

**AMENDMENT TO THE AMENDMENT IN THE NA-
TURE OF A SUBSTITUTE TO COMMITTEE
PRINT RELATING TO THE MEDICAID PRO-
GRAM**

OFFERED BY M . _____

Add at the end the following new section:

1 **SEC. 3110. IMPROVEMENTS TO NURSING FACILITIES**
2 **UNDER THE MEDICARE AND MEDICAID PRO-**
3 **GRAMS.**

4 (a) ADVISORY COUNCIL ON SKILLED NURSING FA-
5 CILITY RANKINGS UNDER MEDICARE AND NURSING FA-
6 CILITY RANKINGS UNDER MEDICAID.—

7 (1) ESTABLISHMENT.—Not later than 1 year
8 after the date of enactment of this Act, the Sec-
9 retary of Health and Human Services shall establish
10 the Advisory Council on Skilled Nursing Facility
11 Rankings under Medicare and Nursing Facility
12 Rankings under Medicaid (in this subsection re-
13 ferred to as the “Advisory Council”).

14 (2) MEMBERSHIP.—The Secretary shall ensure
15 that the membership of the Advisory Council in-
16 cludes equal representation from the following:

1 (A) Consumers with nursing home experi-
2 ence, including adults age 65 and older, individ-
3 uals with disabilities, family caregivers, and
4 their advocates.

5 (B) Skilled nursing facilities and nursing
6 facilities, including non-profit facilities.

7 (C) Academics with expertise in nursing
8 home oversight.

9 (D) Health professionals with nursing
10 home experience, such as physicians, nurses,
11 pharmacists, certified nursing assistants, and
12 direct care professionals.

13 (E) Professionals with expertise in quality
14 measurement.

15 (F) Professionals with expertise in emer-
16 gency management.

17 (G) State surveying agencies.

18 (H) State long-term care ombudsman pro-
19 grams.

20 (I) The Medicare Payment Advisory Com-
21 mission.

22 (J) The Medicaid and CHIP Payment and
23 Access Commission.

24 (K) The Centers for Medicare & Medicaid
25 Services.

1 (L) Other representatives as the Secretary
2 determines appropriate.

3 (3) DUTIES.—

4 (A) STUDY.—The Advisory Council shall
5 conduct a study of processes for ranking skilled
6 nursing facilities and nursing facilities under
7 paragraph (9) of section 1819(f) of the Social
8 Security Act, as added by subsection (b)(1) and
9 under paragraph (11) of section 1919(f) of
10 such Act, as added by subsection (c)(1). Such
11 study shall include an analysis of—

12 (i) which available, verifiable data
13 sources and measures are best for appro-
14 priately designating facilities in—

15 (I) the high-rated facility pro-
16 gram under paragraph (10) of such
17 section 1819(f) and under paragraph
18 (12) of such section 1919(f); and

19 (II) the low-rated facility pro-
20 gram under paragraph (8) of such
21 section 1819(f) and under paragraph
22 (10) of such section 1919(f);

23 (ii) the appropriate frequency with
24 which to update the rankings for the high-

1 rated and low-rated facility programs de-
2 scribed in clause (i);

3 (iii) how best to ensure that skilled
4 nursing facilities and nursing facilities ap-
5 propriately report adverse events;

6 (iv) how surveyors can clearly provide
7 the rationale for giving deficiencies to such
8 skilled nursing facilities and nursing facili-
9 ties and how this can be done in a timely
10 manner;

11 (v) how to manage suspensions from
12 the high-rated facility program described
13 in clause (i)(I) and the need for additional
14 consumer protections to administer such
15 high-rated facility program;

16 (vi) the availability or potential devel-
17 opment of, or modifications to, measures
18 or verifiable data sources on topics, includ-
19 ing avoidable hospital readmissions, emer-
20 gency room visits, risk-adjusted mortality,
21 discharges to the community, involuntary
22 discharges, situations involving the inap-
23 propriate administration of medications by
24 a facility, and emergency management; and

1 (vii) the development of, or modifica-
2 tions to, data collection, verifiable data
3 sources, and potential measures to assess
4 the financial stability of a facility.

5 (B) FINDINGS AND RECOMMENDATIONS.—

6 (i) IN GENERAL.—Not later than 2
7 years after the date of enactment of this
8 Act, the Advisory Council shall submit to
9 the Secretary the findings of the Advisory
10 Council under the study conducted under
11 subparagraph (A), together with rec-
12 ommendations for such legislation and ad-
13 ministrative action as the Advisory Council
14 determines appropriate.

15 (ii) PUBLIC AVAILABILITY.—Upon re-
16 ceiving the findings and recommendations
17 under clause (i), the Secretary shall make
18 the findings and recommendations avail-
19 able to the public on the internet website
20 of the Centers for Medicare & Medicaid
21 Services.

22 (4) SUNSET.—The Advisory Council shall ter-
23minate upon the submission of the report to the Sec-
24retary under paragraph (3)(B)(i).

