

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 9641
OFFERED BY MR. SMITH OF MISSOURI

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. REQUIRING CERTAIN FACILITIES TO PERMIT VISITS
5 FROM AN ESSENTIAL CAREGIVER DURING
6 CERTAIN PERIODS.

7 (a) NURSING FACILITIES AND SKILLED NURSING
8 FACILITIES.—

9 (1) IN GENERAL.—Sections 1819(c) and
10 1919(c) of the Social Security Act (42 U.S.C.
11 1395i–3(c); 1396r(c)) are each amended—

12 (A) in paragraph (3)—

13 (i) in subparagraph (D), by striking
14 “and” at the end;

15 (ii) in subparagraph (E), by striking
16 the period and inserting “; and”; and

17 (iii) by adding at the end the fol-
18 lowing new subparagraph:

1 “(F) implement and maintain, during any
2 period during which regular visitation at such
3 facility is suspended, the essential caregivers
4 program described in paragraph (7).”; and

5 (B) by adding at the end the following new
6 paragraph:

7 “(7) ESSENTIAL CAREGIVERS PROGRAM.—

8 “(A) IN GENERAL.—For purposes of sub-
9 paragraph (F) of paragraph (3), the essential
10 caregivers program described in this paragraph
11 is a program implemented by a facility de-
12 scribed in such paragraph under which such fa-
13 cility must—

14 “(i) allow each resident of such facil-
15 ity the ability to elect 2 essential caregivers
16 (as defined in subparagraph (D)) to have
17 in-person access to such resident at such
18 facility;

19 “(ii) allow each such resident to
20 amend such election at any time; and

21 “(iii) subject to subparagraph (B),
22 permit each such caregiver so elected by
23 such resident in-person access to such resi-
24 dent.

25 “(B) LIMITATIONS ON ACCESS.—

1 “(i) IN GENERAL.—The Secretary
2 may permit a facility described in subpara-
3 graph (A) to limit the access to an essen-
4 tial caregiver elected by a resident of such
5 facility in accordance with guidance issued
6 by the Secretary. Such guidance may—

7 “(I) permit such a facility to
8 deny such a caregiver in-person access
9 to such resident for the first 7 days
10 during the period during which reg-
11 ular visitation at such facility is sus-
12 pended (as described in paragraph
13 (3)(F)), but only if, during the period
14 during which such in-person access is
15 denied, such facility provides such
16 caregiver access to such resident
17 through an audio-visual telecommuni-
18 cations system;

19 “(II) provide reasonable accom-
20 modations to protect the rights of a
21 roommate of such resident; and

22 “(III) notwithstanding subclause
23 (I)—

24 “(aa) allow such a facility to
25 limit or deny such a caregiver in-

1 person access to such resident if
2 such caregiver displays symptoms
3 of a serious infectious disease
4 that poses a significant risk to
5 the residents of such facility, but
6 only until such time as such care-
7 giver tests negative for such dis-
8 ease;

9 “(bb) allow such a facility to
10 deny such a caregiver access to
11 such resident if such caregiver
12 fails to follow the safety protocols
13 described in subparagraph (D);
14 and

15 “(cc) allow only 1 such care-
16 giver at a time in-person access
17 to such resident.

18 “(ii) NO LIMITATION ALLOWED FOR
19 END-OF-LIFE CARE.—Notwithstanding
20 clause (i), a facility described in subpara-
21 graph (A) may not deny an essential care-
22 giver elected by a resident of such facility
23 under subparagraph (A) in-person access
24 to such resident, or limit the duration of

1 such in-person access, if such resident has
2 in effect an election under section 1812(d).

3 “(C) PRESUMPTION OF ELECTION.—For
4 purposes of subparagraph (A), in the case of a
5 resident who is unable, by reason of cognitive
6 decline or mental disability, to make an election
7 described in such subparagraph, a resident rep-
8 resentative (as defined in section 483.5 of title
9 42, Code of Federal Regulations (or a successor
10 regulation)) of such resident shall be permitted
11 to make such election for such resident.

