111TH CONGRESS
2D SESSION

H. R. 5795

To amend the Social Security Act to provide for coverage of voluntary advance care planning consultation under Medicare and Medicaid, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2010

Mr. BLUMENAUER (for himself, Ms. BALDWIN, Mrs. CAPPS, Mr. HOLT, Mr. KIND, Ms. LINDA T. SÁNCHEZ of California, Ms. SCHAKOWSKY, and Mr. WU) 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

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A BILL

To amend the Social Security Act to provide for coverage of voluntary advance care planning consultation under Medicare and Medicaid, 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; FINDINGS; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Personalize Your Care Act of 2010".

6 (b) FINDINGS.—Congress finds the following:

1 (1) All individuals should be afforded the oppor-
2 tunity to fully participate in decisions related to
3 their health care or the care of a person for whom
4 they are the proxy or surrogate.
5 (2) Every individual's values and goals should
6 be identified, understood, and respected. Particular
7 attention should be paid to populations which have
8 not regularly had the opportunity to express their
9 choices or preferences.
10 (3) Advance care planning plays a valuable role
11 in achieving quality care by informing physicians
12 and family members of an individual's treatment
13 preferences should he or she become unable to direct
14 care.
15 (4) Early advance care planning is ideal be-
16 cause a person's ability to make decisions may di-
17 minish over time and the person may suddenly lose
18 the capability to participate in their health care deci-
19 sions.
20 (5) Advance directives (such as living wills and
21 durable powers of attorney for health care) must be
22 prepared while individuals have the capacity to com-
23 plete them and only apply to future medical cir-
24 cumstances when decisionmaking capacity is lost. An

1 individual can change or revoke an advance directive
2 at any time.
3 (6) Physician orders for life-sustaining treat-
4 ment complement advance directives by providing a
5 process to focus patients' values, goals, and pref-
6 erences on current medical circumstances and to
7 translate them into visible and portable medical or-
8 ders applicable across care settings. A patient (or
9 proxy or surrogate) can change or revoke a physi-
10 cian order for life-sustaining treatment at any time.
11 (7) Advance care planning should be routinely
12 conducted in community and clinical practices. Care
13 plans should be periodically revisited to reflect a per-
14 son's changes in values and perceptions at different
15 stages and circumstances of life. This shared deci-
16 sionmaking and collaborative planning between the
17 patient (or proxy or surrogate) and the clinician of
18 their choice will lead to more person-centered, cul-
19 turally appropriate care.
20 (8) Effective, respectful, and culturally com-
21 petent advance care planning requires recognition
22 that both overtreatment and undertreatment may be
23 concerns of individuals contemplating future care.
24 (9) More should be done within local health sys-
25 tems to establish specific policies and programs to

1 assist people with sensory, mental, and other disabil-
2 ities in order to maximize the degree to which they
3 are active participants in the decisions related to
4 their health care, including training health care pro-
5 viders to be aware of augmentative communication
6 devices and how to communicate with people with
7 developmental, psychiatric, speech, and sensory dis-
8 abilities.

9 (10) Studies funded by the Agency for
10 Healthcare Research and Quality have shown that
11 individuals who talked with their families or physi-
12 cians about their preferences for care had less fear
13 and anxiety, felt they had more ability to influence
14 and direct their medical care, believed that their
15 physicians had a better understanding of their wish-
16 es, and indicated a greater understanding and com-
17 fort level than they had before the discussion. Pa-
18 tients who had advance planning discussions with
19 their physicians continued to discuss and talk about
20 these concerns with their families. Such discussions
21 enabled patients and families to reconcile any dif-
22 ferences about care and could help the family and
23 physician come to agreement if they should need to
24 make decisions for the patient.

1 (11) A decade of research has demonstrated
2 that physician orders for life-sustaining treatment
3 effectively convey patient preferences and guide med-
4 ical personnel toward medical treatment aligned with
5 patient wishes. Programs for these orders have de-
6 veloped locally on a statewide or communitywide
7 basis and have different program names, forms, and
8 policies, but all follow the principle of patient-cen-
9 tered care.

10 (12) According to research published in the Ar-
11 chives of Internal Medicine, between 65 and 76 per-
12 cent of physicians whose patients had an advance di-
13 rective were not aware that it existed.

14 (13) Including completed advance care planning
15 documents within a patient's electronic health record
16 can increase the likelihood these documents are kept
17 up-to-date and available at the right place at the
18 right time.

