

116TH CONGRESS  
2D SESSION

# S. 3447

To amend title XVIII of the Social Security Act to establish a program to allow qualified group practices to furnish certain items and services at qualified skilled nursing facilities to individuals entitled to benefits under part A and enrolled under part B of the Medicare program to reduce unnecessary hospitalizations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 11, 2020

Mr. THUNE (for himself and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to establish a program to allow qualified group practices to furnish certain items and services at qualified skilled nursing facilities to individuals entitled to benefits under part A and enrolled under part B of the Medicare program to reduce unnecessary hospitalizations, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reducing Unnecessary  
3 Senior Hospitalizations Act of 2020” or the “RUSH Act  
4 of 2020”.

5 **SEC. 2. SNF-BASED PROVISION OF PREVENTIVE ACUTE**  
6 **CARE AND HOSPITALIZATION REDUCTION**  
7 **PROGRAM.**

8 Title XVIII of the Social Security Act is amended by  
9 adding at the end the following new section:

10 **“SEC. 1899C. SNF-BASED PROVISION OF PREVENTIVE**  
11 **ACUTE CARE AND HOSPITALIZATION REDUC-**  
12 **TION PROGRAM.**

13 “(a) ESTABLISHMENT.—There is established a pro-  
14 gram to be known as the ‘SNF-based Provision of Preven-  
15 tive Acute Care and Hospitalization Reduction Program’  
16 (in this section referred to as the ‘Program’), to be admin-  
17 istered by the Secretary, for purposes of reducing unneces-  
18 sary hospitalizations and emergency department visits by  
19 allowing qualified group practices (as defined in section  
20 1877(h)(4)) on or after January 1, 2021, to furnish items  
21 and services identified under subsection (b)(3) to individ-  
22 uals entitled to benefits under part A and enrolled under  
23 part B residing in qualified skilled nursing facilities.

24 “(b) OPERATION OF PROGRAM.—Under the Pro-  
25 gram, the Secretary shall provide for the following:

1           “(1) Certification of skilled nursing facilities as  
2 qualified skilled nursing facilities under subsection  
3 (c)(1).

4           “(2) Certification of group practices as quali-  
5 fied group practices under subsection (c)(2).

6           “(3) Identification of minimum required non-  
7 surgical items and services furnished at a hospital  
8 emergency department that may be safely furnished  
9 by a qualified group practice at a qualified skilled  
10 nursing facility under the Program and that such  
11 qualified group practice shall offer to furnish under  
12 the Program.

13           “(4) Annual identification of additional items  
14 and services furnished at a hospital emergency de-  
15 partment that may be safely furnished by a qualified  
16 group practice at a qualified skilled nursing facility  
17 under the Program during a year and that such  
18 qualified group practice may offer to furnish under  
19 the Program during such year.

20           “(5) Establishment of qualifications for non-  
21 physician employees who may furnish such items  
22 and services at a qualified skilled nursing facility.  
23 Such qualifications shall include the requirement  
24 that such an employee—

1           “(A) be certified in basic life support by a  
2 nationally recognized specialty board of certifi-  
3 cation or equivalent certification board; and

4           “(B) have—

5               “(i) clinical experience furnishing  
6 medical care—

7                   “(I) in a skilled nursing facility;

8                   “(II) in a hospital emergency de-  
9 partment setting; or

10                   “(III) as an employee of a pro-  
11 vider or supplier of ambulance serv-  
12 ices; or

13               “(ii) a certification in paramedicine.

14           “(6) Payment under this title for items and  
15 services identified under paragraph (3) or (4) fur-  
16 nished by such qualified group practices at such a  
17 facility in amounts determined under subsection (d).

18           “(c) CERTIFICATIONS.—

19               “(1) QUALIFIED SKILLED NURSING FACILI-  
20 TIES.—For purposes of this section, the Secretary  
21 shall certify a skilled nursing facility as a qualified  
22 skilled nursing facility if the facility submits an ap-  
23 plication in a time and manner specified by the Sec-  
24 retary and meets the following requirements:

1           “(A) The facility has on-site diagnostic  
2 equipment necessary for a qualified group prac-  
3 tice to furnish items and services under the  
4 Program and real-time audio and visual capa-  
5 bilities.

6           “(B) The facility has at least one indi-  
7 vidual who meets the qualifications described in  
8 paragraph (5) or a physician present 24 hours  
9 a day and 7 days a week to work with the  
10 qualified group practice. Such individual may  
11 be a member of the staff of the qualified skilled  
12 nursing facility or of the qualified group prac-  
13 tice.

14           “(C) The facility ensures that residents of  
15 such facility, upon entering such facility, are al-  
16 lowed to specify in an advanced care directive  
17 whether the resident wishes to receive items  
18 and services furnished at the facility under the  
19 Program in a case where communication with  
20 the resident is not possible.

21           “(D) The facility ensures that individuals  
22 to be furnished such items and services under  
23 the Program at such facility have the oppor-  
24 tunity, at their request, to instead be trans-  
25 ported to a hospital emergency department.

