H. R. _____

To amend titles XVIII and XIX of the Social Security Act to improve the quality of care in skilled nursing facilities under the Medicare program and nursing facilities under the Medicare program during the COVID–19 emergency period, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on __________________________

A BILL

To amend titles XVIII and XIX of the Social Security Act to improve the quality of care in skilled nursing facilities under the Medicare program and nursing facilities under the Medicare program during the COVID–19 emergency period, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Quality Care for Nurs-
ing Home Residents and Workers During COVID–19 Act

of 2020”.
SEC. 2. IMPROVING QUALITY OF CARE IN SKILLED NURSING FACILITIES AND NURSING FACILITIES DURING COVID–19 EMERGENCY PERIOD.

(a) MEDICARE.—Section 1819 of the Social Security Act (42 U.S.C. 1395i–3) is amended by adding at the end the following new subsection:

“(k) ADDITIONAL REQUIREMENTS DURING CERTAIN PUBLIC HEALTH EMERGENCY.—

“(1) SKILLED NURSING FACILITIES.—

“(A) IN GENERAL.—During the portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subsection, a skilled nursing facility shall comply with the quality of care requirements described in subparagraph (B), the worker safety requirements described in subparagraph (C), and the transparency requirements described in subparagraph (D).

“(B) QUALITY OF CARE REQUIREMENTS.—The quality of care requirements described in this subparagraph are each of the following:

“(i) Employ, on a full-time basis, an infection preventionist who—

“(I) has primary professional training in nursing, medical techn
nology, microbiology, epidemiology, or other related field;

“(II) is qualified by education, training, experience or certification; and—

“(III) has completed specialized training in infection prevention and control.

“(ii) In the case of a resident who elects to reside with a family member of such resident for any portion of the emergency period described in subparagraph (A), guarantee the right of such resident to resume residency in the facility at any time during the 180-day period immediately following the end of such emergency period.

“(iii) Notwithstanding subparagraphs (A) and (B) of subsection (c)(2), permit a resident to remain in the facility and not discharge or transfer the resident from the facility unless—

“(I) the State survey agency approves the discharge or transfer;

“(II) in the case of a transfer, the transfer is to a facility dedicated
to the care of residents who have been diagnosed with COVID–19 if the resident has been diagnosed with COVID–19, or a facility dedicated to the care of residents who have not been diagnosed with COVID–19 if the resident has not been diagnosed with COVID–19;

“(III) before effecting the discharge or transfer, the facility records the reasons in the resident’s clinical record;

“(IV) at least 72 hours in advance of the discharge or transfer, the facility provides a notice of the discharge or transfer to the resident (or legal representative of the resident, if applicable), including the reasons therefor and the items described in clause (iii) of subsection (c)(2)(B); and

“(V) the resident (or legal representative of the resident, if applicable) acknowledges receipt of the notice described in subclause (IV) and pro-
vides written consent to the discharge
or transfer.

“(iv) Test (on a weekly basis) each
resident for COVID–19, or, in the case
that the facility does not have a sufficient
number of testing kits for COVID–19,
screen each resident for symptoms of
COVID–19 and report (on a daily basis
until the facility has a sufficient number of
such testing kits) to the State survey agen-
cy that the facility does not have a suffi-
cient number of such testing kits and what
steps the facility is taking to procure a suf-
ficient number of such testing kits.

“(v) Ensure there is an adequate
number of employees to assist residents in
communicating with family members and
friends through phone calls, e-mail, and
virtual communications on at least a week-
ly basis, without regard to whether a resi-
dent has been diagnosed with COVID–19.

“(C) WORKER SAFETY REQUIREMENTS.—
The worker safety requirements described in
this subparagraph are each of the following:
“(i) In the case the facility is not otherwise subject to the Occupational Safety and Health Act of 1970 (or a State occupational safety and health plan that is approved under section 18(c) of such Act), comply with the Bloodborne Pathogens standard under section 1910.1030 of title 29, Code of Federal Regulations (or a successor regulation).

“(ii) In the case of a predicted shortage of personal protective equipment, report such predicted shortage to the State health department of the State in which the facility is located at least 24 hours in advance of when such predicted shortage is expected to occur.

“(iii) Educate each employee on the transmission of COVID–19.

“(iv) Notwithstanding any other provision of law, provide at least two weeks of paid sick leave to each employee.

