii) and
7 (iii) of paragraph (5)(B) and of sub-
8 clause (I) if this clause (if applicable),
9 the Secretary shall reduce such per-
10 centage for payment rates during such
11 fiscal year by 2 percentage points.”.

12 (b) DATA AND MEASURES VALIDATION.—Section
13 1888(h)(12) of the Social Security Act (42 U.S.C.
14 1395yy(h)(12)) is amended—

15 (1) in subparagraph (A), by striking “and the
16 data submitted under subsection (e)(6)” and insert-
17 ing “, the data submitted under subsection (e)(6),
18 and, beginning with fiscal year 2024, the resident
19 assessment data described in section 1819(b)(3)”;

20 (2) in subparagraph (B), by striking “of
21 \$5,000,000” and all that follows through the period
22 at the end and inserting the following: “of—

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

1 “(ii) \$50,000,000 for the period of fis-
2 cal years 2026 through 2035;
3 to the Centers for Medicare & Medicaid Serv-
4 ices Program Management Account, to remain
5 available until expended.”.

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

12 **SEC. 102. ENSURING ACCURATE INFORMATION ON COST**
13 **REPORTS.**

14 Section 1888(f) of the Social Security Act (42 U.S.C.
15 1395yy(f)) is amended by adding at the end the following
16 new paragraphs:

17 “(5) AUDIT OF COST REPORTS.—

18 “(A) IN GENERAL.—Beginning in 2022,
19 and annually thereafter, the Secretary shall
20 conduct an audit of cost reports submitted
21 under this title for a representative sample of
22 skilled nursing facilities.

23 “(B) FUNDING.—The Secretary shall pro-
24 vide for the transfer, from the Federal Hospital
25 Insurance Trust Fund under section 1817 to

1 the Centers for Medicare & Medicaid Services
2 Program Management Account, of
3 \$250,000,000 for fiscal year 2023 for purposes
4 of carrying out this paragraph. Amounts trans-
5 ferred pursuant to the previous sentence shall
6 remain available until expended.

7 “(6) REVIEW OF RELATIONSHIP BETWEEN
8 COST REPORT DATA AND QUALITY.—

9 “(A) IN GENERAL.—Not later than 2 years
10 after the Secretary completes the first audit de-
11 scribed in paragraph (5), and not less fre-
12 quently than once every 2 years thereafter, the
13 Inspector General of the Department of Health
14 and Human Services shall conduct an analysis
15 of, and submit to Congress a report on, the re-
16 lationship between skilled nursing facility ex-
17 penditures for functional accounts described in
18 paragraph (3) and skilled nursing facility qual-
19 ity (as specified by the Inspector General).

20 “(B) FUNDING.—The Secretary shall pro-
21 vide for the transfer, from the Federal Hospital
22 Insurance Trust Fund under section 1817 to
23 the Inspector General of the Department of
24 Health and Human Services \$25,000,000 for
25 fiscal year 2023 for purposes of carrying out

1 this paragraph. Amounts transferred pursuant
2 to the previous sentence shall remain available
3 until expended.”.

4 **SEC. 103. REQUIRING A SURETY BOND FOR SKILLED NURS-**
5 **ING FACILITIES.**

6 (a) **MEDICARE.**—Section 1819(a) of the Social Secu-
7 rity Act (42 U.S.C. 1395i–3(a)) is amended—

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

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

12 (3) by adding at the end the following new
13 paragraph:

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

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

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

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

1 (3) by inserting after paragraph (3) the fol-
2 lowing new paragraph:

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

9 **SEC. 104. SURVEY IMPROVEMENTS.**

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

12 (1) in the section heading, by striking “**AC-**
13 **COUNTABILITY REQUIREMENTS FOR**” and in-
14 serting “**ADDITIONAL REQUIREMENTS WITH RE-**
15 **SPECT TO**”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(i) SURVEY IMPROVEMENTS.—

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

22 “(A) The extent to which surveys con-
23 ducted under subsection (g) of sections 1819
24 and 1919 and the enforcement process under
25 subsection (h) of sections 1819 and 1919 result

1 in increased compliance with requirements
2 under sections 1819 and 1919 and subpart B
3 of part 483 of title 42, Code of Federal Regula-
4 tions, with respect to facilities.

5 “(B) The timeliness and thoroughness of
6 State agency verification of deficiency correc-
7 tions at facilities.

8 “(C) The appropriateness of the scoping
9 and substantiation of cited deficiencies at facili-
10 ties.

11 “(D) The accuracy of the identification
12 and appropriateness of the scoping of life safe-
13 ty, infection control, and emergency prepared-
14 ness deficiencies at facilities.

15 “(E) The timeliness of State agency inves-
16 tigations of—

17 “(i) complaints at facilities; and

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

20 “(F) The consistency of facility reporting
21 of substantiated complaints to law enforcement.

22 “(G) The ability of the State agency to
23 sufficiently hire, train, and retain individuals
24 who conduct surveys.

1 “(H) Any other area related to surveys of
2 facilities, or the individuals conducting such
3 surveys, determined appropriate by the Sec-
4 retary.

5 “(2) REPORT.—Not later than 3 years after the
6 date of enactment of this subsection, the Secretary
7 shall submit to Congress a report on the review con-
8 ducted under paragraph (1), together with rec-
9 ommendations for such legislation and administra-
10 tive action as the Secretary determines to be appro-
11 priate.

12 “(3) SUPPORT.—If determined appropriate by
13 the Secretary, based on the review under paragraph
14 (1), the Secretary shall provide training, tools, tech-
15 nical assistance, and financial support to State agen-
16 cies that perform surveys of facilities for the purpose
17 of improving the surveys conducted under subsection
18 (g) and the enforcement process under subsection
19 (h) with respect to the areas reviewed under para-
20 graph (1).

