

110TH CONGRESS
2D SESSION

H. R. 5702

To amend titles XVIII and XIX of the Social Security Act to promote the use of advance directives, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2008

Mr. LEVIN (for himself, Mr. CASTLE, Mr. McDERMOTT, Mr. KILDEE, Mrs. MCCARTHY of New York, Mr. MOORE of Kansas, Mr. FARR, Ms. DELAURO, Ms. SLAUGHTER, Ms. WASSERMAN SCHULTZ, Mr. GEORGE MILLER of California, Ms. HOOLEY, Mr. CUMMINGS, Mr. BLUMENAUER, Mr. HIGGINS, Mr. WU, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend titles XVIII and XIX of the Social Security Act to promote the use of advance directives, 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 “Advance Directive Promotion Act of 2008”.

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. Improvement of policies related to the use and portability of advance directives.

Sec. 3. Medicare coverage of an end-of-life planning consultation as part of an initial preventive physical examination.

Sec. 4. National information hotline for end-of-life decisionmaking and hospice care.

Sec. 5. Increasing awareness of the importance of end-of-life planning.

1 SEC. 2. IMPROVEMENT OF POLICIES RELATED TO THE USE
2 AND PORTABILITY OF ADVANCE DIRECTIVES.

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

5 (1) in paragraph (1)—

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

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

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

15 (D) by inserting after subparagraph (E)
16 the following new subparagraph:

17 “(F) to provide each such individual with the
18 opportunity to discuss issues relating to the informa-
19 tion provided to that individual pursuant to subpara-
20 graph (A) with an appropriately trained profes-
21 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 shall give effect to a valid ad-
7 vance directive executed outside the State in which such
8 directive is presented to the same extent as such provider
9 would give effect to a valid advance directive executed
10 under the law of the State in which it is presented. In
11 the absence of knowledge to the contrary, such a provider
12 may presume that such an advance directive executed out-
13 side the State in which it is presented is valid. Nothing
14 in this paragraph shall be construed to authorize the ad-
15 ministration of health care treatment otherwise prohibited
16 by the laws of the State in which the directive is presented.

17 “(B) The provisions of this paragraph shall preempt
18 any State law to the extent such law is inconsistent with
19 such provisions. The provisions of this paragraph shall not
20 preempt any State law that provides for greater port-
21 ability, more deference to a patient’s wishes, or more lati-
22 tude in determining a patient’s wishes with respect to
23 health care.”.

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

1 (1) in paragraph (1)—

2 (A) in subparagraph (B)—

3 (i) by striking “in the individual’s
4 medical record” and inserting “in a promi-
5 nent part of the individual’s current med-
6 ical record”; and

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

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

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

16 (D) by inserting after subparagraph (E)
17 the following new subparagraph:

18 “(F) to provide each such individual with the
19 opportunity to discuss issues relating to the informa-
20 tion provided to that individual pursuant to subpara-
21 graph (A) with an appropriately trained profes-
22 sional.”;

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

1 (3) by adding at the end the following para-
2 graph:

3 “(6)(A) In addition to the requirements of paragraph
4 (1), a provider shall give effect to a valid advance directive
5 executed outside the State in which such directive is pre-
6 sented to the same extent as such provider would give ef-
7 fect to a valid advance directive executed under the law
8 of the State in which it is presented. In the absence of
9 knowledge to the contrary, such a provider may presume
10 that such an advance directive executed outside the State
11 in which it is presented is valid. Nothing in this paragraph
12 shall be construed to authorize the administration of
13 health care treatment otherwise prohibited by the laws of
14 the State in which the directive is presented.

15 “(B) The provisions of this paragraph shall preempt
16 any State law to the extent such law is inconsistent with
17 such provisions. The provisions of this paragraph shall not
18 preempt any State law that provides for greater port-
19 ability, more deference to a patient’s wishes, or more lati-
20 tude in determining a patient’s wishes with respect to
21 health care.”.

22 (c) EFFECTIVE DATES.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 the amendments made by subsections (a) and (b)
25 shall apply to provider agreements entered into, re-

1 newed, or extended under title XVIII of the Social
2 Security Act (42 U.S.C. 1395 et seq.), and to State
3 plans under title XIX of such Act (42 U.S.C. 1396
4 et seq.), on or after such date as the Secretary of
5 Health and Human Services specifies, but in no case
6 may such date be later than 1 year after the date
7 of enactment of this Act.

