

**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-

1 cy, or an approved accreditation agency, as deter-  
2 mined by the Secretary, not less frequently than  
3 once every 36 months (and not less frequently than  
4 once every 24 months beginning October 1, 2021).

5 “(2) PUBLIC TRANSPARENCY OF SURVEY AND  
6 CERTIFICATION INFORMATION.—

7 “(A) SUBMISSION OF INFORMATION TO  
8 THE SECRETARY.—

9 “(i) IN GENERAL.—Each State, and  
10 each national accreditation body with re-  
11 spect to which the Secretary has made a  
12 finding under section 1865(a) respecting  
13 the accreditation of a hospice program by  
14 such body, shall submit, in a form and  
15 manner, and at a time, specified by the  
16 Secretary for purposes of this subpara-  
17 graph, information respecting any survey  
18 or certification made with respect to a hos-  
19 pice program by such State or body, as ap-  
20 plicable. Such information shall include  
21 any inspection report made by such State  
22 or body with respect to such survey or cer-  
23 tification, any enforcement actions taken  
24 as a result of such survey or certification,

1 and any other information determined ap-  
2 propriate by the Secretary.

3 “(ii) REQUIRED INCLUSION OF SPECI-  
4 FIED FORM.—With respect to a survey  
5 under this subsection carried out by a na-  
6 tional accreditation body described in  
7 clause (i) on or after October 1, 2021, in-  
8 formation described in such clause shall in-  
9 clude Form 2567 (or a successor form),  
10 along with such additional information de-  
11 termined appropriate by such body.

12 “(B) PUBLIC DISCLOSURE OF INFORMA-  
13 TION.—Beginning not later than October 1,  
14 2022, the Secretary shall publish the informa-  
15 tion submitted under subparagraph (A) on the  
16 public website of the Centers for Medicare &  
17 Medicaid Services in a manner that is promi-  
18 nent, easily accessible, readily understandable,  
19 and searchable. The Secretary shall provide for  
20 the timely update of such information so pub-  
21 lished.

22 “(3) CONSISTENCY OF SURVEYS.—Each State  
23 and the Secretary shall implement programs to  
24 measure and reduce inconsistency in the application  
25 of survey results among surveyors.

1 “(4) SURVEY TEAMS.—

2 “(A) IN GENERAL.—In the case of a sur-  
3 vey conducted under this subsection on or after  
4 October 1, 2021, by more than 1 individual,  
5 such survey shall be conducted by a multidisci-  
6 plinary team of professionals (including a reg-  
7 istered professional nurse).

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

18 “(C) TRAINING.—The Secretary shall pro-  
19 vide, not later than October 1, 2021, for the  
20 comprehensive training of State and Federal  
21 surveyors, and any surveyor employed by a na-  
22 tional accreditation body described in paragraph  
23 (2)(A)(i), in the conduct of surveys under this  
24 subsection, including training with respect to  
25 the review of written plans for providing hospice

1 care (as described in section 1814(a)(7)(B)).  
2 No individual shall serve as a member of a sur-  
3 vey team with respect to a survey conducted on  
4 or after such date unless the individual has suc-  
5 cessfully completed a training and testing pro-  
6 gram in survey and certification techniques that  
7 has been approved by the Secretary.

8 “(5) FUNDING.—The Secretary shall provide  
9 for the transfer, from the Federal Hospital Insur-  
10 ance Trust Fund under section 1817 to the Centers  
11 for Medicare & Medicaid Program Management Ac-  
12 count, of \$10,000,000 for each fiscal year (begin-  
13 ning with fiscal year 2022) for purposes of carrying  
14 out surveys under this subsection. Sums so trans-  
15 ferred shall remain available until expended. Any  
16 transfer pursuant to this paragraph shall be in addi-  
17 tion to any transfer pursuant to section 3(a)(2) of  
18 the Improving Medicare Post-Acute Care Trans-  
19 formation Act of 2014.

20 “(b) SPECIAL FOCUS PROGRAM.—

21 “(1) IN GENERAL.—The Secretary shall con-  
22 duct a special focus program for enforcement of re-  
23 quirements for hospice programs that the Secretary  
24 has identified as having substantially failed to meet  
25 applicable requirements of this Act.

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

5           “(c) ENFORCEMENT.—

6           “(1) SITUATIONS INVOLVING IMMEDIATE JEOP-  
7 ARDY.—If the Secretary determines on the basis of  
8 a standard survey or otherwise that a hospice pro-  
9 gram that is certified for participation under this  
10 title is no longer in compliance with the require-  
11 ments specified in section 1861(dd) and determines  
12 that the deficiencies involved immediately jeopardize  
13 the health and safety of the individuals to whom the  
14 program furnishes items and services, the Secretary  
15 shall take immediate action to remove the jeopardy  
16 and correct the deficiencies through the remedy de-  
17 scribed in paragraph (5)(B)(iii) or terminate the cer-  
18 tification of the program, and may provide, in addi-  
19 tion, for 1 or more of the other remedies described  
20 in paragraph (5)(B).

21           “(2) SITUATIONS NOT INVOLVING IMMEDIATE  
22 JEOPARDY.—If the Secretary determines on the  
23 basis of a standard survey or otherwise that a hos-  
24 pice program that is certified for participation under  
25 this title is no longer in compliance with the require-

1       ments specified in section 1861(dd) and determines  
2       that the deficiencies involved do not immediately  
3       jeopardize the health and safety of the individuals to  
4       whom the program furnishes items and services, the  
5       Secretary may (for a period not to exceed 6 months)  
6       impose remedies developed pursuant to paragraph  
7       (5)(A), in lieu of terminating the certification of the  
8       program. If, after such a period of remedies, the  
9       program is still no longer in compliance with such  
10      requirements, the Secretary shall terminate the cer-  
11      tification of the program.

