

117TH CONGRESS
1ST SESSION

H. R. 3733

To amend titles XVIII and XIX of the Social Security Act to require skilled nursing facilities, nursing facilities, intermediate care facilities for the intellectually disabled, and inpatient rehabilitation facilities to permit essential caregivers access during any public health emergency under the Medicare and Medicaid programs.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2021

Ms. TENNEY (for herself, Mr. LARSON of Connecticut, Ms. STEFANIK, Mr. RUTHERFORD, Ms. HERRELL, Mr. CAWTHORN, Ms. SPANBERGER, Mr. BUDD, Mr. VAN DREW, and Mr. COHEN) 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 require skilled nursing facilities, nursing facilities, intermediate care facilities for the intellectually disabled, and inpatient rehabilitation facilities to permit essential caregivers access during any public health emergency under the Medicare and Medicaid programs.

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 “Essential Caregivers
3 Act of 2021”.

4 **SEC. 2. RIGHT TO ESSENTIAL CAREGIVERS.**

5 During a public health emergency declared by the
6 Secretary of Health and Human Services under section
7 319 of the Public Health Service Act, a resident of any
8 skilled nursing facility (as defined in section 1819(a) of
9 the Social Security Act (42 U.S.C. 1395i–3(a))), nursing
10 facility (as defined in section 1919(a) of such Act (42
11 U.S.C. 1396r(a))), inpatient rehabilitation facility de-
12 scribed in section 1886(a)(1)(Z) of such Act (42 U.S.C.
13 1395cc(a)(1)(Z)), or intermediate care facility for the in-
14 tellectually disabled (as defined in section 1905(d) of such
15 Act (42 U.S.C. 1396d(d)) has the right to designate two
16 essential caregivers to have access to and provide assist-
17 ance and support to the resident at any time notwith-
18 standing any waiver made under section 1135 of the So-
19 cial Security Act (42 U.S.C. 1320b–5). The resident may
20 change who is designated as an essential caregiver.

21 **SEC. 3. REQUIRING FACILITIES TO PERMIT ESSENTIAL**
22 **CAREGIVERS ACCESS DURING ANY PUBLIC**
23 **HEALTH EMERGENCY.**

24 (a) SKILLED NURSING FACILITIES; NURSING FA-
25 CILITIES.—Section 1819(c) and 1919(c) of the Social Se-

1 curity Act (42 U.S.C. 1395i–3(c), 1396r(c)) are each
2 amended—

3 (1) in paragraph (3)—

4 (A) in subparagraph (D), by striking
5 “and” at the end;

6 (B) in subparagraph (E), by striking the
7 period and inserting “; and”; and

8 (C) by adding at the end the following new
9 subparagraph:

10 “(F) implement and maintain, during any
11 public health emergency declared by the Sec-
12 retary under section 319 of the Public Health
13 Service Act on or after the date of the enact-
14 ment of this subparagraph for the area in which
15 such facility is located and notwithstanding any
16 waiver made under section 1135, the essential
17 caregivers program described in paragraph
18 (7).”; and

19 (2) by adding at the end the following new
20 paragraph:

21 “(7) ESSENTIAL CAREGIVERS PROGRAM.—

22 “(A) IN GENERAL.—For purposes sub-
23 paragraph (F) of paragraph (3), the essential
24 caregivers program described in this paragraph
25 is a program implemented by a facility de-

scribed in such paragraph under which such facility shall—

“(i) allow each resident of such facility the unqualified ability to elect not more than 2 essential caregivers (as defined in subparagraph (D)) to have access to, and provide assistance (as described in subparagraph (C)(i)) to, such resident at such facility, and allow each such resident to amend such election at any time;

“(ii) permit each such caregiver so elected by such resident to provide such assistance to such resident at such facility for 12 hours every day (or, in the case such care is end-of-life care, for an unlimited number of hours every day); and

“(iii) enforce the agreement described in subparagraph (C)(ii) with respect to an essential caregiver.

“(B) PRESUMPTION OF ELECTION.—For purposes of subparagraph (A), in the case of a resident who is unable, by reason of physical or mental disability, to make an election described in such subparagraph, the resident representative (as defined in section 483.5 of title 42,

1 Code of Federal Regulations) of such resident
 2 shall be permitted to make such election for
 3 such resident.

4 “(C) ESSENTIAL CAREGIVER DEFINED.—
 5 For purposes of this paragraph, the term ‘es-
 6 sential caregiver’ means, with respect to a resi-
 7 dent of a facility described in subparagraph
 8 (A), an individual who—

9 “(i) will provide assistance consisting
 10 of activities of daily living, emotional sup-
 11 port, or companionship to such resident;
 12 and

13 “(ii) agrees to follow all safety proto-
 14 cols established by such facility, which
 15 shall be clearly specified in writing and be
 16 the same as such protocols (including safe-
 17 ty standards and entry requirements) ap-
 18 plicable to staff of such facility.”.

