

111TH CONGRESS
1ST SESSION

H. R. 3172

To amend title XVIII of the Social Security Act to provide for advanced illness care management services for Medicare beneficiaries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2009

Ms. BALDWIN (for herself and Mr. TANNER) 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 provide for advanced illness care management services for Medicare beneficiaries, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Senior Navigation and Planning Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Medicare and Medicaid coverage of advanced illness care management services.
- Sec. 3. Increasing awareness of the importance of end-of-life planning.
- Sec. 4. Inclusion of end-of-life planning materials in the Medicare & You handbook.
- Sec. 5. Senior Navigation Advisory Board.
- Sec. 6. Requirement for physicians and nurse practitioners to provide certain Medicare beneficiaries with information on advance directives and other end-of-life planning tools.
- Sec. 7. Improvement of policies related to the use and portability of advance directives.
- Sec. 8. Additional requirements for facilities.
- Sec. 9. Requirement for Medicare providers to honor written orders for medical care.
- Sec. 10. Incentives for accreditation and certification in hospice and palliative care.
- Sec. 11. Discharge checklist pilot program.
- Sec. 12. Office of Medicare/Medicaid Integration.
- Sec. 13. Web-based materials and grants.
- Sec. 14. HHS study and report on the storage of advance directives.
- Sec. 15. GAO study and report on the provisions of, and amendments made by, this Act.

1 **SEC. 2. MEDICARE AND MEDICAID COVERAGE OF AD-**
 2 **VANCED ILLNESS CARE MANAGEMENT SERV-**
 3 **ICES.**

4 (a) **MEDICARE COVERAGE OF ADVANCED ILLNESS**
 5 **CARE MANAGEMENT SERVICES.—**

6 (1) **COVERAGE.**—Section 1812(a)(5) of the So-
 7 cial Security Act (42 U.S.C. 1395d(a)(5)) is amend-
 8 ed to read as follows:

9 “(5) for individuals who have a life expectancy
 10 of 18 months or less and who have not made an
 11 election under subsection (d)(1) to receive hospice
 12 care under this part, advanced illness care manage-
 13 ment services (as defined in section 1861(hhh)).”.

1 (2) DEFINITION.—Section 1861 of the Social
2 Security Act (42 U.S.C. 1395x) is amended by add-
3 ing at the end the following new subsection:

4 “Advanced Illness Care Management Services

5 “(hhh)(1) The term ‘advanced illness care manage-
6 ment services’ means the following services furnished to
7 an individual by a hospice program, as defined in sub-
8 section (dd)(2):

9 “(A) Palliative care consultation services.

10 “(B) Care planning services.

11 “(C) Counseling of individual and family mem-
12 bers.

13 “(D) Discussions regarding the availability of
14 supportive services (including information on ad-
15 vance care planning).

16 “(E) Patient-centered care.

17 “(F) Family conference services.

18 “(G) Respite services.

19 “(H) Onsite caregiver training.

20 “(I) Such other services as may be appropriate
21 under a hospice model of care.

22 “(2) For purposes of paragraph (1)(F), the term
23 ‘family conference services’ means a family conference
24 held by a hospice program (as so defined) for the indi-
25 vidual and the family members of the individual, including

1 services for the facilitation and provision of adequate fol-
2 low-up to such family conference, which includes addi-
3 tional collaboration and coordination with the hospice phy-
4 sician or other hospice personnel to clarify and put into
5 action the goals of care as outlined by the individual and
6 the family members of the individual.

7 “(3)(A) For purposes of paragraph (1)(G), the term
8 ‘respite services’ means the provision of additional hours
9 of care to individuals who are unable to perform 2 or more
10 activities of daily living. Such services shall be targeted
11 toward furnishing services to the individual and providing
12 the caregivers of the individual a needed break outside of
13 the home of the individual.

14 “(B) For purposes of subparagraph (A), the Sec-
15 retary shall establish, on an annual basis, a minimum and
16 maximum number of hours (not to exceed 16 hours each
17 month) for which respite services may be provided to indi-
18 viduals eligible to receive such services.

19 “(C) In subparagraph (A), the term ‘activities of
20 daily living’ means bathing, transferring, toileting, and
21 feeding.

22 “(4) For purposes of paragraph (1)(H), the term ‘on-
23 site caregiver training’ means training provided to the
24 caregivers of an individual, which is focused on training
25 such caregivers to provide effective personal and technical

1 care to individuals, with an emphasis on what the care-
2 giver can expect with the disease process of the individual
3 or the needs of the individual at the end of life. Such train-
4 ing shall be pragmatic and easily understood by non-
5 health professionals as well as culturally and educationally
6 appropriate.

7 “(5) In the case of a hospice program that is fur-
8 nishing advanced illness care management services to an
9 individual who becomes eligible for hospice care under this
10 title, the hospice program shall notify the individual of
11 such eligibility.”

12 (3) PAYMENT BASED ON THE PHYSICIAN FEE
13 SCHEDULE.—Section 1814(i)(4) of the Social Secu-
14 rity Act (42 U.S.C. 1395f(i)(4)) is amended to read
15 as follows:

16 “(4) The amount paid to a hospice program with re-
17 spect to the advanced illness care management services (as
18 defined in section 1861(hhh)) for which payment may be
19 made under this part shall be—

20 “(A) with respect to such services, other than
21 respite services, furnished by a hospice physician, an
22 amount equal to the amount that would be paid for
23 an equivalent physician consultation under the fee
24 schedule established under section 1848(b);

1 “(B) with respect to such services, other than
2 respite services, furnished by other hospice per-
3 sonnel, an amount equal to 85 percent of such fee
4 schedule amount; and

5 “(C) with respect to respite services, payment
6 shall be at an appropriate rate to be determined by
7 the Secretary”.