19 (c) TABLE OF CONTENTS.—The table of contents of
20 this Act is as follows:

Sec. 1. Short title; findings; table of contents.
Sec. 2. Voluntary advance care planning consultation coverage under Medicare and Medicaid.
Sec. 3. Grants for programs for physician orders for life-sustaining treatment.
Sec. 4. Advance care planning standards for electronic health records.
Sec. 5. Portability of advance directives.

1 **SEC. 2. VOLUNTARY ADVANCE CARE PLANNING CONSULTA-**
2 **TION COVERAGE UNDER MEDICARE AND**
3 **MEDICAID.**
4 (a) MEDICARE.—
5 (1) IN GENERAL.—Section 1861 of the Social
6 Security Act (42 U.S.C. 1395x), as amended by sec-
7 tion 4103 of the Patient Protection and Affordable
8 Care Act (Public Law 111–148, in this section re-
9 ferred to as ''PPACA''), is amended—
10 (A) in subsection (s)(2)—
11 (i) by striking ''and'' at the end of
12 subparagraph (EE);
13 (ii) by adding ''and'' at the end of
14 subparagraph (FF); and
15 (iii) by adding at the end the fol-
16 lowing new subparagraph:
17 ''(GG) voluntary advance care planning
18 consultation (as defined in subsection (iii)(1));'';
19 and
20 (B) by adding at the end the following new
21 subsection:
22 ''Voluntary Advance Care Planning Consultation
23 ''(iii)(1) Subject to paragraphs (3) and (4), the term
24 'voluntary advance care planning consultation' means an
25 optional consultation between the individual and a practi-
26 tioner described in paragraph (2) regarding advance care

1 planning. Such consultation may include the following, as
2 specified by the Secretary:
3 "(A) An explanation by the practitioner of ad-
4 vance care planning and the uses of advance direc-
5 tives.
6 "(B) An explanation by the practitioner of the
7 role and responsibilities of a proxy or surrogate.
8 "(C) An explanation by the practitioner of the
9 services and supports available under this title dur-
10 ing chronic and serious illness, including palliative
11 care, home care, long-term care, and hospice care.
12 "(D) An explanation by the practitioner of phy-
13 sician orders for life-sustaining treatment or similar
14 orders in States where such orders or similar orders
15 exist.
16 "(E) Facilitation by the practitioner of shared
17 decisionmaking with the patient (or proxy or surro-
18 gate) which may include—
19 "(i) use of decision aids and patient sup-
20 port tools;
21 "(ii) the provision of patient-centered,
22 easy-to-understand information about advance
23 care planning or disease-specific care planning;
24 and

1 ''(iii) the incorporation of patient pref-
2 erences and values into the medical plan, an ad-
3 vance directive, and a physician order for life-
4 sustaining treatment as appropriate.

5 ''(2) A practitioner described in this paragraph is a
6 physician (as defined in subsection (r)(1)), nurse practi-
7 tioner, or physician assistant.

8 ''(3) Payment may not be made under this title for
9 a voluntary advance care planning consultation furnished
10 more often than once every 5 years unless there is a sig-
11 nificant change in the health, health-related condition, or
12 care setting of the individual.

13 ''(4) For purposes of this section, the term 'physician
14 order for life-sustaining treatment' means, with respect to
15 an individual, an actionable medical order relating to the
16 treatment of that individual that effectively communicates
17 the individual's preferences regarding life-sustaining treat-
18 ment, is in a form that is sanctioned or approved under
19 State law or regulation or is widely recognized by health
20 care providers in the State, and permits it to be followed
21 by health care professionals across the continuum of care.
22 Such an order may be changed or revoked by the indi-
23 vidual (or proxy or surrogate) at any time.''.

24 (2) CONSTRUCTION.—The voluntary advance
25 care planning consultation described in section

1861(iii) of the Social Security Act, as added by paragraph (1), shall be completely optional. Nothing in this section shall—

(A) require an individual to complete an advance directive or a physician order for life-sustaining treatment;

(B) require an individual to consent to restrictions on the amount, duration, or scope of medical benefits an individual is entitled to receive under this title; or

(C) violate the Assisted Suicide Funding Restriction Act of 1997 (Public Law 105–12) by encouraging the promotion of suicide or assisted suicide.

(3) PAYMENT.—Section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3)), as amended by section 4103(c)(2) of PPACA, is amended by inserting ‘‘(2)(GG),’’ after ‘‘(2)(FF),’’.