21 “(4) FUNDING.—There is appropriated to the
22 Secretary, out of any monies in the Treasury not
23 otherwise appropriated, \$570,000,000, to remain
24 available until expended, for purposes of carrying
25 out this subsection.”.

1 **SEC. 105. PROHIBITING PRE-DISPUTE ARBITRATION**
2 **AGREEMENTS.**

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

6 “(7) **PROHIBITION ON USE OF PRE-DISPUTE**
7 **ARBITRATION AGREEMENTS.**—

8 “(A) **IN GENERAL.**—A skilled nursing fa-
9 cility may not enter into a pre-dispute arbitra-
10 tion agreement with an individual applying to
11 reside or residing in the facility (or a legal rep-
12 resentative of such resident), and may not enter
13 into an agreement for services with an entity or
14 individual that enters into a pre-dispute arbitra-
15 tion agreement with an individual applying to
16 reside or residing in the facility (or a legal rep-
17 resentative of such resident).

18 “(B) **NO VALIDITY OR ENFORCEMENT.**—A
19 skilled nursing facility shall not enforce a pre-
20 dispute arbitration agreement against a resi-
21 dent or former resident of a skilled nursing fa-
22 cility (or a legal representative of such resi-
23 dent), without regard to whether the agreement
24 was made prior to or after the effective date of
25 this paragraph.

1 “(C) DEFINITION OF PRE-DISPUTE ARBI-
2 TRATION AGREEMENT.—In this paragraph, the
3 term ‘pre-dispute arbitration agreement’ means
4 any agreement to arbitrate a potential dispute
5 that, as of the date on which such agreement
6 is entered into, has not yet arisen.

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

17 (b) MEDICAID.—

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

23 “(1) PROHIBITING PRE-DISPUTE ARBITRATION
24 AGREEMENTS.—

1 “(1) IN GENERAL.—For home and community-
2 based services or home health care services provided
3 under a waiver under this section, section
4 1902(a)(10)(D), or any other provision authorizing
5 the provision of home and community-based services
6 or home health care services under this title, the
7 provider of such services (and any employee, agent,
8 related entity, or affiliate of such provider) may not
9 enter into a pre-dispute arbitration agreement with
10 an individual receiving such services (or a legal rep-
11 resentative of such individual). A provider of such
12 services (and any employee, agent, related entity, or
13 affiliate of such provider) shall not enforce a pre-dis-
14 pute arbitration agreement against an individual re-
15 ceiving such services, or who formerly received such
16 services (or a legal representative of such indi-
17 vidual), without regard to whether such agreement
18 was made prior to the effective date of this sub-
19 section.

20 “(2) DEFINITION OF PRE-DISPUTE ARBITRA-
21 TION AGREEMENT.—In this subsection, the term
22 ‘pre-dispute arbitration agreement’ means any
23 agreement to arbitrate a potential dispute that, as of
24 the date on which such agreement is entered into,
25 has not yet arisen.

1 “(3) JUDICIAL REVIEW.—A determination as to
2 whether and how this subsection applies to a pre-dis-
3 pute arbitration agreement shall be determined
4 under Federal law by a court of competent jurisdic-
5 tion, rather than an arbitrator, without regard to
6 whether the party opposing arbitration challenges
7 such agreement specifically or in conjunction with
8 any other term of the contract containing such
9 agreement.”.

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

14 “(9) PROHIBITION ON USE OF PRE-DISPUTE
15 ARBITRATION AGREEMENTS.—

16 “(A) IN GENERAL.—A nursing facility may
17 not enter into a pre-dispute arbitration agree-
18 ment with an individual applying to reside or
19 residing in the facility (or a legal representative
20 of such resident), and may not enter into an
21 agreement for services with an entity or indi-
22 vidual that enters into a pre-dispute arbitration
23 agreement with an individual applying to reside
24 or residing in the facility (or a legal representa-
25 tive of such resident).

1 “(B) NO VALIDITY OR ENFORCEMENT.—A
2 nursing facility shall not enforce a pre-dispute
3 arbitration agreement against a resident or
4 former resident of a nursing facility (or a legal
5 representative of such resident), without regard
6 to whether the agreement was made prior to or
7 after the effective date of this paragraph.

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

14 “(D) JUDICIAL REVIEW.—A determination
15 as to whether and how this paragraph applies
16 to a pre-dispute arbitration agreement shall be
17 determined under Federal law by a court of
18 competent jurisdiction, rather than an arbi-
19 trator, without regard to whether the party op-
20 posing arbitration challenges such agreement
21 specifically or in conjunction with any other
22 term of the contract containing such agree-
23 ment.”.

1 **SEC. 106. IMPROVEMENTS TO THE SPECIAL FOCUS FACIL-**
2 **ITY PROGRAM.**

3 (a) APPROPRIATE PARTICIPATION.—

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

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

11 (B) by adding at the end the following new
12 subparagraph:

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

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

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

1 (B) by adding at the end the following new
2 subparagraph:

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

9 (b) COMPLIANCE ASSISTANCE PROGRAMS.—

10 (1) MEDICARE.—Section 1819(f)(8) of the So-
11 cial Security Act (42 U.S.C. 1395i–3(f)(8)), as
12 amended by subsection (a)(1), is amended by adding
13 at the end the following new subparagraph:

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

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

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

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

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

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

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

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

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

1 “(D) COMPLIANCE ASSISTANCE PRO-
2 GRAMS.—

3 “(i) ON-SITE CONSULTATION AND
4 EDUCATIONAL PROGRAMMING.—

5 “(I) IN GENERAL.—The Sec-
6 retary shall establish on-site consulta-
7 tion and educational programming for
8 nursing facilities participating in the
9 special focus facility program with re-
10 spect to compliance with the applica-
11 ble requirements under this Act.