8 (4) CONFORMING AMENDMENTS.—Section
9 1862(a) of the Social Security Act (42 U.S.C.
10 1395y(a)) is amended—

11 (A) in paragraph (1)—

12 (i) by striking “and” at the end of
13 subparagraph (N);

14 (ii) by striking the semicolon at the
15 end of subparagraph (O) and inserting “,
16 and”; and

17 (iii) by adding at the end the fol-
18 lowing new subparagraph:

19 “(P) in the case of advanced illness care
20 management services which are respite services
21 (as defined in section 1861(hhh)(3)), which are
22 performed more frequently than is provided
23 under clause (ii) of such section;”; and

24 (B) in paragraph (7), by striking “or (K)”
25 and inserting “(K), or (P)”.

1 (5) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to services furnished
3 on or after January 1, 2011.

4 (b) MEDICAID COVERAGE OF ADVANCED ILLNESS
5 CARE MANAGEMENT SERVICES.—

6 (1) IN GENERAL.—Section 1905(a) of the So-
7 cial Security Act (42 U.S.C. 1396d(a)) is amend-
8 ed—

9 (A) by redesignating paragraph (28) as
10 paragraph (29);

11 (B) in paragraph (27), by striking at the
12 end “and”; and

13 (C) by inserting after paragraph (27) the
14 following new paragraph:

15 “(28) advanced illness care management serv-
16 ices (as defined in section 1861(hhh)) for individuals
17 described in section 1812(a)(5); and”.

18 (2) CONFORMING AMENDMENT.—Section
19 1902(a)(10)(A) of the Social Security Act (42
20 U.S.C. 1396a(a)(10)(A)) is amended by striking
21 “and (21)” and inserting “, (21), and (28)”.

22 (3) EFFECTIVE DATE.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), the amendments made by

1 paragraphs (1) and (2) take effect on January
2 1, 2011.

3 (B) EXTENSION OF EFFECTIVE DATE FOR
4 STATE LAW AMENDMENT.—In the case of a
5 State plan under title XIX of the Social Secu-
6 rity Act (42 U.S.C. 1396 et seq.) which the
7 Secretary determines requires State legislation
8 in order for the plan to meet the additional re-
9 quirements imposed by the amendments made
10 by paragraph (1), the State plan shall not be
11 regarded as failing to comply with the require-
12 ments of such title solely on the basis of its fail-
13 ure to meet these additional requirements be-
14 fore the first day of the first calendar quarter
15 beginning after the close of the first regular
16 session of the State legislature that begins after
17 the date of enactment of this Act. For purposes
18 of the previous sentence, in the case of a State
19 that has a 2-year legislative session, each year
20 of the session is considered to be a separate
21 regular session of the State legislature.

22 (c) EDUCATION ON ADVANCED ILLNESS CARE MAN-
23 AGEMENT SERVICES.—The Secretary of Health and
24 Human Services (in this section referred to as the “Sec-
25 retary”) shall establish a program under which physicians

1 (as defined in subsection (r) of section 1861 of the Social
2 Security Act (42 U.S.C. 1395x)) are educated on the cov-
3 erage of advanced illness care management services (as de-
4 fined in subsection (hhh) of such section) under the Medi-
5 care and Medicaid programs under titles XVIII and XIX,
6 respectively, of the Social Security Act (42 U.S.C. 1395
7 et seq.; 1396 et seq.), including the importance of early
8 intervention in providing such care to individuals.

9 **SEC. 3. INCREASING AWARENESS OF THE IMPORTANCE OF**
10 **END-OF-LIFE PLANNING.**

11 Title III of the Public Health Service Act (42 U.S.C.
12 241 et seq.) is amended by adding at the end the following
13 new part:

14 **“PART S—PROGRAMS TO INCREASE AWARENESS**
15 **OF ADVANCE CARE PLANNING ISSUES**

16 **“SEC. 399GG. ADVANCE CARE PLANNING EDUCATION CAM-**
17 **PAIGNS AND INFORMATION PHONE LINE AND**
18 **CLEARINGHOUSE.**

19 “(a) ADVANCE CARE PLANNING EDUCATION CAM-
20 PAIGN.—The Secretary shall, directly or through grants
21 awarded under subsection (c), conduct a national public
22 education campaign—

23 “(1) to raise public awareness of the impor-
24 tance of planning for care near the end of life;

1 “(2) to improve the public’s understanding of
2 the various situations in which individuals may find
3 themselves if they become unable to express their
4 health care wishes;

5 “(3) to explain the need for readily available
6 legal documents that express an individual’s wishes
7 through—

8 “(A) advance directives (including living
9 wills, comfort care orders, and durable powers
10 of attorney for health care); and

11 “(B) other planning tools, such as a physi-
12 cian’s orders for life-sustaining treatment
13 (POLST); and

14 “(4) to educate the public about the availability
15 of hospice care and palliative care.

16 “(b) INFORMATION PHONE LINE AND CLEARING-
17 HOUSE.—The Secretary, directly or through grants
18 awarded under subsection (c), shall provide for the estab-
19 lishment of a national, toll-free, information telephone line
20 and a clearinghouse that the public and health care profes-
21 sionals may access to find out about State-specific and
22 other information regarding advance directive and end-of-
23 life decisions.