12 “(D) ESSENTIAL CAREGIVER DEFINED.—
13 For purposes of this paragraph, the term ‘es-
14 sential caregiver’ means, with respect to a resi-
15 dent of a facility described in subparagraph
16 (A), an individual who agrees to follow all pro-
17 tocols for physical safety and infection control
18 established by such facility, which shall be
19 clearly specified in writing and be not more re-
20 strictive than such protocols (including safety
21 standards and entry requirements) applicable to
22 staff of such facility.”.

23 (2) TIMELINE FOR INVESTIGATION OF COM-
24 PLAINTS.—Section 1128I(f)(2) of the Social Secu-

1 rity Act (42 U.S.C. 1320a–7j(f)(2)) is amended by
2 adding at the end the following new subparagraph:

3 “(C) PROCESS FOR COMPLAINTS RELATING
4 TO ESSENTIAL CAREGIVER ACCESS.—The com-
5 plaint resolution process established under sub-
6 paragraph (B) shall provide that, in the case of
7 a complaint relating to a violation of the re-
8 quirements of section 1819(c)(3)(F) or section
9 1919(c)(3)(F)—

10 “(i) the State survey and certification
11 agency shall prioritize the investigation of
12 such complaint; and

13 “(ii) the deadline for notifying the
14 complainant of the outcome of the inves-
15 tigation is not later than 3 days after such
16 complaint is received.”.

17 (b) LONG-TERM CARE HOSPITALS.—Section
18 1861(ccc)(4) of the Social Security Act (42 U.S.C.
19 1395x(ccc)(4)) is amended—

20 (1) in subparagraph (B), by striking “and” at
21 the end;

22 (2) in subparagraph (C), by striking the period
23 at the end and inserting “; and”; and

24 (3) by adding at the end the following new sub-
25 paragraph:

1 “(D) the institution implements and main-
2 tains, during any period during which regular
3 visitation at such institution is suspended, the
4 essential caregivers program described in sec-
5 tion 1819(c)(7) in the same manner as if such
6 institution were a skilled nursing facility.”.

7 (c) INPATIENT REHABILITATION FACILITIES.—Sec-
8 tion 1866(a)(1) of the Social Security Act (42 U.S.C.
9 1395cc(a)(1)) is amended—

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

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

14 (3) by inserting after subparagraph (Y) the fol-
15 lowing new subparagraph:

16 “(Z) in the case of an inpatient rehabilitation
17 facility, to implement and maintain, during any pe-
18 riod during which regular visitation at such facility
19 is suspended, the essential caregivers program de-
20 scribed in section 1819(c)(7) in the same manner as
21 if such facility were a skilled nursing facility.”.

22 (d) INTERMEDIATE CARE FACILITIES FOR INDIVID-
23 UALS WITH INTELLECTUAL DISABILITIES.—Section
24 1905(d) of the Social Security Act (42 U.S.C. 1396d(d))
25 is amended—

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

3 (2) in paragraph (3), by striking the period at
4 the end and inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(4) the institution implements and maintains,
8 during any period during which regular visitation at
9 such institution is suspended, the essential care-
10 givers program described in section 1919(c)(7) in
11 the same manner as if such institution were a nurs-
12 ing facility.”.

13 (e) NONAPPLICABILITY OF WAIVERS.—Subpara-
14 graphs (A) and (B) of section 1135(b)(1) of the Social
15 Security Act (42 U.S.C. 1320b–5(b)(1)) are each amended
16 by inserting “(other than the requirements of sections
17 1819(c)(3)(F), 1861(ccc)(4)(D), 1866(a)(1)(Z),
18 1905(d)(4), and 1919(c)(3)(F))” after “requirements”.

19 (f) REGULATIONS.—The Secretary of Health and
20 Human Services shall promulgate regulations to carry out
21 the amendments made by this section not later than 18
22 months after the date of the enactment of this section.

1 (g) EFFECTIVE DATE.—The amendments made by
2 this section shall apply beginning 2 years after the date
3 of the enactment of this section.