19 (b) INTERMEDIATE CARE FACILITIES FOR THE IN-
 20 TELLECTUALLY DISABLED.—Section 1905(d) of the So-
 21 cial Security Act (42 U.S.C. 1396d(d)) is amended—

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

24 (2) in paragraph (3), by striking the period and
 25 inserting “; and”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(4) the institution implements and maintains,
4 during any public health emergency declared by the
5 Secretary on or after the date of the enactment of
6 this paragraph under section 319 of the Public
7 Health Service Act for the area in which such insti-
8 tution is located and notwithstanding any waiver
9 made under section 1135, the essential caregivers
10 program described in section 1919(c)(7) in the same
11 manner as if such institution were a nursing facil-
12 ity.”.

13 (c) INPATIENT REHABILITATION FACILITIES.—Sec-
14 tion 1866(a)(1) of the Social Security Act (42 U.S.C.
15 1395cc(a)(1)) is amended—

16 (1) in subparagraph (X), by striking “and” at
17 the end;

18 (2) in subparagraph (Y), by striking the period
19 at the end and inserting “, and”; and

20 (3) by inserting after subparagraph (Y) the fol-
21 lowing new subparagraph:

22 “(Z) in the case of an inpatient rehabilitation
23 facility that is located on the same campus (as de-
24 fined by the Secretary) as a skilled nursing facility,
25 nursing facility (as defined in section 1919(a)), or

1 intermediate care facility for the intellectually dis-
2 abled (as described in section 1905(d)), to establish
3 and maintain, during any public health emergency
4 declared by the Secretary on or after the date of the
5 enactment of this paragraph under section 319 of
6 the Public Health Service Act for the area in which
7 such institution is located and notwithstanding any
8 waiver made under section 1135, the essential care-
9 givers program described in section 1819(c)(7) in
10 the same manner as if such institution were a skilled
11 nursing facility.”.

12 (d) COMPLIANCE AND NOTIFICATION.—

13 (1) AUTHORITY.—No caregiver who meets the
14 definition of an essential caregiver in clause (i) of
15 paragraph (7)(C) of either section 1819(c) and
16 1919(c) of the Social Security Act and who upholds
17 the agreement described in clause (ii) of such para-
18 graph shall be denied access to the skilled nursing
19 facility (as defined in section 1819(a) of the Social
20 Security Act (42 U.S.C. 1395i–3(a))), nursing facil-
21 ity (as defined in section 1919(a) of such Act (42
22 U.S.C. 1396r(a))), inpatient rehabilitation facility
23 described in section 1886(a)(1)(Z) of such Act (42
24 U.S.C. 1395cc(a)(1)(Z)), or intermediate care facil-
25 ity for the intellectually disabled (as defined in sec-

tion 1905(d) of such Act (42 U.S.C. 1396d(d)) of the resident involved.

(2) NOTIFICATION.— In the event of non-compliance with either such clause, such facility must first provide a warning to the essential caregiver and resident in writing citing specific issues of non-compliance and providing clear guidance for corrective measures.

(3) ENFORCEMENT.—Should the essential caregiver or resident fail to take corrective action, they may be subsequently denied access. In such cases, the facility shall provide to such caregiver and such resident (or health care proxy of such resident), not later than 24 hours after such failure to allow access occurs, a written explanation as to why such caregiver was not permitted to furnish such assistance to such resident. Such explanation must include the resident's and caregivers' options for appeal (as described in subsection (e)).

(e) OPTIONS FOR RESIDENT AND CAREGIVER APPEAL.—

(1) IN GENERAL.—During any period in which any skilled nursing facility (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))), nursing facility (as defined in section

1 1919(a) of such Act (42 U.S.C. 1396r(a))), inpa-
2 tient rehabilitation facility described in section
3 1886(a)(1)(Z) of such Act (42 U.S.C.
4 1395cc(a)(1)(Z)), or intermediate care facility for
5 the intellectually disabled (as defined in section
6 1905(d) of such Act (42 U.S.C. 1396d(d)) is re-
7 quired to establish and maintain the essential care-
8 givers program under section 1819(c)(3)(F) of such
9 Act, section 1919(c)(3) of such Act, or section
10 1905(d)(4) of such Act (as added by subsections (a)
11 and (b)), the Secretary of Health and Human Serv-
12 ices shall, not later than 15 days after the first day
13 of such period, establish and maintain a process
14 to—

15 (A) receive appeals from residents and
16 caregivers challenging a decision to deny access;
17 and

18 (B) investigate all such appeals within 48
19 hours of receipt.

20 (f) ENFORCEMENT.—With respect to appeals re-
21 ceived under paragraph (1), the Secretary of Health and
22 Human Services shall make a determination as to whether
23 a facility described in subsection (e)(1) violated a require-
24 ment or prohibition in this Act or in an amendment made
25 by this Act within 7 days of commencing its investigation.

1 If the Secretary determines that a facility has violated a
2 requirement or prohibition in this Act or in an amendment
3 made by this Act, the Secretary shall—

4 (1) require the facility to establish a corrective
5 action plan to prevent the recurrence of such viola-
6 tion within a 7-day period of receiving notice from
7 the Secretary; and

8 (2) impose a civil money penalty in an amount
9 to be determined by the Secretary if such facility
10 fails to implement the corrective action plan with the
11 7-day period specified in paragraph (1).

12 (g) REGULATIONS.—The Secretary of Health and
13 Human Services shall, after consultation with stakeholders
14 (including residents, family members, long-term care om-
15 budsmen, other advocates of nursing home residents, and
16 nursing home providers, promulgate regulations to carry
17 out this Act.

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