AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5821
OFFERED BY MR. NEAL OF MASSACHUSETTS

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.
2 This Act may be cited as the “Helping Our Senior
3 Population in Comfort Environments Act” or the “HOS-
4 PICE Act”.

5 SEC. 2. ESTABLISHING HOSPICE PROGRAM SURVEY AND
6 ENFORCEMENT PROCEDURES UNDER THE
7 MEDICARE PROGRAM.
8 (a) SURVEY AND ENFORCEMENT PROCEDURES.—
9 (1) IN GENERAL.—Part A of title XVIII of the
10 Social Security Act (42 U.S.C. 1395c et seq.) is
11 amended by adding at the end the following new sec-
12 tion:
13 “SEC. 1822. HOSPICE PROGRAM SURVEY AND ENFORCE-
14 MENT PROCEDURES.
15 “(a) SURVEYS.—
16 “(1) FREQUENCY.—Any entity that is certified
17 as a hospice program shall be subject to a standard
18 survey by an appropriate State or local survey agen-
cy, or an approved accreditation agency, as deter-

mined by the Secretary, not less frequently than

once every 36 months (and not less frequently than

once every 24 months beginning October 1, 2021).

“(2) Public transparency of survey and

certification information.—

“(A) Submission of information to

the secretary.—

“(i) In general.—Each State, and

each national accreditation body with re-

spect to which the Secretary has made a

finding under section 1865(a) respecting

the accreditation of a hospice program by

such body, shall submit, in a form and

manner, and at a time, specified by the

Secretary for purposes of this subpara-

graph, information respecting any survey

or certification made with respect to a hos-

pice program by such State or body, as ap-

licable. Such information shall include

any inspection report made by such State

or body with respect to such survey or cer-

tification, any enforcement actions taken

as a result of such survey or certification,
and any other information determined appropriate by the Secretary.

“(ii) Required inclusion of specified form.—With respect to a survey under this subsection carried out by a national accreditation body described in clause (i) on or after October 1, 2021, information described in such clause shall include Form 2567 (or a successor form), along with such additional information determined appropriate by such body.

“(B) Public disclosure of information.—Beginning not later than October 1, 2022, the Secretary shall publish the information submitted under subparagraph (A) on the public website of the Centers for Medicare & Medicaid Services in a manner that is prominent, easily accessible, readily understandable, and searchable. The Secretary shall provide for the timely update of such information so published.

“(3) Consistency of surveys.—Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.
“(4) Survey teams.—

“(A) In general.—In the case of a survey conducted under this subsection on or after October 1, 2021, by more than 1 individual, such survey shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

“(B) Prohibition of conflicts of interest.—Beginning October 1, 2021, a State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the program surveyed respecting compliance with the requirements of section 1861(dd) or who has a personal or familial financial interest in the program being surveyed.

“(C) Training.—The Secretary shall provide, not later than October 1, 2021, for the comprehensive training of State and Federal surveyors, and any surveyor employed by a national accreditation body described in paragraph (2)(A)(i), in the conduct of surveys under this subsection, including training with respect to the review of written plans for providing hospice
care (as described in section 1814(a)(7)(B)).

No individual shall serve as a member of a survey team with respect to a survey conducted on or after such date unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

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

“(b) SPECIAL FOCUS PROGRAM.—

“(1) IN GENERAL.—The Secretary shall conduct a special focus program for enforcement of requirements for hospice programs that the Secretary has identified as having substantially failed to meet applicable requirements of this Act.
“(2) Periodic surveys.—Under such special focus program, the Secretary shall conduct surveys of each hospice program in the special focus program not less than once every 6 months.

“(c) Enforcement.—

“(1) Situations involving immediate jeopardy.—If the Secretary determines on the basis of a standard survey or otherwise that a hospice program that is certified for participation under this title is no longer in compliance with the requirements specified in section 1861(dd) and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the program furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy described in paragraph (5)(B)(iii) or terminate the certification of the program, and may provide, in addition, for 1 or more of the other remedies described in paragraph (5)(B).

“(2) Situations not involving immediate jeopardy.—If the Secretary determines on the basis of a standard survey or otherwise that a hospice program that is certified for participation under this title is no longer in compliance with the require-
ments specified in section 1861(dd) and determines
that the deficiencies involved do not immediately
jeopardize the health and safety of the individuals to
whom the program furnishes items and services, the
Secretary may (for a period not to exceed 6 months)
impose remedies developed pursuant to paragraph
(5)(A), in lieu of terminating the certification of the
program. If, after such a period of remedies, the
program is still no longer in compliance with such
requirements, the Secretary shall terminate the cer-
tification of the program.

“(3) Penalty for previous noncompliance.—If the Secretary determines that a hospice
program that is certified for participation under this
title is in compliance with the requirements specified
in section 1861(dd) but, as of a previous period, did
not meet such requirements, the Secretary may pro-
vide for a civil monetary penalty under paragraph
(5)(B)(i) for the days in which the Secretary finds
that the program was not in compliance with such
requirements.

“(4) Option to continue payments for
noncompliant hospice programs.—The Sec-
retary may continue payments under this title with
respect to a hospice program not in compliance with
the requirements specified in section 1861(dd) over
a period of not longer than 6 months, if—

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

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

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

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

“(5) Remedies.—

“(A) Development.—

“(i) In general.—Not later than Oc-
tober 1, 2021, the Secretary shall develop
and implement—
“(I) a range of remedies to apply to hospice programs under the conditions described in paragraphs (1) through (4); and

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

Remedies developed pursuant to the preceding sentence shall include the remedies specified in subparagraph (B).

“(ii) CONDITIONS OF IMPOSITION OF REMEDIES.—Not later than October 1, 2021, the Secretary shall develop and implement specific procedures with respect to the conditions under which each of the remedies developed under clause (i) is to be applied, including the amount of any fines and the severity of each of these remedies. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.
“(B) SPECIFIED REMEDIES.—The remedies specified in this subparagraph are the following:

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

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

“(iii) The appointment of temporary management to oversee the operation of the hospice program and to protect and assure the health and safety of the individuals under the care of the program while improvements are made in order to bring the program into compliance with all such requirements.

“(C) PROCEDURES.—
“(i) Civil Monetary Penalties.—

“(I) In general.—Subject to subclause (II), the provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil monetary penalty under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

“(II) Retention of amounts for hospice program improvements.—The Secretary may provide that any portion of civil monetary penalties collected under this subsection may be used to support activities that benefit individuals receiving hospice care, including education and training programs to ensure hospice program compliance with the requirements of section 1861(dd).

“(ii) Suspension of payment.—A finding to suspend payment under subparagraph (B)(ii) shall terminate when the Secretary finds that the program is in sub-
stantial compliance with all such requirements.

“(iii) TEMPORARY MANAGEMENT.—The temporary management under subparagraph (B)(iii) shall not be terminated until the Secretary has determined that the program has the management capability to ensure continued compliance with all the requirements referred to in such subparagraph.

“(D) RELATIONSHIP TO OTHER REMEDIES.—The remedies developed under subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.”.

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

(3) STATE PROVISION OF HOSPICE PROGRAM INFORMATION.—
(A) IN GENERAL.—Section 1864(a) of the Social Security Act (42 U.S.C. 1395aa(a)) is amended in the sixth sentence—

(i) by inserting “and hospice programs” after “information on home health agencies”;

(ii) by inserting “or the hospice program” after “the home health agency”;

(iii) by inserting “or the hospice program” after “with respect to the agency”; and

(iv) by inserting “and hospice programs” after “with respect to home health agencies”.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply with respect to agreements entered into on or after, or in effect as of, the date that is 1 year after the date of the enactment of this Act.

(4) CONFORMING AMENDMENTS.—

(A) DEFINITION OF A HOSPICE PROGRAM.—Section 1861(dd)(4) of the Social Security Act (42 U.S.C. 1395x(dd)(4)) is amended by striking subparagraph (C).
(B) CONTINUATION OF FUNDING.—Section 3(a)(2) of the Improving Medicare Post-Acute Care Transformation Act of 2014 is amended by inserting “and section 1822(a)(1) of such Act,” after “as added by paragraph (1),”.

(b) INCREASING PAYMENT REDUCTIONS FOR FAILURE TO MEET QUALITY DATA REPORTING REQUIREMENTS.—Section 1814(i)(5)(A)(i) of the Social Security Act (42 U.S.C. 1395f(i)(5)(A)(i)) is amended by inserting “(or, for fiscal year 2023 and each subsequent fiscal year, 4 percentage points)” before the period.

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