

118TH CONGRESS
2D SESSION

H. R. 8331

To amend titles XVIII and XIX of the Social Security Act to require skilled nursing facilities, nursing facilities, intermediate care facilities for the intellectually disabled, and inpatient rehabilitation facilities to permit essential caregivers access during any period in which regular visitation is restricted.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2024

Ms. TENNEY (for herself, Mr. LARSON of Connecticut, Mr. FITZPATRICK, Mr. SMITH of Nebraska, Mr. RUTHERFORD, Mr. VAN ORDEN, Ms. WILD, Mr. CAREY, Mr. LAWLER, Mr. CLEAVER, Ms. LEE of Nevada, Mr. CISCOMANI, Mr. BACON, Mr. DAVIS of North Carolina, Mr. COHEN, and Mr. LANGWORTHY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 require skilled nursing facilities, nursing facilities, intermediate care facilities for the intellectually disabled, and inpatient rehabilitation facilities to permit essential caregivers access during any period in which regular visitation is restricted.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Essential Caregivers
3 Act of 2024”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) According to the National Center for Health
7 Statistics of the Centers for Disease Control and
8 Prevention, an estimated 1,300,000 individuals re-
9 sided in nursing homes in 2020 at the onset of the
10 COVID–19 pandemic and nearly half of all nursing
11 home residents were living with a diagnosis of Alz-
12 heimer’s or other related dementia.

13 (2) Regulations issued pursuant to the Nursing
14 Home Reform Act of 1987 established basic rights
15 and services for residents of nursing homes, includ-
16 ing “the right to a dignified existence, self-deter-
17 mination, and communication with and access to
18 persons and services inside and outside the facility”.

19 (3) In March of 2020, the Centers for Medicare
20 & Medicaid Services instructed nursing facilities to
21 restrict visitation for all visitors and non-essential
22 healthcare personnel and cancel communal dining
23 and group activities. Long-term care ombudsman
24 program representatives and State surveyors were
25 among those whose access to long-term care facilities
26 was prohibited or extremely restricted despite re-

1 opening guidance released by the Centers for Medi-
2 care & Medicaid Services in May of 2020.

3 (4) Many long-term care residents declined dra-
4 matically or died prematurely from “failure to
5 thrive” in isolation.

6 (5) According to the National Consumer Voice
7 for Quality Long-Term Care, in the first year of the
8 COVID–19 pandemic, 1 in 5 healthcare workers re-
9 signed, retired, or were fired. This exacerbated the
10 longstanding problem of staff shortages that already
11 existed. Lack of staff, combined with the forced ab-
12 sence of families, many of whom provided informal
13 care and support to residents, resulted in a signifi-
14 cant decline in residents’ health and well-being. Dur-
15 ing the pandemic, pressure ulcers in nursing home
16 residents rose by 31 percent, the number of resi-
17 dents experiencing significant weight loss rose by 49
18 percent, the number of residents reporting feeling
19 down, depressed, or hopeless rose by 40 percent, and
20 the number of residents prescribed antipsychotic
21 medications rose by 77.5 percent.

22 (6) According to the Department of Health and
23 Human Services, loneliness and isolation, such as
24 that experienced by long-term care residents during

1 the COVID–19 pandemic, represent profound
 2 threats to an individual’s health and well-being.

3 (7) Essential Caregivers provide supplemental
 4 care for their loved one, regardless of staff short-
 5 ages, staff turnover, or emergencies. Essential Care-
 6 givers support residents and advocate on their be-
 7 half.

8 **SEC. 3. RIGHT TO ESSENTIAL CAREGIVERS; ACCESS TO ES-**
 9 **SENTIAL CAREGIVERS DURING PERIODS**
 10 **WHEN VISITATION IS OTHERWISE RE-**
 11 **STRICTED.**

12 (a) MEDICARE SKILLED NURSING FACILITIES.—Sec-
 13 tion 1819(c)(3) of the Social Security Act (42 U.S.C.
 14 1395i–3(c)(3)) is amended—

15 (1) by redesignating subparagraphs (A) through
 16 (E) as clauses (i) through (v), respectively;

17 (2) by striking “A skilled nursing facility
 18 must—” and inserting the following:

19 “(A) IN GENERAL.—A skilled nursing fa-
 20 cility shall—”; and

21 (3) by adding at the end the following new sub-
 22 paragraph:

23 “(B) ACCESS TO ESSENTIAL CAREGIVERS
 24 DURING EMERGENCY PERIODS WHEN VISITA-
 25 TION IS OTHERWISE RESTRICTED.—

1 “(i) DESIGNATION OF ESSENTIAL
2 CAREGIVER.—Each skilled nursing facility
3 shall recognize the right of each resident of
4 such facility to—

5 “(I) designate and have access to
6 essential caregivers for such resident
7 at all times, including during any pe-
8 riod of emergency in which regular
9 visitation is restricted by order of a
10 Federal, State, or local authority or
11 by other operation of law; and

12 “(II) amend such designation at
13 any time.

