To amend title XVIII of the Social Security Act to encourage Medicare beneficiaries to voluntarily adopt advance directives guiding the medical care they receive.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2014

Mr. Coons (for Mr. Coburn (for himself, Mr. Coons, and Mr. Blumenthal)) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to encourage Medicare beneficiaries to voluntarily adopt advance directives guiding the medical care they receive.

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 “Medicare Choices Empowerment and Protection Act”.
SEC. 2. MEDICARE ADVANCE DIRECTIVE CERTIFICATION PROGRAM.

Part B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

"MEDICARE ADVANCE DIRECTIVE CERTIFICATION PROGRAM

"Sec. 1849. (a) In General.—

“(1) Establishment of Program.—The Secretary shall establish and implement an Advance Directive Certification Program (in this section referred to as the ‘Program’) under which the Secretary shall encourage eligible beneficiaries to adopt and maintain certified advance directives to guide the delivery of health care to such beneficiaries. The Secretary shall implement the Program within 3 years of the date of enactment of this section.

“(2) Definitions.—In this section:

“(A) Certified advance directive.—The term ‘certified advance directive’ means any written or electronically stored statement by an eligible beneficiary that—

“(i) provides instructions that outline the kind of medical treatments and care that such beneficiary would want or not want under particular conditions, and may
also include the identification of a health care proxy or legal representative to make medical treatment decisions for the beneficiary if the beneficiary becomes unable to make or communicate those decisions; and

“(ii) is offered by an entity that has received accreditation from the Secretary under this section.

“(B) ELIGIBLE BENEFICIARY.—The term ‘eligible beneficiary’ means an individual enrolled under this part.

“(3) VOLUNTARY.—Participation in the Program shall be voluntary with respect to the eligible beneficiary and an eligible beneficiary who has registered a certified advance directive under the Program may terminate such directive at any time. Nothing in this section shall require an eligible beneficiary to adopt or maintain a certified advance directive.

“(4) BEST PRACTICES.—In establishing and implementing the Program, the Secretary shall consider best practices within existing advance directive registry technologies, programs, and systems, including web-based or cloud-based advance directive technologies, which may utilize time and date stamps,
video, or other innovative measures to protect the authenticity, improve the quality, and enhance the security of such directives.

“(5) **STATE LAW.**—This section shall in no way supersede, abrogate, or otherwise interfere with State law governing advance directives.

“(b) **REGISTRATION.**—

“(1) **IN GENERAL.**—The Secretary shall establish procedures for an eligible beneficiary to register such beneficiary’s adoption of a certified advance directive under the Program. Such procedures shall ensure that registration is available both through an online and manual process. The Secretary shall also establish procedures to ensure Program participants can update previously registered information that is no longer accurate and indicate that an advance directive has been terminated.

“(2) **REQUIRED INFORMATION.**—In addition to such other information as the Secretary may deem appropriate, an eligible beneficiary seeking to register a certified advance directive under the program shall indicate where the advance directive is maintained.
“(3) Registration periods.—The procedures established under paragraph (1) shall provide that registration under the Program shall occur during—

“(A) an eligible beneficiary’s initial Part C enrollment as described in paragraph (1) of section 1851(e); and

“(B) the annual, coordinated election period under paragraph (3) of such section.

“(4) Privacy and security.—

“(A) In general.—The Secretary shall ensure that all aspects of the registration system comply with the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

“(B) Access.—The Secretary shall utilize standardized data protections and privacy standards, including the Federal regulations described in paragraph (1), to ensure that the registration record of an eligible beneficiary can only be accessed by—

“(i) the beneficiary, through the process established under paragraph (1); and
“(ii) providers of services and suppliers participating under this title, through a process established by the Secretary.

“(c) ACCREDITATION.—

“(1) IN GENERAL.—Under the Program, the Secretary shall—

“(A) grant accreditation to advance directive vendors and other entities providing advance directives that meet the accreditation criteria established under paragraph (2); and

“(B) establish a process whereby advance directive vendors and other entities providing advance directives may obtain accreditation under this subsection.

“(2) ACCREDITATION CRITERIA.—The Secretary shall establish accreditation criteria for advance directive vendors and other entities providing advance directives that seek to offer advance directives to be certified under the Program. Such criteria shall include the following:

“(A) PROCESS FOR ADOPTING ADVANCE DIRECTIVE.—The advance directive vendor or other entity providing an advance directive shall
allow a beneficiary to create, adopt, modify, and terminate an advance directive—

“(i) through an online process; and

“(ii) as an alternative to the online process, through a manual process that employs paper documents.

