

110TH CONGRESS
2D SESSION

H. R. 7128

To amend titles XVIII and XIX of the Social Security Act to improve the transparency of information on skilled nursing facilities and nursing facilities and to clarify and improve the targeting of the enforcement of requirements with respect to such facilities.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2008

Mr. STARK (for himself and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 improve the transparency of information on skilled nursing facilities and nursing facilities and to clarify and improve the targeting of the enforcement of requirements with respect to such facilities.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nursing Home Transparency and Quality of Care Im-
6 provement Act of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMPROVING TRANSPARENCY OF INFORMATION ON
SKILLED NURSING FACILITIES AND NURSING FACILITIES

Sec. 101. Required disclosure of ownership and additional disclosable parties in-
formation.

Sec. 102. Accountability requirements.

Sec. 103. Nursing home compare Medicare website.

Sec. 104. Reporting of expenditures.

Sec. 105. Standardized complaint form.

Sec. 106. Ensuring staffing accountability.

TITLE II—TARGETING ENFORCEMENT

Sec. 201. Civil money penalties.

Sec. 202. National independent monitoring requirements.

Sec. 203. GAO studies and reports on temporary management.

Sec. 204. Notification of facility closure.

Sec. 205. National demonstration projects on culture change and use of infor-
mation technology in nursing homes.

TITLE III—IMPROVING STAFF TRAINING

Sec. 301. Dementia and abuse prevention training.

Sec. 302. Study and report on training required for certified nurse aides and
supervisory staff.

3 **TITLE I—IMPROVING TRANS-**
4 **PARENCY OF INFORMATION**
5 **ON SKILLED NURSING FACILI-**
6 **TIES AND NURSING FACILI-**
7 **TIES**

8 **SEC. 101. REQUIRED DISCLOSURE OF OWNERSHIP AND AD-**
9 **DITIONAL DISCLOSABLE PARTIES INFORMA-**
10 **TION.**

11 (a) IN GENERAL.—Section 1124 of the Social Secu-
12 rity Act (42 U.S.C. 1320a–3) is amended by adding at
13 the end the following new subsection:

1 “(c) REQUIRED DISCLOSURE OF OWNERSHIP AND
2 ADDITIONAL DISCLOSABLE PARTIES INFORMATION.—

3 “(1) DISCLOSURE.—

4 “(A) IN GENERAL.—A facility shall have
5 the information described in paragraph (2)
6 available—

7 “(i) during the period beginning on
8 the date of enactment of this subsection
9 and ending on the date such information is
10 made available through the Online Survey,
11 Certification and Reporting (OSCAR) data
12 network (or any successor system) main-
13 tained by the Secretary, for submission to
14 the Secretary, the Inspector General of the
15 Department of Health and Human Serv-
16 ices, the State in which the facility is lo-
17 cated, and the State long-term care om-
18 budsman in the case where the Secretary,
19 the Inspector General, the State, or the
20 State long-term care ombudsman requests
21 such information; and

22 “(ii) beginning on the effective date of
23 the final regulations promulgated under
24 paragraph (3)(A), for reporting such infor-

1 mation in accordance with such final regu-
2 lations.

3 Nothing in clause (i) shall be construed as au-
4 thorizing a facility to dispose of or delete infor-
5 mation described in such clause after the effec-
6 tive date of the final regulations promulgated
7 under paragraph (3)(A).

8 “(B) PUBLIC AVAILABILITY OF INFORMA-
9 TION.—During the period described in subpara-
10 graph (A)(i), a facility shall—

11 “(i) make the information described in
12 paragraph (2) available to the public upon
13 request; and

14 “(ii) post a notice of the availability of
15 such information in the lobby of the facil-
16 ity in a prominent manner.

17 “(2) INFORMATION DESCRIBED.—

18 “(A) IN GENERAL.—The following infor-
19 mation is described in this paragraph:

20 “(i) The information described in sub-
21 sections (a) and (b), subject to subpara-
22 graph (C).

23 “(ii) The identity of and information
24 on—

1 “(I) each member of the gov-
2 erning body of the facility, including
3 the name, title, and period of service
4 of each such member;

5 “(II) each person or entity who is
6 an officer, director, member, partner,
7 trustee, or managing employee of the
8 facility, including the name, title, and
9 period of service of each such person
10 or entity; and

11 “(III) each person or entity who
12 is an additional disclosable party of
13 the facility.

14 “(iii) The organizational structure of
15 each person and entity described in clauses
16 (ii) and (iii) and a description of the rela-
17 tionship of each such person or entity to
18 the facility and to one another.

19 “(B) SPECIAL RULE WHERE INFORMATION
20 IS ALREADY REPORTED OR SUBMITTED.—To
21 the extent that information reported by a facil-
22 ity to the Internal Revenue Service on Form
23 990, information submitted by a facility to the
24 Securities and Exchange Commission, or infor-
25 mation otherwise submitted to the Secretary or

1 any other Federal agency contains the informa-
2 tion described in clauses (i), (ii), (iii), or (iv) of
3 subparagraph (A), the facility may provide such
4 Form or such information submitted to meet
5 the requirements of paragraph (1).

6 “(C) SPECIAL RULE.—In applying sub-
7 subparagraph (A)(i)—

8 “(i) with respect to subsections (a)
9 and (b), ‘ownership or control interest’
10 shall include direct or indirect interests
11 through any number of intermediate enti-
12 ties; and

13 “(ii) subsection (a)(3)(A)(ii) shall in-
14 clude the owner of a whole or part interest
15 in any mortgage, deed of trust, note, or
16 other obligation secured, in whole or in
17 part, by the entity or any of the property
18 or assets thereof, if the interest is equal to
19 or exceeds 5 percent of the total property
20 or assets of the entirety.

21 “(3) REPORTING.—

22 “(A) IN GENERAL.—Not later than the
23 date that is 2 years after the date of enactment
24 of this subsection, the Secretary shall promul-
25 gate final regulations requiring, effective on the

1 date that is 90 days after the date on which
2 such final regulations are published in the Fed-
3 eral Register, a facility to report the informa-
4 tion described in paragraph (2) to the Secretary
5 in a standardized format, and such other regu-
6 lations as are necessary to carry out this sub-
7 section. Such final regulations shall ensure that
8 the facility certifies, as a condition of participa-
9 tion and payment under the program under
10 title XVIII or XIX, that the information re-
11 ported by the facility in accordance with such
12 final regulations is accurate and current.

13 “(B) GUIDANCE.—The Secretary shall pro-
14 vide guidance and technical assistance to States
15 on how to adopt the standardized format under
16 subparagraph (A).

17 “(4) NO EFFECT ON EXISTING REPORTING RE-
18 QUIREMENTS.—Nothing in this subsection shall re-
19 duce, diminish, or alter any reporting requirement
20 for a facility that is in effect as of the date of enact-
21 ment of this subsection.

22 “(5) DEFINITIONS.—In this subsection:

23 “(A) ADDITIONAL DISCLOSABLE PARTY.—
24 The term ‘additional disclosable party’ means,

1 with respect to a facility, any person or entity
2 who—

3 “(i) exercises operational, financial, or
4 managerial control over the facility or a
5 part thereof, or provides policies or proce-
6 dures for any of the operations of the facil-
7 ity, or provides financial or cash manage-
8 ment services to the facility;

9 “(ii) leases or subleases real property
10 to the facility, or owns a whole or part in-
11 terest equal to or exceeding 5 percent of
12 the total value of such real property;

13 “(iii) lends funds or provides a finan-
14 cial guarantee to the facility in an amount
15 which is equal to or exceeds \$50,000;

16 “(iv) provides management or admin-
17 istrative services, management or clinical
18 consulting services, or accounting or finan-
19 cial services to the facility;

20 “(v) provides therapy, pharmacy, or
21 hospice services to residents of the facility;
22 or

23 “(vi) leases employees to or employs
24 staff on behalf of the facility.

1 “(B) FACILITY.—The term ‘facility’ means
2 a disclosing entity which is—

3 “(i) a skilled nursing facility (as de-
4 fined in section 1819(a)); or

5 “(ii) a nursing facility (as defined in
6 section 1919(a)).

7 “(C) MANAGING EMPLOYEE.—The term
8 ‘managing employee’ means, with respect to a
9 facility, an individual (including a general man-
10 ager, business manager, administrator, director,
11 or consultant) who directly or indirectly man-
12 ages, advises, or supervises any element of the
13 practices, finances, or operations of the facility.

14 “(D) ORGANIZATIONAL STRUCTURE.—The
15 term ‘organizational structure’ means, in the
16 case of—

17 “(i) a corporation, the officers, direc-
18 tors, and shareholders of the corporation
19 who have an ownership interest in the cor-
20 poration which is equal to or exceeds 5
21 percent;

22 “(ii) a limited liability company, the
23 members and managers of the limited li-
24 ability company (including, as applicable,
25 what percentage each member and man-

1 ager has of the ownership interest in the
2 limited liability company);

3 “(iii) a general partnership, the part-
4 ners of the general partnership;

5 “(iv) a limited partnership, the gen-
6 eral partners and any limited partners of
7 the limited partnership who have an own-
8 ership interest in the limited partnership
9 which is equal to or exceeds 10 percent;

10 “(v) a trust, the trustees of the trust;

11 “(vi) an individual, contact informa-
12 tion for the individual; and

13 “(vii) any other person or entity, such
14 information as the Secretary determines
15 appropriate.”.

16 (b) PUBLIC AVAILABILITY OF INFORMATION.—

17 (1) IN GENERAL.—Not later than the date that
18 is 1 year after the date on which the final regula-
19 tions promulgated under section 1124(c)(3)(A) of
20 the Social Security Act, as added by subsection (a),
21 are published in the Federal Register, the Secretary
22 shall make the information reported in accordance
23 with such final regulations available to the public in
24 a similar manner as information with respect to
25 skilled nursing facilities and nursing facilities is

1 made available to the public through the Online Sur-
2 vey, Certification and Reporting (OSCAR) data net-
3 work (or any successor system) maintained by the
4 Secretary.

5 (2) DEFINITIONS.—In this subsection:

6 (A) NURSING FACILITY.—The term “nurs-
7 ing facility” has the meaning given such term
8 in section 1919(a) of the Social Security Act
9 (42 U.S.C. 1396r(a)).

10 (B) SECRETARY.—The term “Secretary”
11 means the Secretary of Health and Human
12 Services.

13 (C) SKILLED NURSING FACILITY.—The
14 term “skilled nursing facility” has the meaning
15 given such term in section 1819(a) of the Social
16 Security Act (42 U.S.C. 1395i–3(a)).

17 (c) CONFORMING AMENDMENTS.—

18 (1) SKILLED NURSING FACILITIES.—Section
19 1819(d)(1) of the Social Security Act (42 U.S.C.
20 1395i–3(d)(1)) is amended by striking subparagraph
21 (B) and redesignating subparagraph (C) as subpara-
22 graph (B).

23 (2) NURSING FACILITIES.—Section 1919(d)(1)
24 of the Social Security Act (42 U.S.C. 1396r(d)(1))

1 is amended by striking subparagraph (B) and redesi-
2 gnating subparagraph (C) as subparagraph (B).

3 **SEC. 102. ACCOUNTABILITY REQUIREMENTS.**

4 (a) EFFECTIVE COMPLIANCE AND ETHICS PRO-
5 GRAMS.—

6 (1) SKILLED NURSING FACILITIES.—Section
7 1819(d)(1) of the Social Security Act (42 U.S.C.
8 1395i–3(d)(1)) is amended by adding at the end the
9 following new subparagraph:

10 “(D) COMPLIANCE AND ETHICS PRO-
11 GRAMS.—

12 “(i) REQUIREMENT.—On or after the
13 date that is 36 months after the date of
14 enactment of this subparagraph, a skilled
15 nursing facility shall, with respect to the
16 entity that operates the facility (in this
17 subparagraph referred to as the ‘operating
18 organization’ or ‘organization’), have in op-
19 eration a compliance and ethics program
20 that is effective in preventing and detect-
21 ing criminal, civil, and administrative viola-
22 tions under this Act and in promoting
23 quality of care consistent with regulations
24 developed under clause (ii).

