To protect older adults and people with disabilities living in nursing homes and intermediate care facilities from COVID–19.

IN THE SENATE OF THE UNITED STATES

Mr. CASEY (for himself, Mr. WHITEHOUSE, Mr. JONES, Ms. WARREN, Ms. BALDWIN, Mr. MARKEY, Mrs. SHAHEEN, Mr. MENENDEZ, Mr. REED, Mr. VAN HOLLEN, Mr. BLUMENTHAL, Ms. HIRONO, Ms. CORTEZ MASTO, and Ms. ROSEN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To protect older adults and people with disabilities living in nursing homes and intermediate care facilities from COVID–19.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Nursing Home
6 COVID–19 Protection and Prevention Act of 2020”.
7 SEC. 2. COVID–19 NURSING HOME PROTECTIONS.
8 (a) Program To Support COVID–19 Response.—
(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall carry out a program under which payments are made to States and Indian Tribes in order to support cohorting individuals in skilled nursing facilities, nursing facilities, and intermediate care facilities based on COVID–19 status.

(2) APPLICATION.—To be eligible to receive a payment under this subsection, a State or Indian Tribe shall submit to the Secretary an application. Such application shall include evidence that the State or Indian Tribe (and involved skilled nursing facilities, nursing facilities, and intermediate care facilities) are able to cohort individuals in compliance with guidance issued by the Secretary during the emergency period. If feasible, the Secretary shall provide for an expedited application process.

(3) REQUIREMENTS.—To be eligible to receive a payment under this subsection, a State or Indian Tribe shall comply with the following:

(A) FOLLOWING GUIDANCE.—The State or Indian Tribe shall follow the guidance established by the Secretary under paragraph (5)
and all other guidance issued by the Secretary during the emergency period.

(B) REPORTING.—The State or Indian Tribe shall, as determined appropriate by the Secretary, periodically report to the Secretary on planning and coordination among State health departments, skilled nursing facilities, nursing facilities, intermediate care facilities, hospitals, and other long-term care facilities and service providers on cohorting strategies and other issues related to COVID–19.

(C) PROTOCOL TO EVALUATE.—The State or Indian Tribe shall establish an expedited protocol to evaluate a facility’s ability to cohort individuals who test positive for, or are presumed exposed to, COVID–19 or who test negative for, or are presumed not to have been exposed to, COVID–19. Such protocol shall include an infection control self-assessment and may include an abbreviated or standard survey.

(D) TECHNICAL ASSISTANCE.—The State or Indian Tribe shall ensure that skilled nursing facilities, nursing facilities, and intermediate care facilities receive technical assistance on—
(i) implementing proper infection control protocols and practices;
(ii) minimizing unnecessary transfers;
(iii) adequate staffing, including the short-term utilization of staffing teams;
(iv) effective use of testing and personal protective equipment;
(v) safely transitioning residents to home and community-based settings; and
(vi) other topics, as determined appropriate by the Secretary.

(4) USE OF FUNDS.—

(A) IN GENERAL.—A State or Indian Tribe that receives a payment under this subsection shall use funds to support skilled nursing facilities, nursing facilities, and intermediate care facilities that cohort, and provide services to, individuals who test positive for, or are presumed exposed to, COVID–19, individuals who test negative for, or are presumed not to have been exposed to, COVID–19, and individuals with unknown status or who are under observation. Such cohorting shall be in compliance with all guidance issued by the Secretary during the emergency period.
(B) PERMISSIBLE USES AND AUTHORIZED COSTS.—States and Indian Tribes shall use such funds for the following purposes:

   (i) To retrofit non-traditional facility-based settings, such as hotels, dormitories, schools, churches, and other temporary or permanent shelters, for temporary use as skilled nursing facilities, nursing facilities, and intermediate care facilities.

   (ii) To support skilled nursing facilities, nursing facilities, and intermediate care facilities with the establishment of specialized units within such facilities.

   (iii) To provide testing kits or other supplies needed to test staff members or residents of skilled nursing facilities, nursing facilities and intermediate care facilities for COVID–19.

   (iv) To provide personal protective equipment to staff members of skilled nursing facilities, nursing facilities, and intermediate care facilities.

   (v) To safely facilitate transfers to and from skilled nursing facilities, nursing facilities, and intermediate care facilities.
(vi) To safely facilitate discharges to home and community-based settings from skilled nursing facilities, nursing facilities, and intermediate care facilities.