“(v) Before each employee’s shift, test the employee for COVID–19, or, in the case that the facility does not have a sufficient number of testing kits for COVID–
19, screen each employee for symptoms of COVID–19 and report (on a daily basis until the facility has a sufficient number of such testing kits) to the State survey agency that the facility does not have a sufficient number of such testing kits and what steps the facility is taking to procure a sufficient number of such testing kits.

“(D) TRANSPARENCY REQUIREMENTS.—

The transparency requirements described in this subparagraph are each of the following:

“(i) Report (on a daily basis) to the State survey agency, the Centers for Medicare & Medicaid Services, and the Centers for Disease Control and Prevention each of the following:

“(I) The number of confirmed and suspected cases COVID–19 among residents and staff, including the age and race or ethnicity of such residents and staff.

“(II) The number of deaths related to COVID–19 among residents and staff, including the age and race
or ethnicity of such residents and staff.

“(III) The total number of deaths (without regard to whether a death is related to COVID–19) among residents and staff.

“(IV) The amount of personal protective equipment available and any projected need regarding such equipment.

“(V) Information on staffing levels that would otherwise be required to be submitted through the Payroll-Based Journal of the Centers for Medicare & Medicaid Services.

“(VI) The number of residents and staff who have been tested for COVID–19.

“(ii) In the case that a resident or employee is diagnosed with COVID–19 or dies as a result of COVID–19, notify all residents, legal representatives of residents, and employees not later than 12 hours after such diagnosis is made or such death occurs.
“(iii) At any time three or more residents or employees have newly onset COVID–19 symptoms, notify all residents, legal representatives of residents, and employees not later than 72 hours after such three or more residents or employees are known to the facility.

“(iv) In the case that a resident or employee is suspected to have or is diagnosed with COVID–19, post a notice of such suspicion or diagnosis at each entrance of the facility for the remaining portion of the emergency period described in subparagraph (A).

“(v) For each day of the portion of the emergency period described in subparagraph (A), post a notice at each entrance of the facility with the information required under subsection (b)(8) for such day.

“(2) STATES AND FEDERAL GOVERNMENT.—

“(A) PUBLIC AVAILABILITY OF INFORMATION.—

“(i) IN GENERAL.—As soon as possible, but not later than 24 hours after re-
receiving any information required under paragraph (1)(D)(i), the Administrator of the Centers for Medicare & Medicaid Services, in coordination with the Director of the Centers for Disease Control and Prevention, shall make such information publicly available on the Nursing Home Compare website of the Centers for Medicare & Medicaid Services and the COVIDView website of the Centers for Disease Control and Prevention.

“(ii) HIPAA COMPLIANT INFORMATION ONLY.—Information may only be made publicly available under clause (i) if the disclosure of such information would otherwise be permitted under the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

“(B) DESIGNATION OF COVID–19 FACILITIES.—For purposes of paragraph (1)(B)(iii)(II)—
“(i) the Administrator of the Centers for Medicare & Medicaid Services shall specify criteria (which shall include the provision of the services of a registered nurse on a 24-hours basis) for each State survey agency to carry out the designation requirement described in clause (ii) with respect to skilled nursing facilities; and

“(ii) each State survey agency shall designate a skilled nursing facility in the State as a facility dedicated to the care of residents who have been diagnosed with COVID–19 if such facility meets the criteria specified by the Administrator under clause (i).

“(C) REMOTE MONITORING AND SURVEYS.—A State survey agency shall—

“(i) remotely monitor all skilled nursing facilities with at least one resident or employee who has been diagnosed with COVID–19;

“(ii) in addition to surveys required under subsection (g), conduct a survey of a skilled nursing facility, in the same manner and subject to the same requirements
applicable to standard surveys conducted under subsection (g), if the facility has a ratio of the number of deaths resulting from COVID–19 to the number of COVID–19 diagnoses that exceeds 5 percent, or the State survey agency receives a COVID–19 or staffing related immediate jeopardy complaint regarding the facility; and

“(iii) ensure that each survey team that conducts a survey under clause (ii) has adequate personal protective equipment while conducting such survey.