1 “(ii) DEVELOPMENT OF REGULA-
2 TIONS.—

3 “(I) IN GENERAL.—Not later
4 than the date that is 2 years after
5 such date of enactment, the Secretary,
6 in consultation with the Inspector
7 General of the Department of Health
8 and Human Services, shall promul-
9 gate regulations for an effective com-
10 pliance and ethics program for oper-
11 ating organizations, which may in-
12 clude a model compliance program.

13 “(II) DESIGN OF REGULA-
14 TIONS.—Such regulations with respect
15 to specific elements or formality of a
16 program may vary with the size of the
17 organization, such that larger organi-
18 zations should have a more formal
19 program and include established writ-
20 ten policies defining the standards
21 and procedures to be followed by its
22 employees. Such requirements may
23 specifically apply to the corporate level
24 management of multi-nursing home
25 chains.

1 “(III) EVALUATION.—Not later
2 than 3 years after the date of promul-
3 gation of regulations under this
4 clause, the Secretary shall complete
5 an evaluation of the compliance and
6 ethics programs required to be estab-
7 lished under this subparagraph. Such
8 evaluation shall determine if such pro-
9 grams led to changes in deficiency ci-
10 tations, changes in quality perform-
11 ance, or changes in other metrics of
12 patient quality of care. The Secretary
13 shall submit a report to Congress on
14 such evaluation and shall include in
15 such report such recommendations re-
16 garding changes in the requirements
17 for such programs as the Secretary
18 determines appropriate.

19 “(iii) REQUIREMENTS FOR COMPLI-
20 ANCE AND ETHICS PROGRAMS.—In this
21 subparagraph, the term ‘compliance and
22 ethics program’ means, with respect to a
23 skilled nursing facility, a program of the
24 operating organization that—

1 “(I) has been reasonably de-
2 signed, implemented, and enforced so
3 that it generally will be effective in
4 preventing and detecting criminal,
5 civil, and administrative violations
6 under this Act and in promoting qual-
7 ity of care; and

8 “(II) includes at least the re-
9 quired components specified in clause
10 (iv).

11 “(iv) REQUIRED COMPONENTS OF
12 PROGRAM.—The required components of a
13 compliance and ethics program of an orga-
14 nization are the following:

15 “(I) The organization must have
16 established compliance standards and
17 procedures to be followed by its em-
18 ployees and other agents that are rea-
19 sonably capable of reducing the pros-
20 pect of criminal, civil, and administra-
21 tive violations under this Act.

22 “(II) Specific individuals within
23 high-level personnel of the organiza-
24 tion must have been assigned overall
25 responsibility to oversee compliance

1 with such standards and procedures
2 and has sufficient resources and au-
3 thority to assure such compliance.

4 “(III) The organization must
5 have used due care not to delegate
6 substantial discretionary authority to
7 individuals whom the organization
8 knew, or should have known through
9 the exercise of due diligence, had a
10 propensity to engage in criminal, civil,
11 and administrative violations under
12 this Act.

13 “(IV) The organization must
14 have taken steps to communicate ef-
15 fectively its standards and procedures
16 to all employees and other agents,
17 such as by requiring participation in
18 training programs or by disseminating
19 publications that explain in a practical
20 manner what is required.

21 “(V) The organization must have
22 taken reasonable steps to achieve com-
23 pliance with its standards, such as by
24 utilizing monitoring and auditing sys-
25 tems reasonably designed to detect

1 criminal, civil, and administrative vio-
2 lations under this Act by its employ-
3 ees and other agents and by having in
4 place and publicizing a reporting sys-
5 tem whereby employees and other
6 agents could report violations by oth-
7 ers within the organization without
8 fear of retribution.

9 “(VI) The standards must have
10 been consistently enforced through ap-
11 propriate disciplinary mechanisms, in-
12 cluding, as appropriate, discipline of
13 individuals responsible for the failure
14 to detect an offense.

15 “(VII) After an offense has been
16 detected, the organization must have
17 taken all reasonable steps to respond
18 appropriately to the offense and to
19 prevent further similar offenses, in-
20 cluding any necessary modification to
21 its program to prevent and detect
22 criminal, civil, and administrative vio-
23 lations under this Act.

24 “(VIII) The organization must
25 periodically undertake reassessment of

1 its compliance program to identify
2 changes necessary to reflect changes
3 within the organization and its facili-
4 ties.”.

5 (2) NURSING FACILITIES.—Section 1919(d)(1)
6 of the Social Security Act (42 U.S.C. 1396r(d)(1))
7 is amended by adding at the end the following new
8 subparagraph:

9 “(D) COMPLIANCE AND ETHICS PRO-
10 GRAM.—

11 “(i) REQUIREMENT.—On or after the
12 date that is 36 months after the date of
13 enactment of this subparagraph, a nursing
14 facility shall, with respect to the entity
15 that operates the facility (in this subpara-
16 graph referred to as the ‘operating organi-
17 zation’ or ‘organization’), have in operation
18 a compliance and ethics program that is
19 effective in preventing and detecting crimi-
20 nal, civil, and administrative violations
21 under this Act and in promoting quality of
22 care consistent with regulations developed
23 under clause (ii).

24 “(ii) DEVELOPMENT OF REGULA-
25 TIONS.—

1 “(I) IN GENERAL.—Not later
2 than the date that is 2 years after
3 such date of enactment, the Secretary,
4 in consultation with the Inspector
5 General of the Department of Health
6 and Human Services, shall develop
7 regulations for an effective compliance
8 and ethics program for operating or-
9 ganizations, which may include a
10 model compliance program.

11 “(II) DESIGN OF REGULA-
12 TIONS.—Such regulations with respect
13 to specific elements or formality of a
14 program may vary with the size of the
15 organization, such that larger organi-
16 zations should have a more formal
17 program and include established writ-
18 ten policies defining the standards
19 and procedures to be followed by its
20 employees. Such requirements may
21 specifically apply to the corporate level
22 management of multi-nursing home
23 chains.

24 “(III) EVALUATION.—Not later
25 than 3 years after the date of promul-

1 gation of regulations under this clause
2 the Secretary shall complete an eval-
3 uation of the compliance and ethics
4 programs required to be established
5 under this subparagraph. Such eval-
6 uation shall determine if such pro-
7 grams led to changes in deficiency ci-
8 tations, changes in quality perform-
9 ance, or changes in other metrics of
10 patient quality of care. The Secretary
11 shall submit a report to Congress on
12 such evaluation and shall include in
13 such report such recommendations re-
14 garding changes in the requirements
15 for such programs as the Secretary
16 determines appropriate.

17 “(iii) REQUIREMENTS FOR COMPLI-
18 ANCE AND ETHICS PROGRAMS.—In this
19 subparagraph, the term ‘compliance and
20 ethics program’ means, with respect to a
21 nursing facility, a program of the oper-
22 ating organization that—

23 “(I) has been reasonably de-
24 signed, implemented, and enforced so
25 that it generally will be effective in

1 preventing and detecting criminal,
2 civil, and administrative violations
3 under this Act and in promoting qual-
4 ity of care; and

5 “(II) includes at least the re-
6 quired components specified in clause
7 (iv).

8 “(iv) REQUIRED COMPONENTS OF
9 PROGRAM.—The required components of a
10 compliance and ethics program of an orga-
11 nization are the following:

12 “(I) The organization must have
13 established compliance standards and
14 procedures to be followed by its em-
15 ployees and other agents that are rea-
16 sonably capable of reducing the pros-
17 pect of criminal, civil, and administra-
18 tive violations under this Act.

19 “(II) Specific individuals within
20 high-level personnel of the organiza-
21 tion must have been assigned overall
22 responsibility to oversee compliance
23 with such standards and procedures
24 and has sufficient resources and au-
25 thority to assure such compliance.

1 “(III) The organization must
2 have used due care not to delegate
3 substantial discretionary authority to
4 individuals whom the organization
5 knew, or should have known through
6 the exercise of due diligence, had a
7 propensity to engage in criminal, civil,
8 and administrative violations under
9 this Act.

10 “(IV) The organization must
11 have taken steps to communicate ef-
12 fectively its standards and procedures
13 to all employees and other agents,
14 such as by requiring participation in
15 training programs or by disseminating
16 publications that explain in a practical
17 manner what is required.

18 “(V) The organization must have
19 taken reasonable steps to achieve com-
20 pliance with its standards, such as by
21 utilizing monitoring and auditing sys-
22 tems reasonably designed to detect
23 criminal, civil, and administrative vio-
24 lations under this Act by its employ-
25 ees and other agents and by having in

1 place and publicizing a reporting sys-
2 tem whereby employees and other
3 agents could report violations by oth-
4 ers within the organization without
5 fear of retribution.

6 “(VI) The standards must have
7 been consistently enforced through ap-
8 propriate disciplinary mechanisms, in-
9 cluding, as appropriate, discipline of
10 individuals responsible for the failure
11 to detect an offense.

12 “(VII) After an offense has been
13 detected, the organization must have
14 taken all reasonable steps to respond
15 appropriately to the offense and to
16 prevent further similar offenses, in-
17 cluding any necessary modification to
18 its program to prevent and detect
19 criminal, civil, and administrative vio-
20 lations under this Act.

21 “(VIII) The organization must
22 periodically undertake reassessment of
23 its compliance program to identify
24 changes necessary to reflect changes

1 within the organization and its facili-
2 ties.”.

3 (b) QUALITY ASSURANCE AND PERFORMANCE IM-
4 PROVEMENT (QAPI) DEMONSTRATION PROGRAM.—

5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services (in this subsection referred to as
7 the “Secretary”) shall establish a demonstration
8 program (in this subsection referred to as the “pro-
9 gram”) to be conducted over a 3-year period to test
10 and evaluate models for quality assurance and per-
11 formance improvement (QAPI) programs with re-
12 spect to nursing facilities, including skilled nursing
13 facilities.

14 (2) FACILITIES TO BE INCLUDED.—The pro-
15 gram shall include at least 15, but not more than
16 30, nursing facilities, including a mix of facilities,
17 such as special focus facilities and high and middle
18 performing facilities, but shall have a focus on lower
19 performing facilities. The nursing facilities included
20 in the program shall reflect large and medium
21 chains and stand alone homes.

22 (3) ACTIVITIES.—The program shall provide
23 funding for quality assurance and performance im-
24 provement activities at nursing facilities, such as
25 data analysis, root-cause analysis, and systemic im-

1 improvements. The results of such analysis shall be re-
2 ported to, and used by the governing body at such
3 facilities to make systemic improvements in quality
4 of care.

5 (4) EVALUATION.—

6 (A) IN GENERAL.—The Secretary, in con-
7 sultation with the Inspector General of the De-
8 partment of Health and Human Services, shall
9 conduct an evaluation of the program to deter-
10 mine if quality assurance and performance im-
11 provement activities led to changes in deficiency
12 citations, changes in quality performance, or
13 changes in other metrics of patient quality of
14 care. Not later than 1 year after completion of
15 the program, the Secretary shall submit to Con-
16 gress a report on such evaluation and shall in-
17 clude in such report recommendations on statu-
18 tory changes needed to modify and strengthen
19 quality assurance and performance improve-
20 ment programs in skilled nursing facilities and
21 nursing facilities.

22 (B) BEST PRACTICES MANUAL.—The Sec-
23 retary, in consultation with the Inspector Gen-
24 eral of the Department of Health and Human
25 Services, shall use the results of such evaluation

1 to create a resource manual for nursing facili-
2 ties on best practices in quality assurance and
3 performance improvement.

4 (C) PROPOSAL TO REVISE QUALITY ASSUR-
5 ANCE AND PERFORMANCE IMPROVEMENT PRO-
6 GRAMS.—The Secretary, taking into account
7 the results of such evaluation, shall include in
8 the proposed rule published under section
9 1888(e) of the Social Security Act (42 U.S.C.
10 1395yy(e)(5)(A)) for the subsequent fiscal year
11 to the extent otherwise authorized under section
12 1819(b)(1)(B) or 1819(d)(1)(D) of the Social
13 Security Act or other regulatory authority, one
14 or more proposals for skilled nursing facilities
15 to modify and strengthen quality assurance and
16 performance improvement programs in such fa-
17 cilities. At the time of publication of such pro-
18 posed rule and to the extent otherwise author-
19 ized under section 1919(b)(1)(B) or
20 1919(d)(1)(D) of such Act or other regulatory
21 authority, the Secretary shall promulgate as a
22 proposed rule one or more proposals for nursing
23 facilities to modify and strengthen quality as-
24 surance and performance improvement pro-
25 grams in such facilities.

