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(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. R. _____

To amend titles XVIII and XIX of the Social Security Act to enhance quality under the Medicaid program through nursing facility survey system improvements.

IN THE HOUSE OF REPRESENTATIVES

Mr. STUPAK introduced the following bill; which was referred to the Committee on _____

A BILL

To amend titles XVIII and XIX of the Social Security Act to enhance quality under the Medicaid program through nursing facility survey system improvements.

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 “Enhancing Quality
5 through Survey System Improvements Act of 2010”.

1 **SEC. 2. DATA DRIVEN MODERNIZATION OF THE SURVEY**
2 **PROCESS.**

3 (a) REVIEW OF STATE AND CONTRACTOR SURVEY
4 PROCEDURES.—

5 (1) MEDICARE.—Section 1819(g)(2)(A)(i) of
6 the Social Security Act (42 U.S.C. 1395i–
7 3(g)(2)(A)(i)) is amended—

8 (A) by striking “of” before “not to exceed”
9 in the second sentence; and

10 (B) by striking “each State’s procedures
11 for the scheduling and conduct of standard sur-
12 veys to assure that the State” and inserting
13 “the procedures of each State, or other con-
14 tractor as chosen by the Secretary, for sched-
15 uling and conducting standard surveys to as-
16 sure that the State, or other contractor,”.

17 (2) MEDICAID.—Section 1919(g)(2)(A)(i) of the
18 Social Security Act (42 U.S.C. 1396r(g)(2)(A)(i)) is
19 amended—

20 (A) by striking “of” before “not to exceed”
21 in the second sentence; and

22 (B) by striking “each State’s procedures
23 for the scheduling and conduct of standard sur-
24 veys to assure that the State” and inserting
25 “the procedures of each State, or other con-
26 tractor as chosen by the Secretary, for sched-

1 uling and conducting standard surveys to as-
2 sure that the State, or other contractor,”.

3 (b) FREQUENCY OF SURVEYS OF TOP TIER AND
4 OTHER FACILITIES.—

5 (1) MEDICARE.—Section 1819(g)(2)(A)(iii) of
6 the Social Security Act (42 U.S.C. 1395i-
7 3(g)(2)(A)(iii)) is amended—

8 (A) by striking subclause (I);

9 (B) redesignating subclause (II) as sub-
10 clause (III);

11 (C) in subclause (III), as so redesignated,
12 by striking “subclause (I)” and inserting “sub-
13 clauses (I) and (II)”;

14 (D) by inserting before subclause (III), as
15 so redesignated, the following subclauses:

16 “(I) SURVEYS OF TOP TIER FA-
17 CILITIES.—Each skilled nursing facil-
18 ity in the top tier (as defined by the
19 Secretary in regulations) shall be sub-
20 ject to a complete on-site standard
21 survey not later than 36 months after
22 the date of the previous standard sur-
23 vey of such facility conducted under
24 this subparagraph. The statewide av-
25 erage interval between standard sur-

1 veys of top tier skilled nursing facili-
2 ties under this subclause shall not ex-
3 ceed 39 months. Such facilities will
4 also be subject to quarterly off-site re-
5 view of acuity-adjusted quality indica-
6 tors (as identified by the Secretary).
7 During any year in which a top tier
8 skilled nursing facility does not re-
9 ceive a complete on-site standard sur-
10 vey, such facility will also be subject
11 to an annual half-day on-site review of
12 quality of life and safety issues. All
13 necessary data in connection with
14 such surveys shall be submitted to the
15 Secretary by each such top tier skilled
16 nursing facility at a time and in such
17 a manner as determined by the Sec-
18 retary.

19 “(II) SURVEYS OF OTHER FA-
20 CILITIES.—Skilled nursing facilities
21 not identified in subclause (I) shall be
22 subject to a complete standard on-site
23 survey not later than 12 months after
24 the date of the previous standard sur-
25 vey of such facility conducted under

1 this subparagraph. The statewide av-
2 erage interval between standard sur-
3 veys of such facilities shall not exceed
4 15 months. Such facilities also will be
5 subject to quarterly off-site review of
6 acuity-adjusted quality indicators (as
7 identified by the Secretary). All nec-
8 essary data in connection with such
9 surveys shall be submitted to the Sec-
10 retary by each such facility at a time
11 and in such a manner as determined
12 by the Secretary.”.

