

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4866

To amend titles XVIII and XIX of the Social Security Act to modernize Federal nursing home protections and to enhance care quality and transparency for nursing home residents and their families.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 19), 2020

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

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to modernize Federal nursing home protections and to enhance care quality and transparency for nursing home residents and their families.

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 Reform  
5       Modernization Act of 2020”.

1 **SEC. 2. IMPROVEMENTS TO NURSING FACILITIES UNDER**  
2 **THE MEDICARE AND MEDICAID PROGRAMS.**

3 (a) **ADVISORY COUNCIL ON SKILLED NURSING FA-**  
4 **CILITY RANKINGS UNDER MEDICARE AND NURSING FA-**  
5 **CILITY RANKINGS UNDER MEDICAID.—**

6 (1) **ESTABLISHMENT.—**Not later than 1 year  
7 after the date of enactment of this Act, the Sec-  
8 retary of Health and Human Services shall establish  
9 the Advisory Council on Skilled Nursing Facility  
10 Rankings Under Medicare and Nursing Facility  
11 Rankings Under Medicaid (in this subsection re-  
12 ferred to as the “Advisory Council”).

13 (2) **MEMBERSHIP.—**The Secretary shall ensure  
14 that the membership of the Advisory Council in-  
15 cludes equal representation from the following:

16 (A) Consumers with nursing home experi-  
17 ence, including adults age 65 and older, individ-  
18 uals with disabilities, family caregivers, and  
19 their advocates.

20 (B) Skilled nursing facilities and nursing  
21 facilities, including nonprofit facilities.

22 (C) Academics with expertise in nursing  
23 home oversight.

24 (D) Health professionals with nursing  
25 home experience, such as physicians, nurses,

1 pharmacists, certified nursing assistants, and  
2 direct care professionals.

3 (E) Professionals with expertise in quality  
4 measurement.

5 (F) Professionals with expertise in emer-  
6 gency management.

7 (G) State surveying agencies.

8 (H) State long-term care ombudsman pro-  
9 grams.

10 (I) The Medicare Payment Advisory Com-  
11 mission.

12 (J) The Medicaid and CHIP Payment and  
13 Access Commission.

14 (K) The Centers for Medicare & Medicaid  
15 Services.

16 (L) Other representatives as the Secretary  
17 determines appropriate.

18 (3) DUTIES.—

19 (A) STUDY.—The Advisory Council shall  
20 conduct a study of processes for ranking skilled  
21 nursing facilities and nursing facilities under  
22 paragraph (9) of section 1819(f) of the Social  
23 Security Act, as added by subsection (b)(1) and  
24 under paragraph (11) of section 1919(f) of

1 such Act, as added by subsection (c)(1). Such  
2 study shall include an analysis of—

3 (i) which available, verifiable data  
4 sources and measures are best for appro-  
5 priately designating facilities in—

6 (I) the high-rated facility pro-  
7 gram under paragraph (10) of such  
8 section 1819(f) and under paragraph  
9 (12) of such section 1919(f); and

10 (II) the low-rated facility pro-  
11 gram under paragraph (8) of such  
12 section 1819(f) and under paragraph  
13 (10) of such section 1919(f);

14 (ii) the appropriate frequency with  
15 which to update the rankings for the high-  
16 rated and low-rated facility programs de-  
17 scribed in clause (i);

18 (iii) how best to ensure that skilled  
19 nursing facilities and nursing facilities ap-  
20 propriately report adverse events;

21 (iv) how surveyors can clearly provide  
22 the rationale for giving deficiencies to such  
23 skilled nursing facilities and nursing facili-  
24 ties and how this can be done in a timely  
25 manner;

1 (v) how to manage suspensions from  
2 the high-rated facility program described  
3 in clause (i)(I) and the need for additional  
4 consumer protections to administer such  
5 high-rated facility program;

6 (vi) the availability or potential devel-  
7 opment of, or modifications to, measures  
8 or verifiable data sources on topics, includ-  
9 ing avoidable hospital readmissions, emer-  
10 gency room visits, risk-adjusted mortality,  
11 discharges to the community, involuntary  
12 discharges, situations involving the inap-  
13 propriate administration of medications by  
14 a facility, and emergency management; and

15 (vii) the development of, or modifica-  
16 tions to, data collection, verifiable data  
17 sources, and potential measures to assess  
18 the financial stability of a facility.

19 (B) FINDINGS AND RECOMMENDATIONS.—

20 (i) IN GENERAL.—Not later than 2  
21 years after the date of enactment of this  
22 Act, the Advisory Council shall submit to  
23 the Secretary the findings of the Advisory  
24 Council under the study conducted under  
25 subparagraph (A), together with rec-

1           ommendations for such legislation and ad-  
2           ministrative action as the Advisory Council  
3           determines appropriate.

4           (ii) PUBLIC AVAILABILITY.—Upon re-  
5           ceiving the findings and recommendations  
6           under clause (i), the Secretary shall make  
7           the findings and recommendations avail-  
8           able to the public on the internet website  
9           of the Centers for Medicare & Medicaid  
10          Services.

