

117TH CONGRESS  
1ST SESSION

# S. 2694

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.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 10, 2021

Mr. WYDEN (for himself, Mr. CASEY, Mr. BLUMENTHAL, Mr. BENNET, Mr. WHITEHOUSE, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Nursing Home Improvement and Accountability Act of  
6 2021”.

7 (b) TABLE OF CONTENTS.—The table of contents of  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—TRANSPARENCY AND ACCOUNTABILITY

- Sec. 101. Improving the accuracy and reliability of certain skilled nursing facility data.
- Sec. 102. Ensuring accurate information on cost reports.
- Sec. 103. Requiring a surety bond for skilled nursing facilities and nursing facilities.
- Sec. 104. Survey improvements.
- Sec. 105. Prohibiting pre-dispute arbitration agreements.
- Sec. 106. Improvements to the special focus facility program.

TITLE II—STAFFING IMPROVEMENTS

- Sec. 201. Nurse staffing requirements.
- Sec. 202. Improving Nursing Home Compare staffing data.
- Sec. 203. Ensuring the submission of accurate staffing data.
- Sec. 204. Requiring 24-hour use of registered professional nurses.
- Sec. 205. Provision of infection control services.
- Sec. 206. Enhanced funding to support staffing and quality care in nursing facilities.

TITLE III—BUILDING MODIFICATION AND STAFF INVESTMENT DEMONSTRATION PROGRAM

- Sec. 301. Establishing a skilled nursing facility building modification and staff investment demonstration program.

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:

1                   “(I) FAILURE TO REPORT.—For  
2                   fiscal years”; and

3                   (B) by adding at the end the following new  
4                   subclause:

5                   “(II) REPORTING OF INAC-  
6                   CURATE INFORMATION.—For fiscal  
7                   years beginning with fiscal year 2025,  
8                   in the case of a skilled nursing facility  
9                   that submits data under this para-  
10                  graph, measures under subsection (h),  
11                  or resident assessment data described  
12                  in section 1819(b)(3) with respect to  
13                  such fiscal year that is inaccurate (as  
14                  determined by the Secretary through  
15                  the validation process described in  
16                  section 1888(h)(12) or otherwise),  
17                  after determining the percentage de-  
18                  scribed in paragraph (5)(B)(i), and  
19                  after application of clauses (ii) and  
20                  (iii) of paragraph (5)(B) and of sub-  
21                  clause (I) if this clause (if applicable),  
22                  the Secretary shall reduce such per-  
23                  centage for payment rates during such  
24                  fiscal year by 2 percentage points.”.

1 (b) DATA AND MEASURES VALIDATION.—Section  
 2 1888(h)(12) of the Social Security Act (42 U.S.C.  
 3 1395yy(h)(12)) is amended—

4 (1) in subparagraph (A), by striking “and the  
 5 data submitted under subsection (e)(6)” and insert-  
 6 ing “, the data submitted under subsection (e)(6),  
 7 and, beginning with fiscal year 2024, the resident  
 8 assessment data described in section 1819(b)(3)”;  
 9 and

10 (2) in subparagraph (B), by striking “of  
 11 \$5,000,000” and all that follows through the period  
 12 at the end and inserting the following: “of—

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

15 “(ii) \$50,000,000 for the period of fis-  
 16 cal years 2026 through 2035,

17 to the Centers for Medicare & Medicaid Serv-  
 18 ices Program Management Account, to remain  
 19 available until expended.”.

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

1 **SEC. 102. ENSURING ACCURATE INFORMATION ON COST**  
2 **REPORTS.**

3 Section 1888(f) of the Social Security Act (42 U.S.C.  
4 1395yy(f)) is amended by adding at the end the following  
5 new paragraphs:

6 “(5) AUDIT OF COST REPORTS.—

7 “(A) IN GENERAL.—Beginning in 2022,  
8 and annually thereafter, the Secretary shall  
9 conduct an audit of cost reports submitted  
10 under this title for a representative sample of  
11 skilled nursing facilities.

12 “(B) FUNDING.—The Secretary shall pro-  
13 vide for the transfer, from the Federal Hospital  
14 Insurance Trust Fund under section 1817 to  
15 the Centers for Medicare & Medicaid Services  
16 Program Management Account, of  
17 \$250,000,000 for fiscal year 2023 for purposes  
18 of carrying out this paragraph. Amounts trans-  
19 ferred pursuant to the previous sentence shall  
20 remain available until expended.

21 “(6) REVIEW OF RELATIONSHIP BETWEEN  
22 COST REPORT DATA AND QUALITY.—

23 “(A) IN GENERAL.—Not later than 2 years  
24 after the Secretary completes the first audit de-  
25 scribed in paragraph (5), and not less fre-  
26 quently than once every 2 years thereafter, the

1 Inspector General of the Department of Health  
2 and Human Services shall conduct an analysis  
3 of, and submit to Congress a report on, the re-  
4 lationship between skilled nursing facility ex-  
5 penditures for functional accounts described in  
6 paragraph (3) and skilled nursing facility qual-  
7 ity (as specified by the Inspector General).

8 “(B) FUNDING.—The Secretary shall pro-  
9 vide for the transfer, from the Federal Hospital  
10 Insurance Trust Fund under section 1817 to  
11 the Inspector General of the Department of  
12 Health and Human Services \$25,000,000 for  
13 fiscal year 2023 for purposes of carrying out  
14 this paragraph. Amounts transferred pursuant  
15 to the previous sentence shall remain available  
16 until expended”.

17 **SEC. 103. REQUIRING A SURETY BOND FOR SKILLED NURS-**  
18 **ING FACILITIES AND NURSING FACILITIES.**

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

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

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

1           (3) by adding at the end the following new  
2 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           (b) MEDICAID.—Section 1919(a) of the Social Secu-  
10 rity Act (42 U.S.C. 1396r(a)) is amended—

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

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

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

17           “(4) provides the Secretary with a surety bond  
18 in a form specified by the Secretary and in an  
19 amount that is not less than the minimum of  
20 \$500,000, unless the Secretary waives the provision  
21 of such surety bond due to such facility providing a  
22 comparable surety bond under State law.”.

23 **SEC. 104. SURVEY IMPROVEMENTS.**

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

1 (1) in the section heading, by striking “**AC-**  
2 **COUNTABILITY REQUIREMENTS FOR**” and in-  
3 sserting “**ADDITIONAL REQUIREMENTS WITH RE-**  
4 **SPECT TO**”; and

5 (2) by adding at the end the following new sub-  
6 section:

7 “(i) SURVEY IMPROVEMENTS.—

8 “(1) REVIEW.—The Secretary shall review  
9 (and, as appropriate, identify plans to improve) the  
10 following:

11 “(A) The extent to which surveys con-  
12 ducted under subsection (g) of sections 1819  
13 and 1919 and the enforcement process under  
14 subsection (h) of sections 1819 and 1919 result  
15 in increased compliance with requirements  
16 under sections 1819 and 1919 and subpart B  
17 of part 483 of title 42, Code of Federal Regula-  
18 tions, with respect to facilities.

