

116TH CONGRESS  
2D SESSION

# H. R. 5821

To amend title XVIII of the Social Security Act to establish hospice program survey and enforcement procedures under the Medicare program, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2020

Mr. PANETTA (for himself, Mr. REED, and Mr. HIGGINS of New York) 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

---

## A BILL

To amend title XVIII of the Social Security Act to establish hospice program survey and enforcement procedures under the Medicare program, and for other purposes.

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 “Helping Our Senior  
5 Population in Comfort Environments Act” or the “HOS-  
6 PICE Act”.

1 **SEC. 2. ESTABLISHING HOSPICE PROGRAM SURVEY AND**  
2 **ENFORCEMENT PROCEDURES UNDER THE**  
3 **MEDICARE PROGRAM.**

4 (a) SURVEY AND ENFORCEMENT PROCEDURES.—

5 (1) IN GENERAL.—Part A of title XVIII of the  
6 Social Security Act (42 U.S.C. 1395c et seq.) is  
7 amended by adding at the end the following new sec-  
8 tion:

9 **“SEC. 1822. HOSPICE PROGRAM SURVEY AND ENFORCE-**  
10 **MENT PROCEDURES.**

11 “(a) SURVEYS.—

12 “(1) FREQUENCY.—Any entity that is certified  
13 as a hospice program shall be subject to a standard  
14 survey by an appropriate State or local survey agen-  
15 cy, or an approved accreditation agency, as deter-  
16 mined by the Secretary, not less frequently than  
17 once every 36 months (and not less frequently than  
18 once every 24 months beginning October 1, 2021).

19 “(2) PUBLIC TRANSPARENCY OF SURVEY AND  
20 CERTIFICATION INFORMATION.—

21 “(A) SUBMISSION OF INFORMATION TO  
22 THE SECRETARY.—

23 “(i) IN GENERAL.—Each State, and  
24 each national accreditation body with re-  
25 spect to which the Secretary has made a  
26 finding under section 1865(a) respecting

1 the accreditation of a hospice program by  
2 such body, shall submit, in a form and  
3 manner, and at a time, specified by the  
4 Secretary for purposes of this subpara-  
5 graph, information respecting any survey  
6 or certification made with respect to a hos-  
7 pice program by such State or body, as ap-  
8 plicable. Such information shall include  
9 any inspection report made by such State  
10 or body with respect to such survey or cer-  
11 tification, any enforcement actions taken  
12 as a result of such survey or certification,  
13 and any other information determined ap-  
14 propriate by the Secretary.

15 “(ii) REQUIRED INCLUSION OF SPECI-  
16 FIED FORM.—With respect to a survey  
17 under this subsection carried out by a na-  
18 tional accreditation body described in  
19 clause (i) on or after October 1, 2021, in-  
20 formation described in such clause shall in-  
21 clude Form 2567 (or a successor form),  
22 along with such additional information de-  
23 termined appropriate by such body.

24 “(B) PUBLIC DISCLOSURE OF INFORMA-  
25 TION.—Beginning not later than October 1,

1           2022, the Secretary shall publish the informa-  
2           tion submitted under subparagraph (A) on the  
3           public website of the Centers for Medicare &  
4           Medicaid Services in a manner that is promi-  
5           nent, easily accessible, readily understandable,  
6           and searchable. The Secretary shall provide for  
7           the timely update of such information so pub-  
8           lished.

9           “(3) CONSISTENCY OF SURVEYS.—Each State  
10          and the Secretary shall implement programs to  
11          measure and reduce inconsistency in the application  
12          of survey results among surveyors.

13          “(4) SURVEY TEAMS.—

14                 “(A) IN GENERAL.—In the case of a sur-  
15                 vey conducted under this subsection on or after  
16                 October 1, 2021, by more than 1 individual,  
17                 such survey shall be conducted by a multidisci-  
18                 plinary team of professionals (including a reg-  
19                 istered professional nurse).