24 “(c) GRANTS.—

1 “(1) IN GENERAL.—The Secretary shall use
2 funds appropriated under subsection (d) for the pur-
3 pose of awarding grants to public or nonprofit pri-
4 vate entities (including States or political subdivi-
5 sions of a State), or a consortium of any of such en-
6 tities, for the purpose of conducting education cam-
7 paigns under subsection (a).

8 “(2) PERIOD.—Any grant awarded under para-
9 graph (1) shall be for a period of 3 years.

10 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated—

12 “(1) for purposes of carrying out subsection
13 (b), \$5,000,000 for fiscal year 2010 and each subse-
14 quent year; and

15 “(2) for purposes of making grants under sub-
16 section (c), \$10,000,000 for fiscal year 2010, to re-
17 main available until expended.”.

18 **SEC. 4. INCLUSION OF END-OF-LIFE PLANNING MATERIALS**

19 **IN THE MEDICARE & YOU HANDBOOK.**

20 “(a) IN GENERAL.—Section 1804(a) of the Social Se-
21 curity Act (42 U.S.C. 1395b–2(a)) is amended—

22 (1) in paragraph (2), by striking “and” at the
23 end;

24 (2) in paragraph (3), by striking the period at
25 the end and inserting “; and”; and

1 (3) by inserting after paragraph (3) the fol-
2 lowing new paragraph:

3 “(4) information on advance directives, other
4 end-of-life planning tools, and the hospice care ben-
5 efit under this title.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to notices distributed on or after
8 January 1, 2011.

9 **SEC. 5. SENIOR NAVIGATION ADVISORY BOARD.**

10 (a) ESTABLISHMENT.—The Secretary of Health and
11 Human Services shall establish the Senior Navigation Ad-
12 visory Board (in this section referred to as the “Advisory
13 Board”).

14 (b) MEMBERSHIP.—The Board shall be comprised of
15 advocates, researchers, government officials, health care
16 providers, ethicists, caregivers, and other individuals with
17 expertise in issues related to end-of-life care.

18 (c) DUTIES.—The Advisory Board shall advise the
19 Secretary on issues related to end-of-life care and advance
20 care planning, including how to—

21 (1) increase patients’ quality of life;

22 (2) reduce current legal hurdles to the enforce-
23 ment of advance directives;

1 (3) encourage provider participation in edu-
2 cational and training activities surrounding ad-
3 vanced illnesses and end-of-life care planning;

4 (4) develop quality and outcome measures that
5 hospice programs should report for advanced illness
6 care management services (as defined in section
7 1861(hhh) of the Social Security Act, as added by
8 section 2);

9 (5) determine what information should be dis-
10 cussed in discharge planning; and

11 (6) enhance advance care planning.

12 (d) APPLICATION OF FACA.—The Federal Advisory
13 Committee Act (5 U.S.C. App.) shall apply to the Advisory
14 Board.

15 (e) PAY AND REIMBURSEMENT.—

16 (1) NO COMPENSATION FOR MEMBERS OF ADVI-
17 SORY BOARD.—Except as provided in paragraph (2),
18 a member of the Advisory Board may not receive
19 pay, allowances, or benefits by reason of their serv-
20 ice on the Board.

21 (2) TRAVEL EXPENSES.—Each member shall
22 receive travel expenses, including per diem in lieu of
23 subsistence under subchapter I of chapter 57 of title
24 5, United States Code.

1 (f) REPORT.—Not later than 3 years after the estab-
2 lishment of the Advisory Board, the Advisory Board shall
3 submit to Congress a final report containing the findings
4 and conclusions of the Advisory Board, together with rec-
5 ommendations for such legislation and administrative ac-
6 tions as the Advisory Board considers appropriate.

7 (g) TERMINATION.—The Advisory Board shall termi-
8 nate 30 days after submitting the report under subsection
9 (f).

10 (h) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated such sums as may be
12 necessary to carry out this section.

13 **SEC. 6. REQUIREMENT FOR PHYSICIANS AND NURSE PRAC-**
14 **TITIONERS TO PROVIDE CERTAIN MEDICARE**
15 **BENEFICIARIES WITH INFORMATION ON AD-**
16 **VANCE DIRECTIVES AND OTHER END-OF-LIFE**
17 **PLANNING TOOLS.**

18 Section 1834 of the Social Security Act (42 U.S.C.
19 1395m) is amended by adding at the end the following
20 new subsection:

21 “(n) REQUIREMENT FOR PHYSICIANS AND NURSE
22 PRACTITIONERS TO PROVIDE CERTAIN INDIVIDUALS
23 WITH INFORMATION ON ADVANCE DIRECTIVES AND
24 OTHER END-OF-LIFE PLANNING TOOLS.—

1 “(1) IN GENERAL.—No payment may be made
2 under this title to a physician (as defined in section
3 1861(r)) or a nurse practitioner (as defined in sec-
4 tion 1861(aa)(5)(A)) for items and services fur-
5 nished on or after January 1, 2014, unless the phy-
6 sician or nurse practitioner agrees (under a process
7 established by the Secretary) to provide individuals
8 described in paragraph (2) with information on ad-
9 vance directives and other end-of-life planning tools.
10 Such information shall be provided in a form and
11 manner, and at a time, determined appropriate by
12 the Secretary.

13 “(2) INDIVIDUAL DESCRIBED.—An individual
14 described in this paragraph is an individual entitled
15 to, or enrolled for, benefits under part A or enrolled
16 for benefits under this part with—

17 “(A) metastatic solid organ cancer;

18 “(B) congestive heart failure;

19 “(C) end stage renal disease;

20 “(D) a progressive neurodegenerative dis-
21 order;

22 “(E) oxygen dependent chronic pulmonary
23 disease; or

1 “(F) any other condition with a similar
2 level of medical necessity determined appro-
3 priate by the Secretary.”.