19 “(B) The timeliness and thoroughness of  
20 State agency verification of deficiency correc-  
21 tions at facilities.

22 “(C) The appropriateness of the scoping  
23 and substantiation of cited deficiencies at facili-  
24 ties.



1           “(D) The accuracy of the identification  
2           and appropriateness of the scoping of life safe-  
3           ty, infection control, and emergency prepared-  
4           ness deficiencies at facilities.

5           “(E) The timeliness of State agency inves-  
6           tigations of—

7                   “(i) complaints at facilities; and

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

10           “(F) The consistency of facility reporting  
11           of substantiated complaints to law enforcement.

12           “(G) The ability of the State agency to  
13           sufficiently hire, train, and retain individuals  
14           who conduct surveys.

15           “(H) Any other area related to surveys of  
16           facilities, or the individuals conducting such  
17           surveys, determined appropriate by the Sec-  
18           retary.

19           “(2) REPORT.—Not later than 3 years after the  
20           date of enactment of this subsection, the Secretary  
21           shall submit to Congress a report on the review con-  
22           ducted under paragraph (1), together with rec-  
23           ommendations for such legislation and administra-  
24           tive action as the Secretary determines to be appro-  
25           priate.

1           “(3) SUPPORT.—If determined appropriate by  
 2           the Secretary, based on the review under paragraph  
 3           (1), the Secretary shall provide training, tools, tech-  
 4           nical assistance, and financial support to State agen-  
 5           cies that perform surveys of facilities for the purpose  
 6           of improving the surveys conducted under subsection  
 7           (g) and the enforcement process under subsection  
 8           (h) with respect to the areas reviewed under para-  
 9           graph (1).

10           “(4) FUNDING.—There is appropriated to the  
 11           Secretary, out of any monies in the Treasury not  
 12           otherwise appropriated, \$570,000,000, to remain  
 13           available until expended, for purposes of carrying  
 14           out this subsection.”.

15 **SEC. 105. PROHIBITING PRE-DISPUTE ARBITRATION**  
 16 **AGREEMENTS.**

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

20           “(7) PROHIBITION ON USE OF PRE-DISPUTE  
 21           ARBITRATION AGREEMENTS.—

22           “(A) IN GENERAL.—A skilled nursing fa-  
 23           cility may not enter into a pre-dispute arbitra-  
 24           tion agreement with an individual applying to  
 25           reside or residing in the facility (or a legal rep-

1           representative of such resident), and may not enter  
2           into an agreement for services with an entity or  
3           individual that enters into a pre-dispute arbitra-  
4           tion agreement with an individual applying to  
5           reside or residing in the facility (or a legal rep-  
6           resentative of such resident).

7           “(B) NO VALIDITY OR ENFORCEMENT.—A  
8           skilled nursing facility shall not enforce a pre-  
9           dispute arbitration agreement against a resi-  
10          dent or former resident of a skilled nursing fa-  
11          cility (or a legal representative of such resi-  
12          dent), without regard to whether the agreement  
13          was made prior to or after the effective date of  
14          this paragraph.

15          “(C) DEFINITION OF PRE-DISPUTE ARBI-  
16          TRATION AGREEMENT.—In this paragraph, the  
17          term ‘pre-dispute arbitration agreement’ means  
18          any agreement to arbitrate a potential dispute  
19          that, as of the date on which such agreement  
20          is entered into, has not yet arisen.

21          “(D) JUDICIAL REVIEW.—A determination  
22          as to whether and how this paragraph applies  
23          to a pre-dispute arbitration agreement shall be  
24          determined under Federal law by a court of  
25          competent jurisdiction, rather than an arbi-

1           trator, without regard to whether the party op-  
2           posing arbitration challenges such agreement  
3           specifically or in conjunction with any other  
4           term of the contract containing such agree-  
5           ment.”.

6           (b) MEDICAID.—

7           (1) HOME AND COMMUNITY-BASED SERVICES  
8           AND HOME HEALTH CARE SERVICES.—Section 1915  
9           of the Social Security Act (42 U.S.C. 1396n) is  
10          amended by adding at the end the following new  
11          subsection:

12          “(1) PROHIBITING PRE-DISPUTE ARBITRATION  
13          AGREEMENTS.—

14                 “(1) IN GENERAL.—For home and community-  
15                 based services or home health care services provided  
16                 under a waiver under this section, section  
17                 1902(a)(10)(D), or any other provision authorizing  
18                 the provision of home and community-based services  
19                 or home health care services under this title, the  
20                 provider of such services (and any employee, agent,  
21                 related entity, or affiliate of such provider) may not  
22                 enter into a pre-dispute arbitration agreement with  
23                 an individual receiving such services (or a legal rep-  
24                 resentative of such individual). A provider of such  
25                 services (and any employee, agent, related entity, or

1 affiliate of such provider) shall not enforce a pre-dis-  
2 pute arbitration agreement against an individual re-  
3 ceiving such services, or who formerly received such  
4 services (or a legal representative of such indi-  
5 vidual), without regard to whether such agreement  
6 was made prior to the effective date of this sub-  
7 section.

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

14 “(3) JUDICIAL REVIEW.—A determination as to  
15 whether and how this subsection applies to a pre-dis-  
16 pute arbitration agreement shall be determined  
17 under Federal law by a court of competent jurisdic-  
18 tion, rather than an arbitrator, without regard to  
19 whether the party opposing arbitration challenges  
20 such agreement specifically or in conjunction with  
21 any other term of the contract containing such  
22 agreement.”.

23 (2) NURSING FACILITIES.—Section 1919(c) of  
24 the Social Security Act (42 U.S.C. 1396r(c)) is

1 amended by adding at the end the following new  
2 paragraph:

3 “(9) PROHIBITION ON USE OF PRE-DISPUTE  
4 ARBITRATION AGREEMENTS.—

5 “(A) IN GENERAL.—A nursing facility may  
6 not enter into a pre-dispute arbitration agree-  
7 ment with an individual applying to reside or  
8 residing in the facility (or a legal representative  
9 of such resident), and may not enter into an  
10 agreement for services with an entity or indi-  
11 vidual that enters into a pre-dispute arbitration  
12 agreement with an individual applying to reside  
13 or residing in the facility (or a legal representa-  
14 tive of such resident).