13 (2) MEDICAID.—Section 1919(g)(2)(A)(iii) of
14 the Social Security Act (42 U.S.C.
15 1396r(g)(2)(A)(iii)) is amended—

16 (A) by striking subclause (I);

17 (B) redesignating subclause (II) as sub-
18 clause (III);

19 (C) in subclause (III), as so redesignated,
20 by striking “subclause (I)” and inserting “sub-
21 clauses (I) and (II)”;

22 (D) by inserting before subclause (III), as
23 so redesignated, the following subclauses:

24 “(I) SURVEYS OF TOP TIER FA-
25 CILITIES.—Each nursing facility in

1 the top tier (as defined by the Sec-
2 retary in regulations) shall be subject
3 to a complete on-site standard survey
4 not later than 36 months after the
5 date of the previous standard survey
6 of such facility conducted under this
7 subparagraph. The statewide average
8 interval between standard surveys of
9 top tier nursing facilities under this
10 subclause shall not exceed 39 months.
11 Such facilities will also be subject to
12 quarterly off-site review of acuity-ad-
13 justed quality indicators (as identified
14 by the Secretary). During any year in
15 which a top tier nursing facility does
16 not receive a complete on-site stand-
17 ard survey, such facility will also be
18 subject to an annual half-day on-site
19 review of quality of life and safety
20 issues. All necessary data in connec-
21 tion with such surveys shall be sub-
22 mitted to the Secretary by each such
23 top tier nursing facility at a time and
24 in such a manner as determined by
25 the Secretary.

1 “(II) SURVEYS OF OTHER FA-
2 CILITIES.—Nursing facilities not iden-
3 tified in subelause (I) shall be subject
4 to a complete standard on-site survey
5 not later than 12 months after the
6 date of the previous standard survey
7 of such facility conducted under this
8 subparagraph. The statewide average
9 interval between standard surveys of
10 such facilities shall not exceed 15
11 months. Such facilities also will be
12 subject to quarterly off-site review of
13 acuity-adjusted quality indicators (as
14 identified by the Secretary). All nec-
15 essary data in connection with such
16 surveys shall be submitted to the Sec-
17 retary by each such facility at a time
18 and in such a manner as determined
19 by the Secretary.”.

20 (c) CHANGE IN EFFECTIVE DATES.—

21 (1) MEDICARE.—Section 1819(g)(2)(C) of the
22 Social Security Act (42 U.S.C. 1395i–3(g)(2)(C)) is
23 amended—

24 (A) in clause (i)—

1 (i) by inserting “(I)” before “based on
2 a protocol”; and

3 (ii) by striking “, and” and inserting
4 “; or”

5 “(II) with respect to surveys con-
6 ducted on or after the last day of the 24-
7 month period beginning on the date of the
8 enactment of the Enhancing Quality
9 through Survey System Improvements Act
10 of 2010, based on a revision of protocol
11 under subclause (I) that has been tested
12 and validated not later than such last day;
13 and”; and

14 (B) in clause (ii), by striking “such date”
15 and inserting “January 1, 1990, or, with re-
16 spect to surveys conducted on or after the last
17 day of the 24-month period beginning on the
18 date of the enactment of the Enhancing Quality
19 through Survey System Improvements Act of
20 2010, by such last day.”.

21 (2) MEDICAID.—Section 1919(g)(2)(C) of the
22 Social Security Act (42 U.S.C. 1396r(g)(2)(C)) is
23 amended—

24 (A) in clause (i)—

1 (i) by inserting “(I)” before “based on
2 a protocol”; and

3 (ii) by striking “, and” and inserting
4 “; or”

5 “(II) with respect to surveys con-
6 ducted on or after the last day of the 24-
7 month period beginning on the date of the
8 enactment of the Enhancing Quality
9 through Survey System Improvements Act
10 of 2010, based on a revision of protocol
11 under subclause (I) that has been tested
12 and validated not later than such last day;
13 and”; and

14 (B) in clause (ii), by striking “such date”
15 and inserting “January 1, 1990, or, with re-
16 spect to surveys conducted on or after the last
17 day of the 24-month period beginning on the
18 date of the enactment of the Enhancing Quality
19 through Survey System Improvements Act of
20 2010, by such last day.”.

