

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3437

To amend titles XVIII and XIX of the Social Security Act with respect to reform of Federal survey and certification process of nursing facilities under the Medicare and Medicaid Programs.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2005

Mr. CAMP introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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

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## A BILL

To amend titles XVIII and XIX of the Social Security Act with respect to reform of Federal survey and certification process of nursing facilities under the Medicare and Medicaid Programs.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare and Medicaid  
5 Nursing Facility Quality Improvement Act of 2005”.

1 **SEC. 2. QUALITY IMPROVEMENT FOR NURSING FACILITIES**  
2 **UNDER THE MEDICARE AND MEDICAID PRO-**  
3 **GRAMS.**

4 (a) INCENTIVES FOR IMMEDIATE IMPROVEMENT AND  
5 PROTECTION OF NEEDED TRAINING PROGRAMS.—

6 (1) MEDICARE PROGRAM.—Section 1819(f)(2)  
7 of the Social Security Act (42 U.S.C. 1395i–3(f)(2))  
8 is amended—

9 (A) in subparagraph (B)—

10 (i) by adding “and” at the end of  
11 clause (i);

12 (ii) by striking “; and” at the end of  
13 clause (ii) and inserting a period; and

14 (iii) by striking clause (iii); and

15 (B) by striking subparagraphs (C) and  
16 (D).

17 (2) MEDICAID PROGRAM.—Section 1919(f)(2)  
18 of such Act (42 U.S.C.1396r(f)(2)) is amended—

19 (A) in subparagraph (B)—

20 (i) by adding “and” at the end of  
21 clause (i);

22 (ii) by striking “; and” at the end of  
23 clause (ii) and inserting a period; and

24 (iii) by striking clause (iii); and

25 (B) by striking subparagraphs (C) and  
26 (D).

1 (b) SPECIFIED REMEDIES.—

2 (1) MEDICARE PROGRAM.—Section  
3 1819(h)(2)(B) of such Act (42 U.S.C. 1395i–  
4 3(h)(2)(B)) is amended—

5 (A) by redesignating clause (iii) as clause  
6 (iv); and

7 (B) by inserting after clause (ii) the fol-  
8 lowing new clause:

9 “(iii) DISAPPROVAL OF NURSE AIDE  
10 TRAINING AND COMPETENCY EVALUATION  
11 PROGRAMS.—In consultation with the  
12 State, the Secretary may disapprove nurse  
13 aide training and competency evaluation  
14 programs offered by the facility.”.

15 (2) MEDICAID PROGRAM.—Section  
16 1919(h)(2)(A) of such Act (42 U.S.C.  
17 1396r(h)(2)(A)) is amended—

18 (A) by redesignating clauses (iii) and (iv)  
19 as clauses (iv) and (v), respectively; and

20 (B) by inserting after clause (ii) the fol-  
21 lowing new clause:

22 “(iii) In consultation with the State,  
23 the Secretary may disapprove nurse aide  
24 training and competency evaluation pro-  
25 grams offered by the facility.”.

1           (c) PROMOTING INNOVATION AND QUALITY IM-  
2 PROVEDMENT THROUGH STATE WAIVERS.—

3           (1) MEDICARE PROGRAM.—Section 1819(g) of  
4 such Act (42 U.S.C. 1395i–3(g)) is amended by add-  
5 ing at the end the following new paragraph:

6           “(6) WAIVER DEMONSTRATION AUTHORITY TO  
7 PROMOTE INNOVATION AND QUALITY IMPROVE-  
8 MENT.—

9           “(A) IN GENERAL.—At the request of a  
10 State, but not to exceed a total of 3 States, the  
11 Secretary may waive provisions of this sub-  
12 section relating to survey and certification pro-  
13 cedures in order to test and implement innova-  
14 tive alternatives to the survey process otherwise  
15 applicable. The Secretary shall provide special  
16 consideration to the application of alternative  
17 procedures that increase the use of outcome  
18 measures, the incorporation of quality of life  
19 measures, and improve consistency and accu-  
20 racy in deficiency determinations and survey re-  
21 sults. The Secretary shall approve a waiver re-  
22 quest if applicant demonstrates significant po-  
23 tential for improving the quality of care, quality  
24 of life, and safety of residents.