11          (4) SUNSET.—The Advisory Council shall ter-  
12          minate upon the submission of the report to the Sec-  
13          retary under paragraph (3)(B)(i).

14          (b) MEDICARE PROGRAM REVISIONS.—

15           (1) ESTABLISHMENT OF RANKINGS AND HIGH-  
16           RATED FACILITY PROGRAM.—

17           (A) IN GENERAL.—Section 1819(f) of the  
18           Social Security Act (42 U.S.C. 1395i–3(f)) is  
19           amended by adding at the end the following  
20           new paragraphs:

21           “(9) RANKING PROCESS.—

22           “(A) PROCESS.—

23           “(i) ESTABLISHMENT.—The Secretary  
24           shall establish a process to rank skilled

1 nursing facilities based on compliance with  
2 the applicable requirements of this Act.

3 “(ii) DATA.—The process established  
4 under clause (i) shall include the use of at  
5 least the preceding 3 years of health in-  
6 spection data, if appropriate, and other  
7 data as determined appropriate by the Sec-  
8 retary.

9 “(iii) FINDINGS AND RECOMMENDA-  
10 TIONS OF THE ADVISORY COUNCIL ON  
11 SKILLED NURSING FACILITY RANKINGS  
12 UNDER MEDICARE AND NURSING FACILITY  
13 RANKINGS UNDER MEDICAID.—In estab-  
14 lishing the process under clause (i), the  
15 Secretary shall take into account the find-  
16 ings and recommendations of the Advisory  
17 Council that are submitted to the Sec-  
18 retary under section 2(a)(3)(B)(i) of the  
19 Nursing Home Reform Modernization Act  
20 of 2020.

21 “(B) RANKING.—

22 “(i) IN GENERAL.—Under the process  
23 established under subparagraph (A), the  
24 Secretary shall use the rankings of skilled  
25 nursing facilities to categorize facilities

1 into highest and lowest groups for the pur-  
2 poses specified in clause (ii).

3 “(ii) TIMING AND USE OF  
4 RANKINGS.—Not later than 2 years after  
5 the date the Secretary receives the findings  
6 and recommendations described in sub-  
7 paragraph (A)(iii), the Secretary shall use  
8 the rankings under clause (i) for purposes  
9 of carrying out—

10 “(I) the high-rated facility pro-  
11 gram under paragraph (10); and

12 “(II) the low-rated facility pro-  
13 gram under paragraph (8).

14 “(10) HIGH-RATED FACILITY PROGRAM.—

15 “(A) ESTABLISHMENT.—

16 “(i) IN GENERAL.—Not later than 2  
17 years after the date the Secretary receives  
18 the findings and recommendations de-  
19 scribed in paragraph (9)(A)(iii), the Sec-  
20 retary shall establish and implement a  
21 high-rated facility program to encourage  
22 and reward compliance with the require-  
23 ments of this Act.

24 “(ii) REPORT.—In establishing the  
25 high-rated facility program, the Secretary

1 shall take into account the findings and  
2 recommendations described in paragraph  
3 (9)(A)(iii).

4 “(iii) REGULATIONS.—The Secretary  
5 shall establish the high-rated facility pro-  
6 gram under clause (i) through notice and  
7 comment rulemaking.

8 “(B) DESIGNATION.—Under the high-  
9 rated facility program, subject to subparagraph  
10 (D), the Secretary shall designate the highest  
11 rated skilled nursing facilities under the  
12 rankings under paragraph (9)(B) as high-rated  
13 skilled nursing facilities.

14 “(C) DISTINCTION ON NURSING HOME  
15 COMPARE WEBSITE.—A skilled nursing facility  
16 that is designated as a high-rated skilled nurs-  
17 ing facility under subparagraph (B) shall re-  
18 ceive a high-rated distinction on the official  
19 Internet website of the Federal Government for  
20 comparing nursing homes pursuant to sub-  
21 section (i)(1)(C).

22 “(D) SUSPENSION OF HIGH-RATED STA-  
23 TUS.—

24 “(i) IN GENERAL.—The Secretary  
25 shall suspend a skilled nursing facility’s

1 designation under subparagraph (B) if the  
2 Secretary determines that there are cir-  
3 cumstances warranting such suspension.

4 “(ii) CIRCUMSTANCES.—In estab-  
5 lishing the circumstances under clause (i),  
6 the Secretary shall take into account—

7 “(I) findings from Federal sur-  
8 veys and investigations;

9 “(II) findings from State surveys  
10 conducted under subsection (g)(2)(A);

11 “(III) findings from State inves-  
12 tigations and surveys conducted under  
13 subsection (g)(4), including a high  
14 number of substantiated complaints,  
15 the frequency and severity of substan-  
16 tiated complaints, and how the com-  
17 plaints are handled by the facility;

18 “(IV) situations involving  
19 changes of ownership, administration,  
20 or management of a skilled nursing  
21 facility, or the director of nursing;

22 “(V) situations involving the in-  
23 appropriate administration of medica-  
24 tions by a facility;

1 “(VI) situations involving invol-  
2 untary discharges of residents; and

3 “(VII) other factors determined  
4 appropriate by the Secretary.