4 **SEC. 7. IMPROVEMENT OF POLICIES RELATED TO THE USE**
5 **AND PORTABILITY OF ADVANCE DIRECTIVES.**

6 (a) **MEDICARE.**—Section 1866(f) of the Social Secu-
7 rity Act (42 U.S.C. 1395cc(f)) is amended—

8 (1) in paragraph (1)—

9 (A) in subparagraph (B), by inserting
10 “and if presented by the individual (or on be-
11 half of the individual), to include the content of
12 such advance directive in a prominent part of
13 such record” before the semicolon at the end;

14 (B) in subparagraph (D), by striking
15 “and” after the semicolon at the end;

16 (C) in subparagraph (E), by striking the
17 period at the end and inserting “; and”; and

18 (D) by inserting after subparagraph (E)
19 the following new subparagraph:

20 “(F) to provide each individual with the oppor-
21 tunity to discuss issues relating to the information
22 provided to that individual pursuant to subpara-
23 graph (A) with an appropriately trained profes-
24 sional.”;

1 (2) in paragraph (3), by striking “a written”
2 and inserting “an”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(5)(A) In addition to the requirements of paragraph
6 (1), a provider of services, Medicare Advantage organiza-
7 tion, or prepaid or eligible organization (as the case may
8 be) shall give effect to an advance directive executed out-
9 side the State in which such directive is presented, even
10 one that does not appear to meet the formalities of execu-
11 tion, form, or language required by the State in which it
12 is presented to the same extent as such provider or organi-
13 zation would give effect to an advance directive that meets
14 such requirements, except that a provider or organization
15 may decline to honor such a directive if the provider or
16 organization can reasonably demonstrate that it is not an
17 authentic expression of the individual’s wishes concerning
18 his or her health care. Nothing in this paragraph shall
19 be construed to authorize the administration of medical
20 treatment otherwise prohibited by the laws of the State
21 in which the directive is presented.

22 “(B) The provisions of this paragraph shall preempt
23 any State law to the extent such law is inconsistent with
24 such provisions. The provisions of this paragraph shall not
25 preempt any State law that provides for greater port-

1 ability, more deference to a patient’s wishes, or more lati-
2 tude in determining a patient’s wishes.”.

3 (b) MEDICAID.—Section 1902(w) of the Social Secu-
4 rity Act (42 U.S.C. 1396a(w)) is amended—

5 (1) in paragraph (1)—

6 (A) in subparagraph (B)—

7 (i) by striking “in the individual’s
8 medical record” and inserting “in a promi-
9 nent part of the individual’s current med-
10 ical record”; and

11 (ii) by inserting “and if presented by
12 the individual (or on behalf of the indi-
13 vidual), to include the content of such ad-
14 vance directive in a prominent part of such
15 record” before the semicolon at the end;

16 (B) in subparagraph (D), by striking
17 “and” after the semicolon at the end;

18 (C) in subparagraph (E), by striking the
19 period at the end and inserting “; and”; and

20 (D) by inserting after subparagraph (E)
21 the following new subparagraph:

22 “(F) to provide each individual with the oppor-
23 tunity to discuss issues relating to the information
24 provided to that individual pursuant to subpara-

1 graph (A) with an appropriately trained profes-
2 sional.”;

3 (2) in paragraph (4), by striking “a written”
4 and inserting “an”; and

5 (3) by adding at the end the following para-
6 graph:

7 “(6)(A) In addition to the requirements of paragraph
8 (1), a provider or organization (as the case may be) shall
9 give effect to an advance directive executed outside the
10 State in which such directive is presented, even one that
11 does not appear to meet the formalities of execution, form,
12 or language required by the State in which it is presented
13 to the same extent as such provider or organization would
14 give effect to an advance directive that meets such require-
15 ments, except that a provider or organization may decline
16 to honor such a directive if the provider or organization
17 can reasonably demonstrate that it is not an authentic ex-
18 pression of the individual’s wishes concerning his or her
19 health care. Nothing in this paragraph shall be construed
20 to authorize the administration of medical treatment oth-
21 erwise prohibited by the laws of the State in which the
22 directive is presented.

23 “(B) The provisions of this paragraph shall preempt
24 any State law to the extent such law is inconsistent with
25 such provisions. The provisions of this paragraph shall not

1 preempt any State law that provides for greater port-
2 ability, more deference to a patient's wishes, or more lati-
3 tude in determining a patient's wishes.”.

4 (c) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 the amendments made by subsections (a) and (b)
7 shall apply to provider agreements and contracts en-
8 tered into, renewed, or extended under title XVIII of
9 the Social Security Act (42 U.S.C. 1395 et seq.),
10 and to State plans under title XIX of such Act (42
11 U.S.C. 1396 et seq.), on or after such date as the
12 Secretary of Health and Human Services specifies,
13 but in no case may such date be later than 1 year
14 after the date of enactment of this Act.

15 (2) EXTENSION OF EFFECTIVE DATE FOR
16 STATE LAW AMENDMENT.—In the case of a State
17 plan under title XIX of the Social Security Act (42
18 U.S.C. 1396 et seq.) which the Secretary of Health
19 and Human Services determines requires State legis-
20 lation in order for the plan to meet the additional
21 requirements imposed by the amendments made by
22 subsection (b), the State plan shall not be regarded
23 as failing to comply with the requirements of such
24 title solely on the basis of its failure to meet these
25 additional requirements before the first day of the

1 first calendar quarter beginning after the close of
2 the first regular session of the State legislature that
3 begins after the date of enactment of this Act. For
4 purposes of the previous sentence, in the case of a
5 State that has a 2-year legislative session, each year
6 of the session is considered to be a separate regular
7 session of the State legislature.

