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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R.

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 psy-
chiatric hospitals 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
3 shall carry out a program under which payments are
4 made to States and Indian Tribes in order to sup-
5 port cohorting individuals in skilled nursing facili-
6 ties, nursing facilities, intermediate care facilities,
7 and psychiatric hospitals based on COVID–19 sta-
8 tus.

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

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

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

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

20 (C) TASK FORCE.—

21 (i) IN GENERAL.—The State or In-
22 dian Tribe shall establish a task force to
23 provide advice on the State or Tribe's use
24 and distribution of payments received
25 under the program under this section, in-

1 cluding on cohorting strategies, the use of
2 surge teams, resident rights (particularly
3 involving discharges and transfers), and
4 other topics as determined appropriate by
5 the Secretary.

6 (ii) MEMBERSHIP.—A task force es-
7 tablished under clause (i) shall include rep-
8 resentation from the following:

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

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

16 (III) Health care providers and
17 other congregate settings (including
18 hospitals and permanent or transi-
19 tional housing facilities) that transfer
20 residents to and from skilled nursing
21 facilities, nursing facilities, inter-
22 mediate care facilities, and psychiatric
23 hospitals.

1 (IV) Health professionals, such
2 as direct care professionals, physi-
3 cians, nurses, and pharmacists.

4 (V) Experts in public health and
5 infectious diseases.

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

8 (VII) The State Long-Term Care
9 Ombudsman program (as described in
10 section 712(a)(1) of the Older Ameri-
11 cans Act of 1965 (42 U.S.C.
12 3058g(a)(1))).

13 (VIII) The protection and advo-
14 cacy system (as established under
15 subtitle C of title I of the Develop-
16 mental Disabilities Assistance and Bill
17 of Rights Act of 2000 (42 U.S.C.
18 15041 et seq.).

19 (IX) State agencies, including the
20 State surveying agency and the agen-
21 cy that administers the State plan
22 under the Medicaid program under
23 title XIX of the Social Security Act
24 (42 U.S.C. 1396 et seq.).

1 (X) Other representatives as the
2 Secretary determines appropriate.

3 (D) PROTOCOL TO EVALUATE.—The State
4 or Indian Tribe shall establish an expedited
5 protocol to evaluate a facility’s ability (including
6 a facility retrofitted under paragraph (4)(B)(i))
7 to cohort individuals who test positive for
8 COVID–19, individuals who test negative for
9 COVID–19, or individuals with unknown status
10 or who are under observation regarding
11 COVID–19. Such protocol shall include an in-
12 fection control self-assessment and an abbrev-
13 viated survey and may include a standard sur-
14 vey.

15 (E) TECHNICAL ASSISTANCE AND RE-
16 SOURCES.—

17 (i) IN GENERAL.—The State or In-
18 dian Tribe shall ensure that skilled nursing
19 facilities, nursing facilities, intermediate
20 care facilities, and psychiatric hospitals re-
21 ceive technical assistance and the nec-
22 essary resources to—

23 (I) implement proper infection
24 control protocols and practices;

1 (II) minimize unnecessary trans-
2 fers;

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

5 (IV) effectively use and provide
6 access to testing and personal protec-
7 tive equipment, including guidance on
8 how to effectively use personal protec-
9 tive equipment when access is limited;

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

13 (VI) conduct other activities, as
14 determined appropriate by the Sec-
15 retary.

16 (ii) REQUIREMENT FOR TECHNICAL
17 ASSISTANCE.—The technical assistance re-
18 quired under clause (i) shall be provided
19 by—

20 (I) quality improvement organi-
21 zations under part B of title XI of the
22 Social Security Act (42 U.S.C. 1320c
23 et seq.); or

24 (II) other independent organiza-
25 tions of a similar type that do not

1 have conflicts of interest and are
2 deemed appropriate by the Secretary.

3 (4) USE OF FUNDS.—

4 (A) IN GENERAL.—A State or Indian
5 Tribe that receives a payment under the pro-
6 gram under this subsection shall use funds to
7 support skilled nursing facilities, nursing facili-
8 ties, intermediate care facilities, and psychiatric
9 hospitals that cohort, and provide services to,
10 individuals who test positive for COVID–19, in-
11 dividuals who test negative for COVID–19, and
12 individuals with unknown status or who are
13 under observation regarding COVID–19. Such
14 cohorting and services shall be in compliance
15 with all guidance issued by the Secretary during
16 the emergency period.

