

111TH CONGRESS  
2D SESSION

# H. R. 6074

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2010

Mr. STUPAK introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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) by 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-

veys of top tier skilled nursing facilities under this subclause shall not exceed 39 months. Such facilities will also be subject to quarterly off-site review of acuity-adjusted quality indicators (as identified by the Secretary). During any year in which a top tier skilled nursing facility does not receive a complete on-site standard survey, such facility will also be subject to an annual half-day on-site review of quality of life and safety issues. All necessary data in connection with such surveys shall be submitted to the Secretary by each such top tier skilled nursing facility at a time and in such a manner as determined by the Secretary.

“(II) SURVEYS OF OTHER FACILITIES.—Skilled nursing facilities not identified in subclause (I) shall be subject to a complete standard on-site survey not later than 12 months after the date of the previous standard survey 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) by 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)”; and

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 subclause (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  
5 new 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; and

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.”.

○