5 “(iii) NO REINSTATEMENT PRIOR TO  
6 NEXT STANDARD SURVEY.—If a skilled  
7 nursing facility’s designation is suspended  
8 under clause (i), such designation shall not  
9 be reinstated prior to a subsequent survey  
10 as specified under subsection  
11 (g)(2)(A)(iii).”.

12 (B) ASSESSMENT OF HIGH-RATED DES-  
13 IGNATION IN SPECIAL SURVEYS.—Section  
14 1819(g)(2)(A)(iii)(II) of the Social Security Act  
15 (42 U.S.C. 1395i–3(g)(2)(A)(iii)(II)) is amend-  
16 ed—

17 (i) by inserting “(or, in the case of a  
18 facility that is designated as a high-rated  
19 skilled nursing facility under subsection  
20 (f)(10), shall be conducted)” after “may be  
21 conducted”; and

22 (ii) by adding at the end the following  
23 new sentence: “On and after the date the  
24 Secretary implements the high-rated facil-  
25 ity program under subsection (f)(10), any

1 survey conducted, pursuant to the pre-  
2 ceding sentence, of a facility that is des-  
3 ignated as a high-rated skilled nursing fa-  
4 cility under such subsection shall include  
5 an assessment of whether such designation  
6 should continue or be suspended under  
7 subparagraph (D) of such subsection.”.

8 (2) IMPROVEMENTS TO THE SPECIAL FOCUS  
9 FACILITY PROGRAM.—

10 (A) APPROPRIATE PARTICIPATION.—Sec-  
11 tion 1819(f)(8) of the Social Security Act (42  
12 U.S.C. 1395i–3(f)(8)) is amended—

13 (i) in subparagraph (A), by striking  
14 “The Secretary” and inserting “Subject to  
15 the succeeding provisions of this sub-  
16 section, the Secretary”; and

17 (ii) by adding at the end the following  
18 new subparagraph:

19 “(C) APPROPRIATE PARTICIPATION.—Not  
20 later than 1 year after the date of enactment of  
21 the Nursing Home Reform Modernization Act  
22 of 2020, the Secretary shall ensure that the  
23 number of facilities participating in the special  
24 focus facility program is not less than 3.5 per-  
25 cent of all skilled nursing facilities.”.

1 (B) CONVERSION OF THE SPECIAL FOCUS  
2 FACILITY PROGRAM TO THE LOW-RATED FACIL-  
3 ITY PROGRAM AND ADDITIONAL REQUIRE-  
4 MENTS.—Section 1819(f)(8) of the Social Secu-  
5 rity Act (42 U.S.C. 1395i–3(f)(8)), as amended  
6 by subparagraph (A), is amended—

7 (i) in subparagraph (B), by inserting  
8 the following before the period at the end:  
9 “(or, on and after the date the Secretary  
10 makes the conversion described in subpara-  
11 graph (D), at a frequency determined ap-  
12 propriate by the Secretary (but in no case  
13 less than once every 6 months))”; and

14 (ii) by adding at the end the following  
15 new subparagraphs:

16 “(D) CONVERSION TO THE LOW-RATED  
17 FACILITY PROGRAM.—

18 “(i) IN GENERAL.—On the same date  
19 that the Secretary implements the high-  
20 rated facility program under paragraph  
21 (10), the Secretary shall convert the spe-  
22 cial focus facility program under this sub-  
23 section to the low-rated facility program.

24 “(ii) REGULATIONS.—The Secretary  
25 shall carry out the conversion under clause

1 (i) through notice and comment rule-  
2 making.

3 “(iii) ADDITIONAL REQUIREMENTS  
4 FOR THE LOW-RATED FACILITY PRO-  
5 GRAM.—In addition to the provisions that  
6 apply to the low-rated facility program  
7 through the conversion from the special  
8 focus facility program, the succeeding pro-  
9 visions of this subsection shall also apply  
10 to the low-rated facility program.

11 “(E) PARTICIPATION.—Subject to the min-  
12 imum participation requirement under subpara-  
13 graph (C), the Secretary shall designate the  
14 lowest rated skilled nursing facilities under the  
15 rankings under paragraph (9)(B) for participa-  
16 tion in the low-rated facility program.

17 “(F) PROGRESSIVE ENFORCEMENT AC-  
18 TIONS.—The Secretary, in consultation with  
19 States, shall utilize progressive enforcement ac-  
20 tions, of increasing severity, to ensure facilities  
21 participating in the low-rated facility program  
22 meet the applicable requirements under this  
23 Act.

24 “(G) ENFORCEMENT FOR PATTERNS OF  
25 DEFICIENCY.—The Secretary may utilize en-

1 enforcement actions specified in subsection (h)(2)  
2 to remedy patterns of deficiencies cited across  
3 multiple surveys.

