

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2864

To amend titles XVIII and XIX of the Social Security Act to improve oversight of nursing facilities under the Medicare and Medicaid programs by preventing inappropriate influence over surveyors, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2013

Ms. ROYBAL-ALLARD 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 improve oversight of nursing facilities under the Medicare and Medicaid programs by preventing inappropriate influence over surveyors, 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 “Nursing Home Patient  
5 Protection and Standards Act of 2013”.

1 **SEC. 2. IMPROVING THE RIGOR OF TESTING FOR SUR-**  
2 **VEYORS.**

3 (a) **MEDICARE.**—Section 1819(g)(2)(E)(iii) of the  
4 Social Security Act (42 U.S.C. 1395i–3(g)(2)(E)(iii)) is  
5 amended by adding the following at the end: “The testing  
6 program must be sufficiently rigorous (as determined by  
7 the Secretary) to ensure that surveyors are adequately  
8 prepared to survey and certify facilities in a consistent and  
9 accurate manner.”.

10 (b) **MEDICAID.**—Section 1919(g)(2)(E)(iii) of the So-  
11 cial Security Act (42 U.S.C. 1396r(g)(2)(E)(iii)) is  
12 amended by adding the following at the end: “The testing  
13 program must be sufficiently rigorous (as determined by  
14 the Secretary) to ensure that surveyors are adequately  
15 prepared to survey and certify facilities in a consistent and  
16 accurate manner.”.

17 **SEC. 3. ENSURING ADEQUATE STAFFING AND TRAINING**  
18 **FOR STATE SURVEYS OF NURSING HOMES.**

19 (a) **MEDICARE.**—Section 1819(g)(2)(E) of the Social  
20 Security Act (42 U.S.C. 1395i–3(g)(2)(E)) is amended by  
21 adding at the end the following:

22 “(iv) **ADEQUATE QUALIFIED STAFF**  
23 **FOR SURVEY TEAMS.**—The Secretary, in  
24 consultation with the advisory committee  
25 under subparagraph (F), shall establish re-  
26 quirements for the qualifications and com-

1           pensation of members of a survey team  
2           under this subsection and require that a  
3           State employs an adequate number of indi-  
4           viduals as members of survey teams to en-  
5           sure adequate oversight of skilled nursing  
6           facilities.

7           “(v) CONTINUING EDUCATION.—In  
8           addition to the training and testing pro-  
9           gram required under clause (iii), the Sec-  
10          retary shall require that State and Federal  
11          surveyors regularly complete an adequate  
12          amount (as determined by the Secretary)  
13          of continuing education courses that meet  
14          requirements determined by the Secretary  
15          for content and the rigor of the material  
16          covered by such courses. An individual  
17          shall not serve as a member of a survey  
18          team unless the individual is in compliance  
19          with the requirements of this clause.”.

20          (b) MEDICAID.—Section 1919(g)(2)(E) of the Social  
21          Security Act (42 U.S.C. 1396r(g)(2)(E)) is amended by  
22          adding at the end the following:

23                 “(iv) ADEQUATE QUALIFIED STAFF  
24                 FOR SURVEY TEAMS.—The Secretary, in  
25                 consultation with the advisory committee

1 under subparagraph (F), shall establish re-  
2 quirements for the qualifications and com-  
3 pensation of members of a survey team  
4 under this subsection and require that a  
5 State employs an adequate number of indi-  
6 viduals as members of survey teams to en-  
7 sure adequate oversight of skilled nursing  
8 facilities.

9 “(v) CONTINUING EDUCATION.—In  
10 addition to the training and testing pro-  
11 gram required under clause (iii), the Sec-  
12 retary shall require that State and Federal  
13 surveyors regularly complete an adequate  
14 amount (as determined by the Secretary)  
15 of continuing education courses that meet  
16 requirements determined by the Secretary  
17 for content and the rigor of the material  
18 covered by such courses. No individual  
19 shall serve as a member of a survey team  
20 unless the individual is in compliance with  
21 the requirements of this clause.”.

22 **SEC. 4. ENSURING THE INDEPENDENCE AND IMPARTIALITY**  
23 **OF SURVEYORS.**

24 (a) IN GENERAL.—

1           (1) MEDICARE.—Section 1819(g) of the Social  
2           Security Act (42 U.S.C. 1395i–3(g)) is amended by  
3           adding the following at the end:

4           “(6) REPORTING OF INACCURACIES.—

5           “(A) COVERED INDIVIDUAL DEFINED.—

6           For purposes of this paragraph, the term ‘cov-  
7           ered individual’ means an individual—

8           “(i) who is a member of a State sur-  
9           vey team under this subsection; or

10           “(ii) who is an employee of the State  
11           department or agency that conducts sur-  
12           veys under this section.