1           “(B) CONSIDERATION OF VIEWS OF  
2           STAKEHOLDERS.—The Secretary shall only con-  
3           sider waiver applications under this paragraph  
4           from a State under this paragraph if the State  
5           has convened and consulted with appropriate  
6           stakeholders in the State, including representa-  
7           tives of nursing facilities, consumers groups,  
8           the State long term care ombudsman, labor or-  
9           ganizations (and where such organizations are  
10          not present in the industry, other employee rep-  
11          resentatives), and licensed health care pro-  
12          viders, to assist in developing their alternative  
13          system. In determining whether to grant such  
14          waivers the Secretary shall take into consider-  
15          ation the views of the stakeholders convened by  
16          the State.”.

17          (2) MEDICAID PROGRAM.—Section 1919(g) of  
18          such Act (42 U.S.C. 1396r(g)) is amended by add-  
19          ing at the end the following new paragraph:

20                 “(6) WAIVER DEMONSTRATION AUTHORITY TO  
21                 PROMOTE INNOVATION AND QUALITY IMPROVE-  
22                 MENT.—

23                         “(A) IN GENERAL.—At the request of a  
24                         State, but not to exceed a total of 3 States, the  
25                         Secretary may waive provisions of this sub-

1 section relating to survey and certification pro-  
2 cedures in order to test and implement innova-  
3 tive alternatives to the survey process otherwise  
4 applicable. The Secretary shall provide special  
5 consideration to the application of alternative  
6 procedures that increase the use of outcome  
7 measures, the incorporation of quality of life  
8 measures, and improve consistency and accu-  
9 racy in deficiency determinations and survey re-  
10 sults. The Secretary shall approve a waiver re-  
11 quest if it demonstrates significant potential for  
12 improving the quality of care, quality of life,  
13 and safety of residents.

14 “(B) CONSIDERATION OF VIEWS OF  
15 STAKEHOLDERS.—The Secretary shall only con-  
16 sider waiver applications under this paragraph  
17 from a State under this paragraph if the State  
18 has convened and consulted with appropriate  
19 stakeholders in the State, including representa-  
20 tives of nursing facilities, consumers groups,  
21 the State long term care ombudsman, labor or-  
22 ganizations (and where such organizations are  
23 not present in the industry, other employee rep-  
24 resentatives), and licensed health care pro-  
25 viders, to assist in developing their alternative

1 system. In determining whether to grant such  
2 waivers the Secretary shall take into consider-  
3 ation the views of the stakeholders convened by  
4 the State.”.

5 (d) REMOVAL OF INFLEXIBILITY IN PROVIDER TER-  
6 MINATION.—

7 (1) MEDICARE PROGRAM.—Section 1819(h)(2)  
8 of such Act (42 U.S.C. 1395i–3(h)(2)) is amended—

9 (A) in subparagraph (D), by striking “If”  
10 and inserting “Subject to subparagraph (F),  
11 if”;

12 (B) in subparagraph (E), by striking “In”  
13 and inserting “Subject to subparagraph (F),  
14 in”; and

15 (C) by adding at the end the following new  
16 subparagraph:

17 “(F) CONTINUATION OF PAYMENTS PEND-  
18 ING REMEDIATION WHEN FLEXIBILITY NEEDED  
19 TO PROTECT RESIDENTS.—The Secretary may  
20 continue payments, over a period not longer  
21 than 12 months after the effective date of the  
22 findings, under this title with respect to a nurs-  
23 ing facility not in compliance with a require-  
24 ment of subsection (b), (c), or (d), if—

1           “(i) the State survey agency finds  
2           that ceasing payments is not in the best  
3           interests of residents and that continuation  
4           of payments would not jeopardize resi-  
5           dents’ health and safety;

6           “(ii) the State survey agency finds  
7           that it is more appropriate to take alter-  
8           native action to assure compliance of the  
9           facility with the requirements than to ter-  
10          minate the certification of the facility; and

11          “(iii) the State has submitted a plan  
12          and timetable for corrective action to the  
13          Secretary for approval and the Secretary  
14          approves the plan of corrective action.”.