15 “(B) NO VALIDITY OR ENFORCEMENT.—A  
16 nursing facility shall not enforce a pre-dispute  
17 arbitration agreement against a resident or  
18 former resident of a nursing facility (or a legal  
19 representative of such resident), without regard  
20 to whether the agreement was made prior to or  
21 after the effective date of this paragraph.

22 “(C) DEFINITION OF PRE-DISPUTE ARBI-  
23 TRATION AGREEMENT.—In this paragraph, the  
24 term ‘pre-dispute arbitration agreement’ means  
25 any agreement to arbitrate a potential dispute

1 that, as of the date on which such agreement  
2 is entered into, has not yet arisen.

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

13 **SEC. 106. IMPROVEMENTS TO THE SPECIAL FOCUS FACIL-**  
14 **ITY PROGRAM.**

15 (a) APPROPRIATE PARTICIPATION.—

16 (1) MEDICARE.—Section 1819(f)(8) of the So-  
17 cial Security Act (42 U.S.C. 1395i-3(f)(8)) is  
18 amended—

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

23 (B) by adding at the end the following new  
24 subparagraph:

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

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

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

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

16           “(C) APPROPRIATE PARTICIPATION.—Not  
17 later than October 1, 2022, the Secretary shall  
18 ensure that the number of facilities partici-  
19 pating in the special focus facility program is  
20 not less than 5 percent of all nursing facili-  
21 ties.”.

22           (b) COMPLIANCE ASSISTANCE PROGRAMS.—

23           (1) MEDICARE.—Section 1819(f)(8) of the So-  
24 cial Security Act (42 U.S.C. 1395i–3(f)(8)), as



1 amended by subsection (a)(1), is amended by adding  
 2 at the end the following new subparagraph:

3 “(D) 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 skilled nursing facilities participating  
 11 in the special focus facility program  
 12 with respect to compliance with the  
 13 applicable requirements under this  
 14 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 special focus facility  
2            program 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                    (2) MEDICAID.—Section 1919(f)(10) of the So-  
11                    cial Security Act (42 U.S.C. 1395r(f)(10)), as  
12                    amended by subsection (a)(2), is amended by adding  
13                    at the end the following new subsection:

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                    nursing facilities participating in the  
22                    special focus facility program with re-  
23                    spect to compliance with the applica-  
24                    ble requirements under this 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 nursing facility partici-  
12           pating in the special focus facility pro-  
13           gram 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 nursing facility  
4                   is observed in the course of providing  
5                   on-site consultations and educational  
6                   programming described in clause (i).  
7                   In establishing such on-site consulta-  
8                   tions and educational programming,  
9                   the Secretary shall determine the trig-  
10                  gering events for which the use of  
11                  necessary enforcement actions is per-  
12                  mitted notwithstanding the limitation  
13                  under subclause (I). Such triggering  
14                  events shall include events that are re-  
15                  quired to be reported under State and  
16                  Federal law and a pattern of defi-  
17                  ciencies or problems that the quality  
18                  improvement organization or other or-  
19                  ganization has identified for correc-  
20                  tion but which are consistently not  
21                  corrected.”.

22                  (c) FUNDING FOR THE SPECIAL FOCUS FACILITY  
23 PROGRAM, INCLUDING COMPLIANCE ASSISTANCE PRO-  
24 GRAMS.—Section 1819(f)(8) of the Social Security Act (42  
25 U.S.C. 1395i-3(f)(8)), as amended by subsections (a)(1)

1 and (b)(1), is amended by adding at the end the following  
 2 new subparagraph:

3           “(E) For purposes of carrying out this  
 4 paragraph and section 1919(f)(10), there is ap-  
 5 propriated to the Secretary, out of any monies  
 6 in the Treasury not otherwise appropriated,  
 7 \$14,800,000 for fiscal year 2022 and each sub-  
 8 sequent fiscal year, to remain available until ex-  
 9 pended.”.

10                           **TITLE II—STAFFING**  
 11                           **IMPROVEMENTS**

12 **SEC. 201. NURSE STAFFING REQUIREMENTS.**

13           (a) IN GENERAL.—Title XI of the Social Security Act  
 14 (42 U.S.C. 1301 et seq.) is amended by inserting after  
 15 section 1128K the following new section:

16 **“SEC. 1128L. NURSE STAFFING REQUIREMENTS FOR FA-**  
 17                           **CILITIES.**

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

1           “(1) with respect to the first such report, rec-  
2           ommendations regarding appropriate minimum ra-  
3           tios of registered nurses (and, if practicable, licensed  
4           practical nurses (or licensed vocational nurses) and  
5           certified nursing assistants) to residents at such  
6           skilled nursing facilities and such nursing facilities;  
7           and

8           “(2) with respect to each subsequent such re-  
9           port, recommendations regarding appropriate min-  
10          imum ratios of registered nurses, licensed practical  
11          nurses (or licensed vocational nurses), and certified  
12          nursing assistants to residents at such skilled nurs-  
13          ing facilities and such nursing facilities.

14          “(b) PROMULGATION OF REGULATIONS.—

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

18                         “(A) specify through regulations, con-  
19                         sistent with such report, appropriate minimum  
20                         ratios (if any) of registered nurses (and, if  
21                         practicable, licensed practical nurses (or li-  
22                         censed vocational nurses) and certified nursing  
23                         assistants) to residents at skilled nursing facili-  
24                         ties and nursing facilities; and

1           “(B) subject to any waiver in effect under  
2           section 1819(b)(9)(B) or 1919(b)(9)(B), re-  
3           quire such skilled nursing facilities and such  
4           nursing facilities to comply with such ratios.

5           “(2) UPDATE.—Not later than 2 years after the  
6           submission of each subsequent report under sub-  
7           section (a), the Secretary shall, consistent with such  
8           report, update the regulations described in para-  
9           graph (1)(A) to reflect appropriate minimum ratios  
10          (if any) of registered nurses, licensed practical  
11          nurses (or licensed vocational nurses), and certified  
12          nursing assistants to residents at skilled nursing fa-  
13          cilities and nursing facilities.

14          “(c) FUNDING.—The Secretary shall provide for the  
15          transfer, from the Federal Hospital Insurance Trust Fund  
16          under section 1817 to the Centers for Medicare & Med-  
17          icaid Services Program Management Account, of  
18          \$50,000,000 for fiscal year 2022 for purposes of carrying  
19          out this section. Amounts transferred pursuant to the pre-  
20          vious sentence shall remain available until expended.”.

21          (b) IMPOSITION OF REQUIREMENTS.—

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

25                  “(9) NURSE STAFFING REQUIREMENT.—



1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), a skilled nursing facility shall com-  
3 ply with any minimum staffing ratios for reg-  
4 istered nurses, licensed practical nurses (or li-  
5 censed vocational nurses), or certified nurse as-  
6 sistants specified by the Secretary for such a  
7 facility in regulations promulgated under sec-  
8 tion 1128L(b) or, if greater, as specified by the  
9 State involved for such a facility.