17 (B) PERMISSIBLE USES AND AUTHORIZED
18 COSTS.—States and Indian Tribes shall use the
19 payments received under the program under
20 this subsection for the following purposes:

21 (i) To retrofit non-traditional facility-
22 based settings, such as hotels, dormitories,
23 schools, churches, and other temporary or
24 permanent shelters, for temporary use as
25 skilled nursing facilities, nursing facilities,

1 intermediate care facilities, and psychiatric
2 hospitals.

3 (ii) To support skilled nursing facili-
4 ties, nursing facilities, intermediate care
5 facilities, and psychiatric hospitals with the
6 establishment of specialized units within
7 such facilities.

8 (iii) To provide testing kits or other
9 supplies needed for rapid turnaround to
10 test staff members and residents of skilled
11 nursing facilities, nursing facilities, inter-
12 mediate care facilities, and psychiatric hos-
13 pitals for COVID–19.

14 (iv) To provide personal protective
15 equipment to staff members of skilled
16 nursing facilities, nursing facilities, inter-
17 mediate care facilities, psychiatric hos-
18 pitals, and, where appropriate, to residents
19 of such facilities.

20 (v) To safely facilitate necessary
21 transfers to and from skilled nursing facili-
22 ties, nursing facilities, intermediate care
23 facilities, and psychiatric hospitals.

24 (vi) To safely facilitate voluntary dis-
25 charges to home and community-based set-

1 tings from skilled nursing facilities, nurs-
2 ing facilities, intermediate care facilities,
3 and psychiatric hospitals.

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

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

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

24 (5) **ADDITIONAL GUIDANCE.**—For purposes of
25 the program under this subsection, not later than 30

1 days after the date of enactment of this Act (and
2 prior to making any payments to States or Indian
3 Tribes under the program) the Secretary shall estab-
4 lish guidance on the following:

5 (A) Which skilled nursing facilities, nurs-
6 ing facilities, intermediate care facilities, and
7 psychiatric hospitals are permitted to cohort in-
8 dividuals who test positive for COVID-19, indi-
9 viduals who test negative for COVID-19, and
10 individuals with unknown status or who are
11 under observation regarding COVID-19. Such
12 guidance shall account for—

13 (i) the facility's history of compliance
14 with the requirements of participation
15 under titles XVIII and XIX of the Social
16 Security Act (42 U.S.C. 1395 et seq., 1396
17 et seq.), including requirements relating to
18 infection control and emergency prepared-
19 ness;

20 (ii) the facility's current or past affili-
21 ation (as either a candidate or participant)
22 with the special focus facility program
23 under section 1819(f)(8) of such Act (42
24 U.S.C. 1395i-3(f)(8)) and section

1 1919(f)(10) of such Act (42 U.S.C.
2 1396r(f)(10)); and

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

5 (B) Consumer protections for residents of
6 skilled nursing facilities, nursing facilities, in-
7 termediate care facilities, and psychiatric hos-
8 pitals affected by COVID-19 cohorting policies,
9 including by—

10 (i) prohibiting facilities from dis-
11 charging residents for failure to pay for
12 services; and

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

18 (I) information on the rights of
19 the resident;

20 (II) contact information for the
21 State Long-Term Care Ombudsman
22 program (as described in section
23 712(a)(1) of the Older Americans Act
24 of 1965 (42 U.S.C. 3058g(a)(1)));
25 and

1 (III) contact information for the
2 protection and advocacy system (as
3 established under subtitle C of title I
4 of the Developmental Disabilities As-
5 sistance and Bill of Rights Act of
6 2000 (42 U.S.C. 15041 et seq.).

7 (C) Strategies to effectively cohort resi-
8 dents of skilled nursing facilities, nursing facili-
9 ties, intermediate care facilities, and psychiatric
10 hospitals based on COVID–19 status, includ-
11 ing—

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

19 (ii) how to safely and effectively move,
20 shelter in place, and cohort within facili-
21 ties;

22 (iii) how to establish separate facilities
23 for individuals who test positive for
24 COVID–19;

1 (iv) how to establish separate facilities
2 for individuals who test negative for
3 COVID-19;

4 (v) proper procedures for conducting
5 COVID-19 testing, sending tests to be
6 analyzed, and effective use of COVID-19
7 testing;