25 (b) MEDICARE PROGRAM REVISIONS.—

1 (1) ESTABLISHMENT OF RANKINGS AND HIGH-
2 RATED FACILITY PROGRAM.—

3 (A) IN GENERAL.—Section 1819(f) of the
4 Social Security Act (42 U.S.C. 1395i–3(f)) is
5 amended by adding at the end the following
6 new paragraphs:

7 “(9) RANKING PROCESS.—

8 “(A) PROCESS.—

9 “(i) ESTABLISHMENT.—The Secretary
10 shall establish a process to rank skilled
11 nursing facilities based on compliance with
12 the applicable requirements of this Act.

13 “(ii) DATA.—The process established
14 under clause (i) shall include the use of at
15 least the preceding 3 years of health in-
16 spection data, if appropriate, and other
17 data as determined appropriate by the Sec-
18 retary.

19 “(iii) FINDINGS AND RECOMMENDA-
20 TIONS OF THE ADVISORY COUNCIL ON
21 SKILLED NURSING FACILITY RANKINGS
22 UNDER MEDICARE AND NURSING FACILITY
23 RANKINGS UNDER MEDICAID.—In estab-
24 lishing the process under clause (i), the
25 Secretary shall take into account the find-

1 ings and recommendations of the Advisory
2 Council that are submitted to the Sec-
3 retary under section 2(a)(3)(B)(i) of the
4 Nursing Home Reform Modernization Act
5 of 2020.

6 “(B) RANKING.—

7 “(i) IN GENERAL.—Under the process
8 established under subparagraph (A), the
9 Secretary shall use the rankings of skilled
10 nursing facilities to categorize facilities
11 into highest and lowest groups for the pur-
12 poses specified in clause (ii).

13 “(ii) TIMING AND USE OF
14 RANKINGS.—Not later than 2 years after
15 the date the Secretary receives the findings
16 and recommendations described in sub-
17 paragraph (A)(iii), the Secretary shall use
18 the rankings under clause (i) for purposes
19 of carrying out—

20 “(I) the high-rated facility pro-
21 gram under paragraph (10); and

22 “(II) the low-rated facility pro-
23 gram under paragraph (8).

24 “(10) HIGH-RATED FACILITY PROGRAM.—

25 “(A) ESTABLISHMENT.—

1 “(i) IN GENERAL.—Not later than 2
2 years after the date the Secretary receives
3 the findings and recommendations de-
4 scribed in paragraph (9)(A)(iii), the Sec-
5 retary shall establish and implement a
6 high-rated facility program to encourage
7 and reward compliance with the require-
8 ments of this Act.

9 “(ii) REPORT.—In establishing the
10 high-rated facility program, the Secretary
11 shall take into account the findings and
12 recommendations described in paragraph
13 (9)(A)(iii).

14 “(iii) REGULATIONS.—The Secretary
15 shall establish the high-rated facility pro-
16 gram under clause (i) through notice and
17 comment rulemaking.

18 “(B) DESIGNATION.—Under the high-
19 rated facility program, subject to subparagraph
20 (D), the Secretary shall designate the highest
21 rated skilled nursing facilities under the
22 rankings under paragraph (9)(B) as high-rated
23 skilled nursing facilities.

24 “(C) DISTINCTION ON NURSING HOME
25 COMPARE WEBSITE.—A skilled nursing facility

1 that is designated as a high-rated skilled nurs-
2 ing facility under subparagraph (B) shall re-
3 ceive a high-rated distinction on the official
4 Internet website of the Federal Government for
5 comparing nursing homes pursuant to sub-
6 section (i)(1)(C).

7 “(D) SUSPENSION OF HIGH-RATED STA-
8 TUS.—

9 “(i) IN GENERAL.—The Secretary
10 shall suspend a skilled nursing facility’s
11 designation under subparagraph (B) if the
12 Secretary determines that there are cir-
13 cumstances warranting such suspension.

14 “(ii) CIRCUMSTANCES.—In estab-
15 lishing the circumstances under clause (i),
16 the Secretary shall take into account—

17 “(I) findings from Federal sur-
18 veys and investigations;

19 “(II) findings from State surveys
20 conducted under subsection (g)(2)(A);

21 “(III) findings from State inves-
22 tigations and surveys conducted under
23 subsection (g)(4), including a high
24 number of substantiated complaints,
25 the frequency and severity of substan-

1 tiated complaints, and how the com-
2 plaints are handled by the facility;

3 “**(IV)** situations involving
4 changes of ownership, administration,
5 or management of a skilled nursing
6 facility, or the director of nursing;

7 “**(V)** situations involving the in-
8 appropriate administration of medica-
9 tions by a facility;

10 “**(VI)** situations involving invol-
11 untary discharges of residents; and

12 “**(VII)** other factors determined
13 appropriate by the Secretary.