(4) FREQUENCY LIMITATION.—Section 1862(a) of such Act (42 U.S.C. 1395y(a)), as amended by section 4103(d) of PPACA, is amended—

(A) in paragraph (1)—

(i) in subparagraph (O), by striking ‘‘and’’ at the end;

1 (ii) in subparagraph (P) by striking
2 the semicolon at the end and inserting ‘‘,
3 and’’; and
4 (iii) by adding at the end the fol-
5 lowing new subparagraph:
6 ‘‘(Q) in the case of voluntary advance care
7 planning consultations (as defined in paragraph
8 (1) of section 1861(iii)), which are performed
9 more frequently than is covered under such sec-
10 tion;’’; and
11 (B) in paragraph (7), by striking ‘‘or (P)’’
12 and inserting ‘‘(P), or (Q)’’.
13 (5) EFFECTIVE DATE.—The amendments made
14 by this subsection shall apply to consultations fur-
15 nished on or after January 1, 2011.
16 (b) MEDICAID.—
17 (1) MANDATORY BENEFIT.—Section
18 1902(a)(10)(A) of the Social Security Act (42
19 U.S.C. 1396a(a)(10)(A)), as amended by section
20 2301(b) of PPACA, is amended, in the matter pre-
21 ceding clause (i), by striking ‘‘and (28)’’ and insert-
22 ing ‘‘, (28), and (29)’’.
23 (2) MEDICAL ASSISTANCE.—Section 1905(a) of
24 such Act (42 U.S.C. 1396d(a)), as amended by sec-
25 tion 2301(a) of PPACA, is amended—

1 (A) by striking "and" at the end of paragraph (28);

3 (B) by redesignating paragraph (29) as paragraph (30); and

5 (C) by inserting after paragraph (28) the following new paragraph:

7 "(29) voluntary advance care planning consultation (as defined in section 1861(iii)(1)); and".

9 (c) DEFINITION OF ADVANCE DIRECTIVE UNDER MEDICARE AND MEDICAID.—

11 (1) MEDICARE.—Section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3)) is amended by striking "means" and all that follows and inserting the following: "means a living will, medical directive, health care power of attorney, durable power of attorney for health care, advance health care directive, health care directive, or other statement that is recorded and completed in a manner recognized under State law by an individual with capacity to make health care decisions and that indicates the individual's wishes regarding medical treatment in the event of future incapacity of the individual to make health care decisions.".

24 (2) MEDICAID.—Section 1902(w)(4) of such Act (42 U.S.C. 1396a(w)(4)) is amended by striking

1 ''means'' and all that follows and inserting the fol-
2 lowing: ''means a living will, medical directive,
3 health care power of attorney, durable power of at-
4 torney for health care, advance health care directive,
5 health care directive, or other statement that is re-
6 corded and completed in a manner recognized under
7 State law by an individual with capacity to make
8 health care decisions and that indicates the individ-
9 ual's wishes regarding medical treatment in the
10 event of future incapacity of the individual to make
11 health care decisions.''.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section take effect on January 1, 2011.

14 **SEC. 3. GRANTS FOR PROGRAMS FOR PHYSICIAN ORDERS**
15 **FOR LIFE-SUSTAINING TREATMENT.**

16 (a) IN GENERAL.—The Secretary of Health and
17 Human Services shall make grants to eligible entities for
18 the purpose of—

19 (1) establishing statewide programs for physi-
20 cian orders for life-sustaining treatment; or

21 (2) expanding or enhancing existing programs
22 for physician orders for life-sustaining treatment.

23 (b) AUTHORIZED ACTIVITIES.—Activities funded
24 through a grant under this section for an area may in-
25 clude—

1 (1) developing such a program for the area that
2 includes hospitals, home care, hospice, long-term
3 care, community and assisted living residences,
4 skilled nursing facilities, and emergency medical
5 services within a State; and
6 (2) expanding an existing program for physi-
7 cian orders regarding life-sustaining treatment to
8 serve more patients or enhance the quality of serv-
9 ices, including educational services for patients and
10 patients' families, training of health care profes-
11 sionals, or establishing a physician orders for life-
12 sustaining treatment registry.
13 (c) DISTRIBUTION OF FUNDS.—In funding grants
14 under this section, the Secretary shall ensure that, of the
15 funds appropriated to carry out this section for each fiscal
16 year—
17 (1) at least one-half are used for establishing
18 new programs for physician orders regarding life-
19 sustaining treatment; and
20 (2) remaining funds are to be used for expand-
21 ing or enhancing existing programs for physician or-
22 ders regarding life-sustaining treatment.
23 (d) DEFINITIONS.—In this section:
24 (1) The term ''eligible entity'' includes—

(A) an academic medical center, a medical school, a State health department, a State medical association, a multistate task force, a hospital, or a health system capable of administering a program for physician orders regarding life-sustaining treatment for a State; or

(B) any other health care agency or entity as the Secretary determines appropriate.