1 (5) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this subsection.

4 (c) GAO STUDY ON NURSING FACILITY UNDER-
5 CAPITALIZATION.—

6 (1) IN GENERAL.—The Comptroller General of
7 the United States shall conduct a study that exam-
8 ines the following:

9 (A) The extent to which corporations that
10 own or operate large numbers of nursing facili-
11 ties, taking into account ownership type (includ-
12 ing private equity and control interests), are
13 undercapitalizing such facilities.

14 (B) The effects of such undercapitalization
15 on quality of care, including staffing and food
16 costs, at such facilities.

17 (C) Options to address such undercapital-
18 ization, such as requirements relating to surety
19 bonds, liability insurance, or minimum capital-
20 ization.

21 (2) REPORT.—Not later than 18 months after
22 the date of the enactment of this Act, the Comp-
23 troller General shall submit to Congress a report on
24 the study conducted under paragraph (1).

1 (3) NURSING FACILITY.—In this subsection, the
2 term “nursing facility” includes a skilled nursing fa-
3 cility.

4 **SEC. 103. NURSING HOME COMPARE MEDICARE WEBSITE.**

5 (a) SKILLED NURSING FACILITIES.—

6 (1) IN GENERAL.—Section 1819 of the Social
7 Security Act (42 U.S.C. 1395i–3) is amended—

8 (A) by redesignating subsection (i) as sub-
9 section (j); and

10 (B) by inserting after subsection (h) the
11 following new subsection:

12 “(i) NURSING HOME COMPARE WEBSITE.—

13 “(1) INCLUSION OF ADDITIONAL INFORMA-
14 TION.—

15 “(A) IN GENERAL.—The Secretary shall
16 ensure that the Department of Health and
17 Human Services includes, as part of the infor-
18 mation provided for comparison of nursing
19 homes on the official Internet website of the
20 Federal Government for Medicare beneficiaries
21 (commonly referred to as the ‘Nursing Home
22 Compare’ Medicare website) (or a successor
23 website), the following information in a manner
24 that is prominent, easily accessible, readily un-

1 derstandable to consumers of long-term care
2 services, and searchable:

3 “(i) Information that is reported to
4 the Secretary under section 1124(c)(3).

5 “(ii) Information on the ‘Special
6 Focus Facility program’ (or a successor
7 program) established by the Centers for
8 Medicare & Medicaid Services, according to
9 procedures established by the Secretary.
10 Such procedures shall provide for the in-
11 clusion of information with respect to, and
12 the names and locations of, those facilities
13 that, since the previous quarter—

14 “(I) were newly enrolled in the
15 program;

16 “(II) are enrolled in the program
17 and have failed to significantly im-
18 prove;

19 “(III) are enrolled in the pro-
20 gram and have significantly improved;

21 “(IV) have graduated from the
22 program; and

23 “(V) have closed voluntarily or
24 no longer participate under this title.

1 “(iii) Staffing data for each facility
2 (including resident census data and data
3 on the hours of care provided per resident
4 per day) based on data submitted under
5 subsection (b)(8)(C), including information
6 on staffing turnover and tenure, in a for-
7 mat that is clearly understandable to con-
8 sumers of long-term care services and al-
9 lows such consumers to compare dif-
10 ferences in staffing between facilities and
11 State and national averages for the facili-
12 ties. Such format shall include—

13 “(I) concise explanations of how
14 to interpret the data (such as a plain
15 English explanation of data reflecting
16 “nursing home staff hours per resi-
17 dent day”);

18 “(II) differences in types of staff
19 (such as training associated with dif-
20 ferent categories of staff);

21 “(III) the relationship between
22 nurse staffing levels and quality of
23 care; and

1 “(IV) an explanation that appro-
2 priate staffing levels vary based on
3 patient case mix.

4 “(iv) Links to State internet websites
5 where information about State survey and
6 certification programs, Form 2567 inspec-
7 tion reports (or a successor form), and fa-
8 cility plans of corrections may be found,
9 along with information to guide consumers
10 in interpreting and understanding such re-
11 ports.

12 “(v) The standardized complaint form
13 developed under subsection (f)(8), includ-
14 ing explanatory material on what com-
15 plaint forms are, how they are used, and
16 how to file a complaint with the State sur-
17 vey and certification program and the
18 State long-term care ombudsman program.

19 “(vi) The number of adjudicated in-
20 stances of criminal violations by a nursing
21 facility or crimes committed by an em-
22 ployee of a nursing facility—

23 “(I) that were committed inside
24 of the facility; and

1 “(II) with respect to such in-
2 stances of violations or crimes com-
3 mitted outside of the facility, that
4 were the violations or crimes of elder
5 abuse, neglect, and exploitation, crimi-
6 nal sexual abuse of an elder, or other
7 violations or crimes that resulted in
8 the serious bodily injury of an elder.

9 “(B) DEADLINE FOR PROVISION OF INFOR-
10 MATION.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in clause (ii), the Secretary shall en-
13 sure that the information described in sub-
14 paragraph (A) is included on such website
15 (or a successor website) not later than 1
16 year after the date of enactment of this
17 subsection.

18 “(ii) EXCEPTIONS.—

19 “(I) OWNERSHIP AND AFFILI-
20 ATED PARTIES AND ACCOUNTABILITY
21 REQUIREMENTS INFORMATION.—The
22 Secretary shall ensure that the infor-
23 mation described in subparagraph
24 (A)(i) is included on such website (or
25 a successor website) not later than the

1 date on which the requirements under
2 section 1124(c)(3) are implemented.

3 “(II) STAFFING DATA.—The Sec-
4 retary shall ensure that the informa-
5 tion described in subparagraph
6 (A)(iii) is included on such website (or
7 a successor website) not later than the
8 date on which the requirement under
9 subsection (b)(8)(C) is implemented.

10 “(2) REVIEW AND MODIFICATION OF
11 WEBSITE.—

12 “(A) IN GENERAL.—The Secretary shall
13 establish a process—

14 “(i) to review the accuracy, clarity of
15 presentation, timeliness, and comprehen-
16 siveness of information reported on such
17 website as of the day before the date of en-
18 actment of this subsection; and

19 “(ii) not later than 1 year after the
20 date of enactment of this subsection, to
21 modify or revamp such website in accord-
22 ance with the review conducted under
23 clause (i).

1 “(B) CONSULTATION.—In conducting the
2 review under subparagraph (A)(i), the Sec-
3 retary shall consult with—

4 “(i) State long-term care ombudsman
5 programs;

6 “(ii) consumer advocacy groups;

7 “(iii) provider stakeholder groups;

8 “(iv) skilled nursing facility employees
9 and their representatives; and

10 “(v) any other representatives of pro-
11 grams or groups the Secretary determines
12 appropriate.”.

13 (2) TIMELINESS OF SUBMISSION OF SURVEY
14 AND CERTIFICATION INFORMATION.—

15 (A) IN GENERAL.—Section 1819(g)(5) of
16 the Social Security Act (42 U.S.C. 1395i-
17 3(g)(5)) is amended by adding at the end the
18 following new subparagraph:

19 “(E) SUBMISSION OF SURVEY AND CER-
20 TIFICATION INFORMATION TO THE SEC-
21 RETARY.—In order to improve the timeliness of
22 information made available to the public under
23 subparagraph (A) and provided on the Nursing
24 Home Compare Medicare website under sub-
25 section (i), each State shall submit information

1 respecting any survey or certification made re-
2 specting a skilled nursing facility (including any
3 enforcement actions taken by the State) to the
4 Secretary not later than the date on which the
5 State sends such information to the facility.
6 Any necessary subsequent corrections to prior
7 information submitted by the State shall be
8 submitted to the Secretary in a timely fashion.
9 The Secretary shall use the information sub-
10 mitted under the preceding sentence to update
11 the information provided on the Nursing Home
12 Compare Medicare website as expeditiously as
13 practicable, but not less frequently than quar-
14 terly.”.

15 (B) EFFECTIVE DATE.—The amendment
16 made by this paragraph shall take effect 1 year
17 after the date of enactment of this Act.

18 (3) SPECIAL FOCUS FACILITY PROGRAM.—Sec-
19 tion 1819(f) of such Act is amended by adding at
20 the end the following new paragraph:

21 “(8) SPECIAL FOCUS FACILITY PROGRAM.—

22 “(A) IN GENERAL.—The Secretary shall
23 conduct a special focus facility program for en-
24 forcement of requirements for skilled nursing
25 facilities that the Secretary has identified as

1 having substantially failed to meet applicable
2 requirements of this Act.

3 “(B) PERIODIC SURVEYS.—Under such
4 program the Secretary shall conduct surveys of
5 each facility in the program not less often than
6 once very 6 months.”.

7 (b) NURSING FACILITIES.—

8 (1) IN GENERAL.—Section 1919 of the Social
9 Security Act (42 U.S.C. 1396r) is amended—

10 (A) by redesignating subsection (i) as sub-
11 section (j); and

12 (B) by inserting after subsection (h) the
13 following new subsection:

14 “(i) NURSING HOME COMPARE WEBSITE.—

15 “(1) INCLUSION OF ADDITIONAL INFORMA-
16 TION.—

17 “(A) IN GENERAL.—The Secretary shall
18 ensure that the Department of Health and
19 Human Services includes, as part of the infor-
20 mation provided for comparison of nursing
21 homes on the official Internet website of the
22 Federal Government for Medicare beneficiaries
23 (commonly referred to as the ‘Nursing Home
24 Compare’ Medicare website) (or a successor
25 website), the following information in a manner

1 that is prominent, easily accessible, readily un-
2 derstandable to consumers of long-term care
3 services, and searchable:

4 “(i) Information that is reported to
5 the Secretary under section 1124(c)(3).

6 “(ii) Information on the ‘Special
7 Focus Facility program’ (or a successor
8 program) established by the Centers for
9 Medicare & Medicaid Services, according to
10 procedures established by the Secretary.
11 Such procedures shall provide for the in-
12 clusion of information with respect to, and
13 the names and locations of, those facilities
14 that, since the previous quarter—

15 “(I) were newly enrolled in the
16 program;

17 “(II) are enrolled in the program
18 and have failed to significantly im-
19 prove;

20 “(III) are enrolled in the pro-
21 gram and have significantly improved;

22 “(IV) have graduated from the
23 program; and

24 “(V) have closed voluntarily or or
25 no longer participate under this title.

1 “(iii) Staffing data for each facility
2 (including resident census data and data
3 on the hours of care provided per resident
4 per day) based on data submitted under
5 subsection (b)(8)(C), including information
6 on staffing turnover and tenure, in a for-
7 mat that is clearly understandable to con-
8 sumers of long-term care services and al-
9 lows such consumers to compare dif-
10 ferences in staffing between facilities and
11 State and national averages for the facili-
12 ties. Such format shall include—

13 “(I) concise explanations of how
14 to interpret the data (such as a plain
15 English explanation of data reflecting
16 “nursing home staff hours per resi-
17 dent day”);

18 “(II) differences in types of staff
19 (such as training associated with dif-
20 ferent categories of staff);

21 “(III) the relationship between
22 nurse staffing levels and quality of
23 care; and

1 “(IV) an explanation that appro-
2 priate staffing levels vary based on
3 patient case mix.

4 “(iv) Links to State internet websites
5 where information about State survey and
6 certification programs, Form 2567 inspec-
7 tion reports (or a successor form), and fa-
8 cility plans of corrections may be found,
9 along with information to guide consumers
10 in interpreting and understanding such re-
11 ports.

12 “(v) The standardized complaint form
13 developed under subsection (f)(8), includ-
14 ing explanatory material on what com-
15 plaint forms are, how they are used, and
16 how to file a complaint with the State sur-
17 vey and certification program and the
18 State long-term care ombudsman program.

19 “(vi) The number of adjudicated in-
20 stances of criminal violations by a nursing
21 facility or crimes committed by an em-
22 ployee of a nursing facility—

23 “(I) that were committed inside
24 of the facility; and

1 “(II) with respect to such in-
2 stances of violations or crimes com-
3 mitted outside of the facility, that
4 were the violations or crimes of elder
5 abuse, neglect, and exploitation, crimi-
6 nal sexual abuse of an elder, or other
7 violations or crimes that resulted in
8 the serious bodily injury of an elder.