14 “**(iii) NO REINSTATEMENT PRIOR TO**
15 **NEXT STANDARD SURVEY.**—If a skilled
16 nursing facility’s designation is suspended
17 under clause (i), such designation shall not
18 be reinstated prior to a subsequent survey
19 as specified under subsection
20 **(g)(2)(A)(iii).**”.

21 **(B) ASSESSMENT OF HIGH-RATED DES-**
22 **IGNATION IN SPECIAL SURVEYS.**—Section
23 1819(g)(2)(A)(iii)(II) of the Social Security Act
24 (42 U.S.C. 1395i–3(g)(2)(A)(iii)(II)) is amend-
25 ed—

1 (i) by inserting “(or, in the case of a
2 facility that is designated as a high-rated
3 skilled nursing facility under subsection
4 (f)(10), shall be conducted)” after “may be
5 conducted”; and

6 (ii) by adding at the end the following
7 new sentence: “On and after the date the
8 Secretary implements the high-rated facil-
9 ity program under subsection (f)(10), any
10 survey conducted, pursuant to the pre-
11 ceding sentence, of a facility that is des-
12 ignated as a high-rated skilled nursing fa-
13 cility under such subsection shall include
14 an assessment of whether such designation
15 should continue or be suspended under
16 subparagraph (D) of such subsection.”.

17 (2) IMPROVEMENTS TO THE SPECIAL FOCUS
18 FACILITY PROGRAM.—

19 (A) APPROPRIATE PARTICIPATION.—Sec-
20 tion 1819(f)(8) of the Social Security Act (42
21 U.S.C. 1395i–3(f)(8)) is amended—

22 (i) in subparagraph (A), by striking
23 “The Secretary” and inserting “Subject to
24 the succeeding provisions of this sub-
25 section, the Secretary”; and

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

3 “(C) APPROPRIATE PARTICIPATION.—Not
4 later than 1 year after the date of enactment of
5 the Nursing Home Reform Modernization Act
6 of 2020, the Secretary shall ensure that the
7 number of facilities participating in the special
8 focus facility program is not less than 3.5 per-
9 cent of all skilled nursing facilities.”.

10 (B) CONVERSION OF THE SPECIAL FOCUS
11 FACILITY PROGRAM TO THE LOW-RATED FACIL-
12 ITY PROGRAM AND ADDITIONAL REQUIRE-
13 MENTS.—Section 1819(f)(8) of the Social Secu-
14 rity Act (42 U.S.C. 1395i–3(f)(8)), as amended
15 by subparagraph (A), is amended—

16 (i) in subparagraph (B), by inserting
17 the following before the period at the end:
18 “(or, on and after the date the Secretary
19 makes the conversion described in subpara-
20 graph (D), at a frequency determined ap-
21 propriate by the Secretary (but in no case
22 less than once every 6 months))”; and

23 (ii) by adding at the end the following
24 new subparagraphs:

1 “(D) CONVERSION TO THE LOW-RATED
2 FACILITY PROGRAM.—

3 “(i) IN GENERAL.—On the same date
4 that the Secretary implements the high-
5 rated facility program under paragraph
6 (10), the Secretary shall convert the spe-
7 cial focus facility program under this sub-
8 section to the low-rated facility program.

9 “(ii) REGULATIONS.—The Secretary
10 shall carry out the conversion under clause
11 (i) through notice and comment rule-
12 making.

13 “(iii) ADDITIONAL REQUIREMENTS
14 FOR THE LOW-RATED FACILITY PRO-
15 GRAM.—In addition to the provisions that
16 apply to the low-rated facility program
17 through the conversion from the special
18 focus facility program, the succeeding pro-
19 visions of this subsection shall also apply
20 to the low-rated facility program.

21 “(E) PARTICIPATION.—Subject to the min-
22 imum participation requirement under subpara-
23 graph (C), the Secretary shall designate the
24 lowest rated skilled nursing facilities under the

1 rankings under paragraph (9)(B) for participa-
2 tion in the low-rated facility program.

3 “(F) PROGRESSIVE ENFORCEMENT AC-
4 TIONS.—The Secretary, in consultation with
5 States, shall utilize progressive enforcement ac-
6 tions, of increasing severity, to ensure facilities
7 participating in the low-rated facility program
8 meet the applicable requirements under this
9 Act.

10 “(G) ENFORCEMENT FOR PATTERNS OF
11 DEFICIENCY.—The Secretary may utilize en-
12 forcement actions specified in subsection (h)(2)
13 to remedy patterns of deficiencies cited across
14 multiple surveys.

15 “(H) COMPLIANCE ASSISTANCE PRO-
16 GRAMS.—

17 “(i) ON-SITE CONSULTATION AND
18 EDUCATIONAL PROGRAMMING.—

19 “(I) IN GENERAL.—The Sec-
20 retary shall establish on-site consulta-
21 tion and educational programming for
22 skilled nursing facilities participating
23 in the low-rated facility program with
24 respect to compliance with the appli-
25 cable requirements under this Act.