4 “(H) COMPLIANCE ASSISTANCE PRO-  
5 GRAMS.—

6 “(i) ON-SITE CONSULTATION AND  
7 EDUCATIONAL PROGRAMMING.—

8 “(I) IN GENERAL.—The Sec-  
9 retary shall establish on-site consulta-  
10 tion and educational programming for  
11 skilled nursing facilities participating  
12 in the low-rated facility program with  
13 respect to compliance with the appli-  
14 cable requirements under this Act.

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

24 “(III) REQUIRED PARTICIPA-  
25 TION.—A skilled nursing facility par-

1 participating in the low-rated facility pro-  
2 gram shall participate in any con-  
3 sultations and educational program-  
4 ming described in subclause (I) con-  
5 ducted at the facility.

6 “(ii) CONSULTATION INDEPENDENT  
7 OF ENFORCEMENT.—

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

14 “(II) EXCEPTION.—Subclause (I)  
15 shall not apply in the case where a  
16 triggering event at the skilled nursing  
17 facility is observed in the course of  
18 providing on-site consultations and  
19 educational programming described in  
20 clause (i). In establishing such on-site  
21 consultations and educational pro-  
22 gramming, the Secretary shall deter-  
23 mine the triggering events for which  
24 the use of necessary enforcement ac-  
25 tions is permitted notwithstanding the

1 limitation under subclause (I). Such  
2 triggering events shall include events  
3 that are required to be reported under  
4 State and Federal law and a pattern  
5 of deficiencies or problems that the  
6 quality improvement organization or  
7 other organization has identified for  
8 correction but which are consistently  
9 not corrected.

10 “(I) PUBLIC AVAILABILITY.—

11 “(i) IN GENERAL.—The Secretary  
12 shall ensure that a skilled nursing facility’s  
13 participation in the low-rated facility pro-  
14 gram is publicly announced, including to—

15 “(I) resident family councils;

16 “(II) resident attending physi-  
17 cians;

18 “(III) the State board respon-  
19 sible for the licensing of the skilled  
20 nursing facility administrator at the  
21 facility;

22 “(IV) State Long-Term Care  
23 Ombudsman programs (as described  
24 in section 712(a)(1) of the Older  
25 Americans Act of 1965); and

1 “(V) the community at large.

2 “(ii) WRITTEN NOTIFICATION.—The  
3 Secretary shall ensure that, in the case of  
4 a skilled nursing facility that is partici-  
5 pating in the low-rated facility program,  
6 residents of such facility and family or  
7 legal representatives are furnished with in-  
8 dividualized written notice of such partici-  
9 pation. Such notice shall be provided to  
10 current residents and to new residents  
11 prior to admission.

12 “(J) REQUIREMENT FOR REMOVAL.—The  
13 Secretary shall require that a skilled nursing fa-  
14 cility show improvement prior to removal from  
15 the low-rated facility program.”.

16 (C) USE OF CIVIL MONEY PENALTIES.—  
17 Section 1819(h)(2)(B)(ii)(IV)(ff) of the Social  
18 Security Act (42 U.S.C. 1395i-  
19 3(h)(2)(B)(ii)(IV)(ff)) is amended—

20 (i) by striking “and facility improve-  
21 ment initiatives” and inserting “facility  
22 improvement initiatives”; and

23 (ii) by inserting the following before  
24 the period at the end: “, and, on and after  
25 the date the Secretary makes the conver-

1 sion described in subsection (f)(8)(D), con-  
2 sultation, education, and other activities to  
3 foster improvement and remedy root  
4 causes contributing to deficiencies cited  
5 across multiple surveys among facilities in  
6 the low-rated facility program under sub-  
7 section (f)(8)”.

8 (3) INFORMATION ON HIGH-RATED AND LOW-  
9 RATED FACILITIES ON NURSING HOME COMPARE  
10 MEDICARE WEBSITE.—Section 1819(i)(1) of the So-  
11 cial Security Act (42 U.S.C. 1395i–3(i)(1)) is  
12 amended—

13 (A) in subparagraph (A), by adding at the  
14 end the following new clause:

15 “(vi) On and after the date the Sec-  
16 retary implements the high-rated facility  
17 program under subsection (f)(10) and  
18 makes the conversion under subsection  
19 (f)(8)(D), consistent with subparagraph  
20 (C)—

21 “(I) for each skilled nursing fa-  
22 cility that is designated as a high-  
23 rated skilled nursing facility under  
24 subsection (f)(10), the date the facil-  
25 ity was so designated; and

1                   “(II) for each skilled nursing fa-  
2                   cility participating in the low-rated fa-  
3                   cility program under subsection (f)(8),  
4                   the date the facility was identified for  
5                   inclusion in such program.”; and

6                   (B) by adding at the end the following new  
7                   subparagraphs:

8                   “(C) DISTINCTIONS FOR HIGH-RATED AND  
9                   LOW-RATED FACILITIES.—On and after the  
10                  date the Secretary implements the high-rated  
11                  facility program under subsection (f)(10) and  
12                  makes the conversion under subsection  
13                  (f)(8)(D), the Secretary shall ensure that  
14                  graphics, including an appropriate explanation  
15                  of such graphics, are prominently displayed on  
16                  the website described in subparagraph (A) in  
17                  order to distinguish each of the following:

18                  “(i) Skilled nursing facilities that are  
19                  designated as high-rated skilled nursing fa-  
20                  cilities under subsection (f)(10).

