

116TH CONGRESS
2D SESSION

S. _____

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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nursing Home
5 COVID–19 Protection and Prevention Act of 2020”.

6 **SEC. 2. COVID–19 NURSING HOME PROTECTIONS.**

7 (a) PROGRAM TO SUPPORT COVID–19 RESPONSE.—

1 (1) IN GENERAL.—Not later than 30 days after
2 the date of enactment of this Act, the Secretary, act-
3 ing through the Administrator of the Centers for
4 Medicare & Medicaid Services, shall carry out a pro-
5 gram under which payments are made to States and
6 Indian Tribes in order to support cohorting individ-
7 uals in skilled nursing facilities, nursing facilities,
8 and intermediate care facilities based on COVID–19
9 status.

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

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

23 (A) FOLLOWING GUIDANCE.—The State or
24 Indian Tribe shall follow the guidance estab-
25 lished by the Secretary under paragraph (5)

1 and all other guidance issued by the Secretary
2 during the emergency period.

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

12 (C) PROTOCOL TO EVALUATE.—The State
13 or Indian Tribe shall establish an expedited
14 protocol to evaluate a facility’s ability to cohort
15 individuals who test positive for, or are pre-
16 sumed exposed to, COVID–19 or who test nega-
17 tive for, or are presumed not to have been ex-
18 posed to, COVID–19. Such protocol shall in-
19 clude an infection control self-assessment and
20 may include an abbreviated or standard survey.

21 (D) TECHNICAL ASSISTANCE.—The State
22 or Indian Tribe shall ensure that skilled nurs-
23 ing facilities, nursing facilities, and inter-
24 mediate care facilities receive technical assist-
25 ance on—

- 1 (i) implementing proper infection con-
2 trol protocols and practices;
- 3 (ii) minimizing unnecessary transfers;
- 4 (iii) adequate staffing, including the
5 short-term utilization of staffing teams;
- 6 (iv) effective use of testing and per-
7 sonal protective equipment;
- 8 (v) safely transitioning residents to
9 home and community-based settings; and
- 10 (vi) other topics, as determined appro-
11 priate by the Secretary.

12 (4) USE OF FUNDS.—

13 (A) IN GENERAL.—A State or Indian
14 Tribe that receives a payment under this sub-
15 section shall use funds to support skilled nurs-
16 ing facilities, nursing facilities, and inter-
17 mediate care facilities that cohort, and provide
18 services to, individuals who test positive for, or
19 are presumed exposed to, COVID–19, individ-
20 uals who test negative for, or are presumed not
21 to have been exposed to, COVID–19, and indi-
22 viduals with unknown status or who are under
23 observation. Such cohorting shall be in compli-
24 ance with all guidance issued by the Secretary
25 during the emergency period.

1 (B) PERMISSIBLE USES AND AUTHORIZED
2 COSTS.—States and Indian Tribes shall use
3 such funds for the following purposes:

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

10 (ii) To support skilled nursing facili-
11 ties, nursing facilities, and intermediate
12 care facilities with the establishment of
13 specialized units within such facilities.

14 (iii) To provide testing kits or other
15 supplies needed to test staff members or
16 residents of skilled nursing facilities, nurs-
17 ing facilities and intermediate care facili-
18 ties for COVID–19.

19 (iv) To provide personal protective
20 equipment to staff members of skilled
21 nursing facilities, nursing facilities, and in-
22 termediate care facilities

23 (v) To safely facilitate transfers to
24 and from skilled nursing facilities, nursing
25 facilities, and intermediate care facilities.

1 (vi) To safely facilitate discharges to
2 home and community-based settings from
3 skilled nursing facilities, nursing facilities,
4 and intermediate care facilities.

5 (vii) To provide additional staffing
6 (including the short-term utilization of
7 staffing teams) associated with the
8 COVID–19 pandemic for skilled nursing
9 facilities, nursing facilities, and inter-
10 mediate care facilities which may include
11 providing premium or hazard pay, overtime
12 pay, enhanced payment rates and paid sick
13 and family medical leave for staff mem-
14 bers.