20                 “(B) PROHIBITION OF CONFLICTS OF IN-  
21                 TEREST.—Beginning October 1, 2021, a State  
22                 may not use as a member of a survey team  
23                 under this subsection an individual who is serv-  
24                 ing (or has served within the previous 2 years)  
25                 as a member of the staff of, or as a consultant

1 to, the program surveyed respecting compliance  
2 with the requirements of section 1861(dd) or  
3 who has a personal or familial financial interest  
4 in the program being surveyed.

5 “(C) TRAINING.—The Secretary shall pro-  
6 vide, not later than October 1, 2021, for the  
7 comprehensive training of State and Federal  
8 surveyors in the conduct of surveys under this  
9 subsection, including training with respect to  
10 the review of written plans for providing hospice  
11 care (as described in section 1814(a)(7)(B)).  
12 No individual shall serve as a member of a sur-  
13 vey team with respect to a survey conducted on  
14 or after such date unless the individual has suc-  
15 cessfully completed a training and testing pro-  
16 gram in survey and certification techniques that  
17 has been approved by the Secretary.

18 “(5) FUNDING.—The Secretary shall provide  
19 for the transfer, from the Federal Hospital Insur-  
20 ance Trust Fund under section 1817 to the Centers  
21 for Medicare & Medicaid Program Management Ac-  
22 count, of \$10,000,000 for each fiscal year (begin-  
23 ning with fiscal year 2022) for purposes of carrying  
24 out surveys under this subsection. Sums so trans-  
25 ferred shall remain available until expended. Any

1 transfer pursuant to this paragraph shall be in addi-  
2 tion to any transfer pursuant to section 3(a)(2) of  
3 the Improving Medicare Post-Acute Care Trans-  
4 formation Act of 2014.

5 “(b) SPECIAL FOCUS PROGRAM.—

6 “(1) IN GENERAL.—The Secretary shall con-  
7 duct a special focus program for enforcement of re-  
8 quirements for hospice programs that the Secretary  
9 has identified as having substantially failed to meet  
10 applicable requirements of this Act.

11 “(2) PERIODIC SURVEYS.—Under such special  
12 focus program, the Secretary shall conduct surveys  
13 of each hospice program in the special focus pro-  
14 gram not less than once every 6 months.

15 “(c) ENFORCEMENT.—

16 “(1) SITUATIONS INVOLVING IMMEDIATE JEOP-  
17 ARDY.—If the Secretary determines on the basis of  
18 a standard survey or otherwise that a hospice pro-  
19 gram that is certified for participation under this  
20 title is no longer in compliance with the require-  
21 ments specified in section 1861(dd) and determines  
22 that the deficiencies involved immediately jeopardize  
23 the health and safety of the individuals to whom the  
24 program furnishes items and services, the Secretary  
25 shall take immediate action to remove the jeopardy

1 and correct the deficiencies through the remedy de-  
2 scribed in paragraph (5)(B)(iii) or terminate the cer-  
3 tification of the program, and may provide, in addi-  
4 tion, for one or more of the other remedies described  
5 in paragraph (5)(B).

6 “(2) SITUATIONS NOT INVOLVING IMMEDIATE  
7 JEOPARDY.—If the Secretary determines on the  
8 basis of a standard survey or otherwise that a hos-  
9 pice program that is certified for participation under  
10 this title is no longer in compliance with the require-  
11 ments specified in section 1861(dd) and determines  
12 that the deficiencies involved do not immediately  
13 jeopardize the health and safety of the individuals to  
14 whom the program furnishes items and services, the  
15 Secretary may (for a period not to exceed 6 months)  
16 impose remedies developed pursuant to paragraph  
17 (5)(A), in lieu of terminating the certification of the  
18 program. If, after such a period of remedies, the  
19 program is still no longer in compliance with such  
20 requirements, the Secretary shall terminate the cer-  
21 tification of the program.

22 “(3) PENALTY FOR PREVIOUS NONCOMPLI-  
23 ANCE.—If the Secretary determines that a hospice  
24 program that is certified for participation under this  
25 title is in compliance with the requirements specified

1 in section 1861(dd) but, as of a previous period, did  
2 not meet such requirements, the Secretary may pro-  
3 vide for a civil monetary penalty under paragraph  
4 (5)(B)(i) for the days in which the Secretary finds  
5 that the program was not in compliance with such  
6 requirements.