21                  “(ii) Skilled nursing facilities that are  
22                  participating in the low-rated facility pro-  
23                  gram under subsection (f)(8), with infor-  
24                  mation on facilities that have been placed  
25                  in such program more than one time over

1 the course of the last 10 years (including  
2 the number of times such skilled nursing  
3 facilities have been placed in the program).

4 “(D) FOCUS GROUPS AND CONSUMER  
5 TESTING.—In order to help limit confusion,  
6 particularly among older adults, individuals  
7 with disabilities, and family caregivers, the Sec-  
8 retary shall utilize focus groups and other con-  
9 sumer testing methods prior to including the  
10 additional information under subparagraph  
11 (A)(vi) and implementing the distinctions under  
12 subparagraph (C).”.

13 (c) MEDICAID PROGRAM REVISIONS.—

14 (1) ESTABLISHMENT OF RANKINGS AND HIGH-  
15 RATED FACILITY PROGRAM.—

16 (A) IN GENERAL.—Section 1919(f) of the  
17 Social Security Act (42 U.S.C. 1396r(f)) is  
18 amended by adding at the end the following  
19 new paragraphs:

20 “(11) RANKING PROCESS.—

21 “(A) PROCESS.—

22 “(i) ESTABLISHMENT.—The Secretary  
23 shall establish a process to rank nursing  
24 facilities based on compliance with the ap-  
25 plicable requirements of this Act.

1           “(ii) DATA.—The process established  
2           under clause (i) shall include the use of at  
3           least the preceding 3 years of health in-  
4           spection data, if appropriate, and other  
5           data as determined appropriate by the Sec-  
6           retary.

7           “(iii) FINDINGS AND RECOMMENDA-  
8           TIONS OF THE ADVISORY COUNCIL ON  
9           SKILLED NURSING FACILITY RANKINGS  
10          UNDER MEDICARE AND NURSING FACILITY  
11          RANKINGS UNDER MEDICAID.—In estab-  
12          lishing the process under clause (i), the  
13          Secretary shall take into account the find-  
14          ings and recommendations of the Advisory  
15          Council that are submitted to the Sec-  
16          retary under section 2(a)(3)(B)(i) of the  
17          Nursing Home Reform Modernization Act  
18          of 2020.

19          “(B) RANKING.—

20                 “(i) IN GENERAL.—Under the process  
21                 established under subparagraph (A), the  
22                 Secretary shall use the rankings of nursing  
23                 facilities to categorize facilities into highest  
24                 and lowest groups for the purposes speci-  
25                 fied in clause (ii).

1                   “(ii) TIMING AND USE OF  
2 RANKINGS.—Not later than 2 years after  
3 the date the Secretary receives the findings  
4 and recommendations described in sub-  
5 paragraph (A)(iii), the Secretary shall use  
6 the rankings under clause (i) for purposes  
7 of carrying out—

8                   “(I) the high-rated facility pro-  
9 gram under paragraph (12); and

10                   “(II) the low-rated facility pro-  
11 gram under paragraph (10).

12                   “(12) HIGH-RATED FACILITY PROGRAM.—

13                   “(A) ESTABLISHMENT.—

14                   “(i) IN GENERAL.—Not later than 2  
15 years after the date the Secretary receives  
16 the findings and recommendations de-  
17 scribed in paragraph (11)(A)(iii), the Sec-  
18 retary shall establish and implement a  
19 high-rated facility program to encourage  
20 and reward compliance with the require-  
21 ments of this Act.

22                   “(ii) REPORT.—In establishing the  
23 high-rated facility program, the Secretary  
24 shall take into account the findings and

1 recommendations described in paragraph  
2 (11)(A)(iii).

3 “(iii) REGULATIONS.—The Secretary  
4 shall establish the high-rated facility pro-  
5 gram under clause (i) through notice and  
6 comment rulemaking.

7 “(B) DESIGNATION.—Under the high-  
8 rated facility program, subject to subparagraph  
9 (D), the Secretary shall designate the highest  
10 rated nursing facilities under the rankings  
11 under paragraph (11)(B) as high-rated nursing  
12 facilities.

13 “(C) DISTINCTION ON NURSING HOME  
14 COMPARE WEBSITE.—A nursing facility that is  
15 designated as a high-rated nursing facility  
16 under subparagraph (B) shall receive a high-  
17 rated distinction on the official Internet website  
18 of the Federal Government for comparing nurs-  
19 ing homes pursuant to subsection (i)(1)(C).

20 “(D) SUSPENSION OF HIGH-RATED STA-  
21 TUS.—

22 “(i) IN GENERAL.—The Secretary  
23 shall suspend a nursing facility’s designa-  
24 tion under subparagraph (B) if the Sec-

1           retary determines that there are cir-  
2           cumstances warranting such suspension.