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

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

20 (A) Which skilled nursing facilities, nurs-
21 ing facilities, and intermediate care facilities are
22 permitted to cohort individuals who test positive
23 for, or are presumed exposed to, COVID–19,
24 individuals who test negative for, are presumed
25 not to have been exposed to, COVID–19, and

1 individuals with unknown status or who are
2 under observation. Such guidance shall account
3 for—

4 (i) the facility's history of compliance
5 with the requirements of participation
6 under titles XVIII and XIX of the Social
7 Security Act, including requirements relat-
8 ing to infection control and emergency pre-
9 paredness;

10 (ii) the facility's current or past affili-
11 ation (as either a candidate or participant)
12 with the special focus facility program
13 under section 1819(f)(8) of such Act (42
14 U.S.C. 1395i-3(f)(8)) and section
15 1919(f)(10) of such Act (42 U.S.C.
16 1396r(f)(10));

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

19 (B) Consumer protections for residents of
20 skilled nursing facilities, nursing facilities, and
21 intermediate care facilities affected by COVID-
22 19 cohorting policies, including by—

23 (i) prohibiting facilities from dis-
24 charging residents for inability to pay for
25 services; and

1 (ii) requiring written notification to
2 residents and their family and legal rep-
3 resentatives prior to discharge or transfers,
4 with such notice containing information on
5 the rights of the resident, including contact
6 information for the State Long-Term Care
7 Ombudsman program (as described in sec-
8 tion 712(a)(1) of the Older Americans Act
9 of 1965 (42 U.S.C. 3058g(a)(1))).

10 (C) Strategies to effectively cohort resi-
11 dents of skilled nursing facilities, nursing facili-
12 ties, and intermediate care facilities based on
13 COVID-19 status, including—

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

20 (ii) how to safely and effectively co-
21 hort within facilities;

22 (iii) how to establish separate facilities
23 for individuals who test positive for, or are
24 presumed to have been exposed to,
25 COVID-19;

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

5 (v) effective use of COVID–19 testing;

6 (vi) adequate staffing, including the
7 utilization of—

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

10 (II) short-term staffing teams;

11 (vii) effective use of personal protec-
12 tive equipment;

13 (viii) how to minimize resident trans-
14 fers to and from the facilities;

15 (ix) how to prioritize resident trans-
16 fers to home and community-based settings
17 from the facilities; and

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

21 (6) REPORT.—Not later than 2 years after the
22 date of the enactment of this section, the Secretary
23 shall submit to the appropriate Committees of Con-
24 gress a report on the program under this section, to-
25 gether with recommendations for such legislation

1 and administrative action as the Secretary deter-
2 mines appropriate.

3 (7) FUNDING.—Out of any monies in the
4 Treasury of the United States not otherwise appro-
5 priated, there are appropriated to the Secretary
6 \$20,000,000,000 for fiscal year 2020 for making
7 payments to States and Indian Tribes under this
8 subsection. Amounts appropriated under the pre-
9 ceding sentence shall remain available until ex-
10 pended.

11 (b) COVID–19 DATA COLLECTION AND DISCLO-
12 SURE.—

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

15 (A) IN GENERAL.—Beginning as soon as
16 practicable after the date of enactment of this
17 Act and continuing through the end of the
18 emergency period, or through a later date de-
19 termined appropriate by the Secretary, the Sec-
20 retary shall make publicly available on the
21 Nursing Home Compare websites described in
22 sections 1819(i) and 1919(i) of the Social Secu-
23 rity Act (42 U.S.C. 1395i–3(i); 42 U.S.C.
24 1396r(i)) and on the internet website of the
25 Centers for Medicare & Medicaid Services the

1 number (within each State, Indian Tribe, and
2 each skilled nursing facility, nursing facility,
3 and intermediate care facility) of—

4 (i) COVID–19 cases among residents
5 in skilled nursing facilities, nursing facili-
6 ties, and intermediate care facilities;

7 (ii) COVID-19 cases among staff per-
8 sons in skilled nursing facilities, nursing
9 facilities and intermediate care facilities;
10 and

11 (iii) deaths (among both residents and
12 staff persons) in skilled nursing facilities,
13 nursing facilities, and intermediate care fa-
14 cilities due to COVID–19.

15 (B) UPDATE.—The data described in sub-
16 paragraph (A) shall be updated not less fre-
17 quently than on a daily basis.

18 (C) PRIVACY.—The Secretary shall take all
19 necessary steps to protect the privacy of indi-
20 vidual residents and staff persons associated
21 with the affected skilled nursing facility, nurs-
22 ing facility, or intermediate care facility.

23 (2) DISCLOSURE BY FACILITIES.—

24 (A) IN GENERAL.—Beginning as soon as
25 practicable after the date of enactment of this

1 Act and continuing through the end of the
2 emergency period, or through a later date de-
3 termined appropriate by the Secretary, the Sec-
4 retary shall ensure that skilled nursing facili-
5 ties, nursing facilities, and intermediate care fa-
6 cilities provide notification when a case of
7 COVID-19 is confirmed among a resident or
8 staff person to the following:

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

11 (ii) Resident family councils.

12 (iii) Resident primary attending physi-
13 cians.

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

17 (v) State Long-Term Care Ombuds-
18 man programs (as described in section
19 712(a)(1) of the Older Americans Act of
20 1965).