(vii) To provide additional staffing (including the short-term utilization of staffing teams) associated with the COVID–19 pandemic for skilled nursing facilities, nursing facilities, and intermediate care facilities which may include providing premium or hazard pay, overtime pay, enhanced payment rates and paid sick and family medical leave for staff members.

(viii) Other purposes relating to the cohorting described in subparagraph (A).

(5) ADDITIONAL GUIDANCE.—For purposes of the program under this subsection, the Secretary shall establish guidance on the following:

(A) Which skilled nursing facilities, nursing facilities, and intermediate care facilities are permitted to cohort individuals who test positive for, or are presumed exposed to, COVID–19, individuals who test negative for, are presumed not to have been exposed to, COVID–19, and
individuals with unknown status or who are under observation. Such guidance shall account for—

(i) the facility’s history of compliance with the requirements of participation under titles XVIII and XIX of the Social Security Act, including requirements relating to infection control and emergency preparedness;

(ii) the facility’s current or past affiliation (as either a candidate or participant) with the special focus facility program under section 1819(f)(8) of such Act (42 U.S.C. 1395i–3(f)(8)) and section 1919(f)(10) of such Act (42 U.S.C. 1396r(f)(10));

(iii) the facility’s ability to treat high-severity residents, as applicable.

(B) Consumer protections for residents of skilled nursing facilities, nursing facilities, and intermediate care facilities affected by COVID–19 cohorting policies, including by—

(i) prohibiting facilities from discharging residents for inability to pay for services; and
(ii) requiring written notification to residents and their family and legal representatives prior to discharge or transfers, with such notice containing information on the rights of the resident, including contact information for the State Long-Term Care Ombudsman program (as described in section 712(a)(1) of the Older Americans Act of 1965 (42 U.S.C. 3058g(a)(1))).

(C) Strategies to effectively cohort residents of skilled nursing facilities, nursing facilities, and intermediate care facilities based on COVID–19 status, including—

(i) the temporary utilization of non-traditional facility-based settings, such as hotels, dormitories, schools, churches, and other temporary or permanent shelters, as skilled nursing facilities, nursing facilities, and intermediate care facilities;

(ii) how to safely and effectively cohort within facilities;

(iii) how to establish separate facilities for individuals who test positive for, or are presumed to have been exposed to, COVID–19;
(iv) how to establish separate facilities
for individuals who test negative for, or are
 presumed not to have been exposed to, COVID–19;

(v) effective use of COVID–19 testing;
(vi) adequate staffing, including the
utilization of—

(I) separate staffing according to
COVID–19 status; and

(II) short-term staffing teams;

(vii) effective use of personal protective equipment;

(viii) how to minimize resident transfers to and from the facilities;

(ix) how to prioritize resident transfers to home and community-based settings
from the facilities; and

(x) how to uphold resident rights in accordance with titles XVIII and XIX of
the Social Security Act.

(6) REPORT.—Not later than 2 years after the
date of the enactment of this section, the Secretary
shall submit to the appropriate Committees of Con-
gress a report on the program under this section, to-
gether with recommendations for such legislation
and administrative action as the Secretary determines appropriate.

(7) **FUNDING.**—Out of any monies in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary $20,000,000,000 for fiscal year 2020 for making payments to States and Indian Tribes under this subsection. Amounts appropriated under the preceding sentence shall remain available until expended.

(b) **COVID–19 DATA COLLECTION AND DISCLOSURE.**—

(1) **DATA COLLECTION AND PUBLICATION BY THE SECRETARY.**—

(A) **IN GENERAL.**—Beginning as soon as practicable after the date of enactment of this Act and continuing through the end of the emergency period, or through a later date determined appropriate by the Secretary, the Secretary shall make publicly available on the Nursing Home Compare websites described in sections 1819(i) and 1919(i) of the Social Security Act (42 U.S.C. 1395i–3(i); 42 U.S.C. 1396r(i)) and on the internet website of the Centers for Medicare & Medicaid Services the
number (within each State, Indian Tribe, and each skilled nursing facility, nursing facility, and intermediate care facility) of—

(i) COVID–19 cases among residents in skilled nursing facilities, nursing facilities, and intermediate care facilities;

(ii) COVID-19 cases among staff persons in skilled nursing facilities, nursing facilities and intermediate care facilities;

and

(iii) deaths (among both residents and staff persons) in skilled nursing facilities, nursing facilities, and intermediate care facilities due to COVID–19.