10           “(B) WAIVER.—

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

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

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

1 State for the mentally ill and the  
2 mentally retarded; and

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

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

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

15 “(9) NURSE STAFFING REQUIREMENT.—

16 “(A) IN GENERAL.—Subject to subpara-  
17 graph (B), a nursing facility shall comply with  
18 any minimum staffing ratios for registered  
19 nurses, licensed practical nurses (or licensed vo-  
20 cational nurses), or certified nurse assistants  
21 specified by the Secretary for such a facility in  
22 regulations promulgated under section  
23 1128L(b) or, if greater, as specified by the  
24 State involved for such a facility.

25 “(B) WAIVER.—

1           “(i) IN GENERAL.—The Secretary  
2           may waive the application of subparagraph  
3           (A) with respect to a nursing facility if the  
4           Secretary finds that—

5                   “(I) the facility is located in a  
6                   rural area and the supply of nursing  
7                   facility services in such area is not  
8                   sufficient to meet the needs of individ-  
9                   uals residing therein;

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

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

1                   “(ii) RENEWAL.—Any waiver in effect  
2                   under this subparagraph shall be subject to  
3                   annual renewal.”.

4 **SEC. 202. IMPROVING NURSING HOME COMPARE STAFFING**  
5                   **DATA.**

6           (a) MEDICARE.—Section 1819(i)(1)(A)(i) of the So-  
7           cial Security Act (42 U.S.C. 1395i-3(i)(1)(A)(i)) is  
8           amended by inserting “(excluding, with respect to such  
9           data provided on or after October 1, 2022, any hours  
10          spent on administrative duties by licensed nurse staff)  
11          and, beginning October 1, 2022, data on the hours of care  
12          provided per resident per weekend day” after “per resi-  
13          dent per day”.

14          (b) MEDICAID.—Section 1919(i)(1)(A)(i) of the So-  
15          cial Security Act (42 U.S.C. 1396r(i)(1)(A)(i)) is amended  
16          by inserting “(excluding, with respect to such data pro-  
17          vided on or after October 1, 2022, any hours spent on  
18          administrative duties by licensed nurse staff) and, begin-  
19          ning October 1, 2022, data on the hours of care provided  
20          per resident per weekend day” after “per resident per  
21          day”.

22 **SEC. 203. ENSURING THE SUBMISSION OF ACCURATE**  
23                   **STAFFING DATA.**

24          Section 1128I(g) of the Social Security Act (42  
25          U.S.C. 1320a-7j(g)) is amended—

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

4           (2) in subparagraph (D), as so redesignated, by  
5           striking “paragraph (1)” and inserting “subpara-  
6           graph (A)”;

7           (3) by moving the flush matter following sub-  
8           paragraph (D), as so redesignated, 2 ems to the  
9           right;

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

12           “(1) IN GENERAL.—Beginning not later than”;  
13          and

14          (5) by adding at the end the following new  
15          paragraph:

16           “(2) PENALTY FOR SUBMISSION OF INAC-  
17          CURATE INFORMATION.—Any facility that submits  
18          inaccurate information to the Secretary under para-  
19          graph (1) may be subject to a civil monetary penalty  
20          not to exceed \$10,000 for each such submission. The  
21          provisions of section 1128A (other than subsections  
22          (a) and (b) of such section) shall apply to a civil  
23          money penalty under the preceding sentence in the  
24          same manner as such provisions apply to a penalty  
25          or proceeding under section 1128A(a).”.

1 **SEC. 204. REQUIRING 24-HOUR USE OF REGISTERED PRO-**  
2 **FESSIONAL NURSES.**

3 (a) **MEDICARE.**—Section 1819(b)(4)(C)(i) of the So-  
4 cial Security Act (42 U.S.C. 1395i–3(b)(4)(C)(i)) is  
5 amended by striking “registered professional nurse” and  
6 all that follows through the period at the end and inserting  
7 the following: “registered professional nurse, with respect  
8 to such services furnished—

9 “(I) before October 1, 2023, at  
10 least 8 consecutive hours a day, 7  
11 days a week; and

12 “(II) on or after such date, 24  
13 hours a day, 7 days a week.”.

14 (b) **MEDICAID.**—Section 1919(b)(4)(C)(i)(II) of the  
15 Social Security Act (42 U.S.C. 1396r(b)(4)(C)(i)(II)) is  
16 amended by striking “registered professional nurse” and  
17 all that follows through the period at the end and inserting  
18 the following: “registered professional nurse, with respect  
19 to such services furnished—

20 “(aa) before October 1,  
21 2023, at least 8 consecutive  
22 hours a day, 7 days a week; and

23 “(bb) on or after such date,  
24 24 hours a day, 7 days a week.”.

1 **SEC. 205. PROVISION OF INFECTION CONTROL SERVICES.**

2 (a) **MEDICARE.**—Section 1819(d)(3) of the Social Se-  
3 curity Act (42 U.S.C. 1395i–3(d)(3)) is amended—

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

7 (2) by striking “ENVIRONMENT.—A skilled”  
8 and inserting “ENVIRONMENT.—

9 “(A) IN GENERAL.—A skilled”;

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

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

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

16 (C) by adding at the end the following new  
17 clause:

18 “(iii) provide, directly or under ar-  
19 rangements with others, for infection con-  
20 trol services overseen by an infection  
21 preventionist for a minimum number of  
22 hours per week as determined appropriate  
23 by the Secretary (but, subject to subpara-  
24 graph (B), not less than 40 hours per  
25 week).”; and

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

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

7           “(i) IN GENERAL.—The Secretary  
8 may grant a waiver to a skilled nursing fa-  
9 cility under which the number of hours per  
10 week that infection control services over-  
11 seen by an infection preventionist at the  
12 facility are required under subparagraph  
13 (A)(iii) are reduced if the Secretary finds  
14 that—

15           “(I) the facility—

16           “(aa) is located in a rural  
17 area and the supply of skilled  
18 nursing facility services in such  
19 area is not sufficient to meet the  
20 needs of individuals residing  
21 therein; or

22           “(bb) is of a size that neces-  
23 sitates a lower requirement;

24           “(II) the Secretary provides no-  
25 tice of the waiver to the State Long-



1 Term Care Ombudsman (supported  
 2 under title III or chapter 2 of subtitle  
 3 A of title VII of the Older Americans  
 4 Act of 1965) and the protection and  
 5 advocacy system (as defined in section  
 6 102 of the Developmental Disabilities  
 7 Assistance and Bill of Rights Act of  
 8 2000) in the State; and

9 “(III) the facility that is granted  
 10 the waiver notifies residents of the fa-  
 11 cility (or, where appropriate, the  
 12 guardians or legal representatives of  
 13 such residents) and members of their  
 14 immediate families of the waiver.