3           “(ii) CIRCUMSTANCES.—In estab-  
4           lishing the circumstances under clause (i),  
5           the Secretary shall take into account—

6                   “(I) findings from Federal sur-  
7                   veys and investigations;

8                   “(II) findings from State surveys  
9                   conducted under subsection (g)(2)(A);

10                   “(III) findings from State inves-  
11                   tigations and surveys conducted under  
12                   subsection (g)(4), including a high  
13                   number of substantiated complaints,  
14                   the frequency and severity of substan-  
15                   tiated complaints, and how the com-  
16                   plaints are handled by the facility;

17                   “(IV) situations involving  
18                   changes of ownership, administration,  
19                   or management of a nursing facility,  
20                   or the director of nursing;

21                   “(V) situations involving the in-  
22                   appropriate administration of medica-  
23                   tions by a facility;

24                   “(VI) situations involving invol-  
25                   untary discharges of residents; and

1                   “(VII) other factors determined  
2                   appropriate by the Secretary.

3                   “(iii) NO REINSTATEMENT PRIOR TO  
4                   NEXT STANDARD SURVEY.—If a nursing  
5                   facility’s designation is suspended under  
6                   clause (i), such designation shall not be re-  
7                   instated prior to a subsequent survey as  
8                   specified under subsection (g)(2)(A)(iii).”.

9                   (B) ASSESSMENT OF HIGH-RATED DES-  
10                  IGNATION IN SPECIAL SURVEYS.—Section  
11                  1919(g)(2)(A)(iii)(II) of the Social Security Act  
12                  (42 U.S.C. 1396r(g)(2)(A)(iii)(II)) is amend-  
13                  ed—

14                   (i) by inserting “(or, in the case of a  
15                   facility that is designated as a high-rated  
16                   nursing facility under subsection (f)(12),  
17                   shall be conducted)” after “may be con-  
18                   ducted”; and

19                   (ii) by adding at the end the following  
20                   new sentence: “On and after the date the  
21                   Secretary implements the high-rated facil-  
22                   ity program under subsection (f)(12), any  
23                   survey conducted, pursuant to the pre-  
24                   ceding sentence, of a facility that is des-  
25                   ignated as a high-rated nursing facility

1 under such subsection shall include an as-  
2 sessment of whether such designation  
3 should continue or be suspended under  
4 subparagraph (D) of such subsection.”.

5 (2) IMPROVEMENTS TO THE SPECIAL FOCUS  
6 FACILITY PROGRAM.—

7 (A) APPROPRIATE PARTICIPATION.—Sec-  
8 tion 1919(f)(10) of the Social Security Act (42  
9 U.S.C. 1395r(f)(10)) is amended—

10 (i) in subparagraph (A), by striking  
11 “The Secretary” and inserting “Subject to  
12 the succeeding provisions of this sub-  
13 section, the Secretary”; and

14 (ii) by adding at the end the following  
15 new subparagraph:

16 “(C) APPROPRIATE PARTICIPATION.—Not  
17 later than 1 year after the date of enactment of  
18 the Nursing Home Reform Modernization Act  
19 of 2020, the Secretary shall ensure that the  
20 number of facilities participating in the special  
21 focus facility program is not less than 3.5 per-  
22 cent of all nursing facilities.”.

23 (B) CONVERSION OF THE SPECIAL FOCUS  
24 FACILITY PROGRAM TO THE LOW-RATED FACIL-  
25 ITY PROGRAM AND ADDITIONAL REQUIRE-

1           MENTS.—Section 1919(f)(10) of the Social Se-  
2           curity Act (42 U.S.C. 1395i-3(f)(10)), as  
3           amended by subparagraph (A), is amended—

4                   (i) in subparagraph (B), by inserting  
5                   the following before the period at the end:  
6                   “(or, on and after the date the Secretary  
7                   makes the conversion described in subpara-  
8                   graph (D), at a frequency determined ap-  
9                   propriate by the Secretary (but in no case  
10                  less than once every 6 months))”; and

11                  (ii) by adding at the end the following  
12                  new subparagraphs:

13                  “(D) CONVERSION TO THE LOW-RATED  
14                  FACILITY PROGRAM.—

15                   “(i) IN GENERAL.—On the same date  
16                   that the Secretary implements the high-  
17                   rated facility program under paragraph  
18                   (12), the Secretary shall convert the spe-  
19                   cial focus facility program under this sub-  
20                   section to the low-rated facility program.

21                   “(ii) REGULATIONS.—The Secretary  
22                   shall carry out the conversion under clause  
23                   (i) through notice and comment rule-  
24                   making.

1                   “(iii) ADDITIONAL REQUIREMENTS  
2                   FOR THE LOW-RATED FACILITY PRO-  
3                   GRAM.—In addition to the provisions that  
4                   apply to the low-rated facility program  
5                   through the conversion from the special  
6                   focus facility program, the succeeding pro-  
7                   visions of this subsection shall also apply  
8                   to the low-rated facility program.

