

Union Calendar No. 544

116TH CONGRESS
2^D SESSION

H. R. 5821

[Report No. 116-660, Part I]

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

DECEMBER 17, 2020

Additional sponsors: Mr. KILDEE and Mr. RICE of South Carolina

DECEMBER 17, 2020

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 17, 2020

Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 10, 2020]

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”.*

7 **SEC. 2. ESTABLISHING HOSPICE PROGRAM SURVEY AND**
8 **ENFORCEMENT PROCEDURES UNDER THE**
9 **MEDICARE PROGRAM.**

10 *(a) SURVEY AND ENFORCEMENT PROCEDURES.—*

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

15 **“SEC. 1822. HOSPICE PROGRAM SURVEY AND ENFORCE-**
16 **MENT PROCEDURES.**

17 *“(a) SURVEYS.—*

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

1 “(2) *PUBLIC TRANSPARENCY OF SURVEY AND*
2 *CERTIFICATION INFORMATION.*—

3 “(A) *SUBMISSION OF INFORMATION TO THE*
4 *SECRETARY.*—

5 “(i) *IN GENERAL.*—*Each State, and*
6 *each national accreditation body with re-*
7 *spect to which the Secretary has made a*
8 *finding under section 1865(a) respecting the*
9 *accreditation of a hospice program by such*
10 *body, shall submit, in a form and manner,*
11 *and at a time, specified by the Secretary for*
12 *purposes of this subparagraph, information*
13 *respecting any survey or certification made*
14 *with respect to a hospice program by such*
15 *State or body, as applicable. Such informa-*
16 *tion shall include any inspection report*
17 *made by such State or body with respect to*
18 *such survey or certification, any enforce-*
19 *ment actions taken as a result of such sur-*
20 *vey or certification, and any other informa-*
21 *tion determined appropriate by the Sec-*
22 *retary.*

23 “(ii) *REQUIRED INCLUSION OF SPECI-*
24 *FIED FORM.*—*With respect to a survey*
25 *under this subsection carried out by a na-*

1 *tional accreditation body described in*
2 *clause (i) on or after October 1, 2021, infor-*
3 *mation described in such clause shall in-*
4 *clude Form 2567 (or a successor form),*
5 *along with such additional information de-*
6 *termined appropriate by such body.*

7 *“(B) PUBLIC DISCLOSURE OF INFORMA-*
8 *TION.—Beginning not later than October 1,*
9 *2022, the Secretary shall publish the information*
10 *submitted under subparagraph (A) on the public*
11 *website of the Centers for Medicare & Medicaid*
12 *Services in a manner that is prominent, easily*
13 *accessible, readily understandable, and search-*
14 *able. The Secretary shall provide for the timely*
15 *update of such information so published.*

16 *“(3) CONSISTENCY OF SURVEYS.—Each State*
17 *and the Secretary shall implement programs to meas-*
18 *ure and reduce inconsistency in the application of*
19 *survey results among surveyors.*

20 *“(4) SURVEY TEAMS.—*

21 *“(A) IN GENERAL.—In the case of a survey*
22 *conducted under this subsection on or after Octo-*
23 *ber 1, 2021, by more than 1 individual, such*
24 *survey shall be conducted by a multidisciplinary*

1 *team of professionals (including a registered pro-*
2 *fessional nurse).*

3 “(B) *PROHIBITION OF CONFLICTS OF IN-*
4 *TEREST.—Beginning October 1, 2021, a State*
5 *may not use as a member of a survey team*
6 *under this subsection an individual who is serv-*
7 *ing (or has served within the previous 2 years)*
8 *as a member of the staff of, or as a consultant*
9 *to, the program surveyed respecting compliance*
10 *with the requirements of section 1861(dd) or who*
11 *has a personal or familial financial interest in*
12 *the program being surveyed.*