“(3) CIVIL MONEY PENALTIES.—The Secretary shall impose a civil money penalty against the operators of a skilled nursing facility in an amount equal to $10,000 per day for each violation of a requirement described in subparagraph (B), (C), or (D) of paragraph (1) or the reporting of false information under clause (i) of such subparagraph (D). The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”.
(b) MEDICAID.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended by adding at the end the following new subsection:

“(k) ADDITIONAL REQUIREMENTS DURING CERTAIN PUBLIC HEALTH EMERGENCY.—

“(1) NURSING FACILITIES.—

“(A) IN GENERAL.—During the portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subsection, a nursing facility shall comply with the quality of care requirements described in subparagraph (B), the worker safety requirements described in subparagraph (C), and the transparency requirements described in subparagraph (D).

“(B) QUALITY OF CARE REQUIREMENTS.—

The quality of care requirements described in this subparagraph are each of the following:

“(i) Employ, on a full-time basis, an infection preventionist who—

“(I) has primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field;
“(II) is qualified by education, training, experience or certification; and—

“(III) has completed specialized training in infection prevention and control.

“(ii) In the case of a resident who elects to reside with a family member of such resident for any portion of the emergency period described in subparagraph (A), guarantee the right of such resident to resume residency in the facility at any time during the 180-day period immediately following the end of such emergency period.

“(iii) Notwithstanding subparagraphs (A) and (B) of subsection (c)(2), permit a resident to remain in the facility and not discharge or transfer the resident from the facility unless—

“(I) the State survey agency approves the discharge or transfer;

“(II) in the case of a transfer, the transfer is to a facility dedicated to the care of residents who have been diagnosed with COVID–19 if the resi-
dent has been diagnosed with COVID–19, or a facility dedicated to the care of residents who have not been diagnosed with COVID–19 if the resident has not been diagnosed with COVID–19;

“(III) before effecting the discharge or transfer, the facility records the reasons in the resident’s clinical record;

“(IV) at least 72 hours in advance of the discharge or transfer, the facility provides a notice of the discharge or transfer to the resident (or legal representative of the resident, if applicable), including the reasons therefor and the items described in clause (iii) of subsection (e)(2)(B);

and

“(V) the resident (or legal representative of the resident, if applicable) acknowledges receipt of the notice described in subclause (IV) and provides written consent to the discharge or transfer.
“(iv) Test (on a weekly basis) each resident for COVID–19, or, in the case that the facility does not have a sufficient number of testing kits for COVID–19, screen each resident for symptoms of COVID–19 and report (on a daily basis until the facility has a sufficient number of such testing kits) to the State survey agency that the facility does not have a sufficient number of such testing kits and what steps the facility is taking to procure a sufficient number of such testing kits.

“(v) Ensure there is an adequate number of employees to assist residents in communicating with family members and friends through phone calls, e-mail, and virtual communications on at least a weekly basis, without regard to whether a resident has been diagnosed with COVID–19.

“(C) WORKER SAFETY REQUIREMENTS.—The worker safety requirements described in this subparagraph are each of the following:

“(i) In the case the facility is not otherwise subject to the Occupational Safety and Health Act of 1970 (or a State occu-
pational safety and health plan that is ap-
proved under section 18(e) of such Act),
comply with the Bloodborne Pathogens
standard under section 1910.1030 of title
29, Code of Federal Regulations (or a suc-
cessor regulation).

“(ii) In the case of a predicted short-
age of personal protective equipment, re-
port such predicted shortage to the State
health department of the State in which
the facility is located at least 24 hours in
advance of when such predicted shortage is
expected to occur.

“(iii) Educate each employee on the
transmission of COVID–19.

“(iv) Notwithstanding any other pro-
vision of law, provide at least two weeks of
paid sick leave to each employee.

“(v) Before each employee’s shift, test
the employee for COVID–19, or, in the
case that the facility does not have a suffi-
cient number of testing kits for COVID–
19, screen each employee for symptoms of
COVID–19 and report (on a daily basis
until the facility has a sufficient number of
such testing kits) to the State survey agency that the facility does not have a sufficient number of such testing kits and what steps the facility is taking to procure a sufficient number of such testing kits.

“(D) TRANSPARENCY REQUIREMENTS.—

The transparency requirements described in this subparagraph are each of the following:

“(i) Report (on a daily basis) to the State survey agency, the Centers for Medicare & Medicaid Services, and the Centers for Disease Control and Prevention each of the following:

“(I) The number of confirmed and suspected cases COVID–19 among residents and staff, including the age and race or ethnicity of such residents and staff.