21 (B) **TIMING.**—The notification required
22 under subparagraph (A) shall be provided—

23 (i) within 12 hours of the confirma-
24 tion of a COVID-19 case and within 72
25 hours of the confirmation of 3 or more

1 residents or staff persons exhibiting new-
2 onset respiratory symptoms; and

3 (ii) in the most expedient manner
4 available, to be followed-up with written
5 notification to residents of the facility and
6 the resident's family or legal representa-
7 tive.

8 (3) HHS STUDY AND REPORT ON COVID-19
9 OUTBREAKS.—

10 (A) STUDY.—

11 (i) IN GENERAL.—The Secretary shall
12 conduct a study on COVID-19 outbreaks
13 in skilled nursing facilities, nursing facili-
14 ties, and intermediate care facilities . Such
15 study shall include an analysis of—

16 (I) the characteristics of skilled
17 nursing facilities, nursing facilities,
18 and intermediate care facilities that
19 experienced COVID-19 outbreaks;

20 (II) the size of the outbreaks;
21 and

22 (III) the number of deaths of
23 residents and staff persons from the
24 outbreaks.

1 (ii) CHARACTERISTICS.—The charac-
2 teristics described in clause (i) shall in-
3 clude—

4 (I) the facility’s history of com-
5 pliance with the requirements of par-
6 ticipation under titles XVIII and XIX
7 of the Social Security Act, including
8 requirements relating to infection con-
9 trol and emergency preparedness;

10 (II) the facility’s current or past
11 affiliation (as either a candidate or
12 participant) with the special focus fa-
13 cility program under section
14 1819(f)(8) of such Act (42 U.S.C.
15 1395i–3(f)(8)) and section
16 1919(f)(10) of such Act (42 U.S.C.
17 1396r(f)(10));

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

21 (IV) the facility’s geographic lo-
22 cation.

23 (B) REPORT.—Not later than 6 months
24 after the end of the emergency period, and
25 every 6 months thereafter through the end of

1 the 2-year period that begins at the end of the
2 emergency period, the Secretary shall submit to
3 the appropriate Committees of Congress a re-
4 port containing the results of the study con-
5 ducted under paragraph (1), together with rec-
6 ommendations for such legislation and adminis-
7 trative action as the Secretary determines ap-
8 propriate.

9 (c) MONTHLY BRIEFINGS ON THE COVID-19 RE-
10 SPONSE.—

11 (1) MONTHLY BRIEFINGS.— Not later than 15
12 days after the date of enactment of this Act, and at
13 least once every 30 days thereafter through the end
14 of the emergency period, the Secretary shall brief
15 the appropriate Committees of Congress (including
16 all members of such Committees) on the COVID-19
17 outbreak in skilled nursing facilities, nursing facili-
18 ties, and intermediate care facilities and the re-
19 sponse by the Secretary to such outbreak.

20 (2) REPORT.—Not later than 1 year after the
21 date of enactment of this Act, the Inspector General
22 of the Department of Health and Human Services
23 shall submit to Congress a report that evaluates the
24 response of the Secretary to the COVID-19 out-
25 break in skilled nursing facilities, nursing facilities,

1 and intermediate care facilities such as guidance,
2 rules, or waivers established by the Secretary.

3 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion shall be construed to affect the requirements of par-
5 ticipation under titles XVIII and XIX of the Social Secu-
6 rity Act with respect to skilled nursing facilities, nursing
7 facilities, and intermediate care facilities.

8 (e) DEFINITIONS.—In this section:

9 (1) APPROPRIATE COMMITTEES OF CON-
10 GRESS.—The term “appropriate Committee of Con-
11 gress” means—

12 (A) the Committee on Finance of the Sen-
13 ate;

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

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

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

20 (E) the Committee on Energy and Com-
21 merce of the House of Representatives.

22 (2) EMERGENCY PERIOD.—The term “Emer-
23 gency period” means the emergency period described
24 in section 1135(g)(1)(B) of the Social Security Act
25 (42 U.S.C. 1395b–5(g)(1)(B)).

1 (3) INDIAN TRIBE.—The term “Indian Tribe”
2 has the meaning given that term in section 4 of the
3 Indian Self-Determination and Education Assistance
4 Act (25 U.S.C. 5304)).

5 (4) INTERMEDIATE CARE FACILITY.—The term
6 “intermediate care facility” means an intermediate
7 care facility described in section 1905(d) of the So-
8 cial Security Act (42 U.S.C. 1396d(d)).

9 (5) NURSING FACILITY.—The term “nursing
10 facility” has the meaning given that term in section
11 1919(a) of the Social Security Act (42 U.S.C.
12 1396r(a)).

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

15 (7) SKILLED NURSING FACILITY.—The term
16 “skilled nursing facility” has the meaning given that
17 term in section 1819(a) of the Social Security Act
18 (42 U.S.C. 1395i–3(a)).

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