

Nursing Home Reform Modernization Act of 2020 (S.4866)

Sponsored by Senators Bob Casey (D-PA) and Pat Toomey (R-PA)

Why do we need the *Nursing Home Reform Modernization Act of 2020*?

More than 94,000 nursing home and long-term care facility residents and workers have died from the novel coronavirus (COVID-19).¹ This national tragedy has reinforced the urgent need to improve care quality and enhance accountability in a subset of nursing homes that consistently fail to meet federal standards. As documented in a 2019 report by Senators Casey and Toomey, this need existed long before the pandemic. Specifically, the Senators' bipartisan report revealed examples of persistent abuse and neglect in facilities eligible for a federal watch list known as the Special Focus Facility (SFF) program.² After substantially failing to meet Medicare and Medicaid standards in areas like infection control and prevention, nursing homes selected to participate in the SFF program receive enhanced oversight through more frequent surveys.³ To date, a maximum of just 88 facilities are subject to the SFF program's additional oversight despite more than 500 facilities, or just over 3 percent of all nursing homes, qualifying for the program.⁴

An analysis of SFF participants and candidates reveal that, prior to the pandemic, SFF facilities had worse infection control problems and were more likely to be cited for abuse and neglect. About two-thirds of SFF candidates and more than half of SFF participants had a deficiency that could have resulted in harm to residents in the previous survey cycle, compared to 42 percent of all nursing homes for the same metric.⁵ Similarly, while only five percent of all nursing homes were tagged by the Centers for Medicare & Medicaid Services (CMS) for an incident of abuse, one-third of SFF candidates and 30 percent of SFF participants were flagged with this indicator.⁶ These findings, coupled with those from the Senators' 2019 report, underscore the importance of enhanced oversight for facilities that consistently fall short.

What would the *Nursing Home Reform Modernization Act of 2020* do?

The bill would expand oversight to the SFF candidates that currently do not receive it, increase educational resources for all underperforming facilities, and establish an independent Advisory Council to inform the U.S. Department of Health and Human Services (HHS) on how best to foster quality improvements. The legislation is supported by AARP, Alzheimer's Association, the Alzheimer's Impact Movement (AIM) and the Center for Advocacy for the Rights & Interests of the Elderly (CARIE).

¹ The COVID Tracking Project, *The Long-Term Care COVID Tracker* (Accessed October 26, 2020) (<https://covidtracking.com/data/longtermcare>).

² U.S. Senators Bob Casey and Pat Toomey, *Families' and Residents Right to Know: Uncovering Poor Care in America's Nursing Homes* (2019) (<https://www.aging.senate.gov/imo/media/doc/Casey%20Toomey%20SFF%20Report%20June%202019.pdf>).

³ The Social Security Act of 1935, Pub. L. 74-271, Sec. 1819(f)(8); The Social Security Act of 1935, Pub. L. 74-271, Sec. 1919 (f)(8).

⁴ Centers for Medicare and Medicaid Services, *Fiscal Year (FY) 2017 Special Focus Facility (SFF) Program Update* (March 2017) (<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-20.pdf>); As of November 5, 2020, 84 facilities were participating in the program and 446 facilities were on the candidate list. Together, SFF participants and candidates comprise about 3.5 percent of all nursing homes nationwide. Centers for Medicare and Medicaid Services, *SFF List* (October 2020) (<https://www.cms.gov/files/document/sff-posting-candidate-list-october-2020.pdf>).

⁵ These figures were calculated based on staff analysis of publicly available CMS data that was retrieved on May 1, 2020, from <https://data.medicare.gov/data/nursing-home-compare>. Based on this information, 65 percent of SFF candidates and 56 percent of SFF participants had a deficiency in the previous survey cycle that could have resulted in harm to residents.

⁶ In October 2019, CMS created an abuse indicator on Nursing Home Compare for nursing homes that were cited for harm or the potential for harm to residents during the previous 12 months. Centers for Medicare and Medicaid Services, *Consumer Alerts added to the Nursing Home Compare website and the Five Star Quality Rating System* (October 2019) (<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO-20-01-NH.pdf>); Based on publicly available CMS data, as of October 15, 2020, 33 percent of SFF candidates and 30 percent of SFF participants were flagged with an abuse indicator. Data.medicare.gov, Nursing Home Compare, *Provider Info* (Accessed October 15, 2020) (<https://data.medicare.gov/data/nursing-home-compare>).

Section-By-Section:

SECTION 1. Title. The Nursing Home Reform Modernization Act of 2020.

SECTION 2. Improvements to Nursing Facilities under the Medicare and Medicaid Programs.

(a) Advisory Council on Skilled Nursing Facility Rankings Under Medicare and Nursing Facility Rankings Under Medicaid—The bill would establish an Advisory Council consisting of representatives of older adults, people with disabilities, nursing homes, academics, and states to report to HHS on how to appropriately designate facilities in the subsequently created high- and low-rated facility programs.

(b) Medicare Program Revisions and (c) Medicaid Program Revisions—

(1) Establishment of Rankings and High-Rated Facility Program—The bill would require HHS to establish a data-driven process, drawing on the recommendations of the Advisory Council, to rank nursing homes based on their performance—from low to high. Additionally, the bill would establish an icon on the CMS “Nursing Home Compare” website to publicly indicate nursing homes identified as high-rated and establish a process for suspending a nursing home’s high-rated status, if warranted.

(2) Improvements to the SFF Program—The bill would improve and expand the SFF program to include facilities currently qualifying as candidates. This section would also rename the SFF program to the “Low-Rated Facility Program.” Specific program improvements include:

- Requiring that no fewer than 3.5 percent of the lowest-rated facilities participate in the program;
- Establishing on-site consultation and educational programming for such facilities;
- Codifying core enforcement elements, such as the use of progressive enforcement actions and the requirement that a facility must improve in order to graduate from the program; and
- Reinvesting Civil Monetary Penalties (CMPs) to bolster improvement among program participants.

(3) Information on High-Rated and Low-Rated Facilities on Nursing Home Compare Website—The bill would require HHS to create an icon on the CMS “Nursing Home Compare” website for high- and low-rated nursing homes, leveraging focus group data and other consumer testing to optimize the site’s value for consumers and families.

(d) Government Accountability Office (GAO) Study and Report—The bill would require the GAO to study the low-rated facility program.

(e) Rules of Construction—The bill includes language to clarify that nothing in this bill allows the HHS Secretary to deviate from the standard surveying process, to deviate from the complaint surveys and investigations process, or to weaken protections granted to nursing home residents under state law.