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

21 “(III) REQUIRED PARTICIPA-
22 TION.—A nursing facility partici-
23 pating in the special focus facility pro-
24 gram shall participate in any con-
25 sultations and educational program-

1 ming described in subclause (I) con-
2 ducted at the facility.

3 “(ii) CONSULTATION INDEPENDENT
4 OF ENFORCEMENT.—

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

11 “(II) EXCEPTION.—Subclause (I)
12 shall not apply in the case where a
13 triggering event at the nursing facility
14 is observed in the course of providing
15 on-site consultations and educational
16 programming described in clause (i).
17 In establishing such on-site consulta-
18 tions and educational programming,
19 the Secretary shall determine the trig-
20 gering events for which the use of
21 necessary enforcement actions is per-
22 mitted notwithstanding the limitation
23 under subclause (I). Such triggering
24 events shall include events that are re-
25 quired to be reported under State and

1 Federal law and a pattern of defi-
2 ciencies or problems that the quality
3 improvement organization or other or-
4 ganization has identified for correc-
5 tion but which are consistently not
6 corrected.”.

7 (c) FUNDING FOR THE SPECIAL FOCUS FACILITY
8 PROGRAM, INCLUDING COMPLIANCE ASSISTANCE PRO-
9 GRAMS.—Section 1819(f)(8) of the Social Security Act (42
10 U.S.C. 1395i–3(f)(8)), as amended by subsections (a)(1)
11 and (b)(1), is amended by adding at the end the following
12 new subparagraph:

13 “(E) For purposes of carrying out this
14 paragraph and section 1919(f)(10), there is ap-
15 propriated to the Secretary, out of any monies
16 in the Treasury not otherwise appropriated,
17 \$14,800,000 for fiscal year 2022 and each sub-
18 sequent fiscal year, to remain available until ex-
19 pended.”.

20 **TITLE II—STAFFING**
21 **IMPROVEMENTS**

22 **SEC. 201. NURSE STAFFING REQUIREMENTS.**

23 (a) IN GENERAL.—Title XI of the Social Security Act
24 (42 U.S.C. 1301 et seq.) is amended by inserting after
25 section 1128K the following new section:

1 **“SEC. 1128L. NURSE STAFFING REQUIREMENTS FOR FA-**
2 **CILITIES.**

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

11 “(1) with respect to the first such report, rec-
12 ommendations regarding appropriate minimum ra-
13 tios of registered nurses (and, if practicable, licensed
14 practical nurses (or licensed vocational nurses) and
15 certified nursing assistants) to residents at such
16 skilled nursing facilities and such nursing facilities;
17 and

18 “(2) with respect to each subsequent such re-
19 port, recommendations regarding appropriate min-
20 imum ratios of registered nurses, licensed practical
21 nurses (or licensed vocational nurses), and certified
22 nursing assistants to residents at such skilled nurs-
23 ing facilities and such nursing facilities.

24 “(b) PROMULGATION OF REGULATIONS.—

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

4 “(A) specify through regulations, con-
5 sistent with such report, appropriate minimum
6 ratios (if any) of registered nurses (and, if
7 practicable, licensed practical nurses (or li-
8 censed vocational nurses) and certified nursing
9 assistants) to residents at skilled nursing facili-
10 ties and nursing facilities; and

11 “(B) subject to any waiver in effect under
12 section 1819(b)(9)(B) or 1919(b)(9)(B), re-
13 quire such skilled nursing facilities and such
14 nursing facilities to comply with such ratios.

15 “(2) UPDATE.—Not later than 2 years after the
16 submission of each subsequent report under sub-
17 section (a), the Secretary shall, consistent with such
18 report, update the regulations described in para-
19 graph (1)(A) to reflect appropriate minimum ratios
20 (if any) of registered nurses, licensed practical
21 nurses (or licensed vocational nurses), and certified
22 nursing assistants to residents at skilled nursing fa-
23 cilities and nursing facilities.

24 “(c) FUNDING.—The Secretary shall provide for the
25 transfer, from the Federal Hospital Insurance Trust Fund

1 under section 1817 to the Centers for Medicare & Med-
2 icaid Services Program Management Account, of
3 \$50,000,000 for fiscal year 2022 for purposes of carrying
4 out this section. Amounts transferred pursuant to the pre-
5 vious sentence shall remain available until expended.”.

6 (b) IMPOSITION OF REQUIREMENTS.—

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

10 “(9) NURSE STAFFING REQUIREMENT.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B), a skilled nursing facility shall com-
13 ply with any minimum staffing ratios for reg-
14 istered nurses, licensed practical nurses (or li-
15 censed vocational nurses), or certified nurse as-
16 sistants specified by the Secretary for such a
17 facility in regulations promulgated under sec-
18 tion 1128L(b) or, if greater, as specified by the
19 State involved for such a facility.

20 “(B) WAIVER.—

21 “(i) IN GENERAL.—The Secretary
22 may waive the application of subparagraph
23 (A) with respect to a skilled nursing facil-
24 ity if the Secretary finds that—

1 “(I) the facility is located in a
2 rural area and the supply of skilled
3 nursing facility services in such area
4 is not sufficient to meet the needs of
5 individuals residing therein;

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

14 “(III) the facility that is granted
15 such a waiver notifies residents of the
16 facility (or, where appropriate, the
17 guardians or legal representatives of
18 such residents) and members of their
19 immediate families of the waiver.