13 “(C) *TRAINING.—The Secretary shall pro-*
14 *vide, not later than October 1, 2021, for the com-*
15 *prehensive training of State and Federal sur-*
16 *veyors, and any surveyor employed by a na-*
17 *tional accreditation body described in paragraph*
18 *(2)(A)(i), in the conduct of surveys under this*
19 *subsection, including training with respect to the*
20 *review of written plans for providing hospice*
21 *care (as described in section 1814(a)(7)(B)). No*
22 *individual shall serve as a member of a survey*
23 *team with respect to a survey conducted on or*
24 *after such date unless the individual has success-*
25 *fully completed a training and testing program*

1 *in survey and certification techniques that has*
2 *been approved by the Secretary.*

3 “(5) *FUNDING.*—*The Secretary shall provide for*
4 *the transfer, from the Federal Hospital Insurance*
5 *Trust Fund under section 1817 to the Centers for*
6 *Medicare & Medicaid Program Management Account,*
7 *of \$10,000,000 for each fiscal year (beginning with*
8 *fiscal year 2022) for purposes of carrying out surveys*
9 *under this subsection. Sums so transferred shall re-*
10 *main available until expended. Any transfer pursu-*
11 *ant to this paragraph shall be in addition to any*
12 *transfer pursuant to section 3(a)(2) of the Improving*
13 *Medicare Post-Acute Care Transformation Act of*
14 *2014.*

15 “(b) *SPECIAL FOCUS PROGRAM.*—

16 “(1) *IN GENERAL.*—*The Secretary shall conduct*
17 *a special focus program for enforcement of require-*
18 *ments for hospice programs that the Secretary has*
19 *identified as having substantially failed to meet ap-*
20 *plicable requirements of this Act.*

21 “(2) *PERIODIC SURVEYS.*—*Under such special*
22 *focus program, the Secretary shall conduct surveys of*
23 *each hospice program in the special focus program*
24 *not less than once every 6 months.*

25 “(c) *ENFORCEMENT.*—

1 “(1) *SITUATIONS INVOLVING IMMEDIATE JEOP-*
2 *ARDY.—If the Secretary determines on the basis of a*
3 *standard survey or otherwise that a hospice program*
4 *that is certified for participation under this title is*
5 *no longer in compliance with the requirements speci-*
6 *fied in section 1861(dd) and determines that the defi-*
7 *ciencies involved immediately jeopardize the health*
8 *and safety of the individuals to whom the program*
9 *furnishes items and services, the Secretary shall take*
10 *immediate action to remove the jeopardy and correct*
11 *the deficiencies through the remedy described in para-*
12 *graph (5)(B)(iii) or terminate the certification of the*
13 *program, and may provide, in addition, for 1 or*
14 *more of the other remedies described in paragraph*
15 *(5)(B).*

16 “(2) *SITUATIONS NOT INVOLVING IMMEDIATE*
17 *JEOPARDY.—If the Secretary determines on the basis*
18 *of 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 requirements*
21 *specified in section 1861(dd) and determines that the*
22 *deficiencies involved do not immediately jeopardize*
23 *the health and safety of the individuals to whom the*
24 *program furnishes items and services, the Secretary*
25 *may (for a period not to exceed 6 months) impose*

1 *remedies developed pursuant to paragraph (5)(A), in*
2 *lieu of terminating the certification of the program.*
3 *If, after such a period of remedies, the program is*
4 *still no longer in compliance with such requirements,*
5 *the Secretary shall terminate the certification of the*
6 *program.*

7 “(3) *PENALTY FOR PREVIOUS NONCOMPLI-*
8 *ANCE.—If the Secretary determines that a hospice*
9 *program that is certified for participation under this*
10 *title is in compliance with the requirements specified*
11 *in section 1861(dd) but, as of a previous period, did*
12 *not meet such requirements, the Secretary may pro-*
13 *vide for a civil monetary penalty under paragraph*
14 *(5)(B)(i) for the days in which the Secretary finds*
15 *that the program was not in compliance with such re-*
16 *quirements.*