13           “(B) REPORTING REQUIREMENT.—A cov-  
14           ered individual shall report to the Secretary any  
15           instance in which the individual suspects that—

16           “(i) a survey under this subsection  
17           fails to report or under reports an issue in  
18           a facility that could impact the safety or  
19           quality of care of the residents in such fa-  
20           cility; or

21           “(ii) a member of the survey team or  
22           an employee of the State survey agency  
23           was inappropriately influenced (through  
24           the offering of monetary awards or

1 through undue pressure) to alter the re-  
2 sults of the survey.

3 “(C) RESPONSE TO REPORT.—If the Sec-  
4 retary receives a report under subparagraph  
5 (B), the Secretary shall take appropriate action,  
6 as determined by the Secretary, to ensure the  
7 accuracy of the survey.

8 “(D) PENALTIES FOR INAPPROPRIATELY  
9 INFLUENCING A SURVEYOR.—Subject to sub-  
10 paragraph (H), any individual (including an  
11 employee of a skilled nursing facility or any af-  
12 filiated corporate entity, a representative of the  
13 skilled nursing facility industry, a member of a  
14 State survey team, an employee of the State de-  
15 partment or agency that conducts surveys  
16 under this section, or an elected official) who  
17 attempts to inappropriately influence (as de-  
18 fined by the Secretary through regulations) the  
19 results of a survey under this subsection, or the  
20 actions of a member of a survey team or an em-  
21 ployee of a survey agency, shall be subject to a  
22 civil money penalty not to exceed \$10,000. The  
23 provisions of section 1128A (other than sub-  
24 sections (a) and (b)) shall apply to a civil  
25 money penalty under the previous sentence in

1 the same manner as such provisions apply to a  
2 penalty or proceeding under section 1128A(a).

3 “(E) WHISTLEBLOWER PROTECTIONS.—

4 With respect to a covered individual, any officer  
5 or employee of the State may not—

6 “(i) discharge, demote, suspend,  
7 threaten, harass, or deny a promotion or  
8 other employment-related benefit to such  
9 individual, or in any other manner dis-  
10 criminate against an individual in the  
11 terms and conditions of employment be-  
12 cause the individual submitted a report  
13 under subparagraph (B); or

14 “(ii) file a complaint or a report  
15 against the individual with the appropriate  
16 State professional disciplinary agency be-  
17 cause the individual submitted a report  
18 under subparagraph (B).

19 “(F) PENALTIES FOR VIOLATING WHIS-  
20 TLEBLOWER PROTECTIONS.—Subject to sub-  
21 paragraph (H), any officer or employee of a  
22 State who engages in an activity that is prohib-  
23 ited by subparagraph (E) shall be subject to a  
24 civil money penalty not to exceed \$50,000. The  
25 provisions of section 1128A (other than sub-

1 sections (a) and (b)) shall apply to a civil  
2 money penalty under the previous sentence in  
3 the same manner as such provisions apply to a  
4 penalty or proceeding under section 1128A(a).

5 “(G) REQUIREMENT TO POST NOTICE.—

6 Each State shall post conspicuously in an ap-  
7 propriate location a sign (in a form specified by  
8 the Secretary) specifying the rights of covered  
9 individuals under this section. Such sign shall  
10 include—

11 “(i) a statement that a covered indi-  
12 vidual may file a complaint with the Sec-  
13 retary describing any violations of the pro-  
14 visions of this paragraph by an employee  
15 or officer of a State; and

16 “(ii) information concerning the form  
17 and manner in which such a complaint  
18 should be filed.

19 “(H) CONSTRUCTION RELATED TO LEGIS-  
20 LATIVE OVERSIGHT.—For purposes of this  
21 paragraph, to the extent that a member of a  
22 State legislature requests that a covered indi-  
23 vidual appear at a hearing of a committee of  
24 such legislature or asks questions of such indi-  
25 vidual during such a hearing, the actions of



1 such member shall not be construed in a man-  
2 ner that would subject such member to a pen-  
3 alty under this paragraph.”.

4 (2) MEDICAID.—Section 1919(g) of the Social  
5 Security Act (42 U.S.C. 1396r(g)) is amended by  
6 adding the following at the end:

7 “(6) REPORTING OF INACCURACIES.—

8 “(A) COVERED INDIVIDUAL DEFINED.—

9 For purposes of this paragraph, the term ‘cov-  
10 ered individual’ means an individual—

11 “(i) who is a member of a State sur-  
12 vey team under this subsection; or

13 “(ii) who is an employee of the State  
14 department or agency that conducts sur-  
15 veys under this section.