1 “(II) ENTITY.—The on-site con-
2 sultation and educational program-
3 ming described in subclause (I) shall
4 be carried out by quality improvement
5 organizations under part B of title XI
6 or other independent organizations of
7 a similar type that do not have con-
8 flicts of interest and are deemed ap-
9 propriate by the Secretary.

10 “(III) REQUIRED PARTICIPA-
11 TION.—A skilled nursing facility par-
12 ticipating in the low-rated facility pro-
13 gram shall participate in any con-
14 sultations and educational program-
15 ming described in subclause (I) con-
16 ducted at the facility.

17 “(ii) CONSULTATION INDEPENDENT
18 OF ENFORCEMENT.—

19 “(I) IN GENERAL.—Subject to
20 subclause (II), on-site consultations
21 and educational programming de-
22 scribed in clause (i) shall be con-
23 ducted independently of any enforce-
24 ment activity.

1 “(II) EXCEPTION.—Subclause (I)
2 shall not apply in the case where a
3 triggering event at the skilled nursing
4 facility is observed in the course of
5 providing on-site consultations and
6 educational programming described in
7 clause (i). In establishing such on-site
8 consultations and educational pro-
9 gramming, the Secretary shall deter-
10 mine the triggering events for which
11 the use of necessary enforcement ac-
12 tions is permitted notwithstanding the
13 limitation under subclause (I). Such
14 triggering events shall include events
15 that are required to be reported under
16 State and Federal law and a pattern
17 of deficiencies or problems that the
18 quality improvement organization or
19 other organization has identified for
20 correction but which are consistently
21 not corrected.

22 “(I) PUBLIC AVAILABILITY.—

23 “(i) IN GENERAL.—The Secretary
24 shall ensure that a skilled nursing facility’s

1 participation in the low-rated facility pro-
2 gram is publicly announced, including to—

3 “(I) resident family councils;

4 “(II) resident attending physi-
5 cians;

6 “(III) the State board respon-
7 sible for the licensing of the skilled
8 nursing facility administrator at the
9 facility;

10 “(IV) State Long-Term Care
11 Ombudsman programs (as described
12 in section 712(a)(1) of the Older
13 Americans Act of 1965); and

14 “(V) the community at large.

15 “(ii) WRITTEN NOTIFICATION.—The
16 Secretary shall ensure that, in the case of
17 a skilled nursing facility that is partici-
18 pating in the low-rated facility program,
19 residents of such facility and family or
20 legal representatives are furnished with in-
21 dividualized written notice of such partici-
22 pation. Such notice shall be provided to
23 current residents and to new residents
24 prior to admission.

1 “(J) REQUIREMENT FOR REMOVAL.—The
2 Secretary shall require that a skilled nursing fa-
3 cility show improvement prior to removal from
4 the low-rated facility program.”.

5 (C) USE OF CIVIL MONEY PENALTIES.—
6 Section 1819(h)(2)(B)(ii)(IV)(ff) of the Social
7 Security Act (42 U.S.C. 1395i-
8 3(h)(2)(B)(ii)(IV)(ff)) is amended—

9 (i) by striking “and facility improve-
10 ment initiatives” and inserting “facility
11 improvement initiatives”; and

12 (ii) by inserting the following before
13 the period at the end: “, and, on and after
14 the date the Secretary makes the conver-
15 sion described in subsection (f)(8)(D), con-
16 sultation, education, and other activities to
17 foster improvement and remedy root
18 causes contributing to deficiencies cited
19 across multiple surveys among facilities in
20 the low-rated facility program under sub-
21 section (f)(8)”.

22 (3) INFORMATION ON HIGH-RATED AND LOW-
23 RATED FACILITIES ON NURSING HOME COMPARE
24 MEDICARE WEBSITE.—Section 1819(i)(1) of the So-

1 cial Security Act (42 U.S.C. 1395i–3(i)(1)) is
2 amended—

3 (A) in subparagraph (A), by adding at the
4 end the following new clause:

5 “(vi) On and after the date the Sec-
6 retary implements the high-rated facility
7 program under subsection (f)(10) and
8 makes the conversion under subsection
9 (f)(8)(D), consistent with subparagraph
10 (C)—

11 “(I) for each skilled nursing fa-
12 cility that is designated as a high-
13 rated skilled nursing facility under
14 subsection (f)(10), the date the facil-
15 ity was so designated; and

16 “(II) for each skilled nursing fa-
17 cility participating in the low-rated fa-
18 cility program under subsection (f)(8),
19 the date the facility was identified for
20 inclusion in such program.”; and

21 (B) by adding at the end the following new
22 subparagraphs:

23 “(C) DISTINCTIONS FOR HIGH-RATED AND
24 LOW-RATED FACILITIES.—On and after the
25 date the Secretary implements the high-rated

1 facility program under subsection (f)(10) and
2 makes the conversion under subsection
3 (f)(8)(D), the Secretary shall ensure that
4 graphics, including an appropriate explanation
5 of such graphics, are prominently displayed on
6 the website described in subparagraph (A) in
7 order to distinguish each of the following:

8 “(i) Skilled nursing facilities that are
9 designated as high-rated skilled nursing fa-
10 cilities under subsection (f)(10).