14 “(ii) PRESUMPTION OF DESIGNA-
15 TION.—For purposes of clause (i), in the
16 case of a resident who is unable, by reason
17 of cognitive or mental disability, to make
18 an election described in such clause, the
19 resident representative (as defined in sec-
20 tion 483.5 of title 42, Code of Federal
21 Regulations) of such resident shall be per-
22 mitted to make such designation for such
23 resident.

24 “(iii) ACCESS TO ESSENTIAL CARE-
25 GIVERS DURING EMERGENCY PERIODS

1 WHEN VISITATION IS OTHERWISE RE-
2 STRICTED.—During a period of emergency
3 in which regular visitation is restricted by
4 order of a Federal, State, or local author-
5 ity or by other operation of law, including
6 any period in which a waiver or modifica-
7 tion of requirements pursuant to section
8 1135 is in effect, a skilled nursing facility
9 shall—

10 “(I) not deny in-person access to
11 a resident by an essential caregiver of
12 the resident except as provided in this
13 subparagraph;

14 “(II) allow at least 1 essential
15 caregiver to have access to and pro-
16 vide assistance to such resident at
17 such facility every day and at any
18 time; and

19 “(III) enforce the agreement de-
20 scribed in clause (vii)(III) with respect
21 to an essential caregiver.

22 “(iv) RESTRICTIONS ON ACCESS.—

23 “(I) IN GENERAL.—During a pe-
24 riod of emergency in which regular
25 visitation is restricted by order of a

1 Federal, State, or local authority or
2 by other operation of law, including
3 any period in which a waiver or modi-
4 fication of requirements pursuant to
5 section 1135 is in effect, a skilled
6 nursing facility may deny access to a
7 resident by an essential caregiver of
8 the resident for—

9 “(aa) an initial period of not
10 longer than 7 days; and

11 “(bb) one additional period
12 of not longer than 7 days (in ad-
13 dition to the initial period de-
14 scribed in item (aa)) if the de-
15 partment of health of the State
16 in which the facility is located
17 approves the denial of access for
18 such additional period.

19 “(II) RULE OF APPLICATION.—

20 For purposes of subclause (I), a pe-
21 riod of emergency in which regular
22 visitation is restricted by order of a
23 Federal, State, or local authority or
24 by other operation of law shall begin
25 on the date that such order or other

1 operation of law takes effect and shall
2 end on the date that such order or
3 other operation of law expires or is
4 otherwise terminated. During any
5 such period, the maximum number of
6 days for which a skilled nursing facil-
7 ity may deny access to a resident by
8 an essential caregiver of the resident
9 is 7 total days (or, subject to the ap-
10 proval of the department of health of
11 the State in which the facility is lo-
12 cated, 14 total days).

13 “(v) COMPLIANCE AND NOTIFICA-
14 TION.—

15 “(I) AUTHORITY.—No essential
16 caregiver who upholds the agreement
17 described in clause (vii)(III) shall be
18 denied access to the skilled nursing
19 facility of the resident involved.

20 “(II) NOTIFICATION.— If an es-
21 sential caregiver fails to comply with
22 an agreement with a skilled nursing
23 facility described in clause (vii)(III),
24 the facility must first provide a warn-
25 ing to the essential caregiver and resi-

1 dent in writing citing specific issues of
2 non-compliance and providing clear
3 guidance for corrective measures.

4 “(III) ENFORCEMENT.—If an es-
5 sential caregiver or resident, after re-
6 ceiving a notification of noncompli-
7 ance described in subclause (II), fails
8 to take corrective action, the essential
9 caregiver may subsequently be denied
10 access to the resident. In such cases,
11 the facility shall provide to such care-
12 giver and such resident (or health
13 care proxy of such resident), not later
14 than 24 hours after such denial of ac-
15 cess occurs, a written explanation as
16 to why such caregiver was denied ac-
17 cess to such resident. Such expla-
18 nation must include the resident’s and
19 caregiver’s options for appeal under
20 the processes established under clause
21 (vi).