20 “(ii) RENEWAL.—Any waiver in effect
21 under this subparagraph shall be subject to
22 annual renewal.”.

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

1 “(9) NURSE STAFFING REQUIREMENT.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), a nursing facility shall comply with
4 any minimum staffing ratios for registered
5 nurses, licensed practical nurses (or licensed vo-
6 cational nurses), or certified nurse assistants
7 specified by the Secretary for such a facility in
8 regulations promulgated under section
9 1128L(b) or, if greater, as specified by the
10 State involved for such a facility.

11 “(B) WAIVER.—

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

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

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

1 tection and advocacy system in the
2 State for the mentally ill and the
3 mentally retarded; and

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

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

13 **SEC. 202. IMPROVING NURSING HOME COMPARE STAFFING**
14 **DATA.**

15 (a) MEDICARE.—Section 1819(i)(1)(A)(i) of the So-
16 cial Security Act (42 U.S.C. 1395i–3(i)(1)(A)(i)) is
17 amended by inserting “(excluding, with respect to such
18 data provided on or after October 1, 2022, any hours
19 spent on administrative duties by licensed nurse staff)
20 and, beginning October 1, 2022, data on the hours of care
21 provided per resident per weekend day” after “per resi-
22 dent per day”.

23 (b) MEDICAID.—Section 1919(i)(1)(A)(i) of the So-
24 cial Security Act (42 U.S.C. 1396r(i)(1)(A)(i)) is amended
25 by inserting “(excluding, with respect to such data pro-

1 vided on or after October 1, 2022, any hours spent on
2 administrative duties by licensed nurse staff) and, begin-
3 ning October 1, 2022, data on the hours of care provided
4 per resident per weekend day” after “per resident per
5 day”.

6 **SEC. 203. ENSURING THE SUBMISSION OF ACCURATE**
7 **STAFFING DATA.**

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

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

13 (2) in subparagraph (D), as so redesignated, by
14 striking “paragraph (1)” and inserting “subpara-
15 graph (A)”;

16 (3) by moving the flush matter following sub-
17 paragraph (D), as so redesignated, 2 ems to the
18 right;

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

21 “(1) IN GENERAL.—Beginning not later than”;

22 and

23 (5) by adding at the end the following new
24 paragraph:

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

3 “(iii) provide, directly or under ar-
4 rangements with others, for infection con-
5 trol services overseen by an infection
6 preventionist for a minimum number of
7 hours per week as determined appropriate
8 by the Secretary (but, subject to subpara-
9 graph (B), not less than 40 hours per
10 week).”; and

11 (4) by adding at the end the following new sub-
12 paragraph:

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

17 “(i) IN GENERAL.—The Secretary
18 may grant a waiver to a skilled nursing fa-
19 cility under which the number of hours per
20 week that infection control services over-
21 seen by an infection preventionist at the
22 facility are required under subparagraph
23 (A)(iii) are reduced if the Secretary finds
24 that—

25 “(I) the facility—

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

7 “(bb) is of a size that neces-
8 sitates a lower requirement;

9 “(II) the Secretary provides no-
10 tice of the waiver to the State Long-
11 Term Care Ombudsman (supported
12 under title III or chapter 2 of subtitle
13 A of title VII of the Older Americans
14 Act of 1965) and the protection and
15 advocacy system (as defined in section
16 102 of the Developmental Disabilities
17 Assistance and Bill of Rights Act of
18 2000) in the State; and

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

1 “(ii) ANNUAL REVIEW.—A waiver
2 under this subparagraph shall be subject to
3 annual review by the Secretary.”.

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

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

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

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

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

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

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

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

20 “(iii) provide, directly or under ar-
21 rangements with others, for infection con-
22 trol services overseen by an infection
23 preventionist for a minimum number of
24 hours per week as determined appropriate
25 by the Secretary (but, subject to subpara-

1 graph (B), not less than 40 hours per
2 week.”; and

3 (4) by adding at the end the following new sub-
4 paragraph:

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

9 “(i) IN GENERAL.—A State may
10 grant a waiver to a nursing facility under
11 which the number of hours per week that
12 infection control services overseen by an in-
13 fection preventionist at the facility are re-
14 quired under subparagraph (A)(iii) are re-
15 duced if—

16 “(I) the facility demonstrates to
17 the satisfaction of the State that the
18 facility has been unable, despite dili-
19 gent efforts (including offering wages
20 at the community prevailing rate for
21 nursing facilities), to recruit appro-
22 priate personnel;

23 “(II) the State determines that
24 the waiver will not endanger the

1 health or safety of individuals staying
2 in the facility;

3 “(III) the State agency granting
4 the waiver provides notice of the waiv-
5 er to the State Long-Term Care Om-
6 budsman (supported under title III or
7 chapter 2 of subtitle A of title VII of
8 the Older Americans Act of 1965) and
9 the protection and advocacy system
10 (as defined in section 102 of the De-
11 velopmental Disabilities Assistance
12 and Bill of Rights Act of 2000); and

13 “(IV) the nursing facility that is
14 granted the waiver by a State notifies
15 residents of the facility (or, where ap-
16 propriate, the guardians or legal rep-
17 resentatives of such residents) and
18 members of their immediate families
19 of the waiver.

20 “(ii) ANNUAL REVIEW.—A waiver
21 under this subparagraph shall be subject to
22 annual review by the State agency and to
23 the review of the Secretary and subject to
24 clause (iii) shall be accepted by the Sec-
25 retary for purposes of this title to the same

1 extent as is the State’s certification of the
2 facility. In granting or renewing a waiver,
3 a State may require the facility to use
4 other qualified, licensed personnel to meet
5 the staffing requirements under subpara-
6 graph (A)(iii).