“(B) Access.—The advance directive vendor or other entity providing an advance directive shall maintain advance directives in such a way that—

“(i) an eligible beneficiary who has adopted an advance directive with such vendor or entity and any family member, legal representative, or health care proxy legally designated by such beneficiary has direct, near real-time online access to the beneficiary’s advance directive for purposes of viewing and sharing such advance directive;

“(ii) in the case of an eligible beneficiary who has adopted an advance directive with such vendor or entity or any family member, legal representative, or health care proxy legally designated by such beneficiary who is unable or unwilling to use
the online access under subparagraph (A),
such individual is able to obtain a hard
copy of the beneficiary’s advance directive
for the purposes of viewing and sharing
such advance directive; and

“(iii) providers of services and sup-
pliers participating under this title have
near real-time access to the advance direc-
tive of an eligible beneficiary who has
adopted an advance directive with such
vendor or entity.

“(C) PRIVACY PROTECTIONS.—

“(i) IN GENERAL.—The advance di-
rective vendor or other entity providing an
advance directive shall comply with the
Federal regulations (concerning the privacy
of individually identifiable health informa-
tion) promulgated under section 264(c) of
the Health Insurance Portability and Ac-
countability Act of 1996 (42 U.S.C.
1320d–2 note).

“(ii) ACCESS.—Such vendor or entity
shall utilize standardized data protections
and privacy standards, including the Fed-
eral regulations described in paragraph
(1), to ensure that the content of an eligible beneficiary’s advance directive is owned and maintained by the beneficiary and can only be accessed by—

“(I) the beneficiary or the beneficiary’s designee pursuant to clauses (i) and (ii) of subparagraph (A); and

“(II) a provider of services or a supplier pursuant to subparagraph (A)(iii).

“(D) SECURITY AND TESTING.—The advance directive vendor or other entity providing an advance directive shall certify that—

“(i) all data management and data transfer elements involved in adopting, maintaining, and accessing the advance directive have successfully passed rigorous independent testing regarding standards of timeliness, accuracy, and efficiency;

“(ii) the data management and data transfer elements involved in adopting, maintaining, and accessing the advance directive meet widely accepted industry security standards; and
“(iii) the system that provides access to the advance directive has passed real-time tests simulating a realistic volume of beneficiaries and providers accessing advance directives simultaneously.

“(E) CERTIFIED ADVANCE DIRECTIVES.—

The advance directive vendor or other entity providing an advance directive shall agree to offer certified advance directives (as defined in subsection (a)(2)(A)).

“(F) OTHER.—Such other criteria as the Secretary may require.

“(d) INCENTIVE.—

“(1) IN GENERAL.—The Secretary shall make a one-time payment of the amount specified in paragraph (2) to each eligible beneficiary that adopts a certified advance directive and registers such directive with the Program.

“(2) AMOUNT.—

“(A) IN GENERAL.—For purposes of paragraph (1), the amount specified in this paragraph is—

“(i) for a beneficiary who registers a certified advance directive with the Program in 2015—
“(I) in the case of a beneficiary that creates, adopts, and registers a certified advance directive using online processes only, $75; or

“(II) in the case of a beneficiary that creates, adopts, or registers a certified advance directive using a manual process, $50; and

“(ii) for a beneficiary who registers a certified advance directive with the Program in a subsequent year, the amount specified in this paragraph for the preceding year increased by the percentage increase in the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor) over the preceding year.

“(B) Rounding.—If any amount determined under subparagraph (A) is not a multiple of 10 cents, such amount shall be rounded to the nearest multiple of 10 cents.

“(3) Administration.—The Secretary shall, through a full notice and comment rulemaking process, establish procedures for—
“(A) making the incentive payment directly to the eligible beneficiary or a personal account maintained by the beneficiary at a financial institution that has been designated by the beneficiary, and ensuring that no other entity receives the payment on the beneficiary’s behalf; and

“(B) ensuring that a beneficiary does not receive an incentive payment under this section more than once.

“(e) EDUCATION AND OUTREACH.—The Secretary shall work with stakeholders to conduct appropriate educational and outreach activities under the Program, including—

“(1) the inclusion of detailed information regarding the personal benefits of adopting a certified advance directive and participating in the Program in the Medicare and You handbook under section 1804; and

“(2) the inclusion of detailed information regarding the personal benefits of adopting a certified advance directive and participating in the Program and an explanation of how the Program works (which may include sample certified advance directives, links to the websites of certified advance directives,
tive vendors, other entities providing advance directives, and stakeholder organizations, and such other information as the Secretary determines useful) on the Internet website of the Centers for Medicare & Medicaid Services.

“(f) CONSULTATION.—In establishing and implementing the Program, the Secretary shall consult with, and solicit feedback from, a broad array of stakeholders representing the interests of eligible beneficiaries, health care providers, the advance directive industry and advance directive vendors, and faith-based organizations. Such stakeholders shall include physicians, nurses, hospital representatives, palliative and hospice caregivers, advance directive companies and vendors, patients’ rights groups, health information privacy experts, elder law experts, senior groups, counselors, chaplains, clergy, ethicists, various other members of the faith community, and other individuals and entities that the Secretary determines appropriate.”.