

109TH CONGRESS
1ST SESSION

H. R. 2560

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

15 (3) by inserting after subparagraph (V) the fol-
 16 lowing new subparagraph:

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

25 (b) REQUIREMENT TO CONTACT FAMILY MEMBERS
 26 OR OTHER INDIVIDUALS WITH AUTHORITY TO MAKE

1 HEALTH CARE DECISIONS.—Section 1866 of such Act
2 (42 U.S.C. 1395cc) is amended by adding at the end the
3 following new subsection:

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

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

15 “(i) An immediate family member.

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

21 “(2)(A) The hospital shall take the reasonable meas-
22 ures as soon as practicable, but, subject to subparagraph
23 (B), in no case later than the end of the 24-hour period
24 that begins at the point in time that a health care profes-
25 sional of the emergency department of the hospital deter-

1 mines that the individual is unconscious or otherwise un-
2 able to communicate.

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

9 “(ii) For purposes of clause (i), the term ‘declared
10 state of emergency’ means an officially designated state
11 of emergency that has been declared by the Federal Gov-
12 ernment or a State or local government official having au-
13 thority to declare that the State, county, municipality, or
14 locality is in a state of emergency.

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

17 “(A) Contacting the emergency contact, family
18 member, surrogate decision maker, or other health
19 care agent identified from personal effects of the in-
20 dividual.

21 “(B) Examining medical records in the hos-
22 pital’s possession, including a review of any verbal or
23 written report made by emergency medical techni-
24 cians or the police with respect to the individual.

1 “(C) Insofar as actions under subparagraphs
2 (A) and (B) are unsuccessful, contacting the hos-
3 pital’s social service department or the appropriate
4 local law enforcement agency.

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

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

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

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

19 (b) NEXT OF KIN REGISTRY DESCRIBED.—A next
20 of kin registry is an electronic search service to help indi-
21 viduals, and family members of those individuals, who are
22 missing, injured, or deceased. A next of kin registry is a
23 free service to the public, health care providers and insti-
24 tutions, and governmental agencies using the search serv-
25 ice.

1 (c) AWARDING OF GRANTS.—

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

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

9 (d) TERMS AND CONDITIONS.—

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

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

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

18 (B) Making upgrades and other improve-
19 ments to existing computer software and hard-
20 ware.

21 (C) Providing education and training to el-
22 igible staff on the use of technology to imple-
23 ment next-of-kin registries.

24 (3) PROVISION OF INFORMATION.—As a condi-
25 tion for the awarding of a grant under this section,

1 an applicant shall provide to the Secretary such in-
2 formation as the Secretary may require in order
3 to—

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

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

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

11 (e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to carry out this section
13 such sums as may be necessary for each of fiscal years
14 2006 through 2010.

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