7 “(iii) ASSUMPTION OF WAIVER AU-
8 THORITY BY SECRETARY.—If the Secretary
9 determines that a State has shown a clear
10 pattern and practice of allowing waivers in
11 the absence of diligent efforts by facilities
12 to meet the staffing requirements under
13 subparagraph (A)(iii), the Secretary shall
14 assume and exercise the authority of the
15 State to grant waivers.”.

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

18 **SEC. 206. ENHANCED FUNDING TO SUPPORT STAFFING**
19 **AND QUALITY CARE IN NURSING FACILITIES.**

20 (a) FMAP INCREASE.—

21 (1) IN GENERAL.—Notwithstanding subsection
22 (b) or (ff) of section 1905 of the Social Security Act
23 (42 U.S.C. 1396d), in the case of a State that meets
24 the requirements described in subsection (c), the
25 Federal medical assistance percentage determined

1 for the State under subsection (b) of section 1905
2 of such Act (or subsection (ff) of such section, if ap-
3 plicable) and, if applicable, as increased under sub-
4 section (y), (z), (aa), or (ii) of such section or sec-
5 tion 6008 of the Families First Coronavirus Re-
6 sponse Act (Public Law 116–127), or any other pro-
7 vision of law, shall be increased by the applicable
8 number of percentage points specified in paragraph
9 (2) (but not to exceed 95 percent) with respect to
10 amounts expended by the State Medicaid program
11 for medical assistance for nursing facility services
12 provided for each calendar quarter that occurs dur-
13 ing the applicable period and for which the Secretary
14 determines that the State meets such requirements.
15 Any payment made to Puerto Rico, the Virgin Is-
16 lands, Guam, the Northern Mariana Islands, or
17 American Samoa for expenditures on medical assist-
18 ance that are subject to the Federal medical assist-
19 ance percentage increase specified under the first
20 sentence of this paragraph shall not be taken into
21 account for purposes of applying payment limits
22 under subsections (f) and (g) of section 1108 of the
23 Social Security Act (42 U.S.C. 1308).

24 (2) APPLICABLE NUMBER OF PERCENTAGE
25 POINTS.—For purposes of paragraph (1), the appli-

1 cable number of percentage points specified in this
2 paragraph is—

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

7 (B) in the case of a calendar quarter that
8 occurs within the 4-quarter period immediately
9 succeeding such 16-quarter period, 2 percentage
10 points; and

11 (C) in the case of a calendar quarter that
12 occurs within the 4-quarter period immediately
13 succeeding the 4-quarter period described in
14 subparagraph (B), 1 percentage point.

15 (b) DEFINITIONS.—In this section:

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

18 (A) begins on the 1st day of the 1st cal-
19 endar quarter that begins on or after the date
20 that is 1 year after the date of enactment of
21 this section; and

22 (B) ends on the last day of the succeeding
23 24th calendar quarter.

24 (2) NURSING FACILITY STAFF.—The term
25 “nursing facility staff” includes a registered nurse,

1 licensed practical nurse, licensed nursing assistant,
2 certified nursing assistant, nursing assistant, and
3 any other relevant staff, as determined by the Sec-
4 retary, who provide care to Medicaid beneficiaries
5 who are residents in a nursing facility.

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

9 (4) MEDICAID PROGRAM.—The term “Medicaid
10 program” means, with respect to a State, the State
11 program under title XIX of the Social Security Act
12 (42 U.S.C. 1396 et seq.) (including any waiver or
13 demonstration under such title or under section
14 1115 of such Act (42 U.S.C. 1315) relating to such
15 title).

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

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

21 (B) includes a skilled nursing facility, as
22 defined in section 1819(a) of the Social Secu-
23 rity Act (42 U.S.C. 1395i–3(a)), that is a par-
24 ticipating provider in the Medicaid program of
25 the State in which the facility is located or oth-

1 erwise furnishes items or services for which
2 medical assistance is available under the Med-
3 icaid program of the State in which the facility
4 is located.

5 (6) NURSING FACILITY SERVICES.—

6 (A) IN GENERAL.—Subject to subpara-
7 graphs (B) and (C), the term “nursing facility
8 services” has the meaning given such term
9 under section 1905(f) of the Social Security Act
10 (42 U.S.C. 1396d(f)).

11 (B) STATE MEDICAID PROGRAM.—With re-
12 spect to a State, such term includes those serv-
13 ices (including any limitations on the provision
14 of, or payment for, such services) that are spec-
15 ified as nursing facility services for purposes of
16 the Medicaid program of the State in which the
17 nursing facility furnishing such services is lo-
18 cated.

19 (C) INDIVIDUAL PLAN OF CARE.—Notwith-
20 standing subparagraph (A) or (B), such term
21 includes items or services that are specified in
22 the individual plan of care for a resident of a
23 nursing facility and are furnished to the resi-
24 dent in accordance with the requirements of
25 such plan.

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

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

6 (c) REQUIREMENTS.—As a condition for receipt of
7 the increase under subsection (a) to the Federal medical
8 assistance percentage determined for a State under sub-
9 section (b) of section 1905 of the Social Security Act (42
10 U.S.C. 1396d) for a calendar quarter, the State shall dem-
11 onstrate to the satisfaction of the Secretary the following:

12 (1) USE OF ADDITIONAL FEDERAL FUNDS.—

13 The State agrees to—

14 (A) use the Federal funds attributable to
15 the increase under subsection (a) only for the
16 purposes specified in subsection (d); and

17 (B) not use such Federal funds to satisfy
18 any State contribution required under the State
19 Medicaid program.