21 (d) CONSISTENCY OF SURVEYS.—

22 (1) MEDICARE.—Section 1819(g)(2) of the So-
23 cial Security Act (42 U.S.C. 1395i–3(g)(2)) is
24 amended by striking subparagraph (D) and inserting
25 the following:

1 “(D) CONSISTENCY OF SURVEYS.—

2 “(i) IN GENERAL.—Each State shall
3 implement programs to measure and re-
4 duce inconsistency in the application of
5 survey results (including the results of
6 both health surveys and life safety surveys)
7 among surveyors.

8 “(ii) SECRETARY PROVIDES OVER-
9 SIGHT.—The Secretary shall take such ac-
10 tions as necessary to assure that there is
11 consistent application, both within States
12 and across States, of the survey process
13 under this subsection (including the proc-
14 ess for both health surveys and life safety
15 surveys).

16 “(iii) APPEALS.—The Secretary will
17 assure that there is a fair and timely ap-
18 peals process for surveys under this sub-
19 section (including both health surveys and
20 life safety surveys) in which each State of-
21 fice and regional office provides a timely
22 resolution of disputes.

23 “(iv) REPORT.—The Secretary shall
24 report to the Congress annually, by Octo-
25 ber 30, on the actions taken to ensure the

1 consistency of the survey process within
2 and across states. Such report shall in-
3 clude data that assesses the consistency of
4 the survey process. Such report also shall
5 provide a summary of the status of appeals
6 process, including data that assesses the
7 timeliness of the resolution of disputes.”.

8 (2) MEDICAID.—Section 1919(g)(2) of the So-
9 cial Security Act (42 U.S.C. 1396r(g)(2)) is amend-
10 ed by striking subparagraph (D) and inserting the
11 following:

12 “(D) CONSISTENCY OF SURVEYS.—

13 “(i) IN GENERAL.—Each State shall
14 implement programs to measure and re-
15 duce inconsistency in the application of
16 survey results (including the results of
17 both health surveys and life safety surveys)
18 among surveyors.

19 “(ii) SECRETARY PROVIDES OVER-
20 SIGHT.—The Secretary shall take such ac-
21 tions as necessary to assure that there is
22 consistent application, both within States
23 and across States, of the survey process
24 under this subsection (including the proc-

1 ess for both health surveys and life safety
2 surveys).

3 “(iii) APPEALS.—The Secretary will
4 assure that there is a fair and timely ap-
5 peals process for surveys under this sub-
6 section (including both health surveys and
7 life safety surveys) in which each State of-
8 fice and regional office provides a timely
9 resolution of disputes.

10 “(iv) REPORT.—The Secretary shall
11 report to the Congress annually, by Octo-
12 ber 30, on the actions taken to ensure the
13 consistency of the survey process within
14 and across states. Such report shall in-
15 clude data that assesses the consistency of
16 the survey process. Such report also shall
17 provide a summary of the status of appeals
18 process, including data that assesses the
19 timeliness of the resolution of disputes.”.

20 (e) CIRCUMSTANCES FOR SPECIAL SURVEYS OF COM-
21 PLIANCE.—

22 (1) MEDICARE.—Section 1819(g)(3)(D) of the
23 Social Security Act (42 U.S.C. 1395i–3(g)(3)(D)) is
24 amended by striking subparagraph (D) and inserting
25 the following:

1 (A) by inserting “(I) IN GENERAL.—” be-
2 fore “Where the Secretary has” and adjusting
3 the indentation appropriately.

4 (B) by adding at the end the following new
5 subclause:

6 “(II) CIRCUMSTANCES FOR SPE-
7 CIAL SURVEYS.—The Secretary shall
8 conduct a survey under subclause (I)
9 of a skilled nursing facility if, with re-
10 spect to such facility, any of the fol-
11 lowing events occurs:

12 “(aa) A complaint is made
13 by a resident or family member
14 of a resident of such facility.

15 “(bb) The skilled nursing fa-
16 cility self-reports a reportable in-
17 cident to the State agency re-
18 sponsible for surveys and certifi-
19 cations under this subsection.