22 “(vi) OPTIONS FOR RESIDENTS AND
23 CAREGIVERS TO APPEAL DENIALS OF AC-
24 CESS.—

1 “(I) IN GENERAL.—Not later
2 than 2 years after the date of enact-
3 ment of this subparagraph, the Sec-
4 retary shall issue a final rule estab-
5 lishing a process for residents and
6 caregivers to appeal denials of access.

7 “(II) APPEALS PROCESS.—The
8 agency responsible for overseeing the
9 appeals process established under sub-
10 clause (I) shall—

11 “(aa) receive appeals from
12 residents and essential caregivers
13 challenging a decision by a
14 skilled nursing facility to deny
15 access under clause (v); and

16 “(bb) investigate all such
17 appeals within 48 hours of re-
18 ceipt.

19 “(III) BURDEN OF PROOF.—
20 During an appeal received under the
21 appeals process established under sub-
22 clause (I), if a skilled nursing facility
23 defends a decision to deny access to
24 an essential caregiver under clause (v)
25 on the basis that the essential care-

1 giver violated the agreement described
2 in clause (vii)(III), the skilled nursing
3 facility shall have the burden of proof
4 in demonstrating that the essential
5 caregiver violated such agreement.

6 “(IV) RESOLUTION OF AP-
7 PEAL.—With respect to an appeal re-
8 ceived under the appeals process es-
9 tablished under subclause (I), the
10 agency responsible for overseeing the
11 appeal shall make a determination as
12 to whether a skilled nursing facility
13 violated a requirement or prohibition
14 of this subparagraph within 48 hours
15 of commencing its investigation. If the
16 agency determines that a facility has
17 violated such a requirement or prohi-
18 bition the agency shall—

19 “(aa) require the facility to
20 allow immediate access to the es-
21 sential caregiver in question;

22 “(bb) require the facility to
23 establish a corrective action plan
24 to prevent the recurrence of such
25 violation within a 7-day period of

1 receiving notice from the agency;
2 and

3 “(cc) impose a civil money
4 penalty in an amount to be deter-
5 mined by the agency (not to ex-
6 ceed \$5,000) if such facility fails
7 to implement the corrective ac-
8 tion plan with the 7-day period
9 specified in item (bb).

10 “(vii) DEFINITION OF ESSENTIAL
11 CAREGIVER.—For purposes of this sub-
12 paragraph, the term ‘essential caregiver’
13 means, with respect to a resident of a
14 skilled nursing facility, an individual
15 who—

16 “(I) is designated by or on behalf
17 of the resident pursuant to clause (i)
18 or clause (ii);

19 “(II) will provide assistance to
20 such resident, which may include as-
21 sistance with activities of daily living
22 or providing emotional support or
23 companionship to such resident; and

24 “(III) agrees to follow all safety
25 protocols established by such facility,

1 which shall be clearly specified in
 2 writing and may be no more restric-
 3 tive than the safety protocols (includ-
 4 ing safety standards and entry re-
 5 quirements) applicable to staff of such
 6 facility.”.

7 (b) MEDICAID NURSING FACILITIES.—Section
 8 1919(c)(3) of the Social Security Act (42 U.S.C.
 9 1396r(c)(3)) is amended—

10 (1) by redesignating subparagraphs (A) through
 11 (E) as clauses (i) through (v), respectively;

12 (2) by striking “A nursing facility must—” and
 13 inserting the following:

14 “(A) IN GENERAL.—A nursing facility
 15 shall—”; and

16 (3) by adding at the end the following new sub-
 17 paragraph:

18 “(B) ACCESS TO ESSENTIAL CAREGIVERS
 19 DURING EMERGENCY PERIODS WHEN VISITA-
 20 TION IS OTHERWISE RESTRICTED.—

21 “(i) DESIGNATION OF ESSENTIAL
 22 CAREGIVER.—Each nursing facility shall
 23 recognize the right of each resident of such
 24 facility to—

1 “(I) designate and have access to
2 essential caregivers for such resident
3 at all times, including during any pe-
4 riod of emergency in which regular
5 visitation is restricted by order of a
6 Federal, State, or local authority or
7 by other operation of law; and

8 “(II) amend such designation at
9 any time.

10 “(ii) PRESUMPTION OF DESIGNA-
11 TION.—For purposes of clause (i), in the
12 case of a resident who is unable, by reason
13 of cognitive or mental disability, to make
14 an election described in such clause, the
15 resident representative (as defined in sec-
16 tion 483.5 of title 42, Code of Federal
17 Regulations) of such resident shall be per-
18 mitted to make such designation for such
19 resident.