7 “(4) OPTION TO CONTINUE PAYMENTS FOR  
8 NONCOMPLIANT HOSPICE PROGRAMS.—The Sec-  
9 retary may continue payments under this title with  
10 respect to a hospice program not in compliance with  
11 the requirements specified in section 1861(dd) over  
12 a period of not longer than 6 months, if—

13 “(A) the State or local survey agency finds  
14 that it is more appropriate to take alternative  
15 action to assure compliance of the program with  
16 such requirements than to terminate the certifi-  
17 cation of the program;

18 “(B) the program has submitted a plan  
19 and timetable for corrective action to the Sec-  
20 retary for approval and the Secretary approves  
21 the plan of corrective action; and

22 “(C) the program agrees to repay to the  
23 Federal Government payments received under  
24 this title during such period if the corrective ac-



1           tion is not taken in accordance with the ap-  
2           proved plan and timetable.

3           The Secretary shall establish guidelines for approval  
4           of corrective actions requested by hospice programs  
5           under this paragraph.

6           “(5) REMEDIES.—

7           “(A) DEVELOPMENT.—

8           “(i) IN GENERAL.—Not later than Oc-  
9           tober 1, 2021, the Secretary shall develop  
10          and implement—

11           “(I) a range of remedies to apply  
12           to hospice programs under the condi-  
13           tions described in paragraphs (1)  
14           through (4); and

15           “(II) appropriate procedures for  
16           appealing determinations relating to  
17           the imposition of such remedies.

18          Remedies developed pursuant to the pre-  
19          ceding sentence shall include the remedies  
20          specified in subparagraph (B).

21           “(ii) CONDITIONS OF IMPOSITION OF  
22           REMEDIES.—Not later than October 1,  
23           2021, the Secretary shall develop and im-  
24           plement specific procedures with respect to  
25           the conditions under which each of the

1 remedies developed under clause (i) is to  
2 be applied, including the amount of any  
3 fines and the severity of each of these rem-  
4 edies. Such procedures shall be designed so  
5 as to minimize the time between identifica-  
6 tion of deficiencies and imposition of these  
7 remedies and shall provide for the imposi-  
8 tion of incrementally more severe fines for  
9 repeated or uncorrected deficiencies.

10 “(B) SPECIFIED REMEDIES.—The rem-  
11 edies specified in this subparagraph are the fol-  
12 lowing:

13 “(i) Civil monetary penalties in an  
14 amount not to exceed \$10,000 for each day  
15 of noncompliance by a hospice program  
16 with the requirements specified in section  
17 1861(dd).

18 “(ii) Suspension of all or part of the  
19 payments to which a hospice program  
20 would otherwise be entitled under this title  
21 with respect to items and services fur-  
22 nished by a hospice program on or after  
23 the date on which the Secretary determines  
24 that remedies should be imposed pursuant  
25 to paragraph (2).

1           “(iii) The appointment of temporary  
2 management to oversee the operation of  
3 the hospice program and to protect and as-  
4 sure the health and safety of the individ-  
5 uals under the care of the program while  
6 improvements are made in order to bring  
7 the program into compliance with all such  
8 requirements.

9           “(C) PROCEDURES.—

10           “(i) CIVIL MONETARY PENALTIES.—

11           “(I) IN GENERAL.—Subject to  
12 subclause (II), the provisions of sec-  
13 tion 1128A (other than subsections  
14 (a) and (b)) shall apply to a civil mon-  
15 etary penalty under this subsection in  
16 the same manner as such provisions  
17 apply to a penalty or proceeding  
18 under section 1128A(a).

19           “(II) RETENTION OF AMOUNTS  
20 FOR HOSPICE PROGRAM IMPROVE-  
21 MENTS.—The Secretary may provide  
22 that any portion of civil monetary  
23 penalties collected under this sub-  
24 section may be used to support activi-  
25 ties that benefit individuals receiving

1 hospice care, including education and  
2 training programs to ensure hospice  
3 program compliance with the require-  
4 ments of section 1861(dd).

