

117TH CONGRESS
2D SESSION

S. 4381

To amend titles XVIII and XIX of the Social Security Act with respect to nursing facility requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2022

Mr. WARNER (for himself and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act with respect to nursing facility requirements, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Seniors’ Ac-
5 cess to Quality Care Act”.

6 **SEC. 2. TRAINING AND COMPETENCY EVALUATION PRO-**
7 **GRAMS.**

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

1 (1) in subparagraph (A)(iv)(I), by striking
 2 “(unless the facility is described in subparagraph
 3 (B)(iii)(I))”;

4 (2) in subparagraph (B)—

5 (A) in clause (i)—

6 (i) by striking “(subject to clause
 7 (iii))”; and

8 (ii) by inserting “and” after the semi-
 9 colon;

10 (B) in clause (ii), by striking “; and” and
 11 inserting a period; and

12 (C) by striking clause (iii);

13 (3) by striking “A State may not delegate
 14 (through subcontract or otherwise) its responsibility
 15 under clause (iii)(II) to the skilled nursing facility.”;

16 (4) by striking subparagraphs (C) and (D); and

17 (5) by adding at the end the following:

18 “(C) DISAPPROVAL OF NURSE AIDE TRAIN-
 19 ING AND COMPETENCY EVALUATION PROGRAMS
 20 AND NURSE AIDE COMPETENCY EVALUATION
 21 PROGRAMS.—

22 “(i) IN GENERAL.—With respect to a
 23 State, the Secretary shall, in consultation
 24 with such State, disapprove, for a period
 25 not to exceed 2 years, a nurse aide train-

ing and competency evaluation program or
 a nurse aide competency evaluation pro-
 gram offered by or in a skilled nursing fa-
 cility if such facility—

“(I) has been assessed a civil
 monetary penalty under subsection
 (h)(2)(B)(ii) or section
 1919(h)(2)(A)(ii) of not less than
 \$10,697 for providing substandard
 quality of care; and

“(II) has not, in the determina-
 tion of the Secretary, corrected the
 deficiencies in quality of care for
 which such civil monetary penalty was
 assessed.

“(ii) RESCISSION OF DISAPPROVAL.—
 The Secretary shall rescind a disapproval
 under clause (i) upon demonstration by a
 skilled nursing facility that—

“(I) all deficiencies for which the
 civil monetary penalty described in
 clause (i)(I) was assessed have been
 remedied;

“(II) the facility has not received
 deficiencies related to direct patient

1 harm for substandard quality of care
 2 deficiencies in the prior 2 years; and
 3 “(III) the Secretary certifies that
 4 the civil monetary penalty assessed
 5 under clause (i)(I) did not result in
 6 immediate jeopardy for direct patient
 7 harm or injury related to an abuse or
 8 neglect deficiency.

9 For purposes of rescinding disapproval
 10 under this clause, the Secretary may re-
 11 quire additional oversight of the skilled
 12 nursing facility for a period not to exceed
 13 the period of disapproval imposed under
 14 clause (i) with respect to such facility.”.

15 (b) MEDICAID.—Section 1919(f)(2) of the Social Se-
 16 curity Act (42 U.S.C. 1396r(f)(2)) is amended—

17 (1) in subparagraph (A)(iv)(I), by striking
 18 “(unless the facility is described in subparagraph
 19 (B)(iii)(I))”;

20 (2) in subparagraph (B)—

21 (A) in clause (i), by inserting “and” after
 22 the semicolon;

23 (B) in clause (ii), by striking “; and” and
 24 inserting a period;

25 (C) by striking clause (iii); and

(D) by striking “A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.”;

(3) by striking subparagraphs (C) and (D); and
(4) by adding at the end the following:

“(C) DISAPPROVAL OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

“(i) IN GENERAL.—With respect to a State, the Secretary shall, in consultation with such State, disapprove, for a period not to exceed 2 years, a nurse aide training and competency evaluation program or a nurse aide competency evaluation program offered by or in a nursing facility if such facility—

“(I) has been assessed a civil monetary penalty under section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than \$10,697 for providing substandard quality of care; and

1 “(II) has not, in the determina-
2 tion of the Secretary, corrected the
3 deficiencies in quality of care for
4 which such civil monetary penalty was
5 assessed.