20 “(cc) A quarterly review of
21 quality indicator data from such
22 facility suggests a potential prob-
23 lem at such facility. .”.

1 (2) MEDICAID.—Section 1919(g)(3)(D) of the
2 Social Security Act (42 U.S.C. 1396r(g)(3)(D)) is
3 amended—

4 (A) by inserting “(I) IN GENERAL.—” be-
5 fore “Where the Secretary has” and adjusting
6 the indentation appropriately.

7 (B) by adding at the end the following new
8 subclause:

9 “(II) CIRCUMSTANCES FOR SPE-
10 CIAL SURVEYS.—The Secretary shall
11 conduct a survey under subclause (I)
12 of a nursing facility if, with respect to
13 such facility, any of the following
14 events occurs:

15 “(aa) A complaint is made
16 by a resident or family member
17 of a resident of such facility.

18 “(bb) The nursing facility
19 self-reports a reportable incident
20 to the State agency responsible
21 for surveys and certifications
22 under this subsection.

23 “(cc) A quarterly review of
24 quality indicator data from such

1 facility suggests a potential prob-
2 lem at such facility. .”.

3 (f) NOTICE TO FACILITIES AND THE PUBLIC.—

4 (1) MEDICARE.—Section 1819(g)(5) of the So-
5 cial Security Act (42 U.S.C. 1395i–3(g)(5)) is
6 amended—

7 (A) in subparagraph (A)(i), by striking
8 “statements of deficiencies” and inserting “re-
9 ports of surveys under subparagraph (F)”;

10 (B) by adding at the end the following new
11 subparagraph:

12 “(F) NOTICE TO FACILITY.—A written re-
13 port of the survey must be given to the skilled
14 nursing facility within 15 calendar days fol-
15 lowing the date the survey team exited the facil-
16 ity. The report of the survey must include all
17 the positive aspects of care and facility life as
18 well as the aspects of care that may need im-
19 provement.”.

20 (2) MEDICAID.—Section 1919(g)(5) of the So-
21 cial Security Act (42 U.S.C. 1396r(g)(5)) is amend-
22 ed—

23 (A) in subparagraph (A)(i), by striking
24 “statements of deficiencies” and inserting “re-
25 ports of surveys under subparagraph (F)”;

1 (B) by adding at the end the following new
2 subparagraph:

3 “(F) NOTICE TO FACILITY.—A written re-
4 port of the survey must be given to the nursing
5 facility within 15 calendar days following the
6 date the survey team exited the facility. The re-
7 port of the survey must include all the positive
8 aspects of care and facility life as well as the
9 aspects of care that may need improvement.”.

10 (g) TREATMENT OF FUNDS COLLECTED FROM CIVIL
11 MONETARY PENALTIES.—

12 (1) MEDICARE.—Section 1819(h)(2)(A) of the
13 Social Security Act (42 U.S.C. 1395i–3(h)(2)(A)) is
14 amended by adding at the end (in the flush matter
15 following clause (ii)) the following sentence: “Not-
16 withstanding the previous sentence, any funds col-
17 lected by a State as a result of the imposition of
18 such a penalty (or as a result of the imposition by
19 the State of a civil money penalty for activities de-
20 scribed in subsections (b)(3)(B)(ii)(I),
21 (b)(3)(B)(ii)(II), or (g)(2)(A)(i)) shall be used for
22 development of acuity adjusters that will provide
23 more accurate information to the public, skilled
24 nursing facilities, and the residents of such facilities,

1 about the quality of care that is provided by each
2 such facility.”.

3 (2) MEDICAID.—Section 1919(h)(2)(A)(ii) of
4 the Social Security Act (42 U.S.C.
5 1396r(h)(2)(A)(ii)) is amended by adding at the end
6 (in the flush matter following clause (ii)) the fol-
7 lowing sentence: “Notwithstanding the previous sen-
8 tence, any funds collected by a State as a result of
9 the imposition of such a penalty (or as a result of
10 the imposition by the State of a civil money penalty
11 for activities described in subsections
12 (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i))
13 shall be used for development of acuity adjusters
14 that will provide more accurate information to the
15 public, nursing facilities, and the residents of such
16 facilities, about the quality of care that is provided
17 by each such facility.”.