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

IN THE HOUSE OF REPRESENTATIVES

Ms. Eshoo introduced the following bill; which was referred to the Committee on ____________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. COVID–19 NURSING HOME PROTECTIONS.

(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 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, intermediate care facilities, and psychiatric hospitals 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, intermediate care facilities, and psychiatric hospitals) 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 the following:

(i) The convening and recommenda-
tions of the task force under subparagraph
(C), cohorting strategies being used, the
use of surge teams, and the technical as-
sistance and resources provided under sub-
paragraph (E).

(ii) The State or Indian Tribe’s dis-
tribution of the payments received under
the program under this subsection and
what facilities are using such payments for
(as permitted under paragraph (4)(B)).

(iii) Other items determined appro-
priate by the Secretary.

(C) TASK FORCE.—

(i) IN GENERAL.—The State or In-
dian Tribe shall establish a task force to
provide advice on the State or Tribe’s use
and distribution of payments received
under the program under this section, in-
cluding on cohorting strategies, the use of
surge teams, resident rights (particularly
involving discharges and transfers), and
other topics as determined appropriate by
the Secretary.

(ii) MEMBERSHIP.—A task force es-

tablished under clause (i) shall include rep-

resentation from the following:

(I) Consumers, including older
adults age 65 and older, individuals
with disabilities, family caregivers,
and their advocates.

(II) Skilled nursing facilities,
nursing facilities, intermediate care
facilities, and psychiatric hospitals.

(III) Health care providers and
other congregate settings (including
hospitals and permanent or transi-
tional housing facilities) that transfer
residents to and from skilled nursing
facilities, nursing facilities, inter-
mediate care facilities, and psychiatric
hospitals.
(IV) Health professionals, such as direct care professionals, physicians, nurses, and pharmacists.

(V) Experts in public health and infectious diseases.

(VI) Experts in geriatrics and long-term care medicine.

(VII) 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))).

(VIII) The protection and advocacy system (as established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(IX) State agencies, including the State surveying agency and the agency that administers the State plan under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).
(X) Other representatives as the Secretary determines appropriate.

(D) Protocol to Evaluate.—The State or Indian Tribe shall establish an expedited protocol to evaluate a facility’s ability (including a facility retrofitted under paragraph (4)(B)(i)) to cohort individuals who test positive for COVID–19, individuals who test negative for COVID–19, or individuals with unknown status or who are under observation regarding COVID–19. Such protocol shall include an infection control self-assessment and an abbreviated survey and may include a standard survey.

(E) Technical Assistance and Resources.—

(i) In General.—The State or Indian Tribe shall ensure that skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals receive technical assistance and the necessary resources to—

(I) implement proper infection control protocols and practices;
(II) minimize unnecessary transfers;

(III) ensure adequate staffing, including the use of surge teams;

(IV) effectively use and provide access to testing and personal protective equipment, including guidance on how to effectively use personal protective equipment when access is limited;

(V) safely transition residents to home and community-based settings; and

(VI) conduct other activities, as determined appropriate by the Secretary.

(ii) REQUIREMENT FOR TECHNICAL ASSISTANCE.—The technical assistance required under clause (i) shall be provided by—

(I) quality improvement organizations under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.); or

(II) other independent organizations of a similar type that do not
have conflicts of interest and are deemed appropriate by the Secretary.

(4) USE OF FUNDS.—

(A) IN GENERAL.—A State or Indian Tribe that receives a payment under the program under this subsection shall use funds to support skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals that cohort, and provide services to, individuals who test positive for COVID–19, individuals who test negative for COVID–19, and individuals with unknown status or who are under observation regarding COVID–19. Such cohorting and services 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 the payments received under the program under this subsection 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,
intermediate care facilities, and psychiatric hospitals.

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

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

(iv) To provide personal protective equipment to staff members of skilled nursing facilities, nursing facilities, intermediate care facilities, psychiatric hospitals, and, where appropriate, to residents of such facilities.

(v) To safely facilitate necessary transfers to and from skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals.

(vi) To safely facilitate voluntary discharges to home and community-based set-
tings from skilled nursing facilities, nurs-
ing facilities, intermediate care facilities,
and psychiatric hospitals.

(vii) To provide additional staffing
(including the use of surge teams) associ-
ated with the COVID–19 pandemic for
skilled nursing facilities, nursing facilities,
intermediate care facilities, and psychiatric
hospitals, which may include providing pre-
mium or hazard pay, overtime pay, en-
hanced payment rates, paid sick and fam-
ily medical leave, childcare, temporary
housing, transportation, and other sup-
portive services for staff members.

(viii) To provide support for individ-
uals who have no other mechanism to pay
for their care at skilled nursing facilities,
nursing facilities, intermediate care facili-
ties, and psychiatric hospitals and are un-
able to pay.

(ix) Other purposes relating to the
cohorting and services described in sub-
paragraph (A).

(5) ADDITIONAL GUIDANCE.—For purposes of
the program under this subsection, not later than 30
days after the date of enactment of this Act (and prior to making any payments to States or Indian Tribes under the program) the Secretary shall establish guidance on the following:

(A) Which skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals are permitted to cohort individuals who test positive for COVID–19, individuals who test negative for COVID–19, and individuals with unknown status or who are under observation regarding COVID–19. 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 (42 U.S.C. 1395 et seq., 1396 et seq.), 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)); and

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

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

(i) prohibiting facilities from discharging residents for failure to pay for services; and

(ii) requiring written notification to be provided to residents and their family and legal representatives at least 72 hours prior to discharge or transfers, with such notice containing—

(I) information on the rights of the resident;

(II) 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))); and
(III) contact information for the protection and advocacy system (as established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(C) Strategies to effectively cohort residents of skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals 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, intermediate care facilities, and psychiatric hospitals;

(ii) how to safely and effectively move, shelter in place, and cohort within facilities;

(iii) how to establish separate facilities for individuals who test positive for COVID–19;
(iv) how to establish separate facilities for individuals who test negative for COVID–19;

(v) proper procedures for conducting COVID–19 testing, sending tests to be analyzed, and effective use of COVID–19 testing;

(vi) adequate staffing, with contingency plans during shortages, including the use of—

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

(II) surge teams;

(vii) effective use of personal protective equipment, including in cases where access to an adequate supply of personal protective equipment is limited;

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

(ix) how to safely effectuate 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 (42 U.S.C. 1395 et seq., 1396 et seq.).

(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 Congress a report on the program under this subsection, together 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) 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, intermediate care facilities, and psychiatric hospitals 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, intermediate care facilities, and psychiatric hospitals such as guidance, rules, or waivers established by the Secretary.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the requirements or conditions of participation under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.) with respect to skilled nursing facilities, nursing facilities, intermediate care facilities, and psychiatric hospitals.

(d) 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. 1320b–5(g)(1)(B)).

(3) INDIAN TRIBE.—The term “Indian Tribe” has the meaning given to the term “Indian tribe” 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) Psychiatric Hospital.—The term “psychiatric hospital” has the meaning given that term in section 1861(f) of the Social Security Act (42 U.S.C. 1395x(f)).

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

(8) 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)).

(9) 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.

(10) Surge Team.—The term “surge team” means a short-term staffing team.