9 “(B) DEADLINE FOR PROVISION OF INFOR-
10 MATION.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in clause (ii), the Secretary shall en-
13 sure that the information described in sub-
14 paragraph (A) is included on such website
15 (or a successor website) not later than 1
16 year after the date of enactment of this
17 subsection.

18 “(ii) EXCEPTIONS.—

19 “(I) OWNERSHIP AND AFFILI-
20 ATED PARTIES AND ACCOUNTABILITY
21 REQUIREMENTS INFORMATION.—The
22 Secretary shall ensure that the infor-
23 mation described in subparagraph
24 (A)(i) is included on such website (or
25 a successor website) not later than the

1 date on which the requirements under
2 section 1124(c)(3) are implemented.

3 “(II) STAFFING DATA.—The Sec-
4 retary shall ensure that the informa-
5 tion described in subparagraph
6 (A)(iii) is included on such website (or
7 a successor website) not later than the
8 date on which the requirement under
9 subsection (b)(8)(C) is implemented.

10 “(2) REVIEW AND MODIFICATION OF
11 WEBSITE.—

12 “(A) IN GENERAL.—The Secretary shall
13 establish a process—

14 “(i) to review the accuracy, clarity of
15 presentation, timeliness, and comprehen-
16 siveness of information reported on such
17 website as of the day before the date of en-
18 actment of this subsection; and

19 “(ii) not later than 1 year after the
20 date of enactment of this subsection, to
21 modify or revamp such website in accord-
22 ance with the review conducted under
23 clause (i).

1 “(B) CONSULTATION.—In conducting the
2 review under subparagraph (A)(i), the Sec-
3 retary shall consult with—

4 “(i) State long-term care ombudsman
5 programs;

6 “(ii) consumer advocacy groups;

7 “(iii) provider stakeholder groups;

8 “(iv) skilled nursing facility employees
9 and their representatives; and

10 “(v) any other representatives of pro-
11 grams or groups the Secretary determines
12 appropriate.”.

13 (2) TIMELINESS OF SUBMISSION OF SURVEY
14 AND CERTIFICATION INFORMATION.—

15 (A) IN GENERAL.—Section 1919(g)(5) of
16 the Social Security Act (42 U.S.C. 1396r(g)(5))
17 is amended by adding at the end the following
18 new subparagraph:

19 “(E) SUBMISSION OF SURVEY AND CER-
20 TIFICATION INFORMATION TO THE SEC-
21 RETARY.—In order to improve the timeliness of
22 information made available to the public under
23 subparagraph (A) and provided on the Nursing
24 Home Compare Medicare website under sub-
25 section (i), each State shall submit information

1 respecting any survey or certification made re-
2 specting a nursing facility (including any en-
3 forcement actions taken by the State) to the
4 Secretary not later than the date on which the
5 State sends such information to the facility.
6 Any necessary subsequent corrections to prior
7 information submitted by the State shall be
8 submitted to the Secretary in a timely fashion.
9 The Secretary shall use the information sub-
10 mitted under the preceding sentence to update
11 the information provided on the Nursing Home
12 Compare Medicare website as expeditiously as
13 practicable, but not less frequently than quar-
14 terly.”.

15 (B) EFFECTIVE DATE.—The amendment
16 made by this paragraph shall take effect 1 year
17 after the date of enactment of this Act.

18 (3) SPECIAL FOCUS FACILITY PROGRAM.—Sec-
19 tion 1919(f) of such Act is amended by adding at
20 the end the following new paragraph:

21 “(8) SPECIAL FOCUS FACILITY PROGRAM.—

22 “(A) IN GENERAL.—The Secretary shall
23 conduct a special focus facility program for en-
24 forcement of requirements for nursing facilities
25 that the Secretary has identified as having sub-

1 stantially failed to meet applicable requirements
2 of this Act.

3 “(B) PERIODIC SURVEYS.—Under such
4 program the Secretary shall conduct surveys of
5 each facility in the program not less often than
6 once every 6 months.”.

7 (c) AVAILABILITY OF REPORTS ON SURVEYS, CER-
8 TIFICATIONS, AND SUBSTANTIATED COMPLAINT INVES-
9 TIGATIONS.—

10 (1) SKILLED NURSING FACILITIES.—Section
11 1819(d)(1) of the Social Security Act (42 U.S.C.
12 1395i–3(d)(1)), as amended by section 102, is
13 amended by adding at the end the following new
14 subparagraph:

15 “(G) AVAILABILITY OF SURVEY, CERTIFI-
16 CATION, AND SUBSTANTIATED COMPLAINT IN-
17 VESTIGATION REPORTS.—A skilled nursing fa-
18 cility must—

19 “(i) have reports with respect to any
20 surveys, certifications, and substantiated
21 complaint investigations made respecting
22 the facility during the 3 preceding years
23 available for any individual to review upon
24 request, along with the plan of corrective
25 action; and

1 “(ii) post notice of the availability of
2 such reports in areas of the facility that
3 are prominent and accessible to the public.
4 The facility shall not make available under
5 clause (i) identifying information about com-
6 plainants or residents.”.

7 (2) NURSING FACILITIES.—Section 1919(d)(1)
8 of the Social Security Act (42 U.S.C. 1396r(d)(1)),
9 as amended by section 102, is amended by adding
10 at the end the following new subparagraph:

11 “(G) AVAILABILITY OF SURVEY, CERTIFI-
12 CATION, AND SUBSTANTIATED COMPLAINT IN-
13 VESTIGATION REPORTS.—A nursing facility
14 must—

15 “(i) have reports with respect to any
16 surveys, certifications, and substantiated
17 complaint investigations made respecting
18 the facility during the 3 preceding years
19 available for any individual to review upon
20 request, along with the plan of corrective
21 action; and

22 “(ii) post notice of the availability of
23 such reports in areas of the facility that
24 are prominent and accessible to the public.

1 The facility shall not make available under
2 clause (i) identifying information about com-
3 plainants or residents.”.

4 (3) EFFECTIVE DATE.—The amendments made
5 by this subsection shall take effect 1 year after the
6 date of enactment of this Act.

7 (d) GUIDANCE TO STATES ON FORM 2567 STATE IN-
8 SPECTION REPORTS AND SUBSTANTIATED COMPLAINT
9 INVESTIGATION REPORTS.—

10 (1) GUIDANCE.—The Secretary shall provide
11 guidance to States on how States can establish elec-
12 tronic links to Form 2567 State inspection reports
13 (or a successor form), substantiated complaint inves-
14 tigation reports, and a facility’s plan of correction or
15 other response to such Form 2567 State inspection
16 reports (or a successor form) on the Internet website
17 of the State that provides information on skilled
18 nursing facilities and nursing facilities in a manner
19 that does not disclose identifying information about
20 complainants or residents.

21 (2) REQUIREMENT.—As a condition of a con-
22 tract with a State under section 1864(d) of the So-
23 cial Security Act, effective not later than 2 years
24 after the date of the enactment of this Act, the Sec-
25 retary of Health and Human Services shall require

1 that a State have, on the State’s Internet website re-
2 ferred to in paragraph (1), the electronic links re-
3 ferred to in such paragraph.

4 (3) DEFINITIONS.—In this subsection:

5 (A) NURSING FACILITY.—The term “nurs-
6 ing facility” has the meaning given such term
7 in section 1919(a) of the Social Security Act
8 (42 U.S.C. 1396r(a)).

9 (B) SECRETARY.—The term “Secretary”
10 means the Secretary of Health and Human
11 Services.

12 (C) SKILLED NURSING FACILITY.—The
13 term “skilled nursing facility” has the meaning
14 given such term in section 1819(a) of the Social
15 Security Act (42 U.S.C. 1395i–3(a)).

16 **SEC. 104. REPORTING OF EXPENDITURES.**

17 Section 1888 of the Social Security Act (42 U.S.C.
18 1395yy) is amended by adding at the end the following
19 new subsection:

20 “(f) REPORTING OF DIRECT CARE EXPENDI-
21 TURES.—

22 “(1) IN GENERAL.—For cost reports submitted
23 under this title for cost reporting periods beginning
24 on or after the date that is 2 years after the date
25 of enactment of this subsection, skilled nursing fa-

1 facilities shall separately report expenditures for wages
2 and benefits for direct care staff (breaking out (at
3 a minimum) registered nurses, licensed professional
4 nurses, certified nurse assistants, and other medical
5 and therapy staff).

6 “(2) MODIFICATION OF FORM.—The Secretary,
7 in consultation with private sector accountants expe-
8 rienced with medicare and medicaid nursing facility
9 home cost reports, shall redesign such reports to
10 meet the requirement of paragraph (1) not later
11 than 1 year after the date of the enactment of this
12 subsection.

13 “(3) CATEGORIZATION BY FUNCTIONAL AC-
14 COUNTS.—Not later than 30 months after the date
15 of the enactment of this subsection, the Secretary,
16 working in consultation with the Medicare Payment
17 Advisory Commission, the Inspector General of the
18 Department of Health and Human Services, and
19 other expert parties the Secretary determines appro-
20 priate, shall take the expenditures listed on cost re-
21 ports, as modified under paragraph (1), submitted
22 by skilled nursing facilities and categorize such ex-
23 penditures, regardless of any source of payment for
24 such expenditures, for each skilled nursing facility

1 into the following functional accounts on an annual
2 basis:

3 “(A) Spending on direct care services (in-
4 cluding nursing, therapy, and medical services).

5 “(B) Spending on indirect care (including
6 housekeeping and dietary services).

7 “(C) Capital assets (including building and
8 land costs).

9 “(D) Administrative services costs.

10 “(4) AVAILABILITY OF INFORMATION SUB-
11 MITTED.—The Secretary shall establish procedures
12 to make information on expenditures submitted
13 under this subsection readily available to interested
14 parties upon request, subject to such requirements
15 as the Secretary may specify under the procedures
16 established under this paragraph.”.

17 **SEC. 105. STANDARDIZED COMPLAINT FORM.**

18 (a) SKILLED NURSING FACILITIES.—

19 (1) DEVELOPMENT BY THE SECRETARY.—Sec-
20 tion 1819(f) of the Social Security Act (42 U.S.C.
21 1395i–3(f)) is amended by adding at the end the fol-
22 lowing new paragraph:

23 “(8) STANDARDIZED COMPLAINT FORM.—The
24 Secretary shall develop a standardized complaint
25 form for use in filing, in good faith, a complaint

1 with a State survey and certification agency and a
2 State long-term care ombudsman program with re-
3 spect to a skilled nursing facility.”.

4 (2) STATE REQUIREMENTS.—Section 1819(e)
5 of the Social Security Act (42 U.S.C. 1395i–3(e)) is
6 amended by adding at the end the following new
7 paragraph:

8 “(6) COMPLAINT PROCESS AND WHISTLE-
9 BLOWER PROTECTION.—

10 “(A) COMPLAINT FORMS.—The State must
11 make the standardized complaint form devel-
12 oped under subsection (f)(8) available upon re-
13 quest to—

14 “(i) a resident of a skilled nursing fa-
15 cility;

16 “(ii) any person acting on the resi-
17 dent’s behalf; and

18 “(iii) any person who works at a
19 skilled nursing facility or is a representa-
20 tive of such a worker.

21 “(B) COMPLAINT RESOLUTION PROCESS.—
22 The State must establish a complaint resolution
23 process in order to ensure that a resident is not
24 retaliated against if the resident has com-
25 plained, in good faith, about the quality of care

1 or other issues relating to the skilled nursing
2 facility, that the legal representative of a resi-
3 dent of a skilled nursing facility or other re-
4 sponsible party is not denied access to such
5 resident or otherwise retaliated against if such
6 representative or party has complained, in good
7 faith, about the quality of care provided by the
8 facility or other issues relating to the facility,
9 and that a person who works at a skilled nurs-
10 ing facility is not retaliated against if the work-
11 er has complained, in good faith, about quality
12 of care or services or an issue relating to the
13 quality of care or services provided at the facil-
14 ity, whether the resident, legal representative,
15 other responsible party, or worker used the
16 form developed under subsection (f)(8) or some
17 other method for submitting the complaint.
18 Such complaint resolution process shall in-
19 clude—

20 “(i) procedures to assure accurate
21 tracking of complaints received, including
22 notification to the complainant that a com-
23 plaint has been received;

1 “(ii) procedures to determine the like-
2 ly severity of a complaint and for the in-
3 vestigation of the complaint;

4 “(iii) deadlines for responding to a
5 compliant and procedures in order to en-
6 able the complainant to track the status of
7 the complaint and investigation; and

8 “(iv) procedures to ensure that the
9 identity of the complainant will be kept
10 confidential.