5 “(ii) SUSPENSION OF PAYMENT.—A  
6 finding to suspend payment under sub-  
7 paragraph (B)(ii) shall terminate when the  
8 Secretary finds that the program is in sub-  
9 stantial compliance with all such require-  
10 ments.

11 “(iii) TEMPORARY MANAGEMENT.—  
12 The temporary management under sub-  
13 paragraph (B)(iii) shall not be terminated  
14 until the Secretary has determined that the  
15 program has the management capability to  
16 ensure continued compliance with all the  
17 requirements referred to in such subpara-  
18 graph.

19 “(D) RELATIONSHIP TO OTHER REM-  
20 EDIES.—The remedies developed under sub-  
21 paragraph (A) are in addition to sanctions oth-  
22 erwise available under State or Federal law and  
23 shall not be construed as limiting other rem-  
24 edies, including any remedy available to an indi-  
25 vidual at common law.”.

1           (2) AVAILABILITY OF HOSPICE ACCREDITATION  
2 SURVEYS.—Section 1865(b) of the Social Security  
3 Act (42 U.S.C. 1395bb(b)) is amended by inserting  
4 “or, beginning on the date of the enactment of the  
5 HOSPICE Act, a hospice program” after “home  
6 health agency”.

7           (3) STATE PROVISION OF HOSPICE PROGRAM  
8 INFORMATION.—

9           (A) IN GENERAL.—Section 1864(a) of the  
10 Social Security Act (42 U.S.C. 1395aa(a)) is  
11 amended in the sixth sentence—

12                   (i) by inserting “and hospice pro-  
13 grams” after “information on home health  
14 agencies”;

15                   (ii) by inserting “or the hospice pro-  
16 gram” after “the home health agency”;

17                   (iii) by inserting “or the hospice pro-  
18 gram” after “with respect to the agency”;

19 and

20                   (iv) by inserting “and hospice pro-  
21 grams” after “with respect to home health  
22 agencies”.

23           (B) EFFECTIVE DATE.—The amendments  
24 made by subparagraph (A) shall apply with re-  
25 spect to agreements entered into on or after, or

1 in effect as of, the date that is 1 year after the  
2 date of the enactment of this Act.

3 (4) CONFORMING AMENDMENTS.—

4 (A) DEFINITION OF A HOSPICE PRO-  
5 GRAM.—Section 1861(dd)(4) of the Social Secu-  
6 rity Act (42 U.S.C. 1395x(dd)(4)) is amended  
7 by striking subparagraph (C).

8 (B) CONTINUATION OF FUNDING.—Section  
9 3(a)(2) of the Improving Medicare Post-Acute  
10 Care Transformation Act of 2014 is amended  
11 by inserting “and section 1822(a)(1) of such  
12 Act,” after “as added by paragraph (1),”.

13 (b) INCREASING PAYMENT REDUCTIONS FOR FAIL-  
14 URE TO MEET QUALITY DATA REPORTING REQUIRE-  
15 MENTS.—Section 1814(i)(5)(A)(i) of the Social Security  
16 Act (42 U.S.C. 1395f(i)(5)(A)(i)) is amended by inserting  
17 “(or, for fiscal year 2023 and each subsequent fiscal year,  
18 4 percentage points)” before the period.

19 (c) REPORT.—Not later than October 1, 2024, the  
20 Comptroller General of the United States shall submit to  
21 the Committee on Ways and Means of the House of Rep-  
22 resentatives and the Committee on Finance of the Senate  
23 a report containing an analysis of the effects of the  
24 amendments made by subsection (a), including the fre-  
25 quency of application of remedies specified in section

1 1822(c)(5)(B) of the Social Security Act (as added by  
2 such subsection), on access to, and quality of, care fur-  
3 nished by hospice programs under part A of title XVIII  
4 of the Social Security Act (42 U.S.C. 1395c et seq.).

○