8 (2) EXTENSION OF EFFECTIVE DATE FOR
9 STATE LAW AMENDMENT.—In the case of a State
10 plan under title XIX of the Social Security Act (42
11 U.S.C. 1396 et seq.) which the Secretary of Health
12 and Human Services determines requires State legis-
13 lation in order for the plan to meet the additional
14 requirements imposed by the amendments made by
15 subsection (b), the State plan shall not be regarded
16 as failing to comply with the requirements of such
17 title solely on the basis of its failure to meet these
18 additional requirements before the first day of the
19 first calendar quarter beginning after the close of
20 the first regular session of the State legislature that
21 begins after the date of enactment of this Act. For
22 purposes of the previous sentence, in the case of a
23 State that has a 2-year legislative session, each year
24 of the session is considered to be a separate regular
25 session of the State legislature.

1 **SEC. 3. MEDICARE COVERAGE OF AN END-OF-LIFE PLAN-**
2 **NING CONSULTATION AS PART OF AN INITIAL**
3 **PREVENTIVE PHYSICAL EXAMINATION.**

4 (a) IN GENERAL.—Section 1861(w) of the Social
5 Security Act (42 U.S.C. 1395x(w)) is amended—

6 (1) in paragraph (1), by striking “paragraph
7 (2),” and inserting “paragraph (2) and an end-of-
8 life planning consultation (as defined in paragraph
9 (3)),”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(3) For purposes of paragraph (1), the term ‘end-
13 of-life planning consultation’ means a consultation be-
14 tween the physician and an individual regarding—

15 “(A) the importance of preparing advance di-
16 rectives in case an injury or illness causes the indi-
17 vidual to be unable to make health care decisions;

18 “(B) the situations in which an advance direc-
19 tive is likely to be relied upon;

20 “(C) the reasons why the development of a
21 comprehensive end-of-life plan is beneficial and the
22 reasons why such a plan should be updated periodi-
23 cally as the health of the individual changes;

24 “(D) the identification of resources that an in-
25 dividual may use to determine the requirements of
26 the State in which such individual resides so that

1 the treatment wishes of that individual will be car-
 2 ried out if the individual is unable to communicate
 3 those wishes, including requirements regarding the
 4 designation of a surrogate decision maker (also
 5 known as a health care proxy); and

6 “(E) whether or not the physician is willing to
 7 follow the individual’s wishes as expressed in an ad-
 8 vance directive.”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to initial preventive physical exami-
 11 nations furnished on or after January 1, 2009.

12 **SEC. 4. NATIONAL INFORMATION HOTLINE FOR END-OF-**
 13 **LIFE DECISIONMAKING AND HOSPICE CARE.**

14 The Secretary of Health and Human Services, acting
 15 through the Administrator of the Centers for Medicare &
 16 Medicaid Services, shall operate directly, or by grant, con-
 17 tract, or interagency agreement, out of funds otherwise
 18 appropriated to the Secretary, a clearinghouse and a 24-
 19 hour toll-free telephone hotline in order to provide con-
 20 sumer information about advance directives (as defined in
 21 section 1866(f)(3) of the Social Security Act (42 U.S.C.
 22 1395cc(f)(3)), as amended by section 2(a)), end-of-life de-
 23 cisionmaking, and available end-of-life and hospice care
 24 services. In carrying out the preceding sentence, the Ad-
 25 ministrator may designate an existing clearinghouse and

1 24-hour toll-free telephone hotline or, if no such entity is
2 appropriate, may establish a new clearinghouse and a 24-
3 hour toll-free telephone hotline.

4 **SEC. 5. INCREASING AWARENESS OF THE IMPORTANCE OF**
5 **END-OF-LIFE PLANNING.**

6 Title III of the Public Health Service Act (42 U.S.C.
7 241 et seq.) is amended by adding at the end the following
8 new part:

9 **“PART S—PROGRAMS TO INCREASE AWARENESS**
10 **OF ADVANCE DIRECTIVE PLANNING ISSUES**
11 **“SEC. 399FF. ADVANCE DIRECTIVE EDUCATION CAM-**
12 **PAIGNS.**

13 **“(a) ADVANCE DIRECTIVE EDUCATION CAMPAIGN.—**
14 The Secretary shall, directly or through grants awarded
15 under subsection (b), conduct a national public education
16 campaign—

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

19 **“(2) to improve the public’s understanding of**
20 **the various situations in which individuals may find**
21 **themselves if they become unable to express their**
22 **health care wishes;**

23 **“(3) to explain the need for readily available**
24 **legal documents that express an individual’s wishes,**
25 **through advance directives (including living wills,**

1 comfort care orders, and durable powers of attorney
2 for health care); and

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

5 “(b) GRANTS.—

6 “(1) IN GENERAL.—The Secretary shall use at
7 least 60 percent of the funds appropriated under
8 subsection (c) for the purpose of awarding grants to
9 public or nonprofit private entities (including States
10 or political subdivisions of a State), or a consortium
11 of any of such entities, for the purpose of conducting
12 education campaigns under subsection (a).

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

15 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to carry out this section
17 \$25,000,000.”.

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