8 **SEC. 8. ADDITIONAL REQUIREMENTS FOR FACILITIES.**

9 (a) REQUIREMENTS.—

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

13 (A) in subsection (a)(1)—

14 (i) in subparagraph (U), by striking
15 “and” at the end;

16 (ii) in subparagraph (V), by striking
17 the period at the end and inserting a
18 comma; and

19 (iii) by inserting after subparagraph
20 (V) the following new subparagraphs:

21 “(W) in the case of hospitals, skilled nursing
22 facilities, home health agencies, and hospice pro-
23 grams, to provide individuals receiving care by or
24 through the provider (and their caregivers and fami-
25 lies, with the patient’s consent, or their surrogate

1 decisionmakers) with the opportunity to discuss the
2 general course of treatment expected, the likely im-
3 pact on length of life and function, and the proce-
4 dures they should use to secure help if an unex-
5 pected situation arises, and

6 “(X) in the case of hospitals, skilled nursing fa-
7 cilities, and hospice programs, to—

8 “(i) provide for an assessment of each indi-
9 vidual (at the time of discharge from the pro-
10 vider) using an assessment instrument that is
11 at least as informative as the continuity assess-
12 ment record and evaluation (CARE) instrument
13 developed by the Centers for Medicare & Med-
14 icaid Services; and

15 “(ii) include the results of such assessment
16 in the individual’s medical record.”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to agreements entered
19 into or renewed on or after January 1, 2012.

20 (b) HHS STUDY AND REPORT ON APPROPRIATE AS-
21 SESSMENTS AT DISCHARGE.—

22 (1) STUDY.—The Secretary of Health and
23 Human Services shall conduct a study on the extent
24 to which the assessment of individual by hospitals,
25 skilled nursing facilities, and hospice programs

1 under section 1886(a)(1)(X) of the Social Security
2 Act, as added by subsection (a), accurately reflects
3 the actual diagnosis and care plan of the individual
4 involved at the time of discharge.

5 (2) REPORT.—Not later than January 1, 2014,
6 the Secretary of Health and Human Services shall
7 submit to Congress a report on the study conducted
8 under paragraph (1) together with recommendations
9 for such legislation and administrative action as the
10 Secretary determines to be appropriate.

11 **SEC. 9. REQUIREMENT FOR MEDICARE PROVIDERS TO**
12 **HONOR WRITTEN ORDERS FOR MEDICAL**
13 **CARE.**

14 Section 1834 of the Social Security Act (42 U.S.C.
15 1395m), as amended by section 6, is amended by adding
16 at the end the following new subsection:

17 “(o) REQUIREMENT TO HONOR WRITTEN ORDERS
18 FOR MEDICAL CARE.—No payment may be made under
19 this title to a provider of services or a supplier for items
20 and services furnished on or after January 1, 2013, unless
21 the provider or supplier agrees (under a process estab-
22 lished by the Secretary) to, in the case of an individual
23 with a written order for medical care (such as a physi-
24 cian’s orders for life-sustaining treatment (POLST)), fol-

1 low such order when furnishing items and services to the
2 individual.”.

3 **SEC. 10. INCENTIVES FOR ACCREDITATION AND CERTIFI-**
4 **CATION IN HOSPICE AND PALLIATIVE CARE.**

5 (a) HOSPITALS.—Section 1886 of the Social Security
6 Act (42 U.S.C. 1395ww) is amended by adding at the end
7 the following new subsection:

8 “(o) INCENTIVES FOR ACCREDITATION IN PALLIA-
9 TIVE CARE.—

10 “(1) INCENTIVE PAYMENT.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (3), with respect to inpatient hospital
13 services and inpatient critical access hospital
14 services furnished by an eligible hospital during
15 a payment year, if the eligible hospital has in
16 place an accredited palliative care program (as
17 determined by the Secretary) with respect to
18 such year and meets utilization criteria for such
19 program (as established by the Secretary) with
20 respect to such year, in addition to the amount
21 otherwise paid under this section or section
22 1814, there shall also be paid to the eligible
23 hospital, from the Federal Hospital Insurance
24 Trust Fund established under section 1817, an
25 amount equal to the applicable percent of the

1 amount that would otherwise be paid under this
2 section or section 1814 for such services for the
3 hospital for such year.

4 “(B) APPLICABLE PERCENT DEFINED.—
5 The term ‘applicable percent’ means—

6 “(i) for fiscal years 2011 through
7 2016, 2 percent; and

8 “(ii) for fiscal years 2017 through
9 2020, 1 percent.

10 “(C) FORM OF PAYMENT.—The payment
11 under this paragraph for a payment year may
12 be in the form of a single consolidated payment
13 or in the form of such periodic installments as
14 the Secretary may specify.

15 “(2) INCENTIVE PAYMENT ADJUSTMENT.—Sub-
16 ject to paragraph (3), with respect to inpatient hos-
17 pital services and inpatient critical access hospital
18 services furnished by an eligible hospital during a
19 fiscal year after fiscal year 2020, if the eligible hos-
20 pital does not have in place an accredited palliative
21 care program (as determined by the Secretary) with
22 respect to such fiscal year, the amount otherwise
23 paid under this section or section 1814 for such
24 services for the hospital for the year shall be reduced
25 by 1 percent.