11 “(ii) Skilled nursing facilities that are
12 participating in the low-rated facility pro-
13 gram under subsection (f)(8), with infor-
14 mation on facilities that have been placed
15 in such program more than one time over
16 the course of the last 10 years (including
17 the number of times such skilled nursing
18 facilities have been placed in the program).

19 “(D) FOCUS GROUPS AND CONSUMER
20 TESTING.—In order to help limit confusion,
21 particularly among older adults, individuals
22 with disabilities, and family caregivers, the Sec-
23 retary shall utilize focus groups and other con-
24 sumer testing methods prior to including the
25 additional information under subparagraph

1 (A)(vi) and implementing the distinctions under
2 subparagraph (C).”.

3 (c) MEDICAID PROGRAM REVISIONS.—

4 (1) ESTABLISHMENT OF RANKINGS AND HIGH-
5 RATED FACILITY PROGRAM.—

6 (A) IN GENERAL.—Section 1919(f) of the
7 Social Security Act (42 U.S.C. 1396r(f)) is
8 amended by adding at the end the following
9 new paragraphs:

10 “(11) RANKING PROCESS.—

11 “(A) PROCESS.—

12 “(i) ESTABLISHMENT.—The Secretary
13 shall establish a process to rank nursing
14 facilities based on compliance with the ap-
15 plicable requirements of this Act.

16 “(ii) DATA.—The process established
17 under clause (i) shall include the use of at
18 least the preceding 3 years of health in-
19 spection data, if appropriate, and other
20 data as determined appropriate by the Sec-
21 retary.

22 “(iii) FINDINGS AND RECOMMENDA-
23 TIONS OF THE ADVISORY COUNCIL ON
24 SKILLED NURSING FACILITY RANKINGS
25 UNDER MEDICARE AND NURSING FACILITY

1 RANKINGS UNDER MEDICAID.—In estab-
2 lishing the process under clause (i), the
3 Secretary shall take into account the find-
4 ings and recommendations of the Advisory
5 Council that are submitted to the Sec-
6 retary under section 2(a)(3)(B)(i) of the
7 Nursing Home Reform Modernization Act
8 of 2020.

9 “(B) RANKING.—

10 “(i) IN GENERAL.—Under the process
11 established under subparagraph (A), the
12 Secretary shall use the rankings of nursing
13 facilities to categorize facilities into highest
14 and lowest groups for the purposes speci-
15 fied in clause (ii).

16 “(ii) TIMING AND USE OF
17 RANKINGS.—Not later than 2 years after
18 the date the Secretary receives the findings
19 and recommendations described in sub-
20 paragraph (A)(iii), the Secretary shall use
21 the rankings under clause (i) for purposes
22 of carrying out—

23 “(I) the high-rated facility pro-
24 gram under paragraph (12); and

1 “(II) the low-rated facility pro-
2 gram under paragraph (10).

3 “(12) HIGH-RATED FACILITY PROGRAM.—

4 “(A) ESTABLISHMENT.—

5 “(i) IN GENERAL.—Not later than 2
6 years after the date the Secretary receives
7 the findings and recommendations de-
8 scribed in paragraph (11)(A)(iii), the Sec-
9 retary shall establish and implement a
10 high-rated facility program to encourage
11 and reward compliance with the require-
12 ments of this Act.

13 “(ii) REPORT.—In establishing the
14 high-rated facility program, the Secretary
15 shall take into account the findings and
16 recommendations described in paragraph
17 (11)(A)(iii).

18 “(iii) REGULATIONS.—The Secretary
19 shall establish the high-rated facility pro-
20 gram under clause (i) through notice and
21 comment rulemaking.

22 “(B) DESIGNATION.—Under the high-
23 rated facility program, subject to subparagraph
24 (D), the Secretary shall designate the highest
25 rated nursing facilities under the rankings

1 under paragraph (11)(B) as high-rated nursing
2 facilities.

3 “(C) DISTINCTION ON NURSING HOME
4 COMPARE WEBSITE.—A nursing facility that is
5 designated as a high-rated nursing facility
6 under subparagraph (B) shall receive a high-
7 rated distinction on the official Internet website
8 of the Federal Government for comparing nurs-
9 ing homes pursuant to subsection (i)(1)(C).

10 “(D) SUSPENSION OF HIGH-RATED STA-
11 TUS.—

12 “(i) IN GENERAL.—The Secretary
13 shall suspend a nursing facility’s designa-
14 tion under subparagraph (B) if the Sec-
15 retary determines that there are cir-
16 cumstances warranting such suspension.