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

24 (A) carrying out the staffing and service
25 improvements specified in subsection (e) to

1 strengthen nursing facility staff workforce and
2 improve the quality and safety of care for Med-
3 icaid beneficiaries; and

4 (B) collecting and reporting the informa-
5 tion required under subsection (f).

6 (3) SUPPLEMENT, NOT SUPPLANT.—The State
7 agrees to use the Federal funds attributable to the
8 increase under subsection (a) to supplement, and not
9 supplant, the level of State funds expended as of Oc-
10 tober 1, 2021, for nursing facility services, including
11 with respect to efforts to strengthen the nursing fa-
12 cility staff workforce and improve the quality and
13 safety of care for Medicaid beneficiaries, under the
14 State Medicaid program.

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

17 (A) annually report the information speci-
18 fied in subsection (f) to the Secretary in such
19 form and manner as the Secretary shall require;
20 and

21 (B) provide such data and information as
22 is necessary for the evaluation required under
23 subsection (g).

24 (d) USE OF FUNDS.—A State may use the Federal
25 funds attributable to the increase under subsection (a)

1 only for expenditures eligible for payment under the State
2 Medicaid program that are attributable to State efforts
3 to achieve both of the following purposes:

4 (1) To expand and improve nursing facility
5 staffing, including by increasing payments for nurs-
6 ing facility services to improve staff wages and bene-
7 fits, support retention and recruitment, and reduce
8 staff turnover, consistent with the improvements
9 specified in paragraphs (1) and (2) of subsection (e).

10 (2) To support and improve the quality and
11 safety of care provided to Medicaid beneficiaries in
12 nursing facilities, including through efforts to ex-
13 pand the use of person-centered models of care, and
14 incentives or payments related to the provision of
15 care for Medicaid beneficiaries in private rooms.

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

19 (1) The State makes such changes to processes
20 for determining payment rates for nursing facility
21 services as are necessary to ensure that—

22 (A) such payment rates are reviewed and
23 updated every 2 years during the applicable pe-
24 riod to support the recruitment and retention of
25 nursing facility staff, and reduce turnover in

1 such staff through a transparent process that
2 involves meaningful input from stakeholders;
3 and

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

7 (2) The State updates, develops, and adopts
8 training opportunities and resources for nursing fa-
9 cility staff, including training for providing person-
10 centered care.

11 (3) The State improves and streamlines edu-
12 cation and options counseling services for Medicaid
13 beneficiaries, potential Medicaid beneficiaries, and
14 family members of such beneficiaries and potential
15 beneficiaries, with respect to eligibility and options
16 for institutional and non-institutional long term
17 care.

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

22 (1) The number of Medicaid beneficiaries who
23 received during the reporting period or, as of the
24 date of the report, are receiving, nursing facility

1 services in the State, disaggregated by race, eth-
2 nicity, gender, geography, age, and income.

3 (2) A description of how the State spent the
4 Federal funds attributable to the increase under
5 subsection (a) during the reporting period.

6 (3) Changes to payment rates for nursing facil-
7 ity services under the State Medicaid program dur-
8 ing the reporting period.

9 (4) The staffing information and employee
10 turnover and tenure information in nursing facilities
11 in the State during the reporting period, based on
12 submissions to the Payroll-Based Journal system of
13 the Centers for Medicare & Medicaid Services under
14 section 1128I(g) of the Social Security Act (42
15 U.S.C. 1320a-7j(g)).

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

19 (6) A description of the health status of, and
20 quality of care provided to, Medicaid beneficiaries
21 who are residents of nursing facilities in the State
22 during the reporting period, in the manner deter-
23 mined by the Secretary.

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

4 (1) the quality and safety of care provided in
5 nursing facilities to Medicaid beneficiaries who are
6 residents of nursing facilities;

7 (2) the capacity of the nursing facility staff
8 workforce to provide quality, safe care for Medicaid
9 beneficiaries who are residents of nursing facilities;
10 and

11 (3) the wages, benefits, and turnover of nursing
12 facility staff.

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

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

19 (2) REQUIRED INFORMATION.—

20 (A) INTERIM AND FINAL REPORTS.—The
21 interim and final reports submitted under this
22 subsection shall include the following informa-
23 tion:

24 (i) The number of States that received
25 an increase to the Federal medical assist-

1 ance percentage of the State under sub-
2 section (a) during the applicable period.

3 (ii) The State activities funded by the
4 Federal funds attributable to the increase
5 under subsection (a).

6 (B) FINAL REPORT.—The final report sub-
7 mitted under this section shall include, in addi-
8 tion to the information required under subpara-
9 graph (A), the results of the independent eval-
10 uation conducted pursuant to subsection (g).

11 **TITLE III—BUILDING MODIFICA-**
12 **TION AND STAFF INVEST-**
13 **MENT DEMONSTRATION PRO-**
14 **GRAM**

15 **SEC. 301. ESTABLISHING A SKILLED NURSING FACILITY**
16 **BUILDING MODIFICATION AND STAFF IN-**
17 **VESTMENT DEMONSTRATION PROGRAM.**

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

21 **“SEC. 1819A. COMMUNITY-BASED LIVING MODIFICATIONS**
22 **AND STAFF INVESTMENT DEMONSTRATION**
23 **PROGRAM.**

24 “(a) ESTABLISHMENT.—Not later than January 1,
25 2023, the Secretary shall establish a demonstration pro-

1 gram to test the impact of providing skilled nursing facili-
2 ties (as defined in section 1819(a)) selected by the Sec-
3 retary under subsection (b) funding to modify the built
4 environments of such facilities (or portions of such facili-
5 ties) and invest in individuals providing resident care in
6 such facilities (or in portions of such facilities) in order
7 to, with respect to residents of such facilities, improve
8 health outcomes relative to residents of facilities not so
9 selected.