9                   “(E) PARTICIPATION.—Subject to the min-  
10                  imum participation requirement under subpara-  
11                  graph (C), the Secretary shall designate the  
12                  lowest rated nursing facilities under the  
13                  rankings under paragraph (11)(B) for partici-  
14                  pation in the low-rated facility program.

15                  “(F) PROGRESSIVE ENFORCEMENT AC-  
16                  TIONS.—The Secretary, in consultation with  
17                  States, shall utilize progressive enforcement ac-  
18                  tions, of increasing severity, to ensure facilities  
19                  participating in the low-rated facility program  
20                  meet the applicable requirements under this  
21                  Act.

22                  “(G) ENFORCEMENT FOR PATTERNS OF  
23                  DEFICIENCY.—The Secretary may utilize en-  
24                  forcement actions specified in subsection (h)(2)

1 to remedy patterns of deficiencies cited across  
2 multiple surveys.

3 “(H) COMPLIANCE ASSISTANCE PRO-  
4 GRAMS.—

5 “(i) ON-SITE CONSULTATION AND  
6 EDUCATIONAL PROGRAMMING.—

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

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

23 “(III) REQUIRED PARTICIPA-  
24 TION.—A nursing facility partici-  
25 pating in the low-rated facility pro-

1           gram shall participate in any con-  
2           sultations and educational program-  
3           ming described in subclause (I) con-  
4           ducted at the facility.

5           “(ii) CONSULTATION INDEPENDENT  
6           OF ENFORCEMENT.—

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

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

1 events shall include events that are re-  
2 quired to be reported under State and  
3 Federal law and a pattern of defi-  
4 ciencies or problems that the quality  
5 improvement organization or other or-  
6 ganization has identified for correc-  
7 tion but which are consistently not  
8 corrected.

9 “(I) PUBLIC AVAILABILITY.—

10 “(i) IN GENERAL.—The Secretary  
11 shall ensure that a nursing facility’s par-  
12 ticipation in the low-rated facility program  
13 is publicly announced, including to—

14 “(I) resident family councils;

15 “(II) resident attending physi-  
16 cians;

17 “(III) the State board respon-  
18 sible for the licensing of the nursing  
19 facility administrator at the facility;

20 “(IV) State Long-Term Care  
21 Ombudsman programs (as described  
22 in section 712(a)(1) of the Older  
23 Americans Act of 1965); and

24 “(V) the community at large.

1                   “(ii) WRITTEN NOTIFICATION.—The  
 2                   Secretary shall ensure that, in the case of  
 3                   a nursing facility that is participating in  
 4                   the low-rated facility program, residents of  
 5                   such facility and family or legal represent-  
 6                   atives are furnished with individualized  
 7                   written notice of such participation. Such  
 8                   notice shall be provided to current resi-  
 9                   dents and to new residents prior to admis-  
 10                   sion.

11                   “(J) REQUIREMENT FOR REMOVAL.—The  
 12                   Secretary shall require that a nursing facility  
 13                   show improvement prior to removal from the  
 14                   low-rated facility program.”.

15                   (C) USE OF CIVIL MONEY PENALTIES.—  
 16                   Section 1919(h)(3)(C)(ii)(IV)(ff) of the Social  
 17                   Security Act (42 U.S.C.  
 18                   1396r(h)(3)(C)(ii)(IV)(ff)) is amended—

19                   (i) by striking “and facility improve-  
 20                   ment initiatives” and inserting “facility  
 21                   improvement initiatives”; and

22                   (ii) by inserting the following before  
 23                   the period at the end: “, and, on and after  
 24                   the date the Secretary makes the conver-  
 25                   sion described in subsection (f)(10)(D),

1           consultation, education, and other activities  
2           to foster improvement and remedy root  
3           causes contributing to deficiencies cited  
4           across multiple surveys among facilities in  
5           the low-rated facility program under sub-  
6           section (f)(10)”.  
7

8           (3) INFORMATION ON HIGH-RATED AND LOW-  
9           RATED FACILITIES ON NURSING HOME COMPARE  
10          MEDICARE WEBSITE.—Section 1919(i)(1) of the So-  
11          cial Security Act (42 U.S.C. 1396r(i)(1)) is amend-  
12          ed—

13                 (A) in subparagraph (A), by adding at the  
14                 end the following new clause:

15                         “(vi) On and after the date the Sec-  
16                         retary implements the high-rated facility  
17                         program under subsection (f)(12) and  
18                         makes the conversion under subsection  
19                         (f)(10)(D), consistent with subparagraph  
20                         (C)—

21                                 “(I) for each nursing facility that  
22                                 is designated as a high-rated nursing  
23                                 facility under subsection (f)(12), the  
24                                 date the facility was so designated;  
                                       and

1                   “(II) for each nursing facility  
2                   participating in the low-rated facility  
3                   program under subsection (f)(10), the  
4                   date the facility was identified for in-  
5                   clusion in such program.”; and

6                   (B) by adding at the end the following new  
7                   subparagraphs:

8                   “(C) DISTINCTIONS FOR HIGH-RATED AND  
9                   LOW-RATED FACILITIES.—On and after the  
10                  date the Secretary implements the high-rated  
11                  facility program under subsection (f)(12) and  
12                  makes the conversion under subsection  
13                  (f)(10)(D), the Secretary shall ensure that  
14                  graphics, including an appropriate explanation  
15                  of such graphics, are prominently displayed on  
16                  the website described in subparagraph (A) in  
17                  order to distinguish each of the following:

18                  “(i) Nursing facilities that are des-  
19                  ignated as high-rated nursing facilities  
20                  under subsection (f)(12).