1 “(3) EXCEPTION.—In the case of an eligible
2 hospital with fewer than 50 beds, such hospital shall
3 be deemed to meet the requirement in paragraphs
4 (1)(A) and (2) if, in lieu of having in place an ac-
5 credited palliative care program, the hospital pro-
6 vides patients and family members with access to a
7 local or regional accredited palliative care team or
8 program.

9 “(4) DEFINITIONS.—In this subsection:

10 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
11 gible hospital’ means—

12 “(i) a hospital (as defined in section
13 1861(e)); and

14 “(ii) a critical access hospital (as de-
15 fined in section 1861(mm)(1)).

16 “(B) PAYMENT YEAR.—The term ‘payment
17 year’ means fiscal years 2011 through 2020.

18 “(5) LIMITATIONS ON REVIEW.—There shall be
19 no administrative or judicial review under section
20 1869, section 1878, or otherwise, of—

21 “(A) the methodology and standards for
22 determining payment amounts under paragraph
23 (1) and payment adjustments under paragraph
24 (2);

1 “(B) the methodology and standards for
2 determining whether the eligible hospital has in
3 place an accredited palliative care program; and

4 “(C) the application of the exception under
5 paragraph (3).”.

6 (b) SKILLED NURSING FACILITIES.—Section 1888 of
7 the Social Security Act (42 U.S.C. 1395yy) is amended
8 by adding at the end the following new subsection:

9 “(f) INCENTIVES FOR ACCREDITATION IN PALLIA-
10 TIVE CARE.—

11 “(1) INCENTIVE PAYMENT.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (3), with respect to covered skilled nurs-
14 ing facility services (as defined in subsection
15 (e)(2)(A)) furnished by a skilled nursing facility
16 during a payment year, if the facility has in
17 place an accredited palliative care program (as
18 determined by the Secretary) with respect to
19 such year and meets utilization criteria for such
20 program (as established by the Secretary) with
21 respect to such year, in addition to the amount
22 otherwise paid under this subsection (e), there
23 shall also be paid to the facility, from the Fed-
24 eral Hospital Insurance Trust Fund established
25 under section 1817, an amount equal to the ap-

1 plicable percent of the amount that would oth-
2 erwise be paid under subsection (e) for such
3 services for the facility for such year.

4 “(B) DEFINITIONS.—In this subsection:

5 “(i) APPLICABLE PERCENT.—The
6 term ‘applicable percent’ means—

7 “(I) for fiscal years 2011
8 through 2016, 2 percent; and

9 “(II) for fiscal years 2017
10 through 2020, 1 percent.

11 “(ii) PAYMENT YEAR.—The term
12 ‘payment year’ means fiscal years 2011
13 through 2020.

14 “(C) FORM OF PAYMENT.—The payment
15 under this paragraph for a payment year may
16 be in the form of a single consolidated payment
17 or in the form of such periodic installments as
18 the Secretary may specify.

19 “(2) INCENTIVE PAYMENT ADJUSTMENT.—Sub-
20 ject to paragraph (3), with respect to covered skilled
21 nursing facility services (as defined in subsection
22 (e)(2)(A)) furnished by a skilled nursing facility dur-
23 ing a fiscal year after fiscal year 2020, if the facility
24 does not have in place an accredited palliative care
25 program (as determined by the Secretary) with re-

1 spect to such fiscal year, the amount otherwise paid
2 under subsection (e) for such services for the facility
3 for the year shall be reduced by 1 percent.

4 “(3) EXCEPTION.—In the case of a skilled
5 nursing facility with fewer than 60 beds, such facil-
6 ity shall be deemed to meet the requirement in para-
7 graphs (1)(A) and (2) if, in lieu of having in place
8 an accredited palliative care program, the facility
9 provides patients and family members with access to
10 a local or regional accredited palliative care team or
11 program.

12 “(4) LIMITATIONS ON REVIEW.—There shall be
13 no administrative or judicial review under section
14 1869, section 1878, or otherwise, of—

15 “(A) the methodology and standards for
16 determining payment amounts under paragraph
17 (1) and payment adjustments under paragraph
18 (2);

19 “(B) the methodology and standards for
20 determining whether the skilled nursing facility
21 has in place an accredited palliative care pro-
22 gram; and

23 “(C) the application of the exception under
24 paragraph (3).”.

1 (c) PHYSICIANS.—Section 1848 of the Social Security
2 Act (42 U.S.C. 1395w-4) is amended by adding at the
3 end the following new subsection:

4 “(p) INCENTIVES FOR CERTIFICATION IN HOSPICE
5 AND PALLIATIVE CARE.—

6 “(1) INCENTIVE PAYMENT.—

7 “(A) IN GENERAL.—With respect to physi-
8 cians’ services furnished by a physician during
9 a payment year, if the physician is certified in
10 hospice and palliative care (as determined by
11 the Secretary) with respect to such year, in ad-
12 dition to the amount otherwise paid under this
13 part, there shall also be paid to the physician,
14 from the Federal Supplementary Medical Insur-
15 ance Trust Fund established under section
16 1841, an amount equal to the applicable per-
17 cent of the Secretary’s estimate (based on
18 claims submitted not later than 2 months after
19 the end of the payment year) of the allowed
20 charges under this part for all covered profes-
21 sional services (as defined in subsection (k)(3))
22 furnished by the physician during such year.

23 “(B) DEFINITIONS.—In this subsection:

24 “(i) APPLICABLE PERCENT.—The
25 term ‘applicable percent’ means—

1 “(I) for 2011 through 2016, 2
2 percent; and

3 “(II) for 2017 through 2020, 1
4 percent.

5 “(ii) PAYMENT YEAR.—The term
6 ‘payment year’ means 2011 through 2020.