17 “(4) *OPTION TO CONTINUE PAYMENTS FOR NON-*
18 *COMPLIANT HOSPICE PROGRAMS.—The Secretary may*
19 *continue payments under this title with respect to a*
20 *hospice program not in compliance with the require-*
21 *ments specified in section 1861(dd) over a period of*
22 *not longer than 6 months, if—*

23 “(A) *the State or local survey agency finds*
24 *that it is more appropriate to take alternative*
25 *action to assure compliance of the program with*

1 *such requirements than to terminate the certifi-*
2 *cation of the program;*

3 “(B) *the program has submitted a plan and*
4 *timetable for corrective action to the Secretary*
5 *for approval and the Secretary approves the*
6 *plan of corrective action; and*

7 “(C) *the program agrees to repay to the*
8 *Federal Government payments received under*
9 *this title during such period if the corrective ac-*
10 *tion is not taken in accordance with the ap-*
11 *proved plan and timetable.*

12 *The Secretary shall establish guidelines for approval*
13 *of corrective actions requested by hospice programs*
14 *under this paragraph.*

15 “(5) *REMEDIES.—*

16 “(A) *DEVELOPMENT.—*

17 “(i) *IN GENERAL.—Not later than Oc-*
18 *tober 1, 2021, the Secretary shall develop*
19 *and implement—*

20 “(I) *a range of remedies to apply*
21 *to hospice programs under the condi-*
22 *tions described in paragraphs (1)*
23 *through (4); and*

1 “(II) appropriate procedures for
2 appealing determinations relating to
3 the imposition of such remedies.

4 Remedies developed pursuant to the pre-
5 ceding sentence shall include the remedies
6 specified in subparagraph (B).

7 “(i) *CONDITIONS OF IMPOSITION OF*
8 *REMEDIES.*—Not later than October 1,
9 2021, the Secretary shall develop and imple-
10 ment specific procedures with respect to the
11 conditions under which each of the remedies
12 developed under clause (i) is to be applied,
13 including the amount of any fines and the
14 severity of each of these remedies. Such pro-
15 cedures shall be designed so as to minimize
16 the time between identification of defi-
17 ciencies and imposition of these remedies
18 and shall provide for the imposition of in-
19 crementally more severe fines for repeated
20 or uncorrected deficiencies.

21 “(B) *SPECIFIED REMEDIES.*—The remedies
22 specified in this subparagraph are the following:

23 “(i) Civil monetary penalties in an
24 amount not to exceed \$10,000 for each day
25 of noncompliance by a hospice program

1 *with the requirements specified in section*
2 *1861(dd).*

3 “(ii) *Suspension of all or part of the*
4 *payments to which a hospice program*
5 *would otherwise be entitled under this title*
6 *with respect to items and services furnished*
7 *by a hospice program on or after the date*
8 *on which the Secretary determines that*
9 *remedies should be imposed pursuant to*
10 *paragraph (2).*

11 “(iii) *The appointment of temporary*
12 *management to oversee the operation of the*
13 *hospice program and to protect and assure*
14 *the health and safety of the individuals*
15 *under the care of the program while im-*
16 *provements are made in order to bring the*
17 *program into compliance with all such re-*
18 *quirements.*

19 “(C) *PROCEDURES.—*

20 “(i) *CIVIL MONETARY PENALTIES.—*

21 “(I) *IN GENERAL.—Subject to*
22 *subclause (II), the provisions of section*
23 *1128A (other than subsections (a) and*
24 *(b)) shall apply to a civil monetary*
25 *penalty under this subsection in the*

1 same manner as such provisions apply
2 to a penalty or proceeding under sec-
3 tion 1128A(a).