1           “(E) The facility is not part of the Special  
2           Focus Facility program of the Centers for  
3           Medicare & Medicaid Services (although the fa-  
4           cility may, at the discretion of the Secretary, be  
5           a candidate for selection under such program).  
6           Nothing in this paragraph shall affect the require-  
7           ments under section 1819(b)(4).

8           “(2) QUALIFIED GROUP PRACTICES.—For pur-  
9           poses of this section, the Secretary shall certify a  
10          group practice as a qualified group practice for a pe-  
11          riod of 3 years if the group practice submits an ap-  
12          plication in a time and manner specified by the Sec-  
13          retary and meets the following requirements:

14                 “(A) The group practice offers to furnish  
15                 all minimum required items and services identi-  
16                 fied under subsection (b)(3) under the Pro-  
17                 gram.

18                 “(B) The group practice submits a notifi-  
19                 cation to the Secretary annually specifying  
20                 which (if any) additional items and services  
21                 identified under subsection (b)(4) for a year the  
22                 group practice will offer to furnish for such  
23                 year under the Program.

24                 “(C) The group practice ensures that only  
25                 individuals who meet the qualifications estab-

1 lished under subsection (b)(5) or a physician  
2 who is part of such group practice may furnish  
3 such minimum required items and services and  
4 such additional items and services.

5 “(D) The group practice ensures that, in  
6 the case where such minimum required items  
7 and services or such additional items and serv-  
8 ices are furnished by such an individual, such  
9 individual furnishes such minimum required  
10 items and services or additional items and serv-  
11 ices under the supervision, either in-person or  
12 through the use of telehealth (not including  
13 store-and-forward technologies), of—

14 “(i) a physician—

15 “(I) who is board certified or  
16 board eligible in emergency medicine,  
17 family medicine, geriatrics, or internal  
18 medicine; or

19 “(II) who has been certified by a  
20 nationally recognized specialty board  
21 of certification or equivalent certifi-  
22 cation board in basic life support;

23 “(ii) a nurse practitioner who has  
24 been certified by a nationally recognized  
25 specialty board of certification or equiva-

1           lent certification board in basic life sup-  
2           port; or

3           “(iii) a physician assistant who has  
4           been certified by a nationally recognized  
5           specialty board of certification or equiva-  
6           lent certification board in basic life sup-  
7           port.

8           “(E) With respect to any year in which the  
9           qualified group practice would participate in the  
10          Program, the Chief Actuary for the Centers for  
11          Medicare & Medicaid Services determines that  
12          such participation during such year will not re-  
13          sult in total estimated expenditures under this  
14          title for such year being greater than total esti-  
15          mated expenditures under such title for such  
16          year without such participation.

17          “(d) PAYMENTS.—

18               “(1) IN GENERAL.—For 2021 and each subse-  
19               quent year, the Secretary shall develop a schedule of  
20               payments to apply for items and services identified  
21               under paragraph (3) or paragraph (4) of subsection  
22               (b) furnished during such year under the Program.  
23               Such payments shall be in lieu of any other pay-  
24               ments that may be made under this title for such  
25               items and services.



1           “(2) SHARED SAVINGS.—In the case of a year  
2           for which the Secretary determines that participa-  
3           tion in the Program resulted in a reduction in ex-  
4           penditures under this title compared to what such  
5           expenditures would have been without such partici-  
6           pation, the Secretary shall—

7                   “(A) pay to such qualified group practice  
8                   an amount equal to 37.5 percent of the esti-  
9                   mated amount of such reduction; and

10                   “(B) in the case of each qualified skilled  
11                   nursing facility where such qualified group  
12                   practice furnished items and services under the  
13                   Program during such year—

14                           “(i) if the qualified skilled nursing fa-  
15                           cility has at least a three-star rating under  
16                           the Five Star Quality Rating System (or a  
17                           successor system), pay to the facility an  
18                           amount that bears the same ratio to 12.5  
19                           percent of the estimated amount of such  
20                           reduction as the amount of expenditures  
21                           under the Program for such items and  
22                           services furnished with respect to individ-  
23                           uals at such facility by such qualified  
24                           group practice during such year bears to  
25                           the total amount of expenditures under the

1 Program for such items and services fur-  
2 nished with respect to all individuals by  
3 such qualified group practice during such  
4 year; and

5 “(ii) in the case of a qualified skilled  
6 nursing facility that is not described in  
7 clause (i), retain in the Federal Hospital  
8 Insurance Trust Fund under section 1817  
9 the amount that the facility would have  
10 been paid pursuant to clause (i) if the fa-  
11 cility were described in such clause until  
12 such time as the facility has at least a  
13 three-star rating under the Five Star Qual-  
14 ity Rating System (or a successor system),  
15 at which point the Secretary shall pay such  
16 amount to the facility.

