

115TH CONGRESS
1ST SESSION

H. R. 4704

To amend titles XVIII and XIX of the Social Security Act to codify the emergency preparedness final rule for skilled nursing facilities and nursing facilities as conditions of participation under the Medicare and Medicaid programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2017

Ms. WASSERMAN SCHULTZ (for herself and Mr. WALBERG) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XVIII and XIX of the Social Security Act to codify the emergency preparedness final rule for skilled nursing facilities and nursing facilities as conditions of participation under the Medicare and Medicaid programs, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Nursing Home Com-
3 fortable Air Ready for Emergencies Act” or the “Nursing
4 Home CARE Act”.

5 **SEC. 2. CODIFYING EMERGENCY PREPAREDNESS RULE**
6 **FOR SKILLED NURSING FACILITIES AND**
7 **NURSING FACILITIES AS CONDITIONS OF**
8 **PARTICIPATION UNDER MEDICARE AND MED-**
9 **ICAID PROGRAMS.**

10 (a) **MEDICARE.**—Section 1819(a) of the Social Secu-
11 rity Act (42 U.S.C. 1395i–3(a)) is amended—

12 (1) in paragraph (2), by striking at the end
13 “and”;

14 (2) in paragraph (3), by striking the period at
15 the end and inserting “; and”;

16 (3) by inserting after paragraph (3) the fol-
17 lowing new paragraph:

18 “(4) beginning not later than the date of the
19 enactment of this paragraph—

20 “(A) meets the emergency preparedness re-
21 quirements applicable to skilled nursing facili-
22 ties under the final rule ‘Medicare and Medicaid
23 Programs; Emergency Preparedness Require-
24 ments for Medicare and Medicaid Participating
25 Providers and Suppliers’ as published by the

1 Centers for Medicare & Medicaid Services on
2 September 16, 2016 (81 Fed. Reg. 63859); and

3 “(B) has in place alternative sources of en-
4 ergy capable of powering heating, ventilation,
5 and air conditioning systems for at least 96
6 hours after a catastrophic natural disaster.”;
7 and

8 (4) by adding at the end the following:

9 “Nothing in paragraph (4)(B) shall be construed to re-
10 quire a skilled nursing facility to continuously maintain
11 a supply of fuel on its premise, as long as such facility
12 is able to demonstrate to the Secretary the ability of the
13 facility to obtain any fuel necessary to satisfy such para-
14 graph.”.

15 (b) MEDICAID.—Section 1919(a) of the Social Secu-
16 rity Act (42 U.S.C. 1396r(a)) is amended—

17 (1) in paragraph (2), by striking at the end
18 “and”;

19 (2) in paragraph (3), by striking the period at
20 the end and inserting “; and”;

21 (3) by inserting after paragraph (3) the fol-
22 lowing new paragraph:

23 “(4) beginning not later than the date of the
24 enactment of this paragraph—

1 “(A) meets the emergency preparedness re-
2 quirements applicable to nursing facilities under
3 the final rule ‘Medicare and Medicaid Pro-
4 grams; Emergency Preparedness Requirements
5 for Medicare and Medicaid Participating Pro-
6 viders and Suppliers’ as published by the Cen-
7 ters for Medicare & Medicaid Services on Sep-
8 tember 16, 2016 (81 Fed. Reg. 63859); and

9 “(B) has in place alternative sources of en-
10 ergy capable of powering heating, ventilation,
11 and air conditioning systems for at least 96
12 hours after a catastrophic natural disaster.”;
13 and

14 (4) by adding at the end the following new sen-
15 tence:

16 “Nothing in paragraph (4)(B) shall be construed to re-
17 quire a nursing facility to continuously maintain a supply
18 of fuel on its premise, as long as such facility is able to
19 demonstrate to the Secretary the ability of the facility to
20 obtain any fuel necessary to satisfy such paragraph.”.

21 (c) CIVIL MONEY PENALTIES.—

22 (1) INCREASED PENALTY.—In the case of a de-
23 termination to impose a civil money penalty under
24 section 1819(h)(2)(B)(ii) of the Social Security Act
25 (42 U.S.C. 1395i-3(h)(2)(B)(ii)) or section

1 1919(h)(2)(C)(ii) of such Act (42 U.S.C.
2 1396r(h)(2)(C)(ii)), with respect to a violation of
3 paragraph (4) of section 1819(a) of such Act (42
4 U.S.C. 1395i–3(a)) or of paragraph (4) of section
5 1919(a) of such Act (42 U.S.C. 1396r(a)), as added
6 by subsections (a) and (b), respectively, such penalty
7 shall be three times the amount that would other-
8 wise be imposed pursuant to the interim final rule,
9 relating to the adjustment of civil money penalties
10 for inflation, promulgated by the Department of
11 Health and Human Services on September 6, 2016
12 (81 Fed. Reg. 61538). Nothing in this paragraph
13 shall be construed as limiting the discretion of the
14 Secretary of Health and Human Services in deter-
15 mining the amount of a civil monetary penalty that
16 would otherwise be imposed before application of
17 this paragraph.

18 (2) ADDITIONAL PENALTY.—

19 (A) MEDICARE.—Section 1819(h)(2)(B)(ii)
20 of the Social Security Act (42 U.S.C. 1395i–
21 3(h)(2)(B)(ii)) is amended—

22 (i) in subclause (I), by inserting “,
23 subject to subclause (V),” after “exceed”;
24 and

1 (ii) by adding at the end the following
2 new subclause:

3 “(V) INCREASED PENALTY.—In
4 the case of noncompliance described
5 in subclause (I) of a skilled nursing
6 facility that results in the death of a
7 resident of the facility, the Secretary
8 may impose an additional civil money
9 penalty under such subclause in an
10 amount not to exceed \$100,000.”.