“(II) The number of deaths related to COVID–19 among residents and staff, including the age and race or ethnicity of such residents and staff.

“(III) The total number of deaths (without regard to whether a
death is related to COVID–19) among residents and staff.

“(IV) The amount of personal protective equipment available and any projected need regarding such equipment.

“(V) Information on staffing levels that would otherwise be required to be submitted through the Payroll-Based Journal of the Centers for Medicare & Medicaid Services.

“(VI) The number of residents and staff who have been tested for COVID–19.

“(ii) In the case that a resident or employee is diagnosed with COVID–19 or dies as a result of COVID–19, notify all residents, legal representatives of residents, and employees not later than 12 hours after such diagnosis is made or such death occurs.

“(iii) At any time three or more residents or employees have newly onset COVID–19 symptoms, notify all residents, legal representatives of residents, and em-
ployees not later than 72 hours after such three or more residents or employees are known to the facility.

“(iv) In the case that a resident or employee is suspected to have or is diagnosed with COVID–19, post a notice of such suspicion or diagnosis at each entrance of the facility for the remaining portion of the emergency period described in subparagraph (A).

“(v) For each day of the portion of the emergency period described in subparagraph (A), post a notice at each entrance of the facility with the information required under subsection (b)(8) for such day.

“(2) STATES AND FEDERAL GOVERNMENT.—

“(A) PUBLIC AVAILABILITY OF INFORMATION.—

“(i) IN GENERAL.—As soon as possible, but not later than 24 hours after receiving any information required under paragraph (1)(D)(i), the Administrator of the Centers for Medicare & Medicaid Services, in coordination with the Director of...
the Centers for Disease Control and Prevention, shall make such information publicly available on the Nursing Home Compare website of the Centers for Medicare & Medicaid Services and the COVIDView website of the Centers for Disease Control and Prevention.

“(ii) HIPAA COMPLIANT INFORMATION ONLY.—Information may only be made publicly available under clause (i) if the disclosure of such information would otherwise be permitted under the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

“(B) DESIGNATION OF COVID–19 FACILITIES.—For purposes of paragraph (1)(B)(iii)(II)—

“(i) the Administrator of the Centers for Medicare & Medicaid Services shall specify criteria (which shall include the provision of the services of a registered
nurse on a 24-hours basis) for each State survey agency to carry out the designation requirement described in clause (ii) with respect to nursing facilities; and

“(ii) each State survey agency shall designate a nursing facility in the State as a facility dedicated to the care of residents who have been diagnosed with COVID–19 if such facility meets the criteria specified by the Administrator under clause (i).

“(C) REMOTE MONITORING AND SURVEYS.—A State survey agency shall—

“(i) remotely monitor all nursing facilities with at least one resident or employee who has been diagnosed with COVID–19;

“(ii) in addition to surveys required under subsection (g), conduct a survey of a nursing facility, in the same manner and subject to the same requirements applicable to standard surveys conducted under subsection (g), if the facility has a ratio of the number of deaths resulting from COVID–19 to the number of COVID–19 diagnoses that exceeds 5 percent, or the
State survey agency receives a COVID–19 or staffing related immediate jeopardy complaint regarding the facility; and

“(iii) ensure that each survey team that conducts a survey under clause (ii) has adequate personal protective equipment while conducting such survey.

“(3) CIVIL MONEY PENALTIES.—The Secretary shall impose a civil money penalty against the operators of a nursing facility in an amount equal to $10,000 per day for each violation of a requirement described in subparagraph (B), (C), or (D) of paragraph (1) or the reporting of false information under clause (i) of such subparagraph (D). The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”.

SEC. 3. FUNDING FOR STATE STRIKE TEAMS FOR RESIDENT AND EMPLOYEE SAFETY IN SKILLED NURSING FACILITIES AND NURSING FACILITIES.

(a) IN GENERAL.—Of the amounts made available under subsection (e), the Secretary of Health and Human
Services (referred to in this section as the “Secretary”) shall allocate such amounts among the States, in a manner that takes into account the percentage of skilled nursing facilities and nursing facilities in each State that have residents or employees who have been diagnosed with COVID–19, for purposes of establishing and implementing strike teams in accordance with subsection (b).

