To amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program for consultations regarding orders for life sustaining treatment and to provide grants for the development and expansion of programs for such orders.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mr. BUMENAUER (for himself, Mr. BOUSTANY, Mr. DAVIS of Kentucky, Mr. KIND, Mr. TIBERI, and Mr. YARMUTH) 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 coverage under the Medicare Program for consultations regarding orders for life sustaining treatment and to provide grants for the development and expansion of programs for such orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Life Sustaining Treatment Preferences Act of 2009”.
SEC. 2. FINDINGS.

Congress finds as follows:

(1) Serious illness, death, and dying are often difficult subjects to talk about for individuals, their families, and health care professionals.

(2) Poor communication about preferences for care at the end of life can cause distress for both patients and their families.

(3) As individuals approach the last chapter of their life, more can and should be done to educate them about treatment choices and help individuals communicate to health providers what care they want or do not want to receive.

(4) A decade of research has demonstrated that orders for life sustaining treatment effectively convey treatment preferences, guiding medical personnel in providing or withholding interventions.

(5) Orders for life sustaining treatment differ from advance directives. Advance directives (including living wills and durable powers of attorney for health care) must be completed while individuals have the capacity to complete them and generally apply to future, hypothetical medical circumstances when decisionmaking capacity is lost. Patients’ values, goals, and preferences, as expressed in advance directives, require a thoughtful interpretive process.
to apply to specific medical circumstances in real
time. Yet, patients and proxy decisionmakers are
often uncertain how to apply and implement pa-
tients’ values and goals in unfamiliar health care
settings when real treatment plans and complicated
decisions need to be made.

(6) Orders for life sustaining treatment com-
plement advances directives by providing a process
to focus patients’ values, goals, and preferences on
current medical circumstances and to translate them
into visible and portable medical orders applicable
across care settings, including home, long-term care,
extreme medical services, and hospitals. Without
such medical orders emergency medical personnel
may be required to provide treatments that may not
be consistent with the individual’s preferences. Com-
pletion of such an order is equally valuable to pa-
tients who have not executed advance directives.

(7) The following States have implemented or
are developing orders for life sustaining treatment
programs at the local or statewide level: Alaska,
California, Colorado, Florida, Georgia, Hawaii,
Idaho, Iowa, Kansas, Louisiana, Maine, Massachu-
setts, Michigan, Minnesota, Missouri, Montana, Ne-
braska, Nevada, New Hampshire, New York, North

(8) Programs for orders for life sustaining treatment provide valuable services to individuals, their families, and health care providers through educational materials, professional training on advance care planning, coordinating and collaborating with hospitals, skilled nursing facilities, hospice programs, home health agencies, and emergency medical services to implement such orders across the continuum of care, and monitoring the success of the program.

(9) Medicare pays for acute care services provided to beneficiaries, but generally does not pay for informed discussions between beneficiaries and health providers to allow beneficiaries the opportunity to determine if they desire such acute care in the last months and years of life.

SEC. 3. MEDICARE COVERAGE OF CONSULTATION REGARDING ORDERS FOR LIFE SUSTAINING TREATMENT.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by sections 101(a), 144(a), and 152(b) of the Medicare Improvements
for Patients and Providers Act of 2008 (Public Law 110–275), is amended—

(1) in subsection (s)(2)—

(A) by striking “and” at the end of subparagraph (DD);

(B) by adding “and” at the end of subparagraph (EE); and

(C) by adding at the end the following new subparagraph:

“(FF) consultations regarding an order for life sustaining treatment (as defined in subsection (hhh)(1)) for qualified individuals (as defined in subsection (hhh)(3));”; and

(2) by adding at the end the following new subsection:

“Consultation Regarding an Order for Life Sustaining Treatment

“(hhh)(1) The term ‘consultation regarding an order for life sustaining treatment’ means, with respect to a qualified individual, consultations between the individual and the individual’s physician (as defined in subsection (r)(1)) (or other health care professional described in paragraph (2)(A)) and, to the extent applicable, registered nurses, nurse practitioners, physicians’ assistants, and social workers, regarding the establishment, implementation,
and changes in an order regarding life sustaining treat-
ment (as defined in paragraph (2)) for that individual.
Such a consultation may include a consultation regard-
ing—

“(A) the reasons why the development of
such an order is beneficial to the individual and
the individual’s family and the reasons why
such an order should be updated periodically as
the health of the individual changes;

“(B) the information needed for an indi-
vidual or legal surrogate to make informed deci-
sions regarding the completion of such an
order; and

“(C) the identification of resources that an
individual may use to determine the require-
ments of the State in which such individual re-
sides so that the treatment wishes of that indi-
vidual will be carried out if the individual is un-
able to communicate those wishes, including re-
quirements regarding the designation of a sur-
rogate decisionmaker (also known as a health
care proxy).