20 “(iii) ACCESS TO ESSENTIAL CARE-
21 GIVERS DURING EMERGENCY PERIODS
22 WHEN VISITATION IS OTHERWISE RE-
23 STRICTED.—During a period of emergency
24 in which regular visitation is restricted by
25 order of a Federal, State, or local author-

1 ity or by other operation of law, including
2 any period in which a waiver or modifica-
3 tion of requirements pursuant to section
4 1135 is in effect, a nursing facility shall—

5 “(I) not deny in-person access to
6 a resident by an essential caregiver of
7 the resident except as provided in this
8 subparagraph;

9 “(II) allow at least 1 essential
10 caregiver to have access to and pro-
11 vide assistance to such resident at
12 such facility every day and at any
13 time; and

14 “(III) enforce the agreement de-
15 scribed in clause (vii)(III) with respect
16 to an essential caregiver.

17 “(iv) RESTRICTIONS ON ACCESS.—

18 “(I) IN GENERAL.—During a pe-
19 riod of emergency in which regular
20 visitation is restricted by order of a
21 Federal, State, or local authority or
22 by other operation of law, including
23 any period in which a waiver or modi-
24 fication of requirements pursuant to
25 section 1135 is in effect, a nursing fa-

1 cility may deny access to a resident by
2 an essential caregiver of the resident
3 for—

4 “(aa) an initial period of not
5 longer than 7 days; and

6 “(bb) one additional period
7 of not longer than 7 days (in ad-
8 dition to the initial period de-
9 scribed in item (aa)) if the de-
10 partment of health of the State
11 in which the facility is located
12 approves the denial of access for
13 such additional period.

14 “(II) RULE OF APPLICATION.—

15 For purposes of subclause (I), a pe-
16 riod of emergency in which regular
17 visitation is restricted by order of a
18 Federal, State, or local authority or
19 by other operation of law shall begin
20 on the date that such order or other
21 operation of law takes effect and shall
22 end on the date that such order or
23 other operation of law expires or is
24 otherwise terminated. During any
25 such period, the maximum number of

1 days for which a nursing facility may
2 deny access to a resident by an essen-
3 tial caregiver of the resident is 7 total
4 days (or, subject to the approval of
5 the department of health of the State
6 in which the facility is located, 14
7 total days).

8 “(v) COMPLIANCE AND NOTIFICA-
9 TION.—

10 “(I) AUTHORITY.—No essential
11 caregiver who upholds the agreement
12 described in clause (vii)(III) shall be
13 denied access to the nursing facility of
14 the resident involved.

15 “(II) NOTIFICATION.— If an es-
16 sential caregiver fails to comply with
17 an agreement with a nursing facility
18 described in clause (vii)(III), the facil-
19 ity must first provide a warning to the
20 essential caregiver and resident in
21 writing citing specific issues of non-
22 compliance and providing clear guid-
23 ance for corrective measures.

24 “(III) ENFORCEMENT.—If an es-
25 sential caregiver or resident, after re-

1 ceiving a notification of noncompli-
2 ance described in subclause (II), fails
3 to take corrective action, the essential
4 caregiver may subsequently be denied
5 access to the resident. In such cases,
6 the facility shall provide to such care-
7 giver and such resident (or health
8 care proxy of such resident), not later
9 than 24 hours after such denial of ac-
10 cess occurs, a written explanation as
11 to why such caregiver was denied ac-
12 cess to such resident. Such expla-
13 nation must include the resident's and
14 caregiver's options for appeal under
15 the processes established under clause
16 (vi).

17 “(vi) OPTIONS FOR RESIDENTS AND
18 CAREGIVERS TO APPEAL DENIALS OF AC-
19 CESS.—

20 “(I) IN GENERAL.—Not later
21 than 2 years after the date of enact-
22 ment of this subparagraph, the Sec-
23 retary shall issue a final rule estab-
24 lishing a process for residents and
25 caregivers to appeal denials of access.

1 “(II) APPEALS PROCESS.—The
2 agency responsible for overseeing the
3 appeals process established under sub-
4 clause (I) shall—

5 “(aa) receive appeals from
6 residents and essential caregivers
7 challenging a decision by a nurs-
8 ing facility to deny access under
9 clause (v); and

10 “(bb) investigate all such
11 appeals within 48 hours of re-
12 ceipt.

13 “(III) BURDEN OF PROOF.—
14 During an appeal received under the
15 appeals process established under sub-
16 clause (I), if a nursing facility defends
17 a decision to deny access to an essen-
18 tial caregiver under clause (v) on the
19 basis that the essential caregiver vio-
20 lated the agreement described in
21 clause (vii)(III), the nursing facility
22 shall have the burden of proof in dem-
23 onstrating that the essential caregiver
24 violated such agreement.