(b) USE OF FUNDS.—A State that receives funds under this section shall use such funds to establish and implement a strike team that will be deployed to a skilled nursing facility or nursing facility in the State, not later than 72 hours after three or more residents or employees of the facility are diagnosed with or suspected of having COVID–19, to assist the facility in separating residents and employees who have been exposed to COVID–19 from those residents and employees who have not been so exposed, supervising testing for COVID–19, ensuring any applicable whistleblower protections are being enforced, and such other needs as determined necessary by the strike team. Such strike team shall include members of the National Guard, public health officials from State and local health departments, experts in geriatrics and long-term care medicine, representatives of residents or consumers, and representatives of workers.
(c) Authorization of Appropriations.—For purposes of carrying out this section, there is authorized to be appropriated $500,000,000.

(d) Definitions.—In this section:

(1) Nursing facility.—The term “nursing facility” means a nursing facility under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)

(2) Skilled nursing facility.—The term “skilled nursing facility” means a skilled nursing facility under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

SEC. 4. REINSTITUTION OF REQUIREMENTS WAIVED FOR SKILLED NURSING FACILITIES AND NURSING FACILITIES DURING COVID–19 EMERGENCY PERIOD.

(a) In General.—With respect to requirements that the Administrator of the Centers for Medicare & Medicaid Services (referred to in this section as the “Administrator”) waived for skilled nursing facilities and nursing facilities under section 1135 or 1812(f) of the Social Security Act (42 U.S.C. 1320b–5, 1395d(f)) for the period beginning on March 1, 2020, and ending on the last day of the emergency period defined in subsection (g)(1)(B) of such section 1135, the Administrator shall terminate
the waiver of such requirements before the last day of such
emergency period upon the determination that skilled
nursing facilities and nursing facilities have the capacity
to comply with such requirements and that such waiver
is no longer necessary.

(b) Plan for Conducting Waived or Postponed
Surveys.—With respect to any survey under section
1819(g) or 1919(g) of the Social Security Act (42 U.S.C.
1395i–3(g), 1396r(g)) that is waived or postponed during
the period beginning on March 1, 2020, and ending on
the last day of the emergency period described in sub-
section (a), the Administrator shall develop a plan for con-
ducting such survey after such last day.

(c) Training and Certification of Nurse
Aides.—With respect to any nurse aide with respect to
whom the Administrator waived the application of the re-
quirements under section 483.35(d) of title 42, Code of
Federal Regulations, for the period beginning on March
1, 2020, and ending on the last day of the emergency pe-
riod described in subsection (a), the Administrator shall
prohibit the skilled nursing facility or nursing facility em-
ploying such nurse aide from retaining such nurse aide
after such last day unless such nurse aide satisfies applica-
ble training and certification requirements under such sec-
tion not later than 15 days after such last day.
(d) DEFINITIONS.—In this section:

(1) NURSING FACILITY.—The term “nursing facility” means a nursing facility under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)

(2) SKILLED NURSING FACILITY.—The term “skilled nursing facility” means a skilled nursing facility under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

SEC. 5. GUIDANCE FOR CERTAIN RESIDENTIAL CARE FACILITIES DURING COVID–19 EMERGENCY PERIOD.

Not later than 15 days after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall issue guidance for long-term health care facilities, including assisted living facilities, other residential care facilities, and such facilities that are temporary during the emergency period defined in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)), that are not subject to oversight by the Centers for Medicare & Medicaid Services on providing access to virtual visitation during any portion of such emergency period in which in-person visitation is restricted and ensuring appropriate
infection control and prevention and employee safety during such emergency period. Such guidance shall include—

(1) steps that health care facilities described in this subsection should take to provide residents with access to virtual visitation, including through the purchase or installation of devices purchased for the use or benefit of individual or multiple residents, that allows residents to communicate with their families during such emergency period;

(2) options for such facilities in notifying residents and resident representatives of such access to virtual visitation and how the facility is addressing any operational issues related to such access to virtual visitation; and

(3) steps that health care facilities described in this subsection should take to provide residents and employees with appropriate infection control and prevention, based on requirements for skilled nursing facilities under subsection (k) of section 1819 of the Social Security Act (42 U.S.C. 1395i–3), as added by section 2(a), and requirements for nursing facilities under subsection (k) of section 1919 of such Act (42 U.S.C. 1396r), as added by section 2(b).