The Secretary may limit consultations regarding an
order regarding life sustaining treatment to con-
sultations furnished in States, localities, or other ge-
graphic areas in which such orders have been widely adopted.

“(2) The terms ‘order regarding life sustaining treatment’ means, with respect to an individual, an actionable medical order relating to the treatment of that individual that—

“(A) is signed and dated by a physician (as defined in subsection (r)(1)) or another health care professional (as specified by the Secretary and who is acting within the scope of the professional’s authority under State law in signing such an order) and is in a form that permits it to stay with the patient and be followed by health care professionals and providers across the continuum of care, including home care, hospice, long-term care, community and assisted living residences, skilled nursing facilities, inpatient rehabilitation facilities, hospitals, and emergency medical services;

“(B) effectively communicates the individual’s preferences regarding life sustaining treatment, including an indication of the treatment and care desired by the individual;

“(C) is uniquely identifiable and standardized within a given locality, region, or State (as identified by the Secretary);
“(D) is portable across care settings; and

“(E) may incorporate any advance directive (as defined in section 1866(f)(3)) if executed by the individual.

“(3) The term ‘qualified individual’ means an individual who a physician (as defined in subsection (r)(1)) (or other health care professional described in paragraph (2)(A)) determines has a chronic, progressive illness and, as a consequence of such illness, is as likely as not to die within 1 year.

“(4) The level of treatment indicated under paragraph (2)(B) may range from an indication for full treatment to an indication to limit some or all or specified interventions. Such indicated levels of treatment may include indications respecting, among other items—

“(A) the intensity of medical intervention if the patient is pulseless, apneic, or, has serious cardiac or pulmonary problems;

“(B) the individual’s desire regarding transfer to a hospital or remaining at the current care setting;

“(C) the use of antibiotics; and

“(D) the use of artificially administered nutrition and hydration.”.

(b) PAYMENT.—
(1) IN GENERAL.—Section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3)), as amended by sections 144(a)(2) and 152(b)(1)(C) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), by inserting “(2)(FF),” after “(2)(EE),”.

(2) CONSTRUCTION.—Nothing in this section shall be construed as preventing the payment for a consultation regarding an order regarding life sustaining treatment to be made to multiple health care providers if they are providing such consultation as a team, so long as the total amount of payment is not increased by reason of the payment to multiple providers.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to consultations furnished on or after January 1, 2010.

SEC. 4. GRANTS FOR PROGRAMS FOR ORDERS REGARDING LIFE SUSTAINING TREATMENT.

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

(1) establishing new programs for orders regarding life sustaining treatment in States or localities;
(2) expanding or enhancing an existing pro-
gram for orders regarding life sustaining treatment
in States or localities; or

(3) providing a clearinghouse of information on
programs for orders for life sustaining treatment
and consultative services for the development or en-
hancement of such programs.

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

(1) developing such a program for the area that
includes home care, hospice, long-term care, commu-
nity and assisted living residences, skilled nursing
facilities, inpatient rehabilitation facilities, hospitals,
and emergency medical services within the area;

(2) securing consultative services and advice
from institutions with experience in developing and
managing such programs; and

(3) expanding an existing program for orders
regarding life sustaining treatment to serve more pa-
tients or enhance the quality of services, including
educational services for patients and patients' fami-
lies or training of health care professionals.

(c) DISTRIBUTION OF FUNDS.—In funding grants
under this section, the Secretary shall ensure that, of the
funds appropriated to carry out this section for each fiscal year—

(1) at least two-thirds are used for establishing or developing new programs for orders regarding life sustaining treatment; and

(2) one-third is used for expanding or enhancing existing programs for orders regarding life sustaining treatment.

(d) DEFINITIONS.—In this section:

(1) The term “eligible entity” includes—

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

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

(2) The term “order regarding life sustaining treatment” has the meaning given such term in section 1861(hhh)(2) of the Social Security Act, as added by section 3.

(3) The term “program for orders regarding life sustaining treatment” means, with respect to an
area, a program that supports the active use of orders regarding life sustaining treatment in the area.

(4) The term “Secretary” means the Secretary of Health and Human Services.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2014.