21                  “(ii) Nursing facilities that are par-  
22                  ticipating in the low-rated facility program  
23                  under subsection (f)(10), with information  
24                  on facilities that have been placed in such  
25                  program more than one time over the

1 course of the last 10 years (including the  
2 number of times such nursing facilities  
3 have been placed in the program).

4 “(D) FOCUS GROUPS AND CONSUMER  
5 TESTING.—In order to help limit confusion,  
6 particularly among older adults, individuals  
7 with disabilities, and family caregivers, the Sec-  
8 retary shall utilize focus groups and other con-  
9 sumer testing methods prior to including the  
10 additional information under subparagraph  
11 (A)(vi) and implementing the distinctions under  
12 subparagraph (C).”.

13 (d) GAO STUDY AND REPORT.—

14 (1) STUDY.—The Comptroller General of the  
15 United States (in this section referred to as the  
16 “Comptroller General”) shall conduct a study on the  
17 quality of items and services furnished by skilled  
18 nursing facilities under title XVIII of the Social Se-  
19 curity Act and nursing facilities under title XIX of  
20 such Act, and such facilities’ compliance with the  
21 applicable requirements under such titles. Such  
22 study shall include analysis of the following:

23 (A) The effectiveness of the low-rated facil-  
24 ity program established under paragraph (8) of  
25 section 1819(f) of the Social Security Act (42

1 U.S.C. 1395i–3(f)), as amended by subsection  
2 (b)(2), and under paragraph (10) of section  
3 1919(f) of such Act (42 U.S.C. 1396r(f)), as  
4 amended by subsection (c)(2).

5 (B) Other areas determined appropriate by  
6 the Comptroller General.

7 (2) REPORT.—Not later than 6 years after the  
8 date of enactment of this Act, the Comptroller Gen-  
9 eral shall submit to the appropriate Committees of  
10 Congress a report containing the results of the study  
11 conducted under paragraph (1), together with rec-  
12 ommendations for such legislation and administra-  
13 tive action as the Comptroller General determines  
14 appropriate.

15 (e) RULES OF CONSTRUCTION.—

16 (1) SURVEYS.—Nothing in the provisions of, or  
17 the amendments made by, this section shall be con-  
18 strued to allow the Secretary to modify or deviate  
19 from—

20 (A) a survey schedule that requires unan-  
21 nounced and unanticipated surveying of skilled  
22 nursing facilities under subsection (g)(2)(A)(i)  
23 of section 1819 of the Social Security Act (42  
24 U.S.C. 1395i–3(g)) or under subsection

1 (g)(2)(A)(i) of section 1919 of the Social Secu-  
2 rity Act (42 U.S.C. 1396r(g));

3 (B) the surveying frequency specified  
4 under subsection (g)(2)(A)(iii) of such section  
5 1819 or under subsection (g)(2)(A)(iii) of such  
6 section 1919; or

7 (C) surveys and investigations as required  
8 under subsection (g)(4) of such section 1819 or  
9 under subsection (g)(4) of such section 1919.

10 (2) ACCOUNTABILITY AND STATE LAW.—Noth-  
11 ing in the provisions of, or the amendments made  
12 by, this section shall be construed to impact the abil-  
13 ity of a resident, the family of a resident, or a suc-  
14 cessor in interest to hold a skilled nursing facility or  
15 nursing facility accountable or change protections  
16 granted under State law.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) APPROPRIATE COMMITTEES OF CON-  
20 GRESS.—The term “appropriate Committee of Con-  
21 gress” means—

22 (A) the Committee on Finance of the Sen-  
23 ate;

24 (B) the Committee on Health, Education,  
25 Labor, and Pensions of the Senate;

1           (C) the Special Committee on Aging of the  
2           Senate;

3           (D) the Committee on Ways and Means of  
4           the House of Representatives; and

5           (E) the Committee on Energy and Com-  
6           merce of the House of Representatives.

7           (2) NURSING FACILITY.—The term “nursing  
8           facility” has the meaning given that term in section  
9           1919(a) of the Social Security Act (42 U.S.C.  
10          1396r(a)).

11          (3) SKILLED NURSING FACILITY.—The term  
12          “skilled nursing facility” has the meaning given that  
13          term in section 1819(a) of the Social Security Act  
14          (42 U.S.C. 1395i–3(a)).

15          (4) SECRETARY.—The term “Secretary” means  
16          the Secretary of Health and Human Services.

○