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

22           “(4) OPTION TO CONTINUE PAYMENTS FOR  
23      NONCOMPLIANT HOSPICE PROGRAMS.—The Sec-  
24      retary may continue payments under this title with  
25      respect to a hospice program not in compliance with

1 the requirements specified in section 1861(dd) over  
2 a period of not longer than 6 months, if—

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

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

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

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

20 “(5) REMEDIES.—

21 “(A) DEVELOPMENT.—

22 “(i) IN GENERAL.—Not later than Oc-  
23 tober 1, 2021, the Secretary shall develop  
24 and implement—



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

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

8                   Remedies developed pursuant to the pre-  
9                   ceding sentence shall include the remedies  
10                  specified in subparagraph (B).

11                  “(ii) CONDITIONS OF IMPOSITION OF  
12                  REMEDIES.—Not later than October 1,  
13                  2021, the Secretary shall develop and im-  
14                  plement specific procedures with respect to  
15                  the conditions under which each of the  
16                  remedies developed under clause (i) is to  
17                  be applied, including the amount of any  
18                  fines and the severity of each of these rem-  
19                  edies. Such procedures shall be designed so  
20                  as to minimize the time between identifica-  
21                  tion of deficiencies and imposition of these  
22                  remedies and shall provide for the imposi-  
23                  tion of incrementally more severe fines for  
24                  repeated or uncorrected deficiencies.

1           “(B) SPECIFIED REMEDIES.—The rem-  
2 edies specified in this subparagraph are the fol-  
3 lowing:

4           “(i) Civil monetary penalties in an  
5 amount not to exceed \$10,000 for each day  
6 of noncompliance by a hospice program  
7 with the requirements specified in section  
8 1861(dd).

9           “(ii) Suspension of all or part of the  
10 payments to which a hospice program  
11 would otherwise be entitled under this title  
12 with respect to items and services fur-  
13 nished by a hospice program on or after  
14 the date on which the Secretary determines  
15 that remedies should be imposed pursuant  
16 to paragraph (2).

17           “(iii) The appointment of temporary  
18 management to oversee the operation of  
19 the hospice program and to protect and as-  
20 sure the health and safety of the individ-  
21 uals under the care of the program while  
22 improvements are made in order to bring  
23 the program into compliance with all such  
24 requirements.

25           “(C) PROCEDURES.—

1 “(i) CIVIL MONETARY PENALTIES.—

2 “(I) IN GENERAL.—Subject to  
3 subclause (II), the provisions of sec-  
4 tion 1128A (other than subsections  
5 (a) and (b)) shall apply to a civil mon-  
6 etary penalty under this subsection in  
7 the same manner as such provisions  
8 apply to a penalty or proceeding  
9 under section 1128A(a).

10 “(II) RETENTION OF AMOUNTS  
11 FOR HOSPICE PROGRAM IMPROVE-  
12 MENTS.—The Secretary may provide  
13 that any portion of civil monetary  
14 penalties collected under this sub-  
15 section may be used to support activi-  
16 ties that benefit individuals receiving  
17 hospice care, including education and  
18 training programs to ensure hospice  
19 program compliance with the require-  
20 ments of section 1861(dd).

21 “(ii) SUSPENSION OF PAYMENT.—A  
22 finding to suspend payment under sub-  
23 paragraph (B)(ii) shall terminate when the  
24 Secretary finds that the program is in sub-

1           stantial compliance with all such require-  
2           ments.

3                   “(iii) TEMPORARY MANAGEMENT.—  
4           The temporary management under sub-  
5           paragraph (B)(iii) shall not be terminated  
6           until the Secretary has determined that the  
7           program has the management capability to  
8           ensure continued compliance with all the  
9           requirements referred to in such subpara-  
10          graph.

11                   “(D) RELATIONSHIP TO OTHER REM-  
12          EDIES.—The remedies developed under sub-  
13          paragraph (A) are in addition to sanctions oth-  
14          erwise available under State or Federal law and  
15          shall not be construed as limiting other rem-  
16          edies, including any remedy available to an indi-  
17          vidual at common law.”.

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

24                   (3) STATE PROVISION OF HOSPICE PROGRAM  
25          INFORMATION.—

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

4 (i) by inserting “and hospice pro-  
5 grams” after “information on home health  
6 agencies”;

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

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

11 and

12 (iv) by inserting “and hospice pro-  
13 grams” after “with respect to home health  
14 agencies”.

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

20 (4) CONFORMING AMENDMENTS.—

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

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

6 (b) INCREASING PAYMENT REDUCTIONS FOR FAIL-  
7 URE TO MEET QUALITY DATA REPORTING REQUIRE-  
8 MENTS.—Section 1814(i)(5)(A)(i) of the Social Security  
9 Act (42 U.S.C. 1395f(i)(5)(A)(i)) is amended by inserting  
10 “(or, for fiscal year 2023 and each subsequent fiscal year,  
11 4 percentage points)” before the period.

12 (c) REPORT.—Not later than 36 months after the  
13 date of the enactment of this Act, the Comptroller General  
14 of the United States shall submit to the Committee on  
15 Ways and Means of the House of Representatives and the  
16 Committee on Finance of the Senate a report containing  
17 an analysis of the effects of the amendments made by sub-  
18 section (a), including the frequency of application of rem-  
19 edies specified in section 1822(c)(5)(B) of the Social Secu-  
20 rity Act (as added by such subsection), on access to, and  
21 quality of, care furnished by hospice programs under part  
22 A of title XVIII of the Social Security Act (42 U.S.C.  
23 1395c et seq.).