(2) The term ''physician order for life-sustaining treatment'' has the meaning given such term in section 1861(iii)(4) of the Social Security Act, as added by section 2.

(3) The term ''program for physician orders for life-sustaining treatment'' means a program that—

(A) supports the active use of physician orders for life-sustaining treatment in the State; and

(B) is guided by a coalition of stakeholders that includes patient advocacy groups and representatives from across the continuum of health care services, such as disability rights advocates, senior advocates, emergency medical services, long-term care, medical associations, hospitals, home health, hospice, the State agen-

1 cy responsible for senior and disability services,
2 and the State department of health.
3 (4) The term ''Secretary'' means the Secretary
4 of Health and Human Services.
5 (e) AUTHORIZATION OF APPROPRIATIONS.—To carry
6 out this section, there are authorized to be appropriated
7 such sums as may be necessary for each of the fiscal years
8 2011 through 2016.

9 **SEC. 4. ADVANCE CARE PLANNING STANDARDS FOR ELEC-**
10 **TRONIC HEALTH RECORDS.**

11 Notwithstanding section 3004(b)(3) of the Public
12 Health Service Act (42 U.S.C. 300jj–14(b)(3)), not later
13 than January 1, 2012, the Secretary of Health and
14 Human Services shall adopt, by rule, standards for a
15 qualified electronic health record (as defined in section
16 3000(13) of such Act (42 U.S.C. 300jj(13)), with respect
17 to patient communications with a health care provider
18 about values and goals of care, to adequately display the
19 following:
20 (1) The patient's current advance directive (as
21 defined in section 1866(f)(3) of the Social Security
22 Act (42 U.S.C. 1395cc(f)(3)), as applicable.
23 (2) The patient's current physician order for
24 life-sustaining treatment (as defined in section

1861(iii)(4) of the Social Security Act (42 U.S.C. 1395x(iii)(4)), as applicable.

A standard adopted under this section shall be treated as a standard adopted under section 3004 of the Public Health Service Act (42 U.S.C. 300jj–14) for purposes of certifying qualified electronic health records pursuant to section 3001(c)(5) of such Act (42 U.S.C. 300jj–11(c)(5)).

SEC. 5. PORTABILITY OF ADVANCE DIRECTIVES.

(a) IN GENERAL.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended by adding at the end the following new paragraph:

"(5)(A) An advance directive validly executed outside the State in which such directive is presented must be given effect by a provider of services or organization to the same extent as an advance directive validly executed under the law of the State in which it is presented.

"(B) In the absence of knowledge to the contrary, a physician or other health care provider or organization may presume that a written advance health care directive or similar instrument, regardless of where executed, is valid.

"(C) In the absence of a validly executed advance directive, any authentic expression of a person's wishes with respect to health care shall be honored.

1 “(D) The provisions of this paragraph shall preempt
2 any State law on advance directive portability to the extent
3 such law is inconsistent with such provisions. Nothing in
4 the paragraph shall be construed to authorize the adminis-
5 tration of health care treatment otherwise prohibited by
6 the laws of the State in which the directive is presented.”.
7 (b) MEDICAID.—Section 1902(w) of the Social Secu-
8 rity Act (42 U.S.C. 1396a(w)) is amended by adding at
9 the end the following new paragraph:
10 “(6)(A) An advance directive validly executed outside
11 the State in which such directive is presented must be
12 given effect by a provider or organization to the same ex-
13 tent as an advance directive validly executed under the law
14 of the State in which it is presented.
15 “(B) In the absence of knowledge to the contrary,
16 a physician, other health care provider, or organization
17 may presume that a written advance health care directive
18 or similar instrument, regardless of where executed, is
19 valid.
20 “(C) In the absence of a validly executed advance di-
21 rective, any authentic expression of a person’s wishes with
22 respect to health care shall be honored.
23 “(D) The provisions of this paragraph shall preempt
24 any State law on advance directive portability to the extent
25 such law is inconsistent with such provisions. Nothing in

1 the paragraph shall be construed to authorize the adminis-
2 tration of health care treatment otherwise prohibited by
3 the laws of the State in which the directive is presented.''.

○