15 “(ii) ANNUAL REVIEW.—A waiver  
 16 under this subparagraph shall be subject to  
 17 annual review by the Secretary.”.

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

20 (1) by redesignating subparagraphs (A) and  
 21 (B) as clauses (i) and (ii) respectively, and moving  
 22 such clauses 2 ems to the right;

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

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

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

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

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

7                   (C) by adding at the end the following new  
8                   clause:

9                           “(iii) provide, directly or under ar-  
10                           rangements with others, for infection con-  
11                           trol services overseen by an infection  
12                           preventionist for a minimum number of  
13                           hours per week as determined appropriate  
14                           by the Secretary (but, subject to subpara-  
15                           graph (B), not less than 40 hours per  
16                           week).”;

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

19                           “(B) REDUCTION IN REQUIRED NUMBER  
20                           OF HOURS FOR INFECTION CONTROL SERVICES  
21                           OVERSEEN BY AN INFECTION  
22                           PREVENTIONIST.—

23                           “(i) IN GENERAL.—A State may  
24                           grant a waiver to a nursing facility under  
25                           which the number of hours per week that

1 infection control services overseen by an in-  
2 fection preventionist at the facility are re-  
3 quired under subparagraph (A)(iii) are re-  
4 duced if—

5 “(I) the facility demonstrates to  
6 the satisfaction of the State that the  
7 facility has been unable, despite dili-  
8 gent efforts (including offering wages  
9 at the community prevailing rate for  
10 nursing facilities), to recruit appro-  
11 priate personnel;

12 “(II) the State determines that  
13 the waiver will not endanger the  
14 health or safety of individuals staying  
15 in the facility;

16 “(III) the State agency granting  
17 the waiver provides notice of the waiv-  
18 er to the State Long-Term Care Om-  
19 budsman (supported under title III or  
20 chapter 2 of subtitle A of title VII of  
21 the Older Americans Act of 1965) and  
22 the protection and advocacy system  
23 (as defined in section 102 of the De-  
24 velopmental Disabilities Assistance  
25 and Bill of Rights Act of 2000); and

1                   “(IV) the nursing facility that is  
2                   granted the waiver by a State notifies  
3                   residents of the facility (or, where ap-  
4                   propriate, the guardians or legal rep-  
5                   resentatives of such residents) and  
6                   members of their immediate families  
7                   of the waiver.

8                   “(ii) ANNUAL REVIEW.—A waiver  
9                   under this subparagraph shall be subject to  
10                  annual review by the State agency and to  
11                  the review of the Secretary and subject to  
12                  clause (iii) shall be accepted by the Sec-  
13                  retary for purposes of this title to the same  
14                  extent as is the State’s certification of the  
15                  facility. In granting or renewing a waiver,  
16                  a State may require the facility to use  
17                  other qualified, licensed personnel to meet  
18                  the staffing requirements under subpara-  
19                  graph (A)(iii).

20                  “(iii) ASSUMPTION OF WAIVER AU-  
21                  THORITY BY SECRETARY.—If the Secretary  
22                  determines that a State has shown a clear  
23                  pattern and practice of allowing waivers in  
24                  the absence of diligent efforts by facilities  
25                  to meet the staffing requirements under

1                   subparagraph (A)(iii), the Secretary shall  
2                   assume and exercise the authority of the  
3                   State to grant waivers.”.

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

6 **SEC. 206. ENHANCED FUNDING TO SUPPORT STAFFING**  
7                   **AND QUALITY CARE IN NURSING FACILITIES.**

8           (a) FMAP INCREASE.—

9                   (1) IN GENERAL.—Notwithstanding subsection  
10 (b) or (ff) of section 1905 of the Social Security Act  
11 (42 U.S.C. 1396d), in the case of a State that meets  
12 the requirements described in subsection (c), the  
13 Federal medical assistance percentage determined  
14 for the State under subsection (b) of section 1905  
15 of such Act (or subsection (ff) of such section, if ap-  
16 plicable) and, if applicable, as increased under sub-  
17 section (y), (z), (aa), or (ii) of such section or sec-  
18 tion 6008 of the Families First Coronavirus Re-  
19 sponse Act (Public Law 116–127), or any other pro-  
20 vision of law, shall be increased by the applicable  
21 number of percentage points specified in paragraph  
22 (2) (but not to exceed 95 percent) with respect to  
23 amounts expended by the State Medicaid program  
24 for medical assistance for nursing facility services  
25 provided for each calendar quarter that occurs dur-

1       ing the applicable period and for which the Secretary  
2       determines that the State meets such requirements.  
3       Any payment made to Puerto Rico, the Virgin Is-  
4       lands, Guam, the Northern Mariana Islands, or  
5       American Samoa for expenditures on medical assist-  
6       ance that are subject to the Federal medical assist-  
7       ance percentage increase specified under the first  
8       sentence of this paragraph shall not be taken into  
9       account for purposes of applying payment limits  
10      under subsections (f) and (g) of section 1108 of the  
11      Social Security Act (42 U.S.C. 1308).

12           (2) APPLICABLE NUMBER OF PERCENTAGE  
13      POINTS.—For purposes of paragraph (1), the appli-  
14      cable number of percentage points specified in this  
15      paragraph is—

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

20           (B) in the case of a calendar quarter that  
21           occurs within the 4-quarter period immediately  
22           succeeding such 16-quarter period, 2 percentage  
23           points; and

24           (C) in the case of a calendar quarter that  
25           occurs within the 4-quarter period immediately

1           succeeding the 4-quarter period described in  
2           subparagraph (B), 1 percentage point.

3           (b) DEFINITIONS.—In this section:

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

6                   (A) begins on the 1st day of the 1st cal-  
7                   endar quarter that begins on or after the date  
8                   that is 1 year after the date of enactment of  
9                   this section; and

10                   (B) ends on the last day of the succeeding  
11                   24th calendar quarter.

12           (2) NURSING FACILITY STAFF.—The term  
13           “nursing facility staff” includes a registered nurse,  
14           licensed practical nurse, licensed nursing assistant,  
15           certified nursing assistant, nursing assistant, and  
16           any other relevant staff, as determined by the Sec-  
17           retary, who provide care to Medicaid beneficiaries  
18           who are residents in a nursing facility.

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

22           (4) MEDICAID PROGRAM.—The term “Medicaid  
23           program” means, with respect to a State, the State  
24           program under title XIX of the Social Security Act  
25           (42 U.S.C. 1396 et seq.) (including any waiver or

1 demonstration under such title or under section  
2 1115 of such Act (42 U.S.C. 1315) relating to such  
3 title).