10 “(b) APPLICATION AND SELECTION OF FACILI-
11 TIES.—

12 “(1) APPLICATION.—

13 “(A) IN GENERAL.—A skilled nursing fa-
14 cility shall only be eligible to receive funding
15 under the demonstration program established
16 under subsection (a) if such facility submits an
17 application at such time and in such manner as
18 specified by the Secretary that contains—

19 “(i) a description of modifications and
20 investments described in subsection (a)
21 that will be made by the facility using such
22 funds, including the estimated costs of
23 such modifications and investments;

24 “(ii) an agreement that such facility
25 (or, in the case such modifications and in-

1 vestments are to be made only with respect
2 to a portion of such facility, such portion
3 of such facility)—

4 “(I) will meet the requirements
5 described in subparagraph (B) not
6 later than the date that is 2 years
7 after such facility first receives funds
8 for such modifications and invest-
9 ments under such program; and

10 “(II) will continue to meet such
11 requirements for the 5-year period be-
12 ginning on the date that is 2 years
13 after such facilities first receives such
14 funds;

15 “(iii) an agreement that, in the case
16 such facility (or such portion of such facil-
17 ity, as applicable) fails to meet such re-
18 quirements in accordance with clause (ii),
19 such facility will—

20 “(I) repay such funds to the Sec-
21 retary in an amount determined ap-
22 propriate by the Secretary under sub-
23 section (d); and

24 “(II) notify each resident of such
25 facility (or each resident of such por-

1 tion of such facility, as applicable) of
2 the failure of such facility or such
3 portion, as applicable, to meet such
4 requirements;

5 “(iv) an agreement that, if such facil-
6 ity is selected by the Secretary under para-
7 graph (2), the facility will notify each resi-
8 dent of such facility (or each resident of
9 such portion of such facility, as applicable),
10 of such selection and include in such notifi-
11 cation a description of the program estab-
12 lished under subsection (a), including any
13 modifications and investments to be made
14 with respect to such facility (or with re-
15 spect to such portion of such facility, as
16 applicable); and

17 “(v) in the case such modifications
18 and investments are to be made only with
19 respect to a portion of such facility, an
20 agreement that such facility will not dis-
21 criminate in the selection of residents who
22 may reside in such portion based on
23 whether payment is being made to such fa-
24 cility with respect to such resident under

1 this title, a State plan (or waiver of such
2 plan) under title XIX, or otherwise.

3 “(B) REQUIREMENTS.—For purposes of
4 subparagraph (A), the requirements described
5 in this subparagraph with respect to a skilled
6 nursing facility (or a portion of such facility)
7 are the following:

8 “(i) The facility (or portion) main-
9 tains beds for no less than 5 and no more
10 than 14 residents.

11 “(ii) The facility (or portion) incor-
12 porates universal design (defined in section
13 3(19) of the Assistive Technology Act of
14 1998)) to ensure such facility (or portion)
15 is accessible to all residents, regardless of
16 age or disability, including by providing for
17 the following:

18 “(I) Private rooms and bath-
19 rooms (unless such facility determines
20 that the provision of private rooms
21 and bathrooms at such facility would
22 adversely affect the availability of
23 skilled nursing facility services in the
24 area in which such facility is located

1 and the Secretary concurs with such
2 determination).

3 “(II) Shared space, including a
4 central living area, as defined by the
5 Secretary, with a communal dining
6 table and accessible kitchen.

7 “(III) Accessible outdoor space,
8 including a protected garden space for
9 use by residents and their visitors.

10 “(iii) The facility (or portion) provides
11 a clinical team that consists of a full-time
12 registered professional nurse or licensed
13 practical nurse (or licensed vocational
14 nurse) who works in partnership with cer-
15 tified nursing assistants in a team-based,
16 collaborative model.

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

20 “(v) The facility (or portion) facili-
21 tates a standing resident council run by
22 residents, and a standing family council
23 run by family members of residents, that
24 meets such requirements as may be speci-
25 fied by the Secretary.

1 “(vi) The facility (or portion) solicits
2 resident input on facility policies (or poli-
3 cies relating to such portion of such facil-
4 ity), including with respect to programs
5 and scheduling, and, in the case of an in-
6 capacitated resident, solicits such input
7 from an individual recognized by State law
8 to act on behalf of such resident.

9 “(vii) In addition to the resident as-
10 sessment under section 1819(b)(3), the fa-
11 cility (or portion) conducts an assessment
12 of residents’ care preferences (or, in the
13 case of an incapacitated resident, such
14 preferences as expressed by an individual
15 recognized by State law to act on behalf of
16 such resident) not later than 14 days after
17 the resident is admitted to such facility or
18 portion of such facility (or, in the case of
19 a resident residing at such facility at the
20 time such facility receives funding under
21 the program established under paragraph
22 (1), not later than 14 days after the date
23 of such receipt) to ensure care is person-
24 directed.

1 “(viii) The facility (or portion) offers
2 daily activities, such as art, music, edu-
3 cational activities, or other activities based
4 on resident preferences.

5 “(C) TIMEFRAME.—The Secretary shall
6 develop the application described in subpara-
7 graph (A) and begin accepting such applica-
8 tions not later than July 1, 2023. The Sec-
9 retary shall accept such applications during the
10 2-year period beginning on the date such appli-
11 cations are first accepted.

12 “(2) SELECTION.—

13 “(A) IN GENERAL.—Not later than 2 years
14 after the date the Secretary first accepts appli-
15 cations under paragraph (1), the Secretary
16 shall select a number of skilled nursing facilities
17 determined appropriate by the Secretary to re-
18 ceive funding under the program established
19 under subsection (a).