15          (2) MEDICAID PROGRAM.—Section 1919(h)(2)  
16          of such Act (42 U.S.C. 1396r(h)(2)) is amended—

17                 (A) in subparagraph (C), by striking “If”  
18                 and inserting “Subject to subparagraph (G),  
19                 if”;

20                 (B) in subparagraph (D), by striking “In”  
21                 and inserting “Subject to subparagraph (G),  
22                 in”; and

23                 (C) by adding at the end the following new  
24                 subparagraph:

1           “(G) CONTINUATION OF PAYMENTS PEND-  
2           ING REMEDIATION WHEN FLEXIBILITY NEEDED  
3           TO PROTECT RESIDENTS.—The Secretary may  
4           continue payments, over a period not longer  
5           than 12 months after the effective date of the  
6           findings, under this title with respect to a nurs-  
7           ing facility not in compliance with a require-  
8           ment of subsection (b), (c), or (d), if—

9                   “(i) the State survey agency finds  
10                   that ceasing payments is not in the best  
11                   interests of residents and that continuation  
12                   of payments would not jeopardize resi-  
13                   dents’ health and safety;

14                   “(ii) the State survey agency finds  
15                   that it is more appropriate to take alter-  
16                   native action to assure compliance of the  
17                   facility with the requirements than to ter-  
18                   minate the certification of the facility; and

19                   “(iii) the State has submitted a plan  
20                   and timetable for corrective action to the  
21                   Secretary for approval and the Secretary  
22                   approves the plan of corrective action.”.

23           (e) ACCESS TO INFORMAL DISPUTE RESOLUTION  
24           PROCESS.—

1           (1) MEDICARE PROGRAM.—Section 1819(g)(1)  
2 of such Act (42 U.S.C. 1395i-3(g)(1)) is amended  
3 by adding at the end the following new subpara-  
4 graph:

5                   “(F) ESTABLISHMENT OF INFORMAL,  
6 INDEPENDENT DISPUTE RESOLUTION PROC-  
7 ESS.—Each State shall establish an informal  
8 dispute resolution process that allows facilities  
9 to settle disputes involving compliance with the  
10 standards established under this section. Such  
11 process shall rely on independent third parties,  
12 not related to the State survey agency or the  
13 facilities, in resolving disputes.”.

14           (2) MEDICAID PROGRAM.—Section 1919(g)(1)  
15 of such Act (42 U.S.C. 1396r(g)(1)) is amended by  
16 adding at the end the following new subparagraph:

17                   “(F) ESTABLISHMENT OF INFORMAL,  
18 INDEPENDENT DISPUTE RESOLUTION PROC-  
19 ESS.—Each State shall establish an informal  
20 dispute resolution process that allows facilities  
21 to settle disputes involving compliance with the  
22 standards established under this section. Such  
23 process shall rely on independent third parties,  
24 not related to the State survey agency or the  
25 facilities, in resolving disputes.”.

1 (f) REMOVING BARRIERS THAT DETER NEW MAN-  
2 AGEMENT FROM TAKING OVER AND IMPROVING PROB-  
3 LEM FACILITIES.—

4 (1) MEDICARE PROGRAM.—Section 1819(h) of  
5 such Act (42 U.S.C. 1395i–3(h)) is amended by  
6 adding at the end the following new paragraph:

7 “(7) FOSTERING IMPROVEMENT OF FACILITIES  
8 WITH POOR COMPLIANCE HISTORIES.—The Sec-  
9 retary shall provide incentives for operators with his-  
10 tories of good compliance to acquire facilities with  
11 poor compliance histories. Such incentives shall be  
12 designed to promote the sustained provision of high-  
13 quality care and shall only be made available in the  
14 case of bona fide, arm’s-length sale of facilities with  
15 poor compliance histories.”.

16 (2) MEDICAID PROGRAM.—Section 1919(h) of  
17 such Act (42 U.S.C. 1396r(h)) is amended by add-  
18 ing at the end the following new paragraph:

19 “(10) FOSTERING IMPROVEMENT OF FACILI-  
20 TIES WITH POOR COMPLIANCE HISTORIES.—The  
21 Secretary shall provide incentives for operators with  
22 histories of good compliance to acquire facilities with  
23 poor compliance histories. Such incentives shall be  
24 designed to promote the sustained provision of high-  
25 quality care and shall only be made available in the

1 case of bona fide, arm's-length sale of facilities with  
2 poor compliance histories.”.

3 (g) ALLOWING APPEALS OF ALL DEFICIENCIES.—

4 (1) MEDICARE PROGRAM.—Section 1819(h) of  
5 such Act, as amended by subsection (f)(1), is further  
6 amended by adding at the end the following new  
7 paragraph:

8 “(8) RIGHT TO APPEAL ALL DEFICIENCY CITA-  
9 TIONS.—Notwithstanding any other provision of law,  
10 a facility may appeal any deficiency determination  
11 under this section with respect to which a penalty  
12 has not been imposed in the same manner as the fa-  
13 cility may appeal such determination if a penalty  
14 had been imposed.”.