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

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

9 (B) includes a skilled nursing facility, as  
10 defined in section 1819(a) of the Social Secu-  
11 rity Act (42 U.S.C. 1395i–3(a)), that is a par-  
12 ticipating provider in the Medicaid program of  
13 the State in which the facility is located or oth-  
14 erwise furnishes items or services for which  
15 medical assistance is available under the Med-  
16 icaid program of the State in which the facility  
17 is located.

18 (6) NURSING FACILITY SERVICES.—

19 (A) IN GENERAL.—Subject to subpara-  
20 graphs (B) and (C), the term “nursing facility  
21 services” has the meaning given such term  
22 under section 1905(f) of the Social Security Act  
23 (42 U.S.C. 1396d(f)).

24 (B) STATE MEDICAID PROGRAM.—With re-  
25 spect to a State, such term includes those serv-



1           ices (including any limitations on the provision  
2           of, or payment for, such services) that are spec-  
3           ified as nursing facility services for purposes of  
4           the Medicaid program of the State in which the  
5           nursing facility furnishing such services is lo-  
6           cated.

7           (C) INDIVIDUAL PLAN OF CARE.—Notwith-  
8           standing subparagraph (A) or (B), such term  
9           includes items or services that are specified in  
10          the individual plan of care for a resident of a  
11          nursing facility and are furnished to the resi-  
12          dent in accordance with the requirements of  
13          such plan.

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

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

19          (c) REQUIREMENTS.—As a condition for receipt of  
20          the increase under subsection (a) to the Federal medical  
21          assistance percentage determined for a State under sub-  
22          section (b) of section 1905 of the Social Security Act (42  
23          U.S.C. 1396d) for a calendar quarter, the State shall dem-  
24          onstrate to the satisfaction of the Secretary the following:

1 (1) USE OF ADDITIONAL FEDERAL FUNDS.—

2 The State agrees to—

3 (A) use the Federal funds attributable to  
4 the increase under subsection (a) only for the  
5 purposes specified in subsection (d); and

6 (B) not use such Federal funds to satisfy  
7 any State contribution required under the State  
8 Medicaid program.

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

13 (A) carrying out the staffing and service  
14 improvements specified in subsection (e) to  
15 strengthen nursing facility staff workforce and  
16 improve the quality and safety of care for Med-  
17 icaid beneficiaries; and

18 (B) collecting and reporting the informa-  
19 tion required under subsection (f).

20 (3) SUPPLEMENT, NOT SUPPLANT.—The State  
21 agrees to use the Federal funds attributable to the  
22 increase under subsection (a) to supplement, and not  
23 supplant, the level of State funds expended as of Oc-  
24 tober 1, 2021, for nursing facility services, including  
25 with respect to efforts to strengthen the nursing fa-

1 cility staff workforce and improve the quality and  
2 safety of care for Medicaid beneficiaries, under the  
3 State Medicaid program.

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

6 (A) annually report the information speci-  
7 fied in subsection (f) to the Secretary in such  
8 form and manner as the Secretary shall require;  
9 and

10 (B) provide such data and information as  
11 is necessary for the evaluation required under  
12 subsection (g).

13 (d) USE OF FUNDS.—A State may use the Federal  
14 funds attributable to the increase under subsection (a)  
15 only for expenditures eligible for payment under the State  
16 Medicaid program that are attributable to State efforts  
17 to achieve both of the following purposes:

18 (1) To expand and improve nursing facility  
19 staffing, including by increasing payments for nurs-  
20 ing facility services to improve staff wages and bene-  
21 fits, support retention and recruitment, and reduce  
22 staff turnover, consistent with the improvements  
23 specified in paragraphs (1) and (2) of subsection (e).

24 (2) To support and improve the quality and  
25 safety of care provided to Medicaid beneficiaries in

1 nursing facilities, including through efforts to ex-  
2 pand the use of person-centered models of care, and  
3 incentives or payments related to the provision of  
4 care for Medicaid beneficiaries in private rooms.

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

8 (1) The State makes such changes to processes  
9 for determining payment rates for nursing facility  
10 services as are necessary to ensure that—

11 (A) such payment rates are reviewed and  
12 updated every 2 years during the applicable pe-  
13 riod to support the recruitment and retention of  
14 nursing facility staff, and reduce turnover in  
15 such staff through a transparent process that  
16 involves meaningful input from stakeholders;  
17 and

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

21 (2) The State updates, develops, and adopts  
22 training opportunities and resources for nursing fa-  
23 cility staff, including training for providing person-  
24 centered care.

1           (3) The State improves and streamlines edu-  
2           cation and options counseling services for Medicaid  
3           beneficiaries, potential Medicaid beneficiaries, and  
4           family members of such beneficiaries and potential  
5           beneficiaries, with respect to eligibility and options  
6           for institutional and non-institutional long term  
7           care.

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

12           (1) The number of Medicaid beneficiaries who  
13           received during the reporting period or, as of the  
14           date of the report, are receiving, nursing facility  
15           services in the State, disaggregated by race, eth-  
16           nicity, gender, geography, age, and income.

17           (2) A description of how the State spent the  
18           Federal funds attributable to the increase under  
19           subsection (a) during the reporting period.

20           (3) Changes to payment rates for nursing facil-  
21           ity services under the State Medicaid program dur-  
22           ing the reporting period.

23           (4) The staffing information and employee  
24           turnover and tenure information in nursing facilities  
25           in the State during the reporting period, based on

1 submissions to the Payroll-Based Journal system of  
2 the Centers for Medicare & Medicaid Services under  
3 section 1128I(g) of the Social Security Act (42  
4 U.S.C. 1320a-7j(g)).

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

8 (6) A description of the health status of, and  
9 quality of care provided to, Medicaid beneficiaries  
10 who are residents of nursing facilities in the State  
11 during the reporting period, in the manner deter-  
12 mined by the Secretary.

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

16 (1) the quality and safety of care provided in  
17 nursing facilities to Medicaid beneficiaries who are  
18 residents of nursing facilities;

19 (2) the capacity of the nursing facility staff  
20 workforce to provide quality, safe care for Medicaid  
21 beneficiaries who are residents of nursing facilities;  
22 and

23 (3) the wages, benefits, and turnover of nursing  
24 facility staff.

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

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

6           (2) REQUIRED INFORMATION.—

7           (A) INTERIM AND FINAL REPORTS.—The  
8           interim and final reports submitted under this  
9           subsection shall include the following informa-  
10          tion:

11                   (i) The number of States that received  
12                   an increase to the Federal medical assist-  
13                   ance percentage of the State under sub-  
14                   section (a) during the applicable period.

15                   (ii) The State activities funded by the  
16                   Federal funds attributable to the increase  
17                   under subsection (a).