(B) UPDATE.—The data described in subparagraph (A) shall be updated not less frequently than on a daily basis.

(C) PRIVACY.—The Secretary shall take all necessary steps to protect the privacy of individual residents and staff persons associated with the affected skilled nursing facility, nursing facility, or intermediate care facility.

(2) DISCLOSURE BY FACILITIES.—

(A) IN GENERAL.—Beginning as soon as practicable after the date of enactment of this
Act and continuing through the end of the emergency period, or through a later date determined appropriate by the Secretary, the Secretary shall ensure that skilled nursing facilities, nursing facilities, and intermediate care facilities provide notification when a case of COVID–19 is confirmed among a resident or staff person to the following:

(i) Residents of such facility and the resident’s family or legal representative.

(ii) Resident family councils.

(iii) Resident primary attending physicians.

(iv) The State board responsible for the licensing of the administrator at the facility.

(v) State Long-Term Care Ombudsman programs (as described in section 712(a)(1) of the Older Americans Act of 1965).

(B) Timing.—The notification required under subparagraph (A) shall be provided—

(i) within 12 hours of the confirmation of a COVID–19 case and within 72 hours of the confirmation of 3 or more
residents or staff persons exhibiting new-onset respiratory symptoms; and

(ii) in the most expedient manner available, to be followed-up with written notification to residents of the facility and the resident’s family or legal representative.

(3) HHS STUDY AND REPORT ON COVID–19 OUTBREAKS.—

(A) Study.—

(i) In general.—The Secretary shall conduct a study on COVID–19 outbreaks in skilled nursing facilities, nursing facilities, and intermediate care facilities. Such study shall include an analysis of—

(I) the characteristics of skilled nursing facilities, nursing facilities, and intermediate care facilities that experienced COVID–19 outbreaks;

(II) the size of the outbreaks; and

(III) the number of deaths of residents and staff persons from the outbreaks.
(ii) CHARACTERISTICS.—The characteristics described in clause (i) shall include—

(I) the facility’s history of compliance with the requirements of participation under titles XVIII and XIX of the Social Security Act, including requirements relating to infection control and emergency preparedness;

(II) the facility’s current or past affiliation (as either a candidate or participant) with the special focus facility program under section 1819(f)(8) of such Act (42 U.S.C. 1395i–3(f)(8)) and section 1919(f)(10) of such Act (42 U.S.C. 1396r(f)(10));

(III) the facility’s resident size, including the number of occupied beds; and

(IV) the facility’s geographic location.

(B) REPORT.—Not later than 6 months after the end of the emergency period, and every 6 months thereafter through the end of
the 2-year period that begins at the end of the emergency period, the Secretary shall submit to the appropriate Committees of Congress a report containing the results of the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(e) Monthly Briefings on the COVID–19 Response.—

(1) Monthly Briefings.— Not later than 15 days after the date of enactment of this Act, and at least once every 30 days thereafter through the end of the emergency period, the Secretary shall brief the appropriate Committees of Congress (including all members of such Committees) on the COVID–19 outbreak in skilled nursing facilities, nursing facilities, and intermediate care facilities and the response by the Secretary to such outbreak.

(2) Report.—Not later than 1 year after the date of enactment of this Act, the Inspector General of the Department of Health and Human Services shall submit to Congress a report that evaluates the response of the Secretary to the COVID–19 outbreak in skilled nursing facilities, nursing facilities,
and intermediate care facilities such as guidance, rules, or waivers established by the Secretary.

(d) Rule of Construction.—Nothing in this section shall be construed to affect the requirements of participation under titles XVIII and XIX of the Social Security Act with respect to skilled nursing facilities, nursing facilities, and intermediate care facilities.

(e) Definitions.—In this section:

(1) Appropriate Committees of Congress.—The term “appropriate Committee of Congress” means—

(A) the Committee on Finance of the Senate;

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

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

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

(E) the Committee on Energy and Commerce of the House of Representatives.

(2) Emergency Period.—The term “Emergency period” means the emergency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1395b–5(g)(1)(B)).
(3) **INDIAN TRIBE.**—The term “Indian Tribe” has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).

(4) **INTERMEDIATE CARE FACILITY.**—The term “intermediate care facility” means an intermediate care facility described in section 1905(d) of the Social Security Act (42 U.S.C. 1396d(d)).

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

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

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

(8) **STATE.**—The term “State” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.