

115TH CONGRESS  
1ST SESSION

# H. R. 4704

To amend titles XVIII and XIX of the Social Security Act to codify the emergency preparedness final rule for skilled nursing facilities and nursing facilities as conditions of participation under the Medicare and Medicaid programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2017

Ms. WASSERMAN SCHULTZ (for herself and Mr. WALBERG) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to codify the emergency preparedness final rule for skilled nursing facilities and nursing facilities as conditions of participation under the Medicare and Medicaid programs, 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 “Nursing Home Com-  
3 fortable Air Ready for Emergencies Act” or the “Nursing  
4 Home CARE Act”.

5 **SEC. 2. CODIFYING EMERGENCY PREPAREDNESS RULE**

6                   **FOR SKILLED NURSING FACILITIES AND**  
7                   **NURSING FACILITIES AS CONDITIONS OF**  
8                   **PARTICIPATION UNDER MEDICARE AND MED-**  
9                   **ICAID PROGRAMS.**

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

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

14                  (2) in paragraph (3), by striking the period at  
15                  the end and inserting “; and”;

16                  (3) by inserting after paragraph (3) the fol-  
17                  lowing new paragraph:

18                  “(4) beginning not later than the date of the  
19                  enactment of this paragraph—

20                  “(A) meets the emergency preparedness re-  
21                  quirements applicable to skilled nursing facili-  
22                  ties under the final rule ‘Medicare and Medicaid  
23                  Programs; Emergency Preparedness Require-  
24                  ments for Medicare and Medicaid Participating  
25                  Providers and Suppliers’ as published by the

1        Centers for Medicare & Medicaid Services on  
2        September 16, 2016 (81 Fed. Reg. 63859); and

3                “(B) has in place alternative sources of en-  
4        ergy capable of powering heating, ventilation,  
5        and air conditioning systems for at least 96  
6        hours after a catastrophic natural disaster.”;

7        and

8                (4) by adding at the end the following:

9        “Nothing in paragraph (4)(B) shall be construed to re-  
10      quire a skilled nursing facility to continuously maintain  
11      a supply of fuel on its premise, as long as such facility  
12      is able to demonstrate to the Secretary the ability of the  
13      facility to obtain any fuel necessary to satisfy such para-  
14      graph.”.

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

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

19                (2) in paragraph (3), by striking the period at  
20      the end and inserting “; and”;

21                (3) by inserting after paragraph (3) the fol-  
22      lowing new paragraph:

23                “(4) beginning not later than the date of the  
24      enactment of this paragraph—

1                 “(A) meets the emergency preparedness re-  
2                 quirements applicable to nursing facilities under  
3                 the final rule ‘Medicare and Medicaid Pro-  
4                 grams; Emergency Preparedness Requirements  
5                 for Medicare and Medicaid Participating Pro-  
6                 viders and Suppliers’ as published by the Cen-  
7                 ters for Medicare & Medicaid Services on Sep-  
8                 tember 16, 2016 (81 Fed. Reg. 63859); and

9                 “(B) has in place alternative sources of en-  
10                 ergy capable of powering heating, ventilation,  
11                 and air conditioning systems for at least 96  
12                 hours after a catastrophic natural disaster.”;

13                 and

14                 (4) by adding at the end the following new sen-  
15                 tence:

16                 “Nothing in paragraph (4)(B) shall be construed to re-  
17                 quire a nursing facility to continuously maintain a supply  
18                 of fuel on its premise, as long as such facility is able to  
19                 demonstrate to the Secretary the ability of the facility to  
20                 obtain any fuel necessary to satisfy such paragraph.”.

21                 (c) CIVIL MONEY PENALTIES.—

22                 (1) INCREASED PENALTY.—In the case of a de-  
23                 termination to impose a civil money penalty under  
24                 section 1819(h)(2)(B)(ii) of the Social Security Act  
25                 (42 U.S.C. 1395i–3(h)(2)(B)(ii)) or section

1       1919(h)(2)(C)(ii) of such Act (42 U.S.C.  
2       1396r(h)(2)(C)(ii)), with respect to a violation of  
3       paragraph (4) of section 1819(a) of such Act (42  
4       U.S.C. 1395i–3(a)) or of paragraph (4) of section  
5       1919(a) of such Act (42 U.S.C. 1396r(a)), as added  
6       by subsections (a) and (b), respectively, such penalty  
7       shall be three times the amount that would other-  
8       wise be imposed pursuant to the interim final rule,  
9       relating to the adjustment of civil money penalties  
10      for inflation, promulgated by the Department of  
11      Health and Human Services on September 6, 2016  
12      (81 Fed. Reg. 61538). Nothing in this paragraph  
13      shall be construed as limiting the discretion of the  
14      Secretary of Health and Human Services in deter-  
15      mining the amount of a civil monetary penalty that  
16      would otherwise be imposed before application of  
17      this paragraph.