18           (B) FINAL REPORT.—The final report sub-  
19           mitted under this section shall include, in addi-  
20           tion to the information required under subpara-  
21           graph (A), the results of the independent eval-  
22           uation conducted pursuant to subsection (g).

1 **TITLE III—BUILDING MODIFICA-**  
2 **TION AND STAFF INVEST-**  
3 **MENT DEMONSTRATION PRO-**  
4 **GRAM**

5 **SEC. 301. ESTABLISHING A SKILLED NURSING FACILITY**  
6 **BUILDING MODIFICATION AND STAFF IN-**  
7 **VESTMENT DEMONSTRATION PROGRAM.**

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

11 **“SEC. 1819A. COMMUNITY-BASED LIVING MODIFICATIONS**  
12 **AND STAFF INVESTMENT DEMONSTRATION**  
13 **PROGRAM.**

14 “(a) ESTABLISHMENT.—Not later than January 1,  
15 2023, the Secretary shall establish a demonstration pro-  
16 gram to test the impact of providing skilled nursing facili-  
17 ties (as defined in section 1819(a)) selected by the Sec-  
18 retary under subsection (b) funding to modify the built  
19 environments of such facilities (or portions of such facili-  
20 ties) and invest in individuals providing resident care in  
21 such facilities (or in portions of such facilities) in order  
22 to, with respect to residents of such facilities, improve  
23 health outcomes relative to residents of facilities not so  
24 selected.



1       “(b) APPLICATION AND SELECTION OF FACILI-  
2 TIES.—

3               “(1) APPLICATION.—

4                       “(A) IN GENERAL.—A skilled nursing fa-  
5 cility shall only be eligible to receive funding  
6 under the demonstration program established  
7 under subsection (a) if such facility submits an  
8 application at such time and in such manner as  
9 specified by the Secretary that contains—

10                               “(i) a description of modifications and  
11 investments described in subsection (a)  
12 that will be made by the facility using such  
13 funds, including the estimated costs of  
14 such modifications and investments;

15                               “(ii) an agreement that such facility  
16 (or, in the case such modifications and in-  
17 vestments are to be made only with respect  
18 to a portion of such facility, such portion  
19 of such facility)—

20                                       “(I) will meet the requirements  
21 described in subparagraph (B) not  
22 later than the date that is 2 years  
23 after such facility first receives funds  
24 for such modifications and invest-  
25 ments under such program; and

1           “(II) will continue to meet such  
2 requirements for the 5-year period be-  
3 ginning on the date that is 2 years  
4 after such facilities first receives such  
5 funds;

6           “(iii) an agreement that, in the case  
7 such facility (or such portion of such facil-  
8 ity, as applicable) fails to meet such re-  
9 quirements in accordance with clause (ii),  
10 such facility will—

11           “(I) repay such funds to the Sec-  
12 retary in an amount determined ap-  
13 propriate by the Secretary under sub-  
14 section (d); and

15           “(II) notify each resident of such  
16 facility (or each resident of such por-  
17 tion of such facility, as applicable) of  
18 the failure of such facility or such  
19 portion, as applicable, to meet such  
20 requirements;

21           “(iv) an agreement that, if such facil-  
22 ity is selected by the Secretary under para-  
23 graph (2), the facility will notify each resi-  
24 dent of such facility (or each resident of  
25 such portion of such facility, as applicable),

1 of such selection and include in such notifi-  
2 cation a description of the program estab-  
3 lished under subsection (a), including any  
4 modifications and investments to be made  
5 with respect to such facility (or with re-  
6 spect to such portion of such facility, as  
7 applicable); and

8 “(v) in the case such modifications  
9 and investments are to be made only with  
10 respect to a portion of such facility, an  
11 agreement that such facility will not dis-  
12 criminate in the selection of residents who  
13 may reside in such portion based on  
14 whether payment is being made to such fa-  
15 cility with respect to such resident under  
16 this title, a State plan (or waiver of such  
17 plan) under title XIX, or otherwise.

18 “(B) REQUIREMENTS.—For purposes of  
19 subparagraph (A), the requirements described  
20 in this subparagraph with respect to a skilled  
21 nursing facility (or a portion of such facility)  
22 are the following:

23 “(i) The facility (or portion) main-  
24 tains beds for no less than 5 and no more  
25 than 14 residents.

1           “(ii) The facility (or portion) incor-  
2           porates universal design (defined in section  
3           3(19) of the Assistive Technology Act of  
4           1998)) to ensure such facility (or portion)  
5           is accessible to all residents, regardless of  
6           age or disability, including by providing for  
7           the following:

8                   “(I) Private rooms and bath-  
9                   rooms (unless such facility determines  
10                  that the provision of private rooms  
11                  and bathrooms at such facility would  
12                  adversely affect the availability of  
13                  skilled nursing facility services in the  
14                  area in which such facility is located  
15                  and the Secretary concurs with such  
16                  determination).

17                  “(II) Shared space, including a  
18                  central living area, as defined by the  
19                  Secretary, with a communal dining  
20                  table and accessible kitchen.

21                  “(III) Accessible outdoor space,  
22                  including a protected garden space for  
23                  use by residents and their visitors.

24           “(iii) The facility (or portion) provides  
25           a clinical team that consists of a full-time

1 registered professional nurse or licensed  
2 practical nurse (or licensed vocational  
3 nurse) who works in partnership with cer-  
4 tified nursing assistants in a team-based,  
5 collaborative model.

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

9 “(v) The facility (or portion) facili-  
10 tates a standing resident council run by  
11 residents, and a standing family council  
12 run by family members of residents, that  
13 meets such requirements as may be speci-  
14 fied by the Secretary.

15 “(vi) The facility (or portion) solicits  
16 resident input on facility policies (or poli-  
17 cies relating to such portion of such facil-  
18 ity), including with respect to programs  
19 and scheduling, and, in the case of an in-  
20 capacitated resident, solicits such input  
21 from an individual recognized by State law  
22 to act on behalf of such resident.

23 “(vii) In addition to the resident as-  
24 sessment under section 1819(b)(3), the fa-  
25 cility (or portion) conducts an assessment

1 of residents' care preferences (or, in the  
2 case of an incapacitated resident, such  
3 preferences as expressed by an individual  
4 recognized by State law to act on behalf of  
5 such resident) not later than 14 days after  
6 the resident is admitted to such facility or  
7 portion of such facility (or, in the case of  
8 a resident residing at such facility at the  
9 time such facility receives funding under  
10 the program established under paragraph  
11 (1), not later than 14 days after the date  
12 of such receipt) to ensure care is person-  
13 directed.

14 “(viii) The facility (or portion) offers  
15 daily activities, such as art, music, edu-  
16 cational activities, or other activities based  
17 on resident preferences.