4 “(II) *RETENTION OF AMOUNTS*
5 *FOR HOSPICE PROGRAM IMPROVE-*
6 *MENTS.—The Secretary may provide*
7 *that any portion of civil monetary*
8 *penalties collected under this subsection*
9 *may be used to support activities that*
10 *benefit individuals receiving hospice*
11 *care, including education and training*
12 *programs to ensure hospice program*
13 *compliance with the requirements of*
14 *section 1861(dd).*

15 “(ii) *SUSPENSION OF PAYMENT.—A*
16 *finding to suspend payment under subpara-*
17 *graph (B)(ii) shall terminate when the Sec-*
18 *retary finds that the program is in substan-*
19 *tial compliance with all such requirements.*

20 “(iii) *TEMPORARY MANAGEMENT.—The*
21 *temporary management under subpara-*
22 *graph (B)(iii) shall not be terminated until*
23 *the Secretary has determined that the pro-*
24 *gram has the management capability to en-*
25 *sure continued compliance with all the re-*

1 *quirements referred to in such subpara-*
2 *graph.*

3 *“(D) RELATIONSHIP TO OTHER REM-*
4 *EDIES.—The remedies developed under subpara-*
5 *graph (A) are in addition to sanctions otherwise*
6 *available under State or Federal law and shall*
7 *not be construed as limiting other remedies, in-*
8 *cluding any remedy available to an individual*
9 *at common law.”.*

10 *(2) AVAILABILITY OF HOSPICE ACCREDITATION*
11 *SURVEYS.—Section 1865(b) of the Social Security Act*
12 *(42 U.S.C. 1395bb(b)) is amended by inserting “or,*
13 *beginning on the date of the enactment of the HOS-*
14 *PICE Act, a hospice program” after “home health*
15 *agency”.*

16 *(3) STATE PROVISION OF HOSPICE PROGRAM IN-*
17 *FORMATION.—*

18 *(A) IN GENERAL.—Section 1864(a) of the*
19 *Social Security Act (42 U.S.C. 1395aa(a)) is*
20 *amended in the sixth sentence—*

21 *(i) by inserting “and hospice pro-*
22 *grams” after “information on home health*
23 *agencies”;*

24 *(ii) by inserting “or the hospice pro-*
25 *gram” after “the home health agency”;*

1 (iii) by inserting “or the hospice pro-
2 gram” after “with respect to the agency”;
3 and

4 (iv) by inserting “and hospice pro-
5 grams” after “with respect to home health
6 agencies”.

7 (B) *EFFECTIVE DATE.*—The amendments
8 made by subparagraph (A) shall apply with re-
9 spect to agreements entered into on or after, or
10 in effect as of, the date that is 1 year after the
11 date of the enactment of this Act.

12 (4) *CONFORMING AMENDMENTS.*—

13 (A) *DEFINITION OF A HOSPICE PROGRAM.*—
14 Section 1861(dd)(4) of the Social Security Act
15 (42 U.S.C. 1395x(dd)(4)) is amended by striking
16 subparagraph (C).

17 (B) *CONTINUATION OF FUNDING.*—Section
18 3(a)(2) of the Improving Medicare Post-Acute
19 Care Transformation Act of 2014 is amended by
20 inserting “and section 1822(a)(1) of such Act,”
21 after “as added by paragraph (1),”.

22 (b) *INCREASING PAYMENT REDUCTIONS FOR FAILURE*
23 *TO MEET QUALITY DATA REPORTING REQUIREMENTS.*—
24 Section 1814(i)(5)(A)(i) of the Social Security Act (42
25 U.S.C. 1395f(i)(5)(A)(i)) is amended by inserting “(or, for

1 *fiscal year 2023 and each subsequent fiscal year, 4 percent-*
2 *age points)” before the period.*

3 (c) *REPORT.*—*Not later than 36 months after the date*
4 *of the enactment of this Act, the Comptroller General of the*
5 *United States shall submit to the Committee on Ways and*
6 *Means of the House of Representatives and the Committee*
7 *on Finance of the Senate a report containing an analysis*
8 *of the effects of the amendments made by subsection (a),*
9 *including the frequency of application of remedies specified*
10 *in section 1822(c)(5)(B) of the Social Security Act (as*
11 *added by such subsection), on access to, and quality of, care*
12 *furnished by hospice programs under part A of title XVIII*
13 *of the Social Security Act (42 U.S.C. 1395c et seq.).*

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