15 (2) MEDICAID PROGRAM.—Section 1919(h) of  
16 such Act, as amended by subsection (f)(2), is further  
17 amended by adding at the end the following new  
18 paragraph:

19 “(11) RIGHT TO APPEAL ALL DEFICIENCY CITA-  
20 TIONS.—Notwithstanding any other provision of law,  
21 a facility may appeal any deficiency determination  
22 under this section with respect to which a penalty  
23 has not been imposed in the same manner as the fa-  
24 cility may appeal such determination if a penalty  
25 had been imposed.”.

1 (h) JOINT PROVIDERS/SURVEYOR TRAINING.—

2 (1) MEDICARE PROGRAM.—Section 1819(e) of  
3 such Act (42 U.S.C. 1395i–3(e)) is amended by add-  
4 ing at the end the following new paragraph:

5 “(6) JOINT PROVIDER/SURVEYOR TRAINING.—  
6 The Secretary shall require the State to establish a  
7 process for joint training and education of surveyors  
8 and providers at least annually and periodically as  
9 changes to regulations, guidelines, and policy gov-  
10 erning nursing facility operations are implemented  
11 and used in surveys of participating facilities.”

12 (2) MEDICAID PROGRAM.—Section 1919(e) of  
13 such Act (42 U.S.C. 1396r(e)) is amended by adding  
14 at the end the following new paragraph:

15 “(8) JOINT PROVIDER/SURVEYOR TRAINING.—  
16 The State shall establish a process for joint training  
17 and education to surveyors and providers at least  
18 annually and periodically as changes to regulations,  
19 guidelines, and policy governing nursing facility op-  
20 erations are implemented and used in surveys of  
21 participating facilities.”

22 (i) FACILITY-BASED TRAINING FOR NEW SUR-  
23 VEYORS.—

24 (1) MEDICARE PROGRAM.—Section 1819(e) of  
25 such Act (42 U.S.C. 1395i–3(e)), as amended by

1 subsection (h)(1), is amended by adding at the end  
2 the following new paragraph:

3 “(7) FACILITY-BASED TRAINING FOR NEW SUR-  
4 VEYORS.—The Secretary shall require the State to  
5 establish a process for assuring that—

6 “(A) each individual newly hired as a nurs-  
7 ing home surveyor, as part of the individual’s  
8 basic training, is assigned full-time to a partici-  
9 pating nursing facility for at least 5 days within  
10 a 7-day period to observe actual operations out-  
11 side of the survey process before the individual  
12 begins oversight responsibilities;

13 “(B) such individual shall not assume  
14 oversight responsibility during this training pe-  
15 riod and such observations may not be the sole  
16 basis of a deficiency citation against the facility;  
17 and

18 “(C) such individual shall not be assigned  
19 as a member of a survey team for the facility  
20 in which the individual received training for two  
21 standard surveys following the training period  
22 in the facility.”.

23 (2) MEDICAID PROGRAM.—Section 1919(e) of  
24 such Act (42 U.S.C. 1396r(e)), as amended by sub-

1 section (h)(2), is amended by adding at the end the  
2 following new paragraph:

3 “(9) FACILITY-BASED TRAINING FOR NEW SUR-  
4 VEYORS.—The State shall establish a process for as-  
5 suring that—

6 “(A) each individual newly hired as a nurs-  
7 ing home surveyor, as part of the individual’s  
8 basic training, is assigned full-time to a partici-  
9 pating nursing facility for at least 5 days within  
10 a 7-day period to observe actual operations out-  
11 side of the survey process before the individual  
12 begins oversight responsibilities;

13 “(B) such individual shall not assume  
14 oversight responsibility during this training pe-  
15 riod and such observations may not be the sole  
16 basis of a deficiency citation against the facility;  
17 and

18 “(C) such individual shall not be assigned  
19 as a member of a survey team for the facility  
20 in which the individual received training for two  
21 standard surveys following the training period  
22 in the facility.”.

23 (j) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect one month after the date of  
25 the enactment of this Act, except in cases where regula-

1 tions are needed to implement these amendments and in  
2 such cases shall be effective 6 months after such enact-  
3 ment date.

○