“(IV) RESOLUTION OF AP-

PEAL.—With respect to an appeal received under the appeals process established under subclause (I), the agency responsible for overseeing the appeal shall make a determination as to whether a nursing facility violated a requirement or prohibition of this subparagraph within 48 hours of commencing its investigation. If the agency determines that a facility has violated such a requirement or prohibition the agency shall—

“(aa) require the facility to allow immediate access to the essential caregiver in question;

“(bb) require the facility to establish a corrective action plan to prevent the recurrence of such violation within a 7-day period of receiving notice from the agency; and

“(cc) impose a civil money penalty in an amount to be determined by the agency (not to ex-

ceed \$5,000) if such facility fails to implement the corrective action plan with the 7-day period specified in item (bb).

“(vii) DEFINITION OF ESSENTIAL CAREGIVER.—For purposes of this subparagraph, the term ‘essential caregiver’ means, with respect to a resident of a nursing facility, an individual who—

“(I) is designated by or on behalf of the resident pursuant to clause (i) or clause (ii);

“(II) will provide assistance to such resident, which may include assistance with of activities of daily living or providing emotional support or companionship to such resident; and

“(III) agrees to follow all safety protocols established by such facility, which shall be clearly specified in writing and may be no more restrictive than the safety protocols (including safety standards and entry requirements) applicable to staff of such facility.”.

1 (c) INTERMEDIATE CARE FACILITIES FOR THE IN-
2 TELLECTUALLY DISABLED.—Section 1905(d) of the So-
3 cial Security Act (42 U.S.C. 1396d(d)) is amended—

4 (1) in paragraph (2), by striking “and” at the
5 end;

6 (2) in paragraph (3), by striking the period and
7 inserting “; and”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(4) the institution complies with the require-
11 ments relating to the designation of, and access to
12 residents by, essential caregivers described in section
13 1919(c)(3)(B) in the same manner as if such insti-
14 tution were a nursing facility.”.

15 (d) INPATIENT REHABILITATION FACILITIES.—Sec-
16 tion 1866(a)(1) of the Social Security Act (42 U.S.C.
17 1395cc(a)(1)) is amended—

18 (1) in subparagraph (X), by striking “and” at
19 the end;

20 (2) in subparagraph (Y), by striking the period
21 at the end and inserting “, and”; and

22 (3) by inserting after subparagraph (Y) the fol-
23 lowing new subparagraph:

24 “(Z) in the case of an inpatient rehabilitation
25 facility that is located on the same campus (as de-

1 fined by the Secretary) as a skilled nursing facility,
2 nursing facility (as defined in section 1919(a)), or
3 intermediate care facility for the intellectually dis-
4 abled (as described in section 1905(d)), to comply
5 with the requirements relating to the designation of,
6 and access to residents by, essential caregivers de-
7 scribed in section 1819(c)(3)(B) in the same manner
8 as if such institution were a skilled nursing facil-
9 ity.”.

10 (e) REGULATIONS.—The Secretary of Health and
11 Human Services shall, after consultation with stakeholders
12 (including residents, family members, long-term care om-
13 budsmen, other advocates of nursing home residents, and
14 nursing home providers), promulgate regulations to carry
15 out this Act and the amendments made by this Act.

16 (f) RULES OF CONSTRUCTION.—

17 (1) NO NEW AUTHORITY FOR STATE AND
18 LOCAL OFFICIALS TO RESTRICT VISITATION AT
19 NURSING FACILITIES.—Nothing in this section or
20 the amendments made by this section shall be con-
21 strued as creating any new authority for State or
22 local officials to restrict visitation at nursing facili-
23 ties.

24 (2) NO NEW AUTHORITY FOR NURSING FACILI-
25 TIES TO UNILATERALLY RESTRICT VISITATION.—

1 Nothing in this section or the amendments made by
2 this section shall be construed as creating any new
3 authority for a skilled nursing facility or nursing fa-
4 cility (as such terms are defined in sections 1819
5 and 1919 of the Social Security Act, respectively (42
6 U.S.C. 1395i-3, 1396r)) to restrict visitation.

7 (g) EFFECTIVE DATE.—The amendments made by
8 this Act shall take effect on the date that is 24 months
9 after the date of the enactment of this Act, and shall apply
10 with respect to periods beginning on or after such date
11 in which regular visitation at nursing facilities is restricted
12 by order of a Federal, State, or local authority or by other
13 operation of law.

○