6 “(ii) RESCISSION OF DISAPPROVAL.—
7 The Secretary shall rescind a disapproval
8 under clause (i) upon demonstration by a
9 nursing facility that—

10 “(I) all deficiencies for which the
11 civil monetary penalty described in
12 clause (i)(I) was assessed have been
13 remedied;

14 “(II) the facility has not received
15 deficiencies related to direct patient
16 harm for substandard quality of care
17 deficiencies in the prior 2 years; and

18 “(III) the Secretary certifies that
19 the civil monetary penalty assessed
20 under clause (i)(I) did not result in
21 immediate jeopardy for direct patient
22 harm or injury related to an abuse or
23 neglect deficiency.

24 For purposes of rescinding disapproval
25 under this clause, the Secretary may re-

1 quire additional oversight of the nursing
 2 facility for a period not to exceed the pe-
 3 riod of disapproval imposed under clause
 4 (i) with respect to such facility.”.

5 (c) REGULATIONS.—Not later than 180 days after
 6 the date of enactment of this Act, the Secretary of Health
 7 and Human Services shall promulgate regulations as nec-
 8 essary to implement the amendments made by this section.

9 (d) APPLICABILITY.—

10 (1) IN GENERAL.—

11 (A) TIMING OF DETERMINATIONS.—The
 12 amendments made by subsections (a)(4) and
 13 (b)(4) of this section shall apply only to a civil
 14 monetary penalty if the relevant covered deter-
 15 mination was made on or after the date of en-
 16 actment of this Act.

17 (B) COVERED DETERMINATION DE-
 18 FINED.—The term “covered determination”
 19 means, with respect to a skilled nursing facility
 20 or a nursing facility in a State, a determination
 21 by the State or the Secretary of Health and
 22 Human Services that the facility has provided
 23 a substandard quality of care for which a civil
 24 monetary penalty described in section
 25 1819(f)(2)(C)(i)(I) or 1919(f)(2)(C)(i)(I) of the

1 Social Security Act (as such sections have been
2 amended by this Act) may be assessed.

3 (2) PREVIOUSLY PROHIBITED PROGRAMS.—

4 (A) WAIVER.—With respect to a skilled
5 nursing facility or a nursing facility subject, on
6 the day before the date of enactment of this
7 Act, to a prohibition under item (a) of either
8 section 1819(f)(2)(B)(iii)(I) or section
9 1919(f)(2)(B)(iii)(I) of the Social Security Act
10 (as in effect on the day before such date of en-
11 actment), such prohibition shall no longer apply
12 to the facility on or after such date of enact-
13 ment.

14 (B) SURVEY OR CIVIL MONETARY PEN-
15 ALTY.—With respect to a skilled nursing facil-
16 ity or a nursing facility subject, on the day be-
17 fore the date of enactment of this Act, to a pro-
18 hibition under item (b) or (c) of either section
19 1819(f)(2)(B)(iii)(I) or section
20 1919(f)(2)(B)(iii)(I) of the Social Security Act
21 (as in effect on the day before such date of en-
22 actment), such prohibition shall no longer apply
23 to the facility on or after such date of enact-
24 ment upon a determination by the Secretary of
25 Health and Human Services that the facility

1 has corrected the issue that resulted in such
2 prohibition.

3 **SEC. 3. PERMITTING MEDICARE AND MEDICAID PRO-**
4 **VIDERS TO ACCESS THE NATIONAL PRACTI-**
5 **TIONER DATA BANK TO CONDUCT EMPLOYEE**
6 **BACKGROUND CHECKS.**

7 Section 1921(b)(6) of the Social Security Act (42
8 U.S.C. 1396r–2(b)(6)) is amended—

9 (1) by striking “and other health care entities
10 (as defined in section 431 of the Health Care Qual-
11 ity Improvement Act of 1986)” and inserting “,
12 other health care entities (as defined in section 431
13 of the Health Care Quality Improvement Act of
14 1986), providers of services (as defined in section
15 1861(u)), suppliers (as defined in section 1861(d)),
16 and providers of items or services under a State plan
17 under this title (or a waiver of such a plan)”; and

18 (2) by striking “such hospitals or other health
19 care entities” and inserting “such hospitals, health
20 care entities, providers, or suppliers”.

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