To amend title XVIII of the Social Security Act to require, as a condition of participation in the Medicare Program, that hospitals make reasonable efforts to contact a family member, specified healthcare agent, or surrogate decisionmaker of a patient who arrives at a hospital emergency department unconscious or otherwise physically incapable of communicating with the attending health care practitioners of the hospital, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2005

Mr. JACKSON of Illinois introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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.

A BILL

To amend title XVIII of the Social Security Act to require, as a condition of participation in the Medicare Program, that hospitals make reasonable efforts to contact a family member, specified healthcare agent, or surrogate decisionmaker of a patient who arrives at a hospital emergency department unconscious or otherwise physically incapable of communicating with the attending health care practitioners of the hospital, 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,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Elaine Sullivan Act”.

SEC. 2. REQUIREMENT FOR EMERGENCY DEPARTMENTS TO CONTACT FAMILY MEMBERS, SPECIFIED HEALTHCARE AGENT, OR SURROGATE DECISIONMAKER OF INCAPACITATED PATIENTS WITHIN 24 HOURS OF ARRIVAL AT THE EMERGENCY DEPARTMENT.

(a) IN GENERAL.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (U), by striking “and” at the end;

(2) in subparagraph (V), by striking the period at the end and inserting “, and”; and

(3) by inserting after subparagraph (V) the following new subparagraph:

“(W) in the case of a hospital (as defined in section 1861(e)) with an emergency department, to adopt and enforce a policy to ensure compliance with the requirements of subsection (k) (relating to requirements to make reasonable efforts to contact certain individuals in the case of a patient who is unconscious or physically unable to communicate with staff of the hospital).”.

(b) REQUIREMENT TO CONTACT FAMILY MEMBERS OR OTHER INDIVIDUALS WITH AUTHORITY TO MAKE
Health Care Decisions.—Section 1866 of such Act (42 U.S.C. 1395cc) is amended by adding at the end the following new subsection:

“(k)(1)(A) In the case of a hospital (as defined in section 1861(e)) with an emergency department, if any individual arrives at the emergency department requiring medical treatment and is unconscious or otherwise unable to communicate with a health care professional of the department, the hospital shall take reasonable measures (described in paragraph (3)) to identify and contact a person the hospital reasonably believes has the authority to make health care decisions on behalf of the individual.

“(B) A person referred to in subparagraph (A) is any of the following:

“(i) An immediate family member.

“(ii) A person authorized to make health care decisions for the individual under a durable power of attorney for health care, recognized under State law (whether by statute or as recognized by the courts of the State).

“(2)(A) The hospital shall take the reasonable measures as soon as practicable, but, subject to subparagraph (B), in no case later than the end of the 24-hour period that begins at the point in time that a health care professional of the emergency department of the hospital deter-
mines that the individual is unconscious or otherwise un-
able to communicate.

“(B)(i) The 24-hour period under subparagraph (A) shall not apply during any period in which the hospital implements a disaster and mass casualty program or a fire and internal disaster program, or during a declared state of emergency (as defined in clause (ii)) or other local mass casualty situation.

“(ii) For purposes of clause (i), the term ‘declared state of emergency’ means an officially designated state of emergency that has been declared by the Federal Government or a State or local government official having authority to declare that the State, county, municipality, or locality is in a state of emergency.

“(3) Reasonable measures referred to in paragraph (1) include the following:

“(A) Contacting the emergency contact, family member, surrogate decision maker, or other health care agent identified from personal effects of the individual.

“(B) Examining medical records in the hospital’s possession, including a review of any verbal or written report made by emergency medical technicians or the police with respect to the individual.
“(C) Insofar as actions under subparagraphs (A) and (B) are unsuccessful, contacting the hospital’s social service department or the appropriate local law enforcement agency.

“(4) The provisions of this subsection do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this subsection.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to hospitals as of the date that is one year after the date of the enactment of this Act.

SEC. 3. GRANT PROGRAM FOR THE ESTABLISHMENT OF NEXT OF KIN REGISTRIES.

(a) IN GENERAL.—The Secretary of Health and Human Services is authorized to make grants to qualified not-for-profit organizations for the purpose of assisting such organizations to establish and operate voluntary next of kin registries.

(b) NEXT OF KIN REGISTRY DESCRIBED.—A next of kin registry is an electronic search service to help individuals, and family members of those individuals, who are missing, injured, or deceased. A next of kin registry is a free service to the public, health care providers and institutions, and governmental agencies using the search service.
(c) AWARDING OF GRANTS.—

(1) APPLICATION.—No grant may be made under this section except pursuant to a grant application that is submitted and approved in a time, manner, and form specified by the Secretary.

(2) LIMITATION ON GRANTS.—Only 1 grant may be awarded under this section with respect to any qualified not-for-profit organizations.

(d) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Grants under this section shall be made under such terms and conditions as the Secretary specifies consistent with this section.

(2) USE OF GRANT FUNDS.—Funds provided under grants under this section may be used for any of the following:

(A) For purchasing, leasing, and installing computer software and hardware.

(B) Making upgrades and other improvements to existing computer software and hardware.

(C) Providing education and training to eligible staff on the use of technology to implement next-of-kin registries.

(3) PROVISION OF INFORMATION.—As a condition for the awarding of a grant under this section,
an applicant shall provide to the Secretary such in-
formation as the Secretary may require in order
to—

(A) evaluate the project for which the
grant is made; and

(B) ensure that funding provided under
the grant is expended only for the purposes for
which it is made.

(4) Audit.—The Secretary shall conduct ap-
propriate audits of grants under this section.

(e) Authorization of Appropriations.—There
are authorized to be appropriated to carry out this section
such sums as may be necessary for each of fiscal years
2006 through 2010.