11 “(C) WHISTLEBLOWER PROTECTION.—

12 “(i) PROHIBITION AGAINST RETALIA-
13 TION.—No person who works at a skilled
14 nursing facility may be penalized, discrimi-
15 nated, or retaliated, against with respect to
16 any aspect of employment, including dis-
17 charge, promotion, compensation, terms,
18 conditions, or privileges of employment, or
19 have a contract for services terminated, be-
20 cause the person (or anyone acting at the
21 person’s request) complained, in good
22 faith, about the quality of care or services
23 provided by a nursing facility or about
24 other issues relating to quality of care or
25 services, whether using the form developed

1 under subsection (f)(8) or some other
2 method for submitting the complaint.

3 “(ii) RETALIATORY REPORTING.—A
4 skilled nursing facility may not file a com-
5 plaint or a report against a person who
6 works (or has worked) at the facility with
7 the appropriate State professional discipli-
8 nary agency because the person (or anyone
9 acting at the person’s request) filed, in
10 good faith, a complaint described in clause
11 (i).

12 “(iii) COMMENCEMENT OF ACTION.—
13 Any person who believes the person has
14 been penalized, discriminated, or retaliated
15 against, or had a contract for services ter-
16 minated in violation of clause (i) or against
17 whom a complaint has been filed in viola-
18 tion of clause (ii) may bring an action at
19 law or equity in the appropriate district
20 court of the United States, which shall
21 have jurisdiction over such action without
22 regard to the amount in controversy or the
23 citizenship of the parties, and which shall
24 have jurisdiction to grant complete relief,
25 including, but not limited to, injunctive re-

1 lief (such as reinstatement), compensatory
2 damages (which may include reimburse-
3 ment of lost wages, compensation, and
4 benefits), costs of litigation (including rea-
5 sonable attorney and expert witness fees),
6 exemplary damages where appropriate, and
7 such other relief as the court deems just
8 and proper.

9 “(iv) RIGHTS NOT WAIVABLE.—The
10 rights protected by this paragraph may not
11 be diminished by contract or other agree-
12 ment, and nothing in this paragraph shall
13 be construed to diminish any greater or
14 additional protection provided by Federal
15 or State law or by contract or other agree-
16 ment.

17 “(v) RULE OF CONSTRUCTION.—
18 Nothing in this section shall be construed
19 as preventing a resident of a skilled nurs-
20 ing facility, a person acting on the resi-
21 dent’s behalf, or a person who works at a
22 skilled nursing facility from submitting a
23 complaint in a manner or format other
24 than by using the standardized complaint

1 form developed under subsection (f)(8) (in-
2 cluding submitting a complaint orally).

3 “(vi) REQUIREMENT TO POST NOTICE
4 OF EMPLOYEE RIGHTS.—Each skilled
5 nursing facility shall post conspicuously in
6 an appropriate location a sign (in a form
7 specified by the Secretary) specifying the
8 rights of persons under this paragraph and
9 including a statement that an employee
10 may file a complaint with the Secretary
11 against the a skilled nursing facility that
12 violates the provisions of this paragraph
13 and information with respect to the man-
14 ner of filing such a complaint.

15 “(D) GOOD FAITH DEFINED.—For pur-
16 poses of this paragraph, an individual shall be
17 deemed to be acting in good faith with respect
18 to the filing of a complaint if the individual rea-
19 sonably believes—

20 “(i) the information reported or dis-
21 closed in the complaint is true; and

22 “(ii) a violation of this title has oc-
23 curred or may occur in relation to such in-
24 formation.”.

25 (b) NURSING FACILITIES.—

1 (1) DEVELOPMENT BY THE SECRETARY.—Sec-
2 tion 1919(f) of the Social Security Act (42 U.S.C.
3 1395i–3(f)) is amended by adding at the end the fol-
4 lowing new paragraph:

5 “(10) STANDARDIZED COMPLAINT FORM.—The
6 Secretary shall develop a standardized complaint
7 form for use in filing, in good faith, a complaint
8 with a State survey and certification agency and a
9 State long-term care ombudsman program with re-
10 spect to a nursing facility.”.

11 (2) STATE REQUIREMENTS.—Section 1919(e)
12 of the Social Security Act (42 U.S.C. 1395i–3(e)) is
13 amended by adding at the end the following new
14 paragraph:

15 “(8) COMPLAINT PROCESS AND WHISTLE-
16 BLOWER PROTECTION.—

17 “(A) COMPLAINT FORMS.—The State must
18 make the standardized complaint form devel-
19 oped under subsection (f)(10) available upon re-
20 quest to—

21 “(i) a resident of a nursing facility;

22 “(ii) any person acting on the resi-
23 dent’s behalf; and

1 “(iii) any person who works at a nurs-
2 ing facility or a representative of such a
3 worker.

4 “(B) COMPLAINT RESOLUTION PROCESS.—
5 The State must establish a complaint resolution
6 process in order to ensure that a resident is not
7 retaliated against if the resident has com-
8 plained, in good faith, about the quality of care
9 or other issues relating to the nursing facility,
10 that the legal representative of a resident of a
11 nursing facility or other responsible party is not
12 denied access to such resident or otherwise re-
13 taliated against if such representative or party
14 has complained, in good faith, about the quality
15 of care provided by the facility or other issues
16 relating to the facility, and that a person who
17 works at a nursing facility is not retaliated
18 against if the worker has complained, in good
19 faith, about quality of care or services or an
20 issue relating to the quality of care or services
21 provided at the facility, whether the resident,
22 legal representative, other responsible party, or
23 worker used the form developed under sub-
24 section (f)(10) or some other method for sub-

1 mitting the complaint. Such complaint resolu-
2 tion process shall include—

3 “(i) procedures to assure accurate
4 tracking of complaints received, including
5 notification to the complainant that a com-
6 plaint has been received;

7 “(ii) procedures to determine the like-
8 ly severity of a complaint and for the in-
9 vestigation of the complaint;

10 “(iii) deadlines for responding to a
11 compliant and procedures in order to en-
12 able the complainant to track the status of
13 the complaint and investigation; and

14 “(iv) procedures to ensure that the
15 identity of the complainant will be kept
16 confidential.

17 “(C) WHISTLEBLOWER PROTECTION.—

18 “(i) PROHIBITION AGAINST RETALIA-
19 TION.—No person who works at a skilled
20 nursing facility may be penalized, discrimi-
21 nated, or retaliated, against with respect to
22 any aspect of employment, including dis-
23 charge, promotion, compensation, terms,
24 conditions, or privileges of employment, or
25 have a contract for services terminated, be-

1 cause the person (or anyone acting at the
2 person's request) complained, in good
3 faith, about the quality of care or services
4 provided by a nursing facility or about
5 other issues relating to quality of care or
6 services, whether using the form developed
7 under subsection (f)(10) or some other
8 method for submitting the complaint.

9 “(ii) RETALIATORY REPORTING.—A
10 nursing facility may not file a complaint or
11 a report against a person who works (or
12 has worked) at the facility with the appro-
13 priate State professional disciplinary agen-
14 cy because the person (or anyone acting at
15 the person's request) filed, in good faith, a
16 complaint described in clause (i).

17 “(iii) COMMENCEMENT OF ACTION.—
18 Any person has been penalized, discrimi-
19 nated, or retaliated against, or had a con-
20 tract for services terminated in violation of
21 clause (i) or against whom a complaint has
22 been filed in violation of clause (ii) may
23 bring an action at law or equity in the ap-
24 propriate district court of the United
25 States, which shall have jurisdiction over

1 such action without regard to the amount
2 in controversy or the citizenship of the par-
3 ties, and which shall have jurisdiction to
4 grant complete relief, including, but not
5 limited to, injunctive relief (such as rein-
6 statement), compensatory damages (which
7 may include reimbursement of lost wages,
8 compensation, and benefits), costs of litiga-
9 tion (including reasonable attorney and ex-
10 pert witness fees), exemplary damages
11 where appropriate, and such other relief as
12 the court deems just and proper.

13 “(iv) RIGHTS NOT WAIVABLE.—The
14 rights protected by this paragraph may not
15 be diminished by contract or other agree-
16 ment, and nothing in this paragraph shall
17 be construed to diminish any greater or
18 additional protection provided by Federal
19 or State law or by contract or other agree-
20 ment.

21 “(v) RULE OF CONSTRUCTION.—
22 Nothing in this section shall be construed
23 as preventing a resident of a nursing facil-
24 ity, a person acting on the resident’s be-
25 half, or a person who works at a nursing

1 facility from submitting a complaint in a
2 manner or format other than by using the
3 standardized complaint form developed
4 under subsection (f)(10) (including submit-
5 ting a complaint orally).

6 “(vi) REQUIREMENT TO POST NOTICE
7 OF EMPLOYEE RIGHTS.—Each nursing fa-
8 cility shall post conspicuously in an appro-
9 priate location a sign (in a form specified
10 by the Secretary) specifying the rights of
11 persons under this paragraph and includ-
12 ing a statement that an employee may file
13 a complaint with the Secretary against the
14 a skilled nursing facility that violates the
15 provisions of this paragraph and informa-
16 tion with respect to the manner of filing
17 such a complaint.

18 “(D) GOOD FAITH DEFINED.—For pur-
19 poses of this paragraph, an individual shall be
20 deemed to be acting in good faith with respect
21 to the filing of a complaint if the individual rea-
22 sonably believes—

23 “(i) the information reported or dis-
24 closed in the complaint is true; and

1 “(ii) a violation of this title has oc-
2 curred or may occur in relation to such in-
3 formation.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect 1 year after the date of enact-
6 ment of this Act.

7 **SEC. 106. ENSURING STAFFING ACCOUNTABILITY.**

8 (a) SKILLED NURSING FACILITIES.—Section
9 1819(b)(8) of the Social Security Act (42 U.S.C. 1395i-
10 3(b)(8)) is amended by adding at the end the following
11 new subparagraph:

12 “(C) SUBMISSION OF STAFFING INFORMA-
13 TION BASED ON PAYROLL DATA IN A UNIFORM
14 FORMAT.—Beginning not later than 2 years
15 after the date of the enactment of this subpara-
16 graph, and after consulting with State long-
17 term care ombudsman programs, consumer ad-
18 vocacy groups, provider stakeholder groups, em-
19 ployees and their representatives, and other
20 parties the Secretary deems appropriate, the
21 Secretary shall require a skilled nursing facility
22 to electronically submit to the Secretary direct
23 care staffing information (including information
24 with respect to agency and contract staff) based
25 on payroll and other verifiable and auditable

1 data in a uniform format (according to speci-
2 fications established by the Secretary in con-
3 sultation with such programs, groups, and par-
4 ties). Such specifications shall require that the
5 information submitted under the preceding sen-
6 tence—

7 “(i) specify the category of work a
8 certified employee performs (such as
9 whether the employee is a registered nurse,
10 licensed practical nurse, licensed vocational
11 nurse, certified nursing assistant, thera-
12 pist, or other medical personnel);

13 “(ii) include resident census data and
14 information on resident case mix;

15 “(iii) include a regular reporting
16 schedule; and

17 “(iv) include information on employee
18 turnover and tenure and on the hours of
19 care provided by each category of certified
20 employees referenced in clause (i) per resi-
21 dent per day.

22 Nothing in this subparagraph shall be con-
23 strued as preventing the Secretary from requir-
24 ing submission of such information with respect
25 to specific categories, such as nursing staff, be-

1 fore other categories of certified employees. In-
2 formation under this subparagraph with respect
3 to agency and contract staff shall be kept sepa-
4 rate from information on employee staffing.”