17 “(ii) CIRCUMSTANCES.—In estab-
18 lishing the circumstances under clause (i),
19 the Secretary shall take into account—

20 “(I) findings from Federal sur-
21 veys and investigations;

22 “(II) findings from State surveys
23 conducted under subsection (g)(2)(A);

24 “(III) findings from State inves-
25 tigation and surveys conducted under

1 subsection (g)(4), including a high
2 number of substantiated complaints,
3 the frequency and severity of substan-
4 tiated complaints, and how the com-
5 plaints are handled by the facility;

6 “(IV) situations involving
7 changes of ownership, administration,
8 or management of a nursing facility,
9 or the director of nursing;

10 “(V) situations involving the in-
11 appropriate administration of medica-
12 tions by a facility;

13 “(VI) situations involving invol-
14 untary discharges of residents; and

15 “(VII) other factors determined
16 appropriate by the Secretary.

17 “(iii) NO REINSTATEMENT PRIOR TO
18 NEXT STANDARD SURVEY.—If a nursing
19 facility’s designation is suspended under
20 clause (i), such designation shall not be re-
21 instated prior to a subsequent survey as
22 specified under subsection (g)(2)(A)(iii).”.

23 (B) ASSESSMENT OF HIGH-RATED DES-
24 IGNATION IN SPECIAL SURVEYS.—Section
25 1919(g)(2)(A)(iii)(II) of the Social Security Act

1 (42 U.S.C. 1396r(g)(2)(A)(iii)(II)) is amend-
2 ed—

3 (i) by inserting “(or, in the case of a
4 facility that is designated as a high-rated
5 nursing facility under subsection (f)(12),
6 shall be conducted)” after “may be con-
7 ducted”; and

8 (ii) by adding at the end the following
9 new sentence: “On and after the date the
10 Secretary implements the high-rated facil-
11 ity program under subsection (f)(12), any
12 survey conducted, pursuant to the pre-
13 ceding sentence, of a facility that is des-
14 ignated as a high-rated nursing facility
15 under such subsection shall include an as-
16 sessment of whether such designation
17 should continue or be suspended under
18 subparagraph (D) of such subsection.”.

19 (2) IMPROVEMENTS TO THE SPECIAL FOCUS
20 FACILITY PROGRAM.—

21 (A) APPROPRIATE PARTICIPATION.—Sec-
22 tion 1919(f)(10) of the Social Security Act (42
23 U.S.C. 1395r(f)(10)) is amended—

24 (i) in subparagraph (A), by striking
25 “The Secretary” and inserting “Subject to

1 the succeeding provisions of this sub-
2 section, the Secretary”; and

3 (ii) by adding at the end the following
4 new subparagraph:

5 “(C) APPROPRIATE PARTICIPATION.—Not
6 later than 1 year after the date of enactment of
7 the Nursing Home Reform Modernization Act
8 of 2020, the Secretary shall ensure that the
9 number of facilities participating in the special
10 focus facility program is not less than 3.5 per-
11 cent of all nursing facilities.”.

12 (B) CONVERSION OF THE SPECIAL FOCUS
13 FACILITY PROGRAM TO THE LOW-RATED FACIL-
14 ITY PROGRAM AND ADDITIONAL REQUIRE-
15 MENTS.—Section 1919(f)(10) of the Social Se-
16 curity Act (42 U.S.C. 1395i–3(f)(10)), as
17 amended by subparagraph (A), is amended—

18 (i) in subparagraph (B), by inserting
19 the following before the period at the end:
20 “(or, on and after the date the Secretary
21 makes the conversion described in subpara-
22 graph (D), at a frequency determined ap-
23 propriate by the Secretary (but in no case
24 less than once every 6 months))”; and

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

3 “(D) CONVERSION TO THE LOW-RATED
4 FACILITY PROGRAM.—

5 “(i) IN GENERAL.—On the same date
6 that the Secretary implements the high-
7 rated facility program under paragraph
8 (12), the Secretary shall convert the spe-
9 cial focus facility program under this sub-
10 section to the low-rated facility program.

11 “(ii) REGULATIONS.—The Secretary
12 shall carry out the conversion under clause
13 (i) through notice and comment rule-
14 making.

15 “(iii) ADDITIONAL REQUIREMENTS
16 FOR THE LOW-RATED FACILITY PRO-
17 GRAM.—In addition to the provisions that
18 apply to the low-rated facility program
19 through the conversion from the special
20 focus facility program, the succeeding pro-
21 visions of this subsection shall also apply
22 to the low-rated facility program.

23 “(E) PARTICIPATION.—Subject to the min-
24 imum participation requirement under subpara-
25 graph (C), the Secretary shall designate the

1 lowest rated nursing facilities under the
2 rankings under paragraph (11)(B) for partici-
3 pation in the low-rated facility program.

4 “(F) PROGRESSIVE ENFORCEMENT AC-
5 TIONS.—The Secretary, in consultation with
6 States, shall utilize progressive enforcement ac-
7 tions, of increasing severity, to ensure facilities
8 participating in the low-rated facility program
9 meet the applicable requirements under this
10 Act.

11 “(G) ENFORCEMENT FOR PATTERNS OF
12 DEFICIENCY.—The Secretary may utilize en-
13 forcement actions specified in subsection (h)(2)
14 to remedy patterns of deficiencies cited across
15 multiple surveys.

