

1 **SEC. 406. MEDICAID IMPROVEMENT FUND.**

2 Section 1941(b)(3)(A) of the Social Security Act (42
3 U.S.C 1396w–1(b)(3)(A)), as amended by section 1303 of
4 the Further Continuing Appropriations Act, 2021, and
5 Other Extensions Act, is amended by striking “
6 \$3,464,000,000” and inserting “ \$0”.

7 **SEC. 407. 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 (as defined in section
20 1861(dd)(2)) shall be subject to a standard survey
21 by an appropriate State or local survey agency, or
22 an approved accreditation agency, as determined by
23 the Secretary, not less frequently than once every 36
24 months.

25 “(2) PUBLIC TRANSPARENCY OF SURVEY AND
26 CERTIFICATION INFORMATION.—

1 “(A) SUBMISSION OF INFORMATION TO
2 THE SECRETARY.—

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

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

1 clause (i) on or after October 1, 2021, in-
2 formation described in such clause shall in-
3 clude Form CMS-2567 (or a successor
4 form), along with such additional informa-
5 tion determined appropriate by such body.

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

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

20 “(4) SURVEY TEAMS.—

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

1 plinary team of professionals (including a reg-
2 istered professional 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
11 who has a personal or familial financial interest
12 in the program being surveyed.

13 “(C) TRAINING.—The Secretary shall pro-
14 vide, not later than October 1, 2021, for the
15 comprehensive training of State and Federal
16 surveyors, 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
20 the review of written plans for providing hospice
21 care (as described in section 1814(a)(7)(B)).
22 No individual shall serve as a member of a sur-
23 vey team with respect to a survey conducted on
24 or after such date unless the individual has suc-
25 cessfully completed a training and testing pro-

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

3 “(5) FUNDING.—The Secretary shall provide
4 for the transfer, from the Federal Hospital Insur-
5 ance Trust Fund under section 1817 to the Centers
6 for Medicare & Medicaid Services Program Manage-
7 ment Account, of \$10,000,000 for each fiscal year
8 (beginning with fiscal year 2022) for purposes of
9 carrying out this subsection and subsection (b).
10 Sums so transferred shall remain available until ex-
11 pended. Any transfer pursuant to this paragraph
12 shall be in addition to any transfer pursuant to sec-
13 tion 3(a)(2) of the Improving Medicare Post-Acute
14 Care Transformation Act of 2014.

15 “(b) SPECIAL FOCUS PROGRAM.—

16 “(1) IN GENERAL.—The Secretary shall con-
17 duct a special focus program for enforcement of re-
18 quirements for hospice programs that the Secretary
19 has identified as having substantially failed to meet
20 applicable requirements of this Act.

21 “(2) PERIODIC SURVEYS.—Under such special
22 focus program, the Secretary shall conduct surveys
23 of each hospice program in the special focus pro-
24 gram 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
3 a standard survey or otherwise that a hospice pro-
4 gram that is certified for participation under this
5 title is no longer in compliance with the require-
6 ments specified in section 1861(dd) and determines
7 that the deficiencies involved immediately jeopardize
8 the health and safety of the individuals to whom the
9 program furnishes items and services, the Secretary
10 shall take immediate action to ensure the removal of
11 the jeopardy and correction of the deficiencies or
12 terminate the certification of the program, and may
13 provide, in addition, for 1 or more of the other rem-
14 edies described in paragraph (5)(B).

15 “(2) SITUATIONS NOT INVOLVING IMMEDIATE
16 JEOPARDY.—If the Secretary determines on the
17 basis of a standard survey or otherwise that a hos-
18 pice program that is certified for participation under
19 this title is no longer in compliance with the require-
20 ments specified in section 1861(dd) and determines
21 that the deficiencies involved do not immediately
22 jeopardize the health and safety of the individuals to
23 whom the program furnishes items and services, the
24 Secretary may (for a period not to exceed 6 months)
25 impose remedies developed pursuant to paragraph

1 (5)(A), in lieu of terminating the certification of the
2 program. If, after such a period of remedies, the
3 program is still no longer in compliance with such
4 requirements, the Secretary shall terminate the cer-
5 tification of the program.