5 (b) NURSING FACILITIES.—Section 1919(b)(8) of the
6 Social Security Act (42 U.S.C. 1396r(b)(8)) is amended
7 by adding at the end the following new subparagraph:

8 “(C) SUBMISSION OF STAFFING INFORMA-
9 TION BASED ON PAYROLL DATA IN A UNIFORM
10 FORMAT.—Beginning not later than 2 years
11 after the date of the enactment of this subpara-
12 graph, and after consulting with State long-
13 term care ombudsman programs, consumer ad-
14 vocacy groups, provider stakeholder groups, em-
15 ployees and their representatives, and other
16 parties the Secretary deems appropriate, the
17 Secretary shall require a nursing facility to elec-
18 tronically submit to the Secretary direct care
19 staffing information (including information with
20 respect to agency and contract staff) based on
21 payroll and other verifiable and auditable data
22 in a uniform format (according to specifications
23 established by the Secretary in consultation
24 with such programs, groups, and parties). Such

1 specifications shall require that the information
2 submitted under the preceding sentence—

3 “(i) specify the category of work a
4 certified employee performs (such as
5 whether the employee is a registered nurse,
6 licensed practical nurse, licensed vocational
7 nurse, certified nursing assistant, thera-
8 pist, or other medical personnel);

9 “(ii) include resident census data and
10 information on resident case mix;

11 “(iii) include a regular reporting
12 schedule; and

13 “(iv) include information on employee
14 turnover and tenure and on the hours of
15 care provided by each category of certified
16 employees referenced in clause (i) per resi-
17 dent per day.

18 Nothing in this subparagraph shall be con-
19 strued as preventing the Secretary from requir-
20 ing submission of such information with respect
21 to specific categories, such as nursing staff, be-
22 fore other categories of certified employees. In-
23 formation under this subparagraph with respect
24 to agency and contract staff shall be kept sepa-
25 rate from information on employee staffing.”

1 **TITLE II—TARGETING**
2 **ENFORCEMENT**

3 **SEC. 201. CIVIL MONEY PENALTIES.**

4 (a) **SKILLED NURSING FACILITIES.**—

5 (1) **IN GENERAL.**—Section 1819(h)(2)(B)(ii) of
6 the Social Security Act (42 U.S.C. 1395i–
7 3(h)(2)(B)(ii)) is amended to read as follows:

8 “(ii) **AUTHORITY WITH RESPECT TO**
9 **CIVIL MONEY PENALTIES.**—

10 “(I) **AMOUNT.**—Subject to sub-
11 clause (IV), the Secretary may impose
12 a civil money penalty in the applicable
13 per instance or per day amount (as
14 defined in subclause (II) and (III))
15 for each day or each instance, respec-
16 tively, of noncompliance (as deter-
17 mined appropriate by the Secretary).

18 “(II) **APPLICABLE PER INSTANCE**
19 **AMOUNT.**—In this clause, the term
20 ‘applicable per instance amount’
21 means—

22 “(aa) in the case where the
23 deficiency is found to be a direct
24 proximate cause of death of a

1 resident of the facility, an
2 amount not to exceed \$100,000;

3 “(bb) in each case of a defi-
4 ciency where the facility is cited
5 for actual harm or immediate
6 jeopardy, an amount not less
7 than \$3,050 and not more than
8 \$25,000; and

9 “(cc) in each case of any
10 other deficiency, an amount not
11 less than \$250 and not to exceed
12 \$3,050.

13 “(III) APPLICABLE PER DAY
14 AMOUNT.—In this clause, the term
15 ‘applicable per day amount’ means—

16 “(aa) in each case of a defi-
17 ciency where the facility is cited
18 for actual harm or immediate
19 jeopardy, an amount not less
20 than \$3,050 and not more than
21 \$25,000; and

22 “(bb) in each case of any
23 other deficiency, an amount not
24 less than \$250 and not to exceed
25 \$3,050.

1 “(IV) REDUCTION OF CIVIL
2 MONEY PENALTIES IN CERTAIN CIR-
3 CUMSTANCES.—Subject to subclauses
4 (V) and (VI), in the case where a fa-
5 cility self-reports and promptly cor-
6 rects a deficiency for which a penalty
7 was imposed under this clause not
8 later than 10 calendar days after the
9 date of such imposition, the Secretary
10 may reduce the amount of the penalty
11 imposed.

12 “(V) PROHIBITIONS ON REDUC-
13 TION FOR CERTAIN DEFICIENCIES.—

14 “(aa) REPEAT DEFICI-
15 CIENCIES.—The Secretary may
16 not reduce the amount of a pen-
17 alty under subclause (IV) if the
18 Secretary had reduced a penalty
19 imposed on the facility in the
20 preceding year under such sub-
21 clause with respect to a repeat
22 deficiency.

23 “(bb) CERTAIN OTHER DE-
24 FICIENCIES.—The Secretary may
25 not reduce the amount of a pen-

1 alty under subclause (IV) if the
2 penalty is imposed for a defi-
3 ciency described in subclause
4 (II)(bb) or (III)(aa) and the ac-
5 tual harm is found to result in a
6 pattern of harm or widespread
7 harm that immediately jeopard-
8 izes the health or safety of a resi-
9 dent or residents of the facility,
10 or if the penalty is imposed for a
11 deficiency described in subclause
12 (II)(aa).

13 “(VI) LIMITATION ON AGGRE-
14 GATE REDUCTIONS.—The aggregate
15 reduction in a penalty under sub-
16 clause (IV) may not exceed 35 percent
17 on the basis of self-reporting, on the
18 basis of a waiver of an appeal (as pro-
19 vided for under regulations under sec-
20 tion 488.436 of title 42, Code of Fed-
21 eral Regulations), or on the basis of
22 both.

23 “(VII) COLLECTION OF CIVIL
24 MONEY PENALTIES.—In the case of a
25 civil money penalty imposed under

1 this clause for a deficiency described
2 in item (aa) or (bb) of subclause (II)
3 or subclause (III)(aa), the Sec-
4 retary—

5 “(aa) subject to item (bb),
6 shall provide the opportunity for
7 the facility to participate in an
8 informal dispute resolution proc-
9 ess prior to the collection of such
10 penalty;

11 “(bb) may provide for the
12 collection of such civil money
13 penalty and the placement of
14 such amounts collected in an es-
15 crow account on the earlier of the
16 date on which the informal dis-
17 pute resolution process under
18 item (aa) is completed or the
19 date that is 90 days after the
20 date of the imposition of the pen-
21 alty;

22 “(cc) may provide that such
23 amounts collected are kept in
24 such account pending the resolu-
25 tion of any appeals;

1 “(dd) in the case where the
2 facility successfully appeals the
3 penalty, shall provide for the re-
4 turn of such amounts collected
5 (plus interest) to the facility; and
6 “(ee) in the case where all
7 such appeals are unsuccessful,
8 may provide that some portion of
9 such amounts collected may be
10 used to support activities of the
11 State long term care ombudsman
12 or that benefit residents, includ-
13 ing assistance to support and
14 protect residents who reside in a
15 facility that closes (voluntarily or
16 involuntarily) or is decertified
17 (including offsetting costs of relo-
18 cating residents to home and
19 community-based settings or an-
20 other facility), and projects that
21 support resident and family coun-
22 cils and other consumer involve-
23 ment in assuring quality care in
24 facilities.

1 “(VIII) PROCEDURE.—The pro-
2 visions of section 1128A (other than
3 subsections (a) and (b) and except to
4 the extent that such provisions require
5 a hearing prior to the imposition of a
6 civil money penalty in the case de-
7 scribed in subclause (VII)) shall apply
8 to a civil money penalty under this
9 clause in the same manner as such
10 provisions apply to a penalty or pro-
11 ceeding under section 1128A(a).

12 “(IX) INDEXING AMOUNTS.—For
13 years beginning after 2010, each of
14 the amounts specified in subclauses
15 (II) and (III) shall be subject to peri-
16 odic increase in accordance with the
17 provisions of section 5 of the Federal
18 Civil Penalties Inflation Adjustment
19 Act of 1990 (Public Law 101–410; 28
20 U.S.C. 2461 note).”.

21 (2) CONFORMING AMENDMENT.—The second
22 sentence of section 1819(h)(5) of the Social Security
23 Act (42 U.S.C. 1395i–3(h)(5)) is amended by insert-
24 ing “(ii)(V),” after “(i),”.

25 (b) NURSING FACILITIES.—

1 (1) PENALTIES IMPOSED BY THE STATE.—

2 (A) IN GENERAL.—Section 1919(h)(2) of
3 the Social Security Act (42 U.S.C. 1396r(h)(2))
4 is amended—

5 (i) in subparagraph (A)(ii), by strik-
6 ing the first sentence and inserting the fol-
7 lowing: “A civil money penalty in accord-
8 ance with subparagraph (G).”; and

9 (ii) by adding at the end the following
10 new subparagraph:

11 “(G) CIVIL MONEY PENALTIES.—

12 “(i) IN GENERAL.—Subject to clause
13 (iii), the State may impose a civil money
14 penalty under subparagraph (A)(ii) in the
15 applicable per instance or per day amount
16 (as defined in clause (ii) and (iii)) for each
17 day or each instance, respectively, of non-
18 compliance (as determined appropriate by
19 the State).

20 “(ii) APPLICABLE PER INSTANCE
21 AMOUNT.—In this subparagraph, the term
22 ‘applicable per instance amount’ means—

23 “(I) in the case where the defi-
24 ciency is found to be a direct prox-
25 imate cause of death of a resident of

1 the facility, an amount not to exceed
2 \$100,000;

3 “(II) in each case of a deficiency
4 where the facility is cited for actual
5 harm or immediate jeopardy, an
6 amount not less than \$3,050 and not
7 more than \$25,000; and

8 “(III) in each case of any other
9 deficiency, an amount not less than
10 \$250 and not to exceed \$3,050.

11 “(iii) APPLICABLE PER DAY
12 AMOUNT.—In this subparagraph, the term
13 ‘applicable per day amount’ means—

14 “(I) in each case of a deficiency
15 where the facility is cited for actual
16 harm or immediate jeopardy, an
17 amount not less than \$3,050 and not
18 more than \$25,000; and

19 “(II) in each case of any other
20 deficiency, an amount not less than
21 \$250 and not to exceed \$3,050.

22 “(iv) REDUCTION OF CIVIL MONEY
23 PENALTIES IN CERTAIN CIR-
24 CUMSTANCES.—Subject to clauses (v) and
25 (vi), in the case where a facility self-re-

1 ports and promptly corrects a deficiency
2 for which a penalty was imposed under
3 subparagraph (A)(ii) not later than 10 cal-
4 endar days after the date of such imposi-
5 tion, the State may reduce the amount of
6 the penalty imposed.

7 “(v) PROHIBITION ON REDUCTION
8 FOR CERTAIN DEFICIENCIES.—

9 “(I) REPEAT DEFICIENCIES.—

10 The State may not reduce the amount
11 of a penalty under clause (iv) if the
12 State had reduced a penalty imposed
13 on the facility in the preceding year
14 under such clause with respect to a
15 repeat deficiency.

16 “(II) CERTAIN OTHER DEFICI-
17 CIENCIES.—The State may not reduce
18 the amount of a penalty under clause
19 (iv) if the penalty is imposed for a de-
20 ficiency described in clause (ii)(II) or
21 (iii)(I) and the actual harm is found
22 to result in a pattern of harm or wide-
23 spread harm that immediately jeop-
24 ardizes the health or safety of a resi-
25 dent or residents of the facility, or if

1 the penalty is imposed for a deficiency
2 described in clause (ii)(I).

3 “(vi) LIMITATION ON AGGREGATE RE-
4 Ductions.—The aggregate reduction in a
5 penalty under clause (iv) may not exceed
6 35 percent on the basis of self-reporting,
7 on the basis of a waiver of an appeal (as
8 provided for under regulations under sec-
9 tion 488.436 of title 42, Code of Federal
10 Regulations), or on the basis of both.