18                     (2) ADDITIONAL PENALTY.—

19                     (A) MEDICARE.—Section 1819(h)(2)(B)(ii)  
20                     of the Social Security Act (42 U.S.C. 1395i–  
21                     3(h)(2)(B)(ii)) is amended—

22                         (i) in subclause (I), by inserting “,  
23                         subject to subclause (V),” after “exceed”;  
24                         and

14 (i) in subclause (I), by inserting “,  
15 subject to subclause (V),” after “exceed”;  
16 and

1                         alty under such subclause in an  
2                         amount not to exceed \$100,000.”.

3                         (3) STATE SURVEY AGENCIES COMPLIANCE RE-  
4                         VIEW.—The Secretary of Health and Human Serv-  
5                         ices shall direct State survey agencies, in consulta-  
6                         tion with emergency preparedness experts, to review  
7                         findings related to the final rule “Medicare and  
8                         Medicaid Programs; Emergency Preparedness Re-  
9                         quirements for Medicare and Medicaid Participating  
10                        Providers and Suppliers” as published by the Cen-  
11                        ters for Medicare & Medicaid Services on September  
12                        16, 2016 (81 Fed. Reg. 63859) and make a deter-  
13                        mination of whether a skilled nursing facility or  
14                        nursing facility is substantially compliant or non-  
15                        compliant (as defined by the Secretary) with such  
16                        rule, with special attention given to Ftags E-0001,  
17                        E-0004, E-0013, E-0020, E-0025, E-0036, 0037,  
18                        and E-0041. If a State survey agency makes a de-  
19                        termination of substantial non-compliance for any  
20                        such facility in a State, the agency shall then inform  
21                        those facilities of that finding, and request that this  
22                        be noted as an indicator on Nursing Home Compare.

23 **SEC. 3. LOAN FUND.**

24                         (a) ESTABLISHMENT.—The Secretary of Health and  
25                         Human Services shall, subject to subsection (e), establish

1 a loan program that provides loans to qualifying nursing  
2 facilities and skilled nursing facilities for costs relating to  
3 coming into compliance with the requirement of paragraph  
4 (4) of section 1819(a) of the Social Security Act (42  
5 U.S.C. 1395i–3(a)) and paragraph (4) of section 1919(a)  
6 of such Act (42 U.S.C. 1396r(a)), as added by section 2.

7       (b) APPLICATION.—No loan may be provided under  
8 this section to a qualifying nursing facility or skilled nurs-  
9 ing facility, except pursuant to an application that is sub-  
10 mitted and approved in a time, manner, and form specified  
11 by the Secretary. A loan under this section shall be on  
12 such terms and conditions and meet such requirements as  
13 the Secretary determines appropriate.

14       (c) SELECTION.—

15           (1) IN GENERAL.—The Secretary shall establish  
16 criteria for selecting among qualifying nursing facili-  
17 ties and skilled nursing facilities that apply for a  
18 loan under this section.

19           (2) QUALIFYING FACILITIES.—For purposes of  
20 this section, qualifying nursing facilities and skilled  
21 nursing facilities are nursing facilities under section  
22 1919 of the Social Security Act (42 U.S.C. 1396r)  
23 and skilled nursing facilities under section 1819 of  
24 such Act (42 U.S.C. 1395i–3) that—

4       (d) FEES.—The Secretary may charge such fees as  
5 determined appropriate with respect to a loan issued  
6 under this section, in an amount established annually by  
7 the Secretary, as necessary to reduce to zero the cost (as  
8 defined in section 502 of the Federal Credit Reform Act  
9 of 1990) to the Department of Health and Human Serv-  
10 ices of making loans under this section, which amounts  
11 shall be paid to and retained by the Secretary.

12       (e) LIMITATION.—Commitments for loans authorized  
13 under this section shall not exceed—  
14           (1) \$50,000,000 in fiscal year 2018;  
15           (2) \$50,000,000 in fiscal year 2019; and  
16           (3) \$100,000,000 for the duration of the loan  
17 program.

21           (a) IN GENERAL.—Section 319C–1(b)(2)(A) of the  
22 Public Health Service Act (42 U.S.C. 247d–3a(b)(2)(A))  
23 is amended—  
24               (1) in clause (viii), by striking at the end  
25               “and”;

1                             (2) in clause (ix), by adding at the end “and”;

2                             and

3                             (3) by inserting after clause (ix) the following

4                             new clause:

5                             “(x) a description of—

6                                 “(I) the measures the entity has  
7                                 in place prioritizing nursing facilities  
8                                 and skilled nursing facilities with re-  
9                                 spect to public health emergency pre-  
10                                 paredness in the same manner as such  
11                                 plan prioritizes hospitals, while ensur-  
12                                 ing that, in prioritizing nursing facili-  
13                                 ties, skilled nursing facilities, and hos-  
14                                 pitals, the entity retains the discretion  
15                                 to prioritize among such facilities; and

16                                 “(II) information on the plans of  
17                                 each electric utility company within  
18                                 the entity’s jurisdiction to ensure that  
19                                 such facilities remain functioning or  
20                                 return to functioning as soon as prac-  
21                                 ticable during power outages caused  
22                                 by natural hazards, including severe  
23                                 weather events;”.

24                             (b) EFFECTIVE DATE.—The amendments made by

25                             subsection (a) shall apply with respect to cooperative

1 agreements awarded on or after the date of the enactment  
2 of this Act.