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

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

22 “(A) the State or local survey agency finds
23 that it is more appropriate to take alternative
24 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
4 and timetable for corrective action to the Sec-
5 retary for approval and the Secretary approves
6 the 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, 2022, 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

2316

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 “(ii) CONDITIONS OF IMPOSITION OF
8 REMEDIES.—Not later than October 1,
9 2022, the Secretary shall develop and im-
10 plement specific procedures with respect to
11 the conditions under which each of the
12 remedies developed under clause (i) is to
13 be applied, including the amount of any
14 fines and the severity of each of these rem-
15 edies. Such procedures shall be designed so
16 as to minimize the time between identifica-
17 tion of deficiencies and imposition of these
18 remedies and shall provide for the imposi-
19 tion of incrementally more severe fines for
20 repeated or uncorrected deficiencies.

21 “(B) SPECIFIED REMEDIES.—The rem-
22 edies specified in this subparagraph are the fol-
23 lowing:

24 “(i) Civil money penalties in an
25 amount not to exceed \$10,000 for each day

1 of noncompliance by a hospice program
2 with the requirements specified in section
3 1861(dd).

4 “(ii) Suspension of all or part of the
5 payments to which a hospice program
6 would otherwise be entitled under this title
7 with respect to items and services fur-
8 nished by a hospice program on or after
9 the date on which the Secretary determines
10 that remedies should be imposed pursuant
11 to paragraphs (1) and (2).

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

20 “(C) PROCEDURES.—

21 “(i) CIVIL MONEY PENALTIES.—

22 “(I) IN GENERAL.—Subject to
23 subclause (II), the provisions of sec-
24 tion 1128A (other than subsections
25 (a) and (b)) shall apply to a civil

1 money penalty under this subsection
2 in the same manner as such provi-
3 sions apply to a penalty or proceeding
4 under section 1128A(a).

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

16 “(ii) SUSPENSION OF PAYMENT.—A
17 finding to suspend payment under sub-
18 paragraph (B)(ii) shall terminate when the
19 Secretary finds that the program is in sub-
20 stantial compliance with all requirements
21 of section 1861(dd).

22 “(iii) TEMPORARY MANAGEMENT.—
23 The temporary management under sub-
24 paragraph (B)(iii) shall not be terminated
25 until the Secretary has determined that the

1 program has the management capability to
2 ensure continued compliance with all the
3 requirements referred to in such subpara-
4 graph.

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

12 (2) AVAILABILITY OF HOSPICE ACCREDITATION
13 SURVEYS.—Section 1865(b) of the Social Security
14 Act (42 U.S.C. 1395bb(b)) is amended by inserting
15 “or, beginning on the date of the enactment of the
16 Consolidated Appropriations Act, 2021, a hospice
17 program” after “home health agency”.

18 (3) STATE PROVISION OF HOSPICE PROGRAM
19 INFORMATION.—

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

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

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

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

5 and

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

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

14 (4) CONFORMING AMENDMENTS.—

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

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

24 (b) INCREASING PAYMENT REDUCTIONS FOR FAIL-
25 URE TO MEET QUALITY DATA REPORTING REQUIRE-

1 MENTS.—Section 1814(i)(5)(A)(i) of the Social Security
2 Act (42 U.S.C. 1395f(i)(5)(A)(i)) is amended by inserting
3 “(or, for fiscal year 2024 and each subsequent fiscal year,
4 4 percentage points)” before the period.

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

15 **SEC. 408. MEDICARE IMPROVEMENT FUND.**

16 Section 1898(b)(1) of the Social Security Act (42
17 U.S.C. 1395iii(b)(1)) is amended by striking “ \$0” and
18 inserting “ \$165,000,000”.

19 **TITLE V—MISCELLANEOUS**

20 **SEC. 501. IMPLEMENTATION FUNDING.**

21 For purposes of carrying out the provisions of, and
22 the amendments made by, titles I, II, and IV, in addition
23 to any funds otherwise made available, there are appro-
24 priated from amounts in the Treasury not otherwise ap-
25 propriated, \$37,000,000 to the Centers for Medicare &