11 “(vii) COLLECTION OF CIVIL MONEY
12 PENALTIES.—In the case of a civil money
13 penalty imposed under subparagraph
14 (A)(ii) for a deficiency described in sub-
15 clause (I) or (II) of clause (ii) or clause
16 (iii)(I), the State—

17 “(I) subject to subclause (II),
18 shall provide the opportunity for the
19 facility to participate in an informal
20 dispute resolution process prior to the
21 collection of such penalty;

22 “(II) may provide for the collec-
23 tion of such civil money penalty and
24 the placement of such amounts col-
25 lected in an escrow account on the

1 earlier of the date on which the infor-
2 mal dispute resolution process under
3 subclause (I) is completed or the date
4 that is 90 days after the date of the
5 imposition of the penalty;

6 “(III) may provide that such
7 amounts collected are kept in such ac-
8 count pending the resolution of any
9 appeals;

10 “(IV) in the case where the facil-
11 ity successfully appeals the penalty,
12 shall provide for the return of such
13 amounts collected (plus interest) to
14 the facility; and

15 “(V) in the case where all such
16 appeals are unsuccessful, may provide
17 that such funds collected shall be used
18 for the purposes described in the sec-
19 ond sentence of subparagraph (A)(ii).

20 “(viii) INDEXING AMOUNTS.—For
21 years beginning after 2010, each of the
22 amounts specified in clauses (ii) and (iii)
23 shall be subject to periodic increase in ac-
24 cordance with the provisions of section 5 of
25 the Federal Civil Penalties Inflation Ad-

1 justment Act of 1990 (Public Law 101–
2 410; 28 U.S.C. 2461 note).”.

3 (B) CONFORMING AMENDMENT.—The sec-
4 ond sentence of section 1919(h)(2)(A)(ii) is
5 amended by inserting “, and some portion of
6 such funds may be used to support activities of
7 the State long-term care ombudsman that ben-
8 efit residents, including assistance to support
9 and protect residents who reside in a facility
10 that closes (voluntarily or involuntarily) or is
11 decertified (including offsetting costs of relo-
12 cating residents to home and community-based
13 settings or another facility), and projects that
14 support resident and family councils and other
15 consumer involvement in assuring quality care
16 in facilities” before the period at the end.

17 (2) PENALTIES IMPOSED BY THE SEC-
18 RETARY.—

19 (A) IN GENERAL.—Section
20 1919(h)(3)(C)(ii) of the Social Security Act (42
21 U.S.C. 1396r(h)(3)(C)) is amended to read as
22 follows:

23 “(ii) AUTHORITY WITH RESPECT TO
24 CIVIL MONEY PENALTIES.—

1 “(I) IN GENERAL.—Subject to
2 subclause (III), the Secretary may im-
3 pose a civil money penalty in the ap-
4 plicable per instance or per day
5 amount (as defined in subclause (II)
6 and (III)) for each day or each in-
7 stance, respectively, of noncompliance
8 (as determined appropriate by the
9 Secretary).

10 “(II) APPLICABLE PER INSTANCE
11 AMOUNT.—In this clause, the term
12 ‘applicable per instance amount’
13 means—

14 “(aa) in the case where the
15 deficiency is found to be a direct
16 proximate cause of death of a
17 resident of the facility, an
18 amount not to exceed \$100,000;

19 “(bb) in each case of a defi-
20 ciency where the facility is cited
21 for actual harm or immediate
22 jeopardy, an amount not less
23 than \$3,050 and not more than
24 \$25,000; and

1 “(cc) in each case of any
2 other deficiency, an amount not
3 less than \$250 and not to exceed
4 \$3,050.

5 “(III) APPLICABLE PER DAY
6 AMOUNT.—In this subparagraph, the
7 term ‘applicable per day amount’
8 means—

9 “(aa) in each case of a defi-
10 ciency where the facility is cited
11 for actual harm or immediate
12 jeopardy, an amount not less
13 than \$3,050 and not more than
14 \$25,000; and

15 “(bb) in each case of any
16 other deficiency, an amount not
17 less than \$250 and not to exceed
18 \$3,050.

19 “(IV) REDUCTION OF CIVIL
20 MONEY PENALTIES IN CERTAIN CIR-
21 CUMSTANCES.—Subject to subclauses
22 (V) and (VI), in the case where a fa-
23 cility self-reports and promptly cor-
24 rects a deficiency for which a penalty
25 was imposed under this clause not

1 later than 10 calendar days after the
2 date of such imposition, the State
3 may reduce the amount of the penalty
4 imposed.

5 “(V) PROHIBITION ON REDUC-
6 TION FOR CERTAIN DEFICIENCIES.—

7 “(aa) REPEAT DEFICI-
8 CIENCIES.—The Secretary may
9 not reduce the amount of a pen-
10 alty under subclause (IV) if the
11 Secretary had reduced a penalty
12 imposed on the facility in the
13 preceding year under such sub-
14 clause with respect to a repeat
15 deficiency.

16 “(bb) CERTAIN OTHER DE-
17 FICIENCIES.—The Secretary may
18 not reduce the amount of a pen-
19 alty under subclause (IV) if the
20 penalty is imposed for a defi-
21 ciency described in subclause
22 (II)(aa) or (III)(a) and the ac-
23 tual harm is found to result in a
24 pattern of harm or widespread
25 harm that immediately jeopard-

1 izes the health or safety of a resi-
2 dent or residents of the facility,
3 or if the penalty is imposed for a
4 deficiency described in subclause
5 (II)(a).

6 “(VI) LIMITATION ON AGGRE-
7 GATE REDUCTIONS.—The aggregate
8 reduction in a penalty under sub-
9 clause (IV) may not exceed 35 percent
10 on the basis of self-reporting, on the
11 basis of a waiver of an appeal (as pro-
12 vided for under regulations under sec-
13 tion 488.436 of title 42, Code of Fed-
14 eral Regulations), or on the basis of
15 both.

16 “(VII) COLLECTION OF CIVIL
17 MONEY PENALTIES.—In the case of a
18 civil money penalty imposed under
19 subparagraph (A)(ii) for a deficiency
20 described in subclause (I) or (II) of
21 clause (ii) or clause (iii)(I), the
22 State—

23 “(aa) subject to subclause
24 (II), shall provide the opportunity
25 for the facility to participate in

1 an informal dispute resolution
2 process prior to the collection of
3 such penalty;

4 “(bb) may provide for the
5 collection of such civil money
6 penalty and the placement of
7 such amounts collected in an es-
8 crow account on the earlier of the
9 date on which the informal dis-
10 pute resolution process under
11 subclause (I) is completed or the
12 date that is 90 days after the
13 date of the imposition of the pen-
14 alty;

15 “(cc) may provide that such
16 amounts collected are kept in
17 such account pending the resolu-
18 tion of any appeals;

19 “(dd) in the case where the
20 facility successfully appeals the
21 penalty, shall provide for the re-
22 turn of such amounts collected
23 (plus interest) to the facility; and

24 “(ee) in the case where all
25 such appeals are unsuccessful,

1 may provide that such funds col-
2 lected shall be used for the pur-
3 poses described in the second
4 sentence of paragraph (2)(A)(ii).

5 “(VIII) INDEXING AMOUNTS.—

6 For years beginning after 2010, each
7 of the amounts specified in subclauses
8 (II) and (III) shall be subject to peri-
9 odic increase in accordance with the
10 provisions of section 5 of the Federal
11 Civil Penalties Inflation Adjustment
12 Act of 1990 (Public Law 101–410; 28
13 U.S.C. 2461 note).

14 “(IX) PROCEDURE.—The provi-
15 sions of section 1128A (other than
16 subsections (a) and (b) and except to
17 the extent that such provisions require
18 a hearing prior to the imposition of a
19 civil money penalty in the case de-
20 scribed in subclause (VII)) shall apply
21 to a civil money penalty under this
22 clause in the same manner as such
23 provisions apply to a penalty or pro-
24 ceeding under section 1128A(a).”.

1 (B) CONFORMING AMENDMENT.—Section
2 1919(h)(5)(8) of the Social Security Act (42
3 U.S.C. 1396r(h)(5)(8)) is amended by inserting
4 “(ii)(V),” after “(i),”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect 1 year after the date of enact-
7 ment of this Act.

8 **SEC. 202. NATIONAL INDEPENDENT MONITORING REQUIRE-**
9 **MENTS.**

10 (a) SKILLED NURSING FACILITIES.—Section
11 1819(h) of the Social Security Act (42 U.S.C. 1395i-
12 3(h)(2)) is amended—

13 (1) by redesignating paragraphs (5) and (6) as
14 paragraphs (6) and (7), respectively; and

15 (2) by inserting after paragraph (4) the fol-
16 lowing new paragraph:

17 “(5) NATIONAL INDEPENDENT MONITORING
18 REQUIREMENTS.—

19 “(A) IN GENERAL.—Not later than 1 year
20 after the date of enactment of this paragraph,
21 the Secretary shall, in consultation with the In-
22 spector General of the Department of Health
23 and Human Services, evaluate the potential
24 benefit and feasibility of applying independent

1 monitoring requirements to interstate and large
2 intrastate chains of skilled nursing facilities.

3 “(B) CONSIDERATIONS.— The feasibility
4 evaluation under subparagraph (A) shall con-
5 sider the following:

6 “(i) The need for independent moni-
7 toring requirements to address and remedy
8 patterns of chronic poor performance,
9 based on quality deficiencies, high staff
10 turnover rates, or poor performance on
11 other metrics of quality of care.

12 “(ii) Criteria for selecting interstate
13 and large intrastate chains subject to inde-
14 pendent monitoring requirements, includ-
15 ing—

16 “(I) chains that have had a num-
17 ber of the facilities of such chain en-
18 rolled in the ‘Special Focus Facility
19 program’ (or a successor program) es-
20 tablished by the Centers for Medicare
21 & Medicaid Services during the pre-
22 ceding 3 years that exceeds a thresh-
23 old number specified by the Secretary;

1 “(II) chains experiencing finan-
2 cial problems that may be linked to
3 serious quality deficiencies;

4 “(III) chains experiencing low
5 staffing levels in relation to the num-
6 ber and case mix of patients or turn-
7 over rates linked to serious quality de-
8 ficiencies; and

9 “(IV) chains that have a record
10 of chronic poor performance;

11 and including other appropriate criteria.

12 “(iii) Responsibilities of independent
13 monitors, including—

14 “(I) conducting periodic reviews
15 and preparing root-cause quality and
16 deficiency analyses of a chain de-
17 scribed in such subparagraph to as-
18 sess compliance by the chain with
19 State and Federal laws and regula-
20 tions;

21 “(II) conducting oversight of ef-
22 forts by such a chain, whether pub-
23 licly or privately held, to achieve com-
24 pliance with State and Federal laws
25 and regulations;

1 “(III) analyzing the management
2 structure, distribution of expenditures,
3 and direct care staffing levels of facili-
4 ties of such a chain in relation to resi-
5 dent census, staff turnover rates, and
6 tenure;

7 “(IV) reporting findings and rec-
8 ommendations with respect to such re-
9 views, analyses, and oversight to the
10 chain and facilities of the chain, to
11 the Secretary, and to relevant States;
12 and

13 “(V) other responsibilities of
14 independent monitors;

15 “(iv) Other implementation issues, in-
16 cluding timelines, processes, and enforce-
17 ment mechanisms for implementation of
18 independent monitor recommendations and
19 corrective action plans.”.

20 (b) NURSING FACILITIES.—Section 1919(h) of the
21 Social Security Act (42 U.S.C. 1396r(h)) is amended—

22 (1) by redesignating paragraphs (8) and (9) as
23 paragraphs (9) and (10), respectively; and

24 (2) by inserting after paragraph (7) the fol-
25 lowing new paragraph:

1 “(7) NATIONAL INDEPENDENT MONITORING
2 REQUIREMENTS.—

3 “(A) IN GENERAL.—Not later than 1 year
4 after the date of enactment of this paragraph,
5 the Secretary shall, in consultation with the In-
6 specter General of the Department of Health
7 and Human Services, evaluate the potential
8 benefit and feasibility of applying independent
9 monitoring requirements to interstate and large
10 intrastate chains of nursing facilities.

11 “(B) CONSIDERATIONS.— The feasibility
12 evaluation under subparagraph (A) shall con-
13 sider the following:

14 “(i) The need for independent moni-
15 toring requirements to address and remedy
16 patterns of chronic poor performance,
17 based on quality deficiencies, high staff
18 turnover rates, or poor performance on
19 other metrics of quality of care.