18 “(C) TIMEFRAME.—The Secretary shall  
19 develop the application described in subpara-  
20 graph (A) and begin accepting such applica-  
21 tions not later than July 1, 2023. The Sec-  
22 retary shall accept such applications during the  
23 2-year period beginning on the date such appli-  
24 cations are first accepted.

25 “(2) SELECTION.—

1           “(A) IN GENERAL.—Not later than 2 years  
2 after the date the Secretary first accepts appli-  
3 cations under paragraph (1), the Secretary  
4 shall select a number of skilled nursing facilities  
5 determined appropriate by the Secretary to re-  
6 ceive funding under the program established  
7 under subsection (a).

8           “(B) PREFERENCE.—In selecting skilled  
9 nursing facilities under this paragraph, the Sec-  
10 retary shall—

11           “(i) give preference to facilities that—

12           “(I) are located in medically un-  
13 derserved areas (as defined in section  
14 330(b)(3)(A) of the Public Health  
15 Service Act); and

16           “(II) house a majority of resi-  
17 dents who are receiving medical as-  
18 sistance consisting of nursing facility  
19 services under a State plan (or waiver  
20 of such plan) under title XIX;

21           “(ii) give preference to facilities that  
22 demonstrate the greatest likelihood of  
23 meeting the requirements described in  
24 paragraph (1)(B) within 2 years of receiv-

1           ing funding under the program established  
2           under subsection (a);

3           “(iii) give preference to facilities that  
4           offer staff training beyond such training  
5           required under section 1819 (as deter-  
6           mined through payroll based journal data);  
7           and

8           “(iv) so select such facilities in a man-  
9           ner that ensures geographic diversity, to  
10          the extent practicable.

11       “(c) FUNDS.—

12           “(1) IN GENERAL.—Subject to paragraph (3)  
13           and subsection (h), the Secretary shall provide funds  
14           to each skilled nursing facility selected under sub-  
15           section (b)(2) in an amount equal to not more than  
16           the costs specified by such facility pursuant to sub-  
17           section (b)(1)(A)(i).

18           “(2) USE OF FUNDS.—

19           “(A) IN GENERAL.—Subject to subpara-  
20           graph (B), funds provided under paragraph (1)  
21           may only be used by a skilled nursing facility  
22           for modifications and investments specified by  
23           such facility pursuant to subsection  
24           (b)(1)(A)(i).



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

6                   “(i) such facility submits a request to  
7                   the Secretary containing a description of  
8                   such modifications and investments; and

9                   “(ii) the Secretary determines that  
10                  such modifications and investments will as-  
11                  sist such facility (or a portion of such facil-  
12                  ity, as applicable) in complying with the  
13                  requirements specified in subsection  
14                  (b)(1)(B).

15           “(3) FORM OF PROVISION OF FUNDS.—The  
16           Secretary may provide funding under paragraph (1)  
17           in the form of a single upfront payment or in up to  
18           3 installment payments, spaced out across the first  
19           3 fiscal years beginning with the fiscal year in which  
20           the first such payment is made.

21           “(4) LIMITATION OF PROVISION OF FUND-  
22           ING.—No skilled nursing facility may receive more  
23           than 3 percent of the total monies appropriated  
24           under paragraph (5).

1           “(5) APPROPRIATION.—In addition to any  
2 amounts otherwise available, there is appropriated to  
3 the Secretary, out of any monies in the Treasury not  
4 otherwise appropriated, \$1,300,000,000, to remain  
5 available until expended, for purposes of providing  
6 funds to skilled nursing facilities under paragraph  
7 (1).

8           “(d) FAILURE TO MEET REQUIREMENTS.—

9           “(1) IN GENERAL.—Subject to paragraph (2),  
10 in the case of a facility (or a portion of such facility,  
11 as applicable) that fails to meet the requirements de-  
12 scribed in subsection (b)(1)(B) in accordance with  
13 the agreement described in subsection (b)(1)(A)(ii),  
14 the Secretary may recoup any funds provided to  
15 such facility under subsection (c)(1) in an amount  
16 determined appropriate by the Secretary. In deter-  
17 mining such amount, the Secretary shall take into  
18 account the extent of the compliance of such facility  
19 (or portion of such facility, as applicable) with such  
20 requirements.

21           “(2) EXCEPTION.—The Secretary may suspend  
22 any recoupment described in paragraph (1) with re-  
23 spect to a facility (or a portion of such facility, as  
24 applicable) described in such paragraph for a period  
25 of time determined appropriate by the Secretary if

1 the Secretary finds that such facility (or such por-  
2 tion) will likely be in compliance with the require-  
3 ments described in such paragraph within a reason-  
4 able time specified by the Secretary.

5 “(e) EVALUATION OF PROGRAM.—

6 “(1) IN GENERAL.—The Secretary shall evalu-  
7 ate each skilled nursing facility receiving funds  
8 under the program established under subsection (a)  
9 to assess whether, relative to similarly situated  
10 skilled nursing facilities not receiving funds under  
11 such program and residents of such facilities, modi-  
12 fications and investments described in subsection (a)  
13 made at skilled nursing facilities using such funds  
14 resulted in, with respect to residents of such facili-  
15 ties (or, in the case such modifications and invest-  
16 ments are made only with respect to a portion of  
17 such facility, residents of such portion of such facil-  
18 ity)—

19 “(A) a reduction in preventable hos-  
20 pitalizations;

21 “(B) a reduction in hospital readmissions;

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

23 “(D) greater improvement in functional  
24 status;

25 “(E) an improvement in infection control;

1           “(F) a reduction in nursing staff turnover  
2 rates;

3           “(G) an increase in resident and family  
4 caregiver satisfaction;

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

7           “(I) a reduction in expenditures under this  
8 part (excluding funds provided under subsection  
9 (c)(1)); or

10           “(J) any other outcomes specified by the  
11 Secretary.

12           “(2) REPORTS TO CONGRESS.—Based on eval-  
13 uations described in paragraph (1), the Secretary  
14 shall, not later than July 1, 2031, and again not  
15 later than July 1, 2035, submit to Congress a report  
16 on such program. Each such report shall include an  
17 analysis of the demonstration program’s effect on  
18 the outcomes described in paragraph (1).

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

21           “(g) AUTHORITY TO EXPAND TO CERTAIN NURSING  
22 FACILITIES.—The Secretary may, subject to subsection  
23 (h), enter into agreements with States to include nursing  
24 facilities (as defined in section 1919(a)) that are not  
25 skilled nursing facilities (as defined in section 1819(a))

1 in the demonstration program established under sub-  
2 section (a) and may modify the requirements of the pre-  
3 vious provisions of this section as appropriate to be appli-  
4 cable to such facilities.

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

○