8 (vi) adequate staffing, with contin-
9 gency plans during shortages, including the
10 use of—

11 (I) separate staffing according to
12 COVID-19 status; and

13 (II) surge teams;

14 (vii) effective use of personal protec-
15 tive equipment, including in cases where
16 access to an adequate supply of personal
17 protective equipment is limited;

18 (viii) how to minimize resident trans-
19 fers to and from the facilities;

20 (ix) how to safely effectuate resident
21 transfers to home and community-based
22 settings from the facilities; and

23 (x) how to uphold resident rights in
24 accordance with titles XVIII and XIX of

1 the Social Security Act (42 U.S.C. 1395 et
2 seq., 1396 et seq.).

3 (6) REPORT.—Not later than 2 years after the
4 date of the enactment of this section, the Secretary
5 shall submit to the appropriate Committees of Con-
6 gress a report on the program under this subsection,
7 together with recommendations for such legislation
8 and administrative action as the Secretary deter-
9 mines appropriate.

10 (7) FUNDING.—Out of any monies in the
11 Treasury of the United States not otherwise appro-
12 priated, there are appropriated to the Secretary
13 \$20,000,000,000 for fiscal year 2020 for making
14 payments to States and Indian Tribes under this
15 subsection. Amounts appropriated under the pre-
16 ceding sentence shall remain available until ex-
17 pended.

18 (b) MONTHLY BRIEFINGS ON THE COVID–19 RE-
19 SPONSE.—

20 (1) MONTHLY BRIEFINGS.— Not later than 15
21 days after the date of enactment of this Act, and at
22 least once every 30 days thereafter through the end
23 of the emergency period, the Secretary shall brief
24 the appropriate Committees of Congress (including
25 all members of such Committees) on the COVID–19

1 outbreak in skilled nursing facilities, nursing facili-
2 ties, intermediate care facilities, and psychiatric hos-
3 pitals and the response by the Secretary to such out-
4 break.

5 (2) REPORT.—Not later than 1 year after the
6 date of enactment of this Act, the Inspector General
7 of the Department of Health and Human Services
8 shall submit to Congress a report that evaluates the
9 response of the Secretary to the COVID–19 out-
10 break in skilled nursing facilities, nursing facilities,
11 intermediate care facilities, and psychiatric hospitals
12 such as guidance, rules, or waivers established by
13 the Secretary.

14 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to affect the requirements or condi-
16 tions of participation under titles XVIII and XIX of the
17 Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.)
18 with respect to skilled nursing facilities, nursing facilities,
19 intermediate care facilities, and psychiatric hospitals.

20 (d) DEFINITIONS.—In this section:

21 (1) APPROPRIATE COMMITTEES OF CON-
22 GRESS.—The term “appropriate Committee of Con-
23 gress” means—

24 (A) the Committee on Finance of the Sen-
25 ate;

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

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

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

7 (E) the Committee on Energy and Com-
8 merce of the House of Representatives.

9 (2) EMERGENCY PERIOD.—The term “emer-
10 gency period” means the emergency period described
11 in section 1135(g)(1)(B) of the Social Security Act
12 (42 U.S.C. 1320b–5(g)(1)(B)).

13 (3) INDIAN TRIBE.—The term “Indian Tribe”
14 has the meaning given to the term “Indian tribe” in
15 section 4 of the Indian Self-Determination and Edu-
16 cation Assistance Act (25 U.S.C. 5304).

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

21 (5) NURSING FACILITY.—The term “nursing
22 facility” has the meaning given that term in section
23 1919(a) of the Social Security Act (42 U.S.C.
24 1396r(a)).

1 (6) PSYCHIATRIC HOSPITAL.—The term “psy-
2 chiatric hospital” has the meaning given that term
3 in section 1861(f) of the Social Security Act (42
4 U.S.C. 1395x(f)).

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

7 (8) SKILLED NURSING FACILITY.—The term
8 “skilled nursing facility” has the meaning given that
9 term in section 1819(a) of the Social Security Act
10 (42 U.S.C. 1395i–3(a)).

11 (9) STATE.—The term “State” means the 50
12 States, the District of Columbia, the Commonwealth
13 of Puerto Rico, the United States Virgin Islands,
14 Guam, the Commonwealth of the Northern Mariana
15 Islands, and American Samoa.

16 (10) SURGE TEAM.—The term “surge team”
17 means a short-term staffing team.