20 “(ii) Criteria for selecting interstate
21 and large intrastate chains subject to inde-
22 pendent monitoring requirements, includ-
23 ing—

24 “(I) chains that have had a num-
25 ber of the facilities of such chain en-

1 rolled in the ‘Special Focus Facility
2 program’ (or a successor program) es-
3 tablished by the Centers for Medicare
4 & Medicaid Services during the pre-
5 ceding 3 years that exceeds a thresh-
6 old number specified by the Secretary;

7 “(II) chains experiencing finan-
8 cial problems that may be linked to
9 serious quality deficiencies;

10 “(III) chains experiencing low
11 staffing levels in relation to the num-
12 ber and case mix of patients or turn-
13 over rates linked to serious quality de-
14 ficiencies; and

15 “(IV) chains that have a record
16 of chronic poor performance;

17 and including other appropriate criteria.

18 “(iii) Responsibilities of independent
19 monitors, including—

20 “(I) conducting periodic reviews
21 and preparing root-cause quality and
22 deficiency analyses of a chain de-
23 scribed in such subparagraph to as-
24 sess compliance by the chain with

1 State and Federal laws and regula-
2 tions;

3 “(II) conducting oversight of ef-
4 forts by such a chain, whether pub-
5 licly or privately held, to achieve com-
6 pliance with State and Federal laws
7 and regulations;

8 “(III) analyzing the management
9 structure, distribution of expenditures,
10 and direct care staffing levels of facili-
11 ties of such a chain in relation to resi-
12 dent census, staff turnover rates, and
13 tenure;

14 “(IV) reporting findings and rec-
15 ommendations with respect to such re-
16 views, analyses, and oversight to the
17 chain and facilities of the chain, to
18 the Secretary, and to relevant States;
19 and

20 “(V) other responsibilities of
21 independent monitors;

22 “(iv) Other implementation issues, in-
23 cluding timelines, processes, and enforce-
24 ment mechanisms for implementation of

1 independent monitor recommendations and
2 corrective action plans.”.

3 **SEC. 203. GAO STUDIES AND REPORTS ON TEMPORARY**
4 **MANAGEMENT.**

5 (a) IN GENERAL.—The Comptroller General of the
6 United States (in this section referred to as the “Comp-
7 troller General”) shall conduct a study on—

8 (1) best practices for the appointment of tem-
9 porary management under sections
10 1819(h)(2)(B)(iii), 1919(h)(2)(A)(iii), and
11 1919(h)(3)(C)(iii) of the Social Security Act (42
12 U.S.C. 1395i–3(h)(2)(B)(iii); 1396r(h)(2)(A)(iii);
13 1396r(h)(3)(C)(iii)); and

14 (2) barriers to the appointment of such tem-
15 porary management.

16 (b) REPORT.—Not later than 1 year after the date
17 of enactment of this Act, the Comptroller General shall
18 submit a report to Congress containing the results of the
19 study conducted under subsection (a), together with rec-
20 ommendations for such legislation and administrative ac-
21 tion as the Comptroller General determines appropriate.

22 (c) GUIDANCE TO STATES.—The Secretary of Health
23 and Human Services shall issue guidance to States based
24 on the recommendations contained in the report submitted
25 under subsection (b).

1 **SEC. 204. NOTIFICATION OF FACILITY CLOSURE.**

2 (a) SKILLED NURSING FACILITIES.—

3 (1) IN GENERAL.—Section 1819(c) of the So-
4 cial Security Act (42 U.S.C. 1395i–3(c)) is amended
5 by adding at the end the following new paragraph:

6 “(7) NOTIFICATION OF FACILITY CLOSURE.—

7 “(A) IN GENERAL.—Any individual who is
8 the license holder of a skilled nursing facility
9 must—

10 “(i) submit to the Secretary, the State
11 long-term care ombudsman, residents of
12 the facility, and the legal representatives of
13 such residents or other responsible parties,
14 written notification of an impending clo-
15 sure—

16 “(I) subject to subclause (II), not
17 later than the date that is 60 days
18 prior to the date of such closure; and

19 “(II) in the case of a facility
20 where the Secretary terminates the fa-
21 cility’s participation under this title,
22 not later than the date that the Sec-
23 retary determines appropriate;

24 “(ii) ensure that the facility does not
25 admit any new residents on or after the

1 date on which such written notification is
2 submitted; and

3 “(iii) include in the notice a plan for
4 the transfer and adequate relocation of the
5 residents of the facility by a specified date
6 prior to closure that has been approved by
7 the State, including assurances that the
8 residents will be transferred to the most
9 appropriate facility or other setting in
10 terms of quality, services, and location,
11 taking into consideration the needs, best
12 interests, and preferences of each resident.

13 “(B) RELOCATION.—

14 “(i) IN GENERAL.—The State shall
15 ensure that, before a facility closes, all
16 residents of the facility have been success-
17 fully relocated to another facility or an al-
18 ternative home and community-based set-
19 ting.

20 “(ii) CONTINUATION OF PAYMENTS
21 UNTIL RESIDENTS RELOCATED.—The Sec-
22 retary may, as the Secretary determines
23 appropriate, continue to make payments
24 under this title with respect to residents of
25 a facility that has submitted a notification

1 under subparagraph (A) during the period
2 beginning on the date such notification is
3 submitted and ending on the date on which
4 the resident is successfully relocated.”.

5 (2) CONFORMING AMENDMENTS.—Section
6 1819(h)(4) of the Social Security Act (42 U.S.C.
7 1395i–3(h)(4)) is amended—

8 (A) in the first sentence, by striking “the
9 Secretary shall terminate” and inserting “the
10 Secretary, subject to subsection (c)(7), shall
11 terminate”; and

12 (B) in the second sentence, by striking
13 “subsection (c)(2)” and inserting “paragraphs
14 (2) and (7) of subsection (c)”.

15 (b) NURSING FACILITIES.—

16 (1) IN GENERAL.—Section 1919(c) of the So-
17 cial Security Act (42 U.S.C. 1396r(c)) is amended
18 by adding at the end the following new paragraph:

19 “(9) NOTIFICATION OF FACILITY CLOSURE.—

20 “(A) IN GENERAL.—Any individual who is
21 the license holder of a nursing facility must—

22 “(i) submit to the Secretary, the State
23 long-term care ombudsman, residents of
24 the facility, and the legal representatives of
25 such residents or other responsible parties,

1 written notification of an impending clo-
2 sure—

3 “(I) subject to subclause (II), not
4 later than the date that is 60 days
5 prior to the date of such closure; and

6 “(II) in the case of a facility
7 where the Secretary terminates the fa-
8 cility’s participation under this title,
9 not later than the date that the Sec-
10 retary determines appropriate;

11 “(ii) ensure that the facility does not
12 admit any new residents on or after the
13 date on which such written notification is
14 submitted; and

15 “(iii) include in the notice a plan for
16 the transfer and adequate relocation of the
17 residents of the facility by a specified date
18 prior to closure that has been approved by
19 the State, including assurances that the
20 residents will be transferred to the most
21 appropriate facility or other setting in
22 terms of quality, services, and location,
23 taking into consideration the needs, best
24 interests, and preferences of each resident.

25 “(B) RELOCATION.—

1 that are involved in the culture change movement (includ-
2 ing the development of resources for facilities to find and
3 access funding in order to undertake culture change) and
4 1 for the development of best practices in skilled nursing
5 facilities and nursing facilities for the use of information
6 technology to improve resident care.

7 (b) CONDUCT OF DEMONSTRATION PROJECTS.—

8 (1) GRANT AWARD.—Under each demonstration
9 project conducted under this section, the Secretary
10 shall award 1 or more grants to facility-based set-
11 tings for the development of best practices described
12 in subsection (a) with respect to the demonstration
13 project involved. Such award shall be made on a
14 competitive basis and may be allocated in 1 lump-
15 sum payment.

16 (2) CONSIDERATION OF SPECIAL NEEDS OF
17 RESIDENTS.—Each demonstration project conducted
18 under this section shall take into consideration the
19 special needs of residents of skilled nursing facilities
20 and nursing facilities who have cognitive impair-
21 ment, including dementia.

22 (c) IMPLEMENTATION AND DURATION.—

23 (1) IMPLEMENTATION.—The demonstration
24 projects shall each be implemented not later than 1
25 year after the date of enactment of this Act.

1 (2) IN GENERAL.—The demonstration projects
2 shall each be conducted for a period not to exceed
3 3 years.

4 (d) DEFINITIONS.—In this section:

5 (1) NURSING FACILITY.—The term “nursing
6 facility” has the meaning given such term in section
7 1919(a) of the Social Security Act (42 U.S.C.
8 1396r(a)).

9 (2) SECRETARY.—The term “Secretary” means
10 the Secretary of Health and Human Services.

11 (3) SKILLED NURSING FACILITY.—The term
12 “skilled nursing facility” has the meaning given such
13 term in section 1819(a) of the Social Security Act
14 (42 U.S.C. 1395(a)).

15 (e) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as are nec-
17 essary to carry out this section.

18 (f) REPORT.—Not later than 9 months after the com-
19 pletion of the demonstration project, the Secretary shall
20 submit a report to Congress on such project, together with
21 recommendations for such legislation and administrative
22 action as the Secretary determines appropriate.

1 **TITLE III—IMPROVING STAFF**
2 **TRAINING**

3 **SEC. 301. DEMENTIA AND ABUSE PREVENTION TRAINING.**

4 (a) SKILLED NURSING FACILITIES.—Section
5 1819(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C.
6 1395i–3(f)(2)(A)(i)(I)) is amended by inserting “(includ-
7 ing, in the case of initial training and, if the Secretary
8 determines appropriate, in the case of ongoing training,
9 dementia management training, and patient abuse preven-
10 tion training” before “, (II)”.

11 (b) NURSING FACILITIES.—Section
12 1919(f)(2)(A)(i)(I) of the Social Security Act (42 U.S.C.
13 1396r(f)(2)(A)(i)(I)) is amended by inserting “(including,
14 in the case of initial training and, if the Secretary deter-
15 mines appropriate, in the case of ongoing training, demen-
16 tia management training, and patient abuse prevention”
17 before “, (II)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 1 year after the date of enact-
20 ment of this Act.

21 **SEC. 302. STUDY AND REPORT ON TRAINING REQUIRED**
22 **FOR CERTIFIED NURSE AIDES AND SUPER-**
23 **VISORY STAFF.**

24 (a) STUDY.—

1 (1) IN GENERAL.—The Secretary shall conduct
2 a study on the content of training for certified nurse
3 aides and supervisory staff of skilled nursing facili-
4 ties and nursing facilities. The study shall include an
5 analysis of the following:

6 (A) Whether the number of initial training
7 hours for certified nurse aides required under
8 sections 1819(f)(2)(A)(i)(II) and
9 1919(f)(2)(A)(i)(II) of the Social Security Act
10 (42 U.S.C. 1395i–3(f)(2)(A)(i)(II);
11 1396r(f)(2)(A)(i)(II)) should be increased from
12 75 and, if so, what the required number of ini-
13 tial training hours should be, including any rec-
14 ommendations for the content of such training
15 (including training related to dementia).

16 (B) Whether requirements for ongoing
17 training under such sections
18 1819(f)(2)(A)(i)(II) and 1919(f)(2)(A)(i)(II)
19 should be increased from 12 hours per year, in-
20 cluding any recommendations for the content of
21 such training.

22 (2) CONSULTATION.—In conducting the anal-
23 ysis under paragraph (1)(A), the Secretary shall
24 consult with States that currently (as of the date of

1 enactment of this Act) require more than 75 hours
2 of training for certified nurse aides.

3 (3) DEFINITIONS.—In this section:

4 (A) NURSING FACILITY.—The term “nurs-
5 ing facility” has the meaning given such term
6 in section 1919(a) of the Social Security Act
7 (42 U.S.C. 1396r(a)).

8 (B) SECRETARY.—The term “Secretary”
9 means the Secretary of Health and Human
10 Services, acting through the Assistant Secretary
11 for Planning and Evaluation.

12 (C) SKILLED NURSING FACILITY.—The
13 term “skilled nursing facility” has the meaning
14 given such term in section 1819(a) of the Social
15 Security Act (42 U.S.C. 1395(a)).

16 (b) REPORT.—Not later than 2 years after the date
17 of enactment of this Act, the Secretary shall submit a re-
18 port to Congress containing the results of the study con-
19 ducted under subsection (a), together with recommenda-
20 tions for such legislation and administrative action as the
21 Secretary determines appropriate.

○