7 “(C) FORM OF PAYMENT.—The payment
8 under this subsection for a payment year may
9 be in the form of a single consolidated payment
10 or in the form of such periodic installments as
11 the Secretary may specify.

12 “(2) LIMITATIONS ON REVIEW.—There shall be
13 no administrative or judicial review under section
14 1869, section 1878, or otherwise, of—

15 “(A) the methodology and standards for
16 determining payment amounts under paragraph
17 (1); and

18 “(B) the methodology and standards for
19 determining whether the physician is certified
20 in hospice and palliative care.”.

21 **SEC. 11. DISCHARGE CHECKLIST PILOT PROGRAM.**

22 (a) ESTABLISHMENT.—Not later than July 1, 2010,
23 the Secretary of Health and Human Services (in this sec-
24 tion referred to as the “Secretary”) shall conduct a pilot
25 program under title XVIII of the Social Security Act to

1 test the use of the Centers for Medicare & Medicaid Serv-
2 ices' discharge checklist included in the publication enti-
3 tled "Planning for Your Discharge: A checklist for pa-
4 tients and caregivers preparing to leave a hospital, nursing
5 home, or other health care setting".

6 (b) WAIVER AUTHORITY.—The Secretary may waive
7 compliance of such requirements of titles XI and XVIII
8 of the Social Security Act as the Secretary determines nec-
9 essary to conduct the pilot program under this section.

10 (c) REPORT.—Not later than 6 months after the com-
11 pletion of the pilot program under this section, the Sec-
12 retary shall submit to Congress a final report on the pilot
13 program, together with recommendations for such legisla-
14 tion and administrative action as the Secretary determines
15 appropriate.

16 (d) FUNDING.—There are authorized to be appro-
17 priated such sums as may be necessary for purposes of
18 conducting the pilot program under this section.

19 **SEC. 12. OFFICE OF MEDICARE/MEDICAID INTEGRATION.**

20 (a) ESTABLISHMENT.—The Secretary shall establish
21 or designate an Office on Medicare/Medicaid Integration
22 (in this subsection referred to as the "Office") for the pur-
23 pose of aligning Medicare and Medicaid program policies
24 and procedures and developing tools to support State inte-
25 gration efforts in order to—

1 (1) simplify dual eligible access to Medicare and
2 Medicaid program benefits and services;

3 (2) improve care continuity and ensure safe and
4 effective care transitions;

5 (3) eliminate cost shifting between the Medicare
6 and Medicaid programs and among related care pro-
7 viders;

8 (4) eliminate regulatory conflicts between Medi-
9 care and Medicaid program rules; and

10 (5) improve total cost and quality performance.

11 (b) RESPONSIBILITIES.—The responsibilities of the
12 Office are to develop policies and procedures to—

13 (1) identify incentives for States to advance the
14 integration of the Medicare and Medicaid programs
15 to improve total cost and quality performance, in-
16 cluding shared cost savings among consumers, plans,
17 and Federal and State governments with respect to
18 State initiatives for advancing Medicare and Med-
19 icaid program integration;

20 (2) provide support for coordination of Federal
21 and State contracting and oversight for dual inte-
22 gration programs supportive of the goals described
23 in subsection (a);

24 (3) serve as a liaison between Centers for Medi-
25 care & Medicaid Services central and regional offices

1 to ensure consistent application of Centers for Medi-
2 care & Medicaid Services rules, policies, and auditing
3 practices as such rules, policies, and auditing prac-
4 tices pertain to dual eligibles;

5 (4) monitor total combined Medicare and Med-
6 icaid program costs in serving dual eligibles and
7 make recommendations for optimizing total quality
8 and cost performance across both programs; and

9 (5) identify legislative and administrative
10 changes that are needed to facilitate the integration
11 of benefits and oversight functions of the Medicare
12 and Medicaid programs with respect to dual eligi-
13 bles.

14 (c) DUAL ELIGIBLE DEFINED.—In this section, the
15 term “dual eligible” means an individual who is—

16 (1) entitled to, or enrolled for, benefits under
17 part A of title XVIII of the Social Security Act or
18 enrolled for benefits under part B of such title; and

19 (2) entitled to medical assistance under a State
20 plan under title XIX of such Act.

21 (d) STUDY.—Not later than January 1, 2011, the
22 Secretary of Health and Human Services, in consultation
23 with private health information technology stakeholders
24 and in coordination with other Federal health information
25 technology efforts, shall conduct a study to determine the

1 data that the Office should collect and analyze in order
2 to improve health care outcomes, create efficiencies in care
3 delivery, and impact Federal health care spending.

4 (e) FUNDING.—There are authorized to be appro-
5 priated such sums as may be necessary to carry out the
6 provisions of this section.

7 **SEC. 13. WEB-BASED MATERIALS AND GRANTS.**

8 (a) WEB-BASED MATERIALS.—The Secretary of
9 Health and Human Services (in this section referred to
10 as the “Secretary”) shall establish and maintain a website
11 that provides information, online training, and instruc-
12 tional materials for entities, including faith-based organi-
13 zations, on end-of-life issues, which shall include content
14 addressing—

15 (1) advance care planning, including common
16 issues and questions regarding advance directives
17 and their uses;

18 (2) hospice benefits under Medicare, Medicaid,
19 and the State Children’s Health Insurance Program
20 established under the Social Security Act, including
21 information on how hospice care is administered and
22 provided to terminally ill individuals;

23 (3) palliative care, including information on
24 services that palliative care units provide for termi-
25 nally ill patients; and

1 (4) any additional information related to end-
2 of-life care and associated issues, as determined by
3 the Secretary.

