



COMMITTEE *on* FINANCE

* * * *Chairman Chuck Grassley*

EMERGENCY SUPPORT FOR NURSING HOMES AND ELDER JUSTICE REFORM ACT OF 2020

Section 1. Short title; table of contents. This legislation is entitled the “Emergency Support for Nursing Homes and Elder Justice Reform Act of 2020.”

Section 2. Definitions. Defines terms used in the legislation, such as “COVID-19 public health emergency period,” “nursing facility,” “skilled nursing facility,” “participating provider.”

Section 3. Providing resources for personal protective equipment and testing. Ensures that a portion of any payments received or Federal relief funds made available on or after July 1, 2020, for responding to the COVID-19 emergency period must be devoted to the following two purposes:

- Establish and maintain a supply of personal protective equipment (PPE) at a level that the Centers for Disease Control and Prevention (CDC) deems sufficient to ensure the safety of personnel employed by state survey agencies, personnel of the approximately 15,000 nursing homes that participate in the Medicare and Medicaid programs, and personnel employed by licensed assisted living or personal care facilities; and
- Provide COVID–19 testing, for a period of 60 days, for personnel and residents of nursing homes that participate in the Medicare and Medicaid programs as well as assisted living or personal care facilities.

Also provides that the CDC Director must collaborate with the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Federal Emergency Management Agency (FEMA) in determining the appropriate level of PPE and testing in these facilities during this period. Further provides that the CDC, in collaboration with HHS and FEMA, shall issue guidance to States on compliance with these requirements.

Section 4. Promoting Transparency about COVID–19-Related Cases and Fatalities, and Staffing Levels in Nursing Homes. Confirms that nursing homes participating in the Medicare and Medicaid programs must resume compliance with an existing periodic reporting requirement, under 42 U.S.C. 1320a–7j(g), which was temporarily waived by the Department of Health and Human Services (HHS) during the COVID-19 relief period. To this end, the HHS Secretary must develop a plan for ensuring nursing homes electronically submit direct care staffing information to HHS, based on payroll and other auditable data, for the entire COVID-19 emergency period beginning on January 1, 2020.

Also requires the HHS Secretary to ensure that nursing homes participating in the Medicare and Medicaid programs will report all cases of COVID-19, as well as all fatalities, in such facilities for the period from January 1 through May 8, 2020 to the CDC (there by ensuring that there are no gaps in such reported data for the 2020 calendar year). Requires that the data must be reported to the HHS Secretary in a format that is consistent with the other data that the HHS Secretary on May 8, 2020 directed such facilities to provide to the CDC. Further provides that the HHS Secretary shall develop a plan for determining the number of such nursing home fatalities that are attributable to COVID-19 during this period.

Section 5. Establishing strike teams. Provides that if health-related emergency payments from the Federal government are made available, under COVID-19 relief legislation that is enacted on or after July 1, 2020, a portion of the funding must be used to establish statewide or regional strike teams to respond to COVID–19-related crises in nursing homes and assisted living facilities. Clarifies that the strike teams may include assessment, testing, and clinical teams, and calls for the State to



issue a written directive establishing a mission for each such team (e.g., performing medical examinations, conducting COVID–19 testing, and assisting nursing homes with the implementation of quarantine, isolation, or disinfection procedures). Calls for each strike team to be comprised of individuals who have relevant skills, qualifications, and experience to serve as members of assessment, testing, and clinical teams.

Further provides that members of strike teams, which remain subject to the State’s oversight and direction (and can be disbanded by the State), will receive a State-issued letter of authorization describing their authority to serve, their mission, and the requirement that team members maintain the confidentiality of patient information. Also clarifies that a strike team and its members may not use this letter of authorization for any purpose except in connection with the team’s mission of acting in good faith to promote resident and employee safety in nursing homes in which COVID–19 is confirmed to be present. Also provides that each State shall establish protocols and procedures for requesting the assistance of a strike team as well as any other procedures that are necessary for each team’s operation.

Section 6. Promoting identification and reporting of abuse and neglect in long-term care facilities.

Requires the HHS Secretary, in collaboration with the HHS Office of Inspector General, to compile a comprehensive list of diagnosis codes that may indicate physical or sexual abuse or neglect of nursing home residents, and develop a plan for HHS reliance on the data from Medicare and Medicaid claims containing those codes, for the purpose of verifying that incidents have been properly reported. Also provides that the HHS Secretary shall make such claims data available to State survey agency personnel within two years after the enactment of this section. This requirement stems from a recommendation of the HHS Office of Inspector General (OIG).

Also calls for the HHS Secretary, in collaboration with the Attorney General, to evaluate and, if needed, recommend improvements in, current protocols that call for the prompt reporting of physical injuries that are indicative of abuse to the authorities, by state survey agency personnel. Requires the HHS Secretary to report its findings to Congress within 180 days the evaluation is completed and recommend proposed legislation and administrative action or other improvements, if appropriate.

Imposes a deadline, of one year after enactment of this Act, by which the HHS Secretary must update guidance for State survey and certification agencies on the requirements that protect nursing home resident privacy and prohibit mental abuse, including social media abuse. Calls for the Secretary’s adoption of procedures to ensure that violations of current Federal regulations, which prohibit misuse of photographs, audio and video recordings, and the inappropriate posting or sharing of such photographs or recordings on social media networks or through multimedia messages, are reported by State survey agencies to the appropriate authorities and that such violations are recorded and tracked in the Automated Survey Processing Environment (“ASPEN”) and Complaints/Incident Tracking System (“ACTS”).