16 “(B) REPORTING REQUIREMENT.—A cov-  
17 ered individual shall report to the Secretary any  
18 instance in which the individual suspects that—

19 “(i) a survey under this subsection  
20 fails to report or under reports an issue in  
21 a facility that could impact the safety or  
22 quality of care of the residents in such fa-  
23 cility; or

24 “(ii) a member of the survey team or  
25 an employee of the State survey agency

1           was inappropriately influenced (through  
2           the offering of monetary awards or  
3           through undue pressure) to alter the re-  
4           sults of the survey.

5           “(C) RESPONSE TO REPORT.—If the Sec-  
6           retary receives a report under subparagraph  
7           (B), the Secretary shall take appropriate action,  
8           as determined by the Secretary, to ensure the  
9           accuracy of the survey.

10           “(D) PENALTIES FOR INAPPROPRIATELY  
11           INFLUENCING A SURVEYOR.—Subject to sub-  
12           paragraph (H), any individual (including an  
13           employee of a skilled nursing facility or any af-  
14           filiated corporate entity, a representative of the  
15           skilled nursing facility industry, a member of a  
16           State survey team, an employee of the State de-  
17           partment or agency that conducts surveys  
18           under this section, or an elected official) who  
19           attempts to inappropriately influence (as de-  
20           fined by the Secretary through regulations) the  
21           results of a survey under this subsection, or the  
22           actions of a member of a survey team or an em-  
23           ployee of a survey agency, shall be subject to a  
24           civil money penalty not to exceed \$10,000. The  
25           provisions of section 1128A (other than sub-

1 sections (a) and (b)) shall apply to a civil  
2 money penalty under the previous sentence in  
3 the same manner as such provisions apply to a  
4 penalty or proceeding under section 1128A(a).

5 “(E) WHISTLEBLOWER PROTECTIONS.—

6 With respect to a covered individual, any officer  
7 or employee of the State may not—

8 “(i) discharge, demote, suspend,  
9 threaten, harass, or deny a promotion or  
10 other employment-related benefit to such  
11 individual, or in any other manner dis-  
12 criminate against an individual in the  
13 terms and conditions of employment be-  
14 cause the individual submitted a report  
15 under subparagraph (B); or

16 “(ii) file a complaint or a report  
17 against the individual with the appropriate  
18 State professional disciplinary agency be-  
19 cause the individual submitted a report  
20 under subparagraph (B).

21 “(F) PENALTIES FOR VIOLATING WHIS-  
22 TLEBLOWER PROTECTIONS.—Subject to sub-  
23 paragraph (H), any officer or employee of a  
24 State who engages in an activity that is prohib-  
25 ited by subparagraph (E) shall be subject to a

1 civil money penalty not to exceed \$50,000. The  
2 provisions of section 1128A (other than sub-  
3 sections (a) and (b)) shall apply to a civil  
4 money penalty under the previous sentence in  
5 the same manner as such provisions apply to a  
6 penalty or proceeding under section 1128A(a).

7 “(G) REQUIREMENT TO POST NOTICE.—

8 Each State shall post conspicuously in an ap-  
9 propriate location a sign (in a form specified by  
10 the Secretary) specifying the rights of covered  
11 individuals under this section. Such sign shall  
12 include—

13 “(i) a statement that a covered indi-  
14 vidual may file a complaint with the Sec-  
15 retary describing any violations of the pro-  
16 visions of this paragraph by an employee  
17 or officer of a State; and

18 “(ii) information concerning the form  
19 and manner in which such a complaint  
20 should be filed.

21 “(H) CONSTRUCTION RELATED TO LEGIS-  
22 LATIVE OVERSIGHT.—For purposes of this  
23 paragraph, to the extent that a member of a  
24 State legislature requests that a covered indi-  
25 vidual appear at a hearing of a committee of

1 such legislature or asks questions of such indi-  
 2 vidual during such a hearing, the actions of  
 3 such member shall not be construed in a man-  
 4 ner that would subject such member to a pen-  
 5 alty under this paragraph.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 1819(f)(2)(B)(iii)(I)(c) of the Social  
 8 Security Act (42 U.S.C. 1395i–3(f)(2)(B)(iii)(I)(c))  
 9 is amended by inserting “, a civil monetary penalty  
 10 described in section 1919(g)(6)(D) of not less than  
 11 \$10,000” after “of not less than \$5,000”.

12 (2) Section 1919(f)(2)(B)(iii)(I)(c) of the Social  
 13 Security Act (42 U.S.C. 1396r(f)(2)(B)(iii)(I)(c)) is  
 14 amended by inserting “, a civil monetary penalty de-  
 15 scribed in (g)(6)(D) of not less than \$10,000” after  
 16 “of not less than \$5,000”.

17 **SEC. 5. ADVISORY COMMITTEE.**

18 (a) MEDICARE.—Section 1819(g)(2) of the Social Se-  
 19 curity Act (42 U.S.C. 1395i–3(g)(2)) is amended by add-  
 20 ing at the end the following:

21 “(F) ADVISORY COMMITTEE.—

22 “(i) ESTABLISHMENT.—The Secretary  
 23 shall establish an advisory committee on  
 24 surveys under this paragraph.

1           “(ii) MEMBERSHIP.—The membership  
2 of the advisory committee under clause (i)  
3 shall include advocates for residents of  
4 skilled nursing facilities, members of sur-  
5 vey teams under this subsection, and nurs-  
6 ing home administrators.

7           “(iii) RECOMMENDED STANDARDS.—  
8 The advisory committee under clause (i)  
9 shall make recommendations to the Sec-  
10 retary on standards for—

11                   “(I) the adequate staffing of sur-  
12 vey teams under this subsection;

13                   “(II) the training of members of  
14 such teams; and

15                   “(III) disclosing any contact be-  
16 tween such members and individuals  
17 associated with skilled nursing facili-  
18 ties, and limiting such contact to pre-  
19 vent inappropriate influence of such  
20 members by such individuals.

21           “(iv) OTHER RECOMMENDATIONS.—  
22 The advisory committee under clause (i)  
23 may also make recommendations to the  
24 Secretary on any other issue that would

1 improve the survey process under this  
2 paragraph.”.

3 (b) MEDICAID.—Section 1919(g)(2) of the Social Se-  
4 curity Act (42 U.S.C. 1396r(g)(2)) is amended by adding  
5 at the end the following:

6 “(F) ADVISORY COMMITTEE.—

7 “(i) ESTABLISHMENT.—The Secretary  
8 shall establish an advisory committee on  
9 surveys under this paragraph.

10 “(ii) MEMBERSHIP.—The membership  
11 of the advisory committee under clause (i)  
12 shall include advocates for residents of  
13 nursing facilities, members of survey teams  
14 under this subsection, and nursing home  
15 administrators.

16 “(iii) RECOMMENDED STANDARDS.—  
17 The advisory committee under clause (i)  
18 shall make recommendations to the Sec-  
19 retary on standards for—

20 “(I) the adequate staffing of sur-  
21 vey teams under this subsection;

22 “(II) the training of members of  
23 such teams; and

24 “(III) disclosing any contact be-  
25 tween such members and individuals

1 associated with nursing facilities, and  
2 limiting such contact to prevent inap-  
3 propriate influence of such members  
4 by such individuals.

5 “(iv) OTHER RECOMMENDATIONS.—  
6 The advisory committee under clause (i)  
7 may also make recommendations to the  
8 Secretary on any other issue that would  
9 improve the survey process under this  
10 paragraph.”.

11 **SEC. 6. REVIEW OF SURVEYS.**

12 (a) MEDICARE.—Section 1819(g)(2)(D) of the Social  
13 Security Act (42 U.S.C. 1395i–3(g)(2)(D)) is amended—

14 (1) by striking “Each State” and inserting the  
15 following:

16 “(i) IN GENERAL.—Each State”; and

17 (2) by adding at the end the following new  
18 clause:

19 “(ii) REVIEW OF SURVEYS.—The su-  
20 pervisor of the survey team shall review  
21 each survey conducted under this sub-  
22 section to ensure that any issues that im-  
23 pact quality of care that are identified by  
24 such surveys are consistently and appro-



1                   priately described and rated by the survey  
2                   team.”.

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

5                   (1) by striking “Each State” and inserting the  
6           following:

7                                   “(i) IN GENERAL.—Each State”; and

8                   (2) by adding at the end the following new  
9           clause:

10                                   “(ii) REVIEW OF SURVEYS.—The su-  
11                   pervisor of the survey team shall review  
12                   each survey conducted under this sub-  
13                   section to ensure that any issues that im-  
14                   pact quality of care that are identified by  
15                   such surveys are consistently and appro-  
16                   priately described and rated by the survey  
17                   team.”.

○