20 “(B) PREFERENCE.—In selecting skilled
21 nursing facilities under this paragraph, the Sec-
22 retary shall—

23 “(i) give preference to facilities that—

24 “(I) are located in medically un-
25 derserved areas (as defined in section

1 330(b)(3)(A) of the Public Health
2 Service Act); and

3 “(II) house a majority of resi-
4 dents who are receiving medical as-
5 sistance consisting of nursing facility
6 services under a State plan (or waiver
7 of such plan) under title XIX;

8 “(ii) give preference to facilities that
9 demonstrate the greatest likelihood of
10 meeting the requirements described in
11 paragraph (1)(B) within 2 years of receiv-
12 ing funding under the program established
13 under subsection (a);

14 “(iii) give preference to facilities that
15 offer staff training beyond such training
16 required under section 1819 (as deter-
17 mined through payroll based journal data);
18 and

19 “(iv) so select such facilities in a man-
20 ner that ensures geographic diversity, to
21 the extent practicable.

22 “(c) FUNDS.—

23 “(1) IN GENERAL.—Subject to paragraph (3)
24 and subsection (h), the Secretary shall provide funds
25 to each skilled nursing facility selected under sub-

1 section (b)(2) in an amount equal to not more than
2 the costs specified by such facility pursuant to sub-
3 section (b)(1)(A)(i).

4 “(2) USE OF FUNDS.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), funds provided under paragraph (1)
7 may only be used by a skilled nursing facility
8 for modifications and investments specified by
9 such facility pursuant to subsection
10 (b)(1)(A)(i).

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

16 “(i) such facility submits a request to
17 the Secretary containing a description of
18 such modifications and investments; and

19 “(ii) the Secretary determines that
20 such modifications and investments will as-
21 sist such facility (or a portion of such facil-
22 ity, as applicable) in complying with the
23 requirements specified in subsection
24 (b)(1)(B).

1 “(3) FORM OF PROVISION OF FUNDS.—The
2 Secretary may provide funding under paragraph (1)
3 in the form of a single upfront payment or in up to
4 3 installment payments, spaced out across the first
5 3 fiscal years beginning with the fiscal year in which
6 the first such payment is made.

7 “(4) LIMITATION OF PROVISION OF FUND-
8 ING.—No skilled nursing facility may receive more
9 than 3 percent of the total monies appropriated
10 under paragraph (5).

11 “(5) APPROPRIATION.—In addition to any
12 amounts otherwise available, there is appropriated to
13 the Secretary, out of any monies in the Treasury not
14 otherwise appropriated, \$1,300,000,000, to remain
15 available until expended, for purposes of providing
16 funds to skilled nursing facilities under paragraph
17 (1).

18 “(d) FAILURE TO MEET REQUIREMENTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),
20 in the case of a facility (or a portion of such facility,
21 as applicable) that fails to meet the requirements de-
22 scribed in subsection (b)(1)(B) in accordance with
23 the agreement described in subsection (b)(1)(A)(ii),
24 the Secretary may recoup any funds provided to
25 such facility under subsection (c)(1) in an amount

1 determined appropriate by the Secretary. In deter-
2 mining such amount, the Secretary shall take into
3 account the extent of the compliance of such facility
4 (or portion of such facility, as applicable) with such
5 requirements.

6 “(2) EXCEPTION.—The Secretary may suspend
7 any recoupment described in paragraph (1) with re-
8 spect to a facility (or a portion of such facility, as
9 applicable) described in such paragraph for a period
10 of time determined appropriate by the Secretary if
11 the Secretary finds that such facility (or such por-
12 tion) will likely be in compliance with the require-
13 ments described in such paragraph within a reason-
14 able time specified by the Secretary.

15 “(e) EVALUATION OF PROGRAM.—

16 “(1) IN GENERAL.—The Secretary shall evalu-
17 ate each skilled nursing facility receiving funds
18 under the program established under subsection (a)
19 to assess whether, relative to similarly situated
20 skilled nursing facilities not receiving funds under
21 such program and residents of such facilities, modi-
22 fications and investments described in subsection (a)
23 made at skilled nursing facilities using such funds
24 resulted in, with respect to residents of such facili-
25 ties (or, in the case such modifications and invest-

1 ments are made only with respect to a portion of
2 such facility, residents of such portion of such facil-
3 ity)—

4 “(A) a reduction in preventable hos-
5 pitalizations;

6 “(B) a reduction in hospital readmissions;

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

8 “(D) greater improvement in functional
9 status;

10 “(E) an improvement in infection control;

11 “(F) a reduction in nursing staff turnover
12 rates;

13 “(G) an increase in resident and family
14 caregiver satisfaction;

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

17 “(I) a reduction in expenditures under this
18 part (excluding funds provided under subsection
19 (c)(1)); or

20 “(J) any other outcomes specified by the
21 Secretary.

22 “(2) REPORTS TO CONGRESS.—Based on eval-
23 uations described in paragraph (1), the Secretary
24 shall, not later than July 1, 2031, and again not
25 later than July 1, 2035, submit to Congress a report

1 on such program. Each such report shall include an
2 analysis of the demonstration program’s effect on
3 the outcomes described in paragraph (1).

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

6 “(g) AUTHORITY TO EXPAND TO CERTAIN NURSING
7 FACILITIES.—The Secretary may, subject to subsection
8 (h), enter into agreements with States to include nursing
9 facilities (as defined in section 1919(a)) that are not
10 skilled nursing facilities (as defined in section 1819(a))
11 in the demonstration program established under sub-
12 section (a) and may modify the requirements of the pre-
13 vious provisions of this section as appropriate to be appli-
14 cable to such facilities.

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

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