Section 7. Promoting quality of life of long-term care facility residents through televisitation. Directs the HHS Secretary to take steps to ensure that the residents of each nursing home enrolled in Medicare or Medicaid have reasonable access to the use of the Internet (to the extent practicable), to support visual telecommunication by their residents with family and friends. Specifies that relief assistance provided by Congress during the COVID-19 emergency may be used to support this form of televisitation for both nursing homes and licensed assisted living or personal care facilities during the COVID–19 public health emergency period. Also clarifies that technology purchased with such Federal relief assistance can continue to be used by nursing facilities after the end of the emergency period (with priority in access accorded to residents who are located more than 50 miles from their immediate family or who face significant impediments to in-person visitation).

Section 8. Upgrading nursing home compare and the Five-Star rating system. Calls for HHS, acting through its Centers for Medicare and Medicaid Services (CMS), to do a comprehensive review of its Five-Star Quality Rating System to



measure and publicly report the quality of nursing homes. Specifies what must be included in this review, and requires that the Secretary consult with certain stakeholders in carrying out this review. Provides that the HHS Secretary shall make a final report to Congress that includes findings and recommendations based on the review, which must be completed within a year after the COVID-19 public health emergency period ends. Also provides that the HHS Secretary shall transfer, from the Federal Hospital Insurance Trust Fund, a one-time allocation of \$20 million, to be used by CMS to carry out this section.

Section 9. Enhancing Federal oversight of nursing homes participating in Medicare or Medicaid. Requires that the HHS Secretary periodically publish lists of underperforming nursing homes on the HHS website and the “Nursing Home Compare” Medicare website. The list shall include all nursing facilities that receive the lowest ranking on HHS’s Five Star Rating System (i.e., all nursing homes that were designated for inclusion in the HHS “Special Focus Facility” (SFF) program (under 42 U.S.C. 1395i-3(f)(8), 1396r(f)(10)) as well as all nursing homes that were candidates for, but not included in this program, based on the most recent survey of each facility). To the extent that the HHS Secretary maintains a system to collect data on certification deficiencies and licensure violations relating to nursing homes (such as “ASPEN”), the Secretary must develop methods to separately track reports of confirmed incidents of nursing home abuse or neglect in survey forms submitted by nursing homes through that system.

Also requires that the HHS Secretary, within 18 months after enactment of this Act, issue guidance for personnel of nursing homes enrolled in the Medicare or Medicaid programs, for the purpose of clarifying the meaning of certain statutory or regulatory terms (e.g., “suspicious”, “injuries of unknown source”, and “mistreatment”), which relate to reporting and tracking incidents of abuse or exploitation of nursing home residents by facility staff, including on social media.

Section 10. Continuing funding for Elder Justice Act of 2010 programs. Continues funding for selected programs that were established by the original Elder Justice Act (e.g., the adult protective services program, long-term care ombudsman training, and elder abuse forensic centers), at previously authorized levels (adjusted for inflation). Ensures that the Administrator of the Federal Emergency Management Agency will become a member of the Elder Justice Coordinating Council.

Section 11. Increasing resources to investigate abuse and neglect and extend services to victims. Provides that \$60 million of any emergency funding appropriated by Congress for States and Tribes, on or after July 1, 2020, to mitigate the health effects stemming from the COVID-19 public health emergency, will be transferred to HHS for distribution to adult protective services programs across the country. Clarifies that 3 percent of such \$60 million shall be set aside for Tribally-operated adult protective services programs. Defines terms used in this section. Specifies that no grant matching requirement applies.

Enables, but does not require, the head of U.S. Department of Justice’s (DOJ’s) Office for Victims of Crime to transfer up to 3 percent of the amount to be distributed from the Crime Victims Fund each fiscal year to Federal agencies other than DOJ to provide and improve services for victims of elder abuse, neglect, and exploitation.

Section 12. Protecting Americans with dementia. Amends section 101 of the Elder Abuse Prevention and Prosecution Act (EAPPA), 34 U.S.C. 21711, to ensure that criminal justice personnel will receive specialized training on how to interact with witnesses in elder abuse cases who have Alzheimer’s disease and related dementias. Requires DOJ’s Elder Justice Coordinator to consult with other government experts and nationally recognized nonprofit associations with relevant expertise in developing the training materials that will be used to implement this requirement. Also calls for DOJ Elder Justice Coordinator to review current best practices and materials to determine whether updates are needed, within one year after the date of enactment of this Act, for completion of this requirement. Also amends this section of EAPPA to clarify that the Attorney General must provide a link on DOJ’s website to a required report on best practices and training materials.



Promotes accountability of court-appointed guardians by expanding the availability of Federal demonstration grants to States under the Elder Justice Act (42 U.S.C. 1397m–1(c)). Clarifies that up to 5 percent of grant funds can be used for developing state guardianship databases to collect information on guardians, for training court visitors, and for sharing information on guardian background checks with appropriate entities.

Section 13. Reducing Racial and Ethnic Disparities in Long-Term Care Facilities. Requires HHS Secretary to convene a task force to gather data on racial and ethnic disparities in long term care facilities and provide recommendations to Federal, State, local, and Tribal policymakers on ways to reduce such disparities.

Section 14. Achieving savings in health care programs. Amends Section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)) to require the HHS Secretary to notify the Attorney General when the Secretary identifies improper prescribing of a controlled substance by certain health care providers. If the HHS Secretary revokes an enrollment or makes a preclusion list placement, the Secretary must notify the Attorney General of that action, and the Attorney General must then revoke the registration granted under section 303 of the Controlled Substances Act of the registrant that is the subject of the HHS revocation. (The HHS Secretary also must inform the Attorney General in the event of a reversal of the revocation decision, and this revocation also may be reversed by the Attorney General, if appropriate.)