11 (B) MEDICAID.—Section 1919(h)(3)(C)(ii)
12 of the Social Security Act (42 U.S.C.
13 1396r(h)(3)(C)(ii)) is amended—

14 (i) in subclause (I), by inserting “,
15 subject to subclause (V),” after “exceed”;
16 and

17 (ii) by adding at the end the following
18 new subclause:

19 “(V) INCREASED PENALTY.—In
20 the case of noncompliance described
21 in subclause (I) of a nursing facility
22 that results in the death of a resident
23 of the facility, the Secretary may im-
24 pose an additional civil monetary pen-

1 alty under such subclause in an
2 amount not to exceed \$100,000.”.

3 (3) STATE SURVEY AGENCIES COMPLIANCE RE-
4 VIEW.—The Secretary of Health and Human Serv-
5 ices shall direct State survey agencies, in consulta-
6 tion with emergency preparedness experts, to review
7 findings related to the final rule “Medicare and
8 Medicaid Programs; Emergency Preparedness Re-
9 quirements for Medicare and Medicaid Participating
10 Providers and Suppliers” as published by the Cen-
11 ters for Medicare & Medicaid Services on September
12 16, 2016 (81 Fed. Reg. 63859) and make a deter-
13 mination of whether a skilled nursing facility or
14 nursing facility is substantially compliant or non-
15 compliant (as defined by the Secretary) with such
16 rule, with special attention given to Ftags E–0001,
17 E–0004, E–0013, E–0020, E–0025, E–0036, 0037,
18 and E–0041. If a State survey agency makes a de-
19 termination of substantial non-compliance for any
20 such facility in a State, the agency shall then inform
21 those facilities of that finding, and request that this
22 be noted as an indicator on Nursing Home Compare.

23 **SEC. 3. LOAN FUND.**

24 (a) ESTABLISHMENT.—The Secretary of Health and
25 Human Services shall, subject to subsection (e), establish

1 a loan program that provides loans to qualifying nursing
2 facilities and skilled nursing facilities for costs relating to
3 coming into compliance with the requirement of paragraph
4 (4) of section 1819(a) of the Social Security Act (42
5 U.S.C. 1395i-3(a)) and paragraph (4) of section 1919(a)
6 of such Act (42 U.S.C. 1396r(a)), as added by section 2.

7 (b) APPLICATION.—No loan may be provided under
8 this section to a qualifying nursing facility or skilled nurs-
9 ing facility, except pursuant to an application that is sub-
10 mitted and approved in a time, manner, and form specified
11 by the Secretary. A loan under this section shall be on
12 such terms and conditions and meet such requirements as
13 the Secretary determines appropriate.

14 (c) SELECTION.—

15 (1) IN GENERAL.—The Secretary shall establish
16 criteria for selecting among qualifying nursing facili-
17 ties and skilled nursing facilities that apply for a
18 loan under this section.

19 (2) QUALIFYING FACILITIES.—For purposes of
20 this section, qualifying nursing facilities and skilled
21 nursing facilities are nursing facilities under section
22 1919 of the Social Security Act (42 U.S.C. 1396r)
23 and skilled nursing facilities under section 1819 of
24 such Act (42 U.S.C. 1395i-3) that—

1 (A) have a monthly rate of less than
2 \$6,000 for private rooms; or

3 (B) have fewer than 50 beds.

4 (d) FEES.—The Secretary may charge such fees as
5 determined appropriate with respect to a loan issued
6 under this section, in an amount established annually by
7 the Secretary, as necessary to reduce to zero the cost (as
8 defined in section 502 of the Federal Credit Reform Act
9 of 1990) to the Department of Health and Human Serv-
10 ices of making loans under this section, which amounts
11 shall be paid to and retained by the Secretary.

12 (e) LIMITATION.—Commitments for loans authorized
13 under this section shall not exceed—

14 (1) \$50,000,000 in fiscal year 2018;

15 (2) \$50,000,000 in fiscal year 2019; and

16 (3) \$100,000,000 for the duration of the loan
17 program.

18 **SEC. 4. PRIORITIZATION UNDER ALL-HAZARDS PUBLIC**
19 **HEALTH EMERGENCY PREPAREDNESS AND**
20 **RESPONSE PLAN.**

21 (a) IN GENERAL.—Section 319C–1(b)(2)(A) of the
22 Public Health Service Act (42 U.S.C. 247d–3a(b)(2)(A))
23 is amended—

24 (1) in clause (viii), by striking at the end
25 “and”;

1 (2) in clause (ix), by adding at the end “and”;

2 and

3 (3) by inserting after clause (ix) the following

4 new clause:

5 “(x) a description of—

6 “(I) the measures the entity has
7 in place prioritizing nursing facilities
8 and skilled nursing facilities with re-
9 spect to public health emergency pre-
10 paredness in the same manner as such
11 plan prioritizes hospitals, while ensur-
12 ing that, in prioritizing nursing facili-
13 ties, skilled nursing facilities, and hos-
14 pitals, the entity retains the discretion
15 to prioritize among such facilities; and

16 “(II) information on the plans of
17 each electric utility company within
18 the entity’s jurisdiction to ensure that
19 such facilities remain functioning or
20 return to functioning as soon as prac-
21 ticable during power outages caused
22 by natural hazards, including severe
23 weather events;”.

24 (b) EFFECTIVE DATE.—The amendments made by
25 subsection (a) shall apply with respect to cooperative

- 1 agreements awarded on or after the date of the enactment
- 2 of this Act.

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