16 “(H) COMPLIANCE ASSISTANCE PRO-
17 GRAMS.—

18 “(i) ON-SITE CONSULTATION AND
19 EDUCATIONAL PROGRAMMING.—

20 “(I) IN GENERAL.—The Sec-
21 retary shall establish on-site consulta-
22 tion and educational programming for
23 nursing facilities participating in the
24 low-rated facility program with re-

1 spect to compliance with the applica-
2 ble requirements under this Act.

3 “(II) ENTITY.—The on-site con-
4 sultation and educational program-
5 ming described in subclause (I) shall
6 be carried out by quality improvement
7 organizations under part B of title XI
8 or other independent organizations of
9 a similar type that do not have con-
10 flicts of interest and are deemed ap-
11 propriate by the Secretary.

12 “(III) REQUIRED PARTICIPA-
13 TION.—A nursing facility partici-
14 pating in the low-rated facility pro-
15 gram shall participate in any con-
16 sultations and educational program-
17 ming described in subclause (I) con-
18 ducted at the facility.

19 “(ii) CONSULTATION INDEPENDENT
20 OF ENFORCEMENT.—

21 “(I) IN GENERAL.—Subject to
22 subclause (II), on-site consultations
23 and educational programming de-
24 scribed in clause (i) shall be con-

1 ducted independently of any enforce-
2 ment activity.

3 “(II) EXCEPTION.—Subclause (I)
4 shall not apply in the case where a
5 triggering event at the nursing facility
6 is observed in the course of providing
7 on-site consultations and educational
8 programming described in clause (i).
9 In establishing such on-site consulta-
10 tions and educational programming,
11 the Secretary shall determine the trig-
12 gering events for which the use of
13 necessary enforcement actions is per-
14 mitted notwithstanding the limitation
15 under subclause (I). Such triggering
16 events shall include events that are re-
17 quired to be reported under State and
18 Federal law and a pattern of defi-
19 ciencies or problems that the quality
20 improvement organization or other or-
21 ganization has identified for correc-
22 tion but which are consistently not
23 corrected.

24 “(I) PUBLIC AVAILABILITY.—

1 “(i) IN GENERAL.—The Secretary
2 shall ensure that a nursing facility’s par-
3 ticipation in the low-rated facility program
4 is publicly announced, including to—

5 “(I) resident family councils;

6 “(II) resident attending physi-
7 cians;

8 “(III) the State board respon-
9 sible for the licensing of the nursing
10 facility administrator at the facility;

11 “(IV) State Long-Term Care
12 Ombudsman programs (as described
13 in section 712(a)(1) of the Older
14 Americans Act of 1965); and

15 “(V) the community at large.

16 “(ii) WRITTEN NOTIFICATION.—The
17 Secretary shall ensure that, in the case of
18 a nursing facility that is participating in
19 the low-rated facility program, residents of
20 such facility and family or legal represent-
21 atives are furnished with individualized
22 written notice of such participation. Such
23 notice shall be provided to current resi-
24 dents and to new residents prior to admis-
25 sion.

1 “(J) REQUIREMENT FOR REMOVAL.—The
2 Secretary shall require that a nursing facility
3 show improvement prior to removal from the
4 low-rated facility program.”.

5 (C) USE OF CIVIL MONEY PENALTIES.—
6 Section 1919(h)(3)(C)(ii)(IV)(ff) of the Social
7 Security Act (42 U.S.C.
8 1396r(h)(3)(C)(ii)(IV)(ff)) is amended—

9 (i) by striking “and facility improve-
10 ment initiatives” and inserting “facility
11 improvement initiatives”; and

12 (ii) by inserting the following before
13 the period at the end: “, and, on and after
14 the date the Secretary makes the conver-
15 sion described in subsection (f)(10)(D),
16 consultation, education, and other activities
17 to foster improvement and remedy root
18 causes contributing to deficiencies cited
19 across multiple surveys among facilities in
20 the low-rated facility program under sub-
21 section (f)(10)”.

22 (3) INFORMATION ON HIGH-RATED AND LOW-
23 RATED FACILITIES ON NURSING HOME COMPARE
24 MEDICARE WEBSITE.—Section 1919(i)(1) of the So-

1 cial Security Act (42 U.S.C. 1396r(i)(1)) is amend-
2 ed—

3 (A) in subparagraph (A), by adding at the
4 end the following new clause:

5 “(vi) On and after the date the Sec-
6 retary implements the high-rated facility
7 program under subsection (f)(12) and
8 makes the conversion under subsection
9 (f)(10)(D), consistent with subparagraph
10 (C)—

11 “(I) for each nursing facility that
12 is designated as a high-rated nursing
13 facility under subsection (f)(12), the
14 date the facility was so designated;
15 and

16 “(II) for each nursing facility
17 participating in the low-rated facility
18 program under subsection (f)(10), the
19 date the facility was identified for in-
20 clusion in such program.”; and

21 (B) by adding at the end the following new
22 subparagraphs:

23 “(C) DISTINCTIONS FOR HIGH-RATED AND
24 LOW-RATED FACILITIES.—On and after the
25 date the Secretary implements the high-rated

1 facility program under subsection (f)(12) and
2 makes the conversion under subsection
3 (f)(10)(D), the Secretary shall ensure that
4 graphics, including an appropriate explanation
5 of such graphics, are prominently displayed on
6 the website described in subparagraph (A) in
7 order to distinguish each of the following:

8 “(i) Nursing facilities that are des-
9 ignated as high-rated nursing facilities
10 under subsection (f)(12).

11 “(ii) Nursing facilities that are par-
12 ticipating in the low-rated facility program
13 under subsection (f)(10), with information
14 on facilities that have been placed in such
15 program more than one time over the
16 course of the last 10 years (including the
17 number of times such nursing facilities
18 have been placed in the program).

19 “(D) FOCUS GROUPS AND CONSUMER
20 TESTING.—In order to help limit confusion,
21 particularly among older adults, individuals
22 with disabilities, and family caregivers, the Sec-
23 retary shall utilize focus groups and other con-
24 sumer testing methods prior to including the
25 additional information under subparagraph

1 (A)(vi) and implementing the distinctions under
2 subparagraph (C).”.

3 (d) GAO STUDY AND REPORT.—

4 (1) STUDY.—The Comptroller General of the
5 United States (in this section referred to as the
6 “Comptroller General”) shall conduct a study on the
7 quality of items and services furnished by skilled
8 nursing facilities under title XVIII of the Social Se-
9 curity Act and nursing facilities under title XIX of
10 such Act, and such facilities’ compliance with the
11 applicable requirements under such titles. Such
12 study shall include analysis of the following:

13 (A) The effectiveness of the low-rated facil-
14 ity program established under paragraph (8) of
15 section 1819(f) of the Social Security Act (42
16 U.S.C. 1395i–3(f)), as amended by subsection
17 (b)(2), and under paragraph (10) of section
18 1919(f) of such Act (42 U.S.C. 1396r(f)), as
19 amended by subsection (c)(2).

20 (B) Other areas determined appropriate by
21 the Comptroller General.

22 (2) REPORT.—Not later than 6 years after the
23 date of enactment of this Act, the Comptroller Gen-
24 eral shall submit to the appropriate Committees of
25 Congress a report containing the results of the study

1 conducted under paragraph (1), together with rec-
2 ommendations for such legislation and administra-
3 tive action as the Comptroller General determines
4 appropriate.

5 (e) RULES OF CONSTRUCTION.—

6 (1) SURVEYS.—Nothing in the provisions of, or
7 the amendments made by, this section shall be con-
8 strued to allow the Secretary to modify or deviate
9 from—

10 (A) a survey schedule that requires unan-
11 nounced and unanticipated surveying of skilled
12 nursing facilities under subsection (g)(2)(A)(i)
13 of section 1819 of the Social Security Act (42
14 U.S.C. 1395i–3(g)) or under subsection
15 (g)(2)(A)(i) of section 1919 of the Social Secu-
16 rity Act (42 U.S.C. 1396r(g));

17 (B) the surveying frequency specified
18 under subsection (g)(2)(A)(iii) of such section
19 1819 or under subsection (g)(2)(A)(iii) of such
20 section 1919; or

21 (C) surveys and investigations as required
22 under subsection (g)(4) of such section 1819 or
23 under subsection (g)(4) of such section 1919.

24 (2) ACCOUNTABILITY AND STATE LAW.—Noth-
25 ing in the provisions of, or the amendments made

1 by, this section shall be construed to impact the abil-
2 ity of a resident, the family of a resident, or a suc-
3 cessor in interest to hold a skilled nursing facility or
4 nursing facility accountable or change protections
5 granted under State law.

6 (f) DEFINITIONS.—In this section:

7 (1) APPROPRIATE COMMITTEES OF CON-
8 GRESS.—The term “appropriate Committee of Con-
9 gress” means—

10 (A) the Committee on Finance of the Sen-
11 ate;

12 (B) the Committee on Health, Education,
13 Labor, and Pensions of the Senate;

14 (C) the Special Committee on Aging of the
15 Senate;

16 (D) the Committee on Ways and Means of
17 the House of Representatives; and

18 (E) the Committee on Energy and Com-
19 merce of the House of Representatives.

20 (2) NURSING FACILITY.—The term “nursing
21 facility” has the meaning given that term in section
22 1919(a) of the Social Security Act (42 U.S.C.
23 1396r(a)).

24 (3) SKILLED NURSING FACILITY.—The term
25 “skilled nursing facility” has the meaning given that

1 term in section 1819(a) of the Social Security Act
2 (42 U.S.C. 1395i-3(a)).

3 (4) SECRETARY.—The term “Secretary” means
4 the Secretary of Health and Human Services.