17 “(3) ADVANCED ALTERNATIVE PAYMENT MOD-  
18 ELS.—Paragraph (2) shall not apply to items and  
19 services furnished to an individual entitled to bene-  
20 fits under part A and enrolled under Part B for  
21 whom shared savings would otherwise be attributed  
22 through an advanced alternative payment model as  
23 authorized under section 1115A or section 1899.

24 “(e) EVALUATION.—

1           “(1) IN GENERAL.—With respect to a qualified  
2           group practice and a qualified skilled nursing facil-  
3           ity, not later than 6 months after such group prac-  
4           tice begins furnishing items and services under the  
5           Program (or, in the case of a qualified skilled nurs-  
6           ing facility, not less than 6 months after a qualified  
7           group practice first furnishes such items and serv-  
8           ices at such facility), and not less than once every  
9           2 years thereafter, the Secretary shall evaluate such  
10          qualified group practice and such qualified facility  
11          using information received under paragraph (2) on  
12          such criteria as determined appropriate by the Sec-  
13          retary.

14           “(2) REPORTING OF INFORMATION.—In a time  
15          and manner specified by the Secretary, a qualified  
16          group practice and a qualified skilled nursing facility  
17          shall submit to the Secretary a report containing the  
18          following information with respect to items and serv-  
19          ices furnished under the Program during a reporting  
20          period (as specified by the Secretary):

21           “(A) The number of individuals with re-  
22          spect to whom such group practice furnished  
23          such items and services in such period (or, in  
24          the case of a qualified skilled nursing facility,  
25          the number of individuals with respect to whom

1 such a group practice furnished such items and  
2 services at such facility in such period).

3 “(B) The number of such individuals who  
4 were admitted to a hospital or treated in the  
5 emergency department of a hospital within 24  
6 hours of being furnished such items and serv-  
7 ices.

8 “(C) Other information determined appro-  
9 priate by the Secretary.

10 “(3) LOSS OF QUALIFIED CERTIFICATION.—

11 “(A) IN GENERAL.—Not later than 3  
12 months after a determination described in this  
13 sentence is made, the Secretary may revoke the  
14 certification of a qualified skilled nursing facil-  
15 ity or a qualified group practice made under  
16 subsection (c) if—

17 “(i) the Chief Actuary of the Centers  
18 for Medicare & Medicaid Services deter-  
19 mines that the participation of such skilled  
20 nursing facility or such group practice in  
21 the Program during a year resulted in  
22 total expenditures under this title for such  
23 period being greater than total expendi-  
24 tures under such title would have been

1 during such period without such participa-  
2 tion; or

3 “(ii) a facility is selected for the Spe-  
4 cial Focus Facility program or, if the facil-  
5 ity is a candidate for the Special Focus  
6 Facility program, the Secretary determines  
7 that the participation of such facility in the  
8 Program should be terminated.

9 “(B) EXCLUSION FROM CERTIFICATION.—

10 “(i) IN GENERAL.—In the case that  
11 the Secretary revokes the certification of a  
12 qualified skilled nursing facility or a quali-  
13 fied group practice under subparagraph  
14 (A), such skilled nursing facility or such  
15 group practice shall be ineligible for certifi-  
16 cation as a qualified skilled nursing facility  
17 or a qualified group practice (as applica-  
18 ble) under subsection (c) for the applicable  
19 period (as defined under clause (ii)).

20 “(ii) APPLICABLE PERIOD DE-  
21 FINED.—In this subparagraph, the term  
22 ‘applicable period’ means—

23 “(I) if the revocation of a facility  
24 or group practice under subparagraph  
25 (A) is due to the application of clause

1 (i) of such subparagraph, a 1-year pe-  
2 riod beginning on the date of such  
3 revocation; and

4 “(II) in the revocation of a facil-  
5 ity under subparagraph (A) is due to  
6 the application of clause (ii) of such  
7 subparagraph, the period beginning  
8 on the date of such revocation and  
9 ending on the date on which the facil-  
10 ity graduates from the Special Focus  
11 Facility program (or, in the case of a  
12 facility that is a candidate for such  
13 program, the date on which the facil-  
14 ity is no longer such a candidate, as  
15 determined by the Secretary).

16 “(f) DETERMINATION OF BUDGET NEUTRALITY;  
17 TERMINATION OF PROGRAM.—

18 “(1) DETERMINATION.—Not later than July 1,  
19 2026, the Chief Actuary of the Centers for Medicare  
20 & Medicaid Services shall determine whether the  
21 Program has resulted in an increase in total expend-  
22 itures under this title with respect to the period be-  
23 ginning on January 1, 2021, and ending on Decem-  
24 ber 31, 2025, compared to what such expenditures

1 would have been during such period had the Pro-  
2 gram not been in operation.

3 “(2) TERMINATION.—If the Chief Actuary  
4 makes a determination under paragraph (1) that the  
5 Program has resulted in an increase in total expend-  
6 itures under this title, the Secretary shall terminate  
7 the Program as of January 1 of the first year begin-  
8 ning after such determination.”.

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