4 (b) GRANTS.—

5 (1) HOSPICE CARE GRANT PROGRAM.—

6 (A) GRANTS AUTHORIZED.—The Secretary
7 is authorized to award grants to entities, in-
8 cluding faith-based organizations, to develop
9 and provide services for terminally ill individ-
10 uals who are receiving hospice care in their own
11 homes.

12 (B) REQUIREMENTS.—

13 (i) DURATION.—The grant program
14 shall be conducted for a 5-year period, be-
15 ginning not later than January 1, 2011.

16 (ii) AMOUNT OF GRANTS.—An entity
17 may be awarded a grant under this para-
18 graph for a fiscal year that is not less than
19 \$5,000 and not more than \$250,000.

20 (iii) NUMBER OF GRANTS.—The Sec-
21 retary shall award grants under this para-
22 graph to not more than 100 entities.

23 (C) ADDITIONAL MEDICAID FUNDS.—A
24 State may elect to provide additional funds to
25 recipients of a grant under this section, with

1 such funds to be considered as amounts ex-
2 pended for the proper and efficient administra-
3 tion of the State plan under title XIX of the
4 Social Security Act for purposes of the State
5 receiving payments under section 1903(a)(7) of
6 that Act.

7 (D) USE OF FUNDS.—Grants awarded
8 pursuant to this paragraph shall be used by en-
9 tities to develop and provide end-of-life support
10 services for terminally ill individuals who are re-
11 ceiving care in their own homes, including—

12 (i) support for caregivers;

13 (ii) if the entity is a hospice program
14 under the Medicare program, any addi-
15 tional hospice care determined appropriate
16 by the Secretary; and

17 (iii) any additional end-of-life informa-
18 tion or materials relating to support serv-
19 ices determined appropriate by the Sec-
20 retary.

21 (E) APPLICATION.—Each entity desiring a
22 grant under this paragraph shall submit an ap-
23 plication to the Secretary at such time, in such
24 manner, and accompanied by such information
25 as the Secretary may reasonably require.

1 (F) AUTHORIZATION OF APPROPRIA-
2 TIONS.—For the purpose of carrying out the
3 grant program established under this para-
4 graph, there is authorized to be appropriated
5 \$15,000,000 for the period of fiscal years 2011
6 through 2015.

7 (2) END-OF-LIFE EDUCATIONAL GRANT PRO-
8 GRAM.—

9 (A) GRANTS AUTHORIZED.—The Secretary
10 is authorized to award grants to entities, in-
11 cluding faith-based organizations and religious
12 educational institutions, to develop and provide
13 appropriate training and educational programs
14 addressing end-of-life care issues.

15 (B) REQUIREMENTS.—

16 (i) DURATION.—The grant program
17 shall be conducted for a 5-year period, be-
18 ginning not later than January 1, 2011.

19 (ii) AMOUNT OF GRANTS.—An entity
20 may be awarded a grant under this para-
21 graph for a fiscal year that is not less than
22 \$5,000, and not more than \$50,000.

23 (iii) NUMBER OF GRANTS.—The Sec-
24 retary shall award grants under this para-
25 graph to not more than 100 entities.

1 (C) USE OF FUNDS.—Grants awarded pur-
2 suant to this paragraph shall be used by enti-
3 ties to develop appropriate training and edu-
4 cation programs addressing end-of-life care
5 issues and include such programs as part of
6 their educational curriculum, continuing edu-
7 cation programs, or vocational training.

8 (D) APPLICATION.—Each entity desiring a
9 grant under this paragraph shall submit an ap-
10 plication to the Secretary at such time, in such
11 manner, and accompanied by such information
12 as the Secretary may reasonably require.

13 (E) AUTHORIZATION OF APPROPRIA-
14 TIONS.—For the purpose of carrying out the
15 grant program established under this para-
16 graph, there is authorized to be appropriated
17 \$10,000,000 for the period of fiscal years 2011
18 through 2015.

19 **SEC. 14. HHS STUDY AND REPORT ON THE STORAGE OF AD-**
20 **VANCE DIRECTIVES.**

21 (a) STUDY.—The Secretary of Health and Human
22 Services shall conduct a study on the best methods of stor-
23 ing completed advance directives. Such study shall include
24 an analysis of the feasibility of establishing a national reg-
25 istry for completed advance directives, taking into consid-

1 eration the constraints created by the privacy provisions
2 enacted as a result of the Health Insurance Portability
3 and Accountability Act of 1996 (Public Law 104–191).

4 (b) REPORT.—Not later than January 1, 2012, the
5 Secretary of Health and Human Services shall submit to
6 Congress a report on the study conducted under sub-
7 section (a) together with recommendations for such legis-
8 lation and administrative action as the Secretary deter-
9 mines to be appropriate.

10 **SEC. 15. GAO STUDY AND REPORT ON THE PROVISIONS OF,**
11 **AND AMENDMENTS MADE BY, THIS ACT.**

12 (a) STUDY.—The Comptroller General of the United
13 States (in this section referred to as the “Comptroller
14 General”) shall conduct a study on the provisions of, and
15 amendments made by, this Act, including the quality and
16 costs (such as patient and family experience, patient un-
17 derstanding of treatment choices, and any decrease in
18 avoidable hospital admissions) associated with such provi-
19 sions and such amendments.

20 (b) REPORT.—Not later than January 1, 2012, the
21 Comptroller General shall submit to Congress a report
22 containing the results of the study conducted under sub-
23 section (a), together with recommendations for such legis-

- 1 lation and administrative action as the Comptroller Gen-
- 2 eral determines appropriate.

○