H. R. 116TH CONGRESS
2D SESSION

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

Mr. PANETTA (for himself and Mr. REED) introduced the following bill; which was referred to the Committee on ______________________

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”.

(Original Signature of Member)
SEC. 2. ESTABLISHING HOSPICE PROGRAM SURVEY AND ENFORCEMENT PROCEDURES UNDER THE MEDICARE PROGRAM.

(a) Survey and Enforcement Procedures.—

(1) In general.—Part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is amended by adding at the end the following new section:

“SEC. 1822. HOSPICE PROGRAM SURVEY AND ENFORCEMENT PROCEDURES.

“(a) Surveys.—

“(1) Frequency.—Any entity that is certified as a hospice program shall be subject to a standard survey by an appropriate State or local survey agency, or an approved accreditation agency, as determined 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 respect 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 ap-
propriate by the Secretary.

“(ii) Required inclusion of specified form.—With respect to a survey
under this subsection carried out by a na-
tional accreditation body described in
clause (i) on or after October 1, 2021, in-
formation described in such clause shall in-
clude Form 2567 (or a successor form),
along with such additional information de-
termined 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 pro-
provide, not later than October 1, 2021, for the
comprehensive training of State and Federal
surveyors 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 sur-
vey team with respect to a survey conducted on
or after such date unless the individual has suc-
cessfully completed a training and testing pro-
gram 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 Insur-
ance Trust Fund under section 1817 to the Centers
for Medicare & Medicaid Program Management Ac-
count, of $10,000,000 for each fiscal year (begin-
ning with fiscal year 2022) for purposes of carrying
out surveys under this subsection. Sums so trans-
ferred 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 requirements 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 certification 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 approved 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 October 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 substantial 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 PRO-
GRAM.—Section 1861(dd)(4) of the Social Secu-
rity 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 FAIL-
URE TO MEET QUALITY DATA REPORTING REQUIRE-
MENTS.—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 October 1, 2024, the
Comptroller General of the United States shall submit to
the Committee on Ways and Means of the House of